
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5306

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Zarelli, Hargrove, Long, Stevens, Benton, Schow and Roach)

Read first time 03/10/97.

1 AN ACT Relating to disclosure of offenders' HIV and other
2 communicable disease test results to department of corrections and jail
3 staff; amending RCW 70.24.105, 70.24.340, 70.24.360, and 70.24.024;
4 adding new sections to chapter 72.10 RCW; adding a new section to
5 chapter 70.48 RCW; adding a new section to chapter 70.28 RCW; creating
6 new sections; and prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that department of
9 corrections staff and jail staff perform essential public functions
10 that are vital to our communities. The health and safety of these
11 workers is often placed in jeopardy while they perform the
12 responsibilities of their jobs. There is a special need to allay the
13 concerns of employees who are substantially exposed to the bodily
14 fluids of offenders or detainees. Great mental anguish can be avoided
15 by a prompt blood test and immediate disclosure to the exposed
16 employee. Therefore, the legislature intends that the results of any
17 HIV tests conducted on an offender or detainee under RCW 70.24.340,
18 70.24.360, or 70.24.370 be immediately disclosed to the superintendent
19 or administrator of the department of corrections facility or local

1 jail housing the offender or detainee, and also be immediately
2 disclosed to any member of a jail staff or department of corrections
3 staff who has been substantially exposed to the bodily fluids of an
4 offender or detained person. The legislature finds that the system of
5 universal precautions required under federal and state law in all
6 settings where risk of occupational exposure to communicable diseases
7 exists are an effective way to reduce the risk of communicable disease
8 transmission. The legislature does not intend to discourage the use of
9 universal precautions but to provide supplemental information for
10 corrections and jail staff to utilize as part of their universal
11 precautions with all offenders and detained people.

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

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

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

29 (2) No person may disclose or be compelled to disclose the identity
30 of any person upon whom an HIV antibody test is performed, or the
31 results of such a test, nor may the result of a test for any other
32 sexually transmitted disease when it is positive be disclosed, except
33 as authorized by this chapter. This protection against disclosure of
34 test subject, diagnosis, or treatment also applies to any information
35 relating to diagnosis of or treatment for HIV infection and for any
36 other confirmed sexually transmitted disease. The following persons,
37 however, may receive such information:

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

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

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

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

21 (e) Any state or local public health officer conducting an
22 investigation pursuant to RCW 70.24.024, provided that such record was
23 obtained by means of court ordered HIV testing pursuant to RCW
24 70.24.024; or when disclosure is pursuant to RCW 70.24.340 ((or
25 70.24.024)), 70.24.360, or 70.24.370;

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

1 and the treatment services, including but not limited to the written
2 statement set forth in subsection (5) of this section;

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

9 (h) A law enforcement officer, fire fighter, health care provider,
10 health care facility staff person, jail staff person, department of
11 corrections staff person, or other persons as defined by the board in
12 rule pursuant to RCW 70.24.340(4), who has requested a test of a person
13 whose bodily fluids he or she has been substantially exposed to,
14 pursuant to RCW 70.24.340(4), if a state or local public health officer
15 performs the test or the test is conducted under RCW 70.24.340,
16 70.24.360, or 70.24.370;

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

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

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

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

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

8 (a) The sexually transmitted disease status of a department of
9 corrections offender shall be made available by department of
10 corrections health care providers to a department of corrections
11 superintendent or administrator as necessary for disease prevention or
12 control and for protection of the safety and security of the staff,
13 offenders, and the public. The information may be submitted to
14 transporting officers and receiving facilities, including facilities
15 that are not under the department of correction's 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 for disease prevention or control and
19 for protection of the safety and security of the staff, offenders,
20 detainees, and the public. The results of any test of a person
21 detained in a jail conducted under RCW 70.24.340 or 70.24.360 shall be
22 made available to the jail administrator. The information may be
23 submitted to transporting officers 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 correctional
27 superintendent or administrator or local jail administrator only as
28 necessary for disease prevention or control and for protection of the
29 safety and security of the staff, offenders, and the public.
30 Unauthorized disclosure of this information to any person may result in
31 disciplinary action, in addition to the penalties prescribed in RCW
32 70.24.080 or any other penalties as may be prescribed by law.

