

RESOLUTION 09-21-06

DIGEST

Blood Test Order: Exposure to Bodily Fluids

Amends Health and Safety Code section 121060 to eliminate intentional action by the defendant as a basis for a blood test order.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Health and Safety Code section 121060 to eliminate intentional action by the defendant as a basis for a blood test order. This resolution should be disapproved because, as drafted, and in light of current case law, its effect would be to mandate a blood test order in virtually all cases of arrest.

The court in *People v. Hall* (2002) 101 Cal.App.4th 1009, found that “sweat” is a bodily fluid within the plain meaning of section 121060, and that the defendant’s sweat having come into contact with the arresting officer when he was resisting arrest and being handcuffed constituted a sufficient basis on which to order a blood test. This resolution would eliminate the element of resistance, and any intentional interference with the official personnel’s performance of his or her duties, as a necessary basis for ordering a blood test. In light of the findings and holding of *Hall*, this resolution would require that any person that came into contact with a peace officer, firefighter or emergency medical personnel could be ordered to submit to a blood test upon request of the contacted official party.

Section 121060 presently does not require a finding of probable cause to believe that the bodily fluid allegedly transferred is contaminated or likely to communicate a disease, and has potentially serious Fourth Amendment implications. The statute as proposed to be amended would unacceptably, and arguably unconstitutionally, increase and compound those implications.

The proponent’s intent is a good one: to provide to peace officers, firefighters and emergency medical personnel the benefit of blood test results if they have been exposed to the blood or saliva of another person in the course of performing their official duties; even if that exposure occurred accidentally.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Health and Safety Code Section 121060 to read as follows:

1 § 121060

2 Any person charged in any criminal complaint filed with a magistrate or court and
3 any minor with respect to whom a petition has been filed in juvenile court, in which it is
4 alleged ~~in whole or in part that the defendant or minor interfered with the official duties of a~~
5 ~~peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting,~~
6 that potential exposure to a blood-borne disease may have occurred by either accidental or
7 intentional transfer of ~~or transferring~~ blood or other bodily fluids on, upon, or through the
8 skin or membranes of a peace officer, firefighter, or emergency medical personnel shall in
9 addition to any penalties provided by law be subject to an order of a court having
10 jurisdiction of the complaint or petition requiring testing as provided in this chapter.

11 The peace officer, firefighter, emergency medical personnel or the employing
12 agency, officer, or entity may petition the court for an order authorized under this section.

13 The court shall promptly conduct a hearing upon any such petition. If the court finds
14 that probable cause exists to believe that a possible transfer of blood, saliva, semen, or other
15 bodily fluid took place between the defendant or minor and the peace officer, firefighter, or
16 emergency medical personnel, as specified in this section, the court shall order that the
17 defendant or minor provide two specimens of blood for testing as provided in this chapter.

18 Copies of the test results shall be sent to the defendant or minor, each peace officer,
19 firefighter, and emergency medical personnel named in the petition and his or her employing
20 agency, officer, or entity, and if the defendant or minor is incarcerated or detained, to the
21 officer in charge and the chief medical officer of the facility where the person is incarcerated
22 or detained.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: Only provides for blood tests to be ordered when the defendant or minor is alleged to have interfered with the official duties of a peace officer, firefighter or emergency medical personnel by biting, scratching, or spitting on them.

This Resolution: Would allow blood tests to be ordered whenever there may have been exposure to blood-borne disease.

The Problem: It should not be required that an intentional action by a defendant or minor must occur prior to these tests being ordered. An accidental needle stick or other exposure is as life-threatening and psychologically damaging to these personnel. The intent is to provide information regarding the potential for the transmittal of a blood-borne disease from a possibly-infected individual to a previously uninfected individual. Then protective actions can be taken. The confidentiality of the test results would be maintained.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

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COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

Expanding the State's authority to forcibly conduct blood tests based upon a potential for exposure to a blood-borne disease is a substantial erosion of a criminal defendant's right to privacy. As revised, the statute would permit forcible blood draws in any situation where either a peace officer or a firefighter touches the skin of the defendant. In almost any direct skin to skin contact, it can be alleged that there was an "accidental . . . transfer of . . . bodily fluids on, upon, or through the skin or membranes. . ." The proposed revisions to section 121060, while written for laudable purposes, is overreaching and unconstitutional.