

**PUBLIC SAFETY WORKER PROTECTION AMENDMENTS**

2020 FIFTH SPECIAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill provides certain penalties and procedures to protect certain public safety workers from a communicable disease.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides criminal penalties for intentionally coughing on a first responder or correctional facility employee;
- ▶ modifies definitions and procedures to authorize a court to order an individual to submit to medical testing for COVID-19 under certain circumstances; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**78B-8-401**, as last amended by Laws of Utah 2017, Chapters 185 and 326

**78B-8-402**, as last amended by Laws of Utah 2019, Chapter 400

ENACTS:

**76-5-102.10**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **76-5-102.10** is enacted to read:

**76-5-102.10. Intentional coughing on public safety worker.**

(1) As used in this section:

(a) "Correctional facility" means the same as that term is defined in Section

33 76-8-311.3.

34 (b) "First responder" means the same as that term is defined in Section 26-6b-2.

35 (c) "Infected individual" means the same as that term is defined in Section 26-6-2.

36 (d) "Public safety worker" means:

37 (i) a first responder; or

38 (ii) an individual employed or contracted by a correctional facility to perform services  
39 at a correctional facility.

40 (2) Except as provided in Subsection (3), an individual who intentionally directs a  
41 cough at a public safety worker who is in close proximity to the individual while the public  
42 safety worker is performing the public safety worker's official duties is guilty of a class B  
43 misdemeanor.

44 (3) An individual who violates Subsection (2) is guilty of a class A misdemeanor if, at  
45 the time of the offense, the individual is an infected individual and knows that the individual is  
46 an infected individual.

47 Section 2. Section **78B-8-401** is amended to read:

48 **78B-8-401. Definitions.**

49 [~~For purposes of~~] As used in this part:

50 (1) "Blood or contaminated body fluids" includes blood, saliva, amniotic fluid,  
51 pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and  
52 vaginal secretions, and any body fluid visibly contaminated with blood.

53 (2) "COVID-19" means the same as that term is defined in Section 78B-4-517.

54 [~~(2)~~] (3) "Disease" means Human Immunodeficiency Virus infection, acute or chronic  
55 Hepatitis B infection, Hepatitis C infection, COVID-19, and any other infectious disease  
56 specifically designated by the Labor Commission, in consultation with the Department of  
57 Health, for the purposes of this part.

58 [~~(3)~~] (4) "Emergency services provider" means:

59 (a) an individual licensed under Section 26-8a-302, a peace officer, local fire  
60 department personnel, or personnel employed by the Department of Corrections or by a county  
61 jail, who provide prehospital emergency care for an emergency services provider either as an  
62 employee or as a volunteer; or

63 (b) an individual who provides for the care, control, support, or transport of a prisoner.

64           ~~[(4)]~~ (5) "First aid volunteer" means a person who provides voluntary emergency  
65 assistance or first aid medical care to an injured person prior to the arrival of an emergency  
66 medical services provider or peace officer.

67           ~~[(5)]~~ (6) "Health care provider" means the same as that term is defined in Section  
68 78B-3-403.

69           (7) "Medical testing procedure" means a nasopharyngeal swab, a nasal swab, a  
70 capillary blood sample, a saliva test, or a blood draw.

71           ~~[(6)]~~ (8) "Peace officer" means the same as that term is defined in Section 53-1-102.

72           ~~[(7)]~~ (9) "Prisoner" means the same as that term is defined in Section 76-5-101.

73           ~~[(8)]~~ (10) "Significant exposure" and "significantly exposed" mean:

74           (a) exposure of the body of one ~~[person]~~ individual to the blood or body fluids of  
75 another ~~[person]~~ individual by:

76           (i) percutaneous injury, including a needle stick, cut with a sharp object or instrument,  
77 or a wound resulting from a human bite, scratch, or similar force; or

78           (ii) contact with an open wound, mucous membrane, or nonintact skin because of a cut,  
79 abrasion, dermatitis, or other damage; ~~[or]~~

80           (b) exposure of the body of one individual to the body fluids, including airborne  
81 droplets, of another individual who is infected with COVID-19 or another infectious disease  
82 that may cause Sever Acute Respiratory Syndrome; or

83           ~~[(b)]~~ (c) exposure that occurs by any other method of transmission defined by the  
84 Labor Commission, in consultation with the Department of Health, as a significant exposure.

