

AMENDED IN SENATE JULY 10, 2008

AMENDED IN SENATE JUNE 17, 2008

AMENDED IN ASSEMBLY APRIL 28, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2737**

---

---

**Introduced by Assembly Member Feuer**

February 22, 2008

---

---

An act to amend Sections 121060 and 121065 of, and to add Section 121060.1 to, the Health and Safety Code, relating to communicable disease.

LEGISLATIVE COUNSEL'S DIGEST

AB 2737, as amended, Feuer. Communicable disease: involuntary testing.

Existing law authorizes a court to order the withdrawal of blood from any person charged in any criminal complaint filed with a magistrate or court and any minor with respect to whom a petition has been filed in juvenile court, in which it is alleged that the defendant or minor interfered with the official duties of a peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or other bodily fluids on, upon, or through the skin or membranes of a peace officer, firefighter, or emergency medical personnel for medically accepted indications of exposure to or infection by the acquired immune deficiency syndrome (AIDS) virus, AIDS-related conditions, and those communicable diseases for which medically approved testing is readily and economically available as determined by the court.

Existing law requires copies of the test results to be sent to the defendant or minor, among other specified persons. Existing law authorizes the peace officer, firefighter, emergency medical personnel or the employing agency, officer, or entity to petition the court for this order.

This bill would, instead, authorize a court to order the withdrawal of blood for the above-described purposes from any arrestee whenever a peace officer, firefighter, or emergency medical personnel is exposed to an arrestee’s blood or bodily fluids, as defined, while the peace officer, firefighter, or emergency medical personnel is acting within the scope of his or her duties. The bill would require a licensed health care provider, prior to filing a petition with the court, to first make a good faith effort to obtain a voluntary informed consent in writing before filing the petition. The bill would also authorize the petition to be filed ex parte. The bill would limit the diseases for which testing is required, to HIV, hepatitis B, hepatitis C. By expanding the duties of local officials, this bill would impose a state-mandated local program.

This bill would require the person whose sample was tested to be advised that he or she will be informed of hepatitis B, and hepatitis C, and HIV test results only if he or she wishes to be so informed.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 121060 of the Health and Safety Code
- 2 is amended to read:
- 3 121060. (a) Any peace officer, firefighter, or emergency
- 4 medical personnel who, while acting within the scope of his or her
- 5 duties, is exposed to an arrestee’s blood or bodily fluids, as defined
- 6 in Section 121060.1, shall do the following:
- 7 (1) Prior to filing a petition with the court, a licensed health care
- 8 provider shall notify the arrestee of the bloodborne pathogen

1 exposure and make a good faith effort to obtain the voluntary  
2 informed consent of the arrestee or the arrestee's authorized legal  
3 representative to perform a test for Human Immunodeficiency  
4 Virus (HIV), hepatitis B, and hepatitis C. The voluntary informed  
5 consent shall be in writing. Once consent is given in writing, the  
6 arrestee shall provide three specimens of blood for testing as  
7 provided in this chapter.

8 (2) If voluntary informed consent is not given in writing, the  
9 affected individual may petition, ex parte, the court for an order  
10 requiring testing as provided in this chapter. The petition shall  
11 include a written certification by a health care professional that an  
12 exposure, including the nature and extent of the exposure, has  
13 occurred.

14 (b) The court shall promptly conduct a hearing upon a petition  
15 filed pursuant to paragraph (2) of subdivision (a). If the court finds  
16 that probable cause exists to believe that a possible bloodborne  
17 pathogen exposure, as defined in Section 121060.1, took place  
18 between the arrestee and the peace officer, firefighter, or emergency  
19 medical personnel, as specified in this section, the court shall order  
20 that the arrestee provide three specimens of blood for testing as  
21 provided in this chapter.

22 (c) (1) Except as provided in paragraph (2), copies of the test  
23 results shall be sent to the arrestee, each peace officer, firefighter,  
24 and emergency medical personnel named in the petition and his  
25 or her employing agency, officer, or entity, and if the arrestee is  
26 incarcerated or detained, to the officer in charge and the chief  
27 medical officer of the facility where the person is incarcerated or  
28 detained.

