
SENATE BILL 5186

State of Washington

65th Legislature

2017 Regular Session

By Senators Padden and Pearson

Read first time 01/16/17. Referred to Committee on Law & Justice.

1 AN ACT Relating to the collection of blood samples for forensic
2 testing; amending RCW 18.130.410, 46.61.506, and 46.61.508; and
3 adding a new section to chapter 46.04 RCW.

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

5 **Sec. 1.** RCW 18.130.410 and 2015 2nd sp.s. c 3 s 21 are each
6 amended to read as follows:

7 It is not professional misconduct for a (~~physician licensed~~
8 ~~under chapter 18.71 RCW; osteopathic physician licensed under chapter~~
9 ~~18.57 RCW; registered nurse, licensed practical nurse, or advanced~~
10 ~~registered nurse practitioner licensed under chapter 18.79 RCW;~~
11 ~~physician assistant licensed under chapter 18.71A RCW; osteopathic~~
12 ~~physician assistant licensed under chapter 18.57A RCW; advanced~~
13 ~~emergency medical technician or paramedic licensed under chapter~~
14 ~~18.73 RCW; until July 1, 2016, health care assistant certified under~~
15 ~~chapter 18.135 RCW; or medical assistant-certified or medical~~
16 ~~assistant-phlebotomist certified under chapter 18.360 RCW, or~~
17 ~~hospital, or duly licensed clinical laboratory employing or utilizing~~
18 ~~services of such licensed or certified health care provider,)) person
19 qualified by the department of health to collect a blood sample
20 without a person's consent when the (~~physician licensed under~~
21 ~~chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57~~~~

1 ~~RCW; registered nurse, licensed practical nurse, or advanced~~
2 ~~registered nurse practitioner licensed under chapter 18.79 RCW;~~
3 ~~physician assistant licensed under chapter 18.71A RCW; osteopathic~~
4 ~~physician assistant licensed under chapter 18.57A RCW; advanced~~
5 ~~emergency medical technician or paramedic licensed under chapter~~
6 ~~18.73 RCW; until July 1, 2016, health care assistant certified under~~
7 ~~chapter 18.135 RCW; or medical assistant certified or medical~~
8 ~~assistant phlebotomist certified under chapter 18.360 RCW, or~~
9 ~~hospital, or duly licensed clinical laboratory employing or utilizing~~
10 ~~services of such licensed or certified health care provider)) person~~
11 ~~qualified by the department of health withdrawing blood was directed~~
12 ~~by a law enforcement officer to do so for the purpose of a blood test~~
13 ~~under the provisions of a search warrant or exigent circumstances:~~
14 ~~PROVIDED, That nothing in this section shall relieve a ((physician~~
15 ~~licensed under chapter 18.71 RCW; osteopathic physician licensed~~
16 ~~under chapter 18.57 RCW; registered nurse, licensed practical nurse,~~
17 ~~or advanced registered nurse practitioner licensed under chapter~~
18 ~~18.79 RCW; physician assistant licensed under chapter 18.71A RCW;~~
19 ~~osteopathic physician assistant licensed under chapter 18.57A RCW;~~
20 ~~advanced emergency medical technician or paramedic licensed under~~
21 ~~chapter 18.73 RCW; until July 1, 2016, health care assistant~~
22 ~~certified under chapter 18.135 RCW; or medical assistant certified or~~
23 ~~medical assistant phlebotomist certified under chapter 18.360 RCW))~~
24 ~~person qualified by the department of health, or hospital, or duly~~
25 ~~licensed clinical laboratory employing or utilizing services of such~~
26 ~~licensed or certified health care provider withdrawing blood from~~
27 ~~professional discipline arising from the use of improper procedures~~
28 ~~or from failing to exercise the required standard of care.~~

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.04
30 RCW to read as follows:

31 "Forensic phlebotomist" means a police officer, law enforcement
32 officer, or employee of a correctional facility or detention
33 facility, who meets the training and proficiency standards of his or
34 her employer and who is collecting a venous blood sample for forensic
35 testing pursuant to a search warrant, a waiver of the warrant
36 requirement, or exigent circumstances.

37 **Sec. 3.** RCW 46.61.506 and 2016 c 203 s 8 are each amended to
38 read as follows:

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

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

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

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

18 (3) Analysis of the person's blood or breath to be considered
19 valid under the provisions of this section or RCW 46.61.502 or
20 46.61.504 shall have been performed according to methods approved by
21 the state toxicologist and by an individual possessing a valid permit
22 issued by the state toxicologist for this purpose. The state
23 toxicologist is directed to approve satisfactory techniques or
24 methods, to supervise the examination of individuals to ascertain
25 their qualifications and competence to conduct such analyses, and to
26 issue permits which shall be subject to termination or revocation at
27 the discretion of the state toxicologist.

