

Washington

Analysis¹

A person may face felony prosecution if they intentionally transmit HIV to a child or a vulnerable adult.

Following major amendments to its HIV criminal laws, Washington’s criminal assault statute applies only to persons who transmit HIV to a child or a vulnerable adult² with the intent to cause harm.³ This offense is a Class A felony, with a maximum punishment of life imprisonment and a fine of \$50,000.⁴ Vulnerable adults include those 60 years old or older who have “the functional, mental or physical inability” to care for themselves or adults of any age who: have been found incapacitated under Washington law, are living with a developmental disability, are currently admitted to a long-term care facility, or are receiving home health care.⁵ A “child” is any minor under the age of 18.

This assault offense, while HIV-specific, largely overlaps with conduct that would also be criminal if committed by an individual not living with HIV. Insofar as the offense targets sexual transmission, the conduct would often constitute an existing sex offense under Washington law, as it would entail sex with a partner unable to consent.⁶ The assault offense is not specifically limited to sexual transmission, however; under its terms, it could be applied to transmission by any means.

¹ Washington’s HIV criminalization statutes were revised effective June 11, 2020 following the passage of 2020’s Engrossed Substitute House Bill (ESHB) 1551. No related changes to rules in the Washington Administrative Code (WAC) have occurred as of this writing (May 2021). The Washington Board of Health has announced that it is considering amending Chapter 246-100 of the WAC for consistency with ESHB 1551. This document, including its excerpts of Chapter 246-100, will be updated in the future with any changes that are implemented. See WASHINGTON STATE BOARD OF HEALTH, COMMUNICABLE AND CERTAIN OTHER DISEASE - STD MODERNIZATION, <https://sboh.wa.gov/Rulemaking/CurrentRulesandActivity/CommunicableandCertainOtherDiseasesSTDModernization> (last visited Oct. 9, 2020); 20-15-112 Wash. Reg. (July 16, 2020).

² WASH. REV. CODE § 9A.36.011(1)(b) (2020).

³ WASH. REV. CODE § 9A.36.011(1) (2020).

⁴ WASH. REV. CODE § 9A.20.021(1)(a) (2016).

⁵ WASH. REV. CODE § 9A.44.010 (16) (2007) (definition of “frail elder or vulnerable adult”). See also WASH. REV. CODE § 74.34.020 (22)(a–g) (2020) (definition of “vulnerable adult” for purposes of protection orders).

⁶ See, e.g., WASH. REV. CODE § 9A.44.050 (1)(b–c) (2007) (defining rape in the second degree to include sexual intercourse with someone “incapable of consent by reason of being physically helpless or mentally incapacitated” or someone with a developmental disability under certain circumstances); WASH. REV. CODE § 9A.44.073(1) (1988) (defining rape of a child in the first degree as sexual intercourse with a child under 12); WASH. REV. CODE § 9A.44.076(1) (1988) (defining rape of a child in the second degree as sexual intercourse with a child aged 12 or 13); WASH. REV. CODE § 9A.44.079(1) (1988) (defining rape of a child in the third degree as sexual intercourse with a child aged 14 or 15); WASH. REV. CODE § 9A.44.093(1) (2009) (defining sexual misconduct with a minor in the first degree as sexual intercourse with a child aged 16 or 17 under certain circumstances).

Prior to 2020 reforms, to “administer” or “expose” any person to poison, HIV, or “any other destructive or noxious substance” amounted to first-degree assault.⁷ After the reforms, this provision of the assault statute no longer includes HIV,⁸ while the prohibition on transmitting HIV to a child or vulnerable adult was added in a new subsection.⁹ The new offense is a significantly narrower one, as the prior offense did not require actual transmission, and applied to exposing any person regardless of intent.¹⁰ Prosecutors must now prove “intent to inflict great bodily harm,”¹¹ in addition to actual transmission.¹² In past Washington state cases, courts inferred intent to harm when accused persons knew their status, failed to disclose it, and failed to take adequate precautions to prevent exposure.¹³ It is not known whether the same interpretation will apply to the new offense’s intent requirement, as the authors are not aware of any prosecutions for transmitting HIV to a child or vulnerable adult.

