

SENATE BILL REPORT

SB 5278

AS REPORTED BY COMMITTEE ON WAYS & MEANS, MARCH 11, 1991

Brief Description: Enhancing the penalties for transmitting certain diseases.

SPONSORS: Senators Nelson, Rasmussen, Madsen, A. Smith, Erwin, Hayner, Thorsness, Hansen and Craswell.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5278 be substituted therefor, and the substitute bill do pass.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, Hayner, Newhouse, and Rasmussen.

Staff: Richard Rodger (786-7461)

Hearing Dates: February 11, 1991; February 27, 1991; February 28, 1991

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5278 be substituted therefor, and the second substitute bill do pass.

Signed by Senators McDonald, Chairman; Craswell, Vice Chairman; Bailey, Bauer, Bluechel, Cantu, Gaspard, Hayner, Johnson, Matson, Metcalf, Owen, Saling, L. Smith, and Wojahn.

Staff: Cindi Holmstrom (786-7715)

Hearing Dates: March 8, 1991; March 11, 1991

BACKGROUND:

A person is guilty of assault in the second degree if, with the intent to inflict bodily harm, he or she exposes or transmits human immunodeficiency virus (HIV) to another person. It has been suggested that this offense should be classified as assault in the first degree.

It has been suggested that a new offense should be created for when a person knows that they have HIV and the person exposes or transmits HIV to another person without previously informing such person of the presence of the virus.

A person is guilty of a gross misdemeanor if: (a) the person knows that he or she has a sexually transmitted disease (except HIV); (b) has been informed that the disease may be communicated through sexual intercourse; and (c) has sexual intercourse without informing the other person of the disease.

It has been suggested that the transmission and exposure elements should be separate offenses (assault 3 and 4).

It has also been suggested that penalties for sexual offenses should be enhanced when an offender has tested HIV positive prior to the commission of the offense.

Any person who is convicted of a sexual offense is required to submit to pretest counseling, HIV antibody testing, and post-test counseling. Access to the offender's HIV test results are generally restricted. Law enforcement officers, fire fighters, and health care providers who were exposed to the offender's bodily fluids may receive notification of the test results.

Any person may petition the court for release of HIV test results; however, the court may only grant access to the records for good cause. In determining "good cause," the court must balance the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. It has been suggested that all victims of sexual offenses should have a statutory right to obtain the offender's test results.

An unfair discrimination practice may be based on an actual or perceived HIV infection.

SUMMARY:

A person is guilty of assault in the first degree when he or she knows that they have HIV and the person exposes or transmits HIV to another person with the intent to inflict bodily harm.

A person is guilty of assault in the second degree when he or she knows that they have HIV and the person exposes or transmits HIV to another person without informing them of the presence of the virus.

A person is guilty of assault in the third degree when the person knows that he or she has a sexually transmitted disease (except HIV) and the person transmits the disease to another person without informing them of its presence.

A person is guilty of assault in the fourth degree when the person knows that he or she has a sexually transmitted disease (except HIV) and the person exposes another person to the disease without informing them of its presence.

An additional 48 months is added to the presumptive sentence for certain offenses committed by HIV positive offenders.

All persons who are charged with the commission of a sexual offense shall be tested for the HIV antibody. The court shall, at the time of the alleged offender's first appearance, order the testing to be conducted. As soon as possible after

the entry of the order, the local health department shall conduct the HIV testing.

Any person named as a victim of a sexual offense may be notified of the HIV antibody test results of the alleged offender. The person's legal representative for health care decisions is also authorized to receive the test results.

HIV discrimination claims must be based on an unfair practice which is related to an actual HIV infection.

EFFECT OF PROPOSED SUBSTITUTE:

Victims of any criminal offense who were substantially exposed to bodily fluids may receive the results of tests conducted on alleged or convicted offenders.

The mandatory testing is modified to require testing of any person convicted of a criminal offense where the victim was substantially exposed to the offender's bodily fluids and there is a possible risk of infection.

Mandatory testing for persons convicted of indecent exposure, promoting prostitution, and permitting prostitution is eliminated. Testing will occur for persons who are convicted of offenses of prostitution and patronizing a prostitute. The original time frame for mandatory testing is restored.

The Department of Health is directed to specify a schedule for interval HIV testing.

A procedure is established for a victim to request HIV testing of an accused or convicted person. The court will order the tests upon a finding that, in the course of the offense, the victim was exposed to the bodily fluids of the accused, and there is a substantial risk of exposure to the infection.

The section which eliminated discrimination claims for "perceived" HIV infections is stricken.

EFFECT OF PROPOSED SECOND SUBSTITUTE:

Language is added which makes the act contingent upon funding in the Omnibus Appropriations Act.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR (Law & Justice):

These amendments to the criminal code are necessary to correct the omission of certain offenses that should be criminalized. Additionally the present classification for the intentional exposure or transmission of HIV is too low. The offense should be a class A felony. Current law doesn't adequately

balance the competing interests of victims and offenders. Too much time is allowed to elapse if testing is conducted after sentencing. Presently victims are not informed of negative test results. Interval testing should also be provided for in the statute. Testing should only be done when requested by the victim.

TESTIMONY AGAINST (Law & Justice):

The penalty sections are too broad and include offenses where there is no possibility of transmission. The bill creates bad public policy because it assumes that a person who is charged with the offense is guilty. The testing of offenders does nothing to assist the victims in determining whether they are affected. Testing the victim is the best method of determining whether transmission has occurred. All victims should be provided free testing, counselling, and therapy.

TESTIFIED (Law & Justice): Seth Dawson, Snohomish County Prosecuting Attorney (pro); Susie Tracy, WSMA (pro); Ian McGowan, NW Aids Foundation (con sec. 5 & 6); Bea Kelleigh, Seattle-King Co. Dept. of Health (pro); Kathy Friedt, Executive Director, Human Rights Commission (con sec. 6); Joan Gaumer, Privacy Fund (con); Jerry Sheehan, ACLU (con); Dr. Mimi Fields, Department of Health; Michael Davidson, Seattle Act-UP (con); Heather Buckle, Seattle ACT-UP (con)

TESTIMONY FOR (Ways & Means):

This bill appropriately supports the victim's right for counseling and testing.

TESTIMONY AGAINST (Ways & Means): None

TESTIFIED (Ways & Means): Mimi Fields, M.D., Dept. of Health