

2 **2SSB 5306** - S AMD - 189

3 By Senators Zarelli, Franklin, Hargrove and Long

4 ADOPTED 3/17/97

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** (1) The legislature finds that department  
8 of corrections staff and jail staff perform essential public functions  
9 that are vital to our communities. The health and safety of these  
10 workers is often placed in jeopardy while they perform the  
11 responsibilities of their jobs. There is a special need to allay the  
12 concerns of employees who are substantially exposed to the bodily  
13 fluids of offenders or detainees. Great mental anguish can be avoided  
14 by a prompt blood test and immediate disclosure to the exposed  
15 employee. Therefore, the legislature intends that the results of any  
16 HIV tests conducted on an offender or detainee under RCW 70.24.340,  
17 70.24.360, or 70.24.370 be immediately disclosed to the superintendent  
18 or administrator of the department of corrections facility or local  
19 jail housing the offender or detainee, and also be immediately  
20 disclosed to any member of a jail staff or department of corrections  
21 staff who has been substantially exposed to the bodily fluids of an  
22 offender or detained person. The legislature finds that the system of  
23 universal precautions required under federal and state law in all  
24 settings where risk of occupational exposure to communicable diseases  
25 exists are an effective way to reduce the risk of communicable disease  
26 transmission. The legislature does not intend to discourage the use of  
27 universal precautions but to provide supplemental information for  
28 corrections and jail staff to utilize as part of their universal  
29 precautions with all offenders and detained people.

30 (2) The legislature further finds that, through the efforts of  
31 health care professionals and corrections staff, offenders in  
32 department of corrections facilities and people detained in local jails  
33 are being encouraged to take responsibility for their health by  
34 requesting voluntary and anonymous pretest counseling, HIV testing,  
35 posttest counseling, and AIDS counseling. The legislature does not  
36 intend, through this act, to mandate disclosure of the results of

1 voluntary and anonymous tests. The legislature intends to continue to  
2 protect the confidential exchange of medical information related to  
3 voluntary and anonymous pretest counseling, HIV testing, posttest  
4 counseling, and AIDS counseling as provided by chapter 70.24 RCW.

5 **Sec. 2.** RCW 70.24.105 and 1994 c 72 s 1 are each amended to read  
6 as follows:

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

11 (2) No person may disclose or be compelled to disclose the identity  
12 of any person upon whom an HIV antibody test is performed, or the  
13 results of such a test, nor may the result of a test for any other  
14 sexually transmitted disease when it is positive be disclosed, except  
15 as authorized by this chapter. This protection against disclosure of  
16 test subject, diagnosis, or treatment also applies to any information  
17 relating to diagnosis of or treatment for HIV infection and for any  
18 other confirmed sexually transmitted disease. The following persons,  
19 however, may receive such information:

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

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

30 (c) The state public health officer, a local public health officer,  
31 or the centers for disease control of the United States public health  
32 service in accordance with reporting requirements for a diagnosed case  
33 of a sexually transmitted disease;

34 (d) A health facility or health care provider that procures,  
35 processes, distributes, or uses: (i) A human body part, tissue, or  
36 blood from a deceased person with respect to medical information  
37 regarding that person; (ii) semen, including that provided prior to

1 March 23, 1988, for the purpose of artificial insemination; or (iii)  
2 blood specimens;

3 (e) Any state or local public health officer conducting an  
4 investigation pursuant to RCW 70.24.024, provided that such record was  
5 obtained by means of court ordered HIV testing pursuant to RCW  
6 70.24.024; or when disclosure is pursuant to RCW 70.24.340 (~~or~~  
7 ~~70.24.024~~), 70.24.360, or 70.24.370;

8 (f) A person allowed access to the record by a court order granted  
9 after application showing good cause therefor. In assessing good  
10 cause, the court shall weigh the public interest and the need for  
11 disclosure against the injury to the patient, to the physician-patient  
12 relationship, and to the treatment services. Upon the granting of the  
13 order, the court, in determining the extent to which any disclosure of  
14 all or any part of the record of any such test is necessary, shall  
15 impose appropriate safeguards against unauthorized disclosure. An  
16 order authorizing disclosure shall: (i) Limit disclosure to those  
17 parts of the patient's record deemed essential to fulfill the objective  
18 for which the order was granted; (ii) limit disclosure to those persons  
19 whose need for information is the basis for the order; and (iii)  
20 include any other appropriate measures to keep disclosure to a minimum  
21 for the protection of the patient, the physician-patient relationship,  
22 and the treatment services, including but not limited to the written  
23 statement set forth in subsection (5) of this section;