There are no statutory defenses to the HIV-specific assault provision for those who do take precautions to prevent transmission or disclose their status. The use of a condom should logically negate intent to inflict serious bodily harm, but case law regarding the prior offense was inconclusive on this question.¹⁴ The issue is less likely to arise under the new law, since the use of a condom would make the now-required transmission unlikely. Regarding disclosure, it is doubtful that courts would consider disclosure of status a defense when the alleged victim is a minor or a vulnerable adult. If a person cannot consent to sex, they likely cannot consent to assuming risk following disclosure. Under the prior, broader criminal statute, Washington courts left open the possibility that knowing consent, shown via disclosure, could be a defense.¹⁵

If a person is convicted of intentionally transmitting HIV to a child or vulnerable adult via sexual exposure, they also could be required to register as a sex offender under a law that classifies first-degree assault as a sex offense where there is “a finding of sexual motivation.”¹⁶

A person may face misdemeanor prosecution if they transmit HIV to any person via sex.

When Washington reformed its HIV-related criminal laws in 2020, the state moved its general HIV-specific exposure law from the criminal code to the public health code. The new public health provision penalizes only intentional sexual transmission. Under this provision, it is a misdemeanor for a person living with HIV to have sexual intercourse if: they are aware of their status, they have been counseled by a health care provider or public health professional on the risk of transmitting HIV to others, a partner does not know the person is living with HIV, and the person intends to transmit HIV to the

⁷ WASH. REV. CODE § 9A.36.011(1)(b) (repealed 2020).

⁸ WASH. REV. CODE § 9A.36.011(1)(c) (2020).

⁹ WASH. REV. CODE § 9A.36.011(1)(b) (2020).

¹⁰ WASH. REV. CODE § 9A.36.011(1)(b) (repealed 2020).

¹¹ WASH. REV. CODE § 9A.36.011(1) (2020).

¹² WASH. REV. CODE § 9A.36.011(1)(b) (2020).

¹³ See *State v. Stark*, 832 P.2d 109, 114–15 (Wash. Ct. App. 1992) (intent to harm inferred even on counts involving sexual intercourse with “coitus interruptus”); *State v. Whitfield*, 134 P.3d 1203, 1213–14 (Wash. Ct. App. 2006) (court also found defendant misrepresented status to partners and was aware of routes of transmission).

¹⁴ See *Stark*, 832 P.2d at 115; *Whitfield*, 134 P.3d at 1214; *State v. Ferguson*, 1999 Wash App. LEXIS 1905, *20–21 (Wash Ct. App. 1999) (unprotected sex acts in all three cases affirming convictions).

¹⁵ *Ferguson*, 1999 Wash App. LEXIS 1905, at *20–21 (guilt determined by *failure* to disclose all relevant facts).

¹⁶ WASH. REV. CODE § 9.94A.507(1)(a)(ii) (2016).

partner.¹⁷ Importantly, it is an affirmative defense if transmission did not occur, or if the person took or attempted to take measures to prevent transmission, such as by using a condom.¹⁸

Generally, this offense is a simple misdemeanor¹⁹ with a maximum penalty of 90 days in jail and/or a \$1000 fine.²⁰ It is a gross misdemeanor to intentionally transmit HIV if a person knowingly misrepresents their status to a partner.²¹ If the prosecution shows misrepresentation, the offense is punishable by up to 364 days in jail and/or a \$5000 fine.²² The same defenses—that transmission did not occur or that practical means to prevent transmission were utilized—are available to a person charged with the gross misdemeanor offense.

Previously, a person convicted of first-degree assault for exposing any person to HIV could be subject to sex offender registration.²³ This is not a requirement for someone convicted of a simple or gross misdemeanor for transmission of HIV under the public health code.²⁴

Upon conviction of multiple offenses, sentences for each offense can be imposed consecutively, resulting in lengthy incarceration.

In Washington, Class A felonies such as first-degree assault, which includes intentionally transmitting HIV to a child or vulnerable adult, are punished with a maximum penalty of life in prison and a \$50,000 fine.²⁵ Prison sentences for “serious violent offenses,” which include first-degree assault, must run consecutively, meaning that sentences for every offense must be served one after the other, rather than at the same time (or “concurrently”).²⁶

In *Whitfield*, a case prosecuted under Washington’s former HIV-specific assault law, the trial court interpreted multiple incidents of sexual activity with one partner as a single offense, but activity with each of 17 partners resulted in convictions for 17 Class A felony counts and 17 consecutive sentences, totaling 178 years.²⁷ The Court of Appeals rejected the defendant’s argument that this amounted to cruel and unusual punishment.²⁸ This same requirement for consecutive sentencing now applies to those convicted of first-degree assault for intentional transmission of HIV to a child or vulnerable adult.

