
SENATE BILL 5066

State of Washington

64th Legislature

2015 Regular Session

By Senators Padden and Darneille

Read first time 01/13/15. Referred to Committee on Law & Justice.

1 AN ACT Relating to the collection of blood samples for forensic
2 testing; amending RCW 46.61.506 and 46.61.508; adding a new section
3 to chapter 18.130 RCW; adding a new section to chapter 43.70 RCW; and
4 adding a new section to chapter 46.04 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 18.130
7 RCW to read as follows:

8 It is not professional misconduct for a physician, registered
9 nurse, licensed practical nurse, nursing assistant as defined in
10 chapter 18.88A RCW, physician assistant as defined in chapter 18.71A
11 RCW, first responder as defined in chapter 18.73 RCW, emergency
12 medical technician as defined in chapter 18.73 RCW, health care
13 assistant as defined in chapter 18.135 RCW, or any technician trained
14 in withdrawing blood, to collect a blood sample without a person's
15 consent when the physician, registered nurse, licensed practical
16 nurse, nursing assistant as defined in chapter 18.88A RCW, physician
17 assistant as defined in chapter 18.71A RCW, first responder as
18 defined in chapter 18.73 RCW, emergency medical technician as defined
19 in chapter 18.73 RCW, health care assistant as defined in chapter
20 18.135 RCW, or any technician trained in withdrawing blood was
21 directed by a law enforcement officer to do so for the purpose of a

1 blood test under the provisions of a search warrant or exigent
2 circumstances: PROVIDED, That nothing in this section shall relieve a
3 physician, registered nurse, licensed practical nurse, nursing
4 assistant as defined in chapter 18.88A RCW, physician assistant as
5 defined in chapter 18.71A RCW, first responder as defined in chapter
6 18.73 RCW, emergency medical technician as defined in chapter 18.73
7 RCW, health care assistant as defined in chapter 18.135 RCW, or any
8 technician trained in withdrawing blood from professional discipline
9 arising from the use of improper procedures or from failing to
10 exercise the required standard of care.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.70
12 RCW to read as follows:

13 (1) The secretary, in consultation with health profession boards
14 and commissions, the Washington state criminal justice training
15 commission, and the Washington state patrol, shall establish by rule
16 the administrative procedures and administrative requirements for
17 initial issue, renewal, and reissue of a credential for forensic
18 phlebotomists as defined in section 3 of this act. Failure to renew
19 invalidates the credential and all privileges granted by the
20 credential. Administrative procedures and administrative requirements
21 do not include establishing, monitoring, and enforcing qualifications
22 for licensure, scope or standards of practice, continuing competency
23 mechanisms, and discipline when such authority is authorized in
24 statute to a health profession board or commission or to the criminal
25 justice training commission. For the purposes of this section, "in
26 consultation with" means providing an opportunity for meaningful
27 participation in development of rules consistent with processes set
28 forth in RCW 34.05.310.

29 (2) Notwithstanding any provision of law to the contrary that
30 provides for a licensing period for any type of license subject to
31 this chapter including those under RCW 18.130.040, the secretary may,
32 from time to time, extend or otherwise modify the duration of any
33 licensing, certification, or registration period, whether an initial
34 or renewal period, if the secretary determines that it would result
35 in a more economical or efficient operation of state government and
36 that the public health, safety, or welfare would not be substantially
37 adversely affected thereby. However, no license, certification, or
38 registration may be issued or approved for a period in excess of four
39 years, without renewal. Such extension, reduction, or other

1 modification of a licensing, certification, or registration period
2 shall be by rule or regulation of the department adopted in
3 accordance with the provisions of chapter 34.05 RCW. Such rules and
4 regulations may provide a method for imposing and collecting such
5 additional proportional fee as may be required for the extended or
6 modified period.

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.04
8 RCW to read as follows:

9 "Forensic phlebotomist" means a police officer, law enforcement
10 officer, or employee of a correctional facility or detention
11 facility, who completed a venipuncture training program required
12 under section 2 of this act and who is collecting a blood sample for
13 forensic testing pursuant to a search warrant, a waiver of the
14 warrant requirement, or exigent circumstances.

15 **Sec. 4.** RCW 46.61.506 and 2013 c 3 s 37 are each amended to read
16 as follows:

17 (1) Upon the trial of any civil or criminal action or proceeding
18 arising out of acts alleged to have been committed by any person
19 while driving or in actual physical control of a vehicle while under
20 the influence of intoxicating liquor or any drug, if the person's
21 alcohol concentration is less than 0.08 or the person's THC
22 concentration is less than 5.00, it is evidence that may be
23 considered with other competent evidence in determining whether the
24 person was under the influence of intoxicating liquor or any drug.

25 (2)(a) The breath analysis of the person's alcohol concentration
26 shall be based upon grams of alcohol per two hundred ten liters of
27 breath.

28 (b) The blood analysis of the person's THC concentration shall be
29 based upon nanograms per milliliter of whole blood.

30 (c) The foregoing provisions of this section shall not be
31 construed as limiting the introduction of any other competent
32 evidence bearing upon the question whether the person was under the
33 influence of intoxicating liquor or any drug.

