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SECOND SUBSTITUTE SENATE BILL 5306

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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.** 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. Therefore, the legislature intends  
13 that the results of any HIV tests conducted on an offender or detainee  
14 under RCW 70.24.340, 70.24.360, or 70.24.370 be disclosed to the  
15 superintendent or administrator of the department of corrections  
16 facility or local jail housing the offender or detainee, and also be  
17 disclosed to any member of a jail staff or department of corrections  
18 staff who has been substantially exposed to the bodily fluids of the  
19 offender or detained person. The legislature finds that the system of

1 universal precautions required under federal and state law in all  
2 settings where risk of occupational exposure to communicable diseases  
3 exists are an effective way to reduce the risk of communicable disease  
4 transmission. The legislature does not intend to discourage the use of  
5 universal precautions but to provide supplemental information for  
6 corrections and jail staff to utilize as part of their universal  
7 precautions with all offenders and detained people.

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

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

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

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

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

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

37       (d) A health facility or health care provider that procures,  
38 processes, distributes, or uses: (i) A human body part, tissue, or

1 blood from a deceased person with respect to medical information  
2 regarding that person; (ii) semen, including that provided prior to  
3 March 23, 1988, for the purpose of artificial insemination; or (iii)  
4 blood specimens;

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

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

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

31 (h) A law enforcement officer, fire fighter, health care provider,  
32 health care facility staff person, any member of a jail staff or  
33 department of corrections staff, or other persons as defined by the  
34 board in rule pursuant to RCW 70.24.340(4), who has requested a test of  
35 a person whose bodily fluids he or she has been substantially exposed  
36 to, pursuant to RCW 70.24.340(4), if a state or local public health  
37 officer performs the test or the test is conducted under RCW 70.24.340,  
38 70.24.360, or 70.24.370;

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

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

21 (k) A department of corrections superintendent or administrator, or  
22 a jail administrator.

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

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

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

38 (b) The sexually transmitted disease status of a person detained in  
39 a jail and the results of any tests conducted under RCW 70.24.340,

1 70.24.360, or 70.24.370 shall be made available by the local public  
2 health officer to a jail administrator ((as necessary)). The  
3 information made available to administrators under this subsection  
4 (4)(b) shall be utilized only as provided in section 4 of this act for  
5 disease prevention or control and for protection of the safety and  
6 security of the staff, offenders, detainees, and the public. The  
7 information may be submitted to transporting officers and receiving  
8 facilities.

9 (c) Information regarding ~~((a department of corrections~~  
10 ~~offender's))~~ the sexually transmitted disease status of an offender or  
11 detained person is confidential and may be disclosed by a correctional  
12 superintendent or administrator or local jail administrator only as  
13 necessary for disease prevention or control and for protection of the  
14 safety and security of the staff, offenders, and the public.  
15 Unauthorized disclosure of this information to any person may result in  
16 disciplinary action, in addition to the penalties prescribed in RCW  
17 70.24.080 or any other penalties as may be prescribed by law.

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

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

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

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

17 (4) A law enforcement officer, fire fighter, health care provider,  
18 health care facility staff person, any member of a jail staff or  
19 department of corrections staff, or other categories of employment  
20 determined by the board in rule to be at risk of substantial exposure  
21 to HIV, who has experienced a substantial exposure to another person's  
22 bodily fluids in the course of his or her employment, may request a  
23 state or local public health officer to order pretest counseling, HIV  
24 testing, hepatitis B testing, and posttest counseling for the person  
25 whose bodily fluids he or she has been exposed to. ~~((The person who is~~  
26 subject to the order shall be given written notice of the order  
27 promptly, personally, and confidentially, stating the grounds and  
28 provisions of the order, including the factual basis therefor. If the  
29 person who is subject to the order refuses to comply, the state or  
30 local public health officer may petition the superior court for a  
31 hearing. The standard of review for the order is whether substantial  
32 exposure occurred and whether that exposure presents a possible risk of  
33 transmission of the HIV virus as defined by the board by rule. Upon  
34 conclusion of the hearing, the court shall issue the appropriate  
35 order.)) The state or local public health officer shall perform  
36 counseling and testing under this subsection ~~((if he or she finds that~~  
37 ~~the exposure was substantial and presents a possible risk as defined by~~  
38 ~~the board of health by rule)).~~

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

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

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

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

26       (2) Orders or restrictive measures directed to persons with a  
27 sexually transmitted disease shall be used as the last resort when  
28 other measures to protect the public health have failed, including  
29 reasonable efforts, which shall be documented, to obtain the voluntary  
30 cooperation of the person who may be subject to such an order. The  
31 orders and measures shall be applied serially with the least intrusive  
32 measures used first. The burden of proof shall be on the state or  
33 local public health officer to show that specified grounds exist for  
34 the issuance of the orders or restrictive measures and that the terms  
35 and conditions imposed are no more restrictive than necessary to  
36 protect the public health.

