

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5044

Chapter 196, Laws of 1997

(partial veto)

55th Legislature
1997 Regular Session

AIDS-RELATED CRIMES

EFFECTIVE DATE: 7/27/97

Passed by the Senate March 17, 1997
YEAS 44 NAYS 4

BRAD OWEN

President of the Senate

Passed by the House April 16, 1997
YEAS 57 NAYS 40

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved April 24, 1997, with the
exception of sections 4 and 5, which
are vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
ENGROSSED SUBSTITUTE SENATE BILL 5044
as passed by the Senate and the House
of Representatives on the dates hereon
set forth.

MIKE O'CONNELL

Secretary

FILED

April 24, 1997 - 4:35 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5044

Passed Legislature - 1997 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Benton and Oke)

Read first time 03/05/97.

1 AN ACT Relating to crimes; amending RCW 9A.36.011, 9A.32.010,
2 70.24.034, and 70.24.105; and reenacting and amending RCW 9A.36.021 and
3 9A.04.080.

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

5 **Sec. 1.** RCW 9A.36.011 and 1986 c 257 s 4 are each amended to read
6 as follows:

7 (1) A person is guilty of assault in the first degree if he or she,
8 with intent to inflict great bodily harm:

9 (a) Assaults another with a firearm or any deadly weapon or by any
10 force or means likely to produce great bodily harm or death; or

11 (b) Administers, exposes, or transmits to or causes to be taken by
12 another, poison, the human immunodeficiency virus as defined in chapter
13 70.24 RCW, or any other destructive or noxious substance; or

14 (c) Assaults another and inflicts great bodily harm.

15 (2) Assault in the first degree is a class A felony.

16 **Sec. 2.** RCW 9A.36.021 and 1988 c 266 s 2, 1988 c 206 s 916, and
17 1988 c 158 s 2 are each reenacted and amended to read as follows:

1 (1) A person is guilty of assault in the second degree if he or
2 she, under circumstances not amounting to assault in the first degree:
3 (a) Intentionally assaults another and thereby recklessly inflicts
4 substantial bodily harm; or
5 (b) Intentionally and unlawfully causes substantial bodily harm to
6 an unborn quick child by intentionally and unlawfully inflicting any
7 injury upon the mother of such child; or
8 (c) Assaults another with a deadly weapon; or
9 (d) With intent to inflict bodily harm, administers to or causes to
10 be taken by another, poison(~~(, the human immunodeficiency virus as~~
11 ~~defined in chapter 70.24 RCW,)) or any other destructive or noxious~~
12 substance; or
13 (e) (~~With intent to inflict bodily harm, exposes or transmits~~
14 ~~human immunodeficiency virus as defined in chapter 70.24 RCW; or~~
15 ~~(f))~~) With intent to commit a felony, assaults another; or
16 (~~(g))~~) (f) Knowingly inflicts bodily harm which by design causes
17 such pain or agony as to be the equivalent of that produced by torture.
18 (2) Assault in the second degree is a class B felony.

19 **Sec. 3.** RCW 9A.32.010 and 1987 c 187 s 2 are each amended to read
20 as follows:

21 Homicide is the killing of a human being by the act, procurement,
22 or omission of another, death occurring (~~within three years and a~~
23 ~~day)) at any time, and is either (1) murder, (2) homicide by abuse, (3)
24 manslaughter, (4) excusable homicide, or (5) justifiable homicide.~~

25 ***Sec. 4.** RCW 9A.04.080 and 1995 c 287 s 5 and 1995 c 17 s 1 are
26 each reenacted and amended to read as follows:

27 (1) *Prosecutions for criminal offenses shall not be commenced after*
28 *the periods prescribed in this section.*

29 (a) *The following offenses may be prosecuted at any time after*
30 *their commission:*

31 (i) *Murder;*

32 (ii) *Homicide by abuse;*

33 (iii) *Arson if a death results;*

34 (iv) *Assault in the first degree if the assault is committed by*
35 *administration, exposure, or transmission of the human immunodeficiency*
36 *virus as prohibited by RCW 9A.36.011(1)(b).*

