

2 ESSB 5086 - H COMM AMD
3 By Committee on Health Care

4
5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 70.24.105 and 1989 c 123 s 1 are each amended to read
8 as follows:

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

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

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

25 (b) Any person who secures a specific release of test results or
26 information relating to HIV or confirmed diagnosis of or treatment for
27 any other sexually transmitted disease executed by the subject or the
28 subject's legal representative for health care decisions in accordance

1 with RCW 7.70.065, with the exception of such a representative of a
2 minor child over fourteen years of age and otherwise competent;

3 (c) The state public health officer, a local public health officer,
4 or the centers for disease control of the United States public health
5 service in accordance with reporting requirements for a diagnosed case
6 of a sexually transmitted disease;

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

13 (e) Any state or local public health officer conducting an
14 investigation pursuant to RCW 70.24.024, provided that such record was
15 obtained by means of court ordered HIV testing pursuant to RCW
16 70.24.340 or 70.24.024;

17 (f) A person allowed access to the record by a court order granted
18 after application showing good cause therefor. In assessing good
19 cause, the court shall weigh the public interest and the need for
20 disclosure against the injury to the patient, to the physician-patient
21 relationship, and to the treatment services. Upon the granting of the
22 order, the court, in determining the extent to which any disclosure of
23 all or any part of the record of any such test is necessary, shall
24 impose appropriate safeguards against unauthorized disclosure. An
25 order authorizing disclosure shall: (i) Limit disclosure to those
26 parts of the patient's record deemed essential to fulfill the objective
27 for which the order was granted; (ii) limit disclosure to those persons
28 whose need for information is the basis for the order; and (iii)
29 include any other appropriate measures to keep disclosure to a minimum
30 for the protection of the patient, the physician-patient relationship,

1 and the treatment services, including but not limited to the written
2 statement set forth in subsection (5) of this section;

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

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

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

24 (j) A department of social and health services worker, a child
25 placing agency worker, or a guardian ad litem who is responsible for
26 making or reviewing placement or case-planning decisions or
27 recommendations to the court regarding a child, who is less than
28 fourteen years of age, has a sexually transmitted disease, and is in
29 the custody of the department of social and health services or a
30 licensed child placing agency; this information may also be received by

1 a person responsible for providing residential care for such a child
2 when the department of social and health services or a licensed child
3 placing agency determines that it is necessary for the provision of
4 child care services;

5 (k) A person named as a victim of a charged criminal offense where
6 the prosecuting attorney has requested a test of the accused pursuant
7 to RCW 70.24.340(3); and

8 (l) A person named as a victim of a criminal offense where the
9 offender is tested for HIV under RCW 70.24.340(2).

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

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

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

25 (b) The sexually transmitted disease status of a person detained in
26 a jail shall be made available by the local public health officer to a
27 jail administrator as necessary for disease prevention or control and
28 for protection of the safety and security of the staff, offenders, and
29 the public. The information may be submitted to transporting officers
30 and receiving facilities.

1 (c) Information regarding a department of corrections offender's
2 sexually transmitted disease status is confidential and may be
3 disclosed by a correctional superintendent or administrator or local
4 jail administrator only as necessary for disease prevention or control
5 and for protection of the safety and security of the staff, offenders,
6 and the public. Unauthorized disclosure of this information to any
7 person may result in disciplinary action, in addition to any other
8 penalties as may be prescribed by law.

9 (5) Whenever disclosure is made pursuant to this section, except
10 for subsections (2)(a) and (6) of this section, it shall be accompanied
11 by a statement in writing which includes the following or substantially
12 similar language: "This information has been disclosed to you from
13 records whose confidentiality is protected by state law. State law
14 prohibits you from making any further disclosure of it without the
15 specific written consent of the person to whom it pertains, or as
16 otherwise permitted by state law. A general authorization for the
17 release of medical or other information is NOT sufficient for this
18 purpose." An oral disclosure shall be accompanied or followed by such
19 a notice within ten days.

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

26 (7) If the victim of a charged or convicted criminal offense is a
27 minor, the victim's parents or legal guardian shall have all of the
28 rights and remedies of a victim under this section."

