
SENATE BILL 5172

State of Washington

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By Senators Zarelli, Goings, Oke, Stevens and Rasmussen

Read first time 01/15/1999. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to HIV testing of offenders and arrested and
2 detained persons; and amending RCW 70.24.340, 70.24.360, and 70.24.024.

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

4 **Sec. 1.** RCW 70.24.340 and 1997 c 345 s 3 are each amended to read
5 as follows:

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

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

10 (b) Convicted of prostitution or offenses relating to prostitution
11 under chapter 9A.88 RCW; (~~or~~)

12 (c) Convicted of drug offenses under chapter 69.50 RCW if the court
13 determines at the time of conviction that the related drug offense is
14 one associated with the use of hypodermic needles; or

15 (d) Who are offenders or arrested or detained persons and who have
16 subjected a law enforcement officer, fire fighter, health care
17 provider, health care facility staff person, department of corrections
18 staff person, jail staff person, or other category of employee, as
19 determined by the board, to substantial exposure to their bodily

1 fluids. Persons tested under this subsection (1)(d) shall also be
2 tested for hepatitis B.

3 (2) ~~((Such))~~ Testing of persons convicted under subsection (1)(a)
4 through (c) of this section shall be conducted as soon as possible
5 after sentencing and shall be so ordered by the sentencing judge.
6 Testing of persons causing a substantial exposure under subsection
7 (1)(d) of this section shall be conducted as soon as possible, but not
8 later than forty-eight hours after the exposure.

9 (3) ~~((This section))~~ Subsection (1)(a) through (c) of this section
10 applies only to offenses committed after March 23, 1988, and subsection
11 (1)(d) of this section applies only to exposures occurring on or after
12 the effective date of this act.

13 (4)(a) A law enforcement officer, fire fighter, health care
14 provider, health care facility staff person, department of corrections'
15 staff person, jail staff person, or other categories of employment
16 determined by the board in rule to be at risk of substantial exposure
17 to HIV, who has experienced a substantial exposure to ~~((another~~
18 ~~person's))~~ the bodily fluids of a person not covered under subsection
19 (1)(d) of this section in the course of his or her employment, may
20 request a state or local public health officer to order pretest
21 counseling, HIV testing, and posttest counseling for the person whose
22 bodily fluids he or she has been exposed to. If the state or local
23 public health officer refuses to order counseling and testing under
24 this subsection or subsection (1)(d) of this section, the person who
25 ~~((made the request))~~ experienced the substantial exposure may petition
26 the superior court for a hearing to determine whether an order shall be
27 issued. The hearing on the petition shall be held within seventy-two
28 hours of filing the petition, exclusive of Saturdays, Sundays, and
29 holidays. The standard of review to determine whether the public
30 health officer shall be required to issue the order is whether
31 substantial exposure occurred and whether that exposure presents a
32 possible risk of transmission of the HIV virus as defined by the board
33 by rule. Upon conclusion of the hearing, the court shall issue the
34 appropriate order.

35 (b) If the person who is subject to the state or local public
36 health officer's order to receive counseling and testing is not being
37 tested under subsection (1) of this section, the person shall be given
38 written notice of the order promptly, personally, and confidentially,
39 stating the grounds and provisions of the order, including the factual

1 basis therefor. If the person who is subject to the order is not being
2 tested under subsection (1) of this section and refuses to comply, the
3 state or local public health officer may petition the superior court
4 for a hearing. The hearing on the petition shall be held within
5 seventy-two hours of filing the petition, exclusive of Saturdays,
6 Sundays, and holidays. The standard of review for the order is whether
7 substantial exposure occurred and whether that exposure presents a
8 possible risk of transmission of the HIV virus as defined by the board
9 by rule. Upon conclusion of the hearing, the court shall issue the
10 appropriate order.

11 (c) The state or local public health officer shall perform
12 counseling and testing under this subsection if he or she finds that
13 the exposure was substantial and presents a possible risk as defined by
14 the board of health by rule or if he or she is ordered to do so by a
15 court.

16 (d) The counseling and testing required under this subsection shall
17 be completed as soon as possible after the substantial exposure or
18 after an order is issued by a court, but shall begin not later than
19 seventy-two hours after the substantial exposure or an order is issued
20 by the court.

21 (5) Consent of the persons tested under this section is not
22 required.

23 **Sec. 2.** RCW 70.24.360 and 1988 c 206 s 706 are each amended to
24 read as follows:

25 Jail administrators, ~~((with the approval of))~~ after consultation
26 with and receiving written recommendations from the local public health
27 officer, may order pretest counseling, HIV testing, and posttest
28 counseling for persons detained in the jail if the ((local public
29 health officer)) jail administrator determines that actual or
30 threatened behavior presents a possible risk to the staff, general
31 public, or other persons. ((Approval of the local public health
32 officer shall be based on RCW 70.24.024(3) and may be contested through
33 RCW 70.24.024(4)-.)) The jail administrator shall establish, pursuant
34 to RCW 70.48.071, a procedure to document the possible risk ~~((which))~~
35 that is the basis for the HIV testing. "Possible risk," as used in
36 this section, shall be defined by the jail administrator after
37 consultation with the board ((in rule)). Possible risk, as used in the
38 documentation of the behavior, or threat thereof, shall be reviewed

1 with the person (~~to try to assure that the person understands the~~
2 ~~basis for testing~~)).

