

House Bill 3087

Sponsored by COMMITTEE ON HEALTH CARE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires informed consent of subject of test for communicable disease. Authorizes representative of person to be tested to grant consent if person is incapable of giving consent.

A BILL FOR AN ACT

1
2 Relating to informed consent for testing for communicable diseases; creating new provisions; and
3 amending ORS 135.139 and 433.075.

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

5 **SECTION 1. (1)(a) Except as provided in ORS 433.055 (3), 433.080 and 433.085, prior to**
6 **conducting a test on any person for a communicable disease, the person conducting the test**
7 **shall obtain the informed consent of the person to be tested.**

8 **(b) If the person who is the subject of the test is incapable of granting informed consent**
9 **for the test, a person legally authorized to act on behalf of the person may grant the re-**
10 **quired consent.**

11 **(2) The Department of Human Services shall adopt by rule a form for obtaining informed**
12 **consent of a person who is the subject of a test.**

13 **(3) As used in this section:**

14 **(a) "Communicable disease" includes those diseases identified by the Department of Hu-**
15 **man Services as reportable diseases as provided by ORS 433.004 that are a threat to the**
16 **public health of persons in this state.**

17 **(b) "Person conducting the test" includes but is not limited to any health care provider,**
18 **health care facility, clinical laboratory, blood or government agency, employer, research or-**
19 **ganization or agent of any of them.**

20 **(c) "Test" includes, but is not limited to, blood tests.**

21 **SECTION 2. ORS 433.075 is amended to read:**

22 433.075. (1) The informed consent provisions of **section 1 of this 2007 Act and** ORS 433.045 (1)
23 and (2) apply to any request for consent to an HIV test under rules adopted pursuant to ORS
24 433.065.

25 (2) When a source person is deceased, consent for voluntary informed consent under ORS
26 433.065 shall be from the next of kin.

27 (3) When an HIV test is performed pursuant to ORS 433.080 or rules adopted under ORS 433.065,
28 the exposed person requesting the test, or the exposed person's employer in the case of an occupa-
29 tional exposure, shall be responsible for the cost of the testing.

30 (4) Where an employer provides a program of prevention, education and testing for HIV expo-
31 sures for its employees, the employee to be tested under the provisions of this Act shall comply with

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 the procedures provided by such program. Such program must be approved by the Department of
 2 Human Services.

3 (5) When an HIV test is performed pursuant to ORS 433.080 or rules adopted under ORS 433.065,
 4 the results shall be reported confidentially to the person who suffered the substantial exposure giv-
 5 ing rise to the test.

6 (6) The confidentiality provisions of ORS 433.045 (3) apply to any person who receives an HIV
 7 test result pursuant to ORS 433.080 or rules adopted under ORS 433.065. Any person who complies
 8 with the requirements of this subsection shall not be subject to an action for damages.

9 **SECTION 3.** ORS 135.139 is amended to read:

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

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

25 (b) Notwithstanding the provisions of **section 1 of this 2007 Act and** ORS 433.045, if the district
 26 attorney files a petition under subsection (1) of this section, the court shall order the person charged
 27 to submit to testing if the court determines there is probable cause to believe that:

28 (A) The person charged committed the crime; and

29 (B) The victim has received a substantial exposure, as defined by rule of the Department of
 30 Human Services.

31 (3) Notwithstanding the provisions of **section 1 of this 2007 Act and** ORS 433.045, upon con-
 32 viction of a person for any crime in which the court determines from the facts that the transmission
 33 of body fluids from one person to another was involved and if the person has not been tested pur-
 34 suant to subsection (2) of this section, the court shall seek the consent of the convicted person to
 35 submit to a test for HIV and other communicable diseases. In the absence of such consent or failure
 36 to submit to the test, the court shall order the convicted person to submit to the test if the victim
 37 of the crime, or a parent or guardian of the victim, requests the court to make such order.

38 (4) When a test is ordered under subsection (2) or (3) of this section, the victim of the crime or
 39 a parent or guardian of the victim, shall designate an attending physician to receive such informa-
 40 tion on behalf of the victim.

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

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

45 (a) The victim.

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

2 (c) The attending physician who is licensed to practice medicine.

3 (d) The Department of Human Services.

4 (e) The person tested.

5 (7) If an HIV test ordered under this section results in a positive reaction, the individual subject
6 to the test shall receive post-test counseling as required by the Department of Human Services, by
7 rule. The results of HIV tests ordered under this section shall be reported to the Department of
8 Human Services. Counseling and referral for appropriate health care, testing and support services
9 as directed by the Director of Human Services shall be provided to the victim or victims at the re-
10 quest of the victim or victims, or the parent or guardian of a minor or incapacitated victim.

11 (8) The costs of testing and counseling provided under subsections (2), (3) and (7) of this section
12 shall be paid through the compensation for crime victims program authorized by ORS 147.005 to
13 147.367 from amounts appropriated for such purposes. Restitution to the state for payment of the
14 costs of any counseling provided under this section and for payment of the costs of any test ordered
15 under this section shall be included by the court in any order requiring the convicted person to pay
16 restitution.

17 (9) When a court orders a convicted person to submit to a test under this section, the with-
18 drawal of blood may be performed only by a physician licensed to practice medicine or by a licensed
19 health care provider acting within the provider's licensed scope of practice or acting under the
20 supervision of a physician licensed to practice medicine.

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

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

29 (12) As used in this section:

30 (a) "HIV test" means a test as defined in ORS 433.045.

31 (b) "Parent or guardian of the victim" means a custodial parent or legal guardian of a victim
32 who is a minor or incapacitated person.

33 (c) "Positive reaction" means a positive HIV test with a positive confirmatory test result as
34 specified by the Department of Human Services.

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

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

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