
HOUSE BILL 2574

State of Washington

54th Legislature

1996 Regular Session

By Representatives Quall, Ballasiotes, Basich, Radcliff, Linville and Sherstad

Read first time 01/15/96. Referred to Committee on Corrections.

1 AN ACT Relating to drug testing for staff of state correctional
2 institutions and facilities; and adding a new section to chapter 72.09
3 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 72.09 RCW
6 to read as follows:

7 (1) The legislature recognizes that persons providing
8 services at state correctional institutions and facilities occupy
9 positions of trust and responsibility. The public is entitled to have
10 confidence that these persons are exercising sound judgment while
11 protecting the health, safety, and welfare of the public and securing
12 the inmates of the facilities. The legislature finds that impairment
13 of these persons from the illegal use of drugs is an unacceptable risk
14 to the public health, safety, and welfare.

15 (2) The department shall adopt rules by January 1, 1997,
16 implementing drug testing, as prescribed by this section, of staff at
17 correctional institutions or facilities for the unlawful use of drugs.
18 The department's rules must provide for:

1 (a)(i) Random testing at periodic intervals as determined by the
2 department to provide deterrence against illegal drug use and to
3 maintain public safety; and

4 (ii) Testing as part of a last chance agreement in which a
5 department employee participates under subsection (5) of this section.

6 (b) Procedures for conducting drug testing, including but not
7 limited to:

8 (i) Procedures for control of and accountability for test
9 specimens;

10 (ii) Requirements for testing by an approved laboratory; and

11 (iii) Requirements for confirming initial test results using a
12 second scientifically accepted analytical procedure that is at least as
13 accurate as the initial test. Only confirmed positive test results may
14 be reported as positive test results.

15 (c) An opportunity for the person being tested to provide
16 information that may be relevant to analysis of the drug test result.
17 If the person is using a drug pursuant to a valid prescription or as
18 otherwise permitted by law, a positive test result for that drug may
19 not be reported.

20 (d) Requirements for written notice to the person being tested of
21 the results of a drug test and an opportunity for a hearing in the case
22 of a positive test result.

23 (e)(i) Requirements for confidentiality of drug test results and
24 medical information. The test results and medical information received
25 by the department through the drug testing program are confidential
26 communications and may not be disclosed by the department, except as
27 provided in (e)(ii) of this subsection, and are not subject to
28 discovery, in any civil or administrative proceeding, except in an
29 action or proceeding challenging a disciplinary action arising from the
30 test. The test results and medical information received by the
31 department are not subject to public disclosure under chapter 42.17
32 RCW.

33 (ii) The department may disclose the results of a confirmed
34 positive drug test of a contractor or contractor's employee to the
35 contractor to initiate contract termination or service modification as
36 provided under subsection (6) of this section. The employee test
37 results received by the contractor are confidential communications and
38 may not be disclosed by the contractor, and are not subject to
39 discovery, in any civil or administrative proceeding, except in an

1 action or proceeding challenging a disciplinary action arising from the
2 test.

3 (f) Information describing the assistance that is available to
4 department employees through the employee advisory service or other
5 similar program.

6 (3) The cost of drug testing of a department employee, including
7 transportation costs when testing occurs at a site other than the
8 department employee's institutional worksite, required by the
9 department must be paid by the department.

10 (4) The department shall provide notice of the drug testing
11 program to prospective department employees, to current department
12 employees at least annually, and to potential contractors as part of a
13 request for bids.

14 (5)(a) The department may not use a first-time confirmed positive
15 drug test as the basis for termination of a department employee. After
16 a first-time confirmed positive test result, the employee must be given
17 an opportunity to participate in a last chance agreement requiring the
18 employee, at a minimum, to submit to a chemical dependency evaluation,
19 comply with treatment recommendations, be subject to follow-up drug
20 testing for two years, and meet the same standards of performance and
21 conduct that are required for other employees. The department may
22 receive all relevant information regarding the employee's progress in
23 treatment, as applicable.

24 (b) The department may terminate the employment of a department
25 employee who:

26 (i) Refuses to agree to or fails to comply with the terms of a
27 last-chance agreement;

28 (ii) Refuses to submit to a drug test;

29 (iii) Has a second confirmed positive drug test result; or

30 (iv) Violates the department's rules pertaining to drugs after the
31 first-time confirmed positive drug test result.

32 (c) This section does not diminish the department's authority to
33 establish job performance standards, or conditions of employment, or to
34 base continued employment on satisfactory job performance. This
35 section does not limit the right of the department to terminate
36 employment or take other disciplinary actions permitted by law.

37 (6) After a refusal of a contractor or a contractor's employee to
38 submit to drug testing or after a first-time confirmed positive test
39 result for a contractor or contractor's employee, the department may

1 initiate contract termination or may permit the contractor to modify
2 service by substituting another person to provide the services. Any
3 contract for services entered into after the effective date of this
4 section must contain a provision authorizing contract termination or
5 service modification if the person providing services under the
6 contract refuses to submit to drug testing, receives a confirmed
7 positive drug test result, or violates the department's rules
8 pertaining to drugs.

9 (7) This section does not create individual rights of action based
10 on acts or omissions arising from the drug testing program. However,
11 nothing in this section limits actions that may be brought under
12 chapter 41.06 RCW.

13 (8) For the purposes of this section:

14 (a) "Drug" means controlled substances regulated under chapter
15 69.50 RCW or legend drugs regulated under chapter 69.41 RCW.

16 (b) "Specimen" means urine.

17 (c) "Staff" means: (i) Department employees with direct contact
18 with inmates; and (ii) persons providing services to the department
19 through contract and having direct contact with inmates.

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