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**SUBSTITUTE SENATE BILL 5476**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Talmadge, A. Smith, Quigley, Moyer, M. Rasmussen and Oke)

Read first time 02/24/93.

1 AN ACT Relating to HIV testing of sex offenders; and amending RCW  
2 70.24.105 and 70.24.340.

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

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

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

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

18 (a) The subject of the test or the subject's legal representative  
19 for health care decisions in accordance with RCW 7.70.065, with the

1 exception of such a representative of a minor child over fourteen years  
2 of age and otherwise competent;

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

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

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

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

23 (f) A person allowed access to the record by a court order granted  
24 after application showing good cause therefor. In assessing good  
25 cause, the court shall weigh the public interest and the need for  
26 disclosure against the injury to the patient, to the physician-patient  
27 relationship, and to the treatment services. Upon the granting of the  
28 order, the court, in determining the extent to which any disclosure of  
29 all or any part of the record of any such test is necessary, shall  
30 impose appropriate safeguards against unauthorized disclosure. An  
31 order authorizing disclosure shall: (i) Limit disclosure to those  
32 parts of the patient's record deemed essential to fulfill the objective  
33 for which the order was granted; (ii) limit disclosure to those persons  
34 whose need for information is the basis for the order; and (iii)  
35 include any other appropriate measures to keep disclosure to a minimum  
36 for the protection of the patient, the physician-patient relationship,  
37 and the treatment services, including but not limited to the written  
38 statement set forth in subsection (5) of this section;

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

7 (h) A law enforcement officer, fire fighter, health care provider,  
8 health care facility staff person, or other persons as defined by the  
9 board in rule pursuant to RCW 70.24.340(~~((+4))~~) (5), who has requested  
10 a test of a person whose bodily fluids he or she has been substantially  
11 exposed to, pursuant to RCW 70.24.340(~~((+4))~~) (5), if a state or local  
12 public health officer performs the test;

13 (i) A victim, or a victim's guardian if the victim is under  
14 fourteen years of age, of a sexual offense committed by a person  
15 convicted, or found by a juvenile court to have committed an offense,  
16 under chapter 9A.44 RCW or RCW 9A.64.020;

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

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

37 (3) No person to whom the results of a test for a sexually  
38 transmitted disease have been disclosed pursuant to subsection (2) of

1 this section may disclose the test results to another person except as  
2 authorized by that subsection.

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

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

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

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

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

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

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

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

12 (a) Convicted of, or found by a juvenile court to have committed,  
13 a sexual offense under chapter 9A.44 RCW;

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

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

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

21 (3) Upon request of the victim, or the victim's guardian if the  
22 victim is under fourteen years of age, the local health department  
23 shall disclose the test results of a person convicted of, or found by  
24 a juvenile court to have committed, a sexual offense under chapter  
25 9A.44 RCW or RCW 9A.64.020.

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

28 ~~((4))~~ (5) A law enforcement officer, fire fighter, health care  
29 provider, health care facility staff person, or other categories of  
30 employment determined by the board in rule to be at risk of substantial  
31 exposure to HIV, who has experienced a substantial exposure to another  
32 person's bodily fluids in the course of his or her employment, may  
33 request a state or local public health officer to order pretest  
34 counseling, HIV testing, and posttest counseling for the person whose  
35 bodily fluids he or she has been exposed to. The person who is subject  
36 to the order shall be given written notice of the order promptly,  
37 personally, and confidentially, stating the grounds and provisions of  
38 the order, including the factual basis therefor. If the person who is

1 subject to the order refuses to comply, the state or local public  
2 health officer may petition the superior court for a hearing. The  
3 standard of review for the order is whether substantial exposure  
4 occurred and whether that exposure presents a possible risk of  
5 transmission of the HIV virus as defined by the board by rule. Upon  
6 conclusion of the hearing, the court shall issue the appropriate order.  
7 The state or local public health officer shall perform counseling and  
8 testing under this subsection if he or she finds that the exposure was  
9 substantial and presents a possible risk as defined by the board of  
10 health by rule.

11 (6) Victims of a sexual offense as defined in chapter 9A.44 RCW or  
12 RCW 9A.64.020 shall be informed by the prosecuting attorney of their  
13 right to receive, upon request to their county health department,  
14 counseling and HIV testing as defined in RCW 70.24.320.

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