HIV status may be a factor in sentencing for non-HIV-specific offenses.

In *Matter of Farmer*, the Washington Supreme Court upheld a 90-month sentence for a person convicted of sexual exploitation of a minor and patronizing a juvenile prostitute.²⁹ This lengthy sentence

¹⁷ WASH. REV. CODE § 70.24.027(1) (2020).

¹⁸ WASH. REV. CODE § 70.24.027(2) (2020).

¹⁹ WASH. REV. CODE § 70.24.027(3)(a) (2020).

²⁰ WASH. REV. CODE § 9A.20.021(3) (2016).

²¹ WASH. REV. CODE § 70.24.027(3)(b) (2020).

²² WASH. REV. CODE § 9A.20.021(2) (2016).

²³ WASH. REV. CODE § 9.94A.507(1)(a)(ii) (2016).

²⁴ WASH. REV. CODE § 70.24.027(3)(c) (2020).

²⁵ WASH. REV. CODE § 9A.20.021(1)(a) (2016).

²⁶ WASH. REV. CODE §§ 9.94A.589(1)(b)(2016).

²⁷ *Whitfield*, 134 P.3d at 1209.

²⁸ *Id.* at 1216–17.

²⁹ 835 P.2d 219, 220–21 (Wash. 1992) (per curiam).

was due to the trial court's findings that the defendant knew or believed he had HIV at the time of the crime in question, that he knew or should have known he might have transmitted the virus to the two minors concerned, and that this constituted "deliberate, cruel, and malicious conduct" that justified an exceptional sentence.³⁰ Washington's 2020 reforms do not prevent this outcome, which was based on determinations left to the discretion of the sentencing judge (rather than a specific basis for an enhancement provided by statutory law).

Persons with an STI, including HIV, can be subject to mandatory examination, testing, counseling or medical treatment.

Public health officials may investigate those they reasonably believe (1) have an STI and (2) are engaging in behavior that endangers the public health.³¹ If an investigation determines that a person's behavior is indeed endangering public health, officials must document efforts to remedy the situation, including efforts to obtain the person's voluntary cooperation. If these efforts "fail to protect the public health," officials may order the person with an STI to submit to a medical examination, testing, or treatment.³² Alternatively, officials may issue an order requiring the person to cease and desist specific conduct that "endangers the public health."³³

Conduct that "endangers public health" is defined in Washington's administrative code. It includes anal, oral, or vaginal intercourse involving a person with any STI, including HIV or hepatitis B.³⁴ It also includes the sharing of injection equipment or the donation or sale of blood, blood products, body tissues, or semen by a person living with HIV or hepatitis B.³⁵ Finally, any conduct that causes the blood, semen, or vaginal fluids of a person with an STI to come into contact with another person's mucous membranes, eye, or open skin can be conduct that "endangers public health."³⁶

A written order to cease and desist may not exceed three months.³⁷ Any order issued, whether for examination or to cease and desist engaging in particular conduct, must state the reasons for the order and what the person is ordered to refrain from doing.³⁸ A person who chooses to contest an order is entitled to file an appeal and have a judicial hearing on the order's enforceability in a superior court, which must be held within 72 hours of the person receiving notice of the order.³⁹ The person has a right to appear at the hearing or to have an attorney appear on their behalf, at public expense if necessary.⁴⁰ At the hearing, public health officials must prove by clear and convincing evidence that the required

³⁰ *Id.* at 220.

³¹ WASH. REV. CODE § 70.24.024(2)(a)(i) (2020).

³² WASH. REV. CODE § 70.24.024(4)(a)(i) (2020).

³³ WASH. REV. CODE § 70.24.024(4)(a)(ii) (2020).

³⁴ WASH. ADMIN. CODE § 246-100-203(1)(b)(i) (2016).

³⁵ WASH. ADMIN. CODE § 246-100-203(1)(b)(ii) (2016).

³⁶ WASH. ADMIN. CODE § 246-100-203(1)(b)(iii) (2016).

³⁷ WASH. ADMIN. CODE § 246-100-203(1)(f) (2016).

³⁸ WASH. REV. CODE § 70.24.024(5)(a) (2020).

