

AMENDED IN ASSEMBLY MAY 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 506

Introduced by Assembly Member Mitchell

February 20, 2013

An act to amend Section 121020 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 506, as amended, Mitchell. HIV testing: infants.

Existing law provides that a child may come within the jurisdiction of the juvenile court and become a dependent child of the court in, among others, cases of abuse and neglect. Under existing law, when a minor has been, or has a petition filed with the court to be, adjudged a dependent child of the court, the court may authorize, or order that a social worker may authorize, medical care for the minor, as prescribed. Under existing law, a social worker may, without court order, authorize medical care for a minor in emergency situations, as specified.

Existing law authorizes a peace officer or social worker to take into temporary custody a minor when there is reasonable cause for believing that the minor is in immediate need of medical care or is in immediate danger, as specified. Under existing law, when a minor is taken into temporary custody and is in need of medical care, the social worker may, upon recommendation of the attending physician and surgeon, authorize the performance of medical care, as specified. ~~Under existing law, when allegations of child abuse come to the attention of the local law enforcement agency or local child welfare department and the child is taken into protective custody, the agency or department may cause~~

~~the minor to undergo a physical examination under certain circumstances.~~

Existing law provides that a minor under 12 years of age is deemed not competent to give consent for an HIV test to be performed, and authorizes the minor's parent, guardian, conservator, or other person lawfully authorized to make health care decisions on behalf of the minor to provide consent for the test. Under existing law, a court may also provide consent for the test to be performed on a minor who is adjudged to be a dependent child of the court.

This bill would authorize a social worker ~~or the treating health care provider, as specified,~~ to provide consent for an HIV test to be performed on an infant ~~under one year of age who is less than 12 months of age~~ when the infant has been taken into temporary custody or has been, or has a petition filed with the court to be, adjudged a dependent child of the court and the infant is ~~undergoing a physical examination or~~ receiving medical care *if, among other things, the attending physician and surgeon determines that HIV testing is necessary to render appropriate care to the infant.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 121020 of the Health and Safety Code
2 is amended to read:
3 121020. (a) (1) When the subject of an HIV test is not
4 competent to give consent for the test to be performed, written
5 consent for the test may be obtained from the subject's parents,
6 guardians, conservators, or other person lawfully authorized to
7 make health care decisions for the subject. For purposes of this
8 paragraph, a minor shall be deemed not competent to give consent
9 if he or she is under 12 years of age.
10 (2) Notwithstanding paragraph (1), when the subject of the *HIV*
11 test is a minor adjudged to be a dependent child of the court
12 pursuant to Section 360 of the Welfare and Institutions Code,
13 written consent for the test to be performed may be obtained from
14 the court pursuant to its authority under Section 362 or 369 of the
15 Welfare and Institutions Code.
16 (3) (A) Notwithstanding paragraphs (1) and (2), ~~when if~~ the
17 subject of the test is an infant ~~under one year of age who is less~~

1 *than 12 months of age* who has been taken into temporary custody
2 pursuant to Article 7 (commencing with Section 305) of Chapter
3 2 of Part 1 of Division 2 of the Welfare and Institutions Code or
4 who has been, or has a petition filed with the court to be, adjudged
5 a dependent child of the court pursuant to Section 360 of the
6 Welfare and Institutions Code, the social worker may provide
7 *written* consent for an HIV test to be performed when the infant
8 is ~~undergoing a physical examination pursuant to Section 324.5~~
9 ~~of the Welfare and Institutions Code or is receiving medical care~~
10 ~~pursuant to Section 369 of the Welfare and Institutions Code, or~~
11 ~~the treating health care provider may provide consent if he or she~~
12 ~~determines there are factors indicating that an HIV test should be~~
13 ~~performed.~~ *if all of the following have occurred:*

14 (i) *The attending physician and surgeon determines that HIV*
15 *testing is necessary to render appropriate care to the infant and*
16 *documents that determination. When deciding whether HIV testing*
17 *is necessary, the physician and surgeon shall consider appropriate*
18 *factors, either known to the attending physician and surgeon or*
19 *provided to the attending physician and surgeon by the social*
20 *worker, including, but not limited to, whether the infant has a*
21 *parent with a history of behavior that places the parent at an*
22 *increased risk of exposure to HIV, or whether the infant is a victim*
23 *of sexual abuse, which has placed the child at risk of exposure to*
24 *HIV.*

25 (ii) (I) *The social worker provides known information*
26 *concerning the infant's possible risk factors regarding exposure*
27 *to HIV to the attending physician and surgeon.*

28 (II) *If the parent's or guardian's authority to make medical*
29 *decisions for the child has not been terminated or limited by the*
30 *court, the social worker makes reasonable efforts to contact the*
31 *parent or guardian of the child to seek consent for the HIV testing*
32 *and is unable to contact the parent or guardian. The social worker*
33 *shall document his or her efforts to contact the parent or guardian.*

34 (III) *If the parent's or guardian's authority to make medical*
35 *decisions for the child has been terminated or limited by the court,*
36 *the social worker makes reasonable efforts to contact the person*
37 *authorized by the court to make medical decisions for the child in*
38 *order to seek consent for the HIV testing and is unable to contact*
39 *that person. The social worker shall document his or her efforts*
40 *to contact that person.*

1 (B) *The attending physician and surgeon and the social worker*
2 *shall comply with all applicable state and federal confidentiality*
3 *laws.*

4 (b) Written consent shall only be obtained for the subject
5 pursuant to *paragraphs (1) and (2) of subdivision (a)* when
6 necessary to render appropriate care or to practice preventative
7 measures.

8 (c) The person authorized to consent to the test pursuant to
9 subdivision (a) shall be permitted to do any of the following:

10 (1) Notwithstanding Sections 120975 and 120980, receive the
11 results of the test on behalf of the subject without written
12 authorization.

13 (2) Disclose the test results on behalf of the subject in
14 accordance with Sections 120975 and 120980.

15 (3) Provide written authorization for the disclosure of the test
16 results on behalf of the subject in accordance with Sections 120975
17 and 120980.