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**SUBSTITUTE SENATE BILL 5172**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** Senate Committee on Human Services & Corrections (originally sponsored by Senators Zarelli, Goings, Oke, Stevens and Rasmussen)

Read first time 02/17/1999.

1 AN ACT Relating to testing of offenders and arrested and detained  
2 persons for blood borne pathogens; and amending RCW 70.24.340,  
3 70.24.360, and 70.24.024.

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

5 **Sec. 1.** RCW 70.24.340 and 1997 c 345 s 3 are each amended to read  
6 as follows:

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

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

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

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

16 (d) Who are offenders or arrested or detained persons and who have  
17 subjected a law enforcement officer, fire fighter, health care  
18 provider, health care facility staff person, department of corrections  
19 staff person, jail staff person, or other category of employee, as

1 determined by the board, to substantial exposure to their bodily fluids  
2 upon their consent or pursuant to subsection (5) of this section.  
3 Persons tested under this subsection (1)(d) shall also be tested for  
4 hepatitis B and hepatitis C.

5 (2) ~~((Such))~~ Testing of persons convicted under subsection (1)(a)  
6 through (c) of this section shall be conducted as soon as possible  
7 after sentencing and shall be so ordered by the sentencing judge.  
8 Testing of persons causing a substantial exposure under subsection  
9 (1)(d) of this section shall be conducted as soon as possible, but not  
10 later than forty-eight hours, excluding Saturdays, Sundays, and  
11 holidays, after the exposure.

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

16 (4)(a) A law enforcement officer, fire fighter, health care  
17 provider, health care facility staff person, department of corrections'  
18 staff person, jail staff person, or other categories of employment  
19 determined by the board in rule to be at risk of substantial exposure  
20 to HIV, who has experienced a substantial exposure to ~~((another~~  
21 ~~person's))~~ the bodily fluids of a person not covered under subsection  
22 (1)(d) of this section in the course of his or her employment, may  
23 request a state or local public health officer to order pretest  
24 counseling, HIV testing, and posttest counseling for the person whose  
25 bodily fluids he or she has been exposed to. If the state or local  
26 public health officer refuses to order counseling and testing under  
27 this subsection or subsection (1)(d) of this section, the person who  
28 ~~((made the request))~~ experienced the substantial exposure may petition  
29 the superior court for a hearing to determine whether an order shall be  
30 issued. The hearing on the petition shall be held within seventy-two  
31 hours of filing the petition, exclusive of Saturdays, Sundays, and  
32 holidays. The standard of review to determine whether the public  
33 health officer shall be required to issue 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 (b) If the person who is subject to the state or local public  
39 health officer's order to receive counseling and testing is not being

1 tested under subsection (1) of this section, the person shall be given  
2 written notice of the order promptly, personally, and confidentially,  
3 stating the grounds and provisions of the order, including the factual  
4 basis therefor. If the person who is subject to the order is not being  
5 tested under subsection (1) of this section and refuses to comply, the  
6 state or local public health officer may petition the superior court  
7 for a hearing. The hearing on the petition shall be held within  
8 seventy-two hours of filing the petition, exclusive of Saturdays,  
9 Sundays, and holidays. The standard of review for the order is whether  
10 substantial exposure occurred and whether that exposure presents a  
11 possible risk of transmission of the HIV virus as defined by the board  
12 by rule. Upon conclusion of the hearing, the court shall issue the  
13 appropriate order.

14 (c) The state or local public health officer shall perform  
15 counseling and testing under this subsection if he or she finds that  
16 the exposure was substantial and presents a possible risk as defined by  
17 the board of health by rule or if he or she is ordered to do so by a  
18 court.

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

24 (5)(a) Any employee identified in subsection (1)(d) of this  
25 section, who has experienced a substantial exposure to the bodily  
26 fluids of an offender, arrested person, or detained person covered  
27 under subsection (1)(d) of this section, may seek the consent of the  
28 person to whose bodily fluids he or she was exposed for HIV and  
29 hepatitis testing. If the person consents to be tested, he or she  
30 shall consent to disclosure of the results of the test by the public  
31 health official to the person exposed by the fluids and as otherwise  
32 required by law.

33 If the person does not consent to testing or is released prior to  
34 a request for consent, the officer or identified employee may petition  
35 the court for an order that the local health department shall conduct  
36 or cause to be conducted pretest counseling, testing for HIV, hepatitis  
37 B, and hepatitis C, and posttest counseling for the person to whose  
38 bodily fluids they were substantially exposed, within forty-eight hours  
39 after exposure. The court shall enter a written order granting or

1 denying the petition. The court shall include in its order a statement  
2 that if a test is conducted on the person for whom the order is sought,  
3 a result that indicates no HIV antibodies are present should not be  
4 construed as a determination that HIV is not present.

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

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

13 (6) Consent of the persons tested under this section is not  
14 required.

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

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

33 **Sec. 3.** RCW 70.24.024 and 1988 c 206 s 909 are each amended to  
34 read as follows:

35 (1) Subject to the provisions of this chapter, the state and local  
36 public health officers or their authorized representatives may examine  
37 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) to a person who is not being  
8 tested under RCW 70.24.340(1), such public health officer shall give  
9 written notice promptly, personally, and confidentially to the person  
10 who is the subject of the order stating the grounds and provisions of  
11 the order, including the factual bases therefor, the evidence relied  
12 upon for proof of infection and dangerous behavior, and the likelihood  
13 of repetition of such behaviors in the absence of such an order, and  
14 notifying the person who is the subject of the order that, if he or she  
15 contests the order, he or she may appear at a judicial hearing on the  
16 enforceability of the order, to be held in superior court. He or she  
17 may have an attorney appear on his or her behalf in the hearing at  
18 public expense, if necessary. The hearing shall be held within  
19 seventy-two hours of receipt of the notice, unless the person subject  
20 to the order agrees to comply. If the person contests the order, no  
21 invasive medical procedures shall be carried out prior to a hearing  
22 being held pursuant to this subsection. If the person does not contest  
23 the order within seventy-two hours of receiving it, and the person does  
24 not comply with the order within the time period specified for  
25 compliance with the order, the state or local public health officer may  
26 request a warrant be issued by the superior court to insure appearance  
27 at the hearing. The hearing shall be within seventy-two hours of the  
28 expiration date of the time specified for compliance with the original  
29 order. The burden of proof shall be on the public health officer to  
30 show by clear and convincing evidence that the specified grounds exist  
31 for the issuance of the order and for the need for compliance and that  
32 the terms and conditions imposed therein are no more restrictive than  
33 necessary to protect the public health. Upon conclusion of the  
34 hearing, the court shall issue appropriate orders affirming, modifying,  
35 or dismissing the order.

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

1       (5) Any hearing conducted pursuant to this section shall be closed  
2 and confidential unless a public hearing is requested by the person who  
3 is the subject of the order, in which case the hearing will be  
4 conducted in open court. Unless in open hearing, any transcripts or  
5 records relating thereto shall also be confidential and may be sealed  
6 by the order of the court.

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