
ENGROSSED SUBSTITUTE SENATE BILL 6285

State of Washington

54th Legislature

1996 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Zarelli, Roach, Schow, Long, McCaslin, Morton, Hochstatter, Swecker, Hargrove, Hale, Strannigan, Oke, Wood, Finkbeiner, Deccio, Johnson, A. Anderson, Cantu, Moyer and West)

Read first time 02/02/96.

1 AN ACT Relating to disclosure of offenders' HIV test results to
2 department of corrections and jail staff; amending RCW 70.24.015 and
3 70.24.105; and creating new sections.

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

5 **Sec. 1.** RCW 70.24.015 and 1988 c 206 s 901 are each amended to
6 read as follows:

7 The legislature declares that sexually transmitted diseases
8 constitute a serious and sometimes fatal threat to the public and
9 individual health and welfare of the people of the state. The
10 legislature finds that the incidence of sexually transmitted diseases
11 is rising at an alarming rate and that these diseases result in
12 significant social, health, and economic costs, including infant and
13 maternal mortality, temporary and lifelong disability, and premature
14 death. The legislature further finds that sexually transmitted
15 diseases, by their nature, involve sensitive issues of privacy, and it
16 is the intent of the legislature that all programs designed to deal
17 with these diseases afford patients privacy, confidentiality, and
18 dignity. The legislature also finds that medical knowledge and
19 information about sexually transmitted diseases are rapidly changing.

1 It is therefore the intent of the legislature to provide a program that
2 is sufficiently flexible to meet emerging needs, deals efficiently and
3 effectively with reducing the incidence of sexually transmitted
4 diseases, and provides patients with a secure knowledge that
5 information they provide will remain private and confidential. The
6 legislature further finds that department of corrections staff and jail
7 staff perform essential public functions that are vital to our
8 communities. The health and safety of these workers is often placed in
9 jeopardy while they perform the responsibilities of their jobs.
10 Therefore, the legislature intends that department of corrections staff
11 and jail staff who, in the course of their regularly assigned job
12 responsibilities, may come within close physical proximity to offenders
13 and detained people be notified of the results of an HIV antibody test
14 when the test is mandated by law pursuant to this chapter. However,
15 the legislature recognizes that the mandatory disclosure of the HIV
16 status of individual offenders may cause some corrections and jail
17 staff to use more precautions with those offenders and detained people
18 they know to be HIV positive. The legislature also recognizes the risk
19 exists that some corrections and jail staff may correspondingly use
20 fewer precautions with those offenders and detained people they are not
21 informed are HIV positive. The legislature finds, however, that the
22 system of universal precautions required under federal and state law in
23 all settings where risk of occupational exposure to communicable
24 diseases exists remains the most effective way to reduce the risk of
25 communicable disease transmission. The legislature does not intend to
26 discourage the use of universal precautions but to provide supplemental
27 information for corrections and jail staff to utilize as part of their
28 universal precautions with all offenders and detained people.

29 NEW SECTION. Sec. 2. The legislature finds that, through the
30 efforts of health care professionals and corrections staff, offenders
31 in department of corrections facilities and people detained in local
32 jails are being encouraged to take responsibility for their health by
33 requesting voluntary and anonymous pretest counseling, HIV testing,
34 posttest counseling, and AIDS counseling. The legislature does not
35 intend, through this act, to mandate disclosure of the results of
36 voluntary and anonymous tests. The legislature intends to continue to
37 protect the confidential exchange of medical information related to

1 voluntary and anonymous pretest counseling, HIV testing, posttest
2 counseling, and AIDS counseling as provided by chapter 70.24 RCW.

3 **Sec. 3.** RCW 70.24.105 and 1994 c 72 s 1 are each amended to read
4 as follows:

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

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

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

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

27 (c) The state public health officer, a local public health officer,
28 or the centers for disease control of the United States public health
29 service in accordance with reporting requirements for a diagnosed case
30 of a sexually transmitted disease;

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

37 (e) Any state or local public health officer conducting an
38 investigation pursuant to RCW 70.24.024, provided that such record was

1 obtained by means of court ordered HIV testing pursuant to RCW
2 70.24.340 or 70.24.024;

