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Chapter 554: Protecting California's First Responders

Michael Ritter

Code Sections Affected

Health and Safety Code §§ 121060 (repealed and new), 121060.1 (new), 121065 (amended).
AB 2737 (Feuer); 2008 STAT. Ch. 554.

I. INTRODUCTION

On February 8, 2001, Detective Elliot Stabler severely cut his hand while inspecting the Win-Mick Auto Repair shop for clues to help his unit solve a double-homicide.¹ Shortly thereafter, he traced his suspicions to Gloria Palmera's apartment, where he found Gloria unconscious in her bathtub after she had attempted suicide by cutting her wrists.² Detective Stabler pulled Gloria out of the blood-filled bathtub, drenching his recently-cut hand.³ After regaining consciousness, Gloria confessed to both murders and confirmed that she was HIV positive.⁴ The following week, Detective Stabler experienced nausea and vomiting due to the anti-HIV medication he was placed on to prevent the possible progression of HIV exposure or infection.⁵ Fortunately for Detective Stabler, the results of his HIV and hepatitis C tests came back negative.⁶

While Detective Stabler is a fictional character on *Law & Order: Special Victims Unit*,⁷ his situation is far from fictitious.⁸ In fact, California's police officers experience similar situations almost every day.⁹ Prior to the Legislature's enactment of Chapter 554, a person like Gloria Palmera would not have been required to submit to a blood test if she did not wish to disclose her HIV status because she did not interfere with Detective Stabler's ability to take her into custody.¹⁰ California law did not permit involuntary blood testing of individuals

1. *Law & Order: Special Victims Unit: Victims* (NBC television broadcast Feb. 9, 2001).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Law & Order: Special Victims Unit: Paranoia* (NBC television broadcast Feb. 16, 2001).

6. *Id.*

7. See Internet Movie Database, *Law & Order: Special Victims Unit*, <http://www.imdb.com/title/tt0203259/> (last visited Feb. 4, 2009) (on file with the *McGeorge Law Review*) (listing Christopher Meloni as playing the role of Detective Elliot Stabler).

8. See Kevin Johnson, *Officers at Risk of AIDS Given a Tough Choice*, L.A. TIMES, Dec. 14, 1992, at A1 ("[L]aw enforcement officers, firefighters and paramedics . . . have [all] been exposed to blood products or bodily fluids from people considered to be possible carriers of HIV.").

9. See *id.* (stating that exposure of Orange County first responders to HIV "occur every other day").

10. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737, at 1 (Apr. 8, 2008) (describing existing law as requiring interference with official duties of a police officer to compel a blood test).

unless they interfered with the official duties of first responders and were formally charged with a crime.¹¹ Thus, first responders were often left without vital information needed to protect their health.¹²

The infection rates for diseases like the human immunodeficiency virus (HIV) and hepatitis viruses have reached such a proportion that the State of California has statutorily declared “that [acquired immune deficiency syndrome] AIDS . . . and other communicable diseases pose a major threat to the public health and safety.”¹³ In California alone, there have been 27,980 HIV cases reported in the past two years.¹⁴ Since 1983, close to 150,000 AIDS cases were reported.¹⁵ Between March and April 2008, nearly 1,500 new HIV/AIDS cases were documented in the state.¹⁶ Additionally, nationwide, about four million people currently have or previously had hepatitis C,¹⁷ and about 10,000 to 12,000 people die from hepatitis C every year.¹⁸

Chapter 554 seeks to provide first responders with quicker and more frequent access to information about possible on-the-job exposure to HIV and hepatitis B and C.¹⁹ To achieve this goal, Chapter 554 expands the circumstances under which California’s first responders, including “[a]ny peace officer, firefighter, or emergency medical personnel,”²⁰ may request that a court compel an arrestee to submit to blood tests²¹ to determine the arrestee’s HIV and hepatitis B and C status.²²

11. *See id.* at 4 (stating that former law only allowed involuntary blood tests under a “fairly restrictive condition”).

