
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5278

State of Washington

52nd Legislature

1991 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Nelson, Rasmussen, Madsen, A. Smith, Erwin, Hayner, Thorsness, Hansen and Craswell).

Read first time March 11, 1991.

1 AN ACT Relating to sexually transmitted disease; amending RCW
2 9A.36.011, 9A.36.031, 9A.36.041, 9.94A.310, 70.24.105, and 70.24.340;
3 reenacting and amending RCW 9A.36.021; adding new sections to chapter
4 70.24 RCW; creating a new section; repealing RCW 70.24.140; and
5 prescribing penalties.

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

7 **Sec. 1.** RCW 9A.36.011 and 1986 c 257 s 4 are each amended to read
8 as follows:

9 (1) A person is guilty of assault in the first degree if he or she,
10 with intent to inflict great bodily harm:

11 (a) Assaults another with a firearm or any deadly weapon or by any
12 force or means likely to produce great bodily harm or death; or

13 (b) Administers to or causes to be taken by another, poison or any
14 other destructive or noxious substance; or

15 (c) Assaults another and inflicts great bodily harm.

1 (2) A person is guilty of assault in the first degree if he or she,
2 with intent to inflict bodily harm to another, exposes, transmits,
3 administers, or causes to be taken, the human immunodeficiency virus as
4 defined in chapter 70.24 RCW.

5 (3) Assault in the first degree is a class A felony.

6 **Sec. 2.** RCW 9A.36.021 and 1988 c 266 s 2, 1988 c 206 s 916, and
7 1988 c 158 s 2 are each reenacted and amended to read as follows:

8 (1) A person is guilty of assault in the second degree if he or
9 she, under circumstances not amounting to assault in the first degree:

10 (a) Intentionally assaults another and thereby recklessly inflicts
11 substantial bodily harm; or

12 (b) Intentionally and unlawfully causes substantial bodily harm to
13 an unborn quick child by intentionally and unlawfully inflicting any
14 injury upon the mother of such child; or

15 (c) Assaults another with a deadly weapon; or

16 (d) With intent to inflict bodily harm, administers to or causes to
17 be taken by another, ~~poison((, the human immunodeficiency virus as~~
18 ~~defined in chapter 70.24 RCW,))~~ or any other destructive or noxious
19 substance; or

20 (e) ~~((With intent to inflict bodily harm,))~~ Knowingly exposes or
21 transmits the human immunodeficiency virus as defined in chapter 70.24
22 RCW, to another without previously informing him or her of the presence
23 of the virus; or

24 (f) With intent to commit a felony, assaults another; or

25 (g) Knowingly inflicts bodily harm which by design causes such pain
26 or agony as to be the equivalent of that produced by torture.

27 (2) Assault in the second degree is a class B felony.

1 **Sec. 3.** RCW 9A.36.031 and 1990 c 236 s 1 are each amended to read
2 as follows:

3 (1) A person is guilty of assault in the third degree if he or she,
4 under circumstances not amounting to assault in the first or second
5 degree:

6 (a) With intent to prevent or resist the execution of any lawful
7 process or mandate of any court officer or the lawful apprehension or
8 detention of himself or another person, assaults another; or

9 (b) Assaults a person employed as a transit operator or driver by
10 a public or private transit company while that person is operating or
11 is in control of a vehicle that is owned or operated by the transit
12 company and that is occupied by one or more passengers; or

13 (c) Assaults a school bus driver employed by a school district or
14 a private company under contract for transportation services with a
15 school district while the driver is operating or is in control of a
16 school bus that is occupied by one or more passengers; or

17 (d) With criminal negligence, causes bodily harm to another person
18 by means of a weapon or other instrument or thing likely to produce
19 bodily harm; or

20 (e) Assaults a fire fighter or other employee of a fire department
21 or fire protection district who was performing his or her official
22 duties at the time of the assault; or

23 (f) With criminal negligence, causes bodily harm accompanied by
24 substantial pain that extends for a period sufficient to cause
25 considerable suffering; or

26 (g) Assaults a law enforcement officer or other employee of a law
27 enforcement agency who was performing his or her official duties at the
28 time of the assault; or

29 (h) Knows that he or she has a sexually transmitted disease, as
30 defined in chapter 70.24 RCW, except the human immunodeficiency virus,

1 and transmits the disease to another without informing him or her of
2 the presence of the disease.

