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HOUSE BILL NO. 1100

Offered January 9, 2008

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A BILL to amend and reenact §§ 18.2-62, 32.1-37.2 and 32.1-45.2 of the Code of Virginia, relating to informed consent for testing for human immunodeficiency virus.

Patron—Sickles

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-62, 32.1-37.2 and 32.1-45.2 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 (i) any crime involving sexual assault pursuant to this article, (ii) any offenses against children as prohibited by §§ 18.2-361, 18.2-366, 18.2-370, and 18.2-370.1, or (iii) any assault and battery in which the victim was exposed to body fluids of the person arrested, 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 BC 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.

§ 32.1-37.2. Informed consent for testing for human immunodeficiency virus; condition on disclosure of test results; counseling required; exceptions.

A. *Oral or written informed consent separate and distinct from general consent to medical treatment shall not be required prior to performing any test to determine infection with human immunodeficiency virus.*

B. Prior to performing any test to determine infection with human immunodeficiency virus, the subject of the test shall be given an oral or written explanation of the meaning of the test. Except as otherwise authorized in this Code, informed consent shall be obtained before such a test is performed.

Informed consent for testing for infection with human immunodeficiency virus shall be deemed to have been obtained (i) when an individual seeks the services of a facility offering anonymous testing for infection with human immunodeficiency virus; (ii) when blood specimens which were obtained for routine diagnostic purposes are tested in order to conduct seroprevalence studies of infection with human immunodeficiency virus if such studies are designed to prevent any specimen from being identified with any specific individual; and (iii) when an individual donates or sells his blood. *a medical care provider*

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59 shall inform the patient that the test is planned, provide information about the test, and advise the
60 patient that he has the right to decline the test. If a patient declines the test, the medical care provider
61 shall note that fact in the patient's medical file.

62 B.C. Every person who is the subject of any test to determine infection for human immunodeficiency
63 virus shall be afforded the opportunity for individual face-to-face disclosure of the test results and
64 appropriate counseling. Appropriate counseling shall include, but not be limited to, the meaning of the
65 test results, the need for additional testing, the etiology, prevention and effects of acquired
66 immunodeficiency syndrome, the availability of appropriate health care, mental health care and social
67 services, the need to notify any person who may have been exposed to the virus and the availability of
68 assistance through the Department of Health in notifying such individuals.

69 C.D. Opportunity for face-to-face disclosure of the test results and appropriate counseling shall not be
70 required when the tests are conducted by blood collection agencies. However, all blood collection
71 agencies shall notify the Board of Health of any positive tests.

72 D.E. In the case of a person applying for accident and sickness or life insurance who is the subject
73 of a test to determine infection for human immunodeficiency virus, insurers' practices including an
74 explanation of the meaning of the test, the manner of obtaining informed consent, the method of
75 disclosure of the test results and any counseling requirements shall be as set forth in the regulations of
76 the State Corporation Commission.

77 § 32.1-45.2. Public safety employees; testing for blood-borne pathogens; procedure available for
78 certain citizens; definitions.

79 A. If, in the course of employment, an employee of a public safety agency is involved in a possible
80 exposure prone incident, the employee shall immediately, or as soon thereafter as practicable, notify the
81 agency of the incident in accordance with the agency's procedures for reporting workplace accidents.

82 B. If, after reviewing the facts of the possible exposure prone incident with the employee and after
83 medical consultation, the agency concludes that it is reasonable to believe that an exposure prone
84 incident may have occurred, (i) the agency shall request the person whose body fluids were involved to
85 give informed consent, as provided in § 32.1-37.2, to submit to testing for hepatitis B or C virus and
86 human immunodeficiency virus and to authorize disclosure of the test results or (ii) if the person is
87 deceased, the agency shall request the custodian of the remains to preserve a specimen of blood and
88 shall request the decedent's next of kin to provide informed consent, as provided in § 32.1-37.2, to such
89 testing and to authorize disclosure of the test results.