85           Section 3. Section **78B-8-402** is amended to read:

86           **78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.**

87           (1) An emergency services provider or first aid volunteer who is significantly exposed  
88 during the course of performing the emergency services provider's duties or during the course  
89 of performing emergency assistance or first aid, or a health care provider acting in the course  
90 and scope of the health care provider's duties as a health care provider may:

91           (a) request that the person to whom the emergency services provider, first aid  
92 volunteer, or health care provider was significantly exposed voluntarily submit to testing; or

93           (b) petition the district court or a magistrate for an order requiring that the person to  
94 whom the emergency services provider, first aid volunteer, or health care provider was

95 significantly exposed submit to testing to determine the presence of a disease~~[, as defined in~~  
96 ~~Section 78B-8-401,]~~ and that the results of that test be disclosed to the petitioner by the  
97 Department of Health.

98 (2) (a) A law enforcement agency may submit on behalf of the petitioner by electronic  
99 or other means an ex parte request for a warrant ordering a ~~[blood draw from]~~ medical testing  
100 procedure of the respondent.

101 (b) The court or magistrate shall issue a warrant ordering the respondent to ~~[provide a~~  
102 ~~specimen of the respondent's blood]~~ submit to a medical testing procedure within two hours,  
103 and that reasonable force may be used, if necessary, if the court or magistrate finds that:

104 (i) the petitioner was significantly exposed during the course of performing the  
105 petitioner's duties as an emergency services provider, first aid volunteer, or health care  
106 provider;

107 (ii) the respondent ~~[has]~~ refused to give consent to the [blood draw] medical testing  
108 procedure or is unable to give consent;

109 (iii) there may not be an opportunity to obtain a sample at a later date; and

110 (iv) a delay in administering available FDA-approved post-exposure treatment or  
111 prophylaxis could result in a lack of effectiveness of the treatment or prophylaxis.

112 (c) (i) ~~[The]~~ If the petitioner requests that the court order the respondent to submit to a  
113 blood draw, the petitioner shall request a person authorized under Section 41-6a-523 to  
114 perform the blood draw.

115 (ii) If the petitioner requests that the court order the respondent to submit to a medical  
116 testing procedure, other than a blood draw, the petitioner shall request that a qualified medical  
117 professional, including a physician, a physician's assistant, a registered nurse, a licensed  
118 practical nurse, or a paramedic, perform the medical testing procedure.

119 (d) (i) A sample drawn in accordance with a warrant following an ex parte request shall  
120 be sent to the Department of Health for testing.

121 (ii) If the Department of Health is unable to perform a medical testing procedure  
122 ordered by the court under this section, a qualified medical laboratory may perform the medical  
123 testing procedure if:

124 (A) the Department of Health requests that the medical laboratory perform the medical  
125 testing procedure; and

126 (B) the result of the medical testing procedure is provided to the Department of Health.

127 (3) If a petitioner does not seek or obtain a warrant pursuant to Subsection (2), the  
128 petitioner may file a petition with the district court seeking an order to submit to testing and to  
129 disclose the results in accordance with this section.

130 (4) (a) The petition described in Subsection (3) shall be accompanied by an affidavit in  
131 which the petitioner certifies that the petitioner has been significantly exposed to the individual  
132 who is the subject of the petition and describes that exposure.

133 (b) The petitioner shall submit to testing to determine the presence of a disease, when  
134 the petition is filed or within three days after the petition is filed.

135 (5) The petitioner shall cause the petition required under this section to be served on  
136 the person who the petitioner is requesting to be tested in a manner that will best preserve the  
137 confidentiality of that person.

138 (6) (a) The court shall set a time for a hearing on the matter within 10 days after the  
139 petition is filed and shall give the petitioner and the individual who is the subject of the petition  
140 notice of the hearing at least 72 hours prior to the hearing.

