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HOUSE BILL NO. 1213

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact § 32.1-45.1 of the Code of Virginia, relating to consent for the testing of minors for HIV and hepatitis.

Patron—Melvin

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That § 32.1-45.1 of the Code of Virginia is amended and reenacted as follows:**

§ 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 test results to the patient who was exposed.

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

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

E. Whenever any law-enforcement officer is directly exposed to body fluids of a person 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 test results to the law-enforcement officer who was exposed. In other than emergency situations, it shall be the responsibility of the law-enforcement officer to inform the person of this provision prior to the contact which creates a risk of such exposure.

F. Whenever a person is directly exposed to the body fluids of a law-enforcement officer 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 law-enforcement officer 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. The law-enforcement officer shall also be deemed to have consented to the release of such test results to the person.

G. For the purposes of this section, "law-enforcement officer" means a person who is both (i) engaged in his public duty at the time of such exposure and (ii) employed by any sheriff's office, any

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59 adult or youth correctional facility, or any state or local law-enforcement agency, or any agency or
60 department under the direction and control of the Commonwealth or any local governing body that
61 employs persons who have law-enforcement authority.

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

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

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

79 K. For purposes of ~~subsection H~~ *this section*, if the person to be tested is a minor, consent for such
80 testing shall be obtained from the parent, guardian, or person standing in loco parentis of such minor
81 prior to initiating such testing. If the parent or guardian or person standing in loco parentis withholds
82 such consent, ~~the school board~~ *person potentially exposed to the human immunodeficiency virus or*
83 *hepatitis B or C viruses, or the employer of such person,* may petition the juvenile and domestic
84 relations district court in the county or city where the minor resides *or resided* for an order requiring
85 such testing, *or, in the case of a nonresident, the county or city where the health care provider,*
86 *law-enforcement agency or school board has its principal office or, in the case of a health care*
87 *provider rendering emergency care pursuant to subsection D, the county or city where the exposure*
88 *occurred, for an order requiring such testing.*

89 L. Except as provided in subsection K, if the person whose blood specimen is sought for testing
90 refuses to provide such specimen, any person potentially exposed to the human immunodeficiency virus
91 or hepatitis B or C viruses, or the employer of such person, may petition the general district court of the
92 county or city in which the person whose specimen is sought resides or resided, or, in the case of a
93 nonresident, the county or city where the health care provider, law-enforcement agency or school board
94 has its principal office *or, in the case of a health care provider rendering emergency care pursuant to*
95 *subsection D, the county or city where the exposure occurred,* for an order requiring the person to
96 provide a blood specimen or to submit to testing and to disclose the test results in accordance with this
97 section. At any hearing before the court, the person whose specimen is sought or his counsel may
98 appear. The court shall be advised by the Commissioner or his designee prior to entering any testing
99 order. If a testing order is issued, both the petitioner and the person from whom the blood specimen is
100 sought shall receive counseling and opportunity for face-to-face disclosure of any test results by a
101 licensed practitioner or trained counselor.