

HOUSE RESEARCH

Bill Summary

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Overview

This bill establishes testing procedures to be used in cases where peace officers may have been exposed to bloodborne pathogens. The language is closely patterned, except for the court procedures in section 7, after procedures established for emergency medical services personnel in chapter 144 and less closely related to similar provisions in chapter 241 (corrections officers) and chapter 246 (secure treatment facilities workers). Peace officers are currently covered under chapter 144's provisions, however, that language is tied to emergency response situations. This bill is intended to cover any situation that an on-duty peace officer has a significant exposure to bloodborne pathogens and provide peace officers with expedited court procedures.

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- 1** **Definitions.** Adds § 626.9601. Defines the following terms: bloodborne pathogens, law enforcement agency, peace officer ("PO"), source individual, significant exposure, and facility (*i.e.*, hospital).
 - "Significant exposure" includes exposure to any bodily fluid that may carry a bloodborne pathogen.
- 2** **Conditions for applicability of procedures.** Adds § 626.9602. Specifies conditions under which procedures for responding to a PO who may have had a significant exposure to a bloodborne pathogen apply. Establishes procedures for locating source individuals of

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bloodborne pathogens.

Subd. 1. Request for procedures. Allows a PO or law enforcement agency to request that a facility follow the bill's significant exposure procedures when a PO may have experienced a significant exposure to a bloodborne pathogen.

Subd. 2. Conditions. Requires facilities to follow these procedures when the facility determines that a significant exposure has occurred, the source individual's blood test results are needed to determine a course of treatment, and the exposed PO consents to provide a blood sample for testing for bloodborne pathogens.

Subd. 3. Locating source individual. Requires the law enforcement agency and the facility to make reasonable efforts to locate or contact the source individual, and allows the agency and facility to exchange private data about the source individual as necessary.

3 Information required to be given to individuals. Adds § 626.9603. Before seeking any consent from a source individual to obtain a blood sample, test a blood sample, or obtain existing blood test results, requires a facility to inform the source individual that the individual's test results will be reported to the exposed PO if the PO so requests, and that the test results are for medical purposes.

Also requires the facility to inform the source individual: of the insurance protections in section 72A.20, subd. 29; that the individual may refuse to provide a blood sample and a refusal may result in a court order for the sample; and that the facility will tell the PO about the confidentiality requirements and penalties for unauthorized releases before disclosing any test information.

Before disclosing any information about a source individual to a PO, requires the facility to inform the PO about the confidentiality requirements and penalties for unauthorized release, and about the insurance protections in section 72A.20, subd. 29.

4 Disclosure of positive bloodborne pathogen test results. Adds § 626.9604. Requires a facility to: (1) ask the source individual and the PO if either of them has ever had a positive test for a bloodborne pathogen; (2) try to get existing test results before trying to obtain blood samples or perform new tests; and (3) disclose the source individual's test results to the exposed PO without any identifying information about the source individual.

5 Consent procedures generally. Adds § 626.9605. Specifies that the facility must follow its usual procedures for obtaining consent when it needs to obtain consent for a procedure involving a source individual or PO. Provides that consent from a source individual or representative to test an existing blood sample is not required if (1) the facility has made reasonable efforts to obtain the representative's consent, but that consent cannot be obtained within 24 hours of the exposure, or (2) the source individual dies before being able to give consent to blood collection or testing. If testing occurs without consent, requires the facility to give the source individual certain required information whenever it is possible to do so.

6 Testing of available blood. Adds § 626.9606. Establishes procedures by which a facility may test an available sample of a source individual's blood, with the source individual's consent or without the source individual's consent.

Subd. 1. Procedures with consent. Provides that if the source individual is or was under

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the care of the facility and a sample of the source individual's blood is available with the individual's consent, the facility must test the blood sample if the individual consents.

Subd. 2. Procedures without consent . Establishes criteria under which an available blood sample may be tested for bloodborne pathogens without the source individual's consent, if the PO or the law enforcement agency requests the test. (One of these criteria is that the PO was exposed to blood or body fluids while performing their job.)

Subd. 3. Follow-up. Requires the facility to tell the source individual and the exposed PO their own test results. Also requires the facility to tell the PO of the source individual's test results without any identifying information about the source individual.

7 **Blood sample collection for testing.** Adds § 626.9607. Establishes procedures by which a facility may obtain and test a blood sample from a source individual with or without the individual's consent.