12. *See id.*

13. CAL. HEALTH & SAFETY CODE § 121050 (West 2006).

14. *See* CAL. DEP’T OF PUB. HEALTH, HIV/AIDS CASES BY COUNTY IN CALIFORNIA: CUMULATIVE AS OF APRIL 30, 2008 (2008), available at <http://ww2.cdph.ca.gov/data/statistics/Documents/OA-2008-04/HIVAIDSMerged.pdf> (on file with the *McGeorge Law Review*) (reporting 27,980 total HIV cases and indicating that HIV reporting began in April 2006).

15. *See id.* (reporting that 149,349 total AIDS cases have been reported in California since March 1983).

16. *Id.* (reporting that HIV/AIDS cases totaled 177,329 in April 2008 and 175,830 as of March 2008).

17. *See* National Digestive Diseases Information Clearinghouse, Chronic Hepatitis C: Current Disease Management, <http://digestive.niddk.nih.gov/ddiseases/pubs/chronichepc/> (last visited Feb. 4, 2009) [hereinafter Chronic Hepatitis C] (“[A]n estimated 4.1 million Americans[] have antibody [sic] to HCV (anti-HCV), indicating ongoing or previous infection with the virus.”).

18. *Id.*

19. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737, at 4 (Apr. 8, 2008).

20. CAL. HEALTH & SAFETY CODE § 121060(a) (enacted by Chapter 554).

21. *Id.* § 121060(a)(2) (enacted by Chapter 554).

22. *Id.* § 121060(b) (enacted by Chapter 554).

II. BACKGROUND

A. *The Special Needs Doctrine and the Constitutional Bases for Involuntary Blood Testing*

The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures.²³ In *Skinner v. Railway Labor Executives Association*, the Supreme Court addressed whether involuntary drug and alcohol blood tests violated Fourth Amendment protections.²⁴ The Federal Railroad Administration (FRA) policy at issue in *Skinner* required blood screenings for drug and alcohol abuse “of employees involved in particular train accidents.”²⁵ The FRA established this policy to minimize the safety risks associated with the drug and alcohol abuse of railroad employees.²⁶

The Supreme Court recognized that involuntary blood tests constitute a search requiring a Fourth Amendment analysis.²⁷ While the purpose of reasonable searches and seizures is to further criminal investigations,²⁸ *Skinner* created a “special needs” exception for suspicionless searches for noninvestigatory purposes.²⁹ Under the special needs doctrine, suspicionless searches are constitutional if a state interest justifies the privacy intrusion and if the search is conducted in a reasonable manner.³⁰ The Court held that blood tests are reasonable if they are conducted “according to accepted medical practices” and involve little, if any, health risks or privacy imposition.³¹ Proponents of involuntary blood testing contend that *Skinner* justifies the suspicionless blood testing of defendants and minors for communicable diseases to protect the health of first responders.³²

The California Constitution also guarantees all people the inalienable right to privacy.³³ On the issue of involuntary blood testing for diseases, California courts have rejected the argument that the state constitution affords individuals more protection from bodily intrusions than the U.S. Constitution.³⁴ Thus, if the proponents of involuntary blood testing are correct that such testing does not

23. U.S. CONST. amend. IV.

24. 489 U.S. 602, 606 (1989).

25. *Id.*

26. *Id.*

27. *Id.* at 616.

28. *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987).

29. *Skinner*, 489 U.S. at 619.

30. *Id.* at 624.

31. *Id.* at 625 (citing *Schmerber v. California*, 384 U.S. 757, 771 (1966)).

32. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737, at 6 (Apr. 8, 2008).

