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HOUSE BILL 1605

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Radcliff, Ballasiotes, Quall, Dunn and Sullivan

Read first time 02/03/97. Referred to Committee on Criminal Justice & Corrections.

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, 70.24.360, or 70.24.370 shall be disclosed  
13 to the superintendent or administrator of the department of corrections  
14 facility or local jail housing the offender or detainee, and shall also  
15 be disclosed to any corrections staff or jail staff who have been  
16 substantially exposed to the bodily fluids of the offender or detainee.  
17 However, the legislature recognizes that the mandatory disclosure of  
18 the HIV status of individual offenders may cause some corrections and  
19 jail staff to use more precautions with those offenders and detained

1 people they know to be HIV positive. The legislature also recognizes  
2 the risk exists that some corrections and jail staff may  
3 correspondingly use fewer precautions with those offenders and detained  
4 people they are not informed are HIV positive. The legislature finds,  
5 however, that the system of universal precautions required under  
6 federal and state law in all settings where risk of occupational  
7 exposure to communicable diseases exists remains the most effective way  
8 to reduce the risk of communicable disease transmission. The  
9 legislature does not intend to discourage the use of universal  
10 precautions but to provide supplemental information for corrections and  
11 jail staff to utilize as part of their universal precautions with all  
12 offenders and detained people.

13 (2) The legislature further finds that, through the efforts of  
14 health care professionals and corrections staff, offenders in  
15 department of corrections facilities and people detained in local jails  
16 are being encouraged to take responsibility for their health by  
17 requesting voluntary and anonymous pretest counseling, HIV testing,  
18 posttest counseling, and AIDS counseling. The legislature does not  
19 intend, through this act, to mandate disclosure of the results of  
20 voluntary and anonymous tests. The legislature intends to continue to  
21 protect the confidential exchange of medical information related to  
22 voluntary and anonymous pretest counseling, HIV testing, posttest  
23 counseling, and AIDS counseling as provided by chapter 70.24 RCW.

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

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

30 (2) No person may disclose or be compelled to disclose the identity  
31 of any person upon whom an HIV antibody test is performed, or the  
32 results of such a test, nor may the result of a test for any other  
33 sexually transmitted disease when it is positive be disclosed. This  
34 protection against disclosure of test subject, diagnosis, or treatment  
35 also applies to any information relating to diagnosis of or treatment  
36 for HIV infection and for any other confirmed sexually transmitted  
37 disease. The following persons, however, may receive such information:

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

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

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

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

21 (e) Any state or local public health officer conducting an  
22 investigation pursuant to RCW 70.24.024, provided that such record was  
23 obtained by means of court ordered HIV testing pursuant to RCW  
24 70.24.340 or 70.24.024;

25 (f) A person allowed access to the record by a court order granted  
26 after application showing good cause therefor. In assessing good  
27 cause, the court shall weigh the public interest and the need for  
28 disclosure against the injury to the patient, to the physician-patient  
29 relationship, and to the treatment services. Upon the granting of the  
30 order, the court, in determining the extent to which any disclosure of  
31 all or any part of the record of any such test is necessary, shall  
32 impose appropriate safeguards against unauthorized disclosure. An  
33 order authorizing disclosure shall: (i) Limit disclosure to those  
34 parts of the patient's record deemed essential to fulfill the objective  
35 for which the order was granted; (ii) limit disclosure to those persons  
36 whose need for information is the basis for the order; and (iii)  
37 include any other appropriate measures to keep disclosure to a minimum  
38 for the protection of the patient, the physician-patient relationship,

1 and the treatment services, including but not limited to the written  
2 statement set forth in subsection (5) of this section;

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

9 (h) A law enforcement officer, fire fighter, health care provider,  
10 health care facility staff person, department of correction's staff  
11 person, jail staff person, or other persons as defined by the board in  
12 rule pursuant to RCW 70.24.340(4), who has requested a test of a person  
13 whose bodily fluids he or she has been substantially exposed to,  
14 pursuant to RCW 70.24.340(4), if a state or local public health officer  
15 performs the test;

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

25 (j) A department of social and health services worker, a child  
26 placing agency worker, or a guardian ad litem who is responsible for  
27 making or reviewing placement or case-planning decisions or  
28 recommendations to the court regarding a child, who is less than  
29 fourteen years of age, has a sexually transmitted disease, and is in  
30 the custody of the department of social and health services or a  
31 licensed child placing agency; this information may also be received by  
32 a person responsible for providing residential care for such a child  
33 when the department of social and health services or a licensed child  
34 placing agency determines that it is necessary for the provision of  
35 child care services.

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

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

4 (a) The sexually transmitted disease status of a department of  
5 corrections offender and the results of any tests conducted pursuant to  
6 RCW 70.24.340, 70.24.360, or 70.24.370 shall be made available by  
7 department of corrections health care providers and local public health  
8 officers to a department of corrections superintendent or administrator  
9 ((as necessary)). The information made available to superintendents  
10 and administrators under this subsection (4)(a) shall be utilized by a  
11 superintendent or administrator only as provided in section 3 of this  
12 act for disease prevention or control and for protection of the safety  
13 and security of the staff, offenders, and the public. The information  
14 may be submitted to transporting officers and receiving facilities,  
15 including facilities that are not under the department of  
16 ((correction's)) corrections' jurisdiction.

