

SENATE BILL 5086

State of Washington

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By Senators Amondson, Snyder, Bailey, Wojahn, Hayner, McMullen, Anderson, L. Kreidler, McDonald, Vognild, Newhouse, Craswell, Johnson, Owen, L. Smith, Oke, Conner, Rasmussen, Bauer, Moore, Stratton, McCaslin, Barr, Matson, Roach, Thorsness, Metcalf, Sellar, Nelson, Sutherland and West.

Read first time January 18, 1991. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to counseling and testing for HIV diseases of
2 persons charged with criminal offenses; amending RCW 70.24.105 and
3 70.24.340; adding new sections to chapter 70.24 RCW; and creating a new
4 section.

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

6 NEW SECTION. **Sec. 1.** The intent of the legislature is to
7 create a public health measure designed to provide a mechanism where
8 people that are substantially exposed to the body fluids of a person in
9 the course of a charged criminal offense may obtain information on the
10 offender's HIV status. The legislature respects the need for
11 confidentiality; requirements of confidentiality must be maintained as
12 prescribed in this act.

13 **Sec. 2.** RCW 70.24.105 and 1989 c 123 s 1 are each amended to read
14 as follows:

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

5 (2) No person may disclose or be compelled to disclose the identity
6 of any person upon whom an HIV antibody test is performed, or the
7 results of such a test, nor may the result of a test for any other
8 sexually transmitted disease when it is positive be disclosed. This
9 protection against disclosure of test subject, diagnosis, or treatment
10 also applies to any information relating to diagnosis of or treatment
11 for HIV infection and for any other confirmed sexually transmitted
12 disease. The following persons, however, may receive such information:

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

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

23 (c) The state public health officer, a local public health officer,
24 or the centers for disease control of the United States public health
25 service in accordance with reporting requirements for a diagnosed case
26 of a sexually transmitted disease;

27 (d) A health facility or health care provider that procures,
28 processes, distributes, or uses: (i) A human body part, tissue, or
29 blood from a deceased person with respect to medical information
30 regarding that person; (ii) semen, including that provided prior to

1 March 23, 1988, for the purpose of artificial insemination; or (iii)
2 blood specimens;

3 (e) Any state or local public health officer conducting an
4 investigation pursuant to RCW 70.24.024, provided that such record was
5 obtained by means of court ordered HIV testing pursuant to RCW
6 70.24.340 or 70.24.024;

7 (f) A person allowed access to the record by a court order granted
8 after application showing good cause therefor. In assessing good
9 cause, the court shall weigh the public interest and the need for
10 disclosure against the injury to the patient, to the physician-patient
11 relationship, and to the treatment services. Upon the granting of the
12 order, the court, in determining the extent to which any disclosure of
13 all or any part of the record of any such test is necessary, shall
14 impose appropriate safeguards against unauthorized disclosure. An
15 order authorizing disclosure shall: (i) Limit disclosure to those
16 parts of the patient's record deemed essential to fulfill the objective
17 for which the order was granted; (ii) limit disclosure to those persons
18 whose need for information is the basis for the order; and (iii)
19 include any other appropriate measures to keep disclosure to a minimum
20 for the protection of the patient, the physician-patient relationship,
21 and the treatment services, including but not limited to the written
22 statement set forth in subsection (5) of this section;

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

29 (h) A law enforcement officer, fire fighter, health care provider,
30 health care facility staff person, or other persons as defined by the

1 board in rule pursuant to RCW 70.24.340(4), who has requested a test of
2 a person whose bodily fluids he or she has been substantially exposed
3 to, pursuant to RCW 70.24.340(4), if a state or local public health
4 officer performs the test;

5 (i) Claims management personnel employed by or associated with an
6 insurer, health care service contractor, health maintenance
7 organization, self-funded health plan, state-administered health care
8 claims payer, or any other payer of health care claims where such
9 disclosure is to be used solely for the prompt and accurate evaluation
10 and payment of medical or related claims. Information released under
11 this subsection shall be confidential and shall not be released or
12 available to persons who are not involved in handling or determining
13 medical claims payment; ~~((and))~~

14 (j) A department of social and health services worker, a child
15 placing agency worker, or a guardian ad litem who is responsible for
16 making or reviewing placement or case-planning decisions or
17 recommendations to the court regarding a child, who is less than
18 fourteen years of age, has a sexually transmitted disease, and is in
19 the custody of the department of social and health services or a
20 licensed child placing agency; this information may also be received by
21 a person responsible for providing residential care for such a child
22 when the department of social and health services or a licensed child
23 placing agency determines that it is necessary for the provision of
24 child care services; and

25 (k) A person named as a victim of a charged criminal offense, or
26 that person's legal representative for health care decisions in
27 accordance with RCW 7.70.065, where either person has requested the
28 test of the charged criminal offender to whose bodily fluids the victim
29 has been substantially exposed, pursuant to RCW 70.24.320(5), if a
30 state or local public health officer performs the test.