29 (2) The person whose sample was tested, shall be advised that  
30 he or she will be informed of the hepatitis B, hepatitis C, and HIV  
31 test results only if he or she wishes to be so informed. If the person  
32 consents to be informed of the hepatitis B, hepatitis C, and HIV  
33 test results, then he or she shall sign a form documenting that  
34 consent. The person's refusal to sign that form shall be construed  
35 to be a refusal to be informed of the hepatitis B, hepatitis C, and  
36 HIV test results.

37 (3) Except as otherwise provided under this section, all  
38 confidentiality requirements regarding medical records shall apply  
39 to the test results obtained.

1 SEC. 2. Section 121060.1 is added to the Health and Safety  
2 Code, to read:

3 121060.1. (a) For purposes of Section 121060, “bloodborne  
4 pathogen exposure” means a percutaneous injury, including, but  
5 not limited to, a needle stick or cut with a sharp object, or the  
6 contact of nonintact skin or mucous membranes with any of the  
7 bodily fluids identified in subdivision (b), in accordance with the  
8 most current bloodborne pathogen exposure definition established  
9 by the federal Centers for Disease Control and Prevention.

10 (b) “Bodily fluids” means any of the following:

- 11 (1) Blood.
- 12 (2) Tissue.
- 13 (3) Mucous containing visible blood.
- 14 (4) Semen.
- 15 (5) Vaginal secretions.

16 SEC. 3. Section 121065 of the Health and Safety Code is  
17 amended to read:

18 121065. (a) The withdrawal of blood shall be performed in a  
19 medically approved manner. Only a physician, registered nurse,  
20 licensed vocational nurse, licensed medical technician, or licensed  
21 phlebotomist may withdraw blood specimens for the purposes of  
22 this chapter.

23 (b) The court shall order that the blood specimens be transmitted  
24 to a licensed medical laboratory and that tests be conducted thereon  
25 for medically accepted indications of exposure to or infection by  
26 HIV, hepatitis B, and hepatitis C.

27 ~~(e) Copies of test results that indicate exposure to or infection~~  
28 ~~by HIV, hepatitis B, or hepatitis C shall also be transmitted to the~~  
29 ~~department.~~

30 ~~(d)~~

31 (c) (1) The test results shall be sent to the designated recipients  
32 with the following disclaimer:

33 “The tests were conducted in a medically approved manner.  
34 Persons receiving this test result should continue to monitor their  
35 own health and should consult a physician as appropriate.  
36 Recipients of these test results are subject to existing confidentiality  
37 protections for any identifying information about HIV, hepatitis  
38 B, or hepatitis C test results. Medical information regarding the  
39 HIV, hepatitis B, or hepatitis C status of the source patient shall

1 be kept confidential and may not be further disclosed, except as  
2 otherwise authorized by law.”

3 (2) The exposed individual shall also be informed of the  
4 penalties for disclosure for which he or she would be personally  
5 liable pursuant to Section 120980.

6 If the person subject to the test is a minor, copies of the test result  
7 shall also be sent to the minor’s parents or guardian.

8 (e)

9 (d) The court shall order all persons, other than the test subject,  
10 who receive test results pursuant to Sections 121055, 121056, or  
11 121060, to maintain the confidentiality of personal identifying  
12 data relating to the test results except for disclosure that may be  
13 necessary to obtain medical or psychological care or advice.

14 (f)

15 (e) The specimens and the results of tests ordered pursuant to  
16 Sections 121055, 121056, and 121060 shall not be admissible  
17 evidence in any criminal or juvenile proceeding.

18 (g)

19 (f) Any person performing testing, transmitting test results, or  
20 disclosing information pursuant to the provisions of this chapter  
21 shall be immune from civil liability for any action undertaken in  
22 accordance with the provisions of this chapter.

23 SEC. 4. If the Commission on State Mandates determines that  
24 this act contains costs mandated by the state, reimbursement to  
25 local agencies and school districts for those costs shall be made  
26 pursuant to Part 7 (commencing with Section 17500) of Division  
27 4 of Title 2 of the Government Code.