

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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 - court order**
5 **required - definitions.** (1) AS USED IN THIS SECTION, UNLESS THE
6 CONTEXT OTHERWISE REQUIRES:

7 (a) "COMMUNICABLE DISEASE" MEANS A DISEASE OR INFECTION
8 THAT IS SPREAD FROM ONE PERSON TO ANOTHER THROUGH THE EXCHANGE
9 OF BLOOD OR OTHER BODILY FLUID AND THE HUMAN IMMUNODEFICIENCY
10 VIRUS (HIV).

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

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

15 (d) "FIREFIGHTER" HAS THE SAME MEANING AS DEFINED IN
16 SECTION 18-3-201 (1.5), C.R.S.

17 (e) "PEACE OFFICER" MEANS ANY PERSON DESCRIBED IN SECTION
18 16-2.5-101.

19 (2) **Consent.** UNLESS A PERSON HAS ADMITTED THAT HE OR SHE
20 HAS A COMMUNICABLE DISEASE AND PROVIDES CONFIRMATION OF THE
21 DISEASE, A LAW ENFORCEMENT AGENCY SHALL ASK A PERSON TO
22 VOLUNTARILY CONSENT TO A BLOOD TEST TO DETERMINE IF THE PERSON
23 HAS A COMMUNICABLE DISEASE IF:

24 (a) THE PERSON COMMITTED AN ASSAULT IN THE FIRST DEGREE, IN

1 VIOLATION OF SECTION 18-3-202, C.R.S.; ASSAULT IN THE SECOND DEGREE
2 IN VIOLATION OF SECTION 18-3-203, C.R.S.; OR ASSAULT IN THE THIRD
3 DEGREE IN VIOLATION OF SECTION 18-3-204, C.R.S.; AND

4 (b) DURING OR AS A RESULT OF THE ASSAULT, THE PERSON'S
5 BLOOD OR OTHER BODILY FLUID CAME INTO CONTACT WITH ANY VICTIM OF
6 THE ASSAULT, A PEACE OFFICER, FIREFIGHTER, OR EMERGENCY MEDICAL
7 CARE PROVIDER, OR AN EMERGENCY MEDICAL SERVICE PROVIDER, AND
8 THERE IS REASON TO BELIEVE, BASED ON INFORMATION FROM A MEDICAL
9 PROFESSIONAL, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,
10 OR A LOCAL HEALTH AGENCY, THAT THE VICTIM OF THE ASSAULT, PEACE
11 OFFICER, FIREFIGHTER, EMERGENCY MEDICAL CARE PROVIDER, OR
12 EMERGENCY MEDICAL SERVICE PROVIDER IS AT RISK OF TRANSMISSION OF
13 A COMMUNICABLE DISEASE.

14 (3) **Application.** (a) A COURT SHALL ORDER A PERSON TO SUBMIT
15 BLOOD REQUIRED FOR A TEST FOR COMMUNICABLE DISEASES IF AN
16 AFFIDAVIT SWORN TO OR AFFIRMED BEFORE THE JUDGE ESTABLISHES THE
17 FOLLOWING GROUNDS FOR THE 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.;

23 (II) THE PERSON HAS BEEN ASKED TO VOLUNTARILY SUBMIT TO A
24 BLOOD TEST FOR A COMMUNICABLE DISEASE AND THE PERSON HAS
25 REFUSED; AND

26 (III) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PERSON'S
27 BLOOD OR OTHER BODILY FLUID CAME INTO CONTACT WITH ANY VICTIM

1 OF THE ASSAULT, PEACE OFFICER, FIREFIGHTER, OR EMERGENCY MEDICAL
2 CARE PROVIDER, OR EMERGENCY MEDICAL SERVICE PROVIDER, AND THERE
3 IS REASON TO BELIEVE, BASED ON INFORMATION FROM A MEDICAL
4 PROFESSIONAL, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT,
5 OR A LOCAL HEALTH AGENCY, THAT THE VICTIM OF THE ASSAULT, PEACE
6 OFFICER, FIREFIGHTER, EMERGENCY MEDICAL CARE PROVIDER, OR
7 EMERGENCY MEDICAL SERVICE PROVIDER IS AT RISK OF TRANSMISSION OF
8 A COMMUNICABLE DISEASE.