33. CAL. CONST. art I, § 1.

34. See *Johnetta J. v. Mun. Court*, 218 Cal. App. 3d 1255, 1277, 267 Cal. Rptr. 666, 679 (1st Dist. 1990) (noting that cases interpreting California’s constitutional right to privacy do not create a different or stricter test for bodily intrusions than does the U.S. Constitution).

violate the U.S. Constitution, neither does this testing violate California's constitutional right of privacy.³⁵

B. Compulsory Blood Test Procedures

The first prerequisite to compelling a blood test from a defendant or minor entailed filing a criminal complaint or juvenile petition in a magistrate or juvenile court.³⁶ The second prerequisite was that the complaint or petition specifically allege that the defendant or minor interfered with the official duties of the first responder "by biting, scratching, spitting, or transferring blood or bodily fluids."³⁷ If no formal complaint was filed, or if the complaint failed to allege that the defendant or minor so interfered with the first responder's duties, a court would deny the hearing.³⁸

Once a criminal complaint or juvenile petition was filed, a first responder could petition a court for a hearing to compel the defendant or minor who allegedly interfered with the first responder's official duties to submit to blood tests.³⁹ Upon receiving the petition, the law required a court to promptly hold a hearing to determine if there was probable cause to believe that the first responder was exposed to the defendant's or minor's bodily fluids.⁴⁰ If so, the defendant or minor was compelled to provide two blood samples to be tested⁴¹ for infectious diseases.⁴²

Pursuant to a court order, a licensed specialist would take the blood samples from the defendant or minor according to medically approved standards.⁴³ The blood samples were then sent to a testing laboratory to determine the presence of infectious diseases.⁴⁴ Under prior law, the test results were sent to the defendant or parents of the minor, the first responder who requested the test, and the first responder's employer.⁴⁵ If the defendant or minor was still incarcerated when the blood test was completed, the results were also sent to the chief medical officer

35. *See id.*

36. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737, at 1 (Apr. 8, 2008).

37. *Id.* at 4.

38. *See id.* at 1-2 (stating that a hearing for a blood test could be held only if there was a formal criminal complaint or a juvenile petition and allegations of interference with official duties).

39. *Id.* at 2.

40. *Id.*

41. *Id.*

42. *Id.* at 3.

43. CAL. HEALTH & SAFETY CODE § 121065(a) (amended by Chapter 554).

44. *Id.* § 121065(b) (amended by Chapter 554).

45. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737, at 2 (Apr. 8, 2008).

of their place of detention.⁴⁶ The results of the blood test had to be kept confidential⁴⁷ and would not be admissible in criminal or juvenile proceedings.⁴⁸

C. Treatment After Exposure

1. The Human Immunodeficiency Virus

HIV has been present in the United States since as early as the mid-1970s.⁴⁹ Two weeks to a year after a person is infected with HIV, he or she undergoes seroconversion (the point at which a person becomes HIV positive).⁵⁰ Seroconversion is a process by which one's immune system detects the HIV and creates antibodies to fight the infection.⁵¹ HIV breaks down the immune system by infecting and killing CD4+ T cells, which fight off bodily infections.⁵² Left untreated, HIV infection can severely impair the immune system, resulting in potentially lethal opportunistic diseases.⁵³

The transmission of HIV occurs through the mixing of bodily fluids.⁵⁴ Most commonly, HIV is spread through having unprotected sex or sharing needles with a person who has HIV, or transferred from an HIV-positive mother to her fetus or infant.⁵⁵ In rare circumstances, HIV may be transmitted through accidental needle pricks,⁵⁶ other substantial blood exposures,⁵⁷ and biting,⁵⁸ but contact with saliva, sweat, or tears has not resulted in HIV infection.⁵⁹

46. *Id.*

47. CAL. HEALTH & SAFETY CODE § 121065(e) (West 2006).

48. *Id.* § 121065(f).

49. Center for Disease Control and Prevention, Where Did HIV Come From?, <http://www.cdc.gov/hiv/resources/qa/qa3.htm> (last visited Feb. 4, 2009) (on file with the *McGeorge Law Review*).

