
SUBSTITUTE SENATE BILL 5306

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Zarelli, Hargrove, Long, Stevens, Benton, Schow and Roach)

Read first time 02/26/97.

1 AN ACT Relating to disclosure of offenders' HIV and other
2 communicable disease test results to department of corrections and jail
3 staff; amending RCW 70.24.105, 70.24.340, 70.24.360, and 70.24.024;
4 adding new sections to chapter 72.10 RCW; adding a new section to
5 chapter 70.48 RCW; adding new sections to chapter 70.28 RCW; creating
6 new sections; and prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that department of
9 corrections staff and jail staff perform essential public functions
10 that are vital to our communities. The health and safety of these
11 workers is often placed in jeopardy while they perform the
12 responsibilities of their jobs. Therefore, the legislature intends
13 that the results of any HIV tests conducted on an offender or detainee
14 under RCW 70.24.340, 70.24.360, or 70.24.370, or tuberculosis tests
15 conducted on an offender or detainee under section 7 or 11 of this act
16 be disclosed to the superintendent or administrator of the department
17 of corrections facility or local jail housing the offender or detainee,
18 and also be disclosed to any member of a jail staff or department of
19 corrections staff who has been substantially exposed to the bodily

1 fluids of an offender or detained person. The legislature finds that
2 the system of universal precautions required under federal and state
3 law in all settings where risk of occupational exposure to communicable
4 diseases exists are an effective way to reduce the risk of communicable
5 disease transmission. The legislature does not intend to discourage
6 the use of universal precautions but to provide supplemental
7 information for corrections and jail staff to utilize as part of their
8 universal precautions with all offenders and detained people.

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

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

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

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

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

34 (c) The state public health officer, a local public health officer,
35 or the centers for disease control of the United States public health
36 service in accordance with reporting requirements for a diagnosed case
37 of a sexually transmitted disease;

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

7 (e) Any state or local public health officer conducting an
8 investigation pursuant to RCW 70.24.024, provided that such record was
9 obtained by means of court ordered HIV testing; or when disclosure is
10 pursuant to RCW 70.24.340 ((~~or 70.24.024~~), 70.24.360, or 70.24.370);

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

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

33 (h) A law enforcement officer, fire fighter, health care provider,
34 health care facility staff person, any member of a jail staff or
35 department of corrections staff, or other persons as defined by the
36 board in rule pursuant to RCW 70.24.340(4), who has requested a test of
37 a person whose bodily fluids he or she has been substantially exposed
38 to, pursuant to RCW 70.24.340(4), if a state or local public health

1 officer performs the test or the test is conducted under RCW 70.24.340,
2 70.24.360, or 70.24.370;

3 (i) Claims management personnel employed by or associated with an
4 insurer, health care service contractor, health maintenance
5 organization, self-funded health plan, state-administered health care
6 claims payer, or any other payer of health care claims where such
7 disclosure is to be used solely for the prompt and accurate evaluation
8 and payment of medical or related claims. Information released under
9 this subsection shall be confidential and shall not be released or
10 available to persons who are not involved in handling or determining
11 medical claims payment; ~~((and))~~

12 (j) A department of social and health services worker, a child
13 placing agency worker, or a guardian ad litem who is responsible for
14 making or reviewing placement or case-planning decisions or
15 recommendations to the court regarding a child, who is less than
16 fourteen years of age, has a sexually transmitted disease, and is in
17 the custody of the department of social and health services or a
18 licensed child placing agency; this information may also be received by
19 a person responsible for providing residential care for such a child
20 when the department of social and health services or a licensed child
21 placing agency determines that it is necessary for the provision of
22 child care services; and

23 (k) A department of corrections superintendent or administrator, or
24 a jail administrator.

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))~~ otherwise required by ~~((that subsection))~~ law.

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

32 (a) The sexually transmitted disease status of a department of
33 corrections offender shall be made available by department of
34 corrections health care providers to a department of corrections
35 superintendent or administrator as necessary for disease prevention or
36 control and for protection of the safety and security of the staff,
37 offenders, and the public. The information may be submitted to
38 transporting officers and receiving facilities, including facilities
39 that are not under the department of correction's jurisdiction.