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

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

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

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

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

5 (v) The internal standard test resulted in the message
6 "verified";

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

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

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

14 (b) For purposes of this section, "prima facie evidence" is
15 evidence of sufficient circumstances that would support a logical and
16 reasonable inference of the facts sought to be proved. In assessing
17 whether there is sufficient evidence of the foundational facts, the
18 court or administrative tribunal is to assume the truth of the
19 prosecution's or department's evidence and all reasonable inferences
20 from it in a light most favorable to the prosecution or department.

21 (c) Nothing in this section shall be deemed to prevent the
22 subject of the test from challenging the reliability or accuracy of
23 the test, the reliability or functioning of the instrument, or any
24 maintenance procedures. Such challenges, however, shall not preclude
25 the admissibility of the test once the prosecution or department has
26 made a prima facie showing of the requirements contained in (a) of
27 this subsection. Instead, such challenges may be considered by the
28 trier of fact in determining what weight to give to the test result.

29 (5) When a blood test is administered under the provisions of RCW
30 46.20.308, the withdrawal of blood for the purpose of determining its
31 alcoholic or drug content may be performed only by a (~~physician~~
32 ~~licensed under chapter 18.71 RCW; an osteopathic physician licensed~~
33 ~~under chapter 18.57 RCW; a registered nurse, licensed practical~~
34 ~~nurse, or advanced registered nurse practitioner licensed under~~
35 ~~chapter 18.79 RCW; a physician assistant licensed under chapter~~
36 ~~18.71A RCW; an osteopathic physician assistant licensed under chapter~~
37 ~~18.57A RCW; an advanced emergency medical technician or paramedic~~
38 ~~licensed under chapter 18.73 RCW; until July 1, 2016, a health care~~
39 ~~assistant certified under chapter 18.135 RCW; or a medical assistant-~~
40 ~~certified or medical assistant-phlebotomist certified under chapter~~

1 ~~18.360 RCW~~) forensic phlebotomist or a person qualified by the
2 department of health. Proof of qualification to draw blood may be
3 established through the department of health's provider credential
4 search. This limitation shall not apply to the taking of breath
5 specimens.

6 (6) The person tested may have a licensed or certified health
7 care provider listed in subsection (5) of this section, or a
8 qualified technician, chemist, or other qualified person of his or
9 her own choosing administer one or more tests in addition to any
10 administered at the direction of a law enforcement officer. The test
11 will be admissible if the person establishes the general
12 acceptability of the testing technique or method. The failure or
13 inability to obtain an additional test by a person shall not preclude
14 the admission of evidence relating to the test or tests taken at the
15 direction of a law enforcement officer.

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

20 **Sec. 4.** RCW 46.61.508 and 2015 2nd sp.s. c 3 s 23 are each
21 amended to read as follows:

22 No (~~physician licensed under chapter 18.71 RCW; osteopathic~~
23 ~~physician licensed under chapter 18.57 RCW; registered nurse,~~
24 ~~licensed practical nurse, or advanced registered nurse practitioner~~
25 ~~licensed under chapter 18.79 RCW; physician assistant licensed under~~
26 ~~chapter 18.71A RCW; osteopathic physician assistant licensed under~~
27 ~~chapter 18.57A RCW; advanced emergency medical technician or~~
28 ~~paramedic licensed under chapter 18.73 RCW; until July 1, 2016,~~
29 ~~health care assistant certified under chapter 18.135 RCW; or medical~~
30 ~~assistant certified or medical assistant phlebotomist certified under~~
31 ~~chapter 18.360 RCW~~) forensic phlebotomist or a person qualified by
32 the department of health, or hospital, or duly licensed clinical
33 laboratory employing or utilizing services of such licensed or
34 certified health care provider, shall incur any civil or criminal
35 liability as a result of the act of withdrawing blood from any person
36 when directed by a law enforcement officer to do so for the purpose
37 of a blood test under the provisions of a search warrant, a waiver of
38 the search warrant requirement, exigent circumstances, or any other
39 authority of law(~~, or RCW 46.20.308, as now or hereafter amended~~):

1 PROVIDED, That nothing in this section shall relieve such licensed or
2 certified health care provider, or hospital or duly licensed clinical
3 laboratory, or forensic phlebotomist, from civil liability arising
4 from the use of improper procedures or failing to exercise the
5 required standard of care.

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