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SENATE BILL NO. 534

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 5, 2014)

(Patron Prior to Substitute—Senator Barker)

A BILL to amend and reenact § 54.1-2970.1 of the Code of Virginia, relating to minors; procedures for collection of physical evidence.

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2970.1 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-2970.1. Individual incapable of making informed decision; certain unemancipated minors; procedure for physical evidence recovery kit examination.

A. A licensed physician, physician assistant, nurse practitioner, or registered nurse may perform a physical evidence recovery kit examination for a person who is believed to be the victim of a sexual assault and who is incapable of making an informed decision regarding consent to such examination when:

1. There is a need to conduct the examination before the victim is likely to be able to make an informed decision in order to preserve physical evidence of the alleged sexual assault from degradation;

2. No legally authorized representative or other person authorized to consent to medical treatment on the individual's behalf is reasonably available to provide consent within the time necessary to preserve physical evidence of the alleged sexual assault; and

3. A capacity reviewer, as defined in § 54.1-2982, provides written certification that, based upon a personal examination of the individual, the individual is incapable of making an informed decision regarding the physical evidence recovery kit examination and that, given the totality of the circumstances, the examination should be performed. The capacity reviewer who provides such written certification shall not be otherwise currently involved in the treatment of the person assessed, unless an independent capacity reviewer is not reasonably available.

B. *A licensed physician, physician assistant, nurse practitioner, or registered nurse may perform a physical evidence recovery kit examination for an unemancipated minor as defined in § 16.1-241 whom he reasonably suspects is an abused or neglected child as defined in subdivision 4 of the definition of abused or neglected child in § 63.2-100 when:*

1. The licensed physician, physician assistant, nurse practitioner, or registered nurse reports the suspected abuse as required by § 63.2-1509;

2. There is a need to conduct the examination in order to preserve physical evidence of the alleged abuse from degradation; and

3. A good faith effort has been made to obtain consent to the examination from a parent or other legally authorized representative and such consent either has not been obtained or was refused.

C. Any physical evidence recovery kit examination performed pursuant to this section shall be performed in accordance with the requirements of §§ 19.2-11.2 and 19.2-165.1 and shall protect the alleged victim's identity.

D. A licensed physician, physician assistant, nurse practitioner, or registered nurse who exercises due care under the provisions of this act shall not be liable for any act or omission related to performance of an examination in accordance with this section.