

AMENDED IN SENATE JUNE 14, 2013

AMENDED IN ASSEMBLY MAY 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 506**

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**Introduced by Assembly Member Mitchell**

February 20, 2013

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An act to amend Section 121020 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 506, as amended, Mitchell. HIV testing: infants.

Existing law provides that a child may come within the jurisdiction of the juvenile court and become a dependent child of the court in, among others, cases of abuse and neglect. Under existing law, when a minor has been, or has a petition filed with the court to be, adjudged a dependent child of the court, the court may authorize, or order that a social worker may authorize, medical care for the minor, as prescribed. Under existing law, a social worker may, without court order, authorize medical care for a minor in emergency situations, as specified.

Existing law authorizes a peace officer or social worker to take into temporary custody a minor when there is reasonable cause for believing that the minor is in immediate need of medical care or is in immediate danger, as specified. Under existing law, when a minor is taken into temporary custody and is in need of medical care, the social worker may, upon recommendation of the attending physician and surgeon, authorize the performance of medical care, as specified.

Existing law provides that a minor under 12 years of age is deemed not competent to give consent for an HIV test to be performed, and

authorizes the minor's parent, guardian, conservator, or other person lawfully authorized to make health care decisions on behalf of the minor to provide consent for the test. Under existing law, a court may also provide consent for the test to be performed on a minor who is adjudged to be a dependent child of the court.

This bill would authorize a social worker to provide consent for an HIV test to be performed on an infant who is less than 12 months of age when the infant has been taken into temporary custody or has been, or has a petition filed with the court to be, adjudged a dependent child of the court and the infant is receiving medical care if, among other things, the attending physician and surgeon determines that HIV testing is necessary to render appropriate care to the infant. *The bill would provide that if an infant tests positive for HIV infection and the physician and surgeon determines that immediate HIV medical care is necessary to render appropriate care to that infant, that care shall be considered emergency medical care that may be authorized, without court order, by a social worker.*

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

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

1 SECTION 1. Section 121020 of the Health and Safety Code  
2 is amended to read:  
3 121020. (a) (1) When the subject of an HIV test is not  
4 competent to give consent for the test to be performed, written  
5 consent for the test may be obtained from the subject's parents,  
6 guardians, conservators, or other person lawfully authorized to  
7 make health care decisions for the subject. For purposes of this  
8 paragraph, a minor shall be deemed not competent to give consent  
9 if he or she is under 12 years of age.  
10 (2) Notwithstanding paragraph (1), when the subject of the HIV  
11 test is a minor adjudged to be a dependent child of the court  
12 pursuant to Section 360 of the Welfare and Institutions Code,  
13 written consent for the test to be performed may be obtained from  
14 the court pursuant to its authority under Section 362 or 369 of the  
15 Welfare and Institutions Code.  
16 (3) (A) Notwithstanding paragraphs (1) and (2), if the subject  
17 of the test is an infant who is less than 12 months of age who has  
18 been taken into temporary custody pursuant to Article 7

1 (commencing with Section 305) of Chapter 2 of Part 1 of Division  
2 2 of the Welfare and Institutions Code or who has been, or has a  
3 petition filed with the court to be, adjudged a dependent child of  
4 the court pursuant to Section 360 of the Welfare and Institutions  
5 Code, the social worker may provide written consent for an HIV  
6 test to be performed when the infant is receiving medical care  
7 pursuant to Section 369 of the Welfare and Institutions Code, if  
8 all of the following have occurred:

9 (i) The attending physician and surgeon determines that HIV  
10 testing is necessary to render appropriate care to the infant and  
11 documents that determination. When deciding whether HIV testing  
12 is necessary, the physician and surgeon shall consider appropriate  
13 factors, either known to the attending physician and surgeon or  
14 provided to the attending physician and surgeon by the social  
15 worker, including, but not limited to, whether the infant has a  
16 parent with a history of behavior that places the parent at an  
17 increased risk of exposure to HIV, or whether the infant is a victim  
18 of sexual abuse, which has placed the child at risk of exposure to  
19 HIV.

20 (ii) ~~(H)~~—The social worker provides known information  
21 concerning the infant’s possible risk factors regarding exposure  
22 to HIV to the attending physician and surgeon.

23 ~~(H)~~—If the parent’s or guardian’s authority to make medical  
24 decisions for the child has not been terminated or limited by the  
25 court, the social worker makes reasonable efforts to contact the  
26 parent or guardian of the child to seek consent for the HIV testing  
27 and is unable to contact the parent or guardian. The social worker  
28 shall document his or her efforts to contact the parent or guardian.

29 ~~(H)~~—If the parent’s or guardian’s authority to make medical  
30 decisions for the child has been terminated or limited by the court,  
31 the social worker makes reasonable efforts to contact the person  
32 authorized by the court to make medical decisions for the child in  
33 order to seek consent for the HIV testing and is unable to contact  
34 that person. The social worker shall document his or her efforts to  
35 contact that person.

36 (iii) *The social worker has made reasonable efforts to contact*  
37 *the parent or guardian but was unable to do so, and the social*  
38 *worker has documented his or her efforts to contact that person.*

1 (B) The attending physician and surgeon and the social worker  
2 shall comply with all applicable state and federal confidentiality  
3 laws.

4 (b) Written consent shall only be obtained for the subject  
5 pursuant to paragraphs (1) and (2) of subdivision (a) when  
6 necessary to render appropriate care or to practice preventative  
7 measures.

8 (c) The person authorized to consent to the test pursuant to  
9 subdivision (a) shall be permitted to do any of the following:

10 (1) Notwithstanding Sections 120975 and 120980, receive the  
11 results of the test on behalf of the subject without written  
12 authorization.

13 (2) Disclose the test results on behalf of the subject in  
14 accordance with Sections 120975 and 120980.

15 (3) Provide written authorization for the disclosure of the test  
16 results on behalf of the subject in accordance with Sections 120975  
17 and 120980.

18 *(d) If an infant tested for HIV pursuant to paragraph (3) of*  
19 *subdivision (a) tests positive for HIV infection and the physician*  
20 *and surgeon determines that immediate HIV medical care is*  
21 *necessary to render appropriate care to that infant, the provision*  
22 *of HIV medical care shall be considered emergency medical care,*  
23 *pursuant to subdivision (d) of Section 369 of the Welfare and*  
24 *Institutions Code.*