1 **"Sec. 2.** RCW 70.24.320 and 1988 c 206 s 701 are each amended to
2 read as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Pretest counseling" means counseling aimed at helping the
6 individual understand ways to reduce the risk of HIV infection, the
7 nature and purpose of the tests, the significance of the results, and
8 the potential dangers of the disease, and to assess the individual's
9 ability to cope with the results.

10 (2) "Posttest counseling" means further counseling following
11 testing usually directed toward increasing the individual's
12 understanding of the human immunodeficiency virus infection, changing
13 the individual's behavior, and, if necessary, encouraging the
14 individual to notify persons with whom there has been contact capable
15 of spreading HIV.

16 (3) "AIDS counseling" means counseling directed toward increasing
17 the individual's understanding of acquired immunodeficiency syndrome
18 and changing the individual's behavior.

19 (4) "HIV testing" means a test indicative of infection with the
20 human immunodeficiency virus ~~((as specified by the board of health~~
21 ~~by)), and subsequent tests at such intervals sufficient to detect HIV~~
22 infection, as determined by the board in rule."

23 **"Sec. 3.** RCW 70.24.340 and 1988 c 206 s 703 are each amended to
24 read as follows:

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

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

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

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

6 ~~(2) Such testing))~~ The purposes of the testing and disclosure
7 provided in this section are: (a) To benefit the victim of a crime or
8 assault which involved the substantial exposure to another's bodily
9 fluids, creating a risk of transmission of HIV, by informing the victim
10 whether the defendant or assailant is infected with the AIDS virus; (b)
11 to protect the health of both victims of crime and assault and of those
12 accused or convicted of committing a crime, or assailants; and (c) to
13 protect the health of the public.

14 The legislature respects the need for confidentiality; requirements
15 of confidentiality must be maintained as prescribed in RCW 70.24.105.

16 (2)(a) All persons who are convicted of the following offenses or
17 equivalent juvenile offenses where the offense involved substantial
18 exposure of bodily fluids presenting a possible risk of HIV infection,
19 shall submit to pretest counseling, HIV testing, and posttest
20 counseling to be performed by a local public health officer.

21 (i) Sexual offenses under chapter 9A.44 RCW or under local
22 ordinance;

23 (ii) Prostitution or offenses relating to prostitution under
24 chapter 9A.88 RCW or under local ordinance;

25 (iii) Drug offenses under chapter 69.50 RCW or under local
26 ordinance, if a court determines at the time of conviction that the
27 related drug offense is one associated with the use of hypodermic
28 needles.

1 (b) Pretest counseling, HIV testing, and posttest counseling shall
2 be conducted as soon as possible after sentencing and shall be so
3 ordered by the sentencing judge.

4 ~~((3))~~ (c) This section applies only to offenses committed after
5 March 23, 1988.

6 (3)(a) The prosecuting attorney may request, at any time, that the
7 defendant submit to pretest counseling, HIV testing, and posttest
8 counseling.

9 (b) The prosecuting attorney in the jurisdiction where the criminal
10 charge was filed shall advise the victim, in writing, of the right to
11 receive counseling and testing. The prosecutor shall refer the victim
12 to the local health officer, who shall make available counseling to
13 help that person understand the extent to which the particular
14 circumstances of the crime may or may not have put the victim at the
15 risk of transmission of HIV, to ensure that the victim understands both
16 the benefits and limitations of the current tests, and to help the
17 victim decide whether he or she wants to be tested.

18 (c) Upon request of the victim, the public health officer shall
19 perform counseling and testing for the victim.

20 (d) Upon the request of the victim, the prosecuting attorney shall
21 petition the court, as soon as possible after charging, for an order
22 mandating that the defendant submit to counseling and testing, unless
23 the defendant consents to such counseling and testing.

24 (e) The court in which the criminal charge is filed shall order the
25 defendant to submit to tests to be performed by the local public health
26 officer if the court finds, by a preponderance of the evidence, that
27 during the course of the alleged criminal offense, the victim was
28 substantially exposed to the defendant's bodily fluids, presenting a
29 possible risk of HIV infection. The board in rule shall define
30 "substantial exposure" and "exposure presenting possible risk."

