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SENATE BILL NO. 205

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact §§ 37.2-1104, 54.1-2969, 54.1-2982, and 63.2-1520 of the Code of Virginia, relating to authority to consent to the collection of forensic evidence.

Patrons—Barker and Garrett

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-1104, 54.1-2969, 54.1-2982, and 63.2-1520 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-1104. Temporary detention in hospital for testing, observation or treatment.

Upon the advice of a licensed physician who has attempted to obtain consent and upon a finding of probable cause to believe that an adult person within the court's jurisdiction is incapable of making an informed decision regarding treatment of a physical or mental disorder or is incapable of communicating such a decision due to a physical or mental disorder and that (i) the medical standard of care calls for testing, observation, or treatment of the disorder within the next 24 hours to prevent death, disability, or a serious irreversible condition or (ii) a delay in collecting forensic evidence may adversely affect the ability to prosecute a suspected sexual assault, the court or, if the court is unavailable, a magistrate serving the jurisdiction may issue an order authorizing temporary detention of the person by a hospital emergency room or other appropriate facility and authorizing such testing, observation, or treatment, or collection of forensic evidence. The detention may not be for a period exceeding 24 hours, unless extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized testing, observation, or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation, or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate the order.

§ 54.1-2969. Authority to consent to surgical and medical treatment of certain minors.

A. Whenever any minor who has been separated from the custody of his parent or guardian is in need of surgical or medical treatment, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, as follows:

1. Upon judges with respect to minors whose custody is within the control of their respective courts.

2. Upon local directors of social services or their designees with respect to (i) minors who are committed to the care and custody of the local board by courts of competent jurisdiction, (ii) minors who are taken into custody pursuant to § 63.2-1517, and (iii) minors who are entrusted to the local board by the parent, parents or guardian, when the consent of the parent or guardian cannot be obtained immediately and, in the absence of such consent, a court order for such treatment cannot be obtained immediately.

3. Upon the Director of the Department of Corrections or the Director of the Department of Juvenile Justice or his designees with respect to any minor who is sentenced or committed to his custody.

4. Upon the principal executive officers of state institutions with respect to the wards of such institutions.

5. Upon the principal executive officer of any other institution or agency legally qualified to receive minors for care and maintenance separated from their parents or guardians, with respect to any minor whose custody is within the control of such institution or agency.

6. Upon any person standing in loco parentis, or upon a conservator or custodian for his ward or other charge under disability.

B. Whenever the consent of the parent or guardian of any minor who is in need of surgical or medical treatment is unobtainable because such parent or guardian is not a resident of the Commonwealth or his whereabouts is unknown or he cannot be consulted with promptness reasonable under the circumstances, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, upon judges of juvenile and domestic relations district courts.

C. Whenever delay in providing medical or surgical treatment to a minor may adversely affect such

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59 minor's recovery *or delay in collecting forensic evidence may adversely affect the ability to prosecute a*
60 *suspected sexual assault* and no person authorized in this section to consent to such treatment *or*
61 *forensic evidence collection* for such minor is available within a reasonable time under the
62 circumstances, no liability shall be imposed upon qualified emergency medical services personnel as
63 defined in § 32.1-111.1 at the scene of an accident, fire or other emergency, a licensed health
64 professional, or a licensed hospital by reason of lack of consent to such medical or surgical treatment *or*
65 *forensic evidence collection*. However, in the case of a minor 14 years of age or older who is physically
66 capable of giving consent, such consent shall be obtained first.

67 D. Whenever delay in providing transportation to a minor from the scene of an accident, fire or other
68 emergency prior to hospital admission may adversely affect such minor's recovery and no person
69 authorized in this section to consent to such transportation for such minor is available within a
70 reasonable time under the circumstances, no liability shall be imposed upon emergency medical services
71 personnel as defined in § 32.1-111.1, by reason of lack of consent to such transportation. However, in
72 the case of a minor 14 years of age or older who is physically capable of giving consent, such consent
73 shall be obtained first.

74 E. A minor shall be deemed an adult for the purpose of consenting to:

75 1. Medical or health services needed to determine the presence of or to treat venereal disease or any
76 infectious or contagious disease that the State Board of Health requires to be reported;

77 2. Medical or health services required in case of birth control, pregnancy or family planning except
78 for the purposes of sexual sterilization;

79 3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for
80 substance abuse as defined in § 37.2-100; ~~or~~

81 4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for
82 mental illness or emotional disturbance; *or*

83 5. *Forensic evidence collection in cases of suspected sexual assault.*

84 A minor shall also be deemed an adult for the purpose of accessing or authorizing the disclosure of
85 medical records related to subdivisions 1 through 4.

