

Enrolled
House Bill 2719

Sponsored by Representative NERON; Representatives EVANS, KROPF (Pre-session filed.)

CHAPTER

AN ACT

Relating to crime victims; creating new provisions; and amending ORS 135.139.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 135.139 is amended to read:

135.139. (1) When a person has been charged with a crime in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, the district attorney, upon the request of the victim or the parent or guardian of a minor or incapacitated victim, shall seek the consent of the person charged to submit to a test for HIV and any other communicable disease. In the absence of such consent or failure to submit to the test, the district attorney [may] **shall** petition the court for an order requiring the person charged to submit to a test for HIV and any other communicable disease.

(2)(a) At the time of an appearance before a circuit court judge on a criminal charge, the judge shall inform every person arrested and charged with a crime, in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, of the availability of testing for HIV and other communicable diseases and shall cause the alleged victim of such a crime, if any, or a parent or guardian of the victim, if any, to be notified that testing for HIV and other communicable diseases is available. The judge shall inform the person arrested and charged and the victim, or parent or guardian of the victim, of the availability of counseling under the circumstances described in subsection (7) of this section.

(b) Notwithstanding the provisions of ORS 433.045, [if] **when** the district attorney files a petition under subsection (1) of this section, the court shall order the person charged to submit to testing if the court determines there is probable cause to believe that:

(A) The person charged committed the crime; and

(B) The victim has received a substantial exposure, as defined by rule of the Oregon Health Authority.

(c) If the district attorney files a petition under subsection (1) of this section at or before the defendant's arraignment on the indictment or information and the court orders the defendant to submit to testing, the testing must be done within 48 hours of the defendant's arraignment.

(d) The results of the test described in this subsection must be provided to the victim of the crime, or a parent or guardian of the victim, and to the defendant, as soon as practicable.

(e) Any necessary follow-up testing must be provided as medically appropriate.

(3) Notwithstanding the provisions of ORS 433.045, upon conviction of a person for any crime in which the court determines from the facts that the transmission of body fluids from one person

to another was involved and if the person has not been tested pursuant to subsection (2) of this section, the court shall seek the consent of the convicted person to submit to a test for HIV and other communicable diseases. In the absence of such consent or failure to submit to the test, the court shall order the convicted person to submit to the test if the victim of the crime, or a parent or guardian of the victim, requests the court to make such order.

(4) When a test is ordered under subsection (2) or (3) of this section, the victim of the crime or a parent or guardian of the victim, shall designate an attending physician, a physician assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390 to receive such information on behalf of the victim.

(5) If an HIV test results in a negative reaction, the court may order the person to submit to another HIV test six months after the first test was administered.

(6) The result of any test ordered under this section is not a public record and shall be available only to:

- (a) The victim.
- (b) The parent or guardian of a minor or incapacitated victim.
- (c) The attending physician, physician assistant or nurse practitioner.
- (d) The Oregon Health Authority.
- (e) The person tested.

(7) If an HIV test ordered under this section results in a positive reaction, the individual subject to the test shall receive post-test counseling as required by the Oregon Health Authority by rule. The results of HIV tests ordered under this section shall be reported to the authority. Counseling and referral for appropriate health care, testing and support services as directed by the Director of the Oregon Health Authority shall be provided to the victim or victims at the request of the victim or victims, or the parent or guardian of a minor or incapacitated victim.

(8) The costs of testing and counseling provided under subsections (2), (3) and (7) of this section shall be paid through the compensation for crime victims program authorized by ORS 147.005 to 147.367 from amounts appropriated for such purposes. Restitution to the state for payment of the costs of any counseling provided under this section and for payment of the costs of any test ordered under this section shall be included by the court in any order requiring the convicted person to pay restitution.

(9) When a court orders a convicted person to submit to a test under this section, the withdrawal of blood may be performed only by a physician licensed under ORS chapter 677, a physician assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390, or by another licensed health care provider acting within the provider's licensed scope of practice or acting under the supervision of a physician licensed under ORS chapter 677, a physician assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390.

(10) No person authorized by subsection (9) of this section to withdraw blood, no person assisting in the performance of the test nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices.

(11) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive the information. Any violation of this subsection is a Class C misdemeanor.

(12) As used in this section:

- (a) "HIV test" means a test as defined in ORS 433.045.
- (b) "Parent or guardian of the victim" means a custodial parent or legal guardian of a victim who is a minor or incapacitated person.
- (c) "Positive reaction" means a positive HIV test with a positive confirmatory test result as specified by the Oregon Health Authority.

(d) "Transmission of body fluids" means the transfer of blood, semen, vaginal secretions or other body fluids identified by rule of the authority, from the perpetrator of a crime to the mucous membranes or potentially broken skin of the victim.

(e) "Victim" means the person or persons to whom transmission of body fluids from the perpetrator of the crime occurred or was likely to have occurred in the course of the crime.

SECTION 2. The amendments to ORS 135.139 by section 1 of this 2023 Act apply to crimes alleged to have been committed on or after the effective date of this 2023 Act.

Passed by House March 20, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 21, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State