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

30 (h) A law enforcement officer, fire fighter, health care provider,  
31 health care facility staff person, jail staff person, department of  
32 corrections staff person, or other persons as defined by the board in  
33 rule pursuant to RCW 70.24.340(4), who has requested a test of a person  
34 whose bodily fluids he or she has been substantially exposed to,  
35 pursuant to RCW 70.24.340(4), if a state or local public health officer  
36 performs the test or the test is conducted under RCW 70.24.340,  
37 70.24.360, or 70.24.370;

38 (i) Claims management personnel employed by or associated with an  
39 insurer, health care service contractor, health maintenance

1 organization, self-funded health plan, state-administered health care  
2 claims payer, or any other payer of health care claims where such  
3 disclosure is to be used solely for the prompt and accurate evaluation  
4 and payment of medical or related claims. Information released under  
5 this subsection shall be confidential and shall not be released or  
6 available to persons who are not involved in handling or determining  
7 medical claims payment; (~~and~~)

8 (j) A department of social and health services worker, a child  
9 placing agency worker, or a guardian ad litem who is responsible for  
10 making or reviewing placement or case-planning decisions or  
11 recommendations to the court regarding a child, who is less than  
12 fourteen years of age, has a sexually transmitted disease, and is in  
13 the custody of the department of social and health services or a  
14 licensed child placing agency; this information may also be received by  
15 a person responsible for providing residential care for such a child  
16 when the department of social and health services or a licensed child  
17 placing agency determines that it is necessary for the provision of  
18 child care services; and

19 (k) A department of corrections superintendent or administrator, or  
20 a jail administrator regarding tests of offenders and detained persons  
21 under subsection (4) of this section.

22 (3) No person to whom the results of a test for a sexually  
23 transmitted disease have been disclosed pursuant to subsection (2) of  
24 this section may disclose the test results to another person except as  
25 (~~authorized~~) otherwise required by (~~that subsection~~) law.

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

29 (a) The sexually transmitted disease status of a department of  
30 corrections offender shall be made available by department of  
31 corrections health care providers to a department of corrections  
32 superintendent or administrator as necessary for disease prevention or  
33 control and for protection of the safety and security of the staff,  
34 offenders, and the public. The information may be submitted to  
35 transporting officers and receiving facilities, including facilities  
36 that are not under the department of correction's jurisdiction.

37 (b) The sexually transmitted disease status of a person detained in  
38 a jail shall be made available by the local public health officer to a  
39 jail administrator as necessary for disease prevention or control and

1 for protection of the safety and security of the staff, offenders,  
2 detainees, and the public. The results of any test of a person  
3 detained in a jail conducted under RCW 70.24.340 or 70.24.360 shall be  
4 made available to the jail administrator. The information may be  
5 submitted to transporting officers and receiving facilities.

6 (c) Information regarding ~~((a—department—of—corrections~~  
7 ~~offender's))~~ the sexually transmitted disease status of an offender or  
8 detained person is confidential and may be disclosed by a correctional  
9 superintendent or administrator or local jail administrator only as  
10 necessary for disease prevention or control and for protection of the  
11 safety and security of the staff, offenders, and the public.  
12 Unauthorized disclosure of this information to any person may result in  
13 disciplinary action, in addition to the penalties prescribed in RCW  
14 70.24.080 or any other penalties as may be prescribed by law.

15 (d) Notwithstanding the limitations on disclosure contained in (a),  
16 (b), and (c) of this subsection, whenever any member of jail staff or  
17 department of corrections staff has been substantially exposed to the  
18 bodily fluids of an offender or detained person, then the results of  
19 any tests conducted under RCW 70.24.340, 70.24.360, or 70.24.370 shall  
20 be immediately disclosed by the department of corrections health care  
21 provider or the local public health officer or the officer's designee  
22 to the correctional superintendent or administrator or local jail  
23 administrator. The superintendent or administrator shall then  
24 immediately disclose these results to the staff member who was  
25 substantially exposed. The superintendent or administrator and the  
26 health care provider or public health officer shall make a good faith  
27 effort to provide disclosure to the exposed person within seventy-two  
28 hours of exposure. Disclosure must be accompanied by appropriate  
29 counseling for the staff member, including information regarding  
30 follow-up testing and treatment.