3 (2) Assault in the third degree is a class C felony.

4 **Sec. 4.** RCW 9A.36.041 and 1987 c 188 s 2 are each amended to read
5 as follows:

6 (1) A person is guilty of assault in the fourth degree if he or
7 she, under circumstances not amounting to assault in the first, second,
8 or third degree, or custodial assault(~~(, he or she)~~): (a) Assaults
9 another; or

10 (b) Knows that he or she has a sexually transmitted disease, as
11 defined in chapter 70.24 RCW, except the human immunodeficiency virus,
12 and exposes another person to the disease without informing him or her
13 of the presence of the disease.

14 (2) Assault in the fourth degree is a gross misdemeanor.

15 **Sec. 5.** RCW 9.94A.310 and 1990 c 3 s 701 are each amended to read
16 as follows:

17 (1) TABLE 1

18

19 Sentencing Grid

20 SERIOUSNESS

21 SCORE OFFENDER SCORE

22 9 or

23 0 1 2 3 4 5 6 7 8 more

24

25 XV Life Sentence without Parole/Death Penalty

| | | | | | | | | | | | |
|----|-------|-------|-------|-------|-------|-------|-------|-------|--------|--------|-------|
| 1 | ..... |  |  |  |  |  |  |  |  |  |  |
| 2 | XIV | 23y4m | 24y4m | 25y4m | 26y4m | 27y4m | 28y4m | 30y4m | 32y10m | 36y | 40y |
| 3 | | 240- | 250- | 261- | 271- | 281- | 291- | 312- | 338- | 370- | 411- |
| 4 | | 320 | 333 | 347 | 361 | 374 | 388 | 416 | 450 | 493 | 548 |
| 5 | ..... |  |  |  |  |  |  |  |  |  |  |
| 6 | XIII | 12y | 13y | 14y | 15y | 16y | 17y | 19y | 21y | 25y | 29y |
| 7 | | 123- | 134- | 144- | 154- | 165- | 175- | 195- | 216- | 257- | 298- |
| 8 | | 164 | 178 | 192 | 205 | 219 | 233 | 260 | 288 | 342 | 397 |
| 9 | ..... |  |  |  |  |  |  |  |  |  |  |
| 10 | XII | 9y | 9y11m | 10y9m | 11y8m | 12y6m | 13y5m | 15y9m | 17y3m | 20y3m | 23y3m |
| 11 | | 93- | 102- | 111- | 120- | 129- | 138- | 162- | 178- | 209- | 240- |
| 12 | | 123 | 136 | 147 | 160 | 171 | 184 | 216 | 236 | 277 | 318 |
| 13 | ..... |  |  |  |  |  |  |  |  |  |  |
| 14 | XI | 7y6m | 8y4m | 9y2m | 9y11m | 10y9m | 11y7m | 14y2m | 15y5m | 17y11m | 20y5m |
| 15 | | 78- | 86- | 95- | 102- | 111- | 120- | 146- | 159- | 185- | 210- |
| 16 | | 102 | 114 | 125 | 136 | 147 | 158 | 194 | 211 | 245 | 280 |
| 17 | ..... |  |  |  |  |  |  |  |  |  |  |
| 18 | X | 5y | 5y6m | 6y | 6y6m | 7y | 7y6m | 9y6m | 10y6m | 12y6m | 14y6m |
| 19 | | 51- | 57- | 62- | 67- | 72- | 77- | 98- | 108- | 129- | 149- |
| 20 | | 68 | 75 | 82 | 89 | 96 | 102 | 130 | 144 | 171 | 198 |
| 21 | ..... |  |  |  |  |  |  |  |  |  |  |
| 22 | IX | 3y | 3y6m | 4y | 4y6m | 5y | 5y6m | 7y6m | 8y6m | 10y6m | 12y6m |
| 23 | | 31- | 36- | 41- | 46- | 51- | 57- | 77- | 87- | 108- | 129- |
| 24 | | 41 | 48 | 54 | 61 | 68 | 75 | 102 | 116 | 144 | 171 |
| 25 | ..... |  |  |  |  |  |  |  |  |  |  |
| 26 | VIII | 2y | 2y6m | 3y | 3y6m | 4y | 4y6m | 6y6m | 7y6m | 8y6m | 10y6m |
| 27 | | 21- | 26- | 31- | 36- | 41- | 46- | 67- | 77- | 87- | 108- |
| 28 | | 27 | 34 | 41 | 48 | 54 | 61 | 89 | 102 | 116 | 144 |
| 29 | ..... |  |  |  |  |  |  |  |  |  |  |

