
HOUSE BILL 2588

State of Washington 58th Legislature 2004 Regular Session

By Representatives Pearson, O'Brien, Kristiansen, Grant, Buck, Mastin, Sump, Kessler, Benson, Delvin, Boldt, McDonald, Crouse, Condotta and Ahern

Read first time 01/16/2004. Referred to Committee on Health Care.

1 AN ACT Relating to testing for bloodborne pathogens; amending RCW
2 70.24.340, 70.24.360, and 70.24.370; reenacting and amending RCW
3 70.24.105; and declaring an emergency.

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

5 **Sec. 1.** RCW 70.24.105 and 1997 c 345 s 2 and 1997 c 196 s 6 are
6 each reenacted and amended to read as follows:

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

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

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

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

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

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

21 (e) Any state or local public health officer conducting an
22 investigation pursuant to RCW 70.24.024, provided that such record was
23 obtained by means of court ordered HIV testing pursuant to RCW
24 70.24.340 or 70.24.024;

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

1 for the protection of the patient, the physician-patient relationship,
2 and the treatment services, including but not limited to the written
3 statement set forth in subsection ~~((+5+))~~ (6) of this section;

4 ~~(g) ((Local law enforcement agencies to the extent provided in RCW
5 70.24.034;~~

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

12 ~~((+i+))~~ (h) A law enforcement officer, fire fighter, health care
13 provider, health care facility staff person, department of correction's
14 staff person, jail staff person, or other persons as defined by the
15 board in rule pursuant to RCW 70.24.340(4), who has requested a test of
16 a person whose bodily fluids he or she has been substantially exposed
17 to, pursuant to RCW 70.24.340(4), if a state or local public health
18 officer performs the test;

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

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

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

5 (4) The release of (~~(sexually transmitted disease)~~) information
6 related to a sexually transmitted disease, hepatitis B, hepatitis C, or
7 other bloodborne pathogen as defined by the board by rule regarding an
8 offender or detained person, except as provided in subsection (2)(e) of
9 this section, shall be governed as follows:

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

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

1 (c) Information regarding the (~~sexually transmitted disease status~~
2 ~~of~~) results of an HIV test or testing for hepatitis B, hepatitis C, or
3 other bloodborne pathogen as defined by the board by rule pertaining to
4 an offender or detained person is confidential and may be disclosed by
5 a correctional health care administrator or infection control
6 coordinator or local jail health care administrator or infection
7 control coordinator only as necessary for disease prevention or control
8 and for protection of the safety and security of the staff, offenders,
9 and the public. Unauthorized disclosure of this information to any
10 person may result in disciplinary action, in addition to the penalties
11 prescribed in RCW 70.24.080 or any other penalties as may be prescribed
12 by law.

13 (d) Notwithstanding the limitations on disclosure contained in (a),
14 (b), and (c) of this subsection, whenever any member of a jail staff or
15 department of corrections staff has been substantially exposed to the
16 bodily fluids of an offender or detained person, then the results of
17 any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or
18 70.24.370, shall be immediately disclosed to the staff person in
19 accordance with the Washington Administrative Code rules governing
20 employees' occupational exposure to bloodborne pathogens. Disclosure
21 must be accompanied by appropriate counseling for the staff member,
22 including information regarding follow-up testing and treatment.
23 Disclosure shall also include notice that subsequent disclosure of the
24 information in violation of this chapter or use of the information to
25 harass or discriminate against the offender or detainee may result in
26 disciplinary action, in addition to the penalties prescribed in RCW
27 70.24.080, and imposition of other penalties prescribed by law.

28 (e) The staff member shall also be informed whether the offender or
29 detained person had any other communicable disease, as defined in RCW
30 72.09.251(3), when the staff person was substantially exposed to the
31 offender's or detainee's bodily fluids.

32 (f) The test results of voluntary and anonymous HIV testing or HIV-
33 related condition may not be disclosed to a staff person except as
34 provided in subsection (2)(~~(i)~~) (h) of this section and RCW
35 70.24.340(4). A health care administrator or infection control
36 coordinator may provide the staff member with information about how to
37 obtain the offender's or detainee's test results under subsection
38 (2)(~~(i)~~) (h) of this section and RCW 70.24.340(4).

1 (5) The results of testing for hepatitis B, hepatitis C, or other
2 bloodborne pathogen pursuant to RCW 70.24.340 as requested by a law
3 enforcement officer, fire fighter, health care provider, health care
4 facility staff person, or other persons as defined by the board in rule
5 pursuant to RCW 70.24.340, and pertaining to a person whose bodily
6 fluids he or she has been substantially exposed to, may be released to
7 an exposed individual.