1 (f) The court shall base its finding upon affidavits submitted by
2 the victim, the defendant, the public health officer, or the
3 prosecuting attorney. Any affidavit of the public health officer
4 should set forth the circumstances under which a victim may be
5 substantially exposed to the bodily fluids of another, presenting a
6 possible risk of transmission. The prosecuting attorney may present
7 the request for an order and supporting affidavits to the court and
8 obtain the order without the presence of the victim or the public
9 health officer.

10 (g) Once the order is granted, the prosecuting attorney shall
11 notify the public health officer of the order and of the location of
12 the defendant. The order shall require the accused to report to the
13 local public health department for testing if the person is not in
14 custody or if the accused is released from custody prior to testing.
15 The public health officer shall complete the counseling and testing
16 process as soon as possible, and at such subsequent intervals as are
17 sufficient to detect infection, as determined by the board in rule
18 under section 4 of this act. The public health officer shall notify
19 the prosecuting attorney of the fact that the initial testing process
20 has been completed. Subsequent testing shall not be performed if the
21 defendant is acquitted or charges are dismissed.

22 (h) The public health officer shall have the responsibility for
23 disclosing test results to, and counseling, the victim who requested
24 the test and to the accused who was tested, as soon as possible after
25 the results become available.

26 (i) The results of any blood tested pursuant to (e) of this
27 subsection shall not be used in any criminal proceeding as evidence of
28 either guilt or innocence.

29 (4) A law enforcement officer, fire fighter, health care provider,
30 health care facility staff person, or other categories of employment

1 determined by the board in rule to be at risk of substantial exposure
2 to HIV, who has experienced a substantial exposure to another person's
3 bodily fluids in the course of his or her employment, or a good
4 samaritan who is immune from liability under RCW 4.24.300 who has
5 experienced a substantial exposure to another person's bodily fluids,
6 may request a state or local public health officer to order pretest
7 counseling, HIV testing, and posttest counseling for the person whose
8 bodily fluids he or she has been exposed to. The person who is subject
9 to the order shall be given written notice of the order promptly,
10 personally, and confidentially, stating the grounds and provisions of
11 the order, including the factual basis therefor. If the person who is
12 subject to the order refuses to comply, the state or local public
13 health officer may petition the superior court for a hearing. The
14 standard of review for the order is whether substantial exposure
15 occurred and whether that exposure presents a possible risk of
16 transmission of the HIV virus as defined by the board by rule. Upon
17 conclusion of the hearing, the court shall issue the appropriate order.
18 The state or local public health officer shall perform counseling and
19 testing under this subsection if he or she (~~finds that the exposure~~
20 ~~was substantial and presents a possible risk as defined by the board of~~
21 ~~health by rule~~) receives the consent of the person to be tested, or if
22 ordered by the court to do so.

23 (5) If the victim of a charged criminal offense is a minor, the
24 victim's parent or legal guardian shall have all of the rights and
25 remedies of a victim under this section."

26 "NEW SECTION. Sec. 4. A new section is added to chapter 70.24 RCW
27 to read as follows:

28 The department shall, on a biennial basis, report to the
29 appropriate committees of the legislature information related to the

1 implementation of chapter ..., Laws of 1991 (this act), including: (1)
2 Number of times testing and counseling is requested; (2) number of
3 times testing and counseling is ordered; (3) age, sex, race, dates of
4 tests and counseling, results of testings; date of charge; and date of
5 conviction, if applicable; and evaluative information deemed
6 appropriate by the department."

7 "NEW SECTION. Sec. 5. A new section is added to chapter 70.24 RCW
8 to read as follows:

9 The board shall by October 1, 1991, adopt rules that specify a
10 schedule for testing at sufficient intervals to detect HIV infection
11 under RCW 70.24.320(4)."

12 "NEW SECTION. Sec. 6. If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected."

16 "NEW SECTION. Sec. 7. This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and shall take
19 effect immediately."

20 **ESSB 5086** - H COMM AMD
21 By Committee on Health Care

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23 On page 1, line 2 of the title, after "offenses;" strike the
24 remainder of the title and insert "amending RCW 70.24.105, 70.24.320,
25 and 70.24.340; adding new sections to chapter 70.24 RCW; and declaring
26 an emergency."