

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 862

An Act to amend and reenact § 18.2-62 of the Code of Virginia, relating to testing defendants for HIV.

[S 824]

Approved April 21, 2001

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-62 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-62. Testing of certain persons for human immunodeficiency virus.

A. As soon as practicable following arrest, the attorney for the Commonwealth may request, after consultation with any victim, that any person charged with any crime involving sexual assault pursuant to this article or any offenses against children as prohibited by §§ 18.2-361, 18.2-366, 18.2-370, and 18.2-370.1 be requested to submit to testing for infection with human immunodeficiency virus. The person so charged shall be counseled about the meaning of the test, about acquired immunodeficiency syndrome, and about the transmission and prevention of infection with human immunodeficiency virus.

If the person so charged refuses to submit to the test *or the competency of the person to consent to the test is at issue*, the court with jurisdiction of the case shall, ~~after a finding of~~ hold a hearing to determine whether there is probable cause that the individual has committed the crime with which he is charged. *If the court finds probable cause, the court shall order the accused to undergo testing for infection with human immunodeficiency virus. The court may enter such an order in the absence of the defendant if the defendant is represented at the hearing by counsel or a guardian ad litem. The court's finding shall be without prejudice to either the Commonwealth or the person charged and shall not be evidence in any proceeding, civil or criminal.*

B. Upon conviction, or adjudication as delinquent in the case of a juvenile, of any crime involving sexual assault pursuant to this article or any offenses against children as prohibited by §§ 18.2-361, 18.2-366, 18.2-370, and 18.2-370.1, the attorney for the Commonwealth may, after consultation with any victim and, upon the request of any victim shall, request and the court shall order the defendant to submit to testing for infection with human immunodeficiency virus. Any test conducted following conviction shall be in addition to such tests as may have been conducted following arrest pursuant to subsection A.

C. Confirmatory tests shall be conducted before any test result shall be determined to be positive. The results of the tests for infection with human immunodeficiency virus shall be confidential as provided in § 32.1-36.1; however, the Department of Health shall also disclose the results to any victim and offer appropriate counseling as provided by subsection B of § 32.1-37.2. The Department shall conduct surveillance and investigation in accordance with § 32.1-39.

The results of such tests shall not be admissible as evidence in any criminal proceeding.

The cost of such tests shall be paid by the Commonwealth and taxed as part of the cost of such criminal proceedings.