

2 SSB 5793 - S AMD - 261
3 By Senator Zarelli

4 RULED BEYOND SCOPE AND OBJECT 3/16/99

5 On page 5, after line 2, insert the following:

6 "Sec. 5. RCW 70.24.340 and 1997 c 345 s 3 are each amended to read
7 as follows:

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

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

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

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

17 (d) Who are offenders or arrested or detained persons and who have
18 subjected a law enforcement officer, fire fighter, health care
19 provider, health care facility staff person, department of corrections
20 staff person, jail staff person, or other category of employee, as
21 determined by the board, to substantial exposure to their bodily fluids
22 upon their consent or pursuant to subsection (5) of this section.
23 Persons tested under this subsection (1)(d) shall also be tested for
24 hepatitis B and hepatitis C.

25 (2) ~~((Such))~~ Testing of persons convicted under subsection (1)(a)
26 through (c) of this section shall be conducted as soon as possible
27 after sentencing and shall be so ordered by the sentencing judge.
28 Testing of persons causing a substantial exposure under subsection
29 (1)(d) of this section shall be conducted as soon as possible, but not
30 later than forty-eight hours, excluding Saturdays, Sundays, and
31 holidays, after the exposure.

32 (3) ~~((This section))~~ Subsection (1)(a) through (c) of this section
33 applies only to offenses committed after March 23, 1988, and subsection
34 (1)(d) of this section applies only to exposures occurring on or after
35 the effective date of this act.

1 (4)(a) A law enforcement officer, fire fighter, health care
2 provider, health care facility staff person, department of corrections'
3 staff person, jail staff person, or other categories of employment
4 determined by the board in rule to be at risk of substantial exposure
5 to HIV, who has experienced a substantial exposure to ((another
6 person's)) the bodily fluids of a person not covered under subsection
7 (1)(d) of this section in the course of his or her employment, may
8 request a state or local public health officer to order pretest
9 counseling, HIV testing, and posttest counseling for the person whose
10 bodily fluids he or she has been exposed to. If the state or local
11 public health officer refuses to order counseling and testing under
12 this subsection or subsection (1)(d) of this section, the person who
13 (~~made the request~~) experienced the substantial exposure may petition
14 the superior court for a hearing to determine whether an order shall be
15 issued. The hearing on the petition shall be held within seventy-two
16 hours of filing the petition, exclusive of Saturdays, Sundays, and
17 holidays. The standard of review to determine whether the public
18 health officer shall be required to issue the order is whether
19 substantial exposure occurred and whether that exposure presents a
20 possible risk of transmission of the HIV virus as defined by the board
21 by rule. Upon conclusion of the hearing, the court shall issue the
22 appropriate order.

23 (b) If the person who is subject to the state or local public
24 health officer's order to receive counseling and testing is not being
25 tested under subsection (1) of this section, the person shall be given
26 written notice of the order promptly, personally, and confidentially,
27 stating the grounds and provisions of the order, including the factual
28 basis therefor. If the person who is subject to the order is not being
29 tested under subsection (1) of this section and refuses to comply, the
30 state or local public health officer may petition the superior court
31 for a hearing. The hearing on the petition shall be held within
32 seventy-two hours of filing the petition, exclusive of Saturdays,
33 Sundays, and holidays. The standard of review for the order is whether
34 substantial exposure occurred and whether that exposure presents a
35 possible risk of transmission of the HIV virus as defined by the board
36 by rule. Upon conclusion of the hearing, the court shall issue the
37 appropriate order.

38 (c) 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 or if he or she is ordered to do so by a
3 court.

4 (d) The counseling and testing required under this subsection shall
5 be completed as soon as possible after the substantial exposure or
6 after an order is issued by a court, but shall begin not later than
7 seventy-two hours after the substantial exposure or an order is issued
8 by the court.

9 (5)(a) Any employee identified in subsection (1)(d) of this
10 section, who has experienced a substantial exposure to the bodily
11 fluids of an offender, arrested person, or detained person covered
12 under subsection (1)(d) of this section, may seek the consent of the
13 person to whose bodily fluids he or she was exposed for HIV and
14 hepatitis testing. If the person consents to be tested, he or she
15 shall consent to disclosure of the results of the test by the public
16 health official to the person exposed by the fluids and as otherwise
17 required by law.

18 If the person does not consent to testing or is released prior to
19 a request for consent, the officer or identified employee may petition
20 the court for an order that the local health department shall conduct
21 or cause to be conducted pretest counseling, testing for HIV, hepatitis
22 B, and hepatitis C, and posttest counseling for the person to whose
23 bodily fluids they were substantially exposed, within forty-eight hours
24 after exposure. The court shall enter a written order granting or
25 denying the petition. The court shall include in its order a statement
26 that if a test is conducted on the person for whom the order is sought,
27 a result that indicates no HIV antibodies are present should not be
28 construed as a determination that HIV is not present.

29 (b) Notwithstanding subsection (2) of this section and (a) of this
30 subsection, where the officer or other employee is unaware of the
31 substantial exposure, or is unable to seek consent or file a timely
32 petition with the court, the time shall be tolled until forty-eight
33 hours after the person should reasonably become aware of the exposure
34 or is reasonably able to seek consent and file a petition for testing.

35 (c) The forty-eight hour periods specified in this section shall be
36 computed by excluding Saturdays, Sundays, and holidays.

37 (6) Consent of the persons tested under this section is not
38 required.