1 (b) The following offenses shall not be prosecuted more than ten
2 years after their commission:

3 (i) Any felony committed by a public officer if the commission is
4 in connection with the duties of his or her office or constitutes a
5 breach of his or her public duty or a violation of the oath of office;

6 (ii) Arson if no death results; or

7 (iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is
8 reported to a law enforcement agency within one year of its commission;
9 except that if the victim is under fourteen years of age when the rape
10 is committed and the rape is reported to a law enforcement agency
11 within one year of its commission, the violation may be prosecuted up
12 to three years after the victim's eighteenth birthday or up to ten
13 years after the rape's commission, whichever is later. If a violation
14 of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape
15 may not be prosecuted: (A) More than three years after its commission
16 if the violation was committed against a victim fourteen years of age
17 or older; or (B) more than three years after the victim's eighteenth
18 birthday or more than seven years after the rape's commission,
19 whichever is later, if the violation was committed against a victim
20 under fourteen years of age.

21 (c) Violations of the following statutes shall not be prosecuted
22 more than three years after the victim's eighteenth birthday or more
23 than seven years after their commission, whichever is later: RCW
24 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,
25 9A.44.100(1)(b), or 9A.64.020.

26 (d) The following offenses shall not be prosecuted more than six
27 years after their commission: Violations of RCW 9A.82.060 or
28 9A.82.080.

29 (e) The following offenses shall not be prosecuted more than five
30 years after their commission: Any class C felony under chapter 74.09,
31 82.36, or 82.38 RCW.

32 (f) Bigamy shall not be prosecuted more than three years after the
33 time specified in RCW 9A.64.010.

34 (g) No other felony may be prosecuted more than three years after
35 its commission.

36 (h) No gross misdemeanor may be prosecuted more than two years
37 after its commission.

38 (i) No misdemeanor may be prosecuted more than one year after its
39 commission.

1 (2) The periods of limitation prescribed in subsection (1) of this
2 section do not run during any time when the person charged is not
3 usually and publicly resident within this state.

4 (3) If, before the end of a period of limitation prescribed in
5 subsection (1) of this section, an indictment has been found or a
6 complaint or an information has been filed, and the indictment,
7 complaint, or information is set aside, then the period of limitation
8 is extended by a period equal to the length of time from the finding or
9 filing to the setting aside.

10 *Sec. 4 was vetoed. See message at end of chapter.

11 *Sec. 5. RCW 70.24.034 and 1988 c 206 s 910 are each amended to
12 read as follows:

13 (1) (~~When~~) After the procedures of RCW 70.24.024 have been
14 exhausted on one occasion for a person and the state or local public
15 health officer, within his or her respective jurisdiction, knows or has
16 reason to believe, because of (~~medical information~~) direct medical
17 knowledge or reliable testimony of others in a position to have direct
18 knowledge of a person's behavior, that ((a)) that person has a sexually
19 transmitted disease and that the person continues to engage in
20 behaviors that present an imminent danger to the public health as
21 defined by the board by rule based upon generally accepted standards of
22 medical and public health science, the public health officer:

23 (a) Shall inform the local law enforcement agency of his or her
24 knowledge or beliefs, and shall convey to the local law enforcement
25 agency all information in the health officer's possession, relating to
26 sexually transmitted disease testing, diagnosis, or treatment
27 concerning the person engaging in behavior that presents an imminent
28 danger to the public health. The public health officer may provide the
29 law enforcement agency with the identities of any individuals known to
30 the public health officer through investigations conducted under RCW
31 70.24.024 to have been exposed to that person under circumstances that
32 provide an opportunity for transmission of a sexually transmitted
33 disease. The public health officer shall provide the local law
34 enforcement agency with the identities of all individuals who agree to
35 the release of identifying information and who are known by the public
36 health officer to have been exposed to that person under circumstances
37 that provide an opportunity for transmission of a sexually transmitted
38 disease. A health care provider shall provide to the local law

