

SENATE BILL 5236

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By Senators Bailey, Amondson, Metcalf, Nelson, Craswell, Anderson, Patterson, Rasmussen, McCaslin, Barr, Moore, Vognild, Cantu, Stratton, Oke and McDonald.

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1 AN ACT Relating to HIV testing of alleged sex offenders; and
2 amending RCW 70.24.105 and 70.24.340.

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

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

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

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

1 for HIV infection and for any other confirmed sexually transmitted
2 disease. The following persons, however, may receive such information:

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

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

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

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

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

27 (f) A person allowed access to the record by a court order granted
28 after application showing good cause therefor. In assessing good
29 cause, the court shall weigh the public interest and the need for
30 disclosure against the injury to the patient, to the physician-patient

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

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

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

25 (i) Claims management personnel employed by or associated with an
26 insurer, health care service contractor, health maintenance
27 organization, self-funded health plan, state-administered health care
28 claims payer, or any other payer of health care claims where such
29 disclosure is to be used solely for the prompt and accurate evaluation
30 and payment of medical or related claims. Information released under

1 this subsection shall be confidential and shall not be released or
2 available to persons who are not involved in handling or determining
3 medical claims payment; (~~and~~)

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

15 (k) A person named as a victim of charged sexual offenses under
16 chapter 9A.44 RCW, or that person's legal representative for health
17 care decisions in accordance with RCW 7.70.065, where the alleged
18 offender was subjected to mandatory testing pursuant to RCW 70.24.340.

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

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

26 (a) The sexually transmitted disease status of a department of
27 corrections offender shall be made available by department of
28 corrections health care providers to a department of corrections
29 superintendent or administrator as necessary for disease prevention or
30 control and for protection of the safety and security of the staff,

1 offenders, and the public. The information may be submitted to
2 transporting officers and receiving facilities, including facilities
3 that are not under the department of correction's jurisdiction.

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

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

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

29 (6) The requirements of this section shall not apply to the
30 customary methods utilized for the exchange of medical information

1 among health care providers in order to provide health care services to
2 the patient, nor shall they apply within health care facilities where
3 there is a need for access to confidential medical information to
4 fulfill professional duties.

5 **Sec. 2.** 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~~) Charged by information, indictment, or complaint,
11 based upon probable cause, with the commission of a sexual offense
12 under chapter 9A.44 RCW;

13 (b) Convicted of prostitution or offenses relating to prostitution
14 under chapter 9A.88 RCW; or

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

18 (2) (~~Such~~) (a) Testing required by subsection (1)(a) of this
19 section shall be conducted as soon as possible after the accused's
20 first court appearance following the filing of charges. The judge
21 shall order such testing at that first court appearance.

22 (b) Testing required by subsection (1) (b) and (c) of this section
23 shall be conducted as soon as possible after sentencing and shall be so
24 ordered by the sentencing judge.

25 (3) This section applies only to offenses committed after March 23,
26 1988.

27 (4) A law enforcement officer, fire fighter, health care provider,
28 health care facility staff person, or other categories of employment
29 determined by the board in rule to be at risk of substantial exposure

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