37       (3) When the state or local public health officer within his or her  
38 respective jurisdiction knows or has reason to believe, because of

1 direct medical knowledge or reliable testimony of others in a position  
2 to have direct knowledge of a person's behavior, that a person has a  
3 sexually transmitted disease and is engaging in specified conduct, as  
4 determined by the board by rule based upon generally accepted standards  
5 of medical and public health science, that endangers the public health,  
6 he or she shall conduct an investigation in accordance with procedures  
7 prescribed by the board to evaluate the specific facts alleged, if any,  
8 and the reliability and credibility of the person or persons providing  
9 such information and, if satisfied that the allegations are true, he or  
10 she may issue an order according to the following priority to:

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

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

29 (4)(a) Upon the issuance of any order by the state or local public  
30 health officer or an authorized representative pursuant to subsection  
31 (3) of this section (~~(or RCW 70.24.340(4))~~), such public health officer  
32 shall give written notice promptly, personally, and confidentially to  
33 the person who is the subject of the order stating the grounds and  
34 provisions of the order, including the factual bases therefor, the  
35 evidence relied upon for proof of infection and dangerous behavior, and  
36 the likelihood of repetition of such behaviors in the absence of such  
37 an order, and notifying the person who is the subject of the order  
38 that, if he or she contests the order, he or she may appear at a  
39 judicial hearing on the enforceability of the order, to be held in

1 superior court. He or she may have an attorney appear on his or her  
2 behalf in the hearing at public expense, if necessary. The hearing  
3 shall be held within seventy-two hours of receipt of the notice, unless  
4 the person subject to the order agrees to comply. If the person  
5 contests the order, no invasive medical procedures shall be carried out  
6 prior to a hearing being held pursuant to this subsection. If the  
7 person does not contest the order within seventy-two hours of receiving  
8 it, and the person does not comply with the order within the time  
9 period specified for compliance with the order, the state or local  
10 public health officer may request a warrant be issued by the superior  
11 court to insure appearance at the hearing. The hearing shall be within  
12 seventy-two hours of the expiration date of the time specified for  
13 compliance with the original order. The burden of proof shall be on  
14 the public health officer to show by clear and convincing evidence that  
15 the specified grounds exist for the issuance of the order and for the  
16 need for compliance and that the terms and conditions imposed therein  
17 are no more restrictive than necessary to protect the public health.  
18 Upon conclusion of the hearing, the court shall issue appropriate  
19 orders affirming, modifying, or dismissing the order.

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

23 (5) Any hearing conducted pursuant to this section shall be closed  
24 and confidential unless a public hearing is requested by the person who  
25 is the subject of the order, in which case the hearing will be  
26 conducted in open court. Unless in open hearing, any transcripts or  
27 records relating thereto shall also be confidential and may be sealed  
28 by the order of the court.

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

31 (1) The tuberculosis status of a department of corrections offender  
32 who is in the infectious stage shall be made available by department of  
33 corrections health care providers and local public health officers to  
34 a department of corrections superintendent or administrator. The  
35 information made available under this subsection (1) shall be utilized  
36 by a superintendent or administrator only as provided in section 3 of  
37 this act.

1 (2) The tuberculosis status of a person detained in a jail who is  
2 in the infectious stage shall be made available by department of  
3 corrections health care providers and local public health officers to  
4 the jail administrator. The information made available under this  
5 subsection (2) shall be utilized by the jail administrator only as  
6 provided in section 4 of this act.

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

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

14 (2) All offenders received by the department, those offenders who  
15 are remanded from community custody or work training release, and all  
16 offenders who return or are received at a department facility from the  
17 community or a local jail after being out of the department's custody  
18 for ninety days or more shall be tested for tuberculosis within five  
19 days of reception or return to the department's custody, followed by a  
20 second test with follow-up testing as medically indicated.

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