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SENATE BILL NO. 1436

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on January 30, 2023)

(Patron Prior to Substitute—Senator Dunnavant)

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.

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 offense 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, and where the complaining witness was exposed to body fluids of the person so charged in a manner that may, according to the then-current guidelines of the Centers for Disease Control and Prevention, transmit a sexually transmitted infection, 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 in a manner as provided by § 19.2-183, as soon as practicable, to determine whether there is probable cause that the individual has committed the crime with which he is charged and that the complaining witness was exposed to body fluids of the person so charged in a manner that may, according to the then-current guidelines of the Centers for Disease Control and Prevention, transmit a sexually transmitted infection. If the court finds probable cause, the court shall order the person so charged to undergo testing for sexually transmitted infections. The court may enter such an order in the absence of the person so charged if the person so charged 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. At any hearing before the court, the person so charged or his counsel may appear.

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.

If the defendant 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, in a manner as provided by § 19.2-183, to determine whether there is probable cause that the complaining witness was exposed to body fluids of the defendant in a manner that may, according to the then-current guidelines of the Centers for Disease Control and Prevention, transmit a sexually transmitted infection. 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 defendant and shall not be evidence in any proceeding, civil or criminal. At any hearing before the court, the defendant or his counsel may appear.

C. Any person who is subject to a testing order may appeal the order of the general district court to the circuit court of the same jurisdiction within 10 days of receiving notice of the order. Any hearing conducted pursuant to this subsection shall be held in camera as soon as practicable. The record shall be sealed. The order of the circuit court shall be final and nonappealable.

D. 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 § 32.1-127.1:03; however, the entity that performed the test shall also disclose the results to any victim and offer appropriate counseling. The Department of Health shall conduct surveillance and investigation in accordance with § 32.1-39.

E. The results of such tests shall not be admissible as evidence in any criminal proceeding. No

60 specimen obtained pursuant to this section shall be tested for any purpose other than for the purpose
61 provided for in this section, nor shall the specimen or the results of any testing pursuant to this section
62 be used for any purpose in any criminal matter or investigation. Any violation of this subsection shall
63 constitute reversible error in any criminal case in which the specimen or results were used.

64 F. The cost of such tests shall be paid by the Commonwealth and taxed as part of the cost of such
65 criminal proceedings.

66 G. As used in this section, "sexually transmitted infections" includes chlamydia, gonorrhea, syphilis,
67 human immunodeficiency virus, hepatitis B and C viruses, and any other sexually transmittable disease
68 required to be reported by the Board of Health pursuant to 32.1-35.