33 (d) Notwithstanding the limitations on disclosure contained in (a),
34 (b), and (c) of this subsection, whenever any member of jail staff or
35 department of corrections staff has been substantially exposed to the
36 bodily fluids of an offender or detained person, then the results of
37 any tests conducted under RCW 70.24.340, 70.24.360, or 70.24.370 shall
38 be immediately disclosed by the department of corrections health care
39 provider or the local public health officer or the officer's designee

1 to the correctional superintendent or administrator or local jail
2 administrator. The superintendent or administrator shall then
3 immediately disclose these results to the staff member who was
4 substantially exposed. The superintendent or administrator and the
5 health care provider or public health officer shall make a good faith
6 effort to provide disclosure to the exposed person within seventy-two
7 hours of exposure. Disclosure must be accompanied by appropriate
8 counseling for the staff member, including information regarding
9 follow-up testing and treatment.

10 (e) The receipt by an individual of information disclosed under
11 this subsection (4) shall be utilized only for disease prevention or
12 control and for protection of the safety and security of the staff,
13 offenders, detainees, and the public. Use of this information for any
14 other purpose, including harassment or discrimination, may result in
15 disciplinary action, in addition to the penalties prescribed in RCW
16 70.24.080 or any other penalties as may be prescribed by law.

17 (5) Whenever disclosure is made pursuant to this section, except
18 for subsections (2)(a) and (6) of this section, it shall be accompanied
19 by a statement in writing (~~which~~) that includes the following or
20 substantially similar language: "This information has been disclosed
21 to you from records whose confidentiality is protected by state law.
22 State law prohibits you from making any further disclosure of it
23 without the specific written consent of the person to whom it pertains,
24 or as otherwise permitted by state law. A general authorization for
25 the release of medical or other information is NOT sufficient for this
26 purpose." An oral disclosure shall be accompanied or followed by such
27 a notice within ten days.

28 (6) The requirements of this section shall not apply to the
29 customary methods utilized for the exchange of medical information
30 among health care providers in order to provide health care services to
31 the patient, nor shall they apply within health care facilities where
32 there is a need for access to confidential medical information to
33 fulfill professional duties.

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

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 72.10 RCW
2 to read as follows:

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

8 (2) The protocols must identify the offender and special
9 precautions necessary to reduce the risk of transmission of the
10 communicable disease but must not identify the offender's particular
11 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. 4.** A new section is added to chapter 70.48 RCW
18 to read as follows:

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

24 (2) The protocols must identify the offender or detainee and
25 special precautions necessary to reduce the risk of transmission of the
26 communicable disease but must not identify the offender's or detainee's
27 particular communicable disease.

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

33 NEW SECTION. **Sec. 5.** The department of health and the department
34 of corrections must each adopt rules to implement this act. The
35 department of health and the department of corrections with the
36 cooperation of local jail administrators must also report to the
37 legislature by January 1, 1998, on the following: (1) Changes made in

1 rules and department of corrections and local jail policies and
2 procedures to implement this act; and (2) a summary of the number and
3 circumstances of mandatory test results that were disclosed to
4 department of corrections staff and jail staff under RCW 70.24.105.

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

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

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

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

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

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

23 (2) (~~Such~~) Testing of persons convicted under subsection (1)(a)
24 through (c) of this section shall be conducted as soon as possible
25 after sentencing and shall be so ordered by the sentencing judge.
26 Testing of persons causing a substantial exposure under subsection
27 (1)(d) of this section shall be conducted as soon as possible, but not
28 later than forty-eight hours after the exposure.

