

HB 2719-2
(LC 2915)
3/6/23 (JLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Oregon Law Center)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2719**

1 In line 2 of the printed bill, after “victims” insert “creating new pro-
2 visions; and amending ORS 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
6 appears from the nature of the charge that the transmission of body fluids
7 from one person to another may have been involved, the district attorney,
8 upon the request of the victim or the parent or guardian of a minor or in-
9 capacitated victim, shall seek the consent of the person charged to submit
10 to a test for HIV and any other communicable disease. In the absence of such
11 consent or failure to submit to the test, the district attorney [*may*] **shall**
12 petition the court for an order requiring the person charged to submit to a
13 test for HIV and any other communicable disease.

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

1 arrested and charged and the victim, or parent or guardian of the victim, of
2 the availability of counseling under the circumstances described in sub-
3 section (7) of this section.

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

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

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

11 **“(c) If the district attorney files a petition under subsection (1) of**
12 **this section at or before the defendant’s arraignment on the**
13 **indictment or information and the court orders the defendant to sub-**
14 **mit to testing, the testing must be done within 48 hours of the**
15 **defendant’s arraignment.**

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

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

21 “(3) Notwithstanding the provisions of ORS 433.045, upon conviction of a
22 person for any crime in which the court determines from the facts that the
23 transmission of body fluids from one person to another was involved and if
24 the person has not been tested pursuant to subsection (2) of this section, the
25 court shall seek the consent of the convicted person to submit to a test for
26 HIV and other communicable diseases. In the absence of such consent or
27 failure to submit to the test, the court shall order the convicted person to
28 submit to the test if the victim of the crime, or a parent or guardian of the
29 victim, requests the court to make such order.

30 “(4) When a test is ordered under subsection (2) or (3) of this section, the

1 victim of the crime or a parent or guardian of the victim, shall designate an
2 attending physician, a physician assistant licensed under ORS 677.505 to
3 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390 to re-
4 ceive such information on behalf of the victim.

5 “(5) If an HIV test results in a negative reaction, the court may order the
6 person to submit to another HIV test six months after the first test was ad-
7 ministered.

8 “(6) The result of any test ordered under this section is not a public re-
9 cord and shall be available only to:

10 “(a) The victim.

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

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

13 “(d) The Oregon Health Authority.

14 “(e) The person tested.

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

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

30 “(9) When a court orders a convicted person to submit to a test under this

1 section, the withdrawal of blood may be performed only by a physician li-
2 censed under ORS chapter 677, a physician assistant licensed under ORS
3 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to
4 678.390, or by another licensed health care provider acting within the
5 provider's licensed scope of practice or acting under the supervision of a
6 physician licensed under ORS chapter 677, a physician assistant licensed
7 under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS
8 678.375 to 678.390.

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

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

19 “(12) As used in this section:

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

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

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

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

29 “(e) ‘Victim’ means the person or persons to whom transmission of body
30 fluids from the perpetrator of the crime occurred or was likely to have oc-

1 curred in the course of the crime.

2 **“SECTION 2. The amendments to ORS 135.139 by section 1 of this**
3 **2023 Act apply to crimes alleged to have been committed on or after**
4 **the effective date of this 2023 Act.”.**

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