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

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

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

31 (i) Claims management personnel employed by or associated with an
32 insurer, health care service contractor, health maintenance
33 organization, self-funded health plan, state-administered health care
34 claims payer, or any other payer of health care claims where such
35 disclosure is to be used solely for the prompt and accurate evaluation
36 and payment of medical or related claims. Information released under
37 this subsection shall be confidential and shall not be released or
38 available to persons who are not involved in handling or determining
39 medical claims payment; and

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

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

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

19 (a) The sexually transmitted disease status of a department of
20 corrections offender shall be made available by department of
21 corrections health care providers and local public health officers to
22 a department of corrections superintendent or administrator (~~as~~
23 ~~necessary~~). The information made available to superintendents and
24 administrators under this subsection (4)(a) shall be utilized by a
25 superintendent or administrator only for disease prevention or control
26 and for protection of the safety and security of the staff, offenders,
27 and the public. The information (~~may~~) shall also be submitted to
28 transporting officers and receiving facilities, including facilities
29 that are not under the department of (~~correction's~~) corrections'
30 jurisdiction.

31 (b) The sexually transmitted disease status of a person detained in
32 a jail shall be made available by the local public health officer to a
33 jail administrator (~~as necessary~~). The information made available to
34 administrators under this subsection (4)(b) shall be utilized only for
35 disease prevention or control and for protection of the safety and
36 security of the staff, offenders, detainees, and the public. The
37 information (~~may~~) shall also be submitted to transporting officers
38 and receiving facilities.

1 (c) Information regarding ~~((a department of corrections~~
2 ~~offender's))~~ the sexually transmitted disease status of an offender or
3 detained person is confidential ((and may be disclosed by a
4 correctional superintendent or administrator or local jail
5 administrator only as necessary for disease prevention or control and
6 for protection of the safety and security of the staff, offenders, and
7 the public)), except that any department of corrections staff or jail
8 staff who has requested a test of an offender or detained person, whose
9 bodily fluids he or she has been substantially exposed to, shall be
10 informed of the results if a test is conducted pursuant to RCW
11 70.24.360 or 70.24.370. In addition, information received by a
12 superintendent or administrator under (a) and (b) of this subsection as
13 a result of a mandatory test conducted pursuant to RCW 70.24.340,
14 70.24.360, or 70.24.370 shall be disclosed to all department of
15 corrections staff and jail staff who, in the course of their regularly
16 assigned job responsibilities, may come within close physical proximity
17 to the offender or detained person. Unauthorized disclosure of this
18 information to any person may result in disciplinary action, in
19 addition to the penalties prescribed in RCW 70.24.080 or any other
20 penalties as may be prescribed by law.

21 (d) The receipt by any individual of any information disclosed
22 pursuant to this subsection shall be utilized only for disease
23 prevention or control and for protection of the safety and security of
24 the staff, offenders, detainees, and the public. Use of this
25 information for any other purpose, including harassment or
26 discrimination, may result in disciplinary action, in addition to
27 the penalties prescribed in RCW 70.24.080 or any other penalties as may
28 be prescribed by law.

29 (5) Whenever disclosure is made pursuant to this section, except
30 for subsections (2)(a) and (6) of this section, it shall be accompanied
31 by a statement in writing which includes the following or substantially
32 similar language: "This information has been disclosed to you from
33 records whose confidentiality is protected by state law. State law
34 prohibits you from making any further disclosure of it without the
35 specific written consent of the person to whom it pertains, or as
36 otherwise permitted by state law. A general authorization for the
37 release of medical or other information is NOT sufficient for this
38 purpose." An oral disclosure shall be accompanied or followed by such
39 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 (7) Upon request of the victim, disclosure of test results under
8 this section to victims of sexual offenses under chapter 9A.44 RCW
9 shall be made if the result is negative or positive. The county
10 prosecuting attorney shall notify the victim of the right to such
11 disclosure. Such disclosure shall be accompanied by appropriate
12 counseling, including information regarding follow-up testing.

13 NEW SECTION. **Sec. 4.** The department of health and the department
14 of corrections shall each adopt rules to implement this act. The
15 department of health and the department of corrections shall also
16 report to the legislature by January 1, 1997, on the following: (1)
17 Changes made in rules, policies, and procedures to implement this act;
18 and (2) a summary of the number and circumstances of mandatory test
19 results that were disclosed to department of corrections staff and jail
20 staff pursuant to section 3 of this act.

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