
SUBSTITUTE SENATE BILL 5186

State of Washington

65th Legislature

2017 Regular Session

By Senate Law & Justice (originally sponsored by Senators Padden and Pearson)

1 AN ACT Relating to the collection of blood samples for forensic
2 testing; amending RCW 18.130.410, 46.61.506, and 46.61.508; and
3 adding a new section to chapter 46.04 RCW.

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

5 **Sec. 1.** RCW 18.130.410 and 2015 2nd sp.s. c 3 s 21 are each
6 amended to read as follows:

7 It is not professional misconduct for a physician licensed under
8 chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57
9 RCW; registered nurse, licensed practical nurse, or advanced
10 registered nurse practitioner licensed under chapter 18.79 RCW;
11 physician assistant licensed under chapter 18.71A RCW; osteopathic
12 physician assistant licensed under chapter 18.57A RCW; advanced
13 emergency medical technician or paramedic licensed under chapter
14 ~~((18.73)) 18.71~~ RCW; ~~((until July 1, 2016, health care assistant
15 certified under chapter 18.135 RCW; or))~~ medical assistant-certified
16 or medical assistant-phlebotomist certified under chapter 18.360 RCW,
17 or person holding another credential under Title 18 RCW whose scope
18 of practice includes performing venous blood draws, or hospital, or
19 duly licensed clinical laboratory employing or utilizing services of
20 such licensed or certified health care provider, to collect a blood
21 sample without a person's consent when the physician licensed under

1 chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57
2 RCW; registered nurse, licensed practical nurse, or advanced
3 registered nurse practitioner licensed under chapter 18.79 RCW;
4 physician assistant licensed under chapter 18.71A RCW; osteopathic
5 physician assistant licensed under chapter 18.57A RCW; advanced
6 emergency medical technician or paramedic licensed under chapter
7 ~~((18.73))~~ 18.71 RCW; ~~((until July 1, 2016, health care assistant~~
8 ~~certified under chapter 18.135 RCW;))~~ or medical assistant-certified
9 or medical assistant-phlebotomist certified under chapter 18.360 RCW,
10 or person holding another credential under Title 18 RCW whose scope
11 of practice includes performing venous blood draws, or hospital, or
12 duly licensed clinical laboratory employing or utilizing services of
13 such licensed or certified health care provider withdrawing blood was
14 directed by a law enforcement officer to do so for the purpose of a
15 blood test under the provisions of a search warrant or exigent
16 circumstances: PROVIDED, That nothing in this section shall relieve a
17 physician licensed under chapter 18.71 RCW; osteopathic physician
18 licensed under chapter 18.57 RCW; registered nurse, licensed
19 practical nurse, or advanced registered nurse practitioner licensed
20 under chapter 18.79 RCW; physician assistant licensed under chapter
21 18.71A RCW; osteopathic physician assistant licensed under chapter
22 18.57A RCW; advanced emergency medical technician or paramedic
23 licensed under chapter ~~((18.73))~~ 18.71 RCW; ~~((until July 1, 2016,~~
24 ~~health care assistant certified under chapter 18.135 RCW;))~~ or
25 medical assistant-certified or medical assistant-phlebotomist
26 certified under chapter 18.360 RCW, or person holding another
27 credential under Title 18 RCW whose scope of practice includes
28 performing venous blood draws, or hospital, or duly licensed clinical
29 laboratory employing or utilizing services of such licensed or
30 certified health care provider withdrawing blood from professional
31 discipline arising from the use of improper procedures or from
32 failing to exercise the required standard of care.

33 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.04
34 RCW to read as follows:

35 "Forensic phlebotomist" means a police officer, law enforcement
36 officer, or employee of a correctional facility or detention
37 facility, who meets the training and proficiency standards of his or
38 her employer and who is collecting a venous blood sample for forensic

1 testing pursuant to a search warrant, a waiver of the warrant
2 requirement, or exigent circumstances.

