

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1605

Chapter 345, Laws of 1997

55th Legislature
1997 Regular Session

DISCLOSURE OF INFORMATION CONCERNING DISEASES OF OFFENDERS AND
DETAINEES

EFFECTIVE DATE: 7/27/97

Passed by the House April 26, 1997
Yeas 95 Nays 3

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate April 24, 1997
Yeas 38 Nays 0

BRAD OWEN
President of the Senate

Approved May 13, 1997

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1605** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 13, 1997 - 2:30 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1605

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Radcliff, Ballasiotes, Quall, Dunn and Sullivan)

Read first time 02/27/97.

1 AN ACT Relating to disclosure of information concerning diseases;
2 amending RCW 70.24.105 and 70.24.340; adding a new section to chapter
3 72.09 RCW; adding a new section to chapter 70.48 RCW; and creating new
4 sections.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that department of
7 corrections staff and jail staff perform essential public functions
8 that are vital to our communities. The health and safety of these
9 workers is often placed in jeopardy while they perform the
10 responsibilities of their jobs. Therefore, the legislature intends
11 that the results of any HIV tests conducted on an offender or detainee
12 pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be
13 disclosed to the health care administrator or infection control
14 coordinator of the department of corrections facility or the local jail
15 that houses the offender or detainee. The legislature intends that
16 these test results also be disclosed to any corrections or jail staff
17 who have been substantially exposed to the bodily fluids of the
18 offender or detainee when the disclosure is provided by a licensed
19 health care provider in accordance with Washington Administrative Code

1 rules governing employees' occupational exposure to bloodborne
2 pathogens.

3 (2) The legislature further finds that, through the efforts of
4 health care professionals and corrections staff, offenders in
5 department of corrections facilities and people detained in local jails
6 are being encouraged to take responsibility for their health by
7 requesting voluntary and anonymous pretest counseling, HIV testing,
8 posttest counseling, and AIDS counseling. The legislature does not
9 intend, through this act, to mandate disclosure of the results of
10 voluntary and anonymous tests. The legislature intends to continue to
11 protect the confidential exchange of medical information related to
12 voluntary and anonymous pretest counseling, HIV testing, posttest
13 counseling, and AIDS counseling as provided by chapter 70.24 RCW.

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

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

20 (2) No person may disclose or be compelled to disclose the identity
21 of any person upon whom an HIV antibody test is performed, or the
22 results of such a test, nor may the result of a test for any other
23 sexually transmitted disease when it is positive be disclosed. This
24 protection against disclosure of test subject, diagnosis, or treatment
25 also applies to any information relating to diagnosis of or treatment
26 for HIV infection and for any other confirmed sexually transmitted
27 disease. The following persons, however, may receive such information:

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

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

1 (c) The state public health officer, a local public health officer,
2 or the centers for disease control of the United States public health
3 service in accordance with reporting requirements for a diagnosed case
4 of a sexually transmitted disease;

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

11 (e) Any state or local public health officer conducting an
12 investigation pursuant to RCW 70.24.024, provided that such record was
13 obtained by means of court ordered HIV testing pursuant to RCW
14 70.24.340 or 70.24.024;

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

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

37 (h) A law enforcement officer, fire fighter, health care provider,
38 health care facility staff person, department of correction's staff
39 person, jail staff person, or other persons as defined by the board in

1 rule pursuant to RCW 70.24.340(4), who has requested a test of a person
2 whose bodily fluids he or she has been substantially exposed to,
3 pursuant to RCW 70.24.340(4), if a state or local public health officer
4 performs the test;

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

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

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

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

32 (a) The sexually transmitted disease status of a department of
33 corrections offender who has had a mandatory test conducted pursuant to
34 RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by
35 department of corrections health care providers and local public health
36 officers to ((a)) the department of corrections ((superintendent or
37 administrator as necessary)) health care administrator or infection
38 control coordinator of the facility in which the offender is housed.
39 The information made available to the health care administrator or the

1 infection control coordinator under this subsection (4)(a) shall be
2 used only for disease prevention or control and for protection of the
3 safety and security of the staff, offenders, and the public. The
4 information may be submitted to transporting officers and receiving
5 facilities, including facilities that are not under the department of
6 (~~correction's~~) corrections' jurisdiction according to the provisions
7 of (d) and (e) of this subsection.

