

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-1018.02 Jerry Barry x4341

HOUSE BILL 16-1393

HOUSE SPONSORSHIP

Esgar and Foote,

SENATE SPONSORSHIP

Cooke,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PROCEDURES FOR ORDERED TESTING FOR
102 COMMUNICABLE DISEASES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current law provides that a person may be required to submit to a medical test for communicable diseases if the person's or another person's bodily fluid came into contact with another person related to a conviction or finding of probable cause related to an assault in the first, second, or third degree. The bill repeals these provisions and substitutes a provision authorizing a court to issue a search warrant for a person's bodily fluid if

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

probable cause exists to believe that an assault has been committed and that the person's or another person's bodily fluid came into contact with another person.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 16-3-303.8 as
3 follows:

4 **16-3-303.8. Testing for communicable diseases - search**
5 **warrant required - definitions.** (1) AS USED IN THIS SECTION, UNLESS
6 THE CONTEXT OTHERWISE REQUIRES:

7 (a) "EMERGENCY MEDICAL CARE PROVIDER" HAS THE SAME
8 MEANING AS DEFINED IN SECTION 18-3-201 (1), C.R.S.

9 (b) "EMERGENCY MEDICAL SERVICE PROVIDER" HAS THE SAME
10 MEANING AS DEFINED IN SECTION 18-3-201 (1.3), C.R.S.

11 (c) "FIREFIGHTER" HAS THE SAME MEANING AS DEFINED IN
12 SECTION 18-3-201 (1.5), C.R.S.

13 (2) **Application.** (a) A COURT SHALL ORDER A PERSON TO SUBMIT
14 BLOOD, URINE, SALIVA, OR OTHER BODILY FLUID REQUIRED FOR A TEST FOR
15 COMMUNICABLE DISEASES IF AN AFFIDAVIT SWORN TO OR AFFIRMED
16 BEFORE THE JUDGE ESTABLISHES THE FOLLOWING GROUNDS FOR THE
17 ORDER:

18 (I) THERE IS PROBABLE CAUSE THAT A PERSON COMMITTED THE
19 CRIME OF ASSAULT IN THE FIRST DEGREE, IN VIOLATION OF SECTION
20 18-3-202, C.R.S.; ASSAULT IN THE SECOND DEGREE IN VIOLATION OF
21 SECTION 18-3-203, C.R.S.; OR ASSAULT IN THE THIRD DEGREE IN
22 VIOLATION OF SECTION 18-3-204, C.R.S.; AND

23 (II) THERE IS PROBABLE CAUSE THAT THE PERSON'S, OR ANOTHER
24 PERSON'S, BLOOD, SEMINAL FLUID, URINE, FECES, SALIVA, MUCUS, OR

1 VOMIT CAME INTO CONTACT WITH ANY VICTIM OF THE ASSAULT, PEACE
2 OFFICER, FIREFIGHTER, OR EMERGENCY MEDICAL CARE PROVIDER, OR
3 EMERGENCY MEDICAL SERVICE PROVIDER.

4 (b) THE AFFIDAVIT REQUIRED BY PARAGRAPH (a) OF THIS
5 SUBSECTION (2) MAY INCLUDE SWORN TESTIMONY REDUCED TO WRITING
6 AND SIGNED UNDER OATH BY THE WITNESS GIVING THE TESTIMONY
7 BEFORE THE ISSUANCE OF THE SEARCH WARRANT. A COPY OF THE
8 AFFIDAVIT AND A COPY OF THE TRANSCRIPT OF TESTIMONY TAKEN IN
9 SUPPORT OF THE REQUEST FOR THE SEARCH WARRANT MUST BE ATTACHED
10 TO A COURT ORDER ISSUED PURSUANT TO THIS SECTION.

11 (3) **Order.** IF THE COURT IS SATISFIED THAT GROUNDS FOR THE
12 APPLICATION EXIST OR THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT
13 THE GROUNDS EXIST, THE COURT SHALL ISSUE THE SEARCH WARRANT,
14 WHICH SHALL:

15 (a) IDENTIFY THE NAME OR DESCRIPTION OF THE INDIVIDUAL WHO
16 IS TO GIVE THE BLOOD, URINE, SALIVA, OR OTHER BODILY FLUID;

17 (b) IDENTIFY THE NAMES OF ANY PERSONS MAKING AFFIDAVITS
18 FOR ISSUANCE OF THE ORDER;

19 (c) IDENTIFY THE CRIMINAL OFFENSE CONCERNING WHICH THE
20 ORDER HAS BEEN ISSUED AND THE TESTING PROCEDURES TO BE
21 CONDUCTED;

22 (d) IDENTIFY THE NAME OF THE VICTIM OF THE ASSAULT, PEACE
23 OFFICER, FIREFIGHTER, EMERGENCY MEDICAL CARE PROVIDER, OR
24 EMERGENCY MEDICAL SERVICE PROVIDER;

25 (e) INCLUDE A MANDATE TO THE OFFICER TO WHOM THE ORDER IS
26 DIRECTED TO DETAIN THE PERSON FOR ONLY SUCH TIME AS IS NECESSARY
27 TO OBTAIN THE BLOOD, URINE, SALIVA, OR OTHER BODILY FLUID; AND

1 (f) INCLUDE THE TYPEWRITTEN OR PRINTED NAME OF THE JUDGE
2 ISSUING THE ORDER AND HIS OR HER SIGNATURE.

