
SUBSTITUTE SENATE BILL 6285

State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Zarelli, Roach, Schow, Long, McCaslin, Morton, Hochstatter, Swecker, Hargrove, Hale, Strannigan, Oke, Wood, Finkbeiner, Deccio, Johnson, A. Anderson, Cantu, Moyer and West)

Read first time 02/02/96.

1 AN ACT Relating to disclosure of offenders' HIV test results to
2 department of corrections and jail staff; amending RCW 70.24.015 and
3 70.24.105; and creating new sections.

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

5 **Sec. 1.** RCW 70.24.015 and 1988 c 206 s 901 are each amended to
6 read as follows:

7 The legislature declares that sexually transmitted diseases
8 constitute a serious and sometimes fatal threat to the public and
9 individual health and welfare of the people of the state. The
10 legislature finds that the incidence of sexually transmitted diseases
11 is rising at an alarming rate and that these diseases result in
12 significant social, health, and economic costs, including infant and
13 maternal mortality, temporary and lifelong disability, and premature
14 death. The legislature further finds that sexually transmitted
15 diseases, by their nature, involve sensitive issues of privacy, and it
16 is the intent of the legislature that all programs designed to deal
17 with these diseases afford patients privacy, confidentiality, and
18 dignity. The legislature also finds that medical knowledge and
19 information about sexually transmitted diseases are rapidly changing.

1 It is therefore the intent of the legislature to provide a program that
2 is sufficiently flexible to meet emerging needs, deals efficiently and
3 effectively with reducing the incidence of sexually transmitted
4 diseases, and provides patients with a secure knowledge that
5 information they provide will remain private and confidential. The
6 legislature further finds that department of corrections staff and jail
7 staff perform essential public functions that are vital to our
8 communities. The health and safety of these workers is often placed in
9 jeopardy while they perform the responsibilities of their jobs.
10 Therefore, the legislature intends that department of corrections staff
11 and jail staff who, in the course of their regularly assigned job
12 responsibilities, may come within close physical proximity to offenders
13 and detained people be notified of the results of an HIV antibody test
14 when the test is mandated by law pursuant to this chapter.

15 NEW SECTION. **Sec. 2.** The legislature finds that, through the
16 efforts of health care professionals and corrections staff, offenders
17 in department of corrections facilities and people detained in local
18 jails are being encouraged to take responsibility for their health by
19 requesting voluntary and anonymous pretest counseling, HIV testing,
20 posttest counseling, and AIDS counseling. The legislature does not
21 intend, through this act, to mandate disclosure of the results of
22 voluntary and anonymous tests. The legislature intends to continue to
23 protect the confidential exchange of medical information related to
24 voluntary and anonymous pretest counseling, HIV testing, posttest
25 counseling, and AIDS counseling as provided by chapter 70.24 RCW.

26 **Sec. 3.** RCW 70.24.105 and 1994 c 72 s 1 are each amended to read
27 as follows:

28 (1) No person may disclose or be compelled to disclose the identity
29 of any person who has investigated, considered, or requested a test or
30 treatment for a sexually transmitted disease, except as authorized by
31 this chapter.

32 (2) No person may disclose or be compelled to disclose the identity
33 of any person upon whom an HIV antibody test is performed, or the
34 results of such a test, nor may the result of a test for any other
35 sexually transmitted disease when it is positive be disclosed. This
36 protection against disclosure of test subject, diagnosis, or treatment
37 also applies to any information relating to diagnosis of or treatment

1 for HIV infection and for any other confirmed sexually transmitted
2 disease. The following persons, however, may receive such information:

3 (a) The subject of the test or the subject's legal representative
4 for health care decisions in accordance with RCW 7.70.065, with the
5 exception of such a representative of a minor child over fourteen years
6 of age and otherwise competent;

