



**Colorado
Legislative
Council
Staff**

HB16-1393

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 28, 2016)

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-1018
Prime Sponsor(s): Rep. Esgar; Foote
Sen. Cooke

Date: May 3, 2016
Bill Status: Senate SVMA
Fiscal Analyst: Kerry White (303-866-3469)

BILL TOPIC: SEARCH WARRANT FOR COMMUNICABLE DISEASE TESTING

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue		
State Expenditures	Minimal workload increase.	
Appropriation Required: None.		
Future Year Impacts: Ongoing minimal workload increase.		

Summary of Legislation

Under current law, any person bound over for trial for assault; convicted of assault; or found to have provided bodily fluids to another person indicted, bound over for trial, or convicted of assault is required to submit to a medical test for communicable diseases if his or her bodily fluids came into contact with a victim, peace officer, firefighter, emergency medical care provider, or emergency medical service provider (covered individual).

This **reengrossed** bill repeals that portion of current law and replaces it with a requirement that, unless a person has admitted that he or she has a communicable disease and provides confirmation, a law enforcement agency is required to ask the person to voluntarily consent to a blood test if certain conditions are met. These conditions include whether the person has committed assault in the first, second, or third degree, and during the assault, the person's blood or other bodily fluid came into contact with a covered individual and there is reason to believe that there is risk of transmission of the disease. The court is to order a person to submit blood required for a test if an affidavit establishes:

- there is probable cause that the person committed the crime of assault in the first, second, or third degree;
- the person has been asked to voluntarily submit a blood test, but has refused; and
- there is probable cause to believe that the person's blood or other bodily fluid came into contact with a covered individual and there is reason to believe that the covered individual is at risk for transmission of the disease.

The bill specifies procedures for collection of samples, disclosure of results and confidentiality, and restitution to cover the costs of medical tests, which are similar to those of current law with a few exceptions, including the requirements that:

- court orders are required to identify the name or description of the person required to give the sample, the names of any persons making affidavits, the criminal offense concerning which the order has been issued, the name of the covered individual, and the name of the judge, as well as to include a mandate to the officer to detain the person for only such time as is necessary to obtain the blood;
- blood tests must be conducted under medical supervision, and the court may require medical supervision for any other test as it deems necessary; and
- the order for sample collection must be executed and returned within 35 days of its issuance.

The bill clarifies that if a person voluntarily submits to a test for communicable diseases, the fact of that person's voluntary submission is admissible in mitigation of the sentence if the person is convicted of the charged offense.

Background

Currently, the process for ordering communicable disease testing occurs upon the motion of a district attorney, which generally occurs after adjudication proceedings have begun and during other proceedings. This bill requires that the court determine if probable cause and other factors exist to issue a search warrant upon receipt of an affidavit from a covered individual, which may occur prior to or during the adjudication process. Between January 1, 2015, and March 16, 2016, approximately 19,000 cases were filed that included at least one assault charge. It is not known how many of these cases involved contact with bodily fluids.

State Expenditures

Overall, beginning in FY 2016-17, this bill may increase workload for the trial courts in the Judicial Department and agencies that employ peace officers, firefighters, emergency medical care providers, or emergency medical service providers. These impacts are assumed to be minimal and will not require an increase in appropriations for any state agency.

Judicial Department. This bill will have a minimal effect on workload for the trial courts by requiring them to review affidavits and prepare orders for search warrants instead of approving a motion from the district attorney.

Other state agencies. This bill may increase workload for state agencies that employ covered individuals and that are exposed to bodily fluids in assault cases. Under the bill, these individuals must prepare and submit an affidavit to the court concerning exposure to bodily fluids in order to begin the process of communicable disease testing. In addition, peace officers of affected agencies may be involved in the delivery of search warrants and collection of samples for testing. The Departments of Corrections, Law, Natural Resources, Public Safety and Revenue employ peace officers, as do institutions of higher education. This analysis assumes that workload increases will be minimal.

Local Government Impact

This bill affects local governments in several ways. First, the bill may reduce workload for district attorneys by a minimal amount by shifting the request for communicable disease testing to a covered individual or other witness. Second, similar to state agencies, the bill increases workload for local governments that employ covered individuals and that are exposed to bodily fluids in

assault cases to prepare and file affidavits. Finally, for local law enforcement agencies, the bill may increase workload to execute search warrants for bodily fluids or to supervise additional tests that occur as the result of the bill's encouraging voluntary submissions.

Effective Date

The bill takes effect July 1, 2016.

State and Local Government Contacts

Corrections
Judicial

District Attorneys
Public Safety

Information Technology