3 **Sec. 3.** RCW 70.24.024 and 1988 c 206 s 909 are each amended to
4 read as follows:

5 (1) Subject to the provisions of this chapter, the state and local
6 public health officers or their authorized representatives may examine
7 and counsel or cause to be examined and counseled persons reasonably
8 believed to be infected with or to have been exposed to a sexually
9 transmitted disease.

10 (2) Orders or restrictive measures directed to persons with a
11 sexually transmitted disease shall be used as the last resort when
12 other measures to protect the public health have failed, including
13 reasonable efforts, which shall be documented, to obtain the voluntary
14 cooperation of the person who may be subject to such an order. The
15 orders and measures shall be applied serially with the least intrusive
16 measures used first. The burden of proof shall be on the state or
17 local public health officer to show that specified grounds exist for
18 the issuance of the orders or restrictive measures and that the terms
19 and conditions imposed are no more restrictive than necessary to
20 protect the public health.

21 (3) When the state or local public health officer within his or her
22 respective jurisdiction knows or has reason to believe, because of
23 direct medical knowledge or reliable testimony of others in a position
24 to have direct knowledge of a person's behavior, that a person has a
25 sexually transmitted disease and is engaging in specified conduct, as
26 determined by the board by rule based upon generally accepted standards
27 of medical and public health science, that endangers the public health,
28 he or she shall conduct an investigation in accordance with procedures
29 prescribed by the board to evaluate the specific facts alleged, if any,
30 and the reliability and credibility of the person or persons providing
31 such information and, if satisfied that the allegations are true, he or
32 she may issue an order according to the following priority to:

33 (a) Order a person to submit to a medical examination or testing,
34 seek counseling, or obtain medical treatment for curable diseases, or
35 any combination of these, within a period of time determined by the
36 public health officer, not to exceed fourteen days.

37 (b) Order a person to immediately cease and desist from specified
38 conduct (~~which~~) that endangers the health of others by imposing such

1 restrictions upon the person as are necessary to prevent the specified
2 conduct that endangers the health of others only if the public health
3 officer has determined that clear and convincing evidence exists to
4 believe that such person has been ordered to report for counseling as
5 provided in (a) of this subsection and continues to demonstrate
6 behavior (~~which~~) that endangers the health of others. Any
7 restriction shall be in writing, setting forth the name of the person
8 to be restricted and the initial period of time, not to exceed three
9 months, during which the order shall remain effective, the terms of the
10 restrictions, and such other conditions as may be necessary to protect
11 the public health. Restrictions shall be imposed in the least-
12 restrictive manner necessary to protect the public health.

13 (4)(a) Upon the issuance of any order by the state or local public
14 health officer or an authorized representative pursuant to subsection
15 (3) of this section or RCW 70.24.340(4) to a person who is not being
16 tested under RCW 70.24.340(1), such public health officer shall give
17 written notice promptly, personally, and confidentially to the person
18 who is the subject of the order stating the grounds and provisions of
19 the order, including the factual bases therefor, the evidence relied
20 upon for proof of infection and dangerous behavior, and the likelihood
21 of repetition of such behaviors in the absence of such an order, and
22 notifying the person who is the subject of the order that, if he or she
23 contests the order, he or she may appear at a judicial hearing on the
24 enforceability of the order, to be held in superior court. He or she
25 may have an attorney appear on his or her behalf in the hearing at
26 public expense, if necessary. The hearing shall be held within
27 seventy-two hours of receipt of the notice, unless the person subject
28 to the order agrees to comply. If the person contests the order, no
29 invasive medical procedures shall be carried out prior to a hearing
30 being held pursuant to this subsection. If the person does not contest
31 the order within seventy-two hours of receiving it, and the person does
32 not comply with the order within the time period specified for
33 compliance with the order, the state or local public health officer may
34 request a warrant be issued by the superior court to insure appearance
35 at the hearing. The hearing shall be within seventy-two hours of the
36 expiration date of the time specified for compliance with the original
37 order. The burden of proof shall be on the public health officer to
38 show by clear and convincing evidence that the specified grounds exist
39 for the issuance of the order and for the need for compliance and that

1 the terms and conditions imposed therein are no more restrictive than
2 necessary to protect the public health. Upon conclusion of the
3 hearing, the court shall issue appropriate orders affirming, modifying,
4 or dismissing the order.

5 (b) If the superior court dismisses the order of the public health
6 officer, the fact that the order was issued shall be expunged from the
7 records of the department or local department of health.

8 (5) Any hearing conducted pursuant to this section shall be closed
9 and confidential unless a public hearing is requested by the person who
10 is the subject of the order, in which case the hearing will be
11 conducted in open court. Unless in open hearing, any transcripts or
12 records relating thereto shall also be confidential and may be sealed
13 by the order of the court.

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