7 (b) Any person who secures a specific release of test results or
8 information relating to HIV or confirmed diagnosis of or treatment for
9 any other sexually transmitted disease executed by the subject or the
10 subject's legal representative for health care decisions in accordance
11 with RCW 7.70.065, with the exception of such a representative of a
12 minor child over fourteen years of age and otherwise competent;

13 (c) The state public health officer, a local public health officer,
14 or the centers for disease control of the United States public health
15 service in accordance with reporting requirements for a diagnosed case
16 of a sexually transmitted disease;

17 (d) A health facility or health care provider that procures,
18 processes, distributes, or uses: (i) A human body part, tissue, or
19 blood from a deceased person with respect to medical information
20 regarding that person; (ii) semen, including that provided prior to
21 March 23, 1988, for the purpose of artificial insemination; or (iii)
22 blood specimens;

23 (e) Any state or local public health officer conducting an
24 investigation pursuant to RCW 70.24.024, provided that such record was
25 obtained by means of court ordered HIV testing pursuant to RCW
26 70.24.340 or 70.24.024;

27 (f) A person allowed access to the record by a court order granted
28 after application showing good cause therefor. In assessing good
29 cause, the court shall weigh the public interest and the need for
30 disclosure against the injury to the patient, to the physician-patient
31 relationship, and to the treatment services. Upon the granting of the
32 order, the court, in determining the extent to which any disclosure of
33 all or any part of the record of any such test is necessary, shall
34 impose appropriate safeguards against unauthorized disclosure. An
35 order authorizing disclosure shall: (i) Limit disclosure to those
36 parts of the patient's record deemed essential to fulfill the objective
37 for which the order was granted; (ii) limit disclosure to those persons
38 whose need for information is the basis for the order; and (iii)
39 include any other appropriate measures to keep disclosure to a minimum

1 for the protection of the patient, the physician-patient relationship,
2 and the treatment services, including but not limited to the written
3 statement set forth in subsection (5) of this section;

4 (g) Persons who, because of their behavioral interaction with the
5 infected individual, have been placed at risk for acquisition of a
6 sexually transmitted disease, as provided in RCW 70.24.022, if the
7 health officer or authorized representative believes that the exposed
8 person was unaware that a risk of disease exposure existed and that the
9 disclosure of the identity of the infected person is necessary;

10 (h) A law enforcement officer, fire fighter, health care provider,
11 health care facility staff person, or other persons as defined by the
12 board in rule pursuant to RCW 70.24.340(4), who has requested a test of
13 a person whose bodily fluids he or she has been substantially exposed
14 to, pursuant to RCW 70.24.340(4), if a state or local public health
15 officer performs the test;

16 (i) Claims management personnel employed by or associated with an
17 insurer, health care service contractor, health maintenance
18 organization, self-funded health plan, state-administered health care
19 claims payer, or any other payer of health care claims where such
20 disclosure is to be used solely for the prompt and accurate evaluation
21 and payment of medical or related claims. Information released under
22 this subsection shall be confidential and shall not be released or
23 available to persons who are not involved in handling or determining
24 medical claims payment; and

25 (j) A department of social and health services worker, a child
26 placing agency worker, or a guardian ad litem who is responsible for
27 making or reviewing placement or case-planning decisions or
28 recommendations to the court regarding a child, who is less than
29 fourteen years of age, has a sexually transmitted disease, and is in
30 the custody of the department of social and health services or a
31 licensed child placing agency; this information may also be received by
32 a person responsible for providing residential care for such a child
33 when the department of social and health services or a licensed child
34 placing agency determines that it is necessary for the provision of
35 child care services.

36 (3) No person to whom the results of a test for a sexually
37 transmitted disease have been disclosed pursuant to subsection (2) of
38 this section may disclose the test results to another person except as
39 authorized by that subsection.