| | | | | | | | | | | | |
|----|-------|------|------|------|------|------|------|------|------|------|------|
| 1 | VII | 18m | 2y | 2y6m | 3y | 3y6m | 4y | 5y6m | 6y6m | 7y6m | 8y6m |
| 2 | | 15- | 21- | 26- | 31- | 36- | 41- | 57- | 67- | 77- | 87- |
| 3 | | 20 | 27 | 34 | 41 | 48 | 54 | 75 | 89 | 102 | 116 |
| 4 | ..... |  |  |  |  |  |  |  |  |  |  |
| 5 | VI | 13m | 18m | 2y | 2y6m | 3y | 3y6m | 4y6m | 5y6m | 6y6m | 7y6m |
| 6 | | 12+- | 15- | 21- | 26- | 31- | 36- | 46- | 57- | 67- | 77- |
| 7 | | 14 | 20 | 27 | 34 | 41 | 48 | 61 | 75 | 89 | 102 |
| 8 | ..... |  |  |  |  |  |  |  |  |  |  |
| 9 | V | 9m | 13m | 15m | 18m | 2y2m | 3y2m | 4y | 5y | 6y | 7y |
| 10 | | 6- | 12+- | 13- | 15- | 22- | 33- | 41- | 51- | 62- | 72- |
| 11 | | 12 | 14 | 17 | 20 | 29 | 43 | 54 | 68 | 82 | 96 |
| 12 | ..... |  |  |  |  |  |  |  |  |  |  |
| 13 | IV | 6m | 9m | 13m | 15m | 18m | 2y2m | 3y2m | 4y2m | 5y2m | 6y2m |
| 14 | | 3- | 6- | 12+- | 13- | 15- | 22- | 33- | 43- | 53- | 63- |
| 15 | | 9 | 12 | 14 | 17 | 20 | 29 | 43 | 57 | 70 | 84 |
| 16 | ..... |  |  |  |  |  |  |  |  |  |  |
| 17 | III | 2m | 5m | 8m | 11m | 14m | 20m | 2y2m | 3y2m | 4y2m | 5y |
| 18 | | 1- | 3- | 4- | 9- | 12+- | 17- | 22- | 33- | 43- | 51- |
| 19 | | 3 | 8 | 12 | 12 | 16 | 22 | 29 | 43 | 57 | 68 |
| 20 | ..... |  |  |  |  |  |  |  |  |  |  |
| 21 | II | | 4m | 6m | 8m | 13m | 16m | 20m | 2y2m | 3y2m | 4y2m |
| 22 | | 0-90 | 2- | 3- | 4- | 12+- | 14- | 17- | 22- | 33- | 43- |
| 23 | | Days | 6 | 9 | 12 | 14 | 18 | 22 | 29 | 43 | 57 |
| 24 | ..... |  |  |  |  |  |  |  |  |  |  |
| 25 | I | | | 3m | 4m | 5m | 8m | 13m | 16m | 20m | 2y2m |
| 26 | | 0-60 | 0-90 | 2- | 2- | 3- | 4- | 12+- | 14- | 17- | 22- |
| 27 | | Days | Days | 5 | 6 | 8 | 12 | 14 | 18 | 22 | 29 |
| 28 | ..... |  |  |  |  |  |  |  |  |  |  |

