

House Bill 737

By: Representatives Cox of the 108th, Hitchens of the 161st, Petrea of the 166th, and Powell of the 32nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to
2 general provisions relative to law enforcement officers and agencies, so as to provide for
3 court ordered blood tests of source individuals for the protection of law enforcement officers
4 who have a significant exposure to HIV, hepatitis B, or hepatitis C; to provide for definitions;
5 to provide for the arrangement of the tests by the Department of Public Health; to provide
6 for involuntary submission; to prohibit use of such test in a criminal proceeding; to amend
7 Code Section 31-22-9.2 of the Official Code of Georgia Annotated, relating to report of
8 positive results of HIV tests, notification, counseling, violations, exception for insurance
9 coverage, and exposure of health care provider, so as to provide for a conforming reference;
10 to provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to general
14 provisions relative to law enforcement officers and agencies, is amended by adding a new
15 Code section to read as follows:

16 "35-1-22.

17 (a) As used in this Code section, the term:

18 (1) 'Law enforcement officer' means a sheriff, deputy sheriff, police officer, policeman,
19 peace officer, officer or member of the Department of Public Safety, or other officer or
20 official who has the power of arrest and who is responsible for enforcing the criminal
21 laws of the state or its political subdivisions.

22 (2) 'Significant exposure' means contact of a person's ruptured or broken skin or mucous
23 membranes with the blood or body fluids, other than tears, saliva, or perspiration, of a
24 source individual of a magnitude that the Centers for Disease Control and Prevention
25 have epidemiologically demonstrated can result in transmission of the human
26 immunodeficiency virus (HIV), the hepatitis B virus, or the hepatitis C virus.

27 (3) 'Source individual' means a person whose blood or body fluids, other than tears,
 28 saliva, or perspiration, is the source of a significant exposure.

29 (4) 'Test' means a test designed to identify HIV, the hepatitis B virus, or the hepatitis C
 30 virus or the antigen or antibody of HIV, the hepatitis B virus, or the hepatitis C virus.

31 (b) A law enforcement officer who has experienced a significant exposure from a source
 32 individual while in the process of effecting a lawful arrest of such source individual may
 33 request such source individual to submit to a test and consent to the release of the test
 34 results to the law enforcement officer. If the source individual declines to submit to such
 35 a test, the judge of the superior court of the county in which the significant exposure
 36 occurred or the county in which the source individual resides, upon a showing of probable
 37 cause that the law enforcement officer was in the course of effecting a lawful arrest of the
 38 source individual and that significant exposure occurred, may order the test to be
 39 performed in compliance with rules adopted by the Department of Public Health. The cost
 40 of the test shall be borne by the law enforcement officer, the source individual, the officer's
 41 employer, or the Department of Public Health, in the discretion of the court.

42 (c) The Department of Public Health, within 30 days following receipt of the court's order
 43 under subsection (b) of this Code section, shall arrange for the test for the source individual
 44 required to submit thereto.

45 (d) Any source individual required under this Code section to submit to a test who fails or
 46 refuses to submit to the test arranged pursuant to subsection (c) of this Code section shall
 47 be subject to such measures deemed necessary by the court in which the order was entered
 48 to require involuntary submission to the test.

49 (e) The state may not use the fact that a test was performed on a source individual under
 50 this Code section or use the results of the procedure or test in any criminal proceeding
 51 arising out of the lawful arrest of the source individual."

52 **SECTION 2.**

53 Code Section 31-22-9.2 of the Official Code of Georgia Annotated, relating to report of
 54 positive results of HIV tests, notification, counseling, violations, exception for insurance
 55 coverage, and exposure of health care provider, is amended by revising subsection (c) as
 56 follows:

57 "(c) Unless exempted under this Code section, each health care provider who orders an
 58 HIV test for any person shall do so only after notifying the person to be tested. Unless
 59 exempted under this subsection, the person to be tested shall have the opportunity to refuse
 60 the test. The provisions of this subsection shall not be required if the person is required to
 61 submit to an HIV test pursuant to Code Section 15-11-603, 17-10-15, ~~31-17-4.2~~, 31-17A-3,
 62 35-1-22, 42-5-52.1, or 42-9-42.1. The provisions of this subsection shall not be required

63 if the person is a minor or incompetent and the parent or guardian thereof permits the test
64 after compliance with this subsection. The provisions of this subsection shall not be
65 required if the person is unconscious, temporarily incompetent, or comatose and the next
66 of kin permits the test after compliance with this subsection. The provisions of this
67 subsection shall not apply to emergency or life-threatening situations. The provisions of
68 this subsection shall not apply if the physician ordering the test is of the opinion that the
69 person to be tested is in such a medical or emotional state that disclosure of the test would
70 be injurious to the person's health. The provisions of this subsection shall only be required
71 prior to drawing the body fluids required for the HIV test and shall not be required for each
72 test performed upon that fluid sample."

73

SECTION 3.

74 All laws and parts of laws in conflict with this Act are repealed.