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HOUSE BILL NO. 1792

Offered January 13, 1999

A BILL to amend and reenact §§ 18.2-346, 18.2-346.1, and 32.1-36.1 of the Code of Virginia, relating to prostitution and AIDS testing; penalty.

Patrons—Baskerville, Crittenden, Drake, McEachin and Melvin; Senators: Lambert and Maxwell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-346, 18.2-346.1, and 32.1-36.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-346. Being a prostitute or prostitution.

A. Any person who, for money or its equivalent, commits adultery, fornication or any act in violation of § 18.2-361, or offers to commit adultery, fornication or any act in violation of § 18.2-361 and thereafter does any substantial act in furtherance thereof, shall be guilty of being a prostitute, or prostitution; ~~which shall be punishable as a Class 1 misdemeanor.~~

B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated above and thereafter does any substantial act in furtherance thereof shall be guilty of solicitation of prostitution ~~and shall be guilty of a Class 1 misdemeanor.~~

C. Any person who commits a violation of subsection A or B of this section shall, for a first offense, be guilty of a Class 1 misdemeanor and shall, upon allegation and proof of a second or subsequent offense, be guilty of a Class 6 felony.

D. Any person who commits a violation of subsection A or B of this section while knowingly infected with the human immunodeficiency virus and with the intent to transmit the virus shall be guilty of a Class 5 felony. Any person who is alleged and proved to have committed a second or subsequent violation of subsection A or B of this section while knowingly infected with the human immunodeficiency virus shall be presumed, subject to rebuttal, to have the intent to transmit the virus.

§ 18.2-346.1. Testing of convicted prostitutes for infection with human immunodeficiency virus.

As soon as practicable following conviction of any person for violation of § 18.2-346 or § 18.2-361, such person shall be required to submit to testing for infection with human immunodeficiency virus. The convicted person shall receive counseling from personnel of the Department of Health concerning (i) the meaning of the test, (ii) acquired immunodeficiency syndrome and (iii) the transmission and prevention of infection with human immunodeficiency virus.

Tests shall be conducted to confirm any initial positive test results before any test result shall be determined to be positive for infection. The results of such test shall be confidential as provided in § 32.1-36.1 and shall be disclosed to the person who is the subject of the test, *who shall acknowledge receipt thereof in writing*, and to the Department of Health as required by § 32.1-36. The Department shall conduct surveillance and investigation in accordance with the requirements of § 32.1-39.

The results of the test shall ~~not~~ be admissible in any ~~subsequent criminal proceeding related to prostitution prosecution of the person under § 18.2-346.~~

The cost of the test shall be paid by the Commonwealth and taxed as part of the cost of such criminal proceedings.

§ 32.1-36.1. Confidentiality of test for human immunodeficiency virus; civil penalty; individual action for damages or penalty.

A. The results of every test to determine infection with human immunodeficiency virus shall be confidential. Such information may only be released to the following persons:

1. The subject of the test or his legally authorized representative.

2. Any person designated in a release signed by the subject of the test or his legally authorized representative.

3. The Department of Health.

4. Health care providers for purposes of consultation or providing care and treatment to the person who was the subject of the test or providing care and treatment to a child of a woman who, at the time of such child's birth, was known to be infected with human immunodeficiency virus.

5. Health care facility staff committees which monitor, evaluate, or review programs or services.

6. Medical or epidemiological researchers for use as statistical data only.

7. Any person allowed access to such information by a court order.

8. Any facility which procures, processes, distributes or uses blood, other body fluids, tissues or organs.

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60 9. Any person authorized by law to receive such information.
61 10. The parents or other legal custodian of the subject of the test if the subject is a minor.
62 11. The spouse of the subject of the test.
63 12. Departments of health located outside the Commonwealth by the Virginia Department of Health
64 for the purposes of disease surveillance and investigation.
65 13. *The attorney for the Commonwealth of any jurisdiction where the subject was convicted of a*
66 *violation of § 18.2-346 and tested pursuant to § 18.2-346.1 following conviction.*
67 B. In any action brought under this section, if the court finds that a person has willfully or through
68 gross negligence made an unauthorized disclosure in violation of this section, the Attorney General, any
69 attorney for the Commonwealth, or any attorney for the county, city or town in which the violation
70 occurred may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than
71 \$5,000 per violation.
72 C. Any person who is the subject of an unauthorized disclosure pursuant to this section shall be
73 entitled to initiate an action to recover actual damages, if any, or \$100, whichever is greater. In addition,
74 such person may also be awarded reasonable attorney's fees and court costs.
75 D. This section shall not be deemed to create any duty on the part of any person who receives such
76 test results, where none exists otherwise, to release the results to a person listed herein as authorized to
77 receive them.
78 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
79 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
80 **is \$ 82,813.**