90 C. If a person is involved in a possible exposure prone incident involving the body fluids of an
91 employee of a public safety agency, the person may request the agency to review the facts of the
92 possible exposure prone incident for purposes of obtaining the employee's informed consent, as provided
93 in § 32.1-37.2, to test for hepatitis B or C virus and human immunodeficiency virus and to authorize
94 disclosure of the test results. If, after reviewing the facts and after medical consultation, the agency
95 concludes it is reasonable to believe an exposure prone incident involving the person and the employee
96 may have occurred, (i) the agency shall request the employee whose body fluids were involved to give
97 informed consent to submit to testing for hepatitis B or C virus and human immunodeficiency virus and
98 to authorize disclosure of the test results or (ii) if the employee is deceased, the agency shall request the
99 custodian of the remains to preserve a specimen of blood and shall request the decedent's next of kin to
100 provide informed consent, as provided in § 32.1-37.2, to such testing and to authorize disclosure of the
101 test results.

102 D. If informed consent is refused under subsection B of this section, the public safety agency or the
103 employee may petition the general district court of the city or county in which the person resides or
104 resided, or in the case of a nonresident, the city or county of the public safety agency's principal office,
105 to determine whether an exposure prone incident has occurred and to order testing and disclosure of the
106 test results.

107 If informed consent is refused under subsection C of this section, the person involved in the possible
108 exposure prone incident may petition the general district court of the city or county of the public safety
109 agency's principal office to determine whether an exposure prone incident has occurred and to order
110 testing and disclosure of the test results.

111 E. If the court finds by a preponderance of the evidence that an exposure prone incident has
112 occurred, it shall order testing for hepatitis B or C virus and human immunodeficiency virus and
113 disclosure of the test results. The court shall be advised by the Commissioner or his designee in making
114 this finding. The hearing shall be held in camera as soon as practicable after the petition is filed. The
115 record shall be sealed.

116 F. A party may appeal an order of the general district court to the circuit court of the same
117 jurisdiction within ten days from the date of the order. Any such appeal shall be de novo, in camera,
118 and shall be heard as soon as possible by the circuit court. The circuit court shall be advised by the
119 Commissioner or his designee. The record shall be sealed. The order of the circuit court shall be final
120 and nonappealable.

121 G. Disclosure of any test results provided by this section shall be made to the district health director
122 of the jurisdiction in which the petition was brought or the district in which the person or employee was
123 tested. The district health director or his designee shall inform the parties of the test results and counsel
124 them in accordance with subsection BC of § 32.1-37.2.

125 H. The results of the tests shall be confidential as provided in § 32.1-36.1.

126 I. No person known or suspected to be positive for infection with hepatitis B or C virus or human
127 immunodeficiency virus shall be refused services for that reason by any public safety agency personnel.

128 J. For the purpose of this section and for no other purpose, the term "employee" shall include: (i)
129 any person providing assistance to a person employed by a public safety agency who is directly affected
130 by a possible exposure prone incident as a result of the specific crime or specific circumstances involved
131 in the assistance and (ii) any victim of or witness to a crime who is directly affected by a possible
132 exposure prone incident as a result of the specific crime.

133 K. This section shall not be deemed to create any duty on the part of any person where none exists
134 otherwise, and a cause of action shall not arise from any failure to request consent or to consent to
135 testing under this section. The remedies available under this section shall be exclusive.

136 L. For the purposes of this section, the following terms shall apply:

137 "Exposure prone incident" means a direct exposure to body fluids of another person in a manner
138 which may, according to the then current guidelines of the Centers for Disease Control, transmit
139 hepatitis B or C virus or human immunodeficiency virus and which occurred during the commission of
140 a criminal act, during the performance of emergency procedures, care or assistance, or in the course of
141 public safety or law-enforcement duties.

142 "Public safety agency" means any sheriff's office and any adult or youth correctional,
143 law-enforcement, fire safety organization or any agency or department that employs persons who have
144 law-enforcement authority and which is under the direction and control of the Commonwealth or any
145 local governing body.