

1 1343-S AMH H2413.3

2 SHB 1343 - H AMD 183

3 By Representatives Lock, Appelwick, Padden and Wineberry

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 70.24.105 and 1989 c 123 s 1 are each amended to read
8 as follows:

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

13 (2) No person may disclose or be compelled to disclose the identity
14 of any person upon whom an HIV antibody test is performed, or the
15 results of such a test, nor may the result of a test for any other
16 sexually transmitted disease when it is positive be disclosed. This
17 protection against disclosure of test subject, diagnosis, or treatment
18 also applies to any information relating to diagnosis of or treatment
19 for HIV infection and for any other confirmed sexually transmitted
20 disease. The following persons, however, may receive such information
21 including the results of an HIV antibody test:

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

26 (b) Any person who secures a specific release of test results or
27 information relating to HIV or confirmed diagnosis of or treatment for
28 any other sexually transmitted disease executed by the subject or the

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

4 (c) The state public health officer, a local public health officer,
5 or the centers for disease control of the United States public health
6 service in accordance with reporting requirements for a diagnosed case
7 of a sexually transmitted disease;

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

14 (e) Any state or local public health officer conducting an
15 investigation pursuant to RCW 70.24.024, provided that such record was
16 obtained by means of court ordered HIV testing pursuant to RCW
17 70.24.340 or 70.24.024;

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

1 for the protection of the patient, the physician-patient relationship,
2 and the treatment services, including but not limited to the written
3 statement set forth in subsection (5) of this section;

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

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

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

25 (j) A department of social and health services worker, a child
26 placing agency worker, or a guardian ad litem who is responsible for
27 making or reviewing placement or case-planning decisions or
28 recommendations to the court regarding a child, who is less than
29 fourteen years of age, has a sexually transmitted disease, and is in
30 the custody of the department of social and health services or a

1 licensed child placing agency; this information may also be received by
2 a person responsible for providing residential care for such a child
3 when the department of social and health services or a licensed child
4 placing agency determines that it is necessary for the provision of
5 child care services;

6 (k) A person named as a victim of a charged or convicted criminal
7 defendant where he or she has requested a test of the charged or
8 convicted defendant pursuant to RCW 70.24.340(3); and

9 (l) A person named as a victim of a criminal offense where the
10 offender is tested for HIV under RCW 70.24.340(2).

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

15 (4) The release of sexually transmitted disease information
16 regarding an offender, except as provided in subsection (2)(e) of this
17 section, shall be governed as follows:

18 (a) The sexually transmitted disease status of a department of
19 corrections offender shall be made available by department of
20 corrections health care providers to a department of corrections
21 superintendent or administrator as necessary for disease prevention or
22 control and for protection of the safety and security of the staff,
23 offenders, and the public. The information may be submitted to
24 transporting officers and receiving facilities, including facilities
25 that are not under the department of correction's jurisdiction.

26 (b) The sexually transmitted disease status of a person detained in
27 a jail shall be made available by the local public health officer to a
28 jail administrator as necessary for disease prevention or control and
29 for protection of the safety and security of the staff, offenders, and

1 the public. The information may be submitted to transporting officers
2 and receiving facilities.

3 (c) Information regarding a department of corrections offender's
4 sexually transmitted disease status is confidential and may be
5 disclosed by a correctional superintendent or administrator or local
6 jail administrator only as necessary for disease prevention or control
7 and for protection of the safety and security of the staff, offenders,
8 and the public. Unauthorized disclosure of this information to any
9 person may result in disciplinary action, in addition to any other
10 penalties as may be prescribed by law.

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

22 (6) The requirements of this section shall not apply to the
23 customary methods utilized for the exchange of medical information
24 among health care providers in order to provide health care services to
25 the patient, nor shall they apply within health care facilities where
26 there is a need for access to confidential medical information to
27 fulfill professional duties.

28 (7) If the victim of a charged or convicted criminal defendant is
29 a minor, the victim's parents or legal guardian shall have all of the
30 rights and remedies of a victim under this section. If the victim is

1 a minor, the prosecutor may petition the court pursuant to RCW
2 70.24.340 to require the charged or convicted person to submit to
3 counseling and testing if the prosecutor in his or her discretion
4 believes the testing would be in the best interests of the minor."

5 "Sec. 2. RCW 70.24.320 and 1988 c 206 s 701 are each amended to
6 read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Pretest counseling" means counseling aimed at helping the
10 individual understand ways to reduce the risk of HIV infection, the
11 nature and purpose of the tests, the significance of the results, and
12 the potential dangers of the disease, and to assess the individual's
13 ability to cope with the results.