1 NOTE: Numbers in the first horizontal row of each seriousness category
2 represent sentencing midpoints in years(y) and months(m). Numbers in
3 the second and third rows represent presumptive sentencing ranges in
4 months, or in days if so designated. 12+ equals one year and one day.

5 (2) For persons convicted of the anticipatory offenses of criminal
6 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
7 presumptive sentence is determined by locating the sentencing grid
8 sentence range defined by the appropriate offender score and the
9 seriousness level of the completed crime, and multiplying the range by
10 75 percent.

11 (3) The following additional times shall be added to the
12 presumptive sentence if the offender or an accomplice was armed with a
13 deadly weapon as defined in this chapter and the offender is being
14 sentenced for one of the crimes listed in this subsection. If the
15 offender or an accomplice was armed with a deadly weapon and the
16 offender is being sentenced for an anticipatory offense under chapter
17 9A.28 RCW to commit one of the crimes listed in this subsection, the
18 following times shall be added to the presumptive range determined
19 under subsection (2) of this section:

20 (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW
21 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)

22 (b) 18 months for Burglary 1 (RCW 9A.52.020)

23 (c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Escape 1
24 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building
25 other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or 2 (RCW
26 9A.56.080), or any drug offense.

27 (4) The following additional times shall be added to the
28 presumptive sentence if the offender or an accomplice committed the
29 offense while in a county jail or state correctional facility as that
30 term is defined in this chapter and the offender is being sentenced for

1 one of the crimes listed in this subsection. If the offender or an
2 accomplice committed one of the crimes listed in this subsection while
3 in a county jail or state correctional facility as that term is defined
4 in this chapter, and the offender is being sentenced for an
5 anticipatory offense under chapter 9A.28 RCW to commit one of the
6 crimes listed in this subsection, the following times shall be added to
7 the presumptive sentence range determined under subsection (2) of this
8 section:

9 (a) Eighteen months for offenses committed under RCW
10 69.50.401(a)(1)(i);

11 (b) Fifteen months for offenses committed under RCW
12 69.50.401(a)(1)(ii), (iii), and (iv);

13 (c) Twelve months for offenses committed under RCW 69.50.401(d).

14 For the purposes of this subsection, all of the real property of a
15 state correctional facility or county jail shall be deemed to be part
16 of that facility or county jail.

17 (5) An additional twenty-four months shall be added to the
18 presumptive sentence for any ranked offense involving a violation of
19 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

20 (6) An additional forty-eight months shall be added to the
21 presumptive sentence for any criminal offense where the victim was
22 substantially exposed to the bodily fluids of the offender, the
23 exposure presents a possible risk of infection, and the offender has,
24 prior to the offense, tested positive for the human immunodeficiency
25 virus as defined in chapter 70.24 RCW. The court shall use the board
26 of health's definitions of "substantial exposure" and "exposure
27 presenting possible risk," as adopted by rule.