31 (e) The receipt by an individual of information disclosed under  
32 this subsection (4) shall be utilized only for disease prevention or  
33 control and for protection of the safety and security of the staff,  
34 offenders, detainees, and the public. Use of this information for any  
35 other purpose, including harassment or discrimination, may result in  
36 disciplinary action, in addition to the penalties prescribed in RCW  
37 70.24.080 or any other penalties as may be prescribed by law.

38 (5) Whenever disclosure is made pursuant to this section, except  
39 for subsections (2)(a) and (6) of this section, it shall be accompanied

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

10 (6) The requirements of this section shall not apply to the  
11 customary methods utilized for the exchange of medical information  
12 among health care providers in order to provide health care services to  
13 the patient, nor shall they apply within health care facilities where  
14 there is a need for access to confidential medical information to  
15 fulfill professional duties.

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

22 NEW SECTION. Sec. 3. A new section is added to chapter 72.10 RCW  
23 to read as follows:

24 (1) The department must develop and implement policies and  
25 procedures for the uniform distribution of communicable disease  
26 prevention protocols to all corrections staff who, in the course of  
27 their regularly assigned job responsibilities, may come within close  
28 physical proximity to offenders with communicable diseases.

29 (2) The protocols must identify the offender and special  
30 precautions necessary to reduce the risk of transmission of the  
31 communicable disease but must not identify the offender's particular  
32 communicable disease.

33 (3) For the purposes of this section, "communicable disease" means  
34 an illness caused by an infectious agent that can be transmitted from  
35 one person, animal, or object to another person by direct or indirect  
36 means including transmission via an intermediate host or vector, food,  
37 water, or air.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 70.48 RCW  
2 to read as follows:

3        (1) Local jail administrators must develop and implement policies  
4 and procedures for the uniform distribution of communicable disease  
5 prevention protocols to all jail staff who, in the course of their  
6 regularly assigned job responsibilities, may come within close physical  
7 proximity to offenders or detainees with communicable diseases.

8        (2) The protocols must identify the offender or detainee and  
9 special precautions necessary to reduce the risk of transmission of the  
10 communicable disease but must not identify the offender's or detainee's  
11 particular communicable disease.

12        (3) For the purposes of this section, "communicable disease" means  
13 an illness caused by an infectious agent that can be transmitted from  
14 one person, animal, or object to another person by direct or indirect  
15 means including transmission via an intermediate host or vector, food,  
16 water, or air.

17        NEW SECTION.    **Sec. 5.**    The department of health and the department  
18 of corrections must each adopt rules to implement this act.    The  
19 department of health and the department of corrections with the  
20 cooperation of local jail administrators must also report to the  
21 legislature by January 1, 1998, on the following: (1) Changes made in  
22 rules and department of corrections and local jail policies and  
23 procedures to implement this act; and (2) a summary of the number and  
24 circumstances of mandatory test results that were disclosed to  
25 department of corrections staff and jail staff under RCW 70.24.105.

26        **Sec. 6.**    RCW 70.24.340 and 1988 c 206 s 703 are each amended to  
27 read as follows:

28        (1) Local health departments (~~((authorized under this chapter))~~)  
29 shall conduct or cause to be conducted pretest counseling, HIV testing,  
30 and posttest counseling of all persons:

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

32        (b) Convicted of prostitution or offenses relating to prostitution  
33 under chapter 9A.88 RCW; (~~((or))~~)

34        (c) Convicted of drug offenses under chapter 69.50 RCW if the court  
35 determines at the time of conviction that the related drug offense is  
36 one associated with the use of hypodermic needles; or

1 (d) Who are offenders or arrested or detained persons and who have  
2 subjected a law enforcement officer, fire fighter, health care  
3 provider, health care facility staff person, department of corrections  
4 staff person, jail staff person, or other category of employee, as  
5 determined by the board, to substantial exposure to their bodily  
6 fluids. Persons tested under this subsection (1)(d) shall also be  
7 tested for hepatitis B.