9 (b) THE AFFIDAVIT REQUIRED BY PARAGRAPH (a) OF THIS
10 SUBSECTION (3) MAY INCLUDE SWORN TESTIMONY REDUCED TO WRITING
11 AND SIGNED UNDER OATH BY THE WITNESS GIVING THE TESTIMONY
12 BEFORE THE ISSUANCE OF THE COURT ORDER. A COPY OF THE AFFIDAVIT
13 AND A COPY OF THE TRANSCRIPT OF TESTIMONY TAKEN IN SUPPORT OF THE
14 REQUEST FOR THE COURT ORDER MUST BE ATTACHED TO A COURT ORDER
15 ISSUED PURSUANT TO THIS SECTION.

16 (4) **Order.** IF THE COURT IS SATISFIED THAT GROUNDS FOR THE
17 APPLICATION EXIST OR THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT
18 THE GROUNDS EXIST, THE COURT SHALL ISSUE THE COURT ORDER, WHICH
19 SHALL:

20 (a) IDENTIFY THE NAME OR DESCRIPTION OF THE INDIVIDUAL WHO
21 IS TO GIVE THE BLOOD;

22 (b) IDENTIFY THE NAMES OF ANY PERSONS MAKING AFFIDAVITS
23 FOR ISSUANCE OF THE ORDER;

24 (c) IDENTIFY THE CRIMINAL OFFENSE CONCERNING WHICH THE
25 ORDER HAS BEEN ISSUED;

26 (d) IDENTIFY THE NAME OF THE VICTIM OF THE ASSAULT, PEACE
27 OFFICER, FIREFIGHTER, EMERGENCY MEDICAL CARE PROVIDER, OR

1 EMERGENCY MEDICAL SERVICE PROVIDER;

2 (e) INCLUDE A MANDATE TO THE OFFICER TO WHOM THE ORDER IS
3 DIRECTED TO DETAIN THE PERSON FOR ONLY SUCH TIME AS IS NECESSARY
4 TO OBTAIN THE BLOOD; AND

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

7 (5) **Execution and return.** (a) THE BLOOD TESTS MUST BE
8 CONDUCTED UNDER MEDICAL SUPERVISION. A PERSON WHO APPEARS
9 UNDER AN ORDER OF APPEARANCE ISSUED PURSUANT TO THIS SECTION
10 SHALL NOT BE DETAINED LONGER THAN IS REASONABLY NECESSARY TO
11 OBTAIN THE BLOOD UNLESS HE OR SHE IS ARRESTED FOR AN OFFENSE.

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

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

16 (6) **Disclosure of results and confidentiality.** (a) THE RESULTS
17 OF ANY TEST ON THE BLOOD OBTAINED PURSUANT TO AN ORDER ISSUED
18 UNDER THIS SECTION MUST BE REPORTED TO THE COURT OR THE COURT'S
19 DESIGNEE, WHO SHALL THEN DISCLOSE THE RESULTS TO ANY PERSON
20 NAMED IN PARAGRAPH (d) OF SUBSECTION (4) OF THIS SECTION WHO
21 REQUESTS THE DISCLOSURE.

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

26 (7) **Voluntary submission.** IF A PERSON DESCRIBED IN
27 PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION VOLUNTARILY

1 SUBMITS TO A TEST FOR COMMUNICABLE DISEASES, THE FACT OF THE
2 PERSON'S VOLUNTARY SUBMISSION IS ADMISSIBLE IN MITIGATION OF
3 SENTENCE IF THE PERSON IS CONVICTED OF THE CHARGED OFFENSE.

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

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

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

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

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

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

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

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