

SENATE BILL 5278

State of Washington

52nd Legislature

1991 Regular Session

By Senators Nelson, Rasmussen, Madsen, A. Smith, Erwin, Hayner, Thorsness, Hansen and Craswell.

Read first time January 25, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to sexually transmitted disease; amending RCW
2 9A.36.011, 9A.36.031, 9A.36.041, 9.94A.310, 49.60.174, 70.24.105, and
3 70.24.340; reenacting and amending RCW 9A.36.021; repealing RCW
4 70.24.140; and prescribing penalties.

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

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

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

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

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

14 (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-eighty months shall be added to the
21 presumptive sentence for an offense under chapter 9A.44 RCW or RCW
22 9A.64.020, if the offender has, prior to the offense, tested positive
23 for the human immunodeficiency virus as defined in chapter 70.24 RCW.

24 **Sec. 6.** RCW 49.60.174 and 1988 c 206 s 902 are each amended to
25 read as follows:

26 (1) For the purposes of determining whether an unfair practice
27 under this chapter has occurred, claims of discrimination based on
28 actual ((or perceived)) HIV infection shall be evaluated in the same

1 manner as other claims of discrimination based on sensory, mental, or
2 physical handicap.

3 (2) Subsection (1) of this section shall not apply to transactions
4 with insurance entities, health service contractors, or health
5 maintenance organizations subject to RCW 49.60.030(1)(e) or 49.60.178
6 to prohibit fair discrimination on the basis of actual HIV infection
7 status when bona fide statistical differences in risk or exposure have
8 been substantiated.

9 (3) For the purposes of this chapter, "HIV" means the human
10 immunodeficiency virus, and includes all HIV and HIV-related viruses
11 which damage the cellular branch of the human immune system and leave
12 the infected person immunodeficient.

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

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

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

27 (a) The subject of the test or the subject's legal representative
28 for health care decisions in accordance with RCW 7.70.065, with the

1 exception of such a representative of a minor child over fourteen years
2 of age and otherwise competent;

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

9 (c) The state public health officer, a local public health officer,
10 or the centers for disease control of the United States public health
11 service in accordance with reporting requirements for a diagnosed case
12 of a sexually transmitted disease;

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

19 (e) Any state or local public health officer conducting an
20 investigation pursuant to RCW 70.24.024, provided that such record was
21 obtained by means of court ordered HIV testing pursuant to RCW
22 70.24.340 or 70.24.024;

23 (f) A person allowed access to the record by a court order granted
24 after application showing good cause therefor. In assessing good
25 cause, the court shall weigh the public interest and the need for
26 disclosure against the injury to the patient, to the physician-patient
27 relationship, and to the treatment services. Upon the granting of the
28 order, the court, in determining the extent to which any disclosure of
29 all or any part of the record of any such test is necessary, shall
30 impose appropriate safeguards against unauthorized disclosure. An

1 order authorizing disclosure shall: (i) Limit disclosure to those
2 parts of the patient's record deemed essential to fulfill the objective
3 for which the order was granted; (ii) limit disclosure to those persons
4 whose need for information is the basis for the order; and (iii)
5 include any other appropriate measures to keep disclosure to a minimum
6 for the protection of the patient, the physician-patient relationship,
7 and the treatment services, including but not limited to the written
8 statement set forth in subsection (5) of this section;

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

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

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

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

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

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

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

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

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

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

26 (6) The requirements of this section shall not apply to the
27 customary methods utilized for the exchange of medical information
28 among health care providers in order to provide health care services to
29 the patient, nor shall they apply within health care facilities where

1 there is a need for access to confidential medical information to
2 fulfill professional duties.

3 **Sec. 8.** RCW 70.24.340 and 1988 c 206 s 703 are each amended to
4 read as follows:

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

8 (a) (~~Convicted~~) Charged by information, indictment, or complaint,
9 based upon probable cause, with the commission of a sexual offense
10 under chapter 9A.44 RCW or RCW 9A.64.020;

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

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

23 (3) This section applies only to offenses committed after March 23,
24 1988.

25 (4) A law enforcement officer, fire fighter, health care provider,
26 health care facility staff person, or other categories of employment
27 determined by the board in rule to be at risk of substantial exposure
28 to HIV, who has experienced a substantial exposure to another person's
29 bodily fluids in the course of his or her employment, may request a

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

16 NEW SECTION. **Sec. 9.** RCW 70.24.140 and 1988 c 206 s 917 are
17 each repealed.