8 (2) ((Such)) Testing of persons convicted under subsection (1)(a)  
9 through (c) of this section shall be conducted as soon as possible  
10 after sentencing and shall be so ordered by the sentencing judge.  
11 Testing of persons causing a substantial exposure under subsection  
12 (1)(d) of this section shall be conducted as soon as possible, but not  
13 later than forty-eight hours after the exposure.

14 Consent of the persons tested under this section is not required.

15 (3) ((This section applies)) Subsection (1)(a) through (c) of this  
16 section applies only to offenses committed after March 23, 1988, and  
17 subsection (1)(d) of this section applies only to exposures occurring  
18 after the effective date of this act.

19 (4)(a) A law enforcement officer, fire fighter, health care  
20 provider, health care facility staff person, any member of a jail staff  
21 or department of corrections staff, or other categories of employment  
22 determined by the board in rule to be at risk of substantial exposure  
23 to HIV, who has experienced a substantial exposure to another person's  
24 bodily fluids in the course of his or her employment, may request a  
25 state or local public health officer to order pretest counseling, HIV  
26 testing, hepatitis B testing, and posttest counseling for the person  
27 whose bodily fluids he or she has been exposed to.

28 (b) If the person who is subject to the order is not an offender or  
29 arrested or detained person tested under subsection (1) of this  
30 section, the person shall be given written notice of the order  
31 promptly, personally, and confidentially, stating the grounds and  
32 provisions of the order, including the factual basis therefor. If the  
33 person who is subject to the order is not an offender or arrested or  
34 detained person tested under subsection (1) of this section and refuses  
35 to comply, the state or local public health officer may petition the  
36 superior court for a hearing. The standard of review for the order is  
37 whether substantial exposure occurred and whether that exposure  
38 presents a possible risk of transmission of the HIV virus as defined by



1 the board by rule. Upon conclusion of the hearing, the court shall  
2 issue the appropriate order.

3 (c) The state or local public health officer shall perform  
4 counseling and testing under this subsection if he or she finds that  
5 the exposure was substantial ~~((and presents a possible risk))~~ as  
6 defined by the board of health by rule.

7 **Sec. 7.** RCW 70.24.360 and 1988 c 206 s 706 are each amended to  
8 read as follows:

9 Jail administrators, ~~((with the approval of))~~ after consultation  
10 with and receiving written recommendations from the local public health  
11 officer, may order pretest counseling, HIV testing, and posttest  
12 counseling for persons detained in the jail if the ~~((local public~~  
13 ~~health officer))~~ jail administrator determines that actual or  
14 threatened behavior presents a possible risk to the staff, general  
15 public, or other persons. ~~((Approval of the local public health~~  
16 ~~officer shall be based on RCW 70.24.024(3) and may be contested through~~  
17 ~~RCW 70.24.024(4).))~~ The administrator shall establish, pursuant to RCW  
18 70.48.071, a procedure to document the possible risk ~~((which))~~ that is  
19 the basis for the HIV testing. "Possible risk," as used in this  
20 section, shall be defined by the jail administrator after consultation  
21 with the board ~~((in rule))~~. Possible risk, as used in the  
22 documentation of the behavior, or threat thereof, shall be reviewed  
23 with the person ~~((to try to assure that the person understands the~~  
24 ~~basis for testing))~~.

25 **Sec. 8.** RCW 70.24.024 and 1988 c 206 s 909 are each amended to  
26 read as follows:

27 (1) Subject to the provisions of this chapter, the state and local  
28 public health officers or their authorized representatives may examine  
29 and counsel or cause to be examined and counseled persons reasonably  
30 believed to be infected with or to have been exposed to a sexually  
31 transmitted disease.

32 (2) Orders or restrictive measures directed to persons with a  
33 sexually transmitted disease shall be used as the last resort when  
34 other measures to protect the public health have failed, including  
35 reasonable efforts, which shall be documented, to obtain the voluntary  
36 cooperation of the person who may be subject to such an order. The  
37 orders and measures shall be applied serially with the least intrusive

1 measures used first. The burden of proof shall be on the state or  
2 local public health officer to show that specified grounds exist for  
3 the issuance of the orders or restrictive measures and that the terms  
4 and conditions imposed are no more restrictive than necessary to  
5 protect the public health.

