

**DISEASE TESTING FOR PUBLIC SAFETY OFFICERS**

**AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derek E. Brown**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends disease testing procedures for a prisoner who comes in contact with an emergency services provider or volunteer.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ permits blood testing under certain circumstances with a court order;
- ▶ allows for the use of reasonable force to draw blood from a prisoner if ordered by the court; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78B-8-401**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-8-402**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-8-404**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

Section 1. Section **78B-8-401** is amended to read:

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

For purposes of this chapter:

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

(2) "Disease" means Human Immunodeficiency Virus infection, acute or chronic Hepatitis B infection, Hepatitis C infection, and any other infectious disease specifically designated by the Labor Commission in consultation with the Department of Health for the purposes of this chapter.

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

(a) an individual certified under Section 26-8a-302, a public safety officer, local fire department personnel, or personnel employed by the Department of Corrections or by a county jail, who provide prehospital emergency [~~medical~~] care for an emergency [~~medical~~] services provider either as an employee or as a volunteer[~~;~~]; or

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

(4) "First aid volunteer" means a person who provides voluntary emergency assistance or first aid medical care to an injured person prior to the arrival of an emergency medical services provider or public safety officer.

(5) "Prisoner" is as defined in Section 76-5-101.

~~[(5)]~~ (6) "Public safety officer" means a peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications.

~~[(6)]~~ (7) "Significant exposure" and "significantly exposed" mean:

(a) exposure of the body of one person to the blood or body fluids of another person by:

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

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

59 (b) exposure that occurs by any other method of transmission defined by the  
60 Department of Health as a significant exposure.

61 Section 2. Section **78B-8-402** is amended to read:

62 **78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.**

63 (1) An emergency [~~medical~~] services provider[;] or first aid volunteer who is  
64 significantly exposed during the course of performing the emergency [~~medical~~] services  
65 provider's duties or during the course of performing emergency assistance or first aid may:

66 (a) request that the person to whom [~~he~~] the emergency services provider or first aid  
67 volunteer was significantly exposed voluntarily submit to testing; or

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

72 (2) (a) The petitioner shall file a petition with the district court seeking an order to  
73 submit to testing and to disclose the results in accordance with the provisions of this section.

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

76 (3) (a) The petition described in Subsection (2) shall be accompanied by an affidavit in  
77 which the [~~emergency medical services provider or first aid volunteer~~] petitioner certifies that  
78 [~~he~~] the petitioner has been significantly exposed to the individual who is the subject of the  
79 petition and describes that exposure.

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

82 (4) The petitioner shall cause the petition required under this section to be served on  
83 the person who the petitioner is requesting to be tested in a manner that will best preserve the  
84 confidentiality of that person.

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

88 (b) The individual who is the subject of the petition shall also be notified that [~~he~~] the  
89 individual may have an attorney present at the hearing[;] and that [~~his~~] the individual's attorney

90 may examine and cross-examine witnesses.

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

92 (6) The district court may enter an order requiring that an individual submit to testing,  
93 including blood testing, for a disease if the court finds probable cause to believe:

94 (a) the petitioner was significantly exposed; and

95 (b) the exposure occurred during the course of the emergency [~~medical~~] services  
96 provider's duties, or the provision of emergency assistance or first aid by a first aid volunteer.

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

99 [~~(7)~~] (8) The court may order that additional, follow-up testing be conducted[;] and that  
100 the individual submit to that testing, as it determines to be necessary and appropriate.

101 [~~(8)~~] (9) The court is not required to order an individual to submit to a test under this  
102 section if it finds that there is a substantial reason, relating to the life or health of the  
103 individual, not to enter the order.

104 [~~(9)~~] (10) (a) Upon order of the district court that a person submit to testing for a  
105 disease, that person shall report to the designated local health department to have [~~his~~] the  
106 person's blood drawn within 10 days from the issuance of the order, and thereafter as  
107 designated by the court, or be held in contempt of court.

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

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

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

115 [~~(10)~~] (11) The local health department or the Department of Health shall inform the  
116 subject of the petition and the petitioner of the results of the test and advise both parties that the  
117 test results are confidential. That information shall be maintained as confidential by all parties  
118 to the action.

119 [~~(11)~~] (12) The court, its personnel, the process server, the Department of Health, local  
120 health department, and petitioner shall maintain confidentiality of the name and any other

121 identifying information regarding the individual tested and the results of the test as they relate  
122 to that individual, except as specifically authorized by this chapter.

123 ~~[(12)]~~ (13) (a) Except as provided in Subsection ~~[(12)]~~ (13)(b), the petitioner shall  
124 remit payment for the drawing of the blood specimen and the analysis of the specimen for the  
125 mandatory disease testing to the entity that draws the blood.

126 (b) If the petitioner is an emergency ~~[medical]~~ services provider, the agency ~~[which]~~  
127 that employs the emergency ~~[medical]~~ services provider shall remit payment for the drawing of  
128 the blood specimen and the analysis of the specimen for the mandatory disease testing to the  
129 entity that draws the blood.

130 ~~[(13)]~~ (14) The entity that draws the blood shall cause the blood and the payment for  
131 the analysis of the specimen to be delivered to the Department of Health for analysis.

132 ~~[(14)]~~ (15) If the individual is incarcerated, the incarcerating authority shall either draw  
133 the blood specimen or shall pay the expenses of having the individual's blood drawn.

134 (16) The results of testing performed under this section are not admissible in any civil  
135 or criminal proceeding.

136 Section 3. Section **78B-8-404** is amended to read:

137 **78B-8-404. Department authority -- Rules.**

138 The Labor Commission, in consultation with the Department of Health, has authority to  
139 establish rules necessary for the purposes of Subsections 78B-8-401(2) and ~~[(6)]~~ (7).

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Legislative Review Note  
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Office of Legislative Research and General Counsel