

Department of Planning and Budget

2023 Fiscal Impact Statement

1. Bill Number: HB1416H1

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Brewer

3. Committee: House Committee for Courts of Justice

4. Title: Testing of certain persons following arrest or indictment

5. Summary: The substitute bill adds § 18.2-61.1 that establishes that upon the motion of the attorney for the Commonwealth upon the request of the complaining witness, the court must 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 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 legislation or any offenses against children as prohibited by §§ 18.2-15 361 (Crimes against nature; penalty, 18.2-366 (Sexual intercourse by persons forbidden to marry; incest; penalties.), 18.2-370 (Taking indecent liberties with children; penalties), and 18.2-370.1. (Taking indecent liberties with child by person in custodial or supervisory relationship; penalties)

The bill provides that confirmatory tests must be conducted before any test result is determined to be positive and that the test results must remain confidential as required by § 32.1-127.1:03 (Health Records Privacy). However, the bill authorizes the Department of Health (VDH) to disclose the results to any victim and offer appropriate counseling. VDH is required to conduct surveillance and investigation in accordance with § 32.1-39 (surveillance and investigation). The bill establishes that such tests are not admissible as evidence in any criminal proceeding and that the cost of the tests must be paid by the Commonwealth and taxed as part of the cost of the criminal proceedings.

6. Budget Amendment Necessary: Indeterminate

7. Fiscal Impact Estimates: Preliminary (see Item 8 below)

8. Fiscal Implications: According to the Office of the Executive Secretary of the Supreme Court (“OES”), the substitute bill would allow Commonwealth’s Attorneys’ to request that a person arrested for specific sexual offenses submit to diagnostic testing for sexually transmitted diseases after consulting with the complaining witness. If the defendant refuses to submit to testing, the court may order the accused to undergo testing if it is determined that there is probable cause that the individual committed the crime with which he is charged.

Any diagnostic tests for sexually transmitted diseases (STDs) that would be conducted on the defendant would be paid from the Criminal Fund.

Data is not available to determine how many complaining witnesses would request a diagnostic test for STDs be conducted. Therefore, the fiscal impact to the Criminal Fund, which is funded with general fund appropriation, is indeterminate.

The bill is not expected to have a material fiscal impact on Commonwealth's Attorneys' or the Office of the Attorney General.

9. Specific Agency or Political Subdivisions Affected: Courts, Office of the Attorney General, and Commonwealth's Attorneys'

10. Technical Amendment Necessary: No

11. Other Comments: None