
SUBSTITUTE SENATE BILL 5236

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By Senate Committee on Law & Justice (originally sponsored by Senators Bailey, Amondson, Metcalf, Nelson, Craswell, Anderson, Patterson, Rasmussen, McCaslin, Barr, Moore, Vognild, Cantu, Stratton, Oke and McDonald).

Read first time February 27, 1991.

1 AN ACT Relating to HIV testing of alleged sex offenders; amending
2 RCW 70.24.105 and 70.24.340; and adding new sections to chapter 70.24
3 RCW.

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

5 **Sec. 1.** RCW 70.24.105 and 1989 c 123 s 1 are each amended to read
6 as follows:

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

11 (2) No person may disclose or be compelled to disclose the identity
12 of any person upon whom an HIV antibody test is performed, or the
13 results of such a test, nor may the result of a test for any other
14 sexually transmitted disease when it is positive be disclosed. This
15 protection against disclosure of test subject, diagnosis, or treatment

1 also applies to any information relating to diagnosis of or treatment
2 for HIV infection and for any other confirmed sexually transmitted
3 disease. The following persons, however, may receive such information:

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

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

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

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

24 (e) Any state or local public health officer conducting an
25 investigation pursuant to RCW 70.24.024, provided that such record was
26 obtained by means of court ordered HIV testing pursuant to RCW
27 70.24.340 or 70.24.024;

28 (f) A person allowed access to the record by a court order granted
29 after application showing good cause therefor. In assessing good
30 cause, the court shall weigh the public interest and the need for

1 disclosure against the injury to the patient, to the physician-patient
2 relationship, and to the treatment services. Upon the granting of the
3 order, the court, in determining the extent to which any disclosure of
4 all or any part of the record of any such test is necessary, shall
5 impose appropriate safeguards against unauthorized disclosure. An
6 order authorizing disclosure shall: (i) Limit disclosure to those
7 parts of the patient's record deemed essential to fulfill the objective
8 for which the order was granted; (ii) limit disclosure to those persons
9 whose need for information is the basis for the order; and (iii)
10 include any other appropriate measures to keep disclosure to a minimum
11 for the protection of the patient, the physician-patient relationship,
12 and the treatment services, including but not limited to the written
13 statement set forth in subsection (5) of this section;

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

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

26 (i) Claims management personnel employed by or associated with an
27 insurer, health care service contractor, health maintenance
28 organization, self-funded health plan, state-administered health care
29 claims payer, or any other payer of health care claims where such
30 disclosure is to be used solely for the prompt and accurate evaluation

1 and payment of medical or related claims. Information released under
2 this subsection shall be confidential and shall not be released or
3 available to persons who are not involved in handling or determining
4 medical claims payment; (~~and~~)

5 (j) A department of social and health services worker, a child
6 placing agency worker, or a guardian ad litem who is responsible for
7 making or reviewing placement or case-planning decisions or
8 recommendations to the court regarding a child, who is less than
9 fourteen years of age, has a sexually transmitted disease, and is in
10 the custody of the department of social and health services or a
11 licensed child placing agency; this information may also be received by
12 a person responsible for providing residential care for such a child
13 when the department of social and health services or a licensed child
14 placing agency determines that it is necessary for the provision of
15 child care services; and

16 (k) A person named as a victim of any criminal offense, or that
17 person's legal representative for health care decisions in accordance
18 with RCW 7.70.065, where the victim was substantially exposed to the
19 bodily fluids of the accused, as defined by the board by rule, and
20 testing was conducted pursuant to RCW 70.24.340 or section 4 of this
21 act.

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

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

29 (a) The sexually transmitted disease status of a department of
30 corrections offender shall be made available by department of

1 corrections health care providers to a department of corrections
2 superintendent or administrator as necessary for disease prevention or
3 control and for protection of the safety and security of the staff,
4 offenders, and the public. The information may be submitted to
5 transporting officers and receiving facilities, including facilities
6 that are not under the department of correction's jurisdiction.

7 (b) The sexually transmitted disease status of a person detained in
8 a jail shall be made available by the local public health officer to a
9 jail administrator as necessary for disease prevention or control and
10 for protection of the safety and security of the staff, offenders, and
11 the public. The information may be submitted to transporting officers
12 and receiving facilities.

13 (c) Information regarding a department of corrections offender's
14 sexually transmitted disease status is confidential and may be
15 disclosed by a correctional superintendent or administrator or local
16 jail administrator only as necessary for disease prevention or control
17 and for protection of the safety and security of the staff, offenders,
18 and the public. Unauthorized disclosure of this information to any
19 person may result in disciplinary action, in addition to any other
20 penalties as may be prescribed by law.

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

1 purpose." An oral disclosure shall be accompanied or followed by such
2 a notice within ten days.