3 **Sec. 3.** RCW 46.61.506 and 2016 c 203 s 8 are each amended to
4 read as follows:

5 (1) Upon the trial of any civil or criminal action or proceeding
6 arising out of acts alleged to have been committed by any person
7 while driving or in actual physical control of a vehicle while under
8 the influence of intoxicating liquor or any drug, if the person's
9 alcohol concentration is less than 0.08 or the person's THC
10 concentration is less than 5.00, it is evidence that may be
11 considered with other competent evidence in determining whether the
12 person was under the influence of intoxicating liquor or any drug.

13 (2)(a) The breath analysis of the person's alcohol concentration
14 shall be based upon grams of alcohol per two hundred ten liters of
15 breath.

16 (b) The blood analysis of the person's THC concentration shall be
17 based upon nanograms per milliliter of whole blood.

18 (c) The foregoing provisions of this section shall not be
19 construed as limiting the introduction of any other competent
20 evidence bearing upon the question whether the person was under the
21 influence of intoxicating liquor or any drug.

22 (3) Analysis of the person's blood or breath to be considered
23 valid under the provisions of this section or RCW 46.61.502 or
24 46.61.504 shall have been performed according to methods approved by
25 the state toxicologist and by an individual possessing a valid permit
26 issued by the state toxicologist for this purpose. The state
27 toxicologist is directed to approve satisfactory techniques or
28 methods, to supervise the examination of individuals to ascertain
29 their qualifications and competence to conduct such analyses, and to
30 issue permits which shall be subject to termination or revocation at
31 the discretion of the state toxicologist.

32 (4)(a) A breath test performed by any instrument approved by the
33 state toxicologist shall be admissible at trial or in an
34 administrative proceeding if the prosecution or department produces
35 prima facie evidence of the following:

36 (i) The person who performed the test was authorized to perform
37 such test by the state toxicologist;

1 (ii) The person being tested did not vomit or have anything to
2 eat, drink, or smoke for at least fifteen minutes prior to
3 administration of the test;

4 (iii) The person being tested did not have any foreign
5 substances, not to include dental work, fixed or removable, in his or
6 her mouth at the beginning of the fifteen-minute observation period;

7 (iv) Prior to the start of the test, the temperature of any
8 liquid simulator solution utilized as an external standard, as
9 measured by a thermometer approved of by the state toxicologist was
10 thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

11 (v) The internal standard test resulted in the message
12 "verified";

13 (vi) The two breath samples agree to within plus or minus ten
14 percent of their mean to be determined by the method approved by the
15 state toxicologist;

16 (vii) The result of the test of the liquid simulator solution
17 external standard or dry gas external standard result did lie
18 between .072 to .088 inclusive; and

19 (viii) All blank tests gave results of .000.

20 (b) For purposes of this section, "prima facie evidence" is
21 evidence of sufficient circumstances that would support a logical and
22 reasonable inference of the facts sought to be proved. In assessing
23 whether there is sufficient evidence of the foundational facts, the
24 court or administrative tribunal is to assume the truth of the
25 prosecution's or department's evidence and all reasonable inferences
26 from it in a light most favorable to the prosecution or department.

27 (c) Nothing in this section shall be deemed to prevent the
28 subject of the test from challenging the reliability or accuracy of
29 the test, the reliability or functioning of the instrument, or any
30 maintenance procedures. Such challenges, however, shall not preclude
31 the admissibility of the test once the prosecution or department has
32 made a prima facie showing of the requirements contained in (a) of
33 this subsection. Instead, such challenges may be considered by the
34 trier of fact in determining what weight to give to the test result.