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

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

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

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

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

23 (c) The state public health officer, a local public health officer,
24 or the centers for disease control of the United States public health
25 service in accordance with reporting requirements for a diagnosed case
26 of a sexually transmitted disease;

27 (d) A health facility or health care provider that procures,
28 processes, distributes, or uses: (i) A human body part, tissue, or
29 blood from a deceased person with respect to medical information
30 regarding that person; (ii) semen, including that provided prior to

1 March 23, 1988, for the purpose of artificial insemination; or (iii)
2 blood specimens;

3 (e) Any state or local public health officer conducting an
4 investigation pursuant to RCW 70.24.024, provided that such record was
5 obtained by means of court ordered HIV testing pursuant to RCW
6 70.24.340 or 70.24.024;

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

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

29 (h) A law enforcement officer, fire fighter, health care provider,
30 health care facility staff person, or other persons as defined by the

1 board in rule pursuant to RCW 70.24.340(4), who has requested a test of
2 a person whose bodily fluids he or she has been substantially exposed
3 to, pursuant to RCW 70.24.340(4), if a state or local public health
4 officer performs the test;

5 (i) Claims management personnel employed by or associated with an
6 insurer, health care service contractor, health maintenance
7 organization, self-funded health plan, state-administered health care
8 claims payer, or any other payer of health care claims where such
9 disclosure is to be used solely for the prompt and accurate evaluation
10 and payment of medical or related claims. Information released under
11 this subsection shall be confidential and shall not be released or
12 available to persons who are not involved in handling or determining
13 medical claims payment; ~~((and))~~

14 (j) A department of social and health services worker, a child
15 placing agency worker, or a guardian ad litem who is responsible for
16 making or reviewing placement or case-planning decisions or
17 recommendations to the court regarding a child, who is less than
18 fourteen years of age, has a sexually transmitted disease, and is in
19 the custody of the department of social and health services or a
20 licensed child placing agency; this information may also be received by
21 a person responsible for providing residential care for such a child
22 when the department of social and health services or a licensed child
23 placing agency determines that it is necessary for the provision of
24 child care services; and

25 (k) A person named as a victim of any criminal offense, or that
26 person's legal representative for health care decisions in accordance
27 with RCW 7.70.065, where the victim was substantially exposed to the
28 bodily fluids of the accused, as defined by the board by rule, and
29 testing was conducted pursuant to RCW 70.24.340 or section 9 of this
30 act.

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

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

8 (a) The sexually transmitted disease status of a department of
9 corrections offender shall be made available by department of
10 corrections health care providers to a department of corrections
11 superintendent or administrator as necessary for disease prevention or
12 control and for protection of the safety and security of the staff,
13 offenders, and the public. The information may be submitted to
14 transporting officers and receiving facilities, including facilities
15 that are not under the department of correction's jurisdiction.

16 (b) The sexually transmitted disease status of a person detained in
17 a jail shall be made available by the local public health officer to a
18 jail administrator as necessary for disease prevention or control and
19 for protection of the safety and security of the staff, offenders, and
20 the public. The information may be submitted to transporting officers
21 and receiving facilities.

22 (c) Information regarding a department of corrections offender's
23 sexually transmitted disease status is confidential and may be
24 disclosed by a correctional superintendent or administrator or local
25 jail administrator only as necessary for disease prevention or control
26 and for protection of the safety and security of the staff, offenders,
27 and the public. Unauthorized disclosure of this information to any
28 person may result in disciplinary action, in addition to any other
29 penalties as may be prescribed by law.

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

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

18 **Sec. 7.** RCW 70.24.340 and 1988 c 206 s 703 are each amended to
19 read as follows:

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

23 (a) Convicted of a (~~sexual offense under chapter 9A.44 RCW~~)
24 criminal offense, or equivalent juvenile offense, involving a victim
25 who was substantially exposed to the bodily fluids of the accused and
26 the exposure presents a possible risk of infection, as defined by the
27 board by rule;

1 (b) Convicted of prostitution (~~or offenses relating to~~
2 ~~prostitution under chapter 9A.88 RCW~~), under RCW 9A.88.030, or
3 patronizing a prostitute, under RCW 9A.88.110; or

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

7 (2) Such testing shall be conducted as soon as possible after
8 sentencing and shall be so ordered by the sentencing judge.

9 (3) This section applies only to offenses committed after March 23,
10 1988.