17 (b) The sexually transmitted disease status of a person detained in  
18 a jail and the results of any tests conducted pursuant to RCW  
19 70.24.340, 70.24.360, or 70.24.370 shall be made available by the local  
20 public health officer to a jail administrator ((as necessary)). The  
21 information made available to administrators under this subsection  
22 (4)(b) shall be utilized only as provided in section 4 of this act for  
23 disease prevention or control and for protection of the safety and  
24 security of the staff, offenders, detainees, and the public. The  
25 information may be submitted to transporting officers and receiving  
26 facilities.

27 (c) Information regarding ((a department of corrections  
28 offender's)) the sexually transmitted disease status of an offender or  
29 detained person is confidential and may be disclosed by a correctional  
30 superintendent or administrator or local jail administrator only as  
31 necessary for disease prevention or control and for protection of the  
32 safety and security of the staff, offenders, and the public.  
33 Unauthorized disclosure of this information to any person may result in  
34 disciplinary action, in addition to the penalties prescribed in RCW  
35 70.24.080 or any other penalties as may be prescribed by law.

36 (d) Notwithstanding the limitations on disclosure contained in (a),  
37 (b), and (c) of this subsection, whenever any member of jail staff or  
38 department of corrections staff has been substantially exposed to the  
39 bodily fluids of an offender or detained person, then the results of

1 any tests conducted pursuant to RCW 70.24.340, 70.24.360, or 70.24.370  
2 shall be immediately disclosed by the department of corrections health  
3 care provider and the local public health officer or the officer's  
4 designee to the correctional superintendent or administrator or local  
5 jail administrator. The superintendent or administrator is then  
6 required to immediately disclose these results to the staff member who  
7 was substantially exposed. Disclosure must be accompanied by  
8 appropriate counseling for the staff member, including information  
9 regarding follow-up testing. Disclosure shall also include notice that  
10 subsequent disclosure of the information in violation of this chapter  
11 or use of the information to harass or discriminate against the  
12 offender or detainee may result in disciplinary action, in addition to  
13 the penalties prescribed in RCW 70.24.080, and imposition of other  
14 penalties prescribed by law.

15 (e) The superintendent or administrator shall also disclose to the  
16 staff member whether the offender or detained person had any other  
17 communicable disease, as defined in section 4(3) of this act, when the  
18 staff person was substantially exposed to the offender's or detainee's  
19 bodily fluids.

20 (f) The test results of voluntary and anonymous HIV testing or HIV-  
21 related condition may not be disclosed to a staff person except as  
22 provided in subsection (2)(h) of this section and RCW 70.24.340. The  
23 superintendent or administrator may provide the staff member with  
24 information about how to obtain the offender's or detainee's test  
25 results under subsection (2)(h) of this section and RCW 70.24.340.

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

37 (6) The requirements of this section shall not apply to the  
38 customary methods utilized for the exchange of medical information  
39 among health care providers in order to provide health care services to

1 the patient, nor shall they apply within health care facilities where  
2 there is a need for access to confidential medical information to  
3 fulfill professional duties.

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

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

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

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

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

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

21 (2) Such testing shall be conducted as soon as possible after  
22 sentencing and shall be so 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, department of correction's staff  
27 person, jail staff person, or other categories of employment determined  
28 by the board in rule to be at risk of substantial exposure to HIV, who  
29 has experienced a substantial exposure to another person's bodily  
30 fluids in the course of his or her employment, may request a state or  
31 local public health officer to order pretest counseling, HIV testing,  
32 and posttest counseling for the person whose bodily fluids he or she  
33 has been exposed to. The person who is subject to the order shall be  
34 given written notice of the order promptly, personally, and  
35 confidentially, stating the grounds and provisions of the order,  
36 including the factual basis therefor. If the person who is subject to  
37 the order refuses to comply, the state or local public health officer  
38 may petition the superior court for a hearing. The standard of review

1 for the order is whether substantial exposure occurred and whether that  
2 exposure presents a possible risk of transmission of the HIV virus as  
3 defined by the board by rule. Upon conclusion of the hearing, the  
4 court shall issue the appropriate order. The state or local public  
5 health officer shall perform counseling and testing under this  
6 subsection if he or she finds that the exposure was substantial and  
7 presents a possible risk as defined by the board of health by rule.

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

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

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

17 (3) For the purposes of this section, "communicable disease" means  
18 sexually transmitted diseases, as defined in RCW 70.24.017, diseases  
19 caused by blood borne pathogens, or any other illness caused by an  
20 infectious agent that can be transmitted from one person, animal, or  
21 object to another person by direct or indirect means including  
22 transmission via an intermediate host or vector, food, water, or air.

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

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

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

32 (3) For the purposes of this section, "communicable disease" means  
33 a sexually transmitted disease, as defined in RCW 70.24.017, diseases  
34 caused by blood borne pathogens, or any other illness caused by an  
35 infectious agent that can be transmitted from one person, animal, or  
36 object to another person by direct or indirect means including  
37 transmission via an intermediate host or vector, food, water, or air.



1        NEW SECTION.    **Sec. 6.**    The department of health and the department  
2 of corrections shall each adopt rules to implement this act.    The  
3 department of health and the department of corrections shall also  
4 report to the legislature by January 1, 1998, on the following:    (1)  
5 Changes made in rules and department of corrections and local jail  
6 policies and procedures to implement this act; and (2) a summary of the  
7 number of times and the circumstances under which individual  
8 corrections staff and jail staff members were informed that a  
9 particular offender or detainee had a sexually transmitted disease or  
10 other communicable disease.

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