34 (3) Analysis of the person's blood or breath to be considered
35 valid under the provisions of this section or RCW 46.61.502 or
36 46.61.504 shall have been performed according to methods approved by
37 the state toxicologist and by an individual possessing a valid permit
38 issued by the state toxicologist for this purpose. The state

1 toxicologist is directed to approve satisfactory techniques or
2 methods, to supervise the examination of individuals to ascertain
3 their qualifications and competence to conduct such analyses, and to
4 issue permits which shall be subject to termination or revocation at
5 the discretion of the state toxicologist.

6 (4)(a) A breath test performed by any instrument approved by the
7 state toxicologist shall be admissible at trial or in an
8 administrative proceeding if the prosecution or department produces
9 prima facie evidence of the following:

10 (i) The person who performed the test was authorized to perform
11 such test by the state toxicologist;

12 (ii) The person being tested did not vomit or have anything to
13 eat, drink, or smoke for at least fifteen minutes prior to
14 administration of the test;

15 (iii) The person being tested did not have any foreign
16 substances, not to include dental work, fixed or removable, in his or
17 her mouth at the beginning of the fifteen-minute observation period;

18 (iv) Prior to the start of the test, the temperature of any
19 liquid simulator solution utilized as an external standard, as
20 measured by a thermometer approved of by the state toxicologist was
21 thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

22 (v) The internal standard test resulted in the message
23 "verified";

24 (vi) The two breath samples agree to within plus or minus ten
25 percent of their mean to be determined by the method approved by the
26 state toxicologist;

27 (vii) The result of the test of the liquid simulator solution
28 external standard or dry gas external standard result did lie
29 between .072 to .088 inclusive; and

30 (viii) All blank tests gave results of .000.

31 (b) For purposes of this section, "prima facie evidence" is
32 evidence of sufficient circumstances that would support a logical and
33 reasonable inference of the facts sought to be proved. In assessing
34 whether there is sufficient evidence of the foundational facts, the
35 court or administrative tribunal is to assume the truth of the
36 prosecution's or department's evidence and all reasonable inferences
37 from it in a light most favorable to the prosecution or department.

38 (c) Nothing in this section shall be deemed to prevent the
39 subject of the test from challenging the reliability or accuracy of
40 the test, the reliability or functioning of the instrument, or any

1 maintenance procedures. Such challenges, however, shall not preclude
2 the admissibility of the test once the prosecution or department has
3 made a prima facie showing of the requirements contained in (a) of
4 this subsection. Instead, such challenges may be considered by the
5 trier of fact in determining what weight to give to the test result.

6 (5) When a blood test is administered under the provisions of RCW
7 46.20.308, or pursuant to a search warrant, exigent circumstances, or
8 a waiver of the warrant requirement, the withdrawal of blood for the
9 purpose of determining its alcoholic or drug content may be performed
10 only by a physician, a registered nurse, a licensed practical nurse,
11 a nursing assistant as defined in chapter 18.88A RCW, a physician
12 assistant as defined in chapter 18.71A RCW, a first responder as
13 defined in chapter 18.73 RCW, an emergency medical technician as
14 defined in chapter 18.73 RCW, a health care assistant as defined in
15 chapter 18.135 RCW, or any technician trained in withdrawing blood.
16 This limitation shall not apply to the taking of breath specimens.

17 (6) The person tested may have a physician, or a qualified
18 technician, chemist, registered nurse, or other qualified person of
19 his or her own choosing administer one or more tests in addition to
20 any administered at the direction of a law enforcement officer. The
21 test will be admissible if the person establishes the general
22 acceptability of the testing technique or method. The failure or
23 inability to obtain an additional test by a person shall not preclude
24 the admission of evidence relating to the test or tests taken at the
25 direction of a law enforcement officer.

26 (7) Upon the request of the person who shall submit to a test or
27 tests at the request of a law enforcement officer, full information
28 concerning the test or tests shall be made available to him or her or
29 his or her attorney.

30 **Sec. 5.** RCW 46.61.508 and 1977 ex.s. c 143 s 1 are each amended
31 to read as follows:

32 No physician, registered nurse, (~~qualified technician~~) licensed
33 practical nurse, nursing assistant as defined in chapter 18.88A RCW,
34 physician assistant as defined in chapter 18.71A RCW, first responder
35 as defined in chapter 18.73 RCW, emergency medical technician as
36 defined in chapter 18.73 RCW, health care assistant as defined in
37 chapter 18.135 RCW, forensic phlebotomist under section 3 of this
38 act, or any technician trained in withdrawing blood, or hospital, or
39 duly licensed clinical laboratory employing or utilizing services of

1 such physician, registered nurse, licensed practical nurse, nursing
2 assistant, physician assistant, first responder, emergency medical
3 technician, health care assistant, or qualified technician, shall
4 incur any civil or criminal liability as a result of the act of
5 withdrawing blood from any person when directed by a law enforcement
6 officer to do so for the purpose of a blood test under the provisions
7 of a search warrant, a waiver of the search warrant requirement,
8 exigent circumstances, or RCW 46.20.308, as now or hereafter amended:
9 PROVIDED, That nothing in this section shall relieve any physician,
10 registered nurse, licensed practical nurse, nursing assistant,
11 physician assistant, first responder, emergency medical technician,
12 health care assistant, forensic phlebotomist, qualified technician,
13 or hospital or duly licensed clinical laboratory from civil liability
14 arising from the use of improper procedures or failing to exercise
15 the required standard of care.

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