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

30 (3) (~~This section applies~~) Subsection (1)(a) through (c) of this
31 section applies only to offenses committed after March 23, 1988, and
32 subsection (1)(d) of this section applies only to exposures occurring
33 after the effective date of this act.

34 (4)(a) A law enforcement officer, fire fighter, health care
35 provider, health care facility staff person, any member of a jail staff
36 or department of corrections staff, or other categories of employment
37 determined by the board in rule to be at risk of substantial exposure
38 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, hepatitis B testing, and posttest counseling for the person
4 whose bodily fluids he or she has been exposed to.

5 (b) If the person who is subject to the order is not an offender or
6 arrested or detained person tested under subsection (1) of this
7 section, the person shall be given written notice of the order
8 promptly, personally, and confidentially, stating the grounds and
9 provisions of the order, including the factual basis therefor. If the
10 person who is subject to the order is not an offender or arrested or
11 detained person tested under subsection (1) of this section and refuses
12 to comply, the state or local public health officer may petition the
13 superior court for a hearing. The standard of review for the order is
14 whether substantial exposure occurred and whether that exposure
15 presents a possible risk of transmission of the HIV virus as defined by
16 the board by rule. Upon conclusion of the hearing, the court shall
17 issue the appropriate order.

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

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

24 Jail administrators, ~~((with the approval of))~~ after consultation
25 with and receiving written recommendations from the local public health
26 officer, may order pretest counseling, HIV testing, and posttest
27 counseling for persons detained in the jail if the ~~((local public~~
28 ~~health officer))~~ jail administrator determines that actual or
29 threatened behavior presents a possible risk to the staff, general
30 public, or other persons. ~~((Approval of the local public health~~
31 ~~officer shall be based on RCW 70.24.024(3) and may be contested through~~
32 ~~RCW 70.24.024(4).))~~ The administrator shall establish, pursuant to RCW
33 70.48.071, a procedure to document the possible risk ~~((which))~~ that is
34 the basis for the HIV testing. "Possible risk," as used in this
35 section, shall be defined by the jail administrator after consultation
36 with the board ~~((in rule))~~. Possible risk, as used in the
37 documentation of the behavior, or threat thereof, shall be reviewed

1 with the person (~~to try to assure that the person understands the~~
2 ~~basis for testing~~)).

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

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

10 (2) Orders or restrictive measures directed to persons with a
11 sexually transmitted disease shall be used as the last resort when
12 other measures to protect the public health have failed, including
13 reasonable efforts, which shall be documented, to obtain the voluntary
14 cooperation of the person who may be subject to such an order. The
15 orders and measures shall be applied serially with the least intrusive
16 measures used first. The burden of proof shall be on the state or
17 local public health officer to show that specified grounds exist for
18 the issuance of the orders or restrictive measures and that the terms
19 and conditions imposed are no more restrictive than necessary to
20 protect the public health.

21 (3) When the state or local public health officer within his or her
22 respective jurisdiction knows or has reason to believe, because of
23 direct medical knowledge or reliable testimony of others in a position
24 to have direct knowledge of a person's behavior, that a person has a
25 sexually transmitted disease and is engaging in specified conduct, as
26 determined by the board by rule based upon generally accepted standards
27 of medical and public health science, that endangers the public health,
28 he or she shall conduct an investigation in accordance with procedures
29 prescribed by the board to evaluate the specific facts alleged, if any,
30 and the reliability and credibility of the person or persons providing
31 such information and, if satisfied that the allegations are true, he or
32 she may issue an order according to the following priority to:

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

37 (b) Order a person to immediately cease and desist from specified
38 conduct (~~which~~) that endangers the health of others by imposing such

1 restrictions upon the person as are necessary to prevent the specified
2 conduct that endangers the health of others only if the public health
3 officer has determined that clear and convincing evidence exists to
4 believe that such person has been ordered to report for counseling as
5 provided in (a) of this subsection and continues to demonstrate
6 behavior ((which)) that endangers the health of others. Any
7 restriction shall be in writing, setting forth the name of the person
8 to be restricted and the initial period of time, not to exceed three
9 months, during which the order shall remain effective, the terms of the
10 restrictions, and such other conditions as may be necessary to protect
11 the public health. Restrictions shall be imposed in the least-
12 restrictive manner necessary to protect the public health.

