

This Document can be made available
in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3161

02/11/2020

Authorized by Huot

The bill was read for the first time and referred to the Committee on Health and Human Services Policy

- 1.1 A bill for an act
- 1.2 relating to health; authorizing facilities to collect blood samples from source
- 1.3 individuals without consent; providing a criminal penalty; amending Minnesota
- 1.4 Statutes 2018, sections 144.7403, subdivision 1; 144.7407, subdivisions 1, 2.
- 1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.6 Section 1. Minnesota Statutes 2018, section 144.7403, subdivision 1, is amended to read:
- 1.7 Subdivision 1. **Information to source individual.** (a) Before seeking any consent
- 1.8 required by the procedures under sections 144.7401 to 144.7415, a facility shall inform the
- 1.9 source individual that the source individual's blood-borne pathogen test results, without the
- 1.10 individual's name, address, or other uniquely identifying information, shall be reported to
- 1.11 the emergency medical services person if requested, and that test results collected under
- 1.12 sections 144.7401 to 144.7415 are for medical purposes as set forth in section 144.7409
- 1.13 and may not be used as evidence in any criminal proceedings or civil proceedings, except
- 1.14 for procedures under sections 144.4171 to 144.4186.
- 1.15 (b) The facility shall inform the source individual of the insurance protections in section
- 1.16 72A.20, subdivision 29.
- 1.17 (c) The facility shall inform the source individual that if the individual may refuse ~~refuses~~
- 1.18 ~~to provide a blood sample and that the source individual's refusal may result in a request~~
- 1.19 ~~for a court order to,~~ the emergency medical services person who experienced a significant
- 1.20 exposure, or the emergency medical services person's emergency medical services agency,
- 1.21 may require the source individual to provide a blood sample.

(d) The facility shall inform the source individual that the facility will advise the emergency medical services person of the confidentiality requirements and penalties before disclosing any test information.

Sec. 2. Minnesota Statutes 2018, section 144.7407, subdivision 1, is amended to read:

Subdivision 1. **Procedures with consent.** (a) If a blood sample is not otherwise available, the facility shall ~~obtain~~ request consent from the source individual before collecting a blood sample for testing for blood-borne pathogens. The consent process shall include informing the source individual that the individual may refuse to provide a blood sample and that the source individual's refusal may result in ~~a request for a court order under subdivision 2 to require the facility collecting a blood sample from the source individual to provide a blood sample~~ without the source individual's consent, as provided in subdivision 2.

(b) If the source individual consents to provide a blood sample, the facility shall collect a blood sample and test the sample for blood-borne pathogens.

(c) The facility shall inform the emergency medical services person about the source individual's test results without the individual's name, address, or other uniquely identifying information. The facility shall inform the source individual of the test results.

(d) If the source individual refuses to provide a blood sample for testing, the facility shall inform the emergency medical services person of the source individual's refusal.

Sec. 3. Minnesota Statutes 2018, section 144.7407, subdivision 2, is amended to read:

Subd. 2. **Procedures without consent.** (a) ~~An emergency medical services agency, or, if there is no agency, an emergency medical services person, may bring a petition for a court order to require a source individual to provide a blood sample for testing for blood-borne pathogens. The petition shall be filed in the district court in the county where the source individual resides or is hospitalized. The petitioner shall serve the petition on the source individual at least three days before a hearing on the petition. The petition shall include one or more affidavits attesting that:~~ If a source individual does not consent to a facility collecting a blood sample for testing for blood-borne pathogens, the facility shall collect a blood sample from the source individual and test it for blood-borne pathogens, provided all of the following criteria are met:

(1) the emergency medical services person who experienced a significant exposure, or the emergency medical services person's emergency medical services agency, requests the test;

~~(1)~~ (2) the facility followed the procedures in sections 144.7401 to 144.7415, asked the source individual to consent to collection of a blood sample for testing for blood-borne pathogens, and attempted to obtain blood-borne pathogen test results according to those sections, but the source individual did not consent;

~~(2)~~ (3) it has been determined under section 144.7414, subdivision 2, that a significant exposure has occurred to the emergency medical services person; ~~and~~

~~(3)~~ (4) a physician with specialty training in infectious diseases, including HIV, has documented that the emergency medical services person has provided a blood sample and consented to testing for blood-borne pathogens and blood-borne pathogen test results are needed for beginning, continuing, modifying, or discontinuing medical treatment for the emergency medical services person;

(5) the facility has provided the source individual with all of the information required by section 144.7403; and

(6) the facility has informed the emergency medical services person of the confidentiality requirements of section 144.7411 and the penalties for unauthorized release of source information under section 144.7412.

~~(b) Facilities shall cooperate with petitioners in providing any necessary affidavits to the extent that facility staff can attest under oath to the facts in the affidavits.~~

~~(c) The court may order the source individual to provide a blood sample for blood-borne pathogen testing if:~~

~~(1) there is probable cause to believe the emergency medical services person has experienced a significant exposure to the source individual;~~

~~(2) the court imposes appropriate safeguards against unauthorized disclosure that must specify the persons who have access to the test results and the purposes for which the test results may be used;~~

~~(3) a licensed physician for the emergency medical services person needs the test results for beginning, continuing, modifying, or discontinuing medical treatment for the emergency medical services person; and~~

~~(4) the court finds a compelling need for the test results. In assessing compelling need, the court shall weigh the need for the court-ordered blood collection and test results against the interests of the source individual, including, but not limited to, privacy, health, safety, or economic interests. The court shall also consider whether the involuntary blood collection and testing would serve the public interest.~~

4.1 ~~(d) The court shall conduct the proceeding in camera unless the petitioner or the source~~
4.2 ~~individual requests a hearing in open court and the court determines that a public hearing~~
4.3 ~~is necessary to the public interest and the proper administration of justice.~~

4.4 ~~(e) The court shall conduct an ex parte hearing if the source individual does not attend~~
4.5 ~~the noticed hearing and the petitioner complied with the notice requirements in paragraph~~
4.6 ~~(a).~~

4.7 ~~(f) (b)~~ The source individual has the right to ~~counsel in any proceeding brought~~ consult
4.8 with an attorney prior to collection of a blood sample under this subdivision, but that right
4.9 is limited to the extent that it cannot unreasonably delay the collection of the blood sample.

4.10 ~~(g) The court may order~~ (c) A source individual who refuses to comply with a facility's
4.11 effort to collect a blood sample is guilty of a misdemeanor. A peace officer may take a
4.12 source individual taken into custody by a peace officer for purposes of a facility obtaining
4.13 a blood sample if the source individual does not comply with an order issued by the court
4.14 pursuant to paragraph (e) the facility's effort to collect a blood sample and if there is a
4.15 substantial likelihood that the source individual will not respond to a citation. The source
4.16 individual shall be held no longer than is necessary to secure a blood sample. A person may
4.17 not be held for more than 24 hours without receiving a court hearing.