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

1 finds that the exposure was substantial and presents a possible risk as
2 defined by the board of health by rule.

3 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.24 RCW
4 to read as follows:

5 The board of health shall by October 1, 1991, adopt rules that
6 specify a schedule for testing at sufficient intervals to detect the
7 HIV infection for persons requiring testing under RCW 70.24.340 and
8 section 9 of this act.

9 NEW SECTION. **Sec. 9.** A new section is added to chapter 70.24 RCW
10 to read as follows:

11 (1) The victim of a charged criminal offense, or that person's
12 legal representative for health care decisions in accordance with RCW
13 7.70.065, shall have the right to request that the accused submit to
14 certain tests, as defined by the board in rule, to determine if the
15 accused carries the HIV antibody.

16 (2) The prosecuting attorney in the county where the charge was
17 filed shall advise the victim, in writing, of the right to request
18 testing of the accused. To assist the victim in determining whether he
19 or she should make this request, the prosecutor shall refer the victim
20 to the local health officer or health care provider, who shall make
21 available prerequest counseling and testing. The counseling shall be
22 designed: (a) To assist the person in understanding the risk of
23 transmission of the HIV antibody based on the particular circumstances
24 of the crime, (b) to ensure the person understands both the benefits
25 and limitations of the current tests, and (c) to help the victim in
26 deciding whether to be tested and whether to request the testing of the
27 accused.

1 (3) Upon request of the victim, the prosecuting attorney shall
2 petition the court, as soon as possible, for an order mandating that
3 the accused be tested for the HIV antibody.

4 (4) The court shall order the accused to submit to testing by the
5 local public health officer if the court finds, by a preponderance of
6 the evidence, that during the course of the alleged criminal offense
7 the victim was substantially exposed to the bodily fluids of the
8 accused and the exposure presents a possible risk of infection. The
9 order shall require the accused to report to the local public health
10 department for testing if the person is not in custody or if the
11 accused is released from custody prior to testing. The court shall use
12 the board's definition of "substantial exposure" and "exposure
13 presenting possible risk," as adopted by rule.

14 (5) The court shall base its findings upon affidavits submitted by
15 the victim, accused, public health officer, prosecutor, or any other
16 witnesses. The affidavit of the public health officer shall set forth
17 the type of circumstances under which a victim may be substantially
18 exposed to the bodily fluids of another, presenting a possible risk of
19 transmission of the HIV antibody. The prosecutor may present the
20 petition and affidavits to the court and obtain the order without the
21 presence of the victim or the public health officer.

22 (6) Upon issuance of the order the prosecutor shall immediately
23 notify the public health officer of the order and of the location of
24 the accused if the accused is in custody. The public health officer
25 shall initiate the testing process as soon as possible, and shall
26 conduct testing at the intervals determined necessary by the board
27 under section 8 of this act. Testing shall not occur under this
28 section after the accused is acquitted or charges are dismissed.

29 (7) Any blood tested under this section shall be subjected to
30 appropriate confirmatory tests to ensure accuracy of the first test

1 results. Initially reactive test results shall not be released until
2 confirmed for positive reactors. When available, the public health
3 officer shall report the results to the victim and to the accused.
4 Positive test results shall not be disclosed without providing or
5 offering to provide professional counseling as appropriate to the
6 circumstances.

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

10 (9) A victim may also use the procedure provided in this section to
11 request the testing of a person convicted of a criminal offense
12 involving a substantial exposure to the bodily fluids of the accused
13 and the exposure presents a possible risk of infection to the victim,
14 as defined by the board by rule.

15 NEW SECTION. **Sec. 10.** RCW 70.24.140 and 1988 c 206 s 917 are
16 each repealed.

17 NEW SECTION. **Sec. 11.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 12.** If specific funding for the purposes of
22 this act, referencing this act by bill number, is not provided by June
23 30, 1991, in the omnibus appropriations act, this act shall be null and
24 void.