³⁹ *Id.*

⁴⁰ WASH. REV. CODE § 70.24.024(5)(c) (2020).

grounds for the order exist and that the terms imposed are the least restrictive necessary to protect public health.⁴¹

A person who violates a lawful order issued by a public health official may be charged with a gross misdemeanor and punished with confinement until they comply with the order or the order is terminated, but for no longer than 364 days.⁴² A court may alternatively impose probation, with the condition that the person complies with the order, for a maximum period determined by the length of the order.⁴³ The court is required to revoke probation and reinstate confinement if the person violates the terms of the order during probation.⁴⁴

In September 2014, public health officials sought a court order requiring a PLHIV to submit to treatment and counseling sessions.⁴⁵ The man had already been served with two cease and desist orders and had not complied.⁴⁶ King County public health officials had reportedly last sought such a court order against a PLHIV in 1993.⁴⁷

PLHIV may be subject to detention.

A public health official may bring an action in superior court to detain an individual if the official: has exhausted the measures described above, such as through a cease and desist order; enlisted court enforcement of orders, if appropriate;⁴⁸ and still “knows or has reason to believe, because of medical information,” that a person has an STI and “continues to engage in behaviors that present an imminent danger to the public health.”⁴⁹ The public health official must request the prosecuting attorney file the action in the superior court.⁵⁰

Behaviors that present an imminent danger to public health are defined as the following, when performed by a person with a laboratory-confirmed HIV infection who has received HIV post-test counseling and who did not inform the persons with whom the activities occurred of their HIV status: 1) anal or vaginal intercourse without a latex condom; 2) shared use of blood-contaminated injection equipment; or 3) donating or selling HIV-infected blood, blood products, or semen.⁵¹

A person subject to a detention order may be taken into custody for up to 72 hours.⁵² A detention order must be in writing and state why the detention is lawful and the terms of the order, including the evidence relied upon to establish proof of infection and dangerous behavior.⁵³ If the person refuses to

⁴¹ *Id.*

⁴² WASH. REV. CODE § 70.24.025 (2020).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Levi Pulkkinen, *Seattle-area HIV-positive man who won't stop infecting others could face jail*, SEATTLE PI, Sept. 9, 2014, available at <http://www.seattlepi.com/default/article/Seattle-area-HIV-positive-man-who-won-t-stop-5745044.php>. See also Stark, 832 P.2d at 110 (cease and desist order issued before criminal prosecution).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ WASH. ADMIN. CODE §§ 246-100-203 (2)(b) (2016).

⁴⁹ WASH. REV. CODE § 70.24.034(1) (2016).

⁵⁰ *Id.*

⁵¹ WASH. ADMIN. CODE § 246-100-203(2)(a) (2016).

⁵² WASH. REV. CODE § 70.24.034(2) (2016).

⁵³ *Id.*

comply or contests the order, they are entitled to a closed and confidential hearing within 48 hours of receiving the order.⁵⁴ They have a right to appear at the hearing or have an attorney appear on their behalf, at public expense if necessary.⁵⁵ If the order includes detention for a period of 14 days or more, the person is entitled to a trial by jury upon request.⁵⁶

Public health officials must prove by clear and convincing evidence that the grounds for the issuance of the order exist.⁵⁷ Any order for detention issued by the superior court must impose terms and conditions no more restrictive than necessary to protect the public health.⁵⁸ A person who violates a lawful order issued by a public health official may be charged with a gross misdemeanor⁵⁹ and punished with up to 364 days in jail and/or a \$5000 fine.⁶⁰

Important note: *While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, it should not be used as a substitute for legal advice.*

⁵⁴ WASH. REV. CODE §§ 70.24.034 (2)–(3), (5) (2016).

⁵⁵ WASH. REV. CODE § 70.24.034(3) (2016).

⁵⁶ *Id.*

⁵⁷ WASH. REV. CODE § 70.24.034(4) (2016).

⁵⁸ WASH. REV. CODE § 70.24.034(6) (2016).

⁵⁹ WASH. REV. CODE § 70.24.080 (2020).

⁶⁰ WASH. REV. CODE § 9A.20.021 (2016).

Washington Revised Code

*Note: Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

TITLE 9A, WASHINGTON CRIMINAL CODE

WASH. REV. CODE § 9A.36.011 (2016) **

Assault in the first degree

(1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm:

- (a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death;
 - (b) Transmits HIV to a child or vulnerable adult; or
 - (c) Administers, exposes, or transmits to or causes to be taken by another, poison or any other destructive or noxious substance;
- or
- (d) Assaults another and inflicts great bodily harm.