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

19 (~~(6)~~) (7) The requirements of this section shall not apply to the
20 customary methods utilized for the exchange of medical information
21 among health care providers in order to provide health care services to
22 the patient, nor shall they apply within health care facilities where
23 there is a need for access to confidential medical information to
24 fulfill professional duties.

25 (~~(7)~~) (8) Upon request of the victim, disclosure of test results
26 under this section to victims of sexual offenses under chapter 9A.44
27 RCW shall be made if the result is negative or positive. The county
28 prosecuting attorney shall notify the victim of the right to such
29 disclosure. Such disclosure shall be accompanied by appropriate
30 counseling, including information regarding follow-up testing.

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

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

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

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

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

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

8 (3) This section applies only to offenses committed after March 23,
9 1988.

10 (4) A law enforcement officer, fire fighter, health care provider,
11 health care facility staff person, department of corrections' staff
12 person, jail staff person, or other categories of employment determined
13 by the board in rule to be at risk of substantial exposure to HIV,
14 hepatitis B, hepatitis C, or other bloodborne pathogen as defined by
15 the board by rule, who has experienced a substantial exposure to
16 another person's bodily fluids in the course of his or her employment,
17 may request a state or local public health officer to order pretest
18 counseling, HIV testing, testing for hepatitis B, hepatitis C, or other
19 bloodborne pathogen as defined by the board by rule, and posttest
20 counseling for the person whose bodily fluids he or she has been
21 exposed to. If the state or local public health officer refuses to
22 order counseling and testing under this subsection, the person who made
23 the request may petition the superior court for a hearing to determine
24 whether an order shall be issued. The hearing on the petition shall be
25 held within seventy-two hours of filing the petition, exclusive of
26 Saturdays, Sundays, and holidays. The standard of review to determine
27 whether the public health officer shall be required to issue the order
28 is whether substantial exposure occurred and whether that exposure
29 presents a possible risk of transmission of the HIV virus, hepatitis B,
30 hepatitis C, or other bloodborne pathogen as defined by the board by
31 rule. Upon conclusion of the hearing, the court shall issue the
32 appropriate order.

33 The person who is subject to the state or local public health
34 officer's order to receive counseling and testing shall be given
35 written notice of the order promptly, personally, and confidentially,
36 stating the grounds and provisions of the order, including the factual
37 basis therefor. If the person who is subject to the order refuses to
38 comply, the state or local public health officer may petition the

1 superior court for a hearing. The hearing on the petition shall be
2 held within seventy-two hours of filing the petition, exclusive of
3 Saturdays, Sundays, and holidays. The standard of review for the order
4 is whether substantial exposure occurred and whether that exposure
5 presents a possible risk of transmission of the HIV virus, hepatitis B,
6 hepatitis C, or other bloodborne pathogen as defined by the board by
7 rule. Upon conclusion of the hearing, the court shall issue the
8 appropriate order.

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

13 The counseling and testing required under this subsection shall be
14 completed as soon as possible after the substantial exposure or after
15 an order is issued by a court, but shall begin not later than seventy-
16 two hours after the substantial exposure or an order is issued by the
17 court.

18 **Sec. 3.** RCW 70.24.360 and 1988 c 206 s 706 are each amended to
19 read as follows:

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

1 **Sec. 4.** RCW 70.24.370 and 1988 c 206 s 707 are each amended to
2 read as follows:

3 (1) Department of corrections facility administrators may order
4 pretest counseling, HIV testing, testing for hepatitis B, hepatitis C,
5 or other bloodborne pathogen as defined by the board by rule, and
6 posttest counseling for inmates if the secretary of corrections or the
7 secretary's designee determines that actual or threatened behavior
8 presents a possible risk to the staff, general public, or other
9 inmates. The department of corrections shall establish a procedure to
10 document the possible risk which is the basis for the HIV testing or
11 testing for hepatitis B, hepatitis C, or other bloodborne pathogen as
12 defined by the board by rule. "Possible risk," as used in this
13 section, shall be defined by the department of corrections after
14 consultation with the board. Possible risk, as used in the
15 documentation of the behavior, or threat thereof, shall be reviewed
16 with the inmate.

17 (2) Department of corrections administrators and superintendents
18 who are authorized to make decisions about testing and dissemination of
19 test information shall, at least annually, participate in training
20 seminars on public health considerations conducted by the assistant
21 secretary for public health or her or his designee.

22 (3) Administrative hearing requirements set forth in chapter 34.05
23 RCW do not apply to the procedure developed by the department of
24 corrections pursuant to this section. This section shall not be
25 construed as requiring any hearing process except as may be required
26 under existing federal constitutional law.

27 (4) RCW 70.24.340 does not apply to the department of corrections
28 or to inmates in its custody or subject to its jurisdiction.

29 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of the
31 state government and its existing public institutions, and takes effect
32 immediately.

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