Subd. 1. Procedures with consent. Establishes procedures for collecting and testing blood samples and making the test results available when the source individual consents to provide a blood sample. If the source individual refuses to consent, requires the facility to so inform the exposed PO of the refusal.

Subd. 2. Procedures without consent. Allows a law enforcement agency or a PO to petition for a court order to require a source individual to provide a blood sample for testing for bloodborne pathogens. Requires facilities to provide any information needed by petitioners. A court must order a source individual to provide a blood sample if:

- there is probable cause (*i.e.*, having more evidence for than against) to believe a significant exposure occurred;
- a licensed physician for the PO needs the test results to treat the PO; and
- the court finds "reasonable" need for the test results. (Under the other bloodborne pathogen statutes, the court must find a "compelling" need for the test results.)

The court must impose appropriate safeguards against unauthorized disclosure of test results and personal information, if an order is issued.

Requires the court to schedule the hearing within 24 hours of receiving the petition. (The other bloodborne pathogen statutes do not impose a hearing deadline.) The court may hold the proceedings in camera (*i.e.*, behind closed doors), unless the court concludes that an open hearing is necessary. The hearing may be ex parte: the source individual need not be present or have received prior notice of the hearing. Finally, requires the court to issue an order within 24 hours of the hearing. (The other bloodborne pathogen statutes do not impose a deadline for issuing a ruling.)

Requires the petitioner to serve an ex parte order on the source individual. Permits a source individual to challenge an ex parte order within 48 hours of receiving the order. Requires a court to hold a hearing on an appeal within 24 hours of receiving the appeal. The court may vacate its ex parte order if the source individual proves by clear and convincing evidence that his blood did not contact the PO. The court must issue its ruling on an appeal within 24 hours of the conclusion of the hearing.

A person ordered to submit blood must do so within 48 hours of receiving a copy of the

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order. Failure to comply with an order will place the person in contempt of court and subject them to detention until they comply with the order.

- 8** **No discrimination.** Adds § 626.9608. Prohibits facilities from conditioning decisions about admitting a source individual to a facility or providing care or treatment on any requirement that the source individual consent to a blood test for bloodborne pathogens.
- 9** **Use of test results.** Adds § 626.9609. Specifies that test results of a source individual can be used only for diagnostic and treatment purposes, and prohibits them from being used as evidence in criminal or civil proceedings, except for actions under the health threat procedures statute.
- 10** **Test information confidentiality.** Adds § 626.9611. Classifies information on test results for bloodborne pathogens as private data for public facilities, and prohibits private facilities from disclosing data without consent as required by a section governing access to health records. Prohibits facilities, individuals, and employers from disclosing any identifying information about a source individual to a PO without a written release from the source individual.

Note: There is no section 626.9610. It was purposely omitted so that the bill tracks the provisions in chapter 144 as closely as possible. (There is no §144.7610.)

- 11** **Penalty for unauthorized release of information.** Adds § 626.9612. Makes the unauthorized release of information subject to the remedies and penalties in the Data Practices Act. Specifies that private causes of action may also be pursued against any person responsible for releasing private data or information protected from disclosure.
- 12** **Responsibility for testing and treatment; costs.** Adds § 626.9613. Requires the facility to ensure that tests for bloodborne pathogens are performed if requested by a PO or a law enforcement agency, provided the conditions established in this bill are met. Specifies that the law enforcement agency that employs the PO who requests the test must pay for, or arrange for the payment of, the costs of testing and treating the PO and the costs of testing the source individual.
- 13** **Protocols for exposure to bloodborne pathogens.** Adds § 626.9614. Requires law enforcement agencies and facilities to have post-exposure protocols to follow when a PO experiences a significant exposure.

Subd. 1. Law enforcement agency requirements. Requires the law enforcement agency to have procedures for a PO to notify a facility that the person may have experienced a significant exposure, and procedures to locate the source individual if necessary.

Subd. 2. Facility protocol requirements. Requires facilities to adopt a post-exposure protocol for POs who have experienced a significant exposure. Requires the post-exposure protocol to follow the current recommendations of the U.S. Public Health Service, and lists the minimum criteria that must be met.

- 14** **Penalties and immunity.** Adds § 626.9615. Establishes Penalties and immunity for certain individuals.

Subd. 1. Penalties. Makes it a misdemeanor to willfully violate any of the sections concerning the exposure of PO to bloodborne pathogens.

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15 **Subd. 2. Immunity.** Extends immunity to facilities, physicians, and designated health care personnel who have made a good faith effort to comply with these sections.
Effective Date. July 1, 2006.