13 (4)(a) Upon the issuance of any order by the state or local public
14 health officer or an authorized representative pursuant to subsection
15 (3) of this section or RCW 70.24.340(4) to a person who is not an
16 offender or arrested or detained person tested under RCW 70.24.340(1),
17 such public health officer shall give written notice promptly,
18 personally, and confidentially to the person who is the subject of the
19 order stating the grounds and provisions of the order, including the
20 factual bases therefor, the evidence relied upon for proof of infection
21 and dangerous behavior, and the likelihood of repetition of such
22 behaviors in the absence of such an order, and notifying the person who
23 is the subject of the order that, if he or she contests the order, he
24 or she may appear at a judicial hearing on the enforceability of the
25 order, to be held in superior court. He or she may have an attorney
26 appear on his or her behalf in the hearing at public expense, if
27 necessary. The hearing shall be held within seventy-two hours of
28 receipt of the notice, unless the person subject to the order agrees to
29 comply. If the person contests the order, no invasive medical
30 procedures shall be carried out prior to a hearing being held pursuant
31 to this subsection. If the person does not contest the order within
32 seventy-two hours of receiving it, and the person does not comply with
33 the order within the time period specified for compliance with the
34 order, the state or local public health officer may request a warrant
35 be issued by the superior court to insure appearance at the hearing.
36 The hearing shall be within seventy-two hours of the expiration date of
37 the time specified for compliance with the original order. The burden
38 of proof shall be on the public health officer to show by clear and
39 convincing evidence that the specified grounds exist for the issuance

1 of the order and for the need for compliance and that the terms and
2 conditions imposed therein are no more restrictive than necessary to
3 protect the public health. Upon conclusion of the hearing, the court
4 shall issue appropriate orders affirming, modifying, or dismissing the
5 order.

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

9 (5) Any hearing conducted pursuant to this section shall be closed
10 and confidential unless a public hearing is requested by the person who
11 is the subject of the order, in which case the hearing will be
12 conducted in open court. Unless in open hearing, any transcripts or
13 records relating thereto shall also be confidential and may be sealed
14 by the order of the court.

15 NEW SECTION. **Sec. 9.** A new section is added to chapter 70.28 RCW
16 to read as follows:

17 (1) The tuberculosis status of a department of corrections offender
18 who is in the infectious stage shall be made available by department of
19 corrections health care providers and local public health officers to
20 a department of corrections superintendent or administrator. The
21 information made available under this subsection (1) shall be utilized
22 by a superintendent or administrator only as provided in section 3 of
23 this act.

24 (2) The tuberculosis status of a person detained in a jail who is
25 in the infectious stage shall be made available by the local public
26 health officer to the jail administrator. The information made
27 available under this subsection (2) shall be utilized by the jail
28 administrator only as provided in section 4 of this act.

29 NEW SECTION. **Sec. 10.** A new section is added to chapter 72.10 RCW
30 to read as follows:

31 (1) The department shall conduct or cause to be conducted an
32 inspection, examination, and test for the purposes of determining the
33 presence of tuberculosis in the infectious stage of all offenders
34 sentenced to the department. Initial testing shall be conducted within
35 five days of reception, with follow-up testing as medically indicated.

36 (2) All offenders received by the department, those offenders who
37 are remanded from community custody or work training release, and all

1 offenders who return or are received at a department facility from the
2 community or a local jail after being out of the department's custody
3 for ninety days or more shall be tested for tuberculosis within five
4 days of reception or return to the department's custody, followed by a
5 second test with follow-up testing as medically indicated.

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