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HOUSE BILL NO. 2120

Offered January 9, 2013

Prefiled January 9, 2013

A BILL to amend the Code of Virginia by adding a section numbered 54.1-2970.1, relating to individual incapable of making informed decision; procedure for physical evidence recovery kit examination.

Patrons—Herring; Senator: Howell

Referred to Committee on Health, Welfare and Institutions**Be it enacted by the General Assembly of Virginia:****1. That the Code of Virginia is amended by adding a section numbered 54.1-2970.1 as follows:****§ 54.1-2970.1. Individual incapable of making informed decision; procedure for physical evidence recovery kit examination.**

A. A licensed health care practitioner may perform a physical evidence recovery kit examination for a person who is believed to be the victim of a sexual assault and who is incapable of making an informed decision regarding consent to such examination when:

1. There is an immediate need to conduct the examination to preserve physical evidence of the alleged sexual assault from degradation;

2. No legally authorized representative or other person authorized to consent to medical treatment on the individual's behalf is reasonably available to provide consent within the time necessary to preserve physical evidence of the alleged sexual assault; and

3. A capacity reviewer, as defined in § 54.1-2982, provides written certification that, based upon a personal examination of the individual, the individual is incapable of making an informed decision regarding the physical evidence recovery kit examination and that, given the totality of the circumstances, the examination should be performed. The capacity reviewer who provides such written certification shall not be otherwise currently involved in the treatment of the person assessed, unless an independent capacity reviewer is not reasonably available.

B. Any physical evidence recovery kit examination performed pursuant to this section shall be performed in accordance with the requirements of §§ 19.2-11.2 and 19.2-165.1.

C. A licensed health care practitioner who exercises due care shall not be liable for any act or omission related to performance of an examination in accordance with this section.

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