

HOUSE AMENDMENTS TO HOUSE BILL 2719

By COMMITTEE ON JUDICIARY

March 14

1 In line 2 of the printed bill, after “victims” insert “; creating new provisions; and amending ORS
2 135.139”.

3 Delete lines 4 through 8 and insert:

4 “**SECTION 1.** ORS 135.139 is amended to read:

5 “135.139. (1) When a person has been charged with a crime in which it appears from the nature
6 of the charge that the transmission of body fluids from one person to another may have been in-
7 volved, the district attorney, upon the request of the victim or the parent or guardian of a minor
8 or incapacitated victim, shall seek the consent of the person charged to submit to a test for HIV
9 and any other communicable disease. In the absence of such consent or failure to submit to the test,
10 the district attorney [*may*] **shall** petition the court for an order requiring the person charged to
11 submit to a test for HIV and any other communicable disease.

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

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

23 “(A) The person charged committed the crime; and

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

26 “(c) **If the district attorney files a petition under subsection (1) of this section at or be-**
27 **fore the defendant’s arraignment on the indictment or information and the court orders the**
28 **defendant to submit to testing, the testing must be done within 48 hours of the defendant’s**
29 **arraignment.**

30 “(d) **The results of the test described in this subsection must be provided to the victim**
31 **of the crime, or a parent or guardian of the victim, and to the defendant, as soon as practi-**
32 **cable.**

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

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

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

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

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

12 “(6) The result of any test ordered under this section is not a public record and shall be avail-
13 able only to:

14 “(a) The victim.

15 “(b) The parent or guardian of a minor or incapacitated victim.

16 “(c) The attending physician, physician assistant or nurse practitioner.

17 “(d) The Oregon Health Authority.

18 “(e) The person tested.

19 “(7) If an HIV test ordered under this section results in a positive reaction, the individual sub-
20 ject to the test shall receive post-test counseling as required by the Oregon Health Authority by
21 rule. The results of HIV tests ordered under this section shall be reported to the authority. Coun-
22 seling and referral for appropriate health care, testing and support services as directed by the Di-
23 rector of the Oregon Health Authority shall be provided to the victim or victims at the request of
24 the victim or victims, or the parent or guardian of a minor or incapacitated victim.

25 “(8) The costs of testing and counseling provided under subsections (2), (3) and (7) of this section
26 shall be paid through the compensation for crime victims program authorized by ORS 147.005 to
27 147.367 from amounts appropriated for such purposes. Restitution to the state for payment of the
28 costs of any counseling provided under this section and for payment of the costs of any test ordered
29 under this section shall be included by the court in any order requiring the convicted person to pay
30 restitution.

31 “(9) When a court orders a convicted person to submit to a test under this section, the with-
32 drawal of blood may be performed only by a physician licensed under ORS chapter 677, a physician
33 assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375
34 to 678.390, or by another licensed health care provider acting within the provider’s licensed scope
35 of practice or acting under the supervision of a physician licensed under ORS chapter 677, a physi-
36 cian assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS
37 678.375 to 678.390.

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

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

1 “(12) As used in this section:

2 “(a) ‘HIV test’ means a test as defined in ORS 433.045.

3 “(b) ‘Parent or guardian of the victim’ means a custodial parent or legal guardian of a victim
4 who is a minor or incapacitated person.

5 “(c) ‘Positive reaction’ means a positive HIV test with a positive confirmatory test result as
6 specified by the Oregon Health Authority.

7 “(d) ‘Transmission of body fluids’ means the transfer of blood, semen, vaginal secretions or other
8 body fluids identified by rule of the authority, from the perpetrator of a crime to the mucous mem-
9 branes or potentially broken skin of the victim.

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

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

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