

2 **ESSB 6285** - CONF REPT
3 By Conference Committee

4 ADOPTED 3/7/96

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

7 "NEW SECTION. **Sec. 1.** (1) The legislature finds that department
8 of corrections staff and jail staff perform essential public functions
9 that are vital to our communities. The health and safety of these
10 workers is often placed in jeopardy while they perform the
11 responsibilities of their jobs. Therefore, the legislature intends
12 that the results of any HIV tests conducted on an offender or detainee
13 pursuant to RCW 70.24.340, 70.24.360, or 70.24.370 shall be disclosed
14 to the superintendent or administrator of the department of corrections
15 facility or local jail housing the offender or detainee, and shall also
16 be disclosed to any corrections staff or jail staff who have been
17 substantially exposed to the bodily fluids of the offender or detainee.
18 However, the legislature recognizes that the mandatory disclosure of
19 the HIV status of individual offenders may cause some corrections and
20 jail staff to use more precautions with those offenders and detained
21 people they know to be HIV positive. The legislature also recognizes
22 the risk exists that some corrections and jail staff may
23 correspondingly use fewer precautions with those offenders and detained
24 people they are not informed are HIV positive. The legislature finds,
25 however, that the system of universal precautions required under
26 federal and state law in all settings where risk of occupational
27 exposure to communicable diseases exists remains the most effective way
28 to reduce the risk of communicable disease transmission. The
29 legislature does not intend to discourage the use of universal
30 precautions but to provide supplemental information for corrections and
31 jail staff to utilize as part of their universal precautions with all
32 offenders and detained people.

33 (2) The legislature further finds that, through the efforts of
34 health care professionals and corrections staff, offenders in
35 department of corrections facilities and people detained in local jails
36 are being encouraged to take responsibility for their health by

1 requesting voluntary and anonymous pretest counseling, HIV testing,
2 posttest counseling, and AIDS counseling. The legislature does not
3 intend, through this act, to mandate disclosure of the results of
4 voluntary and anonymous tests. The legislature intends to continue to
5 protect the confidential exchange of medical information related to
6 voluntary and anonymous pretest counseling, HIV testing, posttest
7 counseling, and AIDS counseling as provided by chapter 70.24 RCW.

8 **Sec. 2.** RCW 70.24.105 and 1994 c 72 s 1 are each amended to read
9 as follows:

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

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

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

32 (c) The state public health officer, a local public health officer,
33 or the centers for disease control of the United States public health
34 service in accordance with reporting requirements for a diagnosed case
35 of a sexually transmitted disease;

36 (d) A health facility or health care provider that procures,
37 processes, distributes, or uses: (i) A human body part, tissue, or
38 blood from a deceased person with respect to medical information

1 regarding that person; (ii) semen, including that provided prior to
2 March 23, 1988, for the purpose of artificial insemination; or (iii)
3 blood specimens;

4 (e) Any state or local public health officer conducting an
5 investigation pursuant to RCW 70.24.024, provided that such record was
6 obtained by means of court ordered HIV testing pursuant to RCW
7 70.24.340 or 70.24.024;

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

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

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

36 (i) Claims management personnel employed by or associated with an
37 insurer, health care service contractor, health maintenance
38 organization, self-funded health plan, state-administered health care
39 claims payer, or any other payer of health care claims where such

1 disclosure is to be used solely for the prompt and accurate evaluation
2 and payment of medical or related claims. Information released under
3 this subsection shall be confidential and shall not be released or
4 available to persons who are not involved in handling or determining
5 medical claims payment; and

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

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

21 (4) The release of sexually transmitted disease information
22 regarding an offender or detained person, except as provided in
23 subsection (2)(e) of this section, shall be governed as follows:

24 (a) The sexually transmitted disease status of a department of
25 corrections offender and the results of any tests conducted pursuant to
26 RCW 70.24.340, 70.24.360, or 70.24.370 shall be made available by
27 department of corrections health care providers and local public health
28 officers to a department of corrections superintendent or administrator
29 ((as necessary)). The information made available to superintendents
30 and administrators under this subsection (4)(a) shall be utilized by a
31 superintendent or administrator only as provided in section 3 of this
32 act for disease prevention or control and for protection of the safety
33 and security of the staff, offenders, and the public. The information
34 may be submitted to transporting officers and receiving facilities,
35 including facilities that are not under the department of
36 ((correction's)) corrections' jurisdiction.

37 (b) The sexually transmitted disease status of a person detained in
38 a jail and the results of any tests conducted pursuant to RCW
39 70.24.340, 70.24.360, or 70.24.370 shall be made available by the local

1 public health officer to a jail administrator (~~as necessary~~). The
2 information made available to administrators under this subsection
3 (4)(b) shall be utilized only as provided in section 4 of this act for
4 disease prevention or control and for protection of the safety and
5 security of the staff, offenders, detainees, and the public. The
6 information may be submitted to transporting officers and receiving
7 facilities.

