

Assembly Bill No. 169

CHAPTER 417

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

[Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 169, Portantino. Communicable disease: involuntary testing.

Existing law establishes procedures by which an arrestee's blood may be tested, either voluntarily or by court order, for specified communicable diseases when 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.

This bill would add custodial officers, custody assistants, and nonsworn uniformed employees of a law enforcement agency, as defined, to the list of persons who may seek to have an arrestee's blood tested, either voluntarily or by court order, for specified communicable diseases when the custodial officer, custody assistant, or nonsworn uniformed employee of a law enforcement agency is exposed to that arrestee's blood or bodily fluids, as defined, while acting within the scope of his or her duties. Because this bill increases the duties of local officials, this bill would impose a state-mandated local program.

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.

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

SECTION 1. Section 121060 of the Health and Safety Code is amended to read:

121060. (a) Any peace officer, firefighter, custodial officer, as that term is defined in subdivision (a) of Section 831 or subdivision (a) of Section 831.5 of the Penal Code, a custody assistant, as that term is defined in subdivision (a) of Section 831.7 of the Penal Code, a nonsworn uniformed employee of a law enforcement agency whose job entails the care or control of inmates in a detention facility, or emergency medical personnel who,

while acting within the scope of his or her duties, is exposed to an arrestee's blood or bodily fluids, as defined in Section 121060.1, shall do the following:

(1) Prior to filing a petition with the court, a licensed health care provider shall notify the arrestee of the bloodborne pathogen exposure and make a good faith effort to obtain the voluntary informed consent of the arrestee or the arrestee's authorized legal representative to perform a test for human immunodeficiency virus (HIV), hepatitis B, and hepatitis C. The voluntary informed consent shall be in writing. Once consent is given in writing, the arrestee shall provide three specimens of blood for testing as provided in this chapter.

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

(b) The court shall promptly conduct a hearing upon a petition filed pursuant to paragraph (2) of subdivision (a). If the court finds that probable cause exists to believe that a possible bloodborne pathogen exposure, as defined in Section 121060.1, took place between the arrestee and the peace officer, firefighter, custodial officer, custody assistant, nonsworn uniformed employee of a law enforcement agency whose job entails the care or control of inmates in a detention facility, or emergency medical personnel, as specified in this section, the court shall order that the arrestee provide three specimens of blood for testing as provided in this chapter.

(c) (1) Except as provided in paragraph (2), copies of the test results shall be sent to the arrestee, each peace officer, firefighter, custodial officer, custody assistant, nonsworn uniformed employee of a law enforcement agency whose job entails the care or control of inmates in a detention facility, and emergency medical personnel named in the petition and his or her employing agency, officer, or entity, and if the arrestee is incarcerated or detained, to the officer in charge and the chief medical officer of the facility where the person is incarcerated or detained.

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

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

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and

school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

O