86 F. Except for the purposes of sexual sterilization, any minor who is or has been married shall be
87 deemed an adult for the purpose of giving consent to surgical and medical treatment.

88 G. A pregnant minor shall be deemed an adult for the sole purpose of giving consent for herself and
89 her child to surgical and medical treatment relating to the delivery of her child when such surgical or
90 medical treatment is provided during the delivery of the child or the duration of the hospital admission
91 for such delivery; thereafter, the minor mother of such child shall also be deemed an adult for the
92 purpose of giving consent to surgical and medical treatment for her child.

93 H. Any minor 16 years of age or older may, with the consent of a parent or legal guardian, consent
94 to donate blood and may donate blood if such minor meets donor eligibility requirements. However,
95 parental consent to donate blood by any minor 17 years of age shall not be required if such minor
96 receives no consideration for his blood donation and the procurer of the blood is a nonprofit, voluntary
97 organization.

98 I. Any judge, local director of social services, Director of the Department of Corrections, Director of
99 the Department of Juvenile Justice, or principal executive officer of any state or other institution or
100 agency who consents to surgical or medical treatment of a minor in accordance with this section shall
101 make a reasonable effort to notify the minor's parent or guardian of such action as soon as practicable.

102 J. Nothing in subsection G shall be construed to permit a minor to consent to an abortion without
103 complying with § 16.1-241.

104 K. Nothing in subsection E shall prevent a parent, legal guardian or person standing in loco parentis
105 from obtaining (i) the results of a minor's nondiagnostic drug test when the minor is not receiving care,
106 treatment or rehabilitation for substance abuse as defined in § 37.2-100 or (ii) a minor's other health
107 records, except when the minor's treating physician or the minor's treating clinical psychologist has
108 determined, in the exercise of his professional judgment, that the disclosure of health records to the
109 parent, legal guardian, or person standing in loco parentis would be reasonably likely to cause
110 substantial harm to the minor or another person pursuant to subsection B of § 20-124.6.

111 § 54.1-2982. Definitions.

112 As used in this article:

113 "Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in
114 accordance with the requirements of § 54.1-2983 or (ii) a witnessed oral statement, made by the
115 declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in
116 accordance with the provisions of § 54.1-2983.

117 "Agent" means an adult appointed by the declarant under an advance directive, executed or made in
118 accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant
119 may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of
120 his body pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the health care of the patient.

"Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

"Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to § 54.1-2987.1 to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as an advance directive.

"Health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care. *"Health care" shall also include the collection of forensic evidence in cases of suspected sexual assault.*

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder that precludes communication or impairs judgment, to make an informed decision about providing, continuing, withholding or withdrawing a specific health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of pain relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation.

"Patient care consulting committee" means a committee duly organized by a facility licensed to provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in § 32.1-123 owned or operated by an agency of the Commonwealth that is exempt from licensure pursuant to § 32.1-124, to consult on health care issues only as authorized in this article. Each patient care consulting committee shall consist of five individuals, including at least one physician, one person licensed or holding a multistate licensure privilege under Chapter 30 (§ 54.1-3000 et seq.) to practice professional nursing, and one individual responsible for the provision of social services to patients of the facility. At least one committee member shall have experience in clinical ethics and at least two committee members shall have no employment or contractual relationship with the facility or any involvement in the management, operations, or governance of the facility, other than serving on the patient care consulting committee. A patient care consulting committee may be organized as a subcommittee of a standing ethics or other committee established by the facility or may be a separate and distinct committee. Four members of the patient care consulting committee shall constitute a quorum of the patient care consulting committee.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the health care is to be rendered or withheld.

"Terminal condition" means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent

182 or (ii) the patient is in a persistent vegetative state.

183 "Witness" means any person over the age of 18, including a spouse or blood relative of the
184 declarant. Employees of health care facilities and physician's offices, who act in good faith, shall be
185 permitted to serve as witnesses for purposes of this article.

186 § 63.2-1520. Photographs and X-rays of child; use as evidence.

187 In any case of suspected child abuse, *forensic evidence*, photographs and X-rays of the child may be
188 taken without the consent of the parent or other person responsible for such child as a part of the
189 medical evaluation. Photographs of the child may also be taken without the consent of the parent or
190 other person responsible for such child as a part of the investigation or family assessment of the case by
191 the local department or the court; however, such photographs shall not be used in lieu of medical
192 evaluation. Such *forensic evidence*, photographs and X-rays may be introduced into evidence in any
193 subsequent proceeding.

194 The court receiving such evidence may impose such restrictions as to the confidentiality of
195 photographs of any minor as it deems appropriate.