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HOUSE BILL NO. 1033

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 5, 2018)

(Patron Prior to Substitute—Delegate Price)

A BILL to amend and reenact §§ 32.1-45.1 and 32.1-45.2 of the Code of Virginia, relating to deemed consent to testing of bodily fluids.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-45.1 and 32.1-45.2 of the Code of Virginia are 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 the hepatitis B or C virus.

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 that may, according to the ~~then current~~ *then-current* guidelines of the Centers for Disease Control and Prevention, transmit human immunodeficiency virus or the hepatitis B or C ~~viruses~~ *virus*, 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 the hepatitis B or C ~~viruses~~ *virus*. 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 that may, according to the ~~then current~~ *then-current* guidelines of the Centers for Disease Control and Prevention, transmit human immunodeficiency virus or the hepatitis B or C ~~viruses~~ *virus*, 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 the hepatitis B or C ~~viruses~~ *virus*. 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 Behavioral Health and Developmental 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, 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, salaried or volunteer firefighter, or salaried or volunteer emergency medical services provider is directly exposed to body fluids of a person in a manner that may, according to the ~~then current~~ *then-current* guidelines of the Centers for Disease Control and Prevention, transmit human immunodeficiency virus or the hepatitis B or C ~~viruses~~ *virus*, 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 the hepatitis B or C ~~viruses~~ *virus*. Such person shall also be deemed to have consented to the release of such test results to the person who was exposed.

F. Whenever a person is directly exposed to the body fluids of a law-enforcement officer, salaried or volunteer firefighter, or salaried or volunteer emergency medical services provider in a manner that may, according to the ~~then current~~ *then-current* guidelines of the Centers for Disease Control and Prevention, transmit human immunodeficiency virus or the hepatitis B or C ~~viruses~~ *virus*, 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 the hepatitis B or C ~~viruses~~ *virus*. The law-enforcement officer, salaried or volunteer firefighter, or salaried or volunteer emergency medical services provider shall also be deemed to have consented to the release of such test results to the person who was exposed.

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

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60 H. Whenever any school board employee is directly exposed to body fluids of any person in a
61 manner that may, according to the ~~then current~~ *then-current* guidelines of the Centers for Disease
62 Control and Prevention, transmit human immunodeficiency virus or ~~the~~ hepatitis B or C ~~viruses~~ *virus*,
63 the person whose body fluids were involved in the exposure shall be deemed to have consented to
64 testing for infection with human immunodeficiency virus or ~~the~~ hepatitis B or C ~~viruses~~ *virus*. Such
65 person shall also be deemed to have consented to the release of such test results to the school board
66 employee who was exposed. If the person whose blood specimen is sought for testing is a minor, the
67 parent, guardian, or person standing in loco parentis of such minor shall be notified prior to initiating
68 such testing. In other than emergency situations, it shall be the responsibility of the school board
69 employee to inform the person of 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~~ *then-current* guidelines of the Centers for Disease
72 Control and Prevention, transmit human immunodeficiency virus or ~~the~~ hepatitis B or C ~~viruses~~ *virus*,
73 the school board employee whose body fluids were involved in the exposure shall be deemed to have
74 consented to testing for infection with human immunodeficiency virus or ~~the~~ hepatitis B or C ~~viruses~~ *virus*.
75 The school board employee shall also be deemed to have consented to the release of such test
76 results to the person.

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

80 K. For purposes of this section, if the person whose blood specimen is sought for testing is a minor,
81 and that minor refuses to provide such specimen, consent for obtaining such specimen shall be obtained
82 from the parent, guardian, or person standing in loco parentis of such minor prior to initiating such
83 testing. If the parent or guardian or person standing in loco parentis withholds such consent, or is not
84 reasonably available, the person potentially exposed to the human immunodeficiency virus or ~~the~~
85 hepatitis B or C ~~viruses~~ *virus*, or the employer of such person, may petition the juvenile and domestic
86 relations district court in the county or city where the minor resides or resided, or, in the case of a
87 nonresident, the county or city where the health care provider, law-enforcement agency or school board
88 has its principal office or, in the case of a health care provider rendering emergency care pursuant to
89 subsection D, the county or city where the exposure occurred, for an order requiring the minor to
90 provide a blood specimen or to submit to testing and to disclose the test results in accordance with this
91 section.

92 L. Except as provided in subsection K, if the person whose blood specimen is sought for testing
93 refuses to provide such specimen, any person potentially exposed to the human immunodeficiency virus
94 or ~~the~~ hepatitis B or C ~~viruses~~ *virus*, or the employer of such person, may petition the general district
95 court of or a magistrate serving the county or city in which the person whose specimen is sought
96 resides or resided, or, in the case of a nonresident, the county or city where the health care provider,
97 law-enforcement agency or school board has its principal office or, in the case of a health care provider
98 rendering emergency care pursuant to subsection D, the county or city where the exposure occurred, for
99 an order requiring the person to provide a blood specimen or to submit to testing and to disclose the test
100 results in accordance with this section. ~~At any hearing before the court, the person whose specimen is~~
101 ~~sought or his counsel may appear. The court shall be advised by the Commissioner or his designee prior~~
102 ~~to entering any testing order. If the general district court or the magistrate determines that there is~~
103 ~~probable cause to believe that an exposure has occurred, he shall issue a testing order. If a testing~~
104 ~~order is issued, both the petitioner and the person from whom the blood specimen is sought shall receive~~
105 ~~counseling and opportunity for face-to-face disclosure of any test results by a licensed practitioner or~~
106 ~~trained counselor. Any person who is subject to a testing order may appeal the order of the general~~
107 ~~district court or magistrate to the circuit court of the same jurisdiction within 10 days of receiving~~
108 ~~notice of the order. Any hearing conducted pursuant to this subsection shall be held in camera as soon~~
109 ~~as practicable. The record shall be sealed. The order of the circuit court shall be final and~~
110 ~~nonappealable.~~

111 M. *No specimen obtained pursuant to this section shall be tested for any purpose other than that*
112 *provided for in this section, nor shall the results of any testing pursuant to this section be used as*
113 *evidence in any criminal matter.*

114 **§ 32.1-45.2. Public safety employees; testing for blood-borne pathogens; procedure available for**
115 **certain citizens; definitions.**

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

119 B. If, after reviewing the facts of the possible exposure prone incident with the employee and after
120 medical consultation, the agency concludes that it is reasonable to believe that an exposure prone
121 incident may have occurred, (i) the agency shall request the person whose body fluids were involved to

submit to testing for hepatitis B or C virus and human immunodeficiency virus as provided in § 32.1-37.2 and to authorize disclosure of the test results or (ii) if the person is deceased, the agency shall request the custodian of the remains to preserve a specimen of blood and shall request the decedent's next of kin to consent, as provided in § 32.1-37.2, to such testing and to authorize disclosure of the test results.

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

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

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

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

F. A party who is subject to a testing order may appeal ~~an~~ the order of the general district court or magistrate to the circuit court of the same jurisdiction within ~~ten~~ 10 days from the date of receiving notice of the order. Any such appeal shall be de novo, hearing conducted pursuant to this section shall be held in camera, and shall be heard as soon as possible by the circuit court. ~~The circuit court shall be advised by the Commissioner or his designee practicable.~~ The record shall be sealed. The order of the circuit court shall be final and nonappealable.

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

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

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

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

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

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

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

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

183 *M. No specimen obtained pursuant to this section shall be tested for any purpose other than that*
184 *provided for in this section, nor shall the results of any testing pursuant to this section be used as*
185 *evidence in any criminal matter.*