50. University of Maryland Medical Center, Acute HIV Infection - Overview, <http://www.umm.edu/ency/article/000604.htm> (last visited Feb. 4, 2009) (on file with the *McGeorge Law Review*).

51. *Id.*

52. Center for Disease Control and Prevention, How Does HIV Cause AIDS?, <http://www.cdc.gov/hiv/resources/qa/hiv aids.htm> (last visited Feb. 4, 2009) (on file with the *McGeorge Law Review*).

53. CONSTANCE A. BENSON ET AL., TREATING OPPORTUNISTIC INFECTIONS AMONG HIV-INFECTED ADULTS AND ADOLESCENTS (2004), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5315a1.htm> (on file with the *McGeorge Law Review*).

54. Public Health: Seattle & King County, HIV/AIDS Program: How is HIV transmitted?, <http://www.kingcounty.gov/healthservices/health/communicable/hiv/basic/transmission.aspx> (last visited Feb. 4, 2009) (on file with the *McGeorge Law Review*).

55. *Id.*

56. *Id.*

57. *Id.*

58. Center for Disease Control and Prevention, HIV and Its Transmission, <http://www.cdc.gov/hiv/resources/factsheets/transmission.htm> (last visited Feb. 4, 2009) (on file with the *McGeorge Law Review*).

59. *Id.*

After exposure to or infection with HIV, post-exposure prophylaxis (PEP) may prevent seroconversion.⁶⁰ During PEP, a patient is prescribed a dosage of an antiretroviral;⁶¹ however, the prophylaxis is not always effective.⁶²

2. Hepatitis B

“Hepatitis B is a contagious liver disease” caused by the hepatitis B virus (HBV).⁶³ Infection with HBV can cause either a short-term illness, known as an acute hepatitis B infection, or a long-term illness, known as a chronic hepatitis B infection.⁶⁴ Nausea, vomiting, stomach and joint pains, and jaundice are symptoms associated with a hepatitis B infection.⁶⁵ While “there were an estimated 46,000 new [HBV] infections” in 2006, the rate of infection has slowed by eighty percent in the past seventeen years.⁶⁶ This reduction is due in part because a “routine hepatitis B vaccination of children was implemented and has dramatically decreased the rates of the disease.”⁶⁷ People who have not been vaccinated and are exposed to HBV can be treated with a range of medications currently available.⁶⁸ The virus is spread primarily by sharing intravenous needles, food, razors and toothbrushes, having unprotected sex, or coming into contact with the blood of a person with HBV.⁶⁹

3. Hepatitis C

In the 1980s, the Center for Disease Control discovered the hepatitis C virus,⁷⁰ a disease caused by a virus (HCV) found in the blood of carriers.⁷¹ The virus attacks the liver and puts the carrier at risk of liver disease, cirrhosis of the liver, and cancer.⁷² Approximately four million U.S. citizens have or once had

60. See Michelle E. Roland et al., *Seroconversion Following Nonoccupational Postexposure Prophylaxis Against HIV*, 41 CLINICAL INFECTIOUS DISEASES 1507 (2005) (“The efficacy of antiretroviral postexposure prophylaxis (PEP) against infection with . . . [HIV] following occupational exposures has prompted the use of PEP after nonoccupational exposures.”).

61. *Id.*

62. *Id.* at 1508.

63. Center for Disease Control and Prevention, FAQs for the Public, <http://www.cdc.gov/hepatitis/B/bFAQ.htm> (last visited Feb. 4, 2009) [hereinafter FAQs] (on file with the *McGeorge Law Review*).

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. ALAN FRANCISCUS, HEPATITIS C SUPPORT PROJECT, A BRIEF HISTORY OF HEPATITIS C 1 (2006), available at http://www.hcvadvocate.org/hepatitis/factsheets_pdf/Brief_History_HCV_2006.pdf (on file with the *McGeorge Law Review*).

71. . FAQs, *supra* note 63.

