

**WAC 246-100-206 Special diseases—HIV—Testing and counseling of jail detainees.** Jail administrators, with the approval of the local public health officer, may order pretest counseling, HIV testing and post-test counseling of a jail detainee in accordance with RCW 70.24.360, provided that the local public health officer determines that the detainee's actual or threatened behavior presents a possible risk to the staff, general public, or other persons.

(1) Actual behaviors present a possible risk if they result in "exposure presenting a possible risk" and involve one of the following actions:

(a) Anal, oral, or vaginal intercourse excluding conjugal visits;  
or

(b) Physical assault; or

(c) Sharing of injection equipment or sharp implements; or

(d) Throwing or smearing of blood, semen, or vaginal fluids; or

(2) Threatened behaviors present a "possible risk" if:

(a) The threatening individual states he or she is infected with HIV; and

(b) The threatened behavior is listed in subsection (1)(a), (b), (c), or (d) of this section; and

(c) The threatened behavior could result in "exposure presenting a possible risk."

(3) For purposes of subsections (1) and (2) of this section, "exposure presenting possible risk" means one or more of the following:

(a) Introduction of blood, semen, or vaginal fluids into:

(i) A body orifice or a mucous membrane;

(ii) The eye; or

(iii) An open cut, wound, lesion, or other interruption of the epidermis.

(b) A needle puncture or penetrating wound resulting in exposure to blood, semen, and/or vaginal fluids.

(4) Jail administrators may order pretest counseling, post-test counseling, and HIV testing only under the following conditions:

(a) The jail administrator documents and reports to the local health officer, within seven days after the incident, any incident perceived to be actual or threatened "behaviors presenting possible risk"; and

(b) The local health officer:

(i) Determines the documented behavior or behaviors meet the criteria established in this section for behaviors presenting a "possible risk"; and

(ii) Interviews the detained individual to evaluate the factual basis for alleged actual or threatened behavior; and

(iii) Makes a fact determination, based upon the documented behavior, the interview with the detained individual, and/or independent investigation, that sufficient factual evidence exists to support the allegation of actual or threatened "behaviors presenting possible risk"; and

(iv) Arranges for testing of the individual who is the source of the behavior to occur within seven days of the request from the jail administrator; and

(v) Reviews with the detained individual who is the source of the behavior the documentation of the actual or threatened behavior to try to assure understanding of the basis for HIV testing; and

(vi) Provides written approval of the jail administrator's order prior to HIV testing.

(c) The jail administrator maintains HIV test results and identity of the tested individual as a confidential, nondisclosable record, as provided in RCW 70.24.105.

[Statutory Authority: RCW 70.24.130 and 70.24.380. WSR 05-11-110, § 246-100-206, filed 5/18/05, effective 6/18/05. Statutory Authority: RCW 70.24.380. WSR 02-12-106, § 246-100-206, filed 6/5/02, effective 7/6/02. Statutory Authority: RCW 70.24.125 and 70.24.130. WSR 99-17-077, § 246-100-206, filed 8/13/99, effective 9/1/99. Statutory Authority: RCW 70.24.022, [70.24].340 and Public Law 104-146. WSR 97-15-099, § 246-100-206, filed 7/21/97, effective 7/21/97. Statutory Authority: RCW 43.20.050 and 70.24.130. WSR 92-02-019 (Order 225B), § 246-100-206, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-100-206, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.24 RCW. WSR 89-07-095 (Order 325), § 248-100-206, filed 3/22/89; WSR 88-21-093 (Order 322), § 248-100-206, filed 10/19/88; WSR 88-17-056 (Order 316), § 248-100-206, filed 8/17/88. Statutory Authority: RCW 43.20.050. WSR 87-11-047 (Order 302), § 248-100-206, filed 5/19/87.]