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ENGROSSED SUBSTITUTE SENATE BILL 5086

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State of Washington

52nd Legislature

1991 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Amondson, Snyder, Bailey, Wojahn, Hayner, McMullen, Anderson, L. Kreidler, McDonald, Vognild, Newhouse, Craswell, Johnson, Owen, L. Smith, Oke, Conner, Rasmussen, Bauer, Moore, Stratton, McCaslin, Barr, Matson, Roach, Thorsness, Metcalf, Sellar, Nelson, Sutherland and West).

Read first time February 25, 1991.

1 AN ACT Relating to counseling and testing for HIV diseases of  
2 persons charged with criminal offenses; amending RCW 70.24.105,  
3 70.24.320, and 70.24.340; adding a new section to chapter 70.24 RCW;  
4 and declaring an emergency.

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

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

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

12 (2) No person may disclose or be compelled to disclose the identity  
13 of any person upon whom an HIV antibody test is performed, or the  
14 results of such a test, nor may the result of a test for any other  
15 sexually transmitted disease when it is positive be disclosed. This

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

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

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

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

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

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

29 (f) A person allowed access to the record by a court order granted  
30 after application showing good cause therefor. In assessing good

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

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

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

27 (i) Claims management personnel employed by or associated with an  
28 insurer, health care service contractor, health maintenance  
29 organization, self-funded health plan, state-administered health care  
30 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 (k) A person named as a victim of a charged criminal offense where  
18 he or she has requested a test of the accused pursuant to RCW  
19 70.24.340(3); and

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

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

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

29 (a) The sexually transmitted disease status of a department of  
30 corrections offender shall be made available by department of

1 corrections health care providers to a department of corrections  
2 superintendent or administrator as necessary for disease prevention or  
3 control and for protection of the safety and security of the staff,  
4 offenders, and the public. The information may be submitted to  
5 transporting officers and receiving facilities, including facilities  
6 that are not under the department of correction's jurisdiction.

7 (b) The sexually transmitted disease status of a person detained in  
8 a jail shall be made available by the local public health officer to a  
9 jail administrator as necessary for disease prevention or control and  
10 for protection of the safety and security of the staff, offenders, and  
11 the public. The information may be submitted to transporting officers  
12 and receiving facilities.

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

21 (5) Whenever disclosure is made pursuant to this section, except  
22 for subsections (2)(a) and (6) of this section, it shall be accompanied  
23 by a statement in writing which includes the following or substantially  
24 similar language: "This information has been disclosed to you from  
25 records whose confidentiality is protected by state law. State law  
26 prohibits you from making any further disclosure of it without the  
27 specific written consent of the person to whom it pertains, or as  
28 otherwise permitted by state law. A general authorization for the  
29 release of medical or other information is NOT sufficient for this

1 purpose." An oral disclosure shall be accompanied or followed by such  
2 a notice within ten days.

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

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

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

14 Unless the context clearly requires otherwise, the definitions in  
15 this section apply throughout this chapter.

16 (1) "Pretest counseling" means counseling aimed at helping the  
17 individual understand ways to reduce the risk of HIV infection, the  
18 nature and purpose of the tests, the significance of the results, and  
19 the potential dangers of the disease, and to assess the individual's  
20 ability to cope with the results.

21 (2) "Posttest counseling" means further counseling following  
22 testing usually directed toward increasing the individual's  
23 understanding of the human immunodeficiency virus infection, changing  
24 the individual's behavior, and, if necessary, encouraging the  
25 individual to notify persons with whom there has been contact capable  
26 of spreading HIV.

27 (3) "AIDS counseling" means counseling directed toward increasing  
28 the individual's understanding of acquired immunodeficiency syndrome  
29 and changing the individual's behavior.

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

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

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

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

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

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

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

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

26 (2)(a) All persons who are convicted of the following offenses or  
27 equivalent juvenile offenses where the offense involved substantial  
28 exposure of bodily fluids presenting a possible risk of HIV infection,

1 shall submit to pretest counseling, HIV testing, and posttest  
2 counseling to be performed by a local public health officer.

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

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

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

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

14 ((+3+)) (c) This section applies only to offenses committed after  
15 March 23, 1988.

16 (3)(a) The victim of a charged criminal offense may request, at any  
17 time, that the defendant submit to pretest counseling, HIV testing, and  
18 posttest counseling.

19 (b) The prosecuting attorney in the jurisdiction where the criminal  
20 charge was filed shall advise the victim, in writing, of the right to  
21 request counseling and testing. To assist the victim of the crime to  
22 determine whether he or she should make this request, the prosecutor  
23 shall refer the victim to the local health officer, who shall make  
24 available counseling to help that person understand the extent to which  
25 the particular circumstances of the crime may or may not have put the  
26 victim at the risk of transmission of HIV, to ensure that the victim  
27 understands both the benefits and limitations of the current tests, to  
28 help the victim decide whether he or she wants to request that the  
29 accused be tested, and to help the victim decide whether he or she  
30 wants to be tested.



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

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

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

14       (f) The court shall base its finding upon affidavits submitted by  
15 the victim, the defendant, the public health officer, or the  
16 prosecuting attorney. Any affidavit of the public health officer  
17 should set forth the circumstances under which a victim may be  
18 substantially exposed to the bodily fluids of another, presenting a  
19 possible risk of transmission. The prosecuting attorney may present  
20 the request for an order and supporting affidavits to the court and  
21 obtain the order without the presence of the victim or the public  
22 health officer.

23       (g) Once the order is granted, the prosecuting attorney shall  
24 notify the public health officer of the order and of the location of  
25 the defendant. The public health officer shall complete the counseling  
26 and testing process as soon as possible, and at such subsequent  
27 intervals as are sufficient to detect infection, as determined by the  
28 board in rule under section 4 of this act. The public health officer  
29 shall notify the prosecuting attorney of the fact that the initial

1 testing process has been completed. Testing shall not be performed if  
2 the defendant is acquitted or charges are dismissed.

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

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

10 (4) A law enforcement officer, fire fighter, health care provider,  
11 health care facility staff person, or other categories of employment  
12 determined by the board in rule to be at risk of substantial exposure  
13 to HIV, who has experienced a substantial exposure to another person's  
14 bodily fluids in the course of his or her employment, or a good  
15 samaritan who is immune from liability under RCW 4.24.300 who has  
16 experienced a substantial exposure to another person's bodily fluids,  
17 may request a state or local public health officer to order pretest  
18 counseling, HIV testing, and posttest counseling for the person whose  
19 bodily fluids he or she has been exposed to. The person who is subject  
20 to the order shall be given written notice of the order promptly,  
21 personally, and confidentially, stating the grounds and provisions of  
22 the order, including the factual basis therefor. If the person who is  
23 subject to the order refuses to comply, the state or local public  
24 health officer may petition the superior court for a hearing. The  
25 standard of review for the order is whether substantial exposure  
26 occurred and whether that exposure presents a possible risk of  
27 transmission of the HIV virus as defined by the board by rule. Upon  
28 conclusion of the hearing, the court shall issue the appropriate order.  
29 The state or local public health officer shall perform counseling and  
30 testing under this subsection if he or she ~~((finds that the exposure~~

1 ~~was substantial and presents a possible risk as defined by the board of~~  
2 ~~health by rule)) receives the consent of the person to be tested, or if~~  
3 ~~ordered by the court to do so.~~

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

7 NEW SECTION. Sec. 4. 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. 5. 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. 6. 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.