35 (5) When a blood test is administered under the provisions of RCW
36 46.20.308, the withdrawal of blood for the purpose of determining its
37 alcoholic or drug content may be performed only by a physician
38 licensed under chapter 18.71 RCW; an osteopathic physician licensed
39 under chapter 18.57 RCW; a registered nurse, licensed practical
40 nurse, or advanced registered nurse practitioner licensed under

1 chapter 18.79 RCW; a physician assistant licensed under chapter
2 18.71A RCW; an osteopathic physician assistant licensed under chapter
3 18.57A RCW; an advanced emergency medical technician or paramedic
4 licensed under chapter ~~((18.73))~~ 18.71 RCW; ~~((until July 1, 2016, a~~
5 ~~health care assistant certified under chapter 18.135 RCW;))~~ or a
6 medical assistant-certified or medical assistant-phlebotomist
7 certified under chapter 18.360 RCW, person holding another credential
8 under Title 18 RCW whose scope of practice includes performing venous
9 blood draws, or a forensic phlebotomist. When the blood test is
10 performed outside the state of Washington the withdrawal of blood for
11 the purpose of determining its alcoholic or drug content may be
12 performed by any person who is authorized by the out-of-state
13 jurisdiction to perform venous blood draws. Proof of qualification to
14 draw blood may be established through the department of health's
15 provider credential search. This limitation shall not apply to the
16 taking of breath specimens.

17 (6) When a venous blood sample is performed by a forensic
18 phlebotomist, it must be done under the following conditions:

19 (a) If taken at the scene, it must be performed in an ambulance
20 or aid service vehicle licensed by the department of health under
21 chapter 18.73 RCW.

22 (b) The collection of blood samples must not interfere with the
23 provision of essential medical care.

24 (c) The blood sample must be collected using sterile equipment
25 and the skin area of puncture must be thoroughly cleansed and
26 disinfected.

27 (d) The person whose blood is collected must be seated, reclined,
28 or lying down when the blood is collected.

29 (7) The person tested may have a licensed or certified health
30 care provider listed in subsection (5) of this section, or a
31 qualified technician, chemist, or other qualified person of his or
32 her own choosing administer one or more tests in addition to any
33 administered at the direction of a law enforcement officer. The test
34 will be admissible if the person establishes the general
35 acceptability of the testing technique or method. The failure or
36 inability to obtain an additional test by a person shall not preclude
37 the admission of evidence relating to the test or tests taken at the
38 direction of a law enforcement officer.

39 ~~((+7))~~ (8) Upon the request of the person who shall submit to a
40 test or tests at the request of a law enforcement officer, full

1 information concerning the test or tests shall be made available to
2 him or her or his or her attorney.

3 **Sec. 4.** RCW 46.61.508 and 2015 2nd sp.s. c 3 s 23 are each
4 amended to read as follows:

5 No physician licensed under chapter 18.71 RCW; osteopathic
6 physician licensed under chapter 18.57 RCW; registered nurse,
7 licensed practical nurse, or advanced registered nurse practitioner
8 licensed under chapter 18.79 RCW; physician assistant licensed under
9 chapter 18.71A RCW; osteopathic physician assistant licensed under
10 chapter 18.57A RCW; advanced emergency medical technician or
11 paramedic licensed under chapter (~~(18.73)~~) 18.71 RCW; (~~(until July 1,~~
12 ~~2016, health care assistant certified under chapter 18.135 RCW;)~~) or
13 medical assistant-certified or medical assistant-phlebotomist
14 certified under chapter 18.360 RCW, person holding another credential
15 under Title 18 RCW whose scope of practice includes performing venous
16 blood draws, or a forensic phlebotomist, or hospital, or duly
17 licensed clinical laboratory employing or utilizing services of such
18 licensed or certified health care provider, shall incur any civil or
19 criminal liability as a result of the act of withdrawing blood from
20 any person when directed by a law enforcement officer to do so for
21 the purpose of a blood test under the provisions of a search warrant,
22 a waiver of the search warrant requirement, exigent circumstances, or
23 any other authority of law(~~(, or RCW 46.20.308, as now or hereafter~~
24 ~~amended)~~): PROVIDED, That nothing in this section shall relieve such
25 licensed or certified health care provider, (~~(or)~~) hospital or duly
26 licensed clinical laboratory, or forensic phlebotomist from civil
27 liability arising from the use of improper procedures or failing to
28 exercise the required standard of care.

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