

1                   **POST-EXPOSURE BLOOD TESTING AMENDMENTS**

2                                   2016 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Edward H. Redd**

5                                   Senate Sponsor: Brian E. Shiozawa

---

---

7 **LONG TITLE**

8 **General Description:**

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

12 **Highlighted Provisions:**

13                   This bill:

14                   ▶ allows a law enforcement agency to request a court order on behalf of an emergency  
15 services provider authorizing a blood sample from an individual if, during the  
16 course of performing the provider's duties, the provider is significantly exposed to  
17 the individual's bodily fluids.

18 **Money Appropriated in this Bill:**

19                   None

20 **Other Special Clauses:**

21                   None

22 **Utah Code Sections Affected:**

23 AMENDS:

24                   **78B-8-402**, as last amended by Laws of Utah 2013, Chapter 114

---

---

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

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

28                   **78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.**

29                   (1) An emergency services provider or first aid volunteer who is significantly exposed

30 during the course of performing the emergency services provider's duties or during the course  
31 of performing emergency assistance or first aid may:

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

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

38 (2) (a) A law enforcement agency may submit on behalf of the petitioner by electronic  
39 or other means an ex parte request for a warrant ordering a blood draw from the respondent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

75           (a) the petitioner was significantly exposed; and

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

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

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

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

85           ~~[(10)]~~ (11) (a) Upon order of the district court that a person submit to testing for a

86 disease, that person shall report to the designated local health department to have the person's  
87 blood drawn within 10 days from the issuance of the order, and thereafter as designated by the  
88 court, or be held in contempt of court.

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

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

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

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

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

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

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

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

113 [~~(15)~~] (16) If the individual is incarcerated, the incarcerating authority shall either draw

114 the blood specimen or shall pay the expenses of having the individual's blood drawn.

115 (17) The ex parte request or petition shall be sealed upon filing and made accessible

116 only to the petitioner, the subject of the petition, and their attorneys, upon court order.