1 (b) The sexually transmitted disease status of a person detained in
2 a jail and the results of any tests conducted under RCW 70.24.340,
3 70.24.360, or 70.24.370 shall be made available by the local public
4 health officer to a jail administrator ((as necessary)). The
5 information made available to administrators under this subsection
6 (4)(b) shall be utilized only as provided in section 4 of this act for
7 disease prevention or control and for protection of the safety and
8 security of the staff, offenders, detainees, and the public. The
9 information may be submitted to transporting officers and receiving
10 facilities.

11 (c) Information regarding ((a department of corrections
12 offender's)) the sexually transmitted disease status of an offender or
13 detained person is confidential and may be disclosed by a correctional
14 superintendent or administrator or local jail administrator only as
15 necessary for disease prevention or control and for protection of the
16 safety and security of the staff, offenders, and the public.
17 Unauthorized disclosure of this information to any person may result in
18 disciplinary action, in addition to the penalties prescribed in RCW
19 70.24.080 or any other penalties as may be prescribed by law.

20 (d) Notwithstanding the limitations on disclosure contained in (a),
21 (b), and (c) of this subsection, whenever any member of jail staff or
22 department of corrections staff has been substantially exposed to the
23 bodily fluids of an offender or detained person, then the results of
24 any tests conducted under RCW 70.24.340, 70.24.360, or 70.24.370 shall
25 be immediately disclosed by the department of corrections health care
26 provider and the local public health officer or the officer's designee
27 to the correctional superintendent or administrator or local jail
28 administrator. The superintendent or administrator shall then
29 immediately disclose these results to the staff member who was
30 substantially exposed. Disclosure must be accompanied by appropriate
31 counseling for the staff member, including information regarding
32 follow-up testing.

33 (e) The receipt by an individual of information disclosed under
34 this subsection (4) shall be utilized only for disease prevention or
35 control and for protection of the safety and security of the staff,
36 offenders, detainees, and the public. Use of this information for any
37 other purpose, including harassment or discrimination, may result in
38 disciplinary action, in addition to the penalties prescribed in RCW
39 70.24.080 or any other penalties as may be prescribed by law.

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

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

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

24 NEW SECTION. Sec. 3. A new section is added to chapter 72.10 RCW
25 to read as follows:

26 (1) The department must develop and implement policies and
27 procedures for the uniform distribution of communicable disease
28 prevention protocols to all corrections staff who, in the course of
29 their regularly assigned job responsibilities, may come within close
30 physical proximity to offenders with communicable diseases.

31 (2) The protocols must identify the offender and special
32 precautions necessary to reduce the risk of transmission of the
33 communicable disease but must not identify the offender's particular
34 communicable disease.

35 (3) For the purposes of this section, "communicable disease" means
36 an illness caused by an infectious agent that can be transmitted from
37 one person, animal, or object to another person by direct or indirect

1 means including transmission via an intermediate host or vector, food,
2 water, or air.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.48 RCW
4 to read as follows:

5 (1) Local jail administrators must develop and implement policies
6 and procedures for the uniform distribution of communicable disease
7 prevention protocols to all jail staff who, in the course of their
8 regularly assigned job responsibilities, may come within close physical
9 proximity to offenders or detainees with communicable diseases.

10 (2) The protocols must identify the offender or detainee and
11 special precautions necessary to reduce the risk of transmission of the
12 communicable disease but must not identify the offender's or detainee's
13 particular communicable disease.

14 (3) For the purposes of this section, "communicable disease" means
15 an illness caused by an infectious agent that can be transmitted from
16 one person, animal, or object to another person by direct or indirect
17 means including transmission via an intermediate host or vector, food,
18 water, or air.

19 NEW SECTION. **Sec. 5.** The department of health and the department
20 of corrections must each adopt rules to implement this act. The
21 department of health and the department of corrections with the
22 cooperation of local jail administrators must also report to the
23 legislature by January 1, 1998, on the following: (1) Changes made in
24 rules and department of corrections and local jail policies and
25 procedures to implement this act; and (2) a summary of the number and
26 circumstances of mandatory test results that were disclosed to
27 department of corrections staff and jail staff under RCW 70.24.105.

28 **Sec. 6.** RCW 70.24.340 and 1988 c 206 s 703 are each amended to
29 read as follows:

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

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

34 (b) Convicted of prostitution or offenses relating to prostitution
35 under chapter 9A.88 RCW; (~~((or))~~)

1 (c) Convicted of drug offenses under chapter 69.50 RCW if the court
2 determines at the time of conviction that the related drug offense is
3 one associated with the use of hypodermic needles; or

4 (d) Who have subjected a law enforcement officer, fire fighter,
5 health care provider, health care facility staff person, department of
6 corrections staff person, jail staff person, or other category of
7 employee, as determined by the board, to substantial exposure to their
8 bodily fluids. Persons tested under this subsection (1)(d) shall also
9 be tested for hepatitis B.

