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## SENATE BILL NO. 1045

Offered January 23, 1995

A BILL to amend and reenact § 32.1-45.2 of the Code of Virginia, relating to public safety employees and testing for blood-borne pathogens.

Patrons—Howell and Saslaw; Delegate: Plum

Referred to the Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:**

**1. That § 32.1-45.2 of the Code of Virginia is amended and reenacted as follows:**

§ 32.1-45.2. Public safety employees and testing for hepatitis B and human immunodeficiency viruses.

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

B. If, after reviewing the facts of the possible exposure prone incident with the employee and after written medical consultation, the agency concludes, consistent with the written medical consultation, that it is reasonable to believe that an exposure prone incident may have occurred the employee has been directly exposed to body fluids of a person in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit hepatitis B and human immunodeficiency viruses, (i) the agency shall request inform the person whose body fluids were involved in the exposure and shall request such person or, if such person is deceased, the decedent's next of kin to give voluntary informed consent, as provided in § 32.1-37.2, to submit to testing for hepatitis B virus and human immunodeficiency virus and to authorize disclosure of the test results or (ii) if the person is deceased, the agency shall, immediately upon receiving the employee's notice, request the custodian of the remains to preserve a specimen of blood and shall request the decedent's next of kin to provide informed consent, as provided in § 32.1-37.2, to such testing and to authorize disclosure of the test results. If the person does not voluntarily consent to testing, the agency shall then present the written medical consultation stating that an exposure prone incident has occurred, whereupon the person shall be deemed to have consented to testing for infection with hepatitis B and human immunodeficiency viruses and to have consented to the release of such test results to the employee who was exposed. In other than emergency situations and whenever practicable, it shall be the responsibility of the agency to inform persons of this provision at the time of entry into any public safety system or at the time of services.

C. If a person is involved in a possible exposure prone incident involving directly exposed to the body fluids of an employee of a public safety agency while such employee is acting within the scope of his employment, the person may notify the agency of the incident and request the agency to review the facts of the possible exposure prone incident for purposes of obtaining the employee's informed consent, as provided in § 32.1-37.2, to test for hepatitis B virus and human immunodeficiency virus and to authorize disclosure of the test results. If, after reviewing the facts and after written medical consultation, the agency concludes it is reasonable to believe an exposure prone incident involving the person and the employee may have occurred, (i) , consistent with the written medical consultation, that the person has been directly exposed to body fluids of an agency employee in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit hepatitis B and human immunodeficiency viruses, the agency shall request inform the employee whose body fluids were involved in the exposure and shall request the employee or, if the employee is deceased, the decedent's next of kin to give voluntary informed consent, as provided in § 32.1-37.2, to submit to testing for hepatitis B virus and human immunodeficiency virus and to authorize disclosure of the test results or (ii) if to the exposed person. If the employee is deceased, the agency shall, immediately upon receiving the person's notice, request the custodian of the remains to preserve a specimen of blood and shall request the decedent's next of kin to provide informed consent, as provided in § 32.1-37.2, to such testing and to authorize disclosure of the test results. If the employee does not voluntarily consent to such testing and disclosure, the agency shall then present the written medical consultation stating that an exposure prone incident has occurred, whereupon the employee shall be deemed to have consented to testing for hepatitis B virus and human immunodeficiency virus and to have consented to the release of such test results to the person who was exposed. The agency shall inform all employees of this provision at the time of hiring or by July 1, 1995, whichever is applicable.

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D. If informed consent is refused under subsection B of this section, the public safety agency or the employee may petition the general district court of 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 informed 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 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 that an exposure prone incident has occurred, it shall order testing for hepatitis B 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 may appeal an order of the general district court to the circuit court of the same jurisdiction within ten days from the date of the order. Any such appeal shall be de novo, 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. 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 virus or human immunodeficiency virus shall be refused services for that reason by any public safety agency personnel.

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.

J. E. 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 guidelines of the Centers for Disease Control, transmit hepatitis B 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 other public safety or law-enforcement duties.

"Public safety agency" means any sheriff's office and any adult or youth correctional, law-enforcement, fire safety organization 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.

F. The Department of Criminal Justice Services shall convene an advisory group consisting of representatives of all kinds of public safety agencies to develop specific procedures for implementation of this section, including, but not limited to, filing the notices, obtaining written medical documentation, obtaining voluntary consent, notifying relevant parties of the law's requirements, preserving blood samples from decedents, documentation of employees' infection status at the time of any exposure prone incident, and handling difficult or unexpected circumstances. The Board of Criminal Justice Services shall promulgate regulations consistent with the advisory group's recommendations. All public safety agencies shall utilize the Board's regulations to implement this section.