

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6285

54th Legislature
1996 Regular Session

Passed by the Senate March 7, 1996
YEAS 48 NAYS 0

President of the Senate

Passed by the House March 7, 1996
YEAS 98 NAYS 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6285** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6285

AS RECOMMENDED BY CONFERENCE COMMITTEE

Passed Legislature - 1996 Regular Session

State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Zarelli, Roach, Schow, Long, McCaslin, Morton, Hochstatter, Swecker, Hargrove, Hale, Strannigan, Oke, Wood, Finkbeiner, Deccio, Johnson, A. Anderson, Cantu, Moyer and West)

Read first time 02/02/96.

1 AN ACT Relating to disclosure of offenders' HIV test results to
2 department of corrections and jail staff; amending RCW 70.24.105;
3 adding a new section to chapter 72.09 RCW; adding a new section to
4 chapter 70.48 RCW; and creating new 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, 70.24.360, or 70.24.370 shall be disclosed
13 to the superintendent or administrator of the department of corrections
14 facility or local jail housing the offender or detainee, and shall also
15 be disclosed to any corrections staff or jail staff who have been
16 substantially exposed to the bodily fluids of the offender or detainee.
17 However, the legislature recognizes that the mandatory disclosure of
18 the HIV status of individual offenders may cause some corrections and
19 jail staff to use more precautions with those offenders and detained

1 people they know to be HIV positive. The legislature also recognizes
2 the risk exists that some corrections and jail staff may
3 correspondingly use fewer precautions with those offenders and detained
4 people they are not informed are HIV positive. The legislature finds,
5 however, that the system of universal precautions required under
6 federal and state law in all settings where risk of occupational
7 exposure to communicable diseases exists remains the most effective way
8 to reduce the risk of communicable disease transmission. The
9 legislature does not intend to discourage the use of universal
10 precautions but to provide supplemental information for corrections and
11 jail staff to utilize as part of their universal precautions with all
12 offenders and detained people.

13 (2) The legislature further finds that, through the efforts of
14 health care professionals and corrections staff, offenders in
15 department of corrections facilities and people detained in local jails
16 are being encouraged to take responsibility for their health by
17 requesting voluntary and anonymous pretest counseling, HIV testing,
18 posttest counseling, and AIDS counseling. The legislature does not
19 intend, through this act, to mandate disclosure of the results of
20 voluntary and anonymous tests. The legislature intends to continue to
21 protect the confidential exchange of medical information related to
22 voluntary and anonymous pretest counseling, HIV testing, posttest
23 counseling, and AIDS counseling as provided by chapter 70.24 RCW.

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

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

30 (2) No person may disclose or be compelled to disclose the identity
31 of any person upon whom an HIV antibody test is performed, or the
32 results of such a test, nor may the result of a test for any other
33 sexually transmitted disease when it is positive be disclosed. This
34 protection against disclosure of test subject, diagnosis, or treatment
35 also applies to any information relating to diagnosis of or treatment
36 for HIV infection and for any other confirmed sexually transmitted
37 disease. The following persons, however, may receive such information:

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

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

11 (c) The state public health officer, a local public health officer,
12 or the centers for disease control of the United States public health
13 service in accordance with reporting requirements for a diagnosed case
14 of a sexually transmitted disease;

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

21 (e) Any state or local public health officer conducting an
22 investigation pursuant to RCW 70.24.024, provided that such record was
23 obtained by means of court ordered HIV testing pursuant to RCW
24 70.24.340 or 70.24.024;

25 (f) A person allowed access to the record by a court order granted
26 after application showing good cause therefor. In assessing good
27 cause, the court shall weigh the public interest and the need for
28 disclosure against the injury to the patient, to the physician-patient
29 relationship, and to the treatment services. Upon the granting of the
30 order, the court, in determining the extent to which any disclosure of
31 all or any part of the record of any such test is necessary, shall
32 impose appropriate safeguards against unauthorized disclosure. An
33 order authorizing disclosure shall: (i) Limit disclosure to those
34 parts of the patient's record deemed essential to fulfill the objective
35 for which the order was granted; (ii) limit disclosure to those persons
36 whose need for information is the basis for the order; and (iii)
37 include any other appropriate measures to keep disclosure to a minimum
38 for the protection of the patient, the physician-patient relationship,