141 (b) The individual who is the subject of the petition shall also be notified that the  
142 individual may have an attorney present at the hearing and that the individual's attorney may  
143 examine and cross-examine witnesses.

144 (c) The hearing shall be conducted in camera.

145 (7) The district court may enter an order requiring that an individual submit to testing,  
146 including [~~blood testing~~] a medical testing procedure, for a disease if the court finds probable  
147 cause to believe:

148 (a) the petitioner was significantly exposed; and

149 (b) the exposure occurred during the course of the emergency services provider's  
150 duties, the provision of emergency assistance or first aid by a first aid volunteer, or the health  
151 care provider acting in the course and scope of the provider's duties as a health care provider.

152 (8) The court may order that the [~~blood specimen be obtained by the use of reasonable~~  
153 ~~force~~] use of reasonable force is permitted to complete an ordered test if the individual who is  
154 the subject of the petition is a prisoner.

155 (9) The court may order that additional, follow-up testing be conducted and that the  
156 individual submit to that testing, as it determines to be necessary and appropriate.

157 (10) The court is not required to order an individual to submit to a test under this  
158 section if it finds that there is a substantial reason, relating to the life or health of the  
159 individual, not to enter the order.

160 (11) (a) Upon order of the district court that [~~a person~~] an individual submit to testing  
161 for a disease, that [~~person~~] individual shall report to the designated local health department to  
162 [~~have the person's blood drawn~~] provide the ordered specimen within 10 days [~~from the~~  
163 issuance of] after the day on which the court issues the order, and thereafter as designated by  
164 the court, or be held in contempt of court.

165 (b) The court shall send the order to the Department of Health and to the local health  
166 department ordered to [~~draw the blood~~] conduct or oversee the test.

167 (c) Notwithstanding the provisions of Section 26-6-27, the Department of Health and a  
168 local health department may disclose the test results pursuant to a court order as provided in  
169 this section.

170 (d) Under this section, anonymous testing as provided under Section 26-6-3.5 may not  
171 satisfy the requirements of the court order.

172 (12) The local health department or the Department of Health shall inform the subject  
173 of the petition and the petitioner of the results of the test and advise both parties that the test  
174 results are confidential. That information shall be maintained as confidential by all parties to  
175 the action.

176 (13) The court, the court's personnel, the process server, the Department of Health,  
177 local health department, and petitioner shall maintain confidentiality of the name and any other  
178 identifying information regarding the individual tested and the results of the test as they relate  
179 to that individual, except as specifically authorized by this chapter.

180 (14) (a) Except as provided in Subsection (14)(b), the petitioner shall remit payment  
181 for [~~the drawing of the blood specimen and the analysis of the specimen for the mandatory~~  
182 ~~disease testing to the entity that draws the blood~~] each test performed in accordance with this  
183 section to the entity that performs the procedure.

184 (b) If the petitioner is an emergency services provider, the agency that employs the  
185 emergency services provider shall remit payment for [~~the drawing of the blood specimen and~~  
186 ~~the analysis of the specimen for the mandatory disease testing to the entity that draws the~~  
187 ~~blood~~] each test performed in accordance with this section to the entity that performs the

188 procedure.

189 (15) The entity that [~~draws the blood~~] obtains a specimen for a test ordered under this  
190 section shall cause the [blood] specimen and the payment for the analysis of the specimen to be  
191 delivered to the Department of Health for analysis.

192 (16) If the individual is incarcerated, the incarcerating authority shall either [~~draw the~~  
193 ~~blood specimen~~] obtain a specimen for a test ordered under this section or shall pay the  
194 expenses of having the [~~individual's blood drawn~~] specimen obtained by a qualified individual  
195 who is not employed by the incarcerating authority.

196 (17) The ex parte request or petition shall be sealed upon filing and made accessible  
197 only to the petitioner, the subject of the petition, and their attorneys, upon court order.

198 **Section 4. Effective date.**

199 If approved by two-thirds of all the members elected to each house, this bill takes effect  
200 upon approval by the governor, or the day following the constitutional time limit of Utah  
201 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
202 the date of veto override.