

MAINE STATE LEGISLATURE

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L.D. 799

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HUMAN RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 589, L.D. 799, Bill, "An Act to Amend the Laws Governing HIV Testing at the Request of Victims of Sexual Assault"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 5 MRSA §19203, sub-§10, ¶B, as enacted by PL 1991, c. 803, §1, is amended to read:

B. A victim-witness advocate authorized by section 19203-E 19203-F to receive the test results of a person convicted of gross a sexual assault crime as defined in section 19203-F, subsection 1, paragraph C, who shall disclose to a petitioner victim under section 19203-E 19203-F, subsection 4.

Sec. 2. 5 MRSA §19203-A, sub-§5, as enacted by PL 1991, c. 803, §2, is amended to read:

5. Exposure from sexual crime. Consent need not be obtained when a-victim-of-gross-sexual-assault-has-been-exposed to-the-blood-or-body-fluids-of-the-convicted-offender-and-the exposure-creates-a-significant-risk-of-infection,-provided-that a court order has been obtained issued under section 19203-E 19203-F. The fact that an HIV test was given as a result of the exposure and the results of that test may not appear in a convicted offender's medical record. Counseling on risk

COMMITTEE AMENDMENT

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2 reduction must be offered, but the convicted offender may choose
not to be informed about the result of the test unless the court
4 has ordered that the convicted offender be informed of the result.

6 **Sec. 3. 5 MRSA §19203-E**, as amended by PL 1993, c. 391, §§1
and 2, is repealed.

8 **Sec. 4. 5 MRSA §19203-F** is enacted to read:

10 **§19203-F. HIV test after conviction for sexual assault**

12 **1. Definitions.** As used in this section, unless the
context otherwise indicates, the following terms have the
14 following meanings.

16 A. "Convicted offender" means a person who has been
convicted of a sexual crime or, in the case of a juvenile, a
18 person who has been adjudicated as having committed a sexual
crime.

20 B. "Incapacitated adult" means an adult who is impaired by
reason of mental illness, mental deficiency, physical
22 illness or disability to the extent that the individual
lacks sufficient understanding or capacity to make or
24 communicate responsible decisions concerning that individual.

26 C. "Sexual crime" means a crime involving a sexual act, as
defined in Title 17-A, section 251, subsection 1, paragraph
28 C, subparagraph (1).

30 **2. Request for testing.** A person who is the victim of a
sexual crime, or that person's parent, guardian or authorized
32 representative if that person is a minor or incapacitated adult,
may petition the court at any time prior to sentencing or no
34 later than 180 days after conviction to order the convicted
36 offender to submit to HIV testing and to order that the convicted
offender be informed of the test results.

38 **3. Duties of the court.** Upon receipt of the petition, the
court shall order that the convicted offender obtain HIV testing
40 conducted by or under authority of the Department of Human
Services and, if requested by the petitioner, that the convicted
42 offender be informed of the test results.

44 **4. Reporting and counseling.** The health care facility in
which a convicted offender is tested pursuant to this section
46 shall disclose the results of the test to the victim-witness
advocate, who shall disclose the result to the petitioner. The
48 test result may not be disclosed to the petitioner until the

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2 petitioner has received counseling, pursuant to section 19204-A,
3 regarding the nature, reliability and significance of the
4 convicted offender's HIV test and has been offered referrals for
5 health care and support services for the victim. The health care
6 facility shall, upon order of the court, disclose the results of
7 the test to the convicted offender.

8 **Sec. 5. 5 MRSA §19204-A, first ¶,** as amended by PL 1991, c. 803,
9 §4, is further amended to read:

10 Except as otherwise provided by this chapter, persons who
11 obtain an HIV test must be offered pretest and post-test
12 counseling. Persons who are authorized by section 19203-C or
13 19203-E 19203-F to receive test results after exposure must be
14 offered counseling regarding the nature, reliability and
15 significance of the HIV test and the confidential nature of the
16 test.'

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20 **STATEMENT OF FACT**

21 This amendment brings the bill into compliance with the
22 requirements of 42 United States Code, Section 3756 (f). It
23 removes a requirement that is inconsistent with federal law
24 stating that the victim of the sexual assault must allegedly have
25 been exposed to the blood or body fluids of the convicted
26 offender. Conviction of a sexual assault under the Maine Revised
27 Statutes, Title 17-A, section 251, subsection 1, paragraph C,
28 subparagraph (1) is sufficient. The amendment requires that the
29 victim be offered referrals for health care and support
30 services. It adds a parent, guardian or authorized
31 representative as a person who may petition to have testing
32 done. It requires the testing health care facility, upon request
33 of the petitioner, to disclose to the convicted offender the test
34 results, as required by federal law.