1 (4) The release of sexually transmitted disease information
2 regarding an offender or detained person, except as provided in
3 subsection (2)(e) of this section, shall be governed as follows:

4 (a) The sexually transmitted disease status of a department of
5 corrections offender shall be made available by department of
6 corrections health care providers and local public health officers to
7 a department of corrections superintendent or administrator (~~as~~
8 ~~necessary~~). The information made available to superintendents and
9 administrators under this subsection (4)(a) shall be utilized by a
10 superintendent or administrator only for disease prevention or control
11 and for protection of the safety and security of the staff, offenders,
12 and the public. The information (~~may~~) shall also be submitted to
13 transporting officers and receiving facilities, including facilities
14 that are not under the department of (~~correction's~~) corrections'
15 jurisdiction.

16 (b) The sexually transmitted disease status of a person detained in
17 a jail shall be made available by the local public health officer to a
18 jail administrator (~~as necessary~~). The information made available to
19 administrators under this subsection (4)(b) shall be utilized only for
20 disease prevention or control and for protection of the safety and
21 security of the staff, offenders, detainees, and the public. The
22 information (~~may~~) shall also be submitted to transporting officers
23 and receiving facilities.

24 (c) Information regarding (~~a department of corrections~~
25 ~~offender's~~) the sexually transmitted disease status of an offender or
26 detained person is confidential (~~and may be disclosed by a~~
27 ~~correctional superintendent or administrator or local jail~~
28 ~~administrator only as necessary for disease prevention or control and~~
29 ~~for protection of the safety and security of the staff, offenders, and~~
30 ~~the public~~), except that any department of corrections staff or jail
31 staff who has requested a test of an offender or detained person, whose
32 bodily fluids he or she has been substantially exposed to, shall be
33 informed of the results if a test is conducted pursuant to RCW
34 70.24.360 or 70.24.370. In addition, information received by a
35 superintendent or administrator under (a) and (b) of this subsection as
36 a result of a mandatory test conducted pursuant to RCW 70.24.340,
37 70.24.360, or 70.24.370 shall be disclosed to all department of
38 corrections staff and jail staff who, in the course of their regularly
39 assigned job responsibilities, may come within close physical proximity

1 to the offender or detained person. Unauthorized disclosure of this
2 information to any person may result in disciplinary action, in
3 addition to the penalties prescribed in RCW 70.24.080 or any other
4 penalties as may be prescribed by law.

5 (5) Whenever disclosure is made pursuant to this section, except
6 for subsections (2)(a) and (6) of this section, it shall be accompanied
7 by a statement in writing which includes the following or substantially
8 similar language: "This information has been disclosed to you from
9 records whose confidentiality is protected by state law. State law
10 prohibits you from making any further disclosure of it without the
11 specific written consent of the person to whom it pertains, or as
12 otherwise permitted by state law. A general authorization for the
13 release of medical or other information is NOT sufficient for this
14 purpose." An oral disclosure shall be accompanied or followed by such
15 a notice within ten days.

16 (6) The requirements of this section shall not apply to the
17 customary methods utilized for the exchange of medical information
18 among health care providers in order to provide health care services to
19 the patient, nor shall they apply within health care facilities where
20 there is a need for access to confidential medical information to
21 fulfill professional duties.

22 (7) Upon request of the victim, disclosure of test results under
23 this section to victims of sexual offenses under chapter 9A.44 RCW
24 shall be made if the result is negative or positive. The county
25 prosecuting attorney shall notify the victim of the right to such
26 disclosure. Such disclosure shall be accompanied by appropriate
27 counseling, including information regarding follow-up testing.

28 NEW SECTION. **Sec. 4.** The department of health and the department
29 of corrections shall each adopt rules to implement this act. The
30 department of health and the department of corrections shall also
31 report to the legislature by January 1, 1997, on the following: (1)
32 Changes made in rules, policies, and procedures to implement this act;
33 and (2) a summary of the number and circumstances of mandatory test
34 results that were disclosed to department of corrections staff and jail
35 staff pursuant to section 3 of this act.

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