3 (4) **Execution and return.** (a) COMMUNICABLE DISEASE
4 COLLECTION PROCEDURES MAY BE CONDUCTED BY ANY PEACE OFFICER OR
5 OTHER PERSON DESIGNATED BY THE JUDGE. BLOOD TESTS MUST BE
6 CONDUCTED UNDER MEDICAL SUPERVISION, AND THE JUDGE MAY REQUIRE
7 MEDICAL SUPERVISION FOR ANY OTHER TEST ORDERED PURSUANT TO THIS
8 SECTION WHEN HE OR SHE DEEMS SUPERVISION NECESSARY. A PERSON
9 WHO APPEARS UNDER AN ORDER OF APPEARANCE ISSUED PURSUANT TO
10 THIS SUBSECTION (4) SHALL NOT BE DETAINED LONGER THAN IS
11 REASONABLY NECESSARY TO CONDUCT THE SPECIFIED TESTING
12 PROCEDURES UNLESS HE OR SHE IS ARRESTED FOR AN OFFENSE.

13 (b) THE ORDER MAY BE EXECUTED AND RETURNED ONLY WITHIN
14 THIRTY-FIVE DAYS AFTER ITS ISSUANCE.

15 (c) THE OFFICER EXECUTING THE ORDER SHALL GIVE A COPY OF
16 THE ORDER TO THE PERSON UPON WHOM IT IS SERVED.

17 (5) **Disclosure of results and confidentiality.** (a) THE RESULTS
18 OF ANY TEST ON THE BLOOD, URINE, SALIVA, OR OTHER BODILY FLUID
19 OBTAINED PURSUANT TO AN ORDER ISSUED UNDER THIS SECTION MUST BE
20 REPORTED TO THE COURT OR THE COURT'S DESIGNEE, WHO SHALL THEN
21 DISCLOSE THE RESULTS TO ANY PERSON NAMED IN PARAGRAPH (d) OF
22 SUBSECTION (3) OF THIS SECTION WHO REQUESTS THE DISCLOSURE.

23 (b) EXCEPT AS REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION
24 (5), THE COURT SHALL KEEP THE TEST RESULTS, DISCLOSURE OF THE TEST
25 RESULTS, AND ANY RECORDS RELATING TO THE TEST RESULTS OR THE
26 DISCLOSURE OF THE TEST RESULTS CONFIDENTIAL.

27 (6) **Voluntary submission.** IF A PERSON DESCRIBED IN

1 PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION VOLUNTARILY
2 SUBMITS TO A TEST FOR COMMUNICABLE DISEASES, THE FACT OF THE
3 PERSON'S VOLUNTARY SUBMISSION IS ADMISSIBLE IN MITIGATION OF
4 SENTENCE IF THE PERSON IS CONVICTED OF THE CHARGED OFFENSE.

5 **SECTION 2.** In Colorado Revised Statutes, 18-1.3-602, **add** (3)
6 (a.5) as follows:

7 **18-1.3-602. Definitions.** As used in this part 6, unless the context
8 otherwise requires:

9 (3) (a.5) "RESTITUTION" INCLUDES, FOR A PERSON CONVICTED OF
10 ASSAULT IN THE FIRST, SECOND, OR THIRD DEGREE, AS DESCRIBED IN
11 SECTION 18-3-202, 18-3-203, OR 18-3-204, ALL OR ANY PORTION OF THE
12 FINANCIAL OBLIGATIONS OF MEDICAL TESTS PERFORMED ON AND
13 TREATMENT PRESCRIBED FOR A VICTIM, PEACE OFFICER, FIREFIGHTER,
14 EMERGENCY MEDICAL CARE PROVIDER, OR EMERGENCY MEDICAL SERVICE
15 PROVIDER.

16 **SECTION 3.** In Colorado Revised Statutes, 18-3-202, **repeal** (3).

17 **SECTION 4.** In Colorado Revised Statutes, 18-3-203, **repeal** (3).

18 **SECTION 5.** In Colorado Revised Statutes, 18-3-204, **repeal** (2).

19 **SECTION 6. Effective date.** This act takes effect July 1, 2016.

20 **SECTION 7. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.