

Senate Bill 1025

Sponsored by Senators MANNING JR, KNOPP, Representative BARKER; Senator STEINER HAYWARD, Representative NOBLE (at the request of Oregon Council of Police Associations, Oregon Association Chiefs of Police and Oregon State Sheriffs' Association)

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**.

Modifies burden of proof for petitioner petitioning court for order compelling testing of individual when certain law enforcement and health care professionals come into contact with individual's bodily fluids.

Creates same petition process for other communicable diseases.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to verifying transmission of disease; creating new provisions; amending ORS 433.085; and
3 prescribing an effective date.

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

5 **SECTION 1.** ORS 433.085 is amended to read:

6 433.085. (1) Notwithstanding any other provision of law, any employee of the Department of
7 Corrections, law enforcement officer as defined in ORS 414.805, parole and probation officer[,] **as**
8 **defined in ORS 181A.355**, corrections officer[,] **as defined in ORS 181A.355**, emergency medical
9 services provider[,] **as defined in ORS 682.025**, licensed health care provider or firefighter who, in
10 the performance of the individual's official duties, comes into contact with the bodily fluids of an-
11 other person may seek to have the source person tested for HIV and hepatitis B or C by petitioning
12 the circuit court for an order compelling the testing.

13 (2) The petition submitted to the court must set forth the facts and circumstances of the contact
14 and the reasons the petitioner and a medically trained person representing the petitioner, if avail-
15 able, believe the **petitioner's exposure to the source person's bodily fluids** was substantial and
16 *[the] that* testing would be appropriate. The petition must also include information sufficient to
17 identify the alleged source person and the location of the alleged source person, if known. The court
18 shall hold an ex parte hearing in person or by telephone on the day of receipt of the petition, if
19 possible, or within a reasonable period **of time after the day of receipt of the petition**, not to
20 exceed three judicial days. Upon a showing that **the circumstances create probable cause to**
21 **conclude that** the petitioner has been exposed to the bodily fluids of another person *[and the cir-*
22 *cumstances create probable cause to conclude that a significant possibility exists that the petitioner has*
23 *been exposed to HIV or hepatitis B or C,]* **and that those bodily fluids may transmit HIV or**
24 **hepatitis B or C**, the court shall order the testing of the source person. **The court shall make the**
25 **order within a reasonable period of time after the day of receipt of the petition, not to exceed**
26 **three judicial days.**

27 (3) If the court orders a test under subsection (2) of this section:

28 (a) The order shall direct the source person to allow the required test to be performed by a li-

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 censed health care provider without delay and may specify [*a time when*] **the date by which** the test
 2 must be completed. If the source person is in custody or otherwise subject to the legal control of
 3 another person, the order may be directed to the agency with custody of, or the other person with
 4 legal control over, the source person [*and*]. **The order may** direct the agency or other person to
 5 provide the source person with a copy of the order [*and*]. **The order may contain any directions**
 6 **necessary to** ensure that the required test is performed.

7 (b) The petitioner shall designate a physician or nurse practitioner to receive the test results
 8 on behalf of the petitioner.

9 (c) The order must inform the source person[,] **or the agency with custody of** or other person
 10 **with legal control over the source person of the person** who is to receive the results of the test
 11 and of how to obtain payment for costs under subsection (6) of this section.

12 (d) The order [*shall*] **must** be served on the source person, or the agency with custody of or
 13 other person with legal control over the source person, in the manner directed by the court. The
 14 court may provide for service of the order by any means appropriate to the circumstances of the
 15 source person, including but not limited to [*service by*] **directing** the petitioner **to serve the order**
 16 or [*by*] directing the sheriff to serve the order. Any costs of service shall be paid as provided under
 17 subsection (6) of this section.

18 (e) The order is enforceable through the contempt powers of the court.

19 (4) The results of [*any*] **a** test ordered under this section are confidential and subject to the
 20 confidentiality provisions of ORS 433.045 (4). The results [*shall*] **may** be made available only to those
 21 persons authorized **to receive the results** under ORS 433.045 (4) and to the petitioner, any physi-
 22 cian or nurse practitioner designated by the petitioner to receive the results, the Oregon Health
 23 Authority and the source person.

