

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1454

Chapter 232, Laws of 2011

62nd Legislature
2011 Regular Session

BLOODBORNE PATHOGENS--TESTING

EFFECTIVE DATE: 07/22/11

Passed by the House February 14, 2011
Yeas 93 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 8, 2011
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved May 3, 2011, 2:32 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1454** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 4, 2011

**Secretary of State
State of Washington**

HOUSE BILL 1454

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Representatives Van De Wege, Hinkle, Green, Jinkins, Cody, Takko, Hurst, Liiias, Hope, Stanford, and Overstreet

Read first time 01/21/11. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to testing for bloodborne pathogens; amending RCW
2 70.24.340; and reenacting and amending RCW 70.24.105.

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

4 **Sec. 1.** 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

1 for health care decisions in accordance with RCW 7.70.065, with the
2 exception of such a representative of a minor child over fourteen years
3 of age and otherwise competent;

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

10 (c) The state public health officer, a local public health officer,
11 or the centers for disease control of the United States public health
12 service in accordance with reporting requirements for a diagnosed case
13 of a sexually transmitted disease;

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

20 (e) Any state or local public health officer conducting an
21 investigation pursuant to RCW 70.24.024, provided that such record was
22 obtained by means of court ordered HIV testing pursuant to RCW
23 70.24.340 or 70.24.024;

24 (f) A person allowed access to the record by a court order granted
25 after application showing good cause therefor. In assessing good
26 cause, the court shall weigh the public interest and the need for
27 disclosure against the injury to the patient, to the physician-patient
28 relationship, and to the treatment services. Upon the granting of the
29 order, the court, in determining the extent to which any disclosure of
30 all or any part of the record of any such test is necessary, shall
31 impose appropriate safeguards against unauthorized disclosure. An
32 order authorizing disclosure shall: (i) Limit disclosure to those
33 parts of the patient's record deemed essential to fulfill the objective
34 for which the order was granted; (ii) limit disclosure to those persons
35 whose need for information is the basis for the order; and (iii)
36 include any other appropriate measures to keep disclosure to a minimum
37 for the protection of the patient, the physician-patient relationship,

1 and the treatment services, including but not limited to the written
2 statement set forth in subsection (5) of this section;

3 ~~(g) ((Local law enforcement agencies to the extent provided in RCW
4 70.24.034;~~

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

11 ~~((i))~~ (h) A law enforcement officer, firefighter, health care
12 provider, health care facility staff person, department of correction's
13 staff person, jail staff person, or other persons as defined by the
14 board in rule pursuant to RCW 70.24.340(4), who has requested a test of
15 a person whose bodily fluids he or she has been substantially exposed
16 to, pursuant to RCW 70.24.340(4), if a state or local public health
17 officer performs the test. If the requestor also requested that
18 testing for bloodborne pathogens be conducted pursuant to RCW 70.24.340
19 and the state health or local health officer performs the tests, the
20 requestor must also be informed of the results of those tests;

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

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

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

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

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

11 (a) The sexually transmitted disease status of a department of
12 corrections offender who has had a mandatory test conducted pursuant to
13 RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by
14 department of corrections health care providers and local public health
15 officers to the department of corrections health care administrator or
16 infection control coordinator of the facility in which the offender is
17 housed. The information made available to the health care
18 administrator or the infection control coordinator under this
19 subsection (4)(a) shall be used only for disease prevention or control
20 and for protection of the safety and security of the staff, offenders,
21 and the public. The information may be submitted to transporting
22 officers and receiving facilities, including facilities that are not
23 under the department of corrections' jurisdiction according to the
24 provisions of (d) and (e) of this subsection.

25 (b) The sexually transmitted disease status of a person detained in
26 a jail who has had a (~~mandatory~~) mandatory test conducted pursuant to
27 RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by
28 the local public health officer to a jail health care administrator or
29 infection control coordinator. The information made available to a
30 health care administrator under this subsection (4)(b) shall be used
31 only for disease prevention or control and for protection of the safety
32 and security of the staff, offenders, detainees, and the public. The
33 information may be submitted to transporting officers and receiving
34 facilities according to the provisions of (d) and (e) of this
35 subsection.

36 (c) Information regarding the sexually transmitted disease status
37 of an offender or detained person is confidential and may be disclosed
38 by a correctional health care administrator or infection control

1 coordinator or local jail health care administrator or infection
2 control coordinator only as necessary for disease prevention or control
3 and for protection of the safety and security of the staff, offenders,
4 and the public. Unauthorized disclosure of this information to any
5 person may result in disciplinary action, in addition to the penalties
6 prescribed in RCW 70.24.080 or any other penalties as may be prescribed
7 by law.