1 and the treatment services, including but not limited to the written
2 statement set forth in subsection (5) of this section;

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

9 (h) A law enforcement officer, fire fighter, health care provider,
10 health care facility staff person, or other persons as defined by the
11 board in rule pursuant to RCW 70.24.340(4), who has requested a test of
12 a person whose bodily fluids he or she has been substantially exposed
13 to, pursuant to RCW 70.24.340(4), if a state or local public health
14 officer performs the test;

15 (i) Claims management personnel employed by or associated with an
16 insurer, health care service contractor, health maintenance
17 organization, self-funded health plan, state-administered health care
18 claims payer, or any other payer of health care claims where such
19 disclosure is to be used solely for the prompt and accurate evaluation
20 and payment of medical or related claims. Information released under
21 this subsection shall be confidential and shall not be released or
22 available to persons who are not involved in handling or determining
23 medical claims payment; and

24 (j) A department of social and health services worker, a child
25 placing agency worker, or a guardian ad litem who is responsible for
26 making or reviewing placement or case-planning decisions or
27 recommendations to the court regarding a child, who is less than
28 fourteen years of age, has a sexually transmitted disease, and is in
29 the custody of the department of social and health services or a
30 licensed child placing agency; this information may also be received by
31 a person responsible for providing residential care for such a child
32 when the department of social and health services or a licensed child
33 placing agency determines that it is necessary for the provision of
34 child care services.

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

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

4 (a) The sexually transmitted disease status of a department of
5 corrections offender and the results of any tests conducted pursuant to
6 RCW 70.24.340, 70.24.360, or 70.24.370 shall be made available by
7 department of corrections health care providers and local public health
8 officers to a department of corrections superintendent or administrator
9 ((as necessary)). The information made available to superintendents
10 and administrators under this subsection (4)(a) shall be utilized by a
11 superintendent or administrator only as provided in section 3 of this
12 act for disease prevention or control and for protection of the safety
13 and security of the staff, offenders, and the public. The information
14 may be submitted to transporting officers and receiving facilities,
15 including facilities that are not under the department of
16 ((correction's)) corrections' jurisdiction.

17 (b) The sexually transmitted disease status of a person detained in
18 a jail and the results of any tests conducted pursuant to RCW
19 70.24.340, 70.24.360, or 70.24.370 shall be made available by the local
20 public health officer to a jail administrator ((as necessary)). The
21 information made available to administrators under this subsection
22 (4)(b) shall be utilized only as provided in section 4 of this act for
23 disease prevention or control and for protection of the safety and
24 security of the staff, offenders, detainees, and the public. The
25 information may be submitted to transporting officers and receiving
26 facilities.

27 (c) Information regarding ((a department of corrections
28 offender's)) the sexually transmitted disease status of an offender or
29 detained person is confidential and may be disclosed by a correctional
30 superintendent or administrator or local jail administrator only as
31 necessary for disease prevention or control and for protection of the
32 safety and security of the staff, offenders, and the public.
33 Unauthorized disclosure of this information to any person may result in
34 disciplinary action, in addition to the penalties prescribed in RCW
35 70.24.080 or any other penalties as may be prescribed by law.

36 (d) Notwithstanding the limitations on disclosure contained in (a),
37 (b), and (c) of this subsection, whenever any member of jail staff or
38 department of corrections staff has been substantially exposed to the
39 bodily fluids of an offender or detained person, then the results of

1 any tests conducted pursuant to RCW 70.24.340, 70.24.360, or 70.24.370
2 shall be immediately disclosed by the department of corrections health
3 care provider and the local public health officer or the officer's
4 designee to the correctional superintendent or administrator or local
5 jail administrator. The superintendent or administrator is then
6 required to immediately disclose these results to the staff member who
7 was substantially exposed. Disclosure must be accompanied by
8 appropriate counseling for the staff member, including information
9 regarding follow-up testing.