72. *Id.*

hepatitis C⁷³ and thousands of people in the United States die each year.⁷⁴ Like HIV, a person may become infected with HCV through sharing needles to inject intravenous drugs or having unprotected sexual contact with another person who carries the virus.⁷⁵ The virus is also transmitted by contact with blood, bodily fluids, organs, or needles contaminated with HCV.⁷⁶

Treatment for HCV includes a twenty-four to forty-eight week regimen of alfa interferon injections.⁷⁷ Another option is antiviral medication, Ribavirin, which is taken orally.⁷⁸ However, Ribavirin is more effective if taken in combination with alfa interferon.⁷⁹ The treatment's duration depends on the specific genotype the HCV-infected person and can range from four weeks to about a year.⁸⁰

III. CHAPTER 554

Chapter 554 aims to protect first responders by providing greater and faster access to information about possible exposures to HIV, HBV, and HCV while performing their jobs.⁸¹ Chapter 554 makes two significant changes to existing law. First, it expands the circumstances under which a court can compel blood tests from arrestees.⁸² Second, it expressly provides for *ex parte* hearings to determine probable cause for blood testing.⁸³ To protect the arrestee's privacy,⁸⁴ Chapter 554 requires that physicians make a good-faith effort to obtain the

73. Chronic Hepatitis C, *supra* note 17.

74. *Id.*

75. FAQs, *supra* note 63.

76. *Id.*

77. MedicineNet.com, Interferon, <http://www.medicinenet.com/interferon/article.htm> (last visited Feb. 4, 2009) (on file with the *McGeorge Law Review*).

Interferons are a family of naturally-occurring proteins that are produced by cells of the immune system. Three classes of interferons have been identified: Alfa, beta and gamma. Each class has different effects though their activities overlap. Together, the interferons direct the immune system's attack on viruses, bacteria, tumors and other foreign substances that may invade the body. Once interferons have detected and attacked a foreign substance, they alter it by slowing, blocking, or changing its growth or function.

Id.

78. *Id.*

79. *Id.*

80. *Id.*

81. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737, at 4 (Apr. 8, 2008).

82. See CAL. HEALTH & SAFETY CODE § 121060(a) (enacted by Chapter 554) (expanding statute to "while acting within the scope of his or her duties").

83. *Id.* § 121060(a)(2) (enacted by Chapter 554). "Ex parte" is defined as "[o]n or from one party only, usually without notice to or argument from the adverse party." BLACK'S LAW DICTIONARY 616 (8th ed. 2004).

84. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737, at 4 (Apr. 8, 2008) (suggesting that the bill will improve medical treatment to first responders while protecting arrestees' rights).

arrestee's consent.⁸⁵ It also limits compulsory testing to HIV, HBV, and HCV⁸⁶ and permits notifying the arrestee of the results, so long as he or she consents.⁸⁷

Chapter 554 lifts the existing restrictions and permits first responders to petition for a compulsory blood test of an arrestee if they incur a percutaneous injury⁸⁸ or are exposed to an arrestee's blood, semen, vaginal fluid, or other tissue⁸⁹ "while acting within the scope of [their] duties."⁹⁰ To compel a blood test and obtain the results, Chapter 554 provides that first responders may petition a court *ex parte*.⁹¹ A court receiving such a petition must quickly hold a hearing even if the arrestee has no representation or notice of the hearing.⁹² If a court finds probable cause to believe a first responder was exposed to an arrestee's bodily fluids,⁹³ it must order the involuntary testing of the arrestee's blood for HIV, HBV, and HCV.⁹⁴

To address arrestees' privacy concerns,⁹⁵ Chapter 554 requires a physician to make a good-faith effort to obtain the consent of the arrestee;⁹⁶ narrows the focus of the blood tests to HIV, HBV, and HCV;⁹⁷ and allows notifying arrestees of the results only if they consent.⁹⁸ Moreover, recipients of the test results are informed of penalties for breaching confidentiality requirements.⁹⁹ Arrestees that undergo involuntary blood tests may decline to be informed of the results if they so choose by signing a form waiving disclosure.¹⁰⁰ However, the failure to sign the waiver "shall be construed to be a refusal to be informed of the . . . test results."¹⁰¹

85. CAL. HEALTH & SAFETY CODE § 121060(a)(1) (enacted by Chapter 554).

86. *Id.* § 121065(b) (amended by Chapter 554).