10 (2) ~~((Such))~~ Testing of persons convicted under subsection (1)(a)
11 through (c) of this section shall be conducted as soon as possible
12 after sentencing and shall be so ordered by the sentencing judge.
13 Testing of persons causing a substantial exposure under subsection
14 (1)(d) of this section shall be conducted as soon as possible, but not
15 later than seventy-two hours after the exposure.

16 (3) ~~((This section applies))~~ Subsection (1)(a) through (c) of this
17 section applies only to offenses committed after March 23, 1988, and
18 subsection (1)(d) of this section applies only to exposures occurring
19 after the effective date of this act.

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

1 ~~the exposure was substantial and presents a possible risk as defined by~~
2 ~~the board of health by rule)).~~

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.28 RCW
4 to read as follows:

5 Local health departments shall conduct or cause to be conducted in
6 local correctional facilities an inspection, examination, and test for
7 the purposes of determining the presence of tuberculosis in the
8 infectious stage of all persons detained or incarcerated in a local
9 correctional facility for more than thirty days and are not in the
10 process of being transferred to the department of corrections. Initial
11 testing shall be conducted within ten days of reception into the
12 correctional facility, with follow-up testing as medically indicated.

13 **Sec. 8.** RCW 70.24.360 and 1988 c 206 s 706 are each amended to
14 read as follows:

15 Jail administrators, ~~((with the approval of the local public health~~
16 ~~officer,))~~ after consultation with and receiving written
17 recommendations from a licensed health care provider, may order pretest
18 counseling, HIV testing, and posttest counseling for persons detained
19 in the jail if the ~~((local public health officer))~~ jail administrator
20 determines that actual or threatened behavior presents a possible risk
21 to the staff, general public, or other persons. ~~((Approval of the~~
22 ~~local public health officer shall be based on RCW 70.24.024(3) and may~~
23 ~~be contested through RCW 70.24.024(4).))~~ The administrator shall
24 establish, pursuant to RCW 70.48.071, a procedure to document the
25 possible risk ~~((which))~~ that is the basis for the HIV testing.
26 "Possible risk," as used in this section, shall be defined by the jail
27 administrator after consultation with the board ~~((in rule))~~. Possible
28 risk, as used in the documentation of the behavior, or threat thereof,
29 shall be reviewed with the person ~~((to try to assure that the person~~
30 ~~understands the basis for testing))~~.

31 **Sec. 9.** RCW 70.24.024 and 1988 c 206 s 909 are each amended to
32 read as follows:

33 (1) Subject to the provisions of this chapter, the state and local
34 public health officers or their authorized representatives may examine
35 and counsel or cause to be examined and counseled persons reasonably

1 believed to be infected with or to have been exposed to a sexually
2 transmitted disease.

3 (2) Orders or restrictive measures directed to persons with a
4 sexually transmitted disease shall be used as the last resort when
5 other measures to protect the public health have failed, including
6 reasonable efforts, which shall be documented, to obtain the voluntary
7 cooperation of the person who may be subject to such an order. The
8 orders and measures shall be applied serially with the least intrusive
9 measures used first. The burden of proof shall be on the state or
10 local public health officer to show that specified grounds exist for
11 the issuance of the orders or restrictive measures and that the terms
12 and conditions imposed are no more restrictive than necessary to
13 protect the public health.

14 (3) When the state or local public health officer within his or her
15 respective jurisdiction knows or has reason to believe, because of
16 direct medical knowledge or reliable testimony of others in a position
17 to have direct knowledge of a person's behavior, that a person has a
18 sexually transmitted disease and is engaging in specified conduct, as
19 determined by the board by rule based upon generally accepted standards
20 of medical and public health science, that endangers the public health,
21 he or she shall conduct an investigation in accordance with procedures
22 prescribed by the board to evaluate the specific facts alleged, if any,
23 and the reliability and credibility of the person or persons providing
24 such information and, if satisfied that the allegations are true, he or
25 she may issue an order according to the following priority to:

26 (a) Order a person to submit to a medical examination or testing,
27 seek counseling, or obtain medical treatment for curable diseases, or
28 any combination of these, within a period of time determined by the
29 public health officer, not to exceed fourteen days.