6 (3) When the state or local public health officer within his or her  
7 respective jurisdiction knows or has reason to believe, because of  
8 direct medical knowledge or reliable testimony of others in a position  
9 to have direct knowledge of a person's behavior, that a person has a  
10 sexually transmitted disease and is engaging in specified conduct, as  
11 determined by the board by rule based upon generally accepted standards  
12 of medical and public health science, that endangers the public health,  
13 he or she shall conduct an investigation in accordance with procedures  
14 prescribed by the board to evaluate the specific facts alleged, if any,  
15 and the reliability and credibility of the person or persons providing  
16 such information and, if satisfied that the allegations are true, he or  
17 she may issue an order according to the following priority to:

18 (a) Order a person to submit to a medical examination or testing,  
19 seek counseling, or obtain medical treatment for curable diseases, or  
20 any combination of these, within a period of time determined by the  
21 public health officer, not to exceed fourteen days.

22 (b) Order a person to immediately cease and desist from specified  
23 conduct (~~(which)~~) that endangers the health of others by imposing such  
24 restrictions upon the person as are necessary to prevent the specified  
25 conduct that endangers the health of others only if the public health  
26 officer has determined that clear and convincing evidence exists to  
27 believe that such person has been ordered to report for counseling as  
28 provided in (a) of this subsection and continues to demonstrate  
29 behavior (~~(which)~~) that endangers the health of others. Any  
30 restriction shall be in writing, setting forth the name of the person  
31 to be restricted and the initial period of time, not to exceed three  
32 months, during which the order shall remain effective, the terms of the  
33 restrictions, and such other conditions as may be necessary to protect  
34 the public health. Restrictions shall be imposed in the least-  
35 restrictive manner necessary to protect the public health.

36 (4)(a) Upon the issuance of any order by the state or local public  
37 health officer or an authorized representative pursuant to subsection  
38 (3) of this section or RCW 70.24.340(4) to a person who is not an  
39 offender or arrested or detained person tested under RCW 70.24.340(1),

1 such public health officer shall give written notice promptly,  
2 personally, and confidentially to the person who is the subject of the  
3 order stating the grounds and provisions of the order, including the  
4 factual bases therefor, the evidence relied upon for proof of infection  
5 and dangerous behavior, and the likelihood of repetition of such  
6 behaviors in the absence of such an order, and notifying the person who  
7 is the subject of the order that, if he or she contests the order, he  
8 or she may appear at a judicial hearing on the enforceability of the  
9 order, to be held in superior court. He or she may have an attorney  
10 appear on his or her behalf in the hearing at public expense, if  
11 necessary. The hearing shall be held within seventy-two hours of  
12 receipt of the notice, unless the person subject to the order agrees to  
13 comply. If the person contests the order, no invasive medical  
14 procedures shall be carried out prior to a hearing being held pursuant  
15 to this subsection. If the person does not contest the order within  
16 seventy-two hours of receiving it, and the person does not comply with  
17 the order within the time period specified for compliance with the  
18 order, the state or local public health officer may request a warrant  
19 be issued by the superior court to insure appearance at the hearing.  
20 The hearing shall be within seventy-two hours of the expiration date of  
21 the time specified for compliance with the original order. The burden  
22 of proof shall be on the public health officer to show by clear and  
23 convincing evidence that the specified grounds exist for the issuance  
24 of the order and for the need for compliance and that the terms and  
25 conditions imposed therein are no more restrictive than necessary to  
26 protect the public health. Upon conclusion of the hearing, the court  
27 shall issue appropriate orders affirming, modifying, or dismissing the  
28 order.

29 (b) If the superior court dismisses the order of the public health  
30 officer, the fact that the order was issued shall be expunged from the  
31 records of the department or local department of health.

32 (5) Any hearing conducted pursuant to this section shall be closed  
33 and confidential unless a public hearing is requested by the person who  
34 is the subject of the order, in which case the hearing will be  
35 conducted in open court. Unless in open hearing, any transcripts or  
36 records relating thereto shall also be confidential and may be sealed  
37 by the order of the court.



1 section to chapter 70.48 RCW; adding a new section to chapter 70.28  
2 RCW; creating new sections; and prescribing penalties."

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