

Representative Edward H. Redd proposes the following substitute bill:

POST-EXPOSURE BLOOD TESTING AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Edward H. Redd

Senate Sponsor: Brian E. Shiozawa

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~~ a law enforcement agency to request a court order on behalf of an emergency services provider 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:



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

27 **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) ~~Ŝ→ [The petitioner] A law enforcement agency ←Ŝ~~ may submit ~~Ŝ→~~ on behalf of
37a1 the petitioner ←Ŝ by electronic or other means ~~Ĥ→~~ [and] an ←Ĥ
37a ex parte request for

38 a warrant ordering a blood draw from the respondent.

39 (b) The court or magistrate shall issue a warrant ordering the respondent to provide a
40 specimen of the respondent's blood within 24 hours, and that reasonable force may be used, if
41 necessary, if the court or magistrate finds that:

42 (i) the petitioner was significantly exposed during the course of performing the
43 petitioner's duties as an emergency services or first aid provider;

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

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

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

48 (c) The petitioner shall request a person authorized under Section 41-6a-523 perform
49 the blood draw.

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

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

55 ~~[(b) The petition shall be sealed upon filing and made accessible only to the petitioner,~~
56 ~~the subject of the petition, and their attorneys, upon court order.]~~

57 ~~[(3)]~~ (4) (a) The petition described in Subsection ~~[(2)]~~ (3) shall be accompanied by an
58 affidavit in which the petitioner certifies that the petitioner has been significantly exposed to
59 the individual who is the subject of the petition and describes that exposure.

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

62 ~~[(4)]~~ (5) The petitioner shall cause the petition required under this section to be served
63 on the person who the petitioner is requesting to be tested in a manner that will best preserve
64 the confidentiality of that person.

65 ~~[(5)]~~ (6) (a) The court shall set a time for a hearing on the matter within 10 days after
66 the petition is filed and shall give the petitioner and the individual who is the subject of the
67 petition notice of the hearing at least 72 hours prior to the hearing.

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

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

72 ~~[(6)]~~ (7) The district court may enter an order requiring that an individual submit to
73 testing, including blood testing, for a disease if the court finds probable cause to believe:

74 (a) the petitioner was significantly exposed; and

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

77 ~~[(7)]~~ (8) The court may order that the blood specimen be obtained by the use of
78 reasonable force if the individual who is the subject of the petition is a prisoner.

79 ~~[(8)]~~ (9) The court may order that additional, follow-up testing be conducted and that
80 the individual submit to that testing, as it determines to be necessary and appropriate.

81 ~~[(9)]~~ (10) The court is not required to order an individual to submit to a test under this
82 section if it finds that there is a substantial reason, relating to the life or health of the
83 individual, not to enter the order.

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

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

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

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

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

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

103 ~~[(13)]~~ (14) (a) Except as provided in Subsection ~~[(13)]~~ (14)(b), the petitioner shall
104 remit payment for the drawing of the blood specimen and the analysis of the specimen for the
105 mandatory disease testing to the entity that draws the blood.

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

110 ~~[(14)]~~ (15) The entity that draws the blood shall cause the blood and the payment for
111 the analysis of the specimen to be delivered to the Department of Health for analysis.

112 ~~[(15)]~~ (16) If the individual is incarcerated, the incarcerating authority shall either draw
113 the blood specimen or shall pay the expenses of having the individual's blood drawn.

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