(2) Assault in the first degree is a class A felony.

WASH. REV. CODE § 9A.20.021 (2016) **

Maximum sentences for crimes committed July 1, 1984 and after

(1) Felony. Unless a different maximum sentence for a classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

- (a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine.

(2) Gross misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

WASH. REV. CODE § 9A.44.010 (2007)

Definitions

(16) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" also includes a person found incapacitated under **chapter [11.88](#) RCW, a person over eighteen years of age who has a developmental disability under chapter [71A.10](#) RCW, a person admitted to a long-term care facility that is licensed or required to be licensed under chapter [18.20](#), 18.51, 72.36, or [70.128](#) RCW, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed under chapter [70.127](#) RCW.

TITLE 9, CRIMES AND PUNISHMENTS

WASH. REV. CODE § 9.94A.507 (2016)

Sentencing of sex offenders

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a); or

(b) Has a prior conviction for an offense listed in *RCW 9.94A.030(31)(b), and is convicted of any sex offense other than failure to register.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3)

(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term.

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(6)

(a) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.95.420 through 9.95.435.

(b) An offender released by the board under RCW 9.95.420 is subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

WASH. REV. CODE § 9.94A.550 (2016) **

Fines

Unless otherwise provided by a statute of this state, on all sentences under this chapter the court may impose fines according to the following ranges: Class A felonies \$0-50,000

WASH. REV. CODE § 9.94A.589 (2016) **

Consecutive or Concurrent Sentences

(1)

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW [9.94A.515](#) shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under this subsection (1)(b) shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection. Even if the court orders the confinement terms to run consecutively to each other, the terms of community custody shall run concurrently to each other, unless the court expressly orders the community custody terms to run consecutively to each other.

TITLE 70, PUBLIC HEALTH AND SAFETY

WASH. REV. CODE § 70.24.027 (2020) **

Intentional Transmission of HIV—Penalties

(1) It is unlawful for a person who knows that he or she has HIV to have sexual intercourse if:

- (a) The person has been counseled by a health care provider or public health professional regarding the risk of transmitting HIV to others;
- (b) The partner or partners exposed to HIV through sexual intercourse did not know that the person had HIV; and
- (c) The person intended to transmit HIV to the partner.

- (2) It is a defense to prosecution under this section if:
- (a) HIV was not transmitted to the partner; or
 - (b) The person took or attempted to take practical means to prevent transmission of HIV.
- (3) (a) except as provided in (b) of this subsection, violation of this section is a misdemeanor punishable as provided in RCW 9A.20.021.
- (b) Violation of this section is a gross misdemeanor punishable as provided in RCW 9A.20.021 if the person knowingly misrepresented his or her infection status to the partner.
- (c) Violation of this section does not require registration under RCW 9A.44.130, unless the partner is a child or vulnerable adult victim.
- (4) For purposes of this section, the following terms have the following meanings:
- (a) "Practical means to prevent transmission" means good faith employment of an activity, behavior, method, or device that is scientifically demonstrated to measurably reduce the risk of transmitting a sexually transmitted disease, including but not limited to: The use of a condom, barrier protection, or other prophylactic device; or good faith participation in a treatment regimen prescribed by a health care provider or public health professional.
 - (b) "Sexual intercourse" has its ordinary meanings and occurs upon any penetration, however slight, of the vagina or anus of one person by the sexual organs of another whether such persons are of the same or another sex.

WASH. REV. CODE § 70.05.120 (2016) **

Violations—Remedies—Penalties

(4) Any person violating any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or administrative officer or state board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment.

WASH. REV. CODE § 70.24.017 (2020)

Definitions

(13) "Sexually transmitted disease" means a bacterial, viral, fungal, or parasitic infection, determined by the board by rule to be sexually transmitted, to be a threat to the public health and welfare, and to be an infection for which a legitimate public interest will be served by providing for regulation and treatment. The board shall designate chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, trachomitis, genital human papilloma virus infection, syphilis, and

human immunodeficiency virus (HIV) infection as sexually transmitted diseases, and shall consider the recommendations and classifications of the centers for disease control and other nationally recognized medical authorities in designating other diseases as sexually transmitted.