1 **Sec. 6.** RCW 70.24.360 and 1988 c 206 s 706 are each amended to
2 read as follows:

3 Jail administrators, ~~((with the approval of))~~ after consultation
4 with and receiving written recommendations from the local public health
5 officer, may order pretest counseling, HIV testing, and posttest
6 counseling for persons detained in the jail if the ~~((local public~~
7 ~~health officer))~~ jail administrator determines that actual or
8 threatened behavior presents a possible risk to the staff, general
9 public, or other persons. ~~((Approval of the local public health~~
10 ~~officer shall be based on RCW 70.24.024(3) and may be contested through~~
11 ~~RCW 70.24.024(4).))~~ The jail administrator shall establish, pursuant
12 to RCW 70.48.071, a procedure to document the possible risk ~~((which))~~
13 that is the basis for the HIV testing. "Possible risk," as used in
14 this section, shall be defined by the jail administrator after
15 consultation with the board ~~((in rule))~~. Possible risk, as used in the
16 documentation of the behavior, or threat thereof, shall be reviewed
17 with the person ~~((to try to assure that the person understands the~~
18 ~~basis for testing))~~.

19 **Sec. 7.** RCW 70.24.024 and 1988 c 206 s 909 are each amended to
20 read as follows:

21 (1) Subject to the provisions of this chapter, the state and local
22 public health officers or their authorized representatives may examine
23 and counsel or cause to be examined and counseled persons reasonably
24 believed to be infected with or to have been exposed to a sexually
25 transmitted disease.

26 (2) Orders or restrictive measures directed to persons with a
27 sexually transmitted disease shall be used as the last resort when
28 other measures to protect the public health have failed, including
29 reasonable efforts, which shall be documented, to obtain the voluntary
30 cooperation of the person who may be subject to such an order. The
31 orders and measures shall be applied serially with the least intrusive
32 measures used first. The burden of proof shall be on the state or
33 local public health officer to show that specified grounds exist for
34 the issuance of the orders or restrictive measures and that the terms
35 and conditions imposed are no more restrictive than necessary to
36 protect the public health.

37 (3) When the state or local public health officer within his or her
38 respective jurisdiction knows or has reason to believe, because of

1 direct medical knowledge or reliable testimony of others in a position
2 to have direct knowledge of a person's behavior, that a person has a
3 sexually transmitted disease and is engaging in specified conduct, as
4 determined by the board by rule based upon generally accepted standards
5 of medical and public health science, that endangers the public health,
6 he or she shall conduct an investigation in accordance with procedures
7 prescribed by the board to evaluate the specific facts alleged, if any,
8 and the reliability and credibility of the person or persons providing
9 such information and, if satisfied that the allegations are true, he or
10 she may issue an order according to the following priority to:

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

15 (b) Order a person to immediately cease and desist from specified
16 conduct (~~(which)~~) that endangers the health of others by imposing such
17 restrictions upon the person as are necessary to prevent the specified
18 conduct that endangers the health of others only if the public health
19 officer has determined that clear and convincing evidence exists to
20 believe that such person has been ordered to report for counseling as
21 provided in (a) of this subsection and continues to demonstrate
22 behavior (~~(which)~~) that endangers the health of others. Any
23 restriction shall be in writing, setting forth the name of the person
24 to be restricted and the initial period of time, not to exceed three
25 months, during which the order shall remain effective, the terms of the
26 restrictions, and such other conditions as may be necessary to protect
27 the public health. Restrictions shall be imposed in the least-
28 restrictive manner necessary to protect the public health.

29 (4)(a) Upon the issuance of any order by the state or local public
30 health officer or an authorized representative pursuant to subsection
31 (3) of this section or RCW 70.24.340(4) to a person who is not being
32 tested under RCW 70.24.340(1), such public health officer shall give
33 written notice promptly, personally, and confidentially to the person
34 who is the subject of the order stating the grounds and provisions of
35 the order, including the factual bases therefor, the evidence relied
36 upon for proof of infection and dangerous behavior, and the likelihood
37 of repetition of such behaviors in the absence of such an order, and
38 notifying the person who is the subject of the order that, if he or she
39 contests the order, he or she may appear at a judicial hearing on the

1 enforceability of the order, to be held in superior court. He or she
2 may have an attorney appear on his or her behalf in the hearing at
3 public expense, if necessary. The hearing shall be held within
4 seventy-two hours of receipt of the notice, unless the person subject
5 to the order agrees to comply. If the person contests the order, no
6 invasive medical procedures shall be carried out prior to a hearing
7 being held pursuant to this subsection. If the person does not contest
8 the order within seventy-two hours of receiving it, and the person does
9 not comply with the order within the time period specified for
10 compliance with the order, the state or local public health officer may
11 request a warrant be issued by the superior court to insure appearance
12 at the hearing. The hearing shall be within seventy-two hours of the
13 expiration date of the time specified for compliance with the original
14 order. The burden of proof shall be on the public health officer to
15 show by clear and convincing evidence that the specified grounds exist
16 for the issuance of the order and for the need for compliance and that
17 the terms and conditions imposed therein are no more restrictive than
18 necessary to protect the public health. Upon conclusion of the
19 hearing, the court shall issue appropriate orders affirming, modifying,
20 or dismissing the order.

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

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

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33 On page 1, line 3 of the title, after "70.05.070," strike "and
34 70.05.120" and insert "70.05.120, 70.24.340, 70.24.360, and 70.24.024"

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