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

9 **Sec. 2.** RCW 70.24.340 and 1988 c 206 s 703 are each amended to
10 read as follows:

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

14 (a) Convicted of a (~~sexual offense under chapter 9A.44 RCW~~)
15 criminal offense involving a victim who was substantially exposed to
16 the bodily fluids of the accused and the exposure presents a possible
17 risk of infection, as defined by the board by rule;

18 (b) Convicted of prostitution (~~or offenses relating to~~
19 ~~prostitution under chapter 9A.88 RCW~~), under RCW 9A.88.030, or
20 patronizing a prostitute, under RCW 9A.88.110; or

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

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

26 (3) This section applies only to offenses committed after March 23,
27 1988.

28 (4) A law enforcement officer, fire fighter, health care provider,
29 health care facility staff person, or other categories of employment

1 determined by the board in rule to be at risk of substantial exposure
2 to HIV, who has experienced a substantial exposure to another person's
3 bodily fluids in the course of his or her employment, or any good
4 samaritan who experienced a substantial exposure and who qualifies for
5 immunity under RCW 4.24.300, may request a state or local public health
6 officer to order pretest counseling, HIV testing, and posttest
7 counseling for the person whose bodily fluids he or she has been
8 exposed to. The person who is subject to the order shall be given
9 written notice of the order promptly, personally, and confidentially,
10 stating the grounds and provisions of the order, including the factual
11 basis therefor. If the person who is subject to the order refuses to
12 comply, the state or local public health officer may petition the
13 superior court for a hearing. The standard of review for the order is
14 whether substantial exposure occurred and whether that exposure
15 presents a possible risk of transmission of the HIV virus as defined by
16 the board by rule. Upon conclusion of the hearing, the court shall
17 issue the appropriate order. The state or local public health officer
18 shall perform counseling and testing under this subsection if he or she
19 finds that the exposure was substantial and presents a possible risk as
20 defined by the board of health by rule.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.24 RCW
22 to read as follows:

23 The board of health shall by October 1, 1991, adopt rules that
24 specify a schedule for testing at sufficient intervals to detect the
25 HIV infection for persons requiring testing under RCW 70.24.340 and
26 section 4 of this act.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.24 RCW
28 to read as follows:

1 (1) The victim of a charged criminal offense, or that person's
2 legal representative for health care decisions in accordance with RCW
3 7.70.065, shall have the right to request that the accused submit to
4 certain tests, as defined by the board in rule, to determine if the
5 accused carries the HIV antibody.

6 (2) The prosecuting attorney in the county where the charge was
7 filed shall advise the victim, in writing, of the right to request
8 testing of the accused. To assist the victim in determining whether he
9 or she should make this request, the prosecutor shall refer the victim
10 to the local health officer or health care provider, who shall make
11 available prerequest counseling and testing. The counseling shall be
12 designed: (a) To assist the person in understanding the risk of
13 transmission of the HIV antibody based on the particular circumstances
14 of the crime, (b) to ensure the person understands both the benefits
15 and limitations of the current tests, and (c) to help the victim in
16 deciding whether to be tested and whether to request the testing of the
17 accused.

18 (3) Upon request of the victim, the prosecuting attorney shall
19 petition the court, as soon as possible, for an order mandating that
20 the accused be tested for the HIV antibody.

21 (4) The court shall order the accused to submit to testing by the
22 local public health officer if the court finds, by a preponderance of
23 the evidence, that during the course of the alleged criminal offense
24 the victim was substantially exposed to the bodily fluids of the
25 accused and the exposure presents a possible risk of infection. The
26 order shall require the accused to report to the local public health
27 department for testing if the person is not in custody or if the
28 accused is released from custody prior to testing. The court shall use
29 the board's definition of "substantial exposure" and "exposure
30 presenting possible risk," as adopted by rule.

1 (5) The court shall base its findings upon affidavits submitted by
2 the victim, accused, public health officer, prosecutor, or any other
3 witnesses. The affidavit of the public health officer shall set forth
4 the type of circumstances under which a victim may be substantially
5 exposed to the bodily fluids of another, presenting a possible risk of
6 transmission of the HIV antibody. The prosecutor may present the
7 petition and affidavits to the court and obtain the order without the
8 presence of the victim or the public health officer.

9 (6) Upon issuance of the order the prosecutor shall immediately
10 notify the public health officer of the order and of the location of
11 the accused if the accused is in custody. The public health officer
12 shall initiate the testing process as soon as possible, and shall
13 conduct testing at the intervals determined necessary by the board
14 under section 3 of this act. Testing shall not occur under this
15 section after the accused is acquitted or charges are dismissed.

16 (7) Any blood tested under this section shall be subjected to
17 appropriate confirmatory tests to ensure accuracy of the first test
18 results. Initially reactive test results shall not be released until
19 confirmed for positive reactors. When available, the public health
20 officer shall report the results to the victim and to the accused.
21 Positive test results shall not be disclosed without providing or
22 offering to provide professional counseling as appropriate to the
23 circumstances.

24 (8) The results of any blood tested pursuant to this section shall
25 not be used in any criminal proceeding as evidence of guilt or
26 innocence.

27 (9) A victim may also use the procedure provided in this section to
28 request the testing of a person convicted of a criminal offense
29 involving a substantial exposure to the bodily fluids of the accused
30 and the exposure presents a possible risk of infection to the victim,

1 as defined by the board by rule.