
HOUSE BILL 2207

State of Washington 60th Legislature 2007 Regular Session

By Representatives Wallace, Lovick and Williams

Read first time 02/13/2007. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to requesting preconviction HIV testing in sexual
2 assault cases; reenacting and amending RCW 70.24.105; and adding a new
3 section to chapter 70.24 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.24 RCW
6 to read as follows:

7 (1) When a person is placed under arrest for a sex offense under
8 chapter 9A.44 RCW by which force or threat of force the perpetrator
9 compels the victim to engage in sexual activity, the victim, or parent
10 or guardian of the victim, of the sexual assault may request the
11 defendant to undergo HIV testing prior to conviction not later than
12 forty-eight hours after the date on which the information is presented.
13 Local health departments authorized under this chapter shall conduct or
14 cause to be conducted HIV testing under this section.

15 (2) The results of testing under this section shall be disclosed to
16 the victim, or parent or guardian of the victim, and the defendant, as
17 soon as practicable.

18 (3) A defendant required to submit to testing under this section

1 shall also undergo follow-up tests for HIV as may be medically
2 appropriate, and the results shall be made available in accordance with
3 subsection (2) of this section as soon as practicable after each test.

4 **Sec. 2.** RCW 70.24.105 and 1997 c 345 s 2 and 1997 c 196 s 6 are
5 each reenacted and amended to read as follows:

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

10 (2) No person may disclose or be compelled to disclose the identity
11 of any person upon whom an HIV antibody test is performed, or the
12 results of such a test, nor may the result of a test for any other
13 sexually transmitted disease when it is positive be disclosed. This
14 protection against disclosure of test subject, diagnosis, or treatment
15 also applies to any information relating to diagnosis of or treatment
16 for HIV infection and for any other confirmed sexually transmitted
17 disease. The following persons, however, may receive such information:

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

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

28 (c) The state public health officer, a local public health officer,
29 or the centers for disease control of the United States public health
30 service in accordance with reporting requirements for a diagnosed case
31 of a sexually transmitted disease;

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

1 (e) Any state or local public health officer conducting an
2 investigation pursuant to RCW 70.24.024, provided that such record was
3 obtained by means of court ordered HIV testing pursuant to RCW
4 70.24.340 or 70.24.024;

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

21 ~~((Local law enforcement agencies to the extent provided in RCW
22 70.24.034;~~

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

29 ~~((i))~~ (h) A law enforcement officer, firefighter, health care
30 provider, health care facility staff person, department of correction's
31 staff person, jail staff person, or other persons as defined by the
32 board in rule pursuant to RCW 70.24.340(4), who has requested a test of
33 a person whose bodily fluids he or she has been substantially exposed
34 to, pursuant to RCW 70.24.340(4), if a state or local public health
35 officer performs the test;

36 ~~((j))~~ (i) Claims management personnel employed by or associated
37 with an insurer, health care service contractor, health maintenance
38 organization, self-funded health plan, state-administered health care

1 claims payer, or any other payer of health care claims where such
2 disclosure is to be used solely for the prompt and accurate evaluation
3 and payment of medical or related claims. Information released under
4 this subsection shall be confidential and shall not be released or
5 available to persons who are not involved in handling or determining
6 medical claims payment; and

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

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

22 (4) The release of sexually transmitted disease information
23 regarding an offender or detained person, except as provided in
24 subsection (2)(e) of this section, shall be governed as follows:

25 (a) The sexually transmitted disease status of a department of
26 corrections offender who has had a mandatory test conducted pursuant to
27 RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by
28 department of corrections health care providers and local public health
29 officers to the department of corrections health care administrator or
30 infection control coordinator of the facility in which the offender is
31 housed. The information made available to the health care
32 administrator or the infection control coordinator under this
33 subsection (4)(a) shall be used only for disease prevention or control
34 and for protection of the safety and security of the staff, offenders,
35 and the public. The information may be submitted to transporting
36 officers and receiving facilities, including facilities that are not
37 under the department of corrections' jurisdiction according to the
38 provisions of (d) and (e) of this subsection.

1 (b) The sexually transmitted disease status of a person detained in
2 a jail who has had a mandatory test conducted pursuant to RCW
3 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by the
4 local public health officer to a jail health care administrator or
5 infection control coordinator. The information made available to a
6 health care administrator under this subsection (4)(b) shall be used
7 only for disease prevention or control and for protection of the safety
8 and security of the staff, offenders, detainees, and the public. The
9 information may be submitted to transporting officers and receiving
10 facilities according to the provisions of (d) and (e) of this
11 subsection.

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

22 (d) Notwithstanding the limitations on disclosure contained in (a),
23 (b), and (c) of this subsection, whenever any member of a jail staff or
24 department of corrections staff has been substantially exposed to the
25 bodily fluids of an offender or detained person, then the results of
26 any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or
27 70.24.370, shall be immediately disclosed to the staff person in
28 accordance with the Washington Administrative Code rules governing
29 employees' occupational exposure to bloodborne pathogens. Disclosure
30 must be accompanied by appropriate counseling for the staff member,
31 including information regarding follow-up testing and treatment.
32 Disclosure shall also include notice that subsequent disclosure of the
33 information in violation of this chapter or use of the information to
34 harass or discriminate against the offender or detainee may result in
35 disciplinary action, in addition to the penalties prescribed in RCW
36 70.24.080, and imposition of other penalties prescribed by law.

37 (e) The staff member shall also be informed whether the offender or

1 detained person had any other communicable disease, as defined in RCW
2 72.09.251(3), when the staff person was substantially exposed to the
3 offender's or detainee's bodily fluids.

4 (f) The test results of voluntary and anonymous HIV testing or HIV-
5 related condition may not be disclosed to a staff person except as
6 provided in subsection (2)((+i+)) (h) of this section and RCW
7 70.24.340(4). A health care administrator or infection control
8 coordinator may provide the staff member with information about how to
9 obtain the offender's or detainee's test results under subsection
10 (2)((+i+)) (h) of this section and RCW 70.24.340(4).

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

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

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

--- END ---