30 (b) Order a person to immediately cease and desist from specified
31 conduct ((which)) that endangers the health of others by imposing such
32 restrictions upon the person as are necessary to prevent the specified
33 conduct that endangers the health of others only if the public health
34 officer has determined that clear and convincing evidence exists to
35 believe that such person has been ordered to report for counseling as
36 provided in (a) of this subsection and continues to demonstrate
37 behavior ((which)) that endangers the health of others. Any
38 restriction shall be in writing, setting forth the name of the person
39 to be restricted and the initial period of time, not to exceed three

1 months, during which the order shall remain effective, the terms of the
2 restrictions, and such other conditions as may be necessary to protect
3 the public health. Restrictions shall be imposed in the least-
4 restrictive manner necessary to protect the public health.

5 (4)(a) Upon the issuance of any order by the state or local public
6 health officer or an authorized representative pursuant to subsection
7 (3) of this section (~~(or RCW 70.24.340(4))~~), such public health officer
8 shall give written notice promptly, personally, and confidentially to
9 the person who is the subject of the order stating the grounds and
10 provisions of the order, including the factual bases therefor, the
11 evidence relied upon for proof of infection and dangerous behavior, and
12 the likelihood of repetition of such behaviors in the absence of such
13 an order, and notifying the person who is the subject of the order
14 that, if he or she contests the order, he or she may appear at a
15 judicial hearing on the enforceability of the order, to be held in
16 superior court. He or she may have an attorney appear on his or her
17 behalf in the hearing at public expense, if necessary. The hearing
18 shall be held within seventy-two hours of receipt of the notice, unless
19 the person subject to the order agrees to comply. If the person
20 contests the order, no invasive medical procedures shall be carried out
21 prior to a hearing being held pursuant to this subsection. If the
22 person does not contest the order within seventy-two hours of receiving
23 it, and the person does not comply with the order within the time
24 period specified for compliance with the order, the state or local
25 public health officer may request a warrant be issued by the superior
26 court to insure appearance at the hearing. The hearing shall be within
27 seventy-two hours of the expiration date of the time specified for
28 compliance with the original order. The burden of proof shall be on
29 the public health officer to show by clear and convincing evidence that
30 the specified grounds exist for the issuance of the order and for the
31 need for compliance and that the terms and conditions imposed therein
32 are no more restrictive than necessary to protect the public health.
33 Upon conclusion of the hearing, the court shall issue appropriate
34 orders affirming, modifying, or dismissing the order.

35 (b) If the superior court dismisses the order of the public health
36 officer, the fact that the order was issued shall be expunged from the
37 records of the department or local department of health.

38 (5) Any hearing conducted pursuant to this section shall be closed
39 and confidential unless a public hearing is requested by the person who

1 is the subject of the order, in which case the hearing will be
2 conducted in open court. Unless in open hearing, any transcripts or
3 records relating thereto shall also be confidential and may be sealed
4 by the order of the court.

5 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.28 RCW
6 to read as follows:

7 (1) The tuberculosis status of a department of corrections offender
8 who is in the infectious stage shall be made available by department of
9 corrections health care providers and local public health officers to
10 a department of corrections superintendent or administrator. The
11 information made available under this subsection (1) shall be utilized
12 by a superintendent or administrator only as provided in section 3 of
13 this act.

14 (2) The tuberculosis status of a person detained in a jail who is
15 in the infectious stage shall be made available by department of
16 corrections health care providers and local public health officers to
17 the jail administrator. The information made available under this
18 subsection (2) shall be utilized by the jail administrator only as
19 provided in section 4 of this act.

20 NEW SECTION. **Sec. 11.** A new section is added to chapter 72.10 RCW
21 to read as follows:

22 (1) The department shall conduct or cause to be conducted an
23 inspection, examination, and test for the purposes of determining the
24 presence of tuberculosis in the infectious stage of all offenders
25 sentenced to the department. Initial testing shall be conducted within
26 five days of reception, with follow-up testing as medically indicated.

27 (2) All offenders received by the department, those offenders who
28 are remanded from community custody or work training release, and all
29 offenders who return or are received at a department facility from the
30 community or a local jail after being out of the department's custody
31 for ninety days or more shall be tested for tuberculosis within five
32 days of reception or return to the department's custody, followed by a
33 second test with follow-up testing as medically indicated.

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