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SENATE BILL 5044

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State of Washington

55th Legislature

1997 Regular Session

By Senators Benton and Oke

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

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 to or causes to be taken by another, poison, the  
12 human immunodeficiency virus as defined in chapter 70.24 RCW, or any  
13 other destructive or noxious substance; or

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

15 (2) A person is guilty of assault in the first degree if he or she,  
16 with knowledge that he or she has tested positive for the human  
17 immunodeficiency virus as defined in chapter 70.24 RCW, recklessly  
18 exposes or transmits to another person the human immunodeficiency  
19 virus.

1        (3) Assault in the first degree is a class A felony.

2        **Sec. 2.** RCW 9A.36.021 and 1988 c 266 s 2, 1988 c 206 s 916, and  
3 1988 c 158 s 2 are each reenacted and amended to read as follows:

4        (1) A person is guilty of assault in the second degree if he or  
5 she, under circumstances not amounting to assault in the first degree:

6        (a) Intentionally assaults another and thereby recklessly inflicts  
7 substantial bodily harm; or

8        (b) Intentionally and unlawfully causes substantial bodily harm to  
9 an unborn quick child by intentionally and unlawfully inflicting any  
10 injury upon the mother of such child; or

11        (c) Assaults another with a deadly weapon; or

12        (d) With intent to inflict bodily harm, administers to or causes to  
13 be taken by another, poison(~~(, the human immunodeficiency virus as~~  
14 ~~defined in chapter 70.24 RCW,)) or any other destructive or noxious  
15 substance; or~~

16        (e) (~~With intent to inflict bodily harm, exposes or transmits~~  
17 ~~human immunodeficiency virus as defined in chapter 70.24 RCW; or~~

18        ~~(f))~~ With intent to commit a felony, assaults another; or

19        (~~(g))~~ (f) Knowingly inflicts bodily harm which by design causes  
20 such pain or agony as to be the equivalent of that produced by torture.

21        (2) Assault in the second degree is a class B felony.

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

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

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

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

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

34        (i) Murder;

35        (ii) Homicide by abuse;

36        (iii) Arson if a death results;

1        (iv) Assault in the first degree if the assault is committed by  
2 administration, exposure, or transmission of the human immunodeficiency  
3 virus as prohibited by RCW 9A.36.011 (1)(b) or (2).

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

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

9        (ii) Arson if no death results; or

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

24       (c) Violations of the following statutes shall not be prosecuted  
25 more than three years after the victim's eighteenth birthday or more  
26 than seven years after their commission, whichever is later: RCW  
27 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,  
28 9A.44.100(1)(b), or 9A.64.020.

29       (d) The following offenses shall not be prosecuted more than six  
30 years after their commission: Violations of RCW 9A.82.060 or  
31 9A.82.080.

32       (e) The following offenses shall not be prosecuted more than five  
33 years after their commission: Any class C felony under chapter 74.09,  
34 82.36, or 82.38 RCW.

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

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

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

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

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

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

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

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

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

1 health officer to have been exposed to that person under circumstances  
2 that provide an opportunity for transmission of a sexually transmitted  
3 disease. A health care provider shall provide to the local law  
4 enforcement agency, upon presentation of a warrant, all information in  
5 his or her possession concerning the person engaging in behavior that  
6 presents an imminent danger to the public health that relates in any  
7 way to testing, diagnosis, or treatment for a sexually transmitted  
8 disease. No action taken in good faith and in compliance with this  
9 subsection is a violation of RCW 70.24.105 or 70.02.020;

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

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

38 (3) The hearing shall be conducted no later than ~~((forty-eight))~~  
39 seventy-two hours, excluding Saturdays, Sundays, and holidays, after

1 the receipt of the order. The person who is subject to the order has  
2 a right to be present at the hearing and may have an attorney appear on  
3 his or her behalf in the hearing, at public expense if necessary. If  
4 the order being contested includes detention for a period of fourteen  
5 days or longer, the person shall also have the right to a trial by jury  
6 upon request. Upon conclusion of the hearing or trial by jury, the  
7 court shall issue appropriate orders.

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

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

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

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

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

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

1 (2) No person may disclose or be compelled to disclose the identity  
2 of any person upon whom an HIV antibody test is performed, or the  
3 results of such a test, nor may the result of a test for any other  
4 sexually transmitted disease when it is positive be disclosed. This  
5 protection against disclosure of test subject, diagnosis, or treatment  
6 also applies to any information relating to diagnosis of or treatment  
7 for HIV infection and for any other confirmed sexually transmitted  
8 disease. The following persons, however, may receive such information:

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

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

19 (c) The state public health officer, a local public health officer,  
20 or the centers for disease control of the United States public health  
21 service in accordance with reporting requirements for a diagnosed case  
22 of a sexually transmitted disease;

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

29 (e) Any state or local public health officer conducting an  
30 investigation pursuant to RCW 70.24.024, provided that such record was  
31 obtained by means of court ordered HIV testing pursuant to RCW  
32 70.24.340 or 70.24.024;

33 (f) A person allowed access to the record by a court order granted  
34 after application showing good cause therefor. In assessing good  
35 cause, the court shall weigh the public interest and the need for  
36 disclosure against the injury to the patient, to the physician-patient  
37 relationship, and to the treatment services. Upon the granting of the  
38 order, the court, in determining the extent to which any disclosure of  
39 all or any part of the record of any such test is necessary, shall

1 impose appropriate safeguards against unauthorized disclosure. An  
2 order authorizing disclosure shall: (i) Limit disclosure to those  
3 parts of the patient's record deemed essential to fulfill the objective  
4 for which the order was granted; (ii) limit disclosure to those persons  
5 whose need for information is the basis for the order; and (iii)  
6 include any other appropriate measures to keep disclosure to a minimum  
7 for the protection of the patient, the physician-patient relationship,  
8 and the treatment services, including but not limited to the written  
9 statement set forth in subsection (5) of this section;

10 (g) Local law enforcement agencies to the extent provided in RCW  
11 70.24.034;

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

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

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

33 ((j)) (k) A department of social and health services worker, a  
34 child placing agency worker, or a guardian ad litem who is responsible  
35 for making or reviewing placement or case-planning decisions or  
36 recommendations to the court regarding a child, who is less than  
37 fourteen years of age, has a sexually transmitted disease, and is in  
38 the custody of the department of social and health services or a  
39 licensed child placing agency; this information may also be received by



1 a person responsible for providing residential care for such a child  
2 when the department of social and health services or a licensed child  
3 placing agency determines that it is necessary for the provision of  
4 child care services.

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

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

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

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

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

34 (5) Whenever disclosure is made pursuant to this section, except  
35 for subsections (2)(a) and (6) of this section, it shall be accompanied  
36 by a statement in writing which includes the following or substantially  
37 similar language: "This information has been disclosed to you from  
38 records whose confidentiality is protected by state law. State law  
39 prohibits you from making any further disclosure of it without the

1 specific written consent of the person to whom it pertains, or as  
2 otherwise permitted by state law. A general authorization for the  
3 release of medical or other information is NOT sufficient for this  
4 purpose." An oral disclosure shall be accompanied or followed by such  
5 a notice within ten days.

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

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

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