24 (5) If the [*test*] results **of a test ordered under this section** are negative, the court may order
 25 the source person to [*submit to additional testing*] **allow the required test to be performed as**
 26 **provided in subsection (3) of this section** six months after the first test was conducted.

27 (6) [*No*] **A** charge or filing fee may **not** be imposed for the filing of a petition under this section.
 28 The cost of any testing ordered under this section shall be the responsibility of the employer of the
 29 petitioner.

30 **SECTION 2.** (1) **Notwithstanding any other provision of law, any employee of the De-**
 31 **partment of Corrections, law enforcement officer as defined in ORS 414.805, parole and pro-**
 32 **bation officer as defined in ORS 181A.355, corrections officer as defined in ORS 181A.355,**
 33 **emergency medical services provider as defined in ORS 682.025, licensed health care provider**
 34 **as defined in ORS 433.060, or firefighter who, in the performance of the individual's official**
 35 **duties, comes into contact with the bodily fluids of another person may seek to have the**
 36 **source person tested for a communicable disease, as defined in ORS 431A.005, by petitioning**
 37 **the circuit court for an order compelling the testing.**

38 (2) **The petition submitted to the court must set forth the facts and circumstances of the**
 39 **contact and the reasons the petitioner and a medically trained person representing the**
 40 **petitioner, if available, believe the petitioner's exposure to the source person's bodily fluids**
 41 **was substantial and that testing would be appropriate. The petition must also include infor-**
 42 **mation sufficient to identify the alleged source person and the location of the alleged source**
 43 **person, if known. The court shall hold an ex parte hearing in person or by telephone on the**
 44 **day of receipt of the petition, if possible, or within a reasonable period of time after the day**
 45 **of receipt of the petition, not to exceed three judicial days. Upon a showing that the cir-**

1 cumstances create probable cause to conclude that the petitioner has been exposed to the
2 bodily fluids of another person and that those bodily fluids may transmit the communicable
3 disease, as defined in ORS 431A.005, named in the petition, the court shall order the testing
4 of the source person. The court shall make the order within a reasonable period of time after
5 the day of receipt of the petition, not to exceed three judicial days.

6 (3) If the court orders a test under subsection (2) of this section:

7 (a) The order shall direct the source person to allow the required test to be performed
8 by a licensed health care provider without delay and may specify the date by which the test
9 must be completed. If the source person is in custody or otherwise subject to the legal con-
10 trol of another person, the order may be directed to the agency with custody of, or the other
11 person with legal control over, the source person. The order may direct the agency or other
12 person to provide the source person with a copy of the order. The order may contain any
13 directions necessary to ensure that the required test is performed.

14 (b) The petitioner shall designate a physician or nurse practitioner to receive the test
15 results on behalf of the petitioner.

16 (c) The order must inform the source person or the agency with custody of or other
17 person with legal control over the source person of the person who is to receive the results
18 of the test and of how to obtain payment for costs under subsection (6) of this section.

19 (d) The order must be served on the source person, or the agency with custody of or
20 other person with legal control over the source person, in the manner directed by the court.
21 The court may provide for service of the order by any means appropriate to the circum-
22 stances of the source person, including but not limited to directing the petitioner to serve
23 the order or directing the sheriff to serve the order. Any costs of service shall be paid as
24 provided under subsection (6) of this section.

25 (e) The order is enforceable through the contempt powers of the court.

26 (4) The results of a test ordered under this section are confidential and not subject to
27 public disclosure under ORS 192.410 to 192.505. The results may be made available only to the
28 petitioner, any physician or nurse practitioner designated by the petitioner to receive the
29 results, the Oregon Health Authority and the source person.

30 (5) If the results of a test ordered under this section are negative, the court may order
31 the source person to allow the required test to be performed as provided in subsection (3)
32 of this section six months after the first test was conducted.

33 (6) A charge or filing fee may not be imposed for the filing of a petition under this sec-
34 tion. The cost of any testing ordered under this section shall be the responsibility of the
35 employer of the petitioner.

36 **SECTION 3.** The amendments to ORS 433.085 by section 1 of this 2017 Act apply to pe-
37 titions filed on or after the effective date of this 2017 Act.

38 **SECTION 4.** This 2017 Act takes effect on the 91st day after the date on which the 2017
39 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.