

2 **ESSB 6285 - H AMD 393 ADOPTED 2-29-96**

3 By Representatives Radcliff and Quall

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

7 "NEW SECTION. Sec. 1. (1) The legislature finds that department  
8 of corrections staff and jail staff perform essential public functions  
9 that are vital to our communities. The health and safety of these  
10 workers is often placed in jeopardy while they perform the  
11 responsibilities of their jobs. Therefore, the legislature intends  
12 that department of corrections staff and jail staff who have been  
13 substantially exposed to the bodily fluids of an offender or detainee  
14 shall be entitled to receive the HIV test results of the offender or  
15 detainee. However, the legislature recognizes that the mandatory  
16 disclosure of the HIV status of individual offenders may cause some  
17 corrections and jail staff to use more precautions with those offenders  
18 and detained people they know to be HIV positive. The legislature also  
19 recognizes the risk exists that some corrections and jail staff may  
20 correspondingly use fewer precautions with those offenders and detained  
21 people they are not informed are HIV positive. The legislature finds,  
22 however, that the system of universal precautions required under  
23 federal and state law in all settings where risk of occupational  
24 exposure to communicable diseases exists remains the most effective way  
25 to reduce the risk of communicable disease transmission. The  
26 legislature does not intend to discourage the use of universal  
27 precautions but to provide supplemental information for corrections and  
28 jail staff to utilize as part of their universal precautions with all  
29 offenders and detained people.

30 (2) The legislature further finds that, through the efforts of  
31 health care professionals and corrections staff, offenders in  
32 department of corrections facilities and people detained in local jails  
33 are being encouraged to take responsibility for their health by  
34 requesting voluntary and anonymous pretest counseling, HIV testing,  
35 posttest counseling, and AIDS counseling. The legislature does not  
36 intend, through this act, to mandate disclosure of the results of  
37 voluntary and anonymous tests. The legislature intends to continue to

1 protect the confidential exchange of medical information related to  
2 voluntary and anonymous pretest counseling, HIV testing, posttest  
3 counseling, and AIDS counseling as provided by chapter 70.24 RCW.

4 **Sec. 2.** RCW 70.24.105 and 1994 c 72 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  
16 for HIV infection and for any other confirmed sexually transmitted  
17 disease. The following persons, however, may receive such information:

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

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

28 (c) The state public health officer, a local public health officer,  
29 or the centers for disease control of the United States public health  
30 service in accordance with reporting requirements for a diagnosed case  
31 of a sexually transmitted disease;

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

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

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

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

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

33 (i) Claims management personnel employed by or associated with an  
34 insurer, health care service contractor, health maintenance  
35 organization, self-funded health plan, state-administered health care  
36 claims payer, or any other payer of health care claims where such  
37 disclosure is to be used solely for the prompt and accurate evaluation  
38 and payment of medical or related claims. Information released under  
39 this subsection shall be confidential and shall not be released or

1 available to persons who are not involved in handling or determining  
2 medical claims payment; and

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

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

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

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

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

36 (c) Information regarding (~~a department of corrections~~  
37 ~~offender's~~) the sexually transmitted disease status of an offender or  
38 detained person is confidential and may be disclosed by a correctional  
39 superintendent or administrator or local jail administrator only as

1 necessary for disease prevention or control and for protection of the  
2 safety and security of the staff, offenders, and the public.  
3 Unauthorized disclosure of this information to any person may result in  
4 disciplinary action, in addition to any other penalties as may be  
5 prescribed by law.

6 (d) Notwithstanding the limitations on disclosure contained in (a),  
7 (b), and (c) of this subsection, whenever any member of jail staff or  
8 department of corrections staff has been substantially exposed to the  
9 bodily fluids of an offender or detained person, then the results of  
10 any tests conducted pursuant to RCW 70.24.340, 70.24.360, or 70.24.370  
11 shall be immediately disclosed to the correctional superintendent or  
12 administrator or local jail administrator. The superintendent or  
13 administrator is then required to immediately disclose these results to  
14 the staff member who was substantially exposed. Disclosure must be  
15 accompanied by appropriate counseling for the staff member, including  
16 information regarding follow-up testing.

17 (e) The receipt by any individual of any information disclosed  
18 pursuant to this subsection (4) shall be utilized only for disease  
19 prevention or control and for protection of the safety and security of  
20 the staff, offenders, detainees, and the public. Use of this  
21 information for any other purpose, including harassment or  
22 discrimination, may result in disciplinary action, in addition to the  
23 penalties prescribed in RCW 70.24.080 or any other penalties as may be  
24 prescribed by law.

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

36 (6) The requirements of this section shall not apply to the  
37 customary methods utilized for the exchange of medical information  
38 among health care providers in order to provide health care services to  
39 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 (7) Upon request of the victim, disclosure of test results under  
4 this section to victims of sexual offenses under chapter 9A.44 RCW  
5 shall be made if the result is negative or positive. The county  
6 prosecuting attorney shall notify the victim of the right to such  
7 disclosure. Such disclosure shall be accompanied by appropriate  
8 counseling, including information regarding follow-up testing.

9 NEW SECTION. **Sec. 3.** The department of health and the department  
10 of corrections shall each adopt rules to implement this act. The  
11 department of health and the department of corrections shall also  
12 report to the legislature by January 1, 1997, on the following: (1)  
13 Changes made in rules, policies, and procedures to implement this act;  
14 and (2) a summary of the number and circumstances of mandatory test  
15 results that were disclosed to department of corrections staff and jail  
16 staff pursuant to section 2 of this act."

17 **ESSB 6285** - H AMD  
18 By Representative

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20 On page 1, line 2 of the title, after "staff;" strike the remainder  
21 of the title and insert "amending RCW 70.24.105; and creating new  
22 sections."

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