WASH. REV. CODE § 70.24.024 (2020)

Orders for examination and counseling—Investigation—Issuance of health order—Notice and hearing—Exception

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

(2)

(a) The state or a local health officer may conduct an investigation when:

- (i) He or she knows or has reason to believe that a person in his or her jurisdiction has a sexually transmitted disease and is engaging in specified behavior that endangers the public health; and
- (ii) The basis for the health officer's investigation is the officer's direct medical knowledge or reliable testimony of another who is in a position to have direct knowledge of the person's behavior.

(b) In conducting the investigation, the health officer shall evaluate the allegations, as well as the reliability and credibility of any person or persons who provided information related to the specified behavior that endangers the public health.

(3) If the state or local health officer determines upon conclusion of the investigation that the allegations are true and that the person continues to engage in behavior that endangers the public health, the health officer shall document measures taken to protect the public health, including reasonable efforts to obtain the person's voluntary cooperation.

(4)

(a) If the measures taken under subsection (3) of this section fail to protect the public health, the state or local health officer may issue a health order requiring the person to:

- (i) submit to a medical examination or testing, receive counseling, or receive medical treatment, or any combination of these. If ordering a person to receive medical treatment, the health officer must provide the person with at least one additional appropriate option to choose from in the health order; or
- (ii) Immediately cease and desist from specified behavior that endangers the public health by imposing such restrictions upon the person as are necessary to prevent the specified behavior that endangers the health

(b) Any restriction shall be in writing, setting forth the name of the person to be restricted, the initial period of time during which the health order shall remain effective, the terms of the

restrictions, and such other conditions as may be necessary to protect the public health. Restrictions shall be imposed in the least-restrictive manner necessary to protect the public health. The period of time during which the health order is effective must be reasonably related to the purpose of the restriction or restrictions contained in the order, up to a maximum period of twelve months.

(5)

(a) Upon the issuance of a health order pursuant to subsection (4) of this section, the state or local health officer shall give written notice promptly, personally, and confidentially to the person who is the subject of the order stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order. The written notice must inform the person who is the subject of the order that, if he or she contests the order, he or she may file an appeal and appear at a judicial hearing on the enforceability of the order, to be held in superior court. The hearing shall be held within seventy-two hours of receipt of the notice, unless the person subject to the order agrees to comply.

(b) The health officer may apply to the superior court for a court order requiring the person to comply with the health order if the person fails to comply with the health order within the time period specified.

(c) At a hearing held pursuant to (a) or (b) of this subsection (5), the person subject to the health order may have an attorney appear on his or her behalf at public expense, if necessary. The burden of proof shall be on the health officer to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed therein are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the health order.

(d) If the superior court dismisses the health order, the fact that the order was issued shall be expunged from the records of the department or local department of health.

WASH. REV. CODE § 70.24.025 (2020) **

Violations of health order—Penalties

A person who violates or fails to comply with a health order issued under RCW 70.24.024 is guilty of a gross misdemeanor punishable by confinement until the order has been complied with or terminated, up to a maximum period of three hundred sixty-four days. In lieu of confinement, the court may place the defendant on probation upon condition that the defendant comply with the health order, up to the length of the health order. If the defendant is placed on probation and subsequently violates or fails to comply with the health order, the court shall revoke the probation and reinstate the original sentence of confinement.

WASH. REV. CODE § 70.24.034 (2016)

Detention—Grounds—Order—Hearing

(1) When the procedures of RCW 70.24.024 have been exhausted and the state or local public health officer, within his or her respective jurisdiction, knows or has reason to believe, because of medical information, that a person has a sexually transmitted disease and that the person continues to engage in behaviors that present an imminent danger to the public health as defined by the board by rule based upon generally accepted standards of medical and public health science, the public health officer may bring an action in superior court to detain the person in a facility designated by the board for a period of time necessary to accomplish a program of counseling and education, excluding any coercive techniques or procedures, designed to get the person to adopt nondangerous behavior. In no case may the period exceed ninety days under each order. The board shall establish, by rule, standards for counseling and education under this subsection. The public health officer shall request the prosecuting attorney to file such action in superior court. During that period, reasonable efforts will be made in a noncoercive manner to get the person to adopt nondangerous behavior.