87. *Id.* § 121060(c)(2) (enacted by Chapter 554).

88. *Id.* § 121060.1(a) (enacted by Chapter 554).

89. *Id.* § 121060.1(b)(1)-(5) (enacted by Chapter 554).

90. *Id.* § 121060(a) (enacted by Chapter 554).

91. *Id.* § 121060(a)(2) (enacted by Chapter 554).

92. *Id.*

93. *See id.* § 121060.1(b) (enacted by Chapter 554) (defining "bodily fluids" as "blood, tissue, mucous containing visible blood, semen, [and] vaginal secretions").

94. *Id.* § 121065(b) (amended by Chapter 554).

95. *See* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737, at 4 (Apr. 8, 2008) (suggesting that the bill will improve medical treatment to first responders while protecting arrestees' rights).

96. CAL. HEALTH & SAFETY CODE § 121060(a)(1) (enacted by Chapter 554).

97. *Id.* § 121065(b) (amended by Chapter 554).

98. *Id.* § 121060(c)(2) (enacted by Chapter 554).

99. *Id.* § 121065(c)(2) (amended by Chapter 554).

100. *Id.* § 121060(c)(2) (enacted by Chapter 554).

101. *Id.*

IV. ANALYSIS

Chapter 554 provides first responders with essential information to help them take the necessary measures to protect their health and the health of those around them.¹⁰² To accomplish this goal, Chapter 554 lifts restrictions that limit the ability of first responders to petition for compulsory blood tests of arrestees and speeds up the procedural aspects of compulsory blood tests.

A. *The Compelling Case for Compelling Blood Tests*

Chapter 554 potentially benefits the health of three groups: first responders, the families and coworkers of the first responders, and the arrestees from whom blood tests are compelled.

Because Chapter 554 allows compulsory blood testing in more circumstances, first responders will have greater access to information regarding their exposure to HIV or hepatitis.¹⁰³ Previously, first responders would have access this information only if the arrestees were formally charged with a crime and interfered with the official duties of the first responders.¹⁰⁴ Chapter 554 provides more frequent access to this information by allowing involuntary blood testing even when the exchange of bodily fluids is accidental, as long as the first responder was acting in the scope of his or her duties.¹⁰⁵

Chapter 554 would also yield results from blood tests faster than existing law. The prior requirement that formal criminal charges or a juvenile petition be filed may have resulted in unnecessary delays because city prosecutors must sometimes file these complaints with a magistrate¹⁰⁶ or juvenile court.¹⁰⁷ Chapter 554's provision for ex parte hearings may also reduce the amount of time needed to compel the blood test from seven days to one day.¹⁰⁸ The reduction in the amount of time needed to compel the blood test may allow for PEP and hepatitis treatments to be administered more quickly, which may provide for more effective care and prevention.¹⁰⁹

102. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737, at 2 (Apr. 8, 2008).

103. *Id.*

104. *Id.* at 2–3.

105. CAL. HEALTH & SAFETY CODE § 121060(a) (enacted by Chapter 554).

106. *See* CAL. GOV'T CODE § 72193(a) (West 1997 & Supp. 2009) (providing that city prosecutors must file complaints for misdemeanor offenses with courts when charged with this duty by city law).

107. *See* CAL. WELF. & INST. CODE § 650(c) (West 2008) (stating that prosecuting attorneys file a petition with juvenile court to initiate juvenile court proceedings).

108. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737, at 4 (Apr. 8, 2008).

109. *See id.* (“Knowing whether a source person has a particular infectious disease quickly can significantly improve the overall medical and psychological care provided to individuals who sustain [a blood borne pathogen exposure].”).

One possible disadvantage to more frequent and timely knowledge of possible exposure to HIV is the chance that PEP may be over-administered. The probability of HIV infection after skin exposure to the bodily fluids of another person with HIV is three-tenths of one percent.¹¹⁰ Moreover, the efficacy of prophylaxis has not clearly been established,¹¹¹ and the side effects include nausea, vomiting, and stomach and head pain.¹¹² Regularly administering prophylaxis after every possible exposure could unnecessarily subject first responders to side effects of antiretrovirals.

To mitigate this risk, physicians could limit administration of prophylaxis to exposures posing higher probabilities of infection.¹¹³ Additionally, adjusting the dosage of the prophylaxis can diminish its side effects.¹¹⁴ And while the efficacy of prophylaxis has not been clearly established, the biological plausibility that antiretroviral therapy could prevent seroconversion suggests that PEP could be effective.¹¹⁵

Chapter 554 may also benefit families and coworkers of first responders and the arrestees required to give blood samples. Having quick, frequent access to information regarding possible exposure to HIV and hepatitis could reduce transmissions from first responders to their significant others, family members, and coworkers. While Chapter 554 allows arrestees to opt out of receiving the results of their tests,¹¹⁶ those who object to the blood testing but wish to know their results will have access to the information they need to treat their conditions and take measures to prevent spreading the disease.

B. Privacy Concerns of Chapter 554

Aside from its expected benefits, Chapter 554 raises privacy concerns for the individuals compelled to give blood samples.¹¹⁷ Having a needle penetrate one's skin and remove blood is a "physical intrusion [that] . . . infringes an expectation

110. I. Kennedy & S. Williams, *Occupational Exposure to HIV and Post-Exposure Prophylaxis in Healthcare Workers*, 50 OCCUPATIONAL MED. 387, 387 (2000), available at <http://occmed.oxfordjournals.org/cgi/reprint/50/6/387.pdf> (on file with the *McGeorge Law Review*).

111. See *id.* at 388 ("Assessing the efficacy of post-exposure prophylaxis has proved quite difficult.").

112. *Id.* at 389.

113. See *id.* ("Deciding when to recommend prophylaxis after occupational exposure should take into consideration the risk associated with the specific incident.").

114. *Id.*

115. See Phillipa Easterbrook, *Prophylaxis After Occupational Exposure to HIV*, 315 BMJ 557 (1997), available at <http://www.bmj.com/cgi/content/full/315/7108/557> (on file with the *McGeorge Law Review*) ("The biological rationale is that initial virus uptake and antigen processing after inoculation may take several hours or even days. This presents a window for therapeutic intervention before virus propagation occurs.").

116. CAL. HEALTH & SAFETY CODE § 121060(c)(2) (enacted by Chapter 554).

117. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737, at 5 (Apr. 8, 2008) ("By compelling individuals to submit to an involuntary blood test, the protection of the Fourth Amendment to the United States Constitution is invoked.").

of privacy that society is prepared to recognize as reasonable”;¹¹⁸ however, the Court has recognized the legally protected privacy interests of arrestees are diminished when it comes to involuntary blood testing.¹¹⁹

Society does not view blood tests as an “unduly extensive imposition on an individual’s privacy or bodily integrity”¹²⁰ because the routine nature of blood tests diminishes privacy expectations involved with the procedure.¹²¹ Thus, involuntary blood testing does not necessarily constitute an unreasonable invasion of the right to privacy.

