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**SUBSTITUTE HOUSE BILL 1605**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Radcliff, Ballasiotes, Quall, Dunn and Sullivan)

Read first time 02/27/97.

1 AN ACT Relating to disclosure of information concerning diseases;  
2 amending RCW 70.24.105 and 70.24.340; adding a new section to chapter  
3 72.09 RCW; adding a new section to chapter 70.48 RCW; and creating new  
4 sections.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that department of  
7 corrections staff and jail staff perform essential public functions  
8 that are vital to our communities. The health and safety of these  
9 workers is often placed in jeopardy while they perform the  
10 responsibilities of their jobs. Therefore, the legislature intends  
11 that the results of any HIV tests conducted on an offender or detainee  
12 pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be  
13 disclosed to the health care administrator or infection control  
14 coordinator of the department of corrections facility or the local jail  
15 that houses the offender or detainee. The legislature intends that  
16 these test results also be disclosed to any corrections or jail staff  
17 who have been substantially exposed to the bodily fluids of the  
18 offender or detainee when the disclosure is provided by a licensed  
19 health care provider in accordance with Washington Administrative Code

1 rules governing employees' occupational exposure to bloodborne  
2 pathogens.

3 (2) The legislature further finds that, through the efforts of  
4 health care professionals and corrections staff, offenders in  
5 department of corrections facilities and people detained in local jails  
6 are being encouraged to take responsibility for their health by  
7 requesting voluntary and anonymous pretest counseling, HIV testing,  
8 posttest counseling, and AIDS counseling. The legislature does not  
9 intend, through this act, to mandate disclosure of the results of  
10 voluntary and anonymous tests. The legislature intends to continue to  
11 protect the confidential exchange of medical information related to  
12 voluntary and anonymous pretest counseling, HIV testing, posttest  
13 counseling, and AIDS counseling as provided by chapter 70.24 RCW.

14 **Sec. 2.** RCW 70.24.105 and 1994 c 72 s 1 are each amended to read  
15 as follows:

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

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

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

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

1 (c) The state public health officer, a local public health officer,  
2 or the centers for disease control of the United States public health  
3 service in accordance with reporting requirements for a diagnosed case  
4 of a sexually transmitted disease;

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

11 (e) Any state or local public health officer conducting an  
12 investigation pursuant to RCW 70.24.024, provided that such record was  
13 obtained by means of court ordered HIV testing pursuant to RCW  
14 70.24.340 or 70.24.024;

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

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

37 (h) A law enforcement officer, fire fighter, health care provider,  
38 health care facility staff person, department of correction's staff  
39 person, jail staff person, or other persons as defined by the board in

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

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

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

32 (a) The sexually transmitted disease status of a department of  
33 corrections offender who has had a mandatory test conducted pursuant to  
34 RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by  
35 department of corrections health care providers and local public health  
36 officers to ~~((a))~~ the department of corrections ((superintendent or  
37 administrator as necessary)) health care administrator or infection  
38 control coordinator of the facility in which the offender is housed.  
39 The information made available to the health care administrator or the

1 infection control coordinator under this subsection (4)(a) shall be  
2 used only for disease prevention or control and for protection of the  
3 safety and security of the staff, offenders, and the public. The  
4 information may be submitted to transporting officers and receiving  
5 facilities, including facilities that are not under the department of  
6 (~~correction's~~) corrections' jurisdiction according to the provisions  
7 of (d) and (e) of this subsection.

8 (b) The sexually transmitted disease status of a person detained in  
9 a jail who has had a mandatory test conducted pursuant to RCW  
10 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by the  
11 local public health officer to a jail (~~administrator as necessary~~)  
12 health care administrator or infection control coordinator. The  
13 information made available to a health care administrator under this  
14 subsection (4)(b) shall be used only for disease prevention or control  
15 and for protection of the safety and security of the staff, offenders,  
16 detainees, and the public. The information may be submitted to  
17 transporting officers and receiving facilities according to the  
18 provisions of (d) and (e) of this subsection.

19 (c) Information regarding (~~a department of corrections~~  
20 offender's)) the sexually transmitted disease status of an offender or  
21 detained person is confidential and may be disclosed by a correctional  
22 (~~superintendent or~~) health care administrator or infection control  
23 coordinator or local jail health care administrator or infection  
24 control coordinator only as necessary for disease prevention or control  
25 and for protection of the safety and security of the staff, offenders,  
26 and the public. Unauthorized disclosure of this information to any  
27 person may result in disciplinary action, in addition to the penalties  
28 prescribed in RCW 70.24.080 or any other penalties as may be prescribed  
29 by law.

30 (d) Notwithstanding the limitations on disclosure contained in (a),  
31 (b), and (c) of this subsection, whenever any member of a jail staff or  
32 department of corrections staff has been substantially exposed to the  
33 bodily fluids of an offender or detained person, then the results of  
34 any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or  
35 70.24.370, shall be immediately disclosed to the staff person in  
36 accordance with the Washington Administrative Code rules governing  
37 employees' occupational exposure to bloodborne pathogens. Disclosure  
38 must be accompanied by appropriate counseling for the staff member,  
39 including information regarding follow-up testing and treatment.

