

23102051D

SENATE BILL NO. 1436

Offered January 11, 2023

A BILL to amend the Code of Virginia by adding a section numbered 18.2-61.1, relating to testing of certain persons for sexually transmitted infections.

Patron—Dunnavant

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 18.2-61.1 as follows:

§ 18.2-61.1. Testing of certain persons for sexually transmitted infections.

A. As soon as practicable following arrest, the attorney for the Commonwealth may request after consultation with a complaining witness, or shall request upon the request of the complaining witness, 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 complaining witness was exposed to body fluids of the person arrested, be requested to submit to diagnostic testing for sexually transmitted infections and any follow-up testing as may be medically appropriate. The person so charged shall be counseled about the meaning of the tests and about the transmission, treatment, and prevention of sexually transmitted infections.

If the person so charged refuses to submit to testing or the competency of the person to consent to testing 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 sexually transmitted infections. 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. At any point following indictment, arrest by warrant, or service of a petition 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 request after consultation with a complaining witness, or shall request upon the request of the complaining witness, and the court shall order the defendant to submit to diagnostic testing for sexually transmitted infections within 48 hours and any follow-up testing as may be medically appropriate. Any test conducted following indictment, arrest by warrant, or service of a petition 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 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 B 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.

D. As used in this section, "sexually transmitted infections" includes chlamydia, gonorrhea, syphilis, trichomoniasis, human immunodeficiency virus, hepatitis B and C viruses, human papillomavirus, genital herpes, and any other sexually transmittable disease determined by the Board of Health to be dangerous to the public health.

INTRODUCED

SB1436