(2) If an action is filed as outlined in subsection (1) of this section, the superior court, upon the petition of the prosecuting attorney, shall issue other appropriate court orders including, but not limited to, an order to take the person into custody immediately, for a period not to exceed seventy-two hours, and place him or her in a facility designated or approved by the board. The person who is the subject of the order shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order, and notifying the person that if he or she refuses to comply with the order he or she may appear at a hearing to review the order and that he or she may have an attorney appear on his or her behalf in the hearing at public expense, if necessary. If the person contests testing or treatment, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to subsection (3) of this section.

(3) The hearing shall be conducted no later than forty-eight hours after the receipt of the order. The person who is subject to the order has a right to be present at the hearing and may have an attorney appear on his or her behalf in the hearing, at public expense if necessary. If the order being contested includes detention for a period of fourteen days or longer, the person shall also have the right to a trial by jury upon request. Upon conclusion of the hearing or trial by jury, the court shall issue appropriate orders.

The court may continue the hearing upon the request of the person who is subject to the order for good cause shown for no more than five additional judicial days. If a trial by jury is requested, the court, upon motion, may continue the hearing for no more than ten additional judicial days. During the pendency of the continuance, the court may order that the person contesting the order remain in detention or may place terms and conditions upon the person which the court deems appropriate to protect public health.

(4) The burden of proof shall be on the state or local public health officer to show by clear and convincing evidence that grounds exist for the issuance of any court order pursuant to subsection (2) or (3) of this section. If the superior court dismisses the order, the fact that the order was issued shall be expunged from the records of the state or local department of health.

(5) Any hearing conducted by the superior court pursuant to subsection (2) or (3) of this section shall be closed and confidential unless a public hearing is requested by the person who is the subject of the

order, in which case the hearing will be conducted in open court. Unless in open hearing, any transcripts or records relating thereto shall also be confidential and may be sealed by order of the court.

(6) Any order entered by the superior court pursuant to subsection (1) or (2) of this section shall impose terms and conditions no more restrictive than necessary to protect the public health.

WASH. REV. CODE § 70.24.080 (2020) **

Penalty

Except as provided in RCW 70.24.025 and 70.024.027, any person who violates any of the provisions of this chapter or any rule adopted by the board under this chapter, or who fails or refuses to obey any lawful order issued by any state, county or municipal health officer under this chapter shall be deemed guilty of a gross misdemeanor punishable as provided under RCW 9A.20.021.

Washington Administrative Code

TITLE 246, HEALTH, DEPARTMENT OF COMMUNICABLE DISEASES

WASH. ADMIN. CODE § 246-100-011 (2016)

Definitions

(28) "Sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic disease or condition which is usually transmitted through sexual contact, including:

- (a) Acute pelvic inflammatory disease;
- (b) Chancroid;
- (c) Chlamydia trachomatis infection;
- (d) Genital and neonatal herpes simplex;
- (e) Genital human papilloma virus infection;
- (f) Gonorrhea;
- (g) Granuloma inguinale;
- (h) Hepatitis B infection;
- (i) Human immunodeficiency virus infection (HIV) and acquired immunodeficiency syndrome (AIDS);
- (j) Lymphogranuloma venereum;
- (k) Nongonococcal urethritis (NGU); and
- (l) Syphilis.

WASH. ADMIN. CODE §246-100-203 (2016)

Special diseases—Sexually transmitted diseases—Health officer orders

(1) A state or local health officer within his or her jurisdiction may, in accordance with RCW 70.24.024, issue orders for medical examination, testing, and/or counseling, as well as orders to cease and desist specific activities, when he or she knows or has reason to believe that a person has a sexually transmitted disease and is engaging in conduct endangering the public health.

(a) For purposes of this section, "reason to believe" means a health officer's belief that is based on:

(i) Laboratory test results confirming or suggestive of a STD; or

(ii) A health care provider's direct observation of clinical signs confirming an individual has or is likely to have a STD; or

(iii) Information obtained directly from an individual infected with a STD about the identity of his or her sexual or needle-sharing contacts when:

(A) Contact with the infected individual occurred during a period when the disease may have been infectious; and

(B) The contact was sufficient to transmit the disease; and

(C) The infected individual is, in the health officer's judgment, credible and believable.