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

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

8 (a) The sexually transmitted disease status of a department of
9 corrections offender shall be made available by department of
10 corrections health care providers to a department of corrections
11 superintendent or administrator as necessary for disease prevention or
12 control and for protection of the safety and security of the staff,
13 offenders, and the public. The information may be submitted to
14 transporting officers and receiving facilities, including facilities
15 that are not under the department of correction's jurisdiction.

16 (b) The sexually transmitted disease status of a person detained in
17 a jail shall be made available by the local public health officer to a
18 jail administrator as necessary for disease prevention or control and
19 for protection of the safety and security of the staff, offenders, and
20 the public. The information may be submitted to transporting officers
21 and receiving facilities.

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

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

12 (6) The requirements of this section shall not apply to the
13 customary methods utilized for the exchange of medical information
14 among health care providers in order to provide health care services to
15 the patient, nor shall they apply within health care facilities where
16 there is a need for access to confidential medical information to
17 fulfill professional duties.

18 **Sec. 3.** RCW 70.24.340 and 1988 c 206 s 703 are each amended to
19 read as follows:

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

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

24 (b) Convicted of prostitution or offenses relating to prostitution
25 under chapter 9A.88 RCW; or

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

1 (2) Such testing shall be conducted as soon as possible after
2 sentencing and shall be so ordered by the sentencing judge.

3 (3) This section applies only to offenses committed after March 23,
4 1988.

5 (4) A law enforcement officer, fire fighter, health care provider,
6 health care facility staff person, or other categories of employment
7 determined by the board in rule to be at risk of substantial exposure
8 to HIV, who has experienced a substantial exposure to another person's
9 bodily fluids in the course of his or her employment, may request a
10 state or local public health officer to order pretest counseling, HIV
11 testing, and posttest counseling for the person whose bodily fluids he
12 or she has been exposed to. The person who is subject to the order
13 shall be given written notice of the order promptly, personally, and
14 confidentially, stating the grounds and provisions of the order,
15 including the factual basis therefor. If the person who is subject to
16 the order refuses to comply, the state or local public health officer
17 may petition the superior court for a hearing. The standard of review
18 for the order is whether substantial exposure occurred and whether that
19 exposure presents a possible risk of transmission of the HIV virus as
20 defined by the board by rule. Upon conclusion of the hearing, the
21 court shall issue the appropriate order. The state or local public
22 health officer shall perform counseling and testing under this
23 subsection if he or she finds that the exposure was substantial and
24 presents a possible risk as defined by the board of health by rule.

25 (5) A victim of a charged criminal offense who has experienced
26 substantial exposure to another person's bodily fluids during the
27 course of an alleged criminal offense may request a state or local
28 public health officer to order pretest counseling, HIV testing, and
29 posttest counseling for the person to whose bodily fluids he or she has
30 been exposed. The state or local health officer shall perform

1 counseling and testing under this subsection if he or she finds that
2 the exposure was substantial and presents a possible risk as defined by
3 the state board of health by rule. The person who is subject to the
4 order shall be given written notice of the order promptly, personally,
5 and confidentially, stating the grounds and provision of the order,
6 including the factual basis therefor. If the person who is subject to
7 the order refused to comply, the state or local public health officer
8 may petition the superior court for a hearing. The standard of review
9 for the order is whether substantial exposure occurred and whether that
10 exposure presents a possible risk of transmission of the HIV virus as
11 defined by the board by rule. Upon conclusion of the hearing, the
12 court shall issue the appropriate order. Testing shall occur as soon
13 as possible after the accused's first court appearance following the
14 filing of charges and thereafter unless acquittal of the accused or
15 unless charges against the accused are dropped. Testing shall occur at
16 intervals sufficient to detect HIV infection, as determined by the
17 board of health under section 4 of this act.

18 NEW SECTION. Sec. 4. A new section is added to chapter 70.24 RCW
19 to read as follows:

20 The board of health shall by October 1, 1991, adopt rules that
21 specify a schedule for testing at sufficient intervals to detect HIV
22 infection for persons requiring sexually transmitted disease testing
23 under RCW 70.24.340(5).

24 NEW SECTION. Sec. 5. A new section is added to chapter 70.24 RCW
25 to read as follows:

26 A victim of a charged criminal offense under RCW 70.24.105(1)(k)
27 shall be given notice of his or her rights to request a test of the
28 charged criminal offender.