

DISEASE TESTING AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill amends provisions related to disease testing.

Highlighted Provisions:

This bill:

- ▶ amends the amount of time within which an individual must provide a blood sample when a court or magistrate has issued a warrant ordering the individual to provide the sample; and

- ▶ makes technical and conforming changes.

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 2017, Chapter 185

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.

(1) An emergency services provider or first aid volunteer who is significantly exposed during the course of performing the emergency services provider's duties or during the course

29 of performing emergency assistance or first aid, or a health care provider acting in the course
30 and scope of the health care provider's duties as a health care provider may:

31 (a) request that the person to whom the emergency services provider, first aid
32 volunteer, or health care provider 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, first aid volunteer, or health care provider was
35 significantly exposed submit to testing to determine the presence of a disease, as defined in
36 Section 78B-8-401, and that the results of that test be disclosed to the petitioner by the
37 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~~] two hours, and that reasonable force may be
42 used, if 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 provider, first aid volunteer, or health care
45 provider;

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

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

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

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

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

54 (3) If a petitioner does not seek or obtain a warrant pursuant to Subsection (2), the
55 petitioner may file a petition with the district court seeking an order to submit to testing and to

56 disclose the results in accordance with this section.

57 (4) (a) The petition described in Subsection (3) shall be accompanied by an affidavit in
58 which the petitioner certifies that the petitioner has been significantly exposed to the individual
59 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 (5) The petitioner shall cause the petition required under this section to be served on
63 the person who the petitioner is requesting to be tested in a manner that will best preserve the
64 confidentiality of that person.

65 (6) (a) The court shall set a time for a hearing on the matter within 10 days after the
66 petition is filed and shall give the petitioner and the individual who is the subject of the petition
67 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 (7) The district court may enter an order requiring that an individual submit to testing,
73 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, the provision of emergency assistance or first aid by a first aid volunteer, or the health
77 care provider acting in the course and scope of the provider's duties as a health care provider.

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

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

82 (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 (11) (a) Upon order of the district court that a person submit to testing for a disease,
86 that person shall report to the designated local health department to have the person's blood
87 drawn within 10 days from the issuance of the order, and thereafter as designated by the court,
88 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 may not
95 satisfy the requirements of the court order.

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

100 (13) The court, ~~[its]~~ the court's personnel, the process server, the Department of Health,
101 local 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 (14) (a) Except as provided in Subsection (14)(b), the petitioner shall remit payment
105 for the drawing of the blood specimen and the analysis of the specimen for the mandatory
106 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 (15) The entity that draws the blood shall cause the blood and the payment for the
112 analysis of the specimen to be delivered to the Department of Health for analysis.

113 (16) If the individual is incarcerated, the incarcerating authority shall either draw the
114 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.