(b) "Conduct endangering the public health" for the purposes of RCW 70.24.024 and this section, means:

(i) Anal, oral, or vaginal intercourse for all sexually transmitted diseases;

(ii) For HIV and Hepatitis B:

(A) Anal, oral, or vaginal intercourse; and/or

(B) Sharing of injection equipment; and/or

(C) Donating or selling blood, blood products, body tissues, or semen; and

(iii) Activities described in (b)(i) and (ii) of this subsection resulting in introduction of blood, semen, and/or vaginal fluids to:

(A) Mucous membranes;

(B) Eyes;

(C) Open cuts, wounds, lesions; or

(D) Interruption of epidermis.

(c) State and local health officers and their authorized representatives shall have authority to issue written orders for medical examination, testing, and/or counseling under chapter 70.24 RCW, only after:

(i) All other efforts to protect public health have failed, including reasonable efforts to obtain the voluntary cooperation of the person to be affected by the order; and

(ii) They have sufficient evidence to "reasonably believe" the individual to be affected by the order:

(A) Has a sexually transmitted disease; and

(B) Is engaging in "conduct endangering public health"; and

(iii) They have investigated and confirmed the existence of "conduct endangering the public health" by:

(A) Interviewing sources to assess their credibility and accuracy; and

(B) Interviewing the person to be affected by the order; and

(iv) They have incorporated all information required in RCW 70.24.024 in a written order.

(d) State and local health officers and their authorized representatives shall have authority to issue written orders for treatment under RCW 70.24.022 only after laboratory test results or direct observation of clinical signs or assessment of clinical data by a physician confirm the individual has, or is likely to have, a sexually transmitted disease.

(e) State and local health officers and their authorized representatives shall have authority to issue written orders to cease and desist from specified activities under RCW 70.24.024 only after:

(i) They have determined the person to be affected by the order is engaging in "conduct endangering public health"; and

(ii) Laboratory test results, or direct observation of clinical signs or assessment of clinical data by a physician, confirm the individual has, or is likely to have, a sexually transmitted disease; and

(iii) They have exhausted procedures described in subsection (8)(a) of this section; and

(iv) They have enlisted, if appropriate, court enforcement of the orders described in (c) and (d) of this subsection.

(f) Written orders to cease and desist from specified activities shall be for an initial period of time not to exceed three months, and may be renewed by the health officer for periods of time not to exceed three months provided all requirements of RCW 70.24.024 regarding notification, confidentiality, right to a judicial hearing, and right to counsel are met again at the time of renewal.

(2) A state or local health officer within his or her jurisdiction may, in accordance with RCW 70.24.034, bring action in superior court to detain a person in a designated or approved facility when he or she

knows or has reason to believe that person has a sexually transmitted disease and continues to engage in behaviors that present an imminent danger to the public health.

(a) "Behaviors that present an imminent danger to public health" or "BPID" for the purposes of detention in accordance with RCW 70.24.034 and this section means the following activities, under conditions specified below, performed by an individual with a laboratory-confirmed HIV infection:

- (i) Anal or vaginal intercourse without a latex condom; or
- (ii) Shared use of blood-contaminated injection equipment;
- (iii) Donating or selling HIV-infected blood, blood products, or semen; and
- (iv) Activities described in (a)(i) and (ii) of this subsection constitute BPID only if:
 - (A) The infected individual received post-test counseling as described in WAC 246-100-209 prior to repeating activities; and
 - (B) The infected individual did not inform the persons with whom the activities occurred of his or her infectious status.

(b) State and local health officers and their authorized representatives shall have authority to seek court orders for detainment under RCW 70.24.034 only for persons infected with HIV and only after:

- (i) Exhausting procedures described in subsection (1) of this section; and
- (ii) Enlisting, if appropriate, court enforcement of orders to cease and desist; and
- (iii) Having sufficient evidence to "reasonably believe" the person is engaging in BPID.

(c) A local health officer may notify the state health officer if he or she determines:

- (i) The criteria for BPID are met by an individual; and
- (ii) Such individual fails to comply with a cease and desist order affirmed or issued by a court.

(d) A local or state health officer may request the prosecuting attorney to file an action in superior court to detain an individual specified in this subsection. The requesting local or state health officer or authorized representative shall:

- (i) Notify the department prior to recommending the detainment setting where the individualized counseling and education plan may be carried out consistent with subsection (9)(d), (e), and (f) of this section;
- (ii) Make a recommendation to the court for placement of such individual consistent with (e), (f), and (g) of this subsection; and
- (iii) Provide to the court an individualized plan for education and counseling consistent with (f) of this subsection.