
HOUSE BILL 1080

State of Washington

55th Legislature

1997 Regular Session

By Representatives Backlund, Ballasiotes, Koster, Skinner, Talcott, Carrell, Dyer, Mulliken, Mastin, D. Sommers, Quall, Costa, Sterk, Sherstad, Sheldon, Bush, Smith, Mielke and Anderson

Read first time 01/13/97. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to protecting the health and safety of department
2 of corrections and jail staff; amending RCW 70.24.015 and 70.24.105;
3 and creating new sections.

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

5 **Sec. 1.** RCW 70.24.015 and 1988 c 206 s 901 are each amended to
6 read as follows:

7 The legislature declares that sexually transmitted diseases
8 constitute a serious and sometimes fatal threat to the public and
9 individual health and welfare of the people of the state. The
10 legislature finds that the incidence of sexually transmitted diseases
11 is rising at an alarming rate and that these diseases result in
12 significant social, health, and economic costs, including infant and
13 maternal mortality, temporary and lifelong disability, and premature
14 death. The legislature further finds that sexually transmitted
15 diseases, by their nature, involve sensitive issues of privacy, and it
16 is the intent of the legislature that all programs designed to deal
17 with these diseases afford patients privacy, confidentiality, and
18 dignity. The legislature also finds that medical knowledge and
19 information about sexually transmitted diseases are rapidly changing.

1 It is therefore the intent of the legislature to provide a program that
2 is sufficiently flexible to meet emerging needs, deals efficiently and
3 effectively with reducing the incidence of sexually transmitted
4 diseases, and provides patients with a secure knowledge that
5 information they provide will remain private and confidential. The
6 legislature further finds that department of corrections staff and jail
7 staff perform essential public functions that are vital to the
8 protection of our communities. The health and safety of these workers
9 is often placed in jeopardy while they perform the responsibilities of
10 their jobs. Therefore, the legislature intends that department of
11 corrections staff and jail staff who, in the course of their regularly
12 assigned job responsibilities, may come within close physical proximity
13 to offenders and detained people be notified of the results of an HIV
14 antibody test when the test is mandated by law pursuant to this
15 chapter. 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 NEW SECTION. Sec. 2. The legislature finds that, through the
31 efforts of health care professionals and corrections staff, offenders
32 in department of corrections facilities and people detained in local
33 jails 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
38 protect the confidential exchange of medical information related to

1 voluntary and anonymous pretest counseling, HIV testing, posttest
2 counseling, and AIDS counseling as provided by chapter 70.24 RCW.

3 **Sec. 3.** RCW 70.24.105 and 1994 c 72 s 1 are each amended to read
4 as follows:

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

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

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

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

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

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

37 (e) Any state or local public health officer conducting an
38 investigation pursuant to RCW 70.24.024, provided that such record was

1 obtained by means of court ordered HIV testing pursuant to RCW
2 70.24.340 or 70.24.024;

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

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

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

32 (i) Claims management personnel employed by or associated with an
33 insurer, health care service contractor, health maintenance
34 organization, self-funded health plan, state-administered health care
35 claims payer, or any other payer of health care claims where such
36 disclosure is to be used solely for the prompt and accurate evaluation
37 and payment of medical or related claims. Information released under
38 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~~). The information made available to superintendents and
26 administrators under this subsection (4)(a) shall be utilized by a
27 superintendent or administrator only for disease prevention or control
28 and for protection of the safety and security of the staff, offenders,
29 and the public. The information (~~may~~) shall also be submitted to
30 transporting officers and receiving facilities, including facilities
31 that are not under the department of (~~correction's~~) corrections'
32 jurisdiction.

33 (b) The sexually transmitted disease status of a person detained in
34 a jail shall be made available by the local public health officer to a
35 jail administrator (~~as necessary~~). The information made available to
36 administrators under this subsection (4)(b) shall be utilized only for
37 disease prevention or control and for protection of the safety and
38 security of the staff, offenders, detainees, and the public. The

1 information ((may)) shall also be submitted to transporting officers
2 and receiving facilities.

3 (c) Information regarding ~~((a department of corrections~~
4 ~~offender's))~~ the sexually transmitted disease status of an offender or
5 detained person is confidential ~~((and may be disclosed by a~~
6 ~~correctional superintendent or administrator or local jail~~
7 ~~administrator only as necessary for disease prevention or control and~~
8 ~~for protection of the safety and security of the staff, offenders, and~~
9 ~~the public))~~, except that information received by a superintendent or
10 administrator under (a) and (b) of this subsection as a result of a
11 mandatory test conducted pursuant to RCW 70.24.340, 70.24.360, or
12 70.24.370 shall be disclosed to all department of corrections staff and
13 jail staff who, in the course of their regularly assigned job
14 responsibilities, may come within close physical proximity to the
15 offender or detained person. Unauthorized disclosure of this
16 information to any person may result in disciplinary action, in
17 addition to the penalties prescribed in RCW 70.24.080 or any other
18 penalties as may be prescribed by law.

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

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

38 (6) The requirements of this section shall not apply to the
39 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 (7) Upon request of the victim, disclosure of test results under
6 this section to victims of sexual offenses under chapter 9A.44 RCW
7 shall be made if the result is negative or positive. The county
8 prosecuting attorney shall notify the victim of the right to such
9 disclosure. Such disclosure shall be accompanied by appropriate
10 counseling, including information regarding follow-up testing.

11 NEW SECTION. **Sec. 4.** The department of health and the department
12 of corrections shall each adopt rules to implement this act. The
13 department of health and the department of corrections shall also
14 report to the legislature by January 1, 1998, on the following: (1)
15 Changes made in rules, policies, and procedures to implement this act;
16 and (2) a summary of the number and circumstances of mandatory test
17 results that were disclosed to department of corrections staff and jail
18 staff pursuant to section 3 of this act.

--- END ---