1 enforcement agency, upon presentation of a warrant, all information in
2 his or her possession concerning the person engaging in behavior that
3 presents an imminent danger to the public health that relates in any
4 way to testing, diagnosis, or treatment for a sexually transmitted
5 disease. No action taken in good faith and in compliance with this
6 subsection is a violation of RCW 70.24.105 or 70.02.020;

7 (b) May bring an action in superior court to detain the person in
8 a facility designated by the board for a period of time necessary to
9 accomplish a program of counseling and education, excluding any
10 coercive techniques or procedures, designed to get the person to adopt
11 nondangerous behavior. In no case may the period exceed ninety days
12 under each order. The board shall establish, by rule, standards for
13 counseling and education under this subsection. The public health
14 officer shall request the prosecuting attorney to file such action in
15 superior court. During that period, reasonable efforts will be made in
16 a noncoercive manner to get the person to adopt nondangerous behavior.

17 (2) If an action is filed as outlined in subsection (1) of this
18 section, the superior court, upon the petition of the prosecuting
19 attorney, shall issue other appropriate court orders including, but not
20 limited to, an order to take the person into custody immediately, for
21 a period not to exceed seventy-two hours, excluding Saturdays, Sundays,
22 and holidays, and place him or her in a facility designated or approved
23 by the board. The person who is the subject of the order shall be
24 given written notice of the order promptly, personally, and
25 confidentially, stating the grounds and provisions of the order,
26 including the factual bases therefor, the evidence relied upon for
27 proof of infection and dangerous behavior, and the likelihood of
28 repetition of such behaviors in the absence of such an order, and
29 notifying the person that if he or she refuses to comply with the order
30 he or she may appear at a hearing to review the order and that he or
31 she may have an attorney appear on his or her behalf in the hearing at
32 public expense, if necessary. If the person contests testing or
33 treatment, no invasive medical procedures shall be carried out prior to
34 a hearing being held pursuant to subsection (3) of this section.

35 (3) The hearing shall be conducted no later than (~~forty-eight~~)
36 seventy-two hours, excluding Saturdays, Sundays, and holidays, after
37 the receipt of the order. The person who is subject to the order has
38 a right to be present at the hearing and may have an attorney appear on
39 his or her behalf in the hearing, at public expense if necessary. If

1 the order being contested includes detention for a period of fourteen
2 days or longer, the person shall also have the right to a trial by jury
3 upon request. Upon conclusion of the hearing or trial by jury, the
4 court shall issue appropriate orders.

5 The court may continue the hearing upon the request of the person
6 who is subject to the order for good cause shown for no more than five
7 additional judicial days. If a trial by jury is requested, the court,
8 upon motion, may continue the hearing for no more than ten additional
9 judicial days. During the pendency of the continuance, the court may
10 order that the person contesting the order remain in detention or may
11 place terms and conditions upon the person which the court deems
12 appropriate to protect public health.

13 (4) The burden of proof shall be on the state or local public
14 health officer to show by clear and convincing evidence that grounds
15 exist for the issuance of any court order pursuant to subsection (2) or
16 (3) of this section. If the superior court dismisses the order, the
17 fact that the order was issued shall be expunged from the records of
18 the state or local department of health.

19 (5) Any hearing conducted by the superior court pursuant to
20 subsection (2) or (3) of this section shall be closed and confidential
21 unless a public hearing is requested by the person who is the subject
22 of the order, in which case the hearing will be conducted in open
23 court. Unless in open hearing, any transcripts or records relating
24 thereto shall also be confidential and may be sealed by order of the
25 court.

26 (6) Any order entered by the superior court pursuant to subsection
27 (1) or (2) of this section shall impose terms and conditions no more
28 restrictive than necessary to protect the public health.

29 *Sec. 5 was vetoed. See message at end of chapter.

