
ENGROSSED SUBSTITUTE SENATE BILL 5044

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Benton and Oke)

Read first time 03/05/97.

1 AN ACT Relating to crimes; amending RCW 9A.36.011, 9A.32.010,
2 70.24.034, and 70.24.105; and reenacting and amending RCW 9A.36.021 and
3 9A.04.080.

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

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

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

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

11 (b) Administers, exposes, or transmits to or causes to be taken by
12 another, poison, the human immunodeficiency virus as defined in chapter
13 70.24 RCW, or any other destructive or noxious substance; or

14 (c) Assaults another and inflicts great bodily harm.

15 (2) Assault in the first degree is a class A felony.

16 **Sec. 2.** RCW 9A.36.021 and 1988 c 266 s 2, 1988 c 206 s 916, and
17 1988 c 158 s 2 are each reenacted and amended to read as follows:

1 (1) A person is guilty of assault in the second degree if he or
2 she, under circumstances not amounting to assault in the first degree:
3 (a) Intentionally assaults another and thereby recklessly inflicts
4 substantial bodily harm; or
5 (b) Intentionally and unlawfully causes substantial bodily harm to
6 an unborn quick child by intentionally and unlawfully inflicting any
7 injury upon the mother of such child; or
8 (c) Assaults another with a deadly weapon; or
9 (d) With intent to inflict bodily harm, administers to or causes to
10 be taken by another, poison(~~(, the human immunodeficiency virus as~~
11 ~~defined in chapter 70.24 RCW,)) or any other destructive or noxious~~
12 substance; or
13 (e) (~~With intent to inflict bodily harm, exposes or transmits~~
14 ~~human immunodeficiency virus as defined in chapter 70.24 RCW; or~~
15 ~~(f))~~) With intent to commit a felony, assaults another; or
16 (~~(g))~~) (f) Knowingly inflicts bodily harm which by design causes
17 such pain or agony as to be the equivalent of that produced by torture.
18 (2) Assault in the second degree is a class B felony.

19 **Sec. 3.** RCW 9A.32.010 and 1987 c 187 s 2 are each amended to read
20 as follows:

21 Homicide is the killing of a human being by the act, procurement,
22 or omission of another, death occurring (~~within three years and a~~
23 ~~day~~) at any time, and is either (1) murder, (2) homicide by abuse, (3)
24 manslaughter, (4) excusable homicide, or (5) justifiable homicide.

25 **Sec. 4.** RCW 9A.04.080 and 1995 c 287 s 5 and 1995 c 17 s 1 are
26 each reenacted and amended to read as follows:

27 (1) Prosecutions for criminal offenses shall not be commenced after
28 the periods prescribed in this section.

29 (a) The following offenses may be prosecuted at any time after
30 their commission:

31 (i) Murder;

32 (ii) Homicide by abuse;

33 (iii) Arson if a death results;

34 (iv) Assault in the first degree if the assault is committed by
35 administration, exposure, or transmission of the human immunodeficiency
36 virus as prohibited by RCW 9A.36.011(1)(b).

1 (b) The following offenses shall not be prosecuted more than ten
2 years after their commission:

3 (i) Any felony committed by a public officer if the commission is
4 in connection with the duties of his or her office or constitutes a
5 breach of his or her public duty or a violation of the oath of office;

6 (ii) Arson if no death results; or

7 (iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is
8 reported to a law enforcement agency within one year of its commission;
9 except that if the victim is under fourteen years of age when the rape
10 is committed and the rape is reported to a law enforcement agency
11 within one year of its commission, the violation may be prosecuted up
12 to three years after the victim's eighteenth birthday or up to ten
13 years after the rape's commission, whichever is later. If a violation
14 of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape
15 may not be prosecuted: (A) More than three years after its commission
16 if the violation was committed against a victim fourteen years of age
17 or older; or (B) more than three years after the victim's eighteenth
18 birthday or more than seven years after the rape's commission,
19 whichever is later, if the violation was committed against a victim
20 under fourteen years of age.

21 (c) Violations of the following statutes shall not be prosecuted
22 more than three years after the victim's eighteenth birthday or more
23 than seven years after their commission, whichever is later: RCW
24 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,
25 9A.44.100(1)(b), or 9A.64.020.

