

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1330

H.P. 941

House of Representatives, April 13, 1995

An Act to Protect Victims of Sexual Assault.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative PENDLETON of Scarborough.
Cosponsored by Senator BENOIT of Franklin and
Representatives: BIGL of Bucksport, GIERINGER of Portland, HATCH of Skowhegan,
LABRECQUE of Gorham, LOVETT of Scarborough, PINKHAM of Lamoine, SAMSON of
Jay.

Be it enacted by the People of the State of Maine as follows:

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4 **Sec. 1. 5 MRSA §19201, sub-§§6-A, 7-A and 7-B** are enacted to read:

6 **6-A. Perpetrator.** "Perpetrator" means a person charged with or convicted of a sexual assault.

8
10 **7-A. Sexual assault.** "Sexual assault" means a crime or alleged crime involving a sexual act, as defined in Title 17-A, section 251.

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14 **7-B. Victim.** "Victim" means the victim or alleged victim of a sexual assault who allegedly has been exposed to the blood or body fluids of the perpetrator.

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18 **Sec. 2. 5 MRSA §19203, sub-§10, ¶B,** as enacted by PL 1991, c. 803, §1, is amended to read:

20 B. A victim-witness advocate authorized by section ~~19203-E~~ 19203-F to receive test results of a ~~person-convicted-of gross-sexual-assault~~ perpetrator, who shall disclose to a petitioner under section ~~19203-E~~ 19203-F.

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26 **Sec. 3. 5 MRSA §19203-A, sub-§5,** as enacted by PL 1991, c. 803, §2, is amended to read:

28 **5. Exposure from a sexual assault.** Consent need not be obtained when a victim of ~~gross-sexual-assault~~ a sexual assault has been exposed to the blood or body fluids of the ~~convicted offender-and-the-exposure-creates-a-significant-risk-of-infection~~ perpetrator, 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~~ perpetrator's medical record. Counseling on risk reduction must be offered, but the ~~convicted-offender~~ perpetrator may choose not to be informed about the result of the test.

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40 **Sec. 4. 5 MRSA §19203-E,** as amended by PL 1993, c. 391, §§1 and 2, is repealed.

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

46 **§19203-F. HIV testing in situations of sexual assault**

48 **1. Testing for the victim.** Upon request of a victim, a health care facility that performs HIV testing shall offer to the victim the pretest counseling required by section 19204-A and perform the test.

2 2. Testing for the perpetrator. A victim who allegedly has
4 been exposed to the blood or body fluids of the perpetrator may
6 petition the court having jurisdiction over the perpetrator as a
 result of the criminal charge or conviction to order the
 perpetrator to submit to HIV testing.

8 3. Duties of the court. Within 3 business days of the
10 filing of a request under subsection 2, the court shall conduct
12 an expedited hearing to determine whether the petitioner may have
14 been exposed to the blood or body fluids of the perpetrator.
 Upon finding good cause to believe that the petitioner may have
 been exposed to the blood or body fluids of the perpetrator, the
 court shall order the perpetrator to undergo HIV testing within 5
 business days of the entry of the order.

16 4. Reporting and counseling. The health care facility that
18 tests a perpetrator pursuant to this section shall disclose the
20 results of the perpetrator's test to the victim-witness
22 advocate. The victim-witness advocate shall disclose the results
 to the victim after the victim has been offered counseling,
 pursuant to section 19204-A, regarding the nature, reliability
 and significance of the perpetrator's HIV test.

24 **Sec. 6. 5 MRSA §19204-A, first ¶,** as amended by PL 1991, c.
26 803, §4, is further amended to read:

28 Except as otherwise provided by this chapter, persons who
30 obtain an HIV test must be offered pretest and post-test
32 counseling. Persons who are authorized by section 19203-C or
34 19203-E 19203-F to receive test results after exposure must be
 offered counseling regarding the nature, reliability and
 significance of the HIV test and the confidential nature of the
 test.

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38 **STATEMENT OF FACT**

40 This bill amends the laws regarding HIV testing. If a
42 victim of a crime or an alleged crime involving a sexual act, as
44 defined in the Maine Revised Statutes, Title 17-A, section 251,
46 requests an HIV test, a health care facility that performs HIV
48 tests must offer the required pretest counseling and perform the
 test. This bill requires an alleged or convicted perpetrator of
 crimes involving a sexual act to undergo HIV testing if requested
 by the victim and if there is good cause to believe that the
 victim may have been exposed to the blood or body fluids of the
 perpetrator.