14 (2) "Posttest counseling" means further counseling following
15 testing usually directed toward increasing the individual's
16 understanding of the human immunodeficiency virus infection, changing
17 the individual's behavior, and, if necessary, encouraging the
18 individual to notify persons with whom there has been contact capable
19 of spreading HIV.

20 (3) "AIDS counseling" means counseling directed toward increasing
21 the individual's understanding of acquired immunodeficiency syndrome
22 and changing the individual's behavior.

23 (4) "HIV testing" means a test indicative of infection with the
24 human immunodeficiency virus (~~as specified by the board of health~~
25 ~~by)), and subsequent tests at such intervals sufficient to detect HIV~~
26 infection, as determined by the board in rule."

27 "Sec. 3. RCW 70.24.340 and 1988 c 206 s 703 are each amended to
28 read as follows:

1 ~~(1) ((Local health departments authorized under this chapter shall~~
2 ~~conduct or cause to be conducted pretest counseling, HIV testing, and~~
3 ~~posttest counseling of all persons:~~

4 ~~(a) Convicted of a sexual offense under chapter 9A.44 RCW;~~

5 ~~(b) Convicted of prostitution or offenses relating to prostitution~~
6 ~~under chapter 9A.88 RCW; or~~

7 ~~(c) Convicted of drug offenses under chapter 69.50 RCW if the court~~
8 ~~determines at the time of conviction that the related drug offense is~~
9 ~~one associated with the use of hypodermic needles.~~

10 ~~(2) Such testing))~~ The purposes of the testing and disclosure
11 provided in this section are: (a) To benefit the victim of a crime
12 which involved the substantial exposure to another's bodily fluids,
13 creating a risk of transmission of HIV, by informing the victim whether
14 the defendant is infected with the AIDS virus; (b) to protect the
15 health of both victims of crime and assault and of those accused or
16 convicted of committing a crime; (c) to protect the health of people
17 who by the nature of their employment are at a substantial risk of
18 exposure to HIV infection; and (d) to protect the health of the public.

19 The legislature respects the need for confidentiality; requirements
20 of confidentiality must be maintained as prescribed in RCW 70.24.105.

21 (2)(a) All persons who are convicted of the following offenses
22 where the offense involved substantial exposure of bodily fluids
23 presenting a possible risk of HIV infection, shall submit to pretest
24 counseling, HIV testing, and posttest counseling to be performed by a
25 local public health officer.

26 (i) Sexual offenses under chapter 9A.44 RCW or under local
27 ordinance;

28 (ii) Prostitution or offenses relating to prostitution under
29 chapter 9A.88 RCW or under local ordinance;

1 (iii) Drug offenses under chapter 69.50 RCW or under local
2 ordinance, if a court determines at the time of conviction that the
3 related drug offense is one associated with the use of hypodermic
4 needles.

5 (b) Pretest counseling, HIV testing, and posttest counseling shall
6 be conducted as soon as possible after sentencing and shall be so
7 ordered by the sentencing judge.

8 ((+3+)) (c) This section applies only to offenses committed after
9 March 23, 1988.

10 (3)(a) The victim of a charged or convicted criminal defendant may
11 request, at any time, that the defendant submit to pretest counseling,
12 HIV testing, and posttest counseling.

13 (b) The prosecuting attorney in the jurisdiction where the criminal
14 charge was filed shall advise the victim, in writing, of the right to
15 request counseling and testing. To assist the victim of the crime to
16 determine whether he or she should make this request, the prosecutor
17 shall refer the victim to the local health officer or other health care
18 provider, who shall make available counseling and testing to help that
19 person understand the extent to which the particular circumstances of
20 the crime may or may not have put the victim at the risk of
21 transmission of HIV and other communicable diseases, to ensure that the
22 victim understands both the benefits and limitations of the current
23 tests, including the limitations in relating the results of the
24 defendant's test taken after the victim's request back to the time of
25 the victim's substantial exposure to the defendant's bodily fluids, to
26 help the victim decide whether he or she wants to request that the
27 accused be tested, and to help the victim decide whether he or she
28 wants to be tested.

29 (c) Upon request of the victim, the public health officer shall
30 perform counseling and testing for the victim.

1 (d) Upon the request of the victim, the prosecuting attorney shall
2 petition the court, as soon as possible after charging, for an order
3 mandating that the defendant submit to counseling and testing, unless
4 the defendant consents to such counseling and testing.