26 (d) The following offenses shall not be prosecuted more than six
27 years after their commission: Violations of RCW 9A.82.060 or
28 9A.82.080.

29 (e) The following offenses shall not be prosecuted more than five
30 years after their commission: Any class C felony under chapter 74.09,
31 82.36, or 82.38 RCW.

32 (f) Bigamy shall not be prosecuted more than three years after the
33 time specified in RCW 9A.64.010.

34 (g) No other felony may be prosecuted more than three years after
35 its commission.

36 (h) No gross misdemeanor may be prosecuted more than two years
37 after its commission.

38 (i) No misdemeanor may be prosecuted more than one year after its
39 commission.

1 (2) The periods of limitation prescribed in subsection (1) of this
2 section do not run during any time when the person charged is not
3 usually and publicly resident within this state.

4 (3) If, before the end of a period of limitation prescribed in
5 subsection (1) of this section, an indictment has been found or a
6 complaint or an information has been filed, and the indictment,
7 complaint, or information is set aside, then the period of limitation
8 is extended by a period equal to the length of time from the finding or
9 filing to the setting aside.

10 **Sec. 5.** RCW 70.24.034 and 1988 c 206 s 910 are each amended to
11 read as follows:

12 (1) (~~When~~) After the procedures of RCW 70.24.024 have been
13 exhausted on one occasion for a person and the state or local public
14 health officer, within his or her respective jurisdiction, knows or has
15 reason to believe, because of (~~medical information~~) direct medical
16 knowledge or reliable testimony of others in a position to have direct
17 knowledge of a person's behavior, that ((a)) that person has a sexually
18 transmitted disease and that the person continues to engage in
19 behaviors that present an imminent danger to the public health as
20 defined by the board by rule based upon generally accepted standards of
21 medical and public health science, the public health officer:

22 (a) Shall inform the local law enforcement agency of his or her
23 knowledge or beliefs, and shall convey to the local law enforcement
24 agency all information in the health officer's possession, relating to
25 sexually transmitted disease testing, diagnosis, or treatment
26 concerning the person engaging in behavior that presents an imminent
27 danger to the public health. The public health officer may provide the
28 law enforcement agency with the identities of any individuals known to
29 the public health officer through investigations conducted under RCW
30 70.24.024 to have been exposed to that person under circumstances that
31 provide an opportunity for transmission of a sexually transmitted
32 disease. The public health officer shall provide the local law
33 enforcement agency with the identities of all individuals who agree to
34 the release of identifying information and who are known by the public
35 health officer to have been exposed to that person under circumstances
36 that provide an opportunity for transmission of a sexually transmitted
37 disease. A health care provider shall provide to the local law
38 enforcement agency, upon presentation of a warrant, all information in

1 his or her possession concerning the person engaging in behavior that
2 presents an imminent danger to the public health that relates in any
3 way to testing, diagnosis, or treatment for a sexually transmitted
4 disease. No action taken in good faith and in compliance with this
5 subsection is a violation of RCW 70.24.105 or 70.02.020;

6 (b) May bring an action in superior court to detain the person in
7 a facility designated by the board for a period of time necessary to
8 accomplish a program of counseling and education, excluding any
9 coercive techniques or procedures, designed to get the person to adopt
10 nondangerous behavior. In no case may the period exceed ninety days
11 under each order. The board shall establish, by rule, standards for
12 counseling and education under this subsection. The public health
13 officer shall request the prosecuting attorney to file such action in
14 superior court. During that period, reasonable efforts will be made in
15 a noncoercive manner to get the person to adopt nondangerous behavior.

16 (2) If an action is filed as outlined in subsection (1) of this
17 section, the superior court, upon the petition of the prosecuting
18 attorney, shall issue other appropriate court orders including, but not
19 limited to, an order to take the person into custody immediately, for
20 a period not to exceed seventy-two hours, excluding Saturdays, Sundays,
21 and holidays, and place him or her in a facility designated or approved
22 by the board. The person who is the subject of the order shall be
23 given written notice of the order promptly, personally, and
24 confidentially, stating the grounds and provisions of the order,
25 including the factual bases therefor, the evidence relied upon for
26 proof of infection and dangerous behavior, and the likelihood of
27 repetition of such behaviors in the absence of such an order, and
28 notifying the person that if he or she refuses to comply with the order
29 he or she may appear at a hearing to review the order and that he or
30 she may have an attorney appear on his or her behalf in the hearing at
31 public expense, if necessary. If the person contests testing or
32 treatment, no invasive medical procedures shall be carried out prior to
33 a hearing being held pursuant to subsection (3) of this section.