8 (d) Notwithstanding the limitations on disclosure contained in (a),
9 (b), and (c) of this subsection, whenever any member of a jail staff or
10 department of corrections staff has been substantially exposed to the
11 bodily fluids of an offender or detained person, then the results of
12 any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or
13 70.24.370, shall be immediately disclosed to the staff person in
14 accordance with the Washington Administrative Code rules governing
15 employees' occupational exposure to bloodborne pathogens. Disclosure
16 must be accompanied by appropriate counseling for the staff member,
17 including information regarding follow-up testing and treatment.
18 Disclosure shall also include notice that subsequent disclosure of the
19 information in violation of this chapter or use of the information to
20 harass or discriminate against the offender or detainee may result in
21 disciplinary action, in addition to the penalties prescribed in RCW
22 70.24.080, and imposition of other penalties prescribed by law.

23 (e) The staff member shall also be informed whether the offender or
24 detained person had any other communicable disease, as defined in RCW
25 72.09.251(3), when the staff person was substantially exposed to the
26 offender's or detainee's bodily fluids.

27 (f) The test results of voluntary and anonymous HIV testing or HIV-
28 related condition may not be disclosed to a staff person except as
29 provided in subsection (2)((+i+)) (h) of this section and RCW
30 70.24.340(4). A health care administrator or infection control
31 coordinator may provide the staff member with information about how to
32 obtain the offender's or detainee's test results under subsection
33 (2)((+i+)) (h) of this section and RCW 70.24.340(4).

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

1 prohibits you from making any further disclosure of it without the
2 specific written consent of the person to whom it pertains, or as
3 otherwise permitted by state law. A general authorization for the
4 release of medical or other information is NOT sufficient for this
5 purpose." An oral disclosure shall be accompanied or followed by such
6 a notice within ten days.

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

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

19 **Sec. 2.** RCW 70.24.340 and 1997 c 345 s 3 are each amended to read
20 as follows:

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

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

25 (b) Convicted of prostitution or offenses relating to prostitution
26 under chapter 9A.88 RCW; or

27 (c) Convicted of drug offenses under chapter 69.50 RCW if the court
28 determines at the time of conviction that the related drug offense is
29 one associated with the use of hypodermic needles.

30 (2) Such testing shall be conducted as soon as possible after
31 sentencing and shall be so ordered by the sentencing judge.

32 (3) This section applies only to offenses committed after March 23,
33 1988.

34 (4) A law enforcement officer, firefighter, health care provider,
35 health care facility staff person, department of corrections' staff
36 person, jail staff person, or other categories of employment determined
37 by the board in rule to be at risk of substantial exposure to HIV, who

1 has experienced a substantial exposure to another person's bodily
2 fluids in the course of his or her employment, may request a state or
3 local public health officer to order pretest counseling, HIV testing,
4 and posttest counseling for the person whose bodily fluids he or she
5 has been exposed to. A person eligible to request a state or local
6 health official to order HIV testing under this chapter and board rule
7 may also request a state or local health officer to order testing for
8 other bloodborne pathogens. If the state or local public health
9 officer refuses to order counseling and testing under this subsection,
10 the person who made the request may petition the superior court for a
11 hearing to determine whether an order shall be issued. The hearing on
12 the petition shall be held within seventy-two hours of filing the
13 petition, exclusive of Saturdays, Sundays, and holidays. The standard
14 of review to determine whether the public health officer shall be
15 required to issue the order is whether substantial exposure occurred
16 and whether that exposure presents a possible risk of transmission of
17 the HIV virus as defined by the board by rule. Upon conclusion of the
18 hearing, the court shall issue the appropriate order, which may require
19 additional testing for other bloodborne pathogens.

20 The person who is subject to the state or local public health
21 officer's order to receive counseling and testing shall be given
22 written notice of the order promptly, personally, and confidentially,
23 stating the grounds and provisions of the order, including the factual
24 basis therefor. If the person who is subject to the order refuses to
25 comply, the state or local public health officer may petition the
26 superior court for a hearing. The hearing on the petition shall be
27 held within seventy-two hours of filing the petition, exclusive of
28 Saturdays, Sundays, and holidays. The standard of review for the order
29 is whether substantial exposure occurred and whether that exposure
30 presents a possible risk of transmission of the HIV virus as defined by
31 the board by rule. Upon conclusion of the hearing, the court shall
32 issue the appropriate order.

33 The state or local public health officer shall perform counseling
34 and testing under this subsection if he or she finds that the exposure
35 was substantial and presents a possible risk as defined by the board of
36 health by rule or if he or she is ordered to do so by a court.

37 The counseling and testing required under this subsection shall be
38 completed as soon as possible after the substantial exposure or after

1 an order is issued by a court, but shall begin not later than seventy-
2 two hours after the substantial exposure or an order is issued by the
3 court.

Passed by the House February 14, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor May 3, 2011.

Filed in Office of Secretary of State May 4, 2011.