8 (b) The sexually transmitted disease status of a person detained in
9 a jail who has had a mandatory test conducted pursuant to RCW
10 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by the
11 local public health officer to a jail (~~administrator as necessary~~)
12 health care administrator or infection control coordinator. The
13 information made available to a health care administrator under this
14 subsection (4)(b) shall be used only for disease prevention or control
15 and for protection of the safety and security of the staff, offenders,
16 detainees, and the public. The information may be submitted to
17 transporting officers and receiving facilities according to the
18 provisions of (d) and (e) of this subsection.

19 (c) Information regarding (~~a department of corrections~~
20 offender's)) the sexually transmitted disease status of an offender or
21 detained person is confidential and may be disclosed by a correctional
22 (~~superintendent or~~) health care administrator or infection control
23 coordinator or local jail health care administrator or infection
24 control coordinator only as necessary for disease prevention or control
25 and for protection of the safety and security of the staff, offenders,
26 and the public. Unauthorized disclosure of this information to any
27 person may result in disciplinary action, in addition to the penalties
28 prescribed in RCW 70.24.080 or any other penalties as may be prescribed
29 by law.

30 (d) Notwithstanding the limitations on disclosure contained in (a),
31 (b), and (c) of this subsection, whenever any member of a jail staff or
32 department of corrections staff has been substantially exposed to the
33 bodily fluids of an offender or detained person, then the results of
34 any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or
35 70.24.370, shall be immediately disclosed to the staff person in
36 accordance with the Washington Administrative Code rules governing
37 employees' occupational exposure to bloodborne pathogens. Disclosure
38 must be accompanied by appropriate counseling for the staff member,
39 including information regarding follow-up testing and treatment.

1 Disclosure shall also include notice that subsequent disclosure of the
2 information in violation of this chapter or use of the information to
3 harass or discriminate against the offender or detainee may result in
4 disciplinary action, in addition to the penalties prescribed in RCW
5 70.24.080, and imposition of other penalties prescribed by law.

6 (e) The staff member shall also be informed whether the offender or
7 detained person had any other communicable disease, as defined in
8 section 4(3) of this act, when the staff person was substantially
9 exposed to the offender's or detainee's bodily fluids.

10 (f) The test results of voluntary and anonymous HIV testing or HIV-
11 related condition may not be disclosed to a staff person except as
12 provided in subsection (2)(h) of this section and RCW 70.24.340(4). A
13 health care administrator or infection control coordinator may provide
14 the staff member with information about how to obtain the offender's or
15 detainee's test results under subsection (2)(h) of this section and RCW
16 70.24.340(4).

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 includes the following or substantially
20 similar language: "This information has been disclosed to you from
21 records whose confidentiality is protected by state law. State law
22 prohibits you from making any further disclosure of it without the
23 specific written consent of the person to whom it pertains, or as
24 otherwise permitted by state law. A general authorization for the
25 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 **Sec. 3.** RCW 70.24.340 and 1988 c 206 s 703 are each amended to
2 read as follows:

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

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

7 (b) Convicted of prostitution or offenses relating to prostitution
8 under chapter 9A.88 RCW; or

9 (c) Convicted of drug offenses under chapter 69.50 RCW if the court
10 determines at the time of conviction that the related drug offense is
11 one associated with the use of hypodermic needles.

12 (2) Such testing shall be conducted as soon as possible after
13 sentencing and shall be so ordered by the sentencing judge.

14 (3) This section applies only to offenses committed after March 23,
15 1988.

16 (4) A law enforcement officer, fire fighter, health care provider,
17 health care facility staff person, department of corrections' staff
18 person, jail staff person, or other categories of employment determined
19 by the board in rule to be at risk of substantial exposure to HIV, who
20 has experienced a substantial exposure to another person's bodily
21 fluids in the course of his or her employment, may request a state or
22 local public health officer to order pretest counseling, HIV testing,
23 and posttest counseling for the person whose bodily fluids he or she
24 has been exposed to. If the state or local public health officer
25 refuses to order counseling and testing under this subsection, the
26 person who made the request may petition the superior court for a
27 hearing to determine whether an order shall be issued. The hearing on
28 the petition shall be held within seventy-two hours of filing the
29 petition, exclusive of Saturdays, Sundays, and holidays. The standard
30 of review to determine whether the public health officer shall be
31 required to issue the order is whether substantial exposure occurred
32 and whether that exposure presents a possible risk of transmission of
33 the HIV virus as defined by the board by rule. Upon conclusion of the
34 hearing, the court shall issue the appropriate order.

