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HOUSE BILL NO. 2906

Offered January 21, 2005

A *BILL to amend and reenact §§ 18.2-62 and 32.1-45.1 of the Code of Virginia, relating to crime victims; testing of certain persons for human immunodeficiency, hepatitis B or C viruses.*

Patrons—Shuler and Keister

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-62 and 32.1-45.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-62. Testing of certain persons for human immunodeficiency virus or hepatitis B or C viruses.

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 *or hepatitis B or C viruses*. The person so charged shall be counseled about the meaning of the test, about acquired immunodeficiency syndrome *or hepatitis B or C viruses*, and about the transmission and prevention of infection with human immunodeficiency virus *or hepatitis B or C viruses*.

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 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 *or hepatitis B or C viruses*. 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 *or hepatitis B or C viruses*. 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 *or hepatitis B or C viruses* 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.

§ 32.1-45.1. Deemed consent to testing and release of test results related to infection with human immunodeficiency virus or hepatitis B or C viruses.

A. Whenever any health care provider, or any person employed by or under the direction and control of a health care provider, is directly exposed to body fluids of a patient in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the patient whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such patient shall also be deemed to have consented to the release of such test results to the person who was exposed. In other than emergency situations, it shall be the responsibility of the health care provider to inform patients of this provision prior to providing them with health care services which create a risk of such exposure.

B. Whenever any patient is directly exposed to body fluids of a health care provider, or of any person employed by or under the direction and control of a health care provider, in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such

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59 test results to the patient who was exposed.

60 C. For the purposes of this section, "health care provider" means any person, facility or agency
61 licensed or certified to provide care or treatment by the Department of Health, Department of Mental
62 Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, or the
63 Department of Social Services, any person licensed or certified by a health regulatory board within the
64 Department of Health Professions except for the Boards of Funeral Directors and Embalmers and
65 Veterinary Medicine or any personal care agency contracting with the Department of Medical Assistance
66 Services.

67 D. "Health care provider," as defined in subsection C of this section, shall be deemed to include any
68 person who renders emergency care or assistance, without compensation and in good faith, at the scene
69 of an accident, fire, or any life-threatening emergency, or while en route therefrom to any hospital,
70 medical clinic or doctor's office during the period while rendering such emergency care or assistance.
71 The Department of Health shall provide appropriate counseling and opportunity for face-to-face
72 disclosure of any test results to any such person.

73 E. Whenever any law-enforcement officer is directly exposed to body fluids of a person in a manner
74 which may, according to the then current guidelines of the Centers for Disease Control, transmit human
75 immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the
76 exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus
77 or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such
78 test results to the law-enforcement officer who was exposed. In other than emergency situations, it shall
79 be the responsibility of the law-enforcement officer to inform the person of this provision prior to the
80 contact which creates a risk of such exposure.

81 F. Whenever a person is directly exposed to the body fluids of a law-enforcement officer in a
82 manner which may, according to the then current guidelines of the Centers for Disease Control, transmit
83 human immunodeficiency virus or hepatitis B or C viruses, the law-enforcement officer whose body
84 fluids were involved in the exposure shall be deemed to have consented to testing for infection with
85 human immunodeficiency virus or hepatitis B or C viruses. The law-enforcement officer shall also be
86 deemed to have consented to the release of such test results to the person.

87 G. For the purposes of this section, "law-enforcement officer" means a person who is both (i)
88 engaged in his public duty at the time of such exposure and (ii) employed by any sheriff's office, any
89 adult or youth correctional facility, or any state or local law-enforcement agency, or any agency or
90 department under the direction and control of the Commonwealth or any local governing body that
91 employs persons who have law-enforcement authority.

92 *H. Except as provided by § 18.2-62, whenever a victim of a crime, as defined in subdivision B (i) of*
93 *§ 19.2-11.01, is directly exposed to body fluids of a person in a manner which may, according to the*
94 *then-current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or*
95 *hepatitis B or C viruses, the person whose body fluids were involved in the exposure shall be deemed*
96 *to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C*
97 *viruses. Such person shall also be deemed to have consented to the release of such test results to the*
98 *victim who was exposed.*

99 H. Whenever any school board employee is directly exposed to body fluids of any person in a
100 manner which may, according to the then current guidelines of the Centers for Disease Control, transmit
101 human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved
102 in the exposure shall be deemed to have consented to testing for infection with human
103 immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented
104 to the release of such test results to the school board employee who was exposed. In other than
105 emergency situations, it shall be the responsibility of the school board employee to inform the person of
106 this provision prior to the contact that creates a risk of such exposure.

107 I. Whenever any person is directly exposed to the body fluids of a school board employee in a
108 manner that may, according to the then current guidelines of the Centers for Disease Control, transmit
109 human immunodeficiency virus or hepatitis B or C viruses, the school board employee whose body
110 fluids were involved in the exposure shall be deemed to have consented to testing for infection with
111 human immunodeficiency virus or hepatitis B or C viruses. The school board employee shall also be
112 deemed to have consented to the release of such test results to the person.

113 J. For the purposes of this section, "school board employee" means a person who is both (i) acting
114 in the course of employment at the time of such exposure and (ii) employed by any local school board
115 in the Commonwealth.

116 K. For purposes of subsection H I, if the person to be tested is a minor, consent for such testing
117 shall be obtained from the parent, guardian, or person standing in loco parentis of such minor prior to
118 initiating such testing. If the parent or guardian or person standing in loco parentis withholds such
119 consent, the school board may petition the juvenile and domestic relations district court in the county or
120 city where the minor resides for an order requiring such testing.

121 ~~LM~~. Except as provided in subsection ~~KL~~, if the person whose blood specimen is sought for testing
122 refuses to provide such specimen, any person potentially exposed to the human immunodeficiency virus
123 or hepatitis B or C viruses, or the employer of such person, may petition the general district court of the
124 county or city in which the person whose specimen is sought resides or resided, or, in the case of a
125 nonresident, the county or city where the health care provider, law-enforcement agency or school board
126 has its principal office, for an order requiring the person to provide a blood specimen or to submit to
127 testing and to disclose the test results in accordance with this section. At any hearing before the court,
128 the person whose specimen is sought or his counsel may appear. The court shall be advised by the
129 Commissioner or his designee prior to entering any testing order. If a testing order is issued, both the
130 petitioner and the person from whom the blood specimen is sought shall receive counseling and
131 opportunity for face-to-face disclosure of any test results by a licensed practitioner or trained counselor.

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