Furthermore, both Chapter 554 and existing statutes contain provisions that protect arrestees’ privacy. Chapter 554 attempts to safeguard the minimized privacy interest of arrestees who must give blood samples. First, it limits the scope of testing from any communicable disease to only HIV, HBV, and HCV, thus precluding searches for every possible disease the arrestee may have.¹²² Second, recipients are prohibited from disclosing the test results¹²³ and are informed of the legal penalties for breaching confidentiality requirements.¹²⁴ Third, Chapter 554 allows arrestees that have had their blood drawn to opt out of receiving the test results,¹²⁵ thus providing arrestees with some control over their personal information.¹²⁶

Finally, other statutory provisions limit the dissemination of the results of the blood test. The blood test results may not be introduced in a criminal or juvenile hearing¹²⁷ and those who receive the results are required to keep the information confidential.¹²⁸

V. CONCLUSION

HIV, HBV, and HCV clearly pose significant public health challenges.¹²⁹ California’s police officers, firefighters, and emergency medics are at constant risk of contracting HIV, HBV, or HCV while performing their jobs.¹³⁰ Prior to the

118. *Skinner v. Ry. Labor Executives Ass’n*, 489 U.S. 602, 616 (1989).

119. *Id.*

120. *Id.* at 625.

121. *See Breithaupt v. Abram*, 352 U.S. 432, 436 (1957) (“The blood test procedure has become routine in our everyday life. It is a ritual for those going into the military service as well as those applying for marriage licenses. Many colleges require such tests before permitting entrance . . .”).

122. CAL. HEALTH & SAFETY CODE § 121065(b) (amended by Chapter 554).

123. *Id.* § 121065(d) (amended by Chapter 554).

124. *Id.* § 121065(c)(2) (amended by Chapter 554).

125. *Id.* § 121060(c)(2) (enacted by Chapter 554).

126. *See Hill v. NCAA*, 7 Cal. 4th 1, 35, 865 P.2d 633, 654 (1994) (“Legally recognized privacy interests are generally . . . ‘informational privacy’ . . . and . . . ‘autonomy privacy.’”).

127. CAL. HEALTH & SAFETY CODE § 121065(f) (amended by Chapter 554).

128. *Id.* § 121065(e) (amended by Chapter 554).

129. *See id.* § 121050 (West 2006) (“AIDS . . . and other communicable diseases pose a major threat to the public health and safety.”).

130. *See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737*, at 2 (Apr. 8,

implementation of Chapter 554, statutes limited first responders' ability to acquire information about whether they may have been exposed to HIV or hepatitis in the course of their jobs.¹³¹ To permit the early detection of possible infection, Chapter 554 increases first responders' access to information regarding possible on-the-job exposure to HIV and hepatitis by allowing courts more leeway in granting petitions to compel blood tests from arrestees.¹³²

Chapter 554 allows first responders to be treated more quickly for exposure to HIV, HBV, and HCV while limiting the intrusiveness of the involuntary blood tests. It allows blood tests to be compelled not only when formal complaints are charged against individuals that interfere with an arrest, but any time a first responder is exposed to the bodily fluids of an arrestee while acting within the scope of his or her duties.¹³³ Chapter 554 also speeds up the hearing process by allowing first responders to file *ex parte* petitions with a court to compel the blood tests.¹³⁴ By limiting the scope of the testing and giving arrestees the option to deny receiving the results,¹³⁵ Chapter 554 will protect the privacy interests of arrestees while promoting the health of California's first responders.¹³⁶

2008) ("The purpose of this chapter is to require that information that may be vital to the health and safety of . . . custodial personnel, custodial medical personnel, peace officers, firefighters and emergency medical personnel put at risk in the course of their official duties.").

131. *Id.* at 1–2.

132. *See* CAL. HEALTH & SAFETY CODE § 121060(a) (enacted by Chapter 554) (allowing involuntary blood tests for when a first responder is exposed to a blood-borne pathogen while acting within the scope of his or her duty).

133. *Id.*

134. *Id.*

135. *Id.* § 121060(c)(2) (enacted by Chapter 554).

136. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 2737, at 4 (Apr. 8, 2008).

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