10 (e) The receipt by any individual of any information disclosed
11 pursuant to this subsection (4) shall be utilized only for disease
12 prevention or control and for protection of the safety and security of
13 the staff, offenders, detainees, and the public. Use of this
14 information for any other purpose, including harassment or
15 discrimination, may result in disciplinary action, in addition to the
16 penalties prescribed in RCW 70.24.080 or any other penalties as may be
17 prescribed by law.

18 (5) Whenever disclosure is made pursuant to this section, except
19 for subsections (2)(a) and (6) of this section, it shall be accompanied
20 by a statement in writing which includes the following or substantially
21 similar language: "This information has been disclosed to you from
22 records whose confidentiality is protected by state law. State law
23 prohibits you from making any further disclosure of it without the
24 specific written consent of the person to whom it pertains, or as
25 otherwise permitted by state law. A general authorization for the
26 release of medical or other information is NOT sufficient for this
27 purpose." An oral disclosure shall be accompanied or followed by such
28 a notice within ten days.

29 (6) The requirements of this section shall not apply to the
30 customary methods utilized for the exchange of medical information
31 among health care providers in order to provide health care services to
32 the patient, nor shall they apply within health care facilities where
33 there is a need for access to confidential medical information to
34 fulfill professional duties.

35 (7) Upon request of the victim, disclosure of test results under
36 this section to victims of sexual offenses under chapter 9A.44 RCW
37 shall be made if the result is negative or positive. The county
38 prosecuting attorney shall notify the victim of the right to such

1 disclosure. Such disclosure shall be accompanied by appropriate
2 counseling, including information regarding follow-up testing.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 72.09 RCW
4 to read as follows:

5 (1) The department shall develop and implement policies and
6 procedures for the uniform distribution of communicable disease
7 prevention protocols to all corrections staff who, in the course of
8 their regularly assigned job responsibilities, may come within close
9 physical proximity to offenders with communicable diseases. The
10 protocols shall include, but not be limited to, information learned
11 from tests conducted pursuant to RCW 70.24.340, 70.24.360, and
12 70.24.370.

13 (2) The protocols shall identify the offender and special
14 precautions necessary to reduce the risk of transmission of the
15 communicable disease but shall not identify the offender's particular
16 communicable disease.

17 (3) For the purposes of this section, "communicable disease" means
18 an illness caused by an infectious agent which can be transmitted from
19 one person, animal, or object to another person by direct or indirect
20 means including transmission via an intermediate host or vector, food,
21 water, or air.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.48 RCW
23 to read as follows:

24 (1) Local jail administrators shall develop and implement policies
25 and procedures for the uniform distribution of communicable disease
26 prevention protocols to all jail staff who, in the course of their
27 regularly assigned job responsibilities, may come within close physical
28 proximity to offenders or detainees with communicable diseases. The
29 protocols shall include, but not be limited to, information learned
30 from tests conducted pursuant to RCW 70.24.340, 70.24.360, and
31 70.24.370.

32 (2) The protocols shall identify the offender or detainee and
33 special precautions necessary to reduce the risk of transmission of the
34 communicable disease but shall not identify the offender's or
35 detainee's particular communicable disease.

36 (3) For the purposes of this section, "communicable disease" means
37 an illness caused by an infectious agent which can be transmitted from

1 one person, animal, or object to another person by direct or indirect
2 means including transmission via an intermediate host or vector, food,
3 water, or air.

4 NEW SECTION. **Sec. 5.** The department of health and the department
5 of corrections shall each adopt rules to implement this act. The
6 department of health and the department of corrections shall also
7 report to the legislature by January 1, 1997, on the following: (1)
8 Changes made in rules and department of corrections and local jail
9 policies and procedures to implement this act; and (2) a summary of the
10 number and circumstances of mandatory test results that were disclosed
11 to department of corrections staff and jail staff pursuant to section
12 2 of this act.

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