8 (c) Information regarding (~~a department of corrections~~
9 ~~offender's~~) the sexually transmitted disease status of an offender or
10 detained person is confidential and may be disclosed by a correctional
11 superintendent or administrator or local jail administrator only as
12 necessary for disease prevention or control and for protection of the
13 safety and security of the staff, offenders, and the public.
14 Unauthorized disclosure of this information to any person may result in
15 disciplinary action, in addition to the penalties prescribed in RCW
16 70.24.080 or any other penalties as may be prescribed by law.

17 (d) Notwithstanding the limitations on disclosure contained in (a),
18 (b), and (c) of this subsection, whenever any member of jail staff or
19 department of corrections staff has been substantially exposed to the
20 bodily fluids of an offender or detained person, then the results of
21 any tests conducted pursuant to RCW 70.24.340, 70.24.360, or 70.24.370
22 shall be immediately disclosed by the department of corrections health
23 care provider and the local public health officer or the officer's
24 designee to the correctional superintendent or administrator or local
25 jail administrator. The superintendent or administrator is then
26 required to immediately disclose these results to the staff member who
27 was substantially exposed. Disclosure must be accompanied by
28 appropriate counseling for the staff member, including information
29 regarding follow-up testing.

30 (e) The receipt by any individual of any information disclosed
31 pursuant to this subsection (4) shall be utilized only for disease
32 prevention or control and for protection of the safety and security of
33 the staff, offenders, detainees, and the public. Use of this
34 information for any other purpose, including harassment or
35 discrimination, may result in disciplinary action, in addition to the
36 penalties prescribed in RCW 70.24.080 or any other penalties as may be
37 prescribed by law.

38 (5) Whenever disclosure is made pursuant to this section, except
39 for subsections (2)(a) and (6) of this section, it shall be accompanied

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

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

16 (7) Upon request of the victim, disclosure of test results under
17 this section to victims of sexual offenses under chapter 9A.44 RCW
18 shall be made if the result is negative or positive. The county
19 prosecuting attorney shall notify the victim of the right to such
20 disclosure. Such disclosure shall be accompanied by appropriate
21 counseling, including information regarding follow-up testing.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 72.09 RCW
23 to read as follows:

24 (1) The department shall develop and implement policies and
25 procedures for the uniform distribution of communicable disease
26 prevention protocols to all corrections staff who, in the course of
27 their regularly assigned job responsibilities, may come within close
28 physical proximity to offenders with communicable diseases. The
29 protocols shall include, but not be limited to, information learned
30 from tests conducted pursuant to RCW 70.24.340, 70.24.360, and
31 70.24.370.

32 (2) The protocols shall identify the offender and special
33 precautions necessary to reduce the risk of transmission of the
34 communicable disease but shall not identify the offender's particular
35 communicable disease.

36 (3) For the purposes of this section, "communicable disease" means
37 an illness caused by an infectious agent which can be transmitted from
38 one person, animal, or object to another person by direct or indirect

1 means including transmission via an intermediate host or vector, food,
2 water, or air.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.48 RCW
4 to read as follows:

5 (1) Local jail administrators shall develop and implement policies
6 and procedures for the uniform distribution of communicable disease
7 prevention protocols to all jail staff who, in the course of their
8 regularly assigned job responsibilities, may come within close physical
9 proximity to offenders or detainees with communicable diseases. The
10 protocols shall include, but not be limited to, information learned
11 from tests conducted pursuant to RCW 70.24.340, 70.24.360, and
12 70.24.370.

13 (2) The protocols shall identify the offender or detainee and
14 special precautions necessary to reduce the risk of transmission of the
15 communicable disease but shall not identify the offender's or
16 detainee's particular communicable disease.

17 (3) For the purposes of this section, "communicable disease" means
18 an illness caused by an infectious agent which can be transmitted from
19 one person, animal, or object to another person by direct or indirect
20 means including transmission via an intermediate host or vector, food,
21 water, or air.

22 NEW SECTION. **Sec. 5.** The department of health and the department
23 of corrections shall each adopt rules to implement this act. The
24 department of health and the department of corrections shall also
25 report to the legislature by January 1, 1997, on the following: (1)
26 Changes made in rules and department of corrections and local jail
27 policies and procedures to implement this act; and (2) a summary of the
28 number and circumstances of mandatory test results that were disclosed
29 to department of corrections staff and jail staff pursuant to section
30 2 of this act."

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33 ADOPTED 3/7/96

34 On page 1, line 2 of the title, after "staff;" strike the remainder
35 of the title and insert "amending RCW 70.24.105; adding a new section

1 to chapter 72.09 RCW; adding a new section to chapter 70.48 RCW; and
2 creating new sections."

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