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**SUBSTITUTE HOUSE BILL 2491**

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**State of Washington                      52nd Legislature                      1992 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Padden, Paris, Silver and Morton)

Read first time 02/07/92.

1            AN ACT Relating to HIV testing of juvenile offenders; and amending  
2 RCW 13.40.070 and 70.24.340.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 13.40.070 and 1989 c 407 s 9 are each amended to read  
5 as follows:

6            (1) Complaints referred to the juvenile court alleging the  
7 commission of an offense shall be referred directly to the prosecutor.  
8 The prosecutor, upon receipt of a complaint, shall screen the complaint  
9 to determine whether:

10            (a) The alleged facts bring the case within the jurisdiction of the  
11 court; and

12            (b) On a basis of available evidence there is probable cause to  
13 believe that the juvenile did commit the offense.

1 (2) If the identical alleged acts constitute an offense under both  
2 the law of this state and an ordinance of any city or county of this  
3 state, state law shall govern the prosecutor's screening and charging  
4 decision for both filed and diverted cases.

5 (3) If the requirements of subsection((s)) (1)(a) and (b) of this  
6 section are met, the prosecutor shall either file an information in  
7 juvenile court or divert the case, as set forth in subsections (5),  
8 (6), and (7) of this section. If the prosecutor finds that the  
9 requirements of subsection (1)(a) and (b) of this section are not met,  
10 the prosecutor shall maintain a record, for one year, of such decision  
11 and the reasons therefor. In lieu of filing an information or  
12 diverting an offense a prosecutor may file a motion to modify community  
13 supervision where such offense constitutes a violation of community  
14 supervision.

15 (4) An information shall be a plain, concise, and definite written  
16 statement of the essential facts constituting the offense charged. It  
17 shall be signed by the prosecuting attorney and conform to chapter  
18 10.37 RCW.

19 (5) Where a case is legally sufficient, the prosecutor shall file  
20 an information with the juvenile court if:

21 (a) An alleged offender is accused of a class A felony, a class B  
22 felony, an attempt to commit a class B felony, assault in the third  
23 degree, rape in the third degree, or any other offense listed in RCW  
24 13.40.020(1)(b) or (c); or

25 (b) An alleged offender is accused of a felony and has a criminal  
26 history of at least one class A or class B felony, or two class C  
27 felonies, or at least two gross misdemeanors, or at least two  
28 misdemeanors and one additional misdemeanor or gross misdemeanor, or at  
29 least one class C felony and one misdemeanor or gross misdemeanor; or

1 (c) An alleged offender has been referred by a diversion unit for  
2 prosecution or desires prosecution instead of diversion; or

3 (d) An alleged offender has three or more diversions on the alleged  
4 offender's criminal history within eighteen months of the current  
5 alleged offense.

6 (6) Where a case is legally sufficient the prosecutor shall divert  
7 the case if the alleged offense is a misdemeanor or gross misdemeanor  
8 or violation and the alleged offense(s) in combination with the alleged  
9 offender's criminal history do not exceed two offenses or violations  
10 and do not include any felonies: PROVIDED, That if the alleged  
11 offender is charged with a related offense that must or may be filed  
12 under subsections (5) and (7) of this section, a case under this  
13 subsection may also be filed.

14 (7) Where a case is legally sufficient and falls into neither  
15 subsection (5) nor (6) of this section, it may be filed or diverted.  
16 In deciding whether to file or divert an offense under this section the  
17 prosecutor shall be guided only by the length, seriousness, and recency  
18 of the alleged offender's criminal history and the circumstances  
19 surrounding the commission of the alleged offense.

20 (8) If an alleged offender is accused of prostitution or  
21 patronizing a prostitute under chapter 9A.88 RCW and the offense may be  
22 diverted as provided in subsections (6) and (7) of this section, the  
23 diversion agreement must include referral of the juvenile to local  
24 health departments for HIV testing and counseling of the alleged  
25 offender as provided in RCW 70.24.340.

26 (9) Whenever a juvenile is placed in custody or, where not placed  
27 in custody, referred to a diversionary interview, the parent or legal  
28 guardian of the juvenile shall be notified as soon as possible  
29 concerning the allegation made against the juvenile and the current  
30 status of the juvenile.

1       (~~(9)~~) (10) The responsibilities of the prosecutor under  
2 subsections (1) through (~~(8)~~) (9) of this section may be performed by  
3 a juvenile court probation counselor for any complaint referred to the  
4 court alleging the commission of an offense which would not be a felony  
5 if committed by an adult, if the prosecutor has given sufficient  
6 written notice to the juvenile court that the prosecutor will not  
7 review such complaints.

8       **Sec. 2.** RCW 70.24.340 and 1988 c 206 s 703 are each amended to  
9 read as follows:

10       (1) Local health departments authorized under this chapter shall  
11 conduct or cause to be conducted pretest counseling, HIV testing, and  
12 posttest counseling of all persons convicted of, referred by  
13 prosecutors under RCW 13.40.070(8), or adjudged in juvenile court to  
14 have committed:

15       (a) (~~Convicted of~~) A sexual offense under chapter 9A.44 RCW;

16       (b) (~~Convicted of~~) Prostitution or offenses relating to  
17 prostitution under chapter 9A.88 RCW; or

18       (c) (~~Convicted of~~) Drug offenses under chapter 69.50 RCW if the  
19 court determines at the time of conviction that the related drug  
20 offense is one associated with the use of hypodermic needles.

21       (2) Such testing shall be conducted as soon as possible after  
22 referral, adjudication, or sentencing and shall be so requested by the  
23 prosecutor or ordered by the juvenile or sentencing judge.

24       (3) This section applies only to offenses committed after March 23,  
25 1988.

26       (4) A law enforcement officer, fire fighter, health care provider,  
27 health care facility staff person, or other categories of employment  
28 determined by the board in rule to be at risk of substantial exposure  
29 to HIV, who has experienced a substantial exposure to another person's

1 bodily fluids in the course of his or her employment, may request a  
2 state or local public health officer to order pretest counseling, HIV  
3 testing, and posttest counseling for the person whose bodily fluids he  
4 or she has been exposed to. The person who is subject to the order  
5 shall be given written notice of the order promptly, personally, and  
6 confidentially, stating the grounds and provisions of the order,  
7 including the factual basis therefor. If the person who is subject to  
8 the order refuses to comply, the state or local public health officer  
9 may petition the superior court for a hearing. The standard of review  
10 for the order is whether substantial exposure occurred and whether that  
11 exposure presents a possible risk of transmission of the HIV virus as  
12 defined by the board by rule. Upon conclusion of the hearing, the  
13 court shall issue the appropriate order. The state or local public  
14 health officer shall perform counseling and testing under this  
15 subsection if he or she finds that the exposure was substantial and  
16 presents a possible risk as defined by the board of health by rule.