

POST-EXPOSURE BLOOD TESTING AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Edward H. Redd

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill allows an emergency service provider to request a blood sample if significantly exposed to a person's bodily fluids in the course of performing the provider's duties.

Highlighted Provisions:

This bill:

- ▶ allows an emergency service provider to request a court order authorizing a blood sample from an individual if, during the course of performing the provider's duties, the provider is significantly exposed to the individual's bodily fluids.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-8-402, as last amended by Laws of Utah 2013, Chapter 114

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

Section 1. Section **78B-8-402** is amended to read:

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



28 (1) An emergency services provider or first aid volunteer who is significantly exposed
 29 during the course of performing the emergency services provider's duties or during the course
 30 of performing emergency assistance or first aid may:

31 (a) request that the person to whom the emergency services provider or first aid
 32 volunteer was significantly exposed voluntarily submit to testing; or

33 (b) petition the district court or a magistrate for an order requiring that the person to
 34 whom the emergency services provider or first aid volunteer was significantly exposed submit
 35 to testing to determine the presence of a disease, as defined in Section 78B-8-401, and that the
 36 results of that test be disclosed to the petitioner by the Department of Health.

37 (2) (a) The petitioner may submit by electronic or other means an ex parte request for
 38 an order authorizing a blood draw from the respondent.

39 (b) ~~Ë→ [If the court finds that, on the basis of the information in the ex parte request, the~~
 40 ~~petitioner was significantly exposed during the course of performing the petitioner's duties as~~
 41 ~~an emergency provider and that there is a reasonable likelihood that there will not be an~~
 42 ~~opportunity to obtain a sample at a later date, the court shall issue an order authorizing the~~
 43 ~~petitioner to obtain a specimen of the person's blood, and that reasonable force may be used, if~~
 44 ~~necessary.] The court or magistrate shall issue a warrant authorizing the petitioner to obtain a~~
 44a ~~specimen of the person's blood, and that reasonable force may be used, if necessary, if the~~
 44b ~~court or magistrate finds that:~~

44c ~~(a) the petitioner was significantly exposed during the course of performing the~~
 44d ~~petitioner's duties as an emergency services or first aid provider;~~

44e ~~(b) the respondent has refused consent to the blood draw or is unable to give consent;~~

44f ~~(c) there will not be an opportunity to obtain a sample at a later date; Ë→ [and] or ←Ë~~

44g ~~(d) a delay in administering available FDA-approved post-exposure treatment or~~
 44h ~~prophylaxis could result in a lack of effectiveness of the treatment or prophylaxis. ←Ë~~

45 (c) Depending upon the location of the respondent, the petitioner shall request a person
 46 authorized under Section 41-6a-523 perform the blood draw.

47 (d) A sample drawn in accordance with an order following an ex parte request shall be
 48 sent to the Department of Health for testing.

49 [(2)] (3) (a) ~~[The]~~ If a petitioner does not seek or obtain authorization pursuant to
 50 Subsection (2), the petitioner [shall] may file a petition with the district court seeking an order
 51 to submit to testing and to disclose the results in accordance with the provisions of this section.

52 (b) The petition shall be sealed upon filing and made accessible only to the petitioner,
 53 the subject of the petition, and their attorneys, upon court order.

54 [(3)] (4) (a) The petition described in Subsection [(2)] (3) shall be accompanied by an
 55 affidavit in which the petitioner certifies that the petitioner has been significantly exposed to
 56 the individual who is the subject of the petition and describes that exposure.

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

59 ~~[(4)]~~ (5) The petitioner shall cause the petition required under this section to be served
60 on the person who the petitioner is requesting to be tested in a manner that will best preserve
61 the confidentiality of that person.

62 ~~[(5)]~~ (6) (a) The court shall set a time for a hearing on the matter within 10 days after
63 the petition is filed and shall give the petitioner and the individual who is the subject of the
64 petition notice of the hearing at least 72 hours prior to the hearing.

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

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

69 ~~[(6)]~~ (7) The district court may enter an order requiring that an individual submit to
70 testing, including blood testing, for a disease if the court finds probable cause to believe:

71 (a) the petitioner was significantly exposed; and

72 (b) the exposure occurred during the course of the emergency services provider's
73 duties, or the provision of emergency assistance or first aid by a first aid volunteer.

74 ~~[(7)]~~ (8) The court may order that the blood specimen be obtained by the use of
75 reasonable force if the individual who is the subject of the petition is a prisoner.

76 ~~[(8)]~~ (9) The court may order that additional, follow-up testing be conducted and that
77 the individual submit to that testing, as it determines to be necessary and appropriate.

78 ~~[(9)]~~ (10) The court is not required to order an individual to submit to a test under this
79 section if it finds that there is a substantial reason, relating to the life or health of the
80 individual, not to enter the order.

81 ~~[(10)]~~ (11) (a) Upon order of the district court that a person submit to testing for a
82 disease, that person shall report to the designated local health department to have the person's
83 blood drawn within 10 days from the issuance of the order, and thereafter as designated by the
84 court, or be held in contempt of court.

85 (b) The court shall send the order to the Department of Health and to the local health
86 department ordered to draw the blood.

87 (c) Notwithstanding the provisions of Section [26-6-27](#), the Department of Health and a
88 local health department may disclose the test results pursuant to a court order as provided in
89 this section.

90 (d) Under this section, anonymous testing as provided under Section ~~26-6-3.5~~ [shall]
91 may not satisfy the requirements of the court order.

92 [~~(11)~~] (12) The local health department or the Department of Health shall inform the
93 subject of the petition and the petitioner of the results of the test and advise both parties that the
94 test results are confidential. That information shall be maintained as confidential by all parties
95 to the action.

96 [~~(12)~~] (13) The court, its personnel, the process server, the Department of Health, local
97 health department, and petitioner shall maintain confidentiality of the name and any other
98 identifying information regarding the individual tested and the results of the test as they relate
99 to that individual, except as specifically authorized by this chapter.

100 [~~(13)~~] (14) (a) Except as provided in Subsection [~~(13)~~] (14)(b), the petitioner shall
101 remit payment for the drawing of the blood specimen and the analysis of the specimen for the
102 mandatory disease testing to the entity that draws the blood.

103 (b) If the petitioner is an emergency services provider, the agency that employs the
104 emergency services provider shall remit payment for the drawing of the blood specimen and
105 the analysis of the specimen for the mandatory disease testing to the entity that draws the
106 blood.

107 [~~(14)~~] (15) The entity that draws the blood shall cause the blood and the payment for
108 the analysis of the specimen to be delivered to the Department of Health for analysis.

109 [~~(15)~~] (16) If the individual is incarcerated, the incarcerating authority shall either draw
110 the blood specimen or shall pay the expenses of having the individual's blood drawn.

Legislative Review Note
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Office of Legislative Research and General Counsel