34 (3) The hearing shall be conducted no later than (~~forty-eight~~)
35 seventy-two hours, excluding Saturdays, Sundays, and holidays, after
36 the receipt of the order. The person who is subject to the order has
37 a right to be present at the hearing and may have an attorney appear on
38 his or her behalf in the hearing, at public expense if necessary. If
39 the order being contested includes detention for a period of fourteen

1 days or longer, the person shall also have the right to a trial by jury
2 upon request. Upon conclusion of the hearing or trial by jury, the
3 court shall issue appropriate orders.

4 The court may continue the hearing upon the request of the person
5 who is subject to the order for good cause shown for no more than five
6 additional judicial days. If a trial by jury is requested, the court,
7 upon motion, may continue the hearing for no more than ten additional
8 judicial days. During the pendency of the continuance, the court may
9 order that the person contesting the order remain in detention or may
10 place terms and conditions upon the person which the court deems
11 appropriate to protect public health.

12 (4) The burden of proof shall be on the state or local public
13 health officer to show by clear and convincing evidence that grounds
14 exist for the issuance of any court order pursuant to subsection (2) or
15 (3) of this section. If the superior court dismisses the order, the
16 fact that the order was issued shall be expunged from the records of
17 the state or local department of health.

18 (5) Any hearing conducted by the superior court pursuant to
19 subsection (2) or (3) of this section shall be closed and confidential
20 unless a public hearing is requested by the person who is the subject
21 of the order, in which case the hearing will be conducted in open
22 court. Unless in open hearing, any transcripts or records relating
23 thereto shall also be confidential and may be sealed by order of the
24 court.

25 (6) Any order entered by the superior court pursuant to subsection
26 (1) or (2) of this section shall impose terms and conditions no more
27 restrictive than necessary to protect the public health.

28 **Sec. 6.** RCW 70.24.105 and 1994 c 72 s 1 are each amended to read
29 as follows:

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

34 (2) No person may disclose or be compelled to disclose the identity
35 of any person upon whom an HIV antibody test is performed, or the
36 results of such a test, nor may the result of a test for any other
37 sexually transmitted disease when it is positive be disclosed. This
38 protection against disclosure of test subject, diagnosis, or treatment

1 also applies to any information relating to diagnosis of or treatment
2 for HIV infection and for any other confirmed sexually transmitted
3 disease. The following persons, however, may receive such information:

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

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

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

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

24 (e) Any state or local public health officer conducting an
25 investigation pursuant to RCW 70.24.024, provided that such record was
26 obtained by means of court ordered HIV testing pursuant to RCW
27 70.24.340 or 70.24.024;

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

1 include any other appropriate measures to keep disclosure to a minimum
2 for the protection of the patient, the physician-patient relationship,
3 and the treatment services, including but not limited to the written
4 statement set forth in subsection (5) of this section;

5 (g) Local law enforcement agencies to the extent provided in RCW
6 70.24.034;

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

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

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

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

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

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

8 (a) The sexually transmitted disease status of a department of
9 corrections offender shall be made available by department of
10 corrections health care providers to a department of corrections
11 superintendent or administrator as necessary for disease prevention or
12 control and for protection of the safety and security of the staff,
13 offenders, and the public. The information may be submitted to
14 transporting officers and receiving facilities, including facilities
15 that are not under the department of correction's jurisdiction.

16 (b) The sexually transmitted disease status of a person detained in
17 a jail shall be made available by the local public health officer to a
18 jail administrator as necessary for disease prevention or control and
19 for protection of the safety and security of the staff, offenders, and
20 the public. The information may be submitted to transporting officers
21 and receiving facilities.

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

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

1 purpose." An oral disclosure shall be accompanied or followed by such
2 a notice within ten days.

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

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

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