35 The person who is subject to the state or local public health
36 officer's order to receive counseling and testing shall be given
37 written notice of the order promptly, personally, and confidentially,
38 stating the grounds and provisions of the order, including the factual
39 basis therefor. If the person who is subject to the order refuses to

1 comply, the state or local public health officer may petition the
2 superior court for a hearing. The hearing on the petition shall be
3 held within seventy-two hours of filing the petition, exclusive of
4 Saturdays, Sundays, and holidays. The standard of review for the order
5 is whether substantial exposure occurred and whether that exposure
6 presents a possible risk of transmission of the HIV virus as defined by
7 the board by rule. Upon conclusion of the hearing, the court shall
8 issue the appropriate order.

9 The state or local public health officer shall perform counseling
10 and testing under this subsection if he or she finds that the exposure
11 was substantial and presents a possible risk as defined by the board of
12 health by rule or if he or she is ordered to do so by a court.

13 The counseling and testing required under this subsection shall be
14 completed as soon as possible after the substantial exposure or after
15 an order is issued by a court, but shall begin not later than seventy-
16 two hours after the substantial exposure or an order is issued by the
17 court.

18 NEW SECTION. Sec. 4. A new section is added to chapter 72.09 RCW
19 to read as follows:

20 (1) The department shall develop and implement policies and
21 procedures for the uniform distribution of communicable disease
22 prevention guidelines to all corrections staff who, in the course of
23 their regularly assigned job responsibilities, may come within close
24 physical proximity to offenders with communicable diseases.

25 (2) The guidelines shall identify special precautions necessary to
26 reduce the risk of transmission of communicable diseases.

27 (3) For the purposes of this section, "communicable disease" means
28 sexually transmitted diseases, as defined in RCW 70.24.017, diseases
29 caused by bloodborne pathogens, or any other illness caused by an
30 infectious agent that can be transmitted from one person, animal, or
31 object to another person by direct or indirect means including
32 transmission via an intermediate host or vector, food, water, or air.

33 NEW SECTION. Sec. 5. A new section is added to chapter 70.48 RCW
34 to read as follows:

35 (1) Local jail administrators shall develop and implement policies
36 and procedures for the uniform distribution of communicable disease
37 prevention guidelines to all jail staff who, in the course of their

1 regularly assigned job responsibilities, may come within close physical
2 proximity to offenders or detainees with communicable diseases.

3 (2) The guidelines shall identify special precautions necessary to
4 reduce the risk of transmission of communicable diseases.

5 (3) For the purposes of this section, "communicable disease" means
6 a sexually transmitted disease, as defined in RCW 70.24.017, diseases
7 caused by bloodborne pathogens, or any other illness caused by an
8 infectious agent that can be transmitted from one person, animal, or
9 object to another person by direct or indirect means including
10 transmission via an intermediate host or vector, food, water, or air.

11 NEW SECTION. **Sec. 6.** The department of health and the department
12 of corrections shall each adopt rules to implement this act. The
13 department of health and the department of corrections shall also
14 report to the legislature by January 1, 1998, on the following: (1)
15 Changes made in rules and department of corrections and local jail
16 policies and procedures to implement this act; and (2) a summary of the
17 number of times and the circumstances under which individual
18 corrections staff and jail staff members were informed that a
19 particular offender or detainee had a sexually transmitted disease or
20 other communicable disease. The department of health and the
21 department of corrections shall cooperate with local jail
22 administrators to obtain the information from local jail administrators
23 that is necessary to comply with this section.

Passed the House April 26, 1997.

Passed the Senate April 24, 1997.

Approved by the Governor May 13, 1997.

Filed in Office of Secretary of State May 13, 1997.