30 **Sec. 6.** RCW 70.24.105 and 1994 c 72 s 1 are each amended to read
31 as follows:

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

36 (2) No person may disclose or be compelled to disclose the identity
37 of any person upon whom an HIV antibody test is performed, or the
38 results of such a test, nor may the result of a test for any other

1 sexually transmitted disease when it is positive be disclosed. This
2 protection against disclosure of test subject, diagnosis, or treatment
3 also applies to any information relating to diagnosis of or treatment
4 for HIV infection and for any other confirmed sexually transmitted
5 disease. The following persons, however, may receive such information:

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

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

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

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

26 (e) Any state or local public health officer conducting an
27 investigation pursuant to RCW 70.24.024, provided that such record was
28 obtained by means of court ordered HIV testing pursuant to RCW
29 70.24.340 or 70.24.024;

30 (f) A person allowed access to the record by a court order granted
31 after application showing good cause therefor. In assessing good
32 cause, the court shall weigh the public interest and the need for
33 disclosure against the injury to the patient, to the physician-patient
34 relationship, and to the treatment services. Upon the granting of the
35 order, the court, in determining the extent to which any disclosure of
36 all or any part of the record of any such test is necessary, shall
37 impose appropriate safeguards against unauthorized disclosure. An
38 order authorizing disclosure shall: (i) Limit disclosure to those
39 parts of the patient's record deemed essential to fulfill the objective

1 for which the order was granted; (ii) limit disclosure to those persons
2 whose need for information is the basis for the order; and (iii)
3 include any other appropriate measures to keep disclosure to a minimum
4 for the protection of the patient, the physician-patient relationship,
5 and the treatment services, including but not limited to the written
6 statement set forth in subsection (5) of this section;

7 (g) Local law enforcement agencies to the extent provided in RCW
8 70.24.034;

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

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

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

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

1 placing agency determines that it is necessary for the provision of
2 child care services.

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

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

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

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

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

32 (5) Whenever disclosure is made pursuant to this section, except
33 for subsections (2)(a) and (6) of this section, it shall be accompanied
34 by a statement in writing which includes the following or substantially
35 similar language: "This information has been disclosed to you from
36 records whose confidentiality is protected by state law. State law
37 prohibits you from making any further disclosure of it without the
38 specific written consent of the person to whom it pertains, or as
39 otherwise permitted by state law. A general authorization for the

1 release of medical or other information is NOT sufficient for this
2 purpose." An oral disclosure shall be accompanied or followed by such
3 a notice within ten days.

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

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

Passed the Senate March 17, 1997.

Passed the House April 16, 1997.

Approved by the Governor April 24, 1997, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 24, 1997.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 4 and
3 5, Engrossed Substitute Senate Bill No. 5044 entitled:

4 "AN ACT Relating to crimes;"

5 This legislation relates to the criminal prosecution of persons who
6 are infected with the human immunodeficiency virus (HIV) and other
7 sexually transmitted diseases (STD's). ESSB 5044 raises the penalties
8 for the crime of intentional exposure or transmission of HIV to another
9 person by reclassifying it from second degree to first degree assault.
10 I agree that this is an appropriate penalty when considering that the
11 transmission of the HIV could lead to AIDS and eventual death.

12 Section 3 of the bill removes the "three years and a day" rule that
13 currently prevents a homicide prosecution if death does not occur
14 within that period of time following the criminal act. Under section
15 3, prosecutors are able to file homicide charges any time after the
16 victim dies. An act which results in a homicide should not escape
17 punishment and I agree with the purpose of section 3.

18 Section 4 of the bill does not add meaningfully to what prosecutors
19 can accomplish under section 3 and therefore I have vetoed it.

20 Section 5 of the bill requires that public health officers inform
21 law enforcement of any person with an STD whose behavior presents an
22 imminent danger. As section 5 is written, it may adversely affect
23 HIV/AIDS prevention efforts and could reverse the gains that have been
24 made in slowing the spread of this disease and other STD's.

1 Current law allows public health officers to give the prosecutor
2 the names of individuals who are intentionally spreading STD's.
3 Section 5 of the bill does not add constructively to what local health
4 officers are already empowered to do.

5 For these reasons I have vetoed sections 4 and 5 of Engrossed
6 Substitute Senate Bill No. 5044.

7 With the exception of sections 4 and 5, Engrossed Substitute Senate
8 Bill No. 5044 is approved."