1 Disclosure shall also include notice that subsequent disclosure of the  
2 information in violation of this chapter or use of the information to  
3 harass or discriminate against the offender or detainee may result in  
4 disciplinary action, in addition to the penalties prescribed in RCW  
5 70.24.080, and imposition of other penalties prescribed by law.

6 (e) The staff member shall also be informed whether the offender or  
7 detained person had any other communicable disease, as defined in  
8 section 4(3) of this act, when the staff person was substantially  
9 exposed to the offender's or detainee's bodily fluids.

10 (f) The test results of voluntary and anonymous HIV testing or HIV-  
11 related condition may not be disclosed to a staff person except as  
12 provided in subsection (2)(h) of this section and RCW 70.24.340(4). A  
13 health care administrator or infection control coordinator may provide  
14 the staff member with information about how to obtain the offender's or  
15 detainee's test results under subsection (2)(h) of this section and RCW  
16 70.24.340(4).

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

28 (6) The requirements of this section shall not apply to the  
29 customary methods utilized for the exchange of medical information  
30 among health care providers in order to provide health care services to  
31 the patient, nor shall they apply within health care facilities where  
32 there is a need for access to confidential medical information to  
33 fulfill professional duties.

34 (7) Upon request of the victim, disclosure of test results under  
35 this section to victims of sexual offenses under chapter 9A.44 RCW  
36 shall be made if the result is negative or positive. The county  
37 prosecuting attorney shall notify the victim of the right to such  
38 disclosure. Such disclosure shall be accompanied by appropriate  
39 counseling, including information regarding follow-up testing.

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

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

6       (a) Convicted of a sexual offense under chapter 9A.44 RCW;

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

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

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

14       (3) This section applies only to offenses committed after March 23,  
15 1988.

16       (4) A law enforcement officer, fire fighter, health care provider,  
17 health care facility staff person, department of correction's staff  
18 person, jail staff person, or other categories of employment determined  
19 by the board in rule to be at risk of substantial exposure to HIV, who  
20 has experienced a substantial exposure to another person's bodily  
21 fluids in the course of his or her employment, may request a state or  
22 local public health officer to order pretest counseling, HIV testing,  
23 and posttest counseling for the person whose bodily fluids he or she  
24 has been exposed to. The person who is subject to the order shall be  
25 given written notice of the order promptly, personally, and  
26 confidentially, stating the grounds and provisions of the order,  
27 including the factual basis therefor. If the person who is subject to  
28 the order refuses to comply, the state or local public health officer  
29 may petition the superior court for a hearing. The hearing on the  
30 petition shall be held within seventy-two hours of filing the petition,  
31 exclusive of Saturdays, Sundays, and holidays. The standard of review  
32 for the order is whether substantial exposure occurred and whether that  
33 exposure presents a possible risk of transmission of the HIV virus as  
34 defined by the board by rule. Upon conclusion of the hearing, the  
35 court shall issue the appropriate order. The state or local public  
36 health officer shall perform counseling and testing under this  
37 subsection if he or she finds that the exposure was substantial and  
38 presents a possible risk as defined by the board of health by rule.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 72.09 RCW  
2 to read as follows:

3        (1) The department shall develop and implement policies and  
4 procedures for the uniform distribution of communicable disease  
5 prevention protocols to all corrections staff who, in the course of  
6 their regularly assigned job responsibilities, may come within close  
7 physical proximity to offenders with communicable diseases.

8        (2) The protocols shall identify special precautions necessary to  
9 reduce the risk of transmission of communicable diseases.

10       (3) For the purposes of this section, "communicable disease" means  
11 sexually transmitted diseases, as defined in RCW 70.24.017, diseases  
12 caused by bloodborne pathogens, or any other illness caused by an  
13 infectious agent that can be transmitted from one person, animal, or  
14 object to another person by direct or indirect means including  
15 transmission via an intermediate host or vector, food, water, or air.

16       NEW SECTION.    **Sec. 5.**    A new section is added to chapter 70.48 RCW  
17 to read as follows:

18       (1) Local jail administrators shall develop and implement policies  
19 and procedures for the uniform distribution of communicable disease  
20 prevention protocols to all jail staff who, in the course of their  
21 regularly assigned job responsibilities, may come within close physical  
22 proximity to offenders or detainees with communicable diseases.

23       (2) The protocols shall identify special precautions necessary to  
24 reduce the risk of transmission of communicable diseases.

25       (3) For the purposes of this section, "communicable disease" means  
26 a sexually transmitted disease, as defined in RCW 70.24.017, diseases  
27 caused by bloodborne pathogens, or any other illness caused by an  
28 infectious agent that can be transmitted from one person, animal, or  
29 object to another person by direct or indirect means including  
30 transmission via an intermediate host or vector, food, water, or air.

31       NEW SECTION.    **Sec. 6.**    The department of health and the department  
32 of corrections shall each adopt rules to implement this act.    The  
33 department of health and the department of corrections shall also  
34 report to the legislature by January 1, 1998, on the following: (1)  
35 Changes made in rules and department of corrections and local jail  
36 policies and procedures to implement this act; and (2) a summary of the  
37 number of times and the circumstances under which individual



1 corrections staff and jail staff members were informed that a  
2 particular offender or detainee had a sexually transmitted disease or  
3 other communicable disease. The department of health and the  
4 department of corrections shall cooperate with local jail  
5 administrators to obtain the information from local jail administrators  
6 that is necessary to comply with this section.

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