5 (e) The court in which the criminal charge is filed shall order the
6 defendant to submit to tests to be performed by the local public health
7 officer if the court finds, by a preponderance of the evidence, (i)
8 that during the course of the alleged criminal offense, the victim was
9 substantially exposed to the defendant's bodily fluids, presenting a
10 possible risk of HIV infection; and (ii) that the results of the
11 defendant's test taken after charging have sufficient relation to the
12 time the victim was substantially exposed to the defendant's bodily
13 fluids to conclude that the defendant's HIV status at the time of
14 testing reflects the defendant's HIV status at the time of the
15 substantial exposure to the victim. The board in rule shall define
16 "substantial exposure" and "exposure presenting possible risk."

17 (f) The court shall base its finding upon affidavits submitted by
18 the victim, the defendant, the public health officer, or the
19 prosecuting attorney. Any affidavit of the public health officer
20 should set forth (i) the circumstances under which a victim may be
21 substantially exposed to the bodily fluids of another, presenting a
22 possible risk of transmission; and (ii) the factors to consider in
23 determining whether the results of the defendant's test taken after
24 charging relate back to the time of the victim's substantial exposure
25 to the defendant's bodily fluids. The prosecuting attorney may
26 present the request for an order and supporting affidavits to the court
27 and obtain the order without the presence of the victim or the public
28 health officer.

29 (g) Once the order is granted, the prosecuting attorney shall
30 notify the public health officer of the order and of the location of

1 the defendant. The public health officer shall complete the counseling
2 and testing process as soon as possible, and at such subsequent
3 intervals as are sufficient to detect infection, as determined by the
4 board in rule under section 4 of this act. The public health officer
5 shall notify the prosecuting attorney of the fact that the initial
6 testing process has been completed.

7 (h) The public health officer shall have the responsibility for
8 disclosing test results to, and counseling, the victim who requested
9 the test and to the accused who was tested, as soon as possible after
10 the results become available.

11 (i) The results of any blood tested pursuant to (e) of this
12 subsection shall not be used in any criminal proceeding as evidence of
13 either guilt or innocence or for sentencing on conviction of the
14 charges.

15 (j) If the victim of a charged or convicted criminal defendant is
16 a minor, the victim's parent or legal guardian shall have all of the
17 rights and remedies of a victim under this section. If the victim is a
18 minor, the prosecutor may petition the court under this section to
19 require the charged or convicted defendant to submit to counseling and
20 testing if the prosecutor in his or her discretion believes the testing
21 would be in the best interests of the minor.

22 (4) A law enforcement officer, fire fighter, health care provider,
23 health care facility staff person, or other categories of employment
24 determined by the board in rule to be at risk of substantial exposure
25 to HIV, who has experienced a substantial exposure to another person's
26 bodily fluids in the course of his or her employment, may request a
27 state or local public health officer to order pretest counseling, HIV
28 testing, and posttest counseling for the person whose bodily fluids he
29 or she has been exposed to. The person who is subject to the order
30 shall be given written notice of the order promptly, personally, and

1 confidentially, stating the grounds and provisions of the order,
2 including the factual basis therefor. If the person who is subject to
3 the order refuses to comply, the state or local public health officer
4 may petition the superior court for a hearing. The standard of review
5 for the order is whether substantial exposure occurred and whether that
6 exposure presents a possible risk of transmission of the HIV virus as
7 defined by the board by rule. Upon conclusion of the hearing, the
8 court shall issue the appropriate order. The state or local public
9 health officer shall perform counseling and testing under this
10 subsection if he or she (~~finds that the exposure was substantial and~~
11 ~~presents a possible risk as defined by the board of health by rule~~)
12 receives the consent of the person to be tested, or if ordered by the
13 court to do so."

14 "NEW SECTION. Sec. 4. A new section is added to chapter 70.24 RCW
15 to read as follows:

16 The board shall by October 1, 1991, adopt rules that specify a
17 schedule for testing at sufficient intervals to detect HIV infection
18 under RCW 70.24.320(4)."

19 "NEW SECTION. Sec. 5. If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected."

23 "NEW SECTION. Sec. 6. This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and shall take
26 effect immediately."

1 **SHB 1343** - H AMD
2 By Representative

3
4 On page 1, line 2 of the title, after "offenses;" strike the
5 remainder of the title and insert "amending RCW 70.24.105, 70.24.320,
6 and 70.24.340; adding a new section to chapter 70.24 RCW; and declaring
7 an emergency."