

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 488**

6 (By Senators Stollings, Foster, Hall, Wills, Snyder, Kessler
7 (Acting President), Jenkins, Plymale and Miller)

8 _____
9 [Originating in the Committee on the Judiciary;
10 reported February 24, 2011.]

11 _____
12
13 A BILL to repeal §16-3C-7 of the Code of West Virginia, 1931, as
14 amended; and to amend and reenact §16-3C-1, §16-3C-2 and §16-
15 3C-3 of said code, all relating to HIV testing generally;
16 repealing the authority of the Department of Corrections to
17 conduct AIDS-related study; providing for AIDS-related testing
18 and confidentiality of records; providing definitions;
19 providing who may request testing; providing when testing may
20 be mandated; providing for confidentiality of records;
21 providing enforcement mechanism for orders of the Commissioner
22 of the Bureau of Public Health; eliminating requirements for
23 counseling in certain circumstances; eliminating requirement
24 for information regarding HIV and AIDS be provided to persons
25 applying for marriage licenses; and providing when disclosure
26 is permitted.

27 *Be it enacted by the Legislature of West Virginia:*

28 That §16-3C-7 of the Code of West Virginia, 1931, as amended,

1 be repealed; and that §16-3C-1, §16-3C-2 and §16-3C-3 of said code
2 be amended and reenacted, all to read as follows:

3 **ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS**
4 **CONFIDENTIALITY ACT.**

5 **§16-3C-1. Definitions.**

6 When used in this article:

7 (a) "AIDS" means acquired immunodeficiency syndrome.

8 ~~(b) "ARC" means AIDS-related complex.~~

9 ~~(c) (b) "Bureau" means the Bureau of for Public ~~health~~ Health.~~

10 ~~(d) (c) "Commissioner" means the commissioner of the Bureau of~~
11 ~~for Public Health.~~

12 (d) "Convicted" includes pleas of guilty and pleas of nolo
13 contendere accepted by the court having jurisdiction of the
14 criminal prosecution, a finding of guilty following a jury trial or
15 a trial to a court and an adjudicated juvenile offender as defined
16 in sections two and four, article one, chapter forty-nine of this
17 code.

18 (e) "Department" means the State Department of Health and
19 Human Resources.

20 (f) "Funeral director" ~~shall have~~ has the same meaning
21 ascribed to such term in section ~~four~~ three, article six, chapter
22 thirty of this code.

23 ~~(g) "Convicted" includes pleas of guilty and pleas of nolo~~
24 ~~contendere accepted by the court having jurisdiction of the~~
25 ~~criminal prosecution, a finding of guilty following a jury trial or~~
26 ~~a trial to a court, and an adjudicated juvenile offender as defined~~
27 ~~in section three, article five-b, chapter forty-nine of this code.~~

28 ~~(h) (g) "Funeral establishment" shall have~~ has the same

1 meaning ascribed to ~~such~~ that term in section ~~four~~ three, article
2 six, chapter thirty of this code.

3 ~~(i)~~ (h) "HIV" means the human immunodeficiency virus
4 identified as the causative agent of AIDS.

5 ~~(j)~~ (i) "HIV-related test" means a test for the HIV antibody
6 or antigen or any future valid test approved by the bureau, the
7 federal drug administration or the ~~centers for disease control~~
8 Centers for Disease Control and Prevention.

9 ~~(k)~~ (j) "Health facility" means a hospital, nursing home,
10 physician's office, clinic, blood bank, blood center, sperm bank,
11 laboratory or other health care institution.

12 ~~(l)~~ (k) "Health care provider" means any physician, dentist,
13 nurse, paramedic, psychologist or other person providing medical,
14 dental, nursing, psychological or other health care services of any
15 kind.

16 (l) "Health Information Exchange" means the electronic
17 movement of health-related information in accord with law and
18 nationally recognized standards.

19 (m) "High risk behavior" means behavior by a person including,
20 but not limited to: (i) Unprotected sex with a person who is
21 living with HIV; (ii) unprotected sex in exchange for money or
22 drugs; (iii) unprotected sex with multiple partners; (iv) anonymous
23 unprotected sex; (v) or needle sharing; (vi) diagnosis of a
24 sexually transmitted disease; or (vii) unprotected sex or sharing
25 injecting equipment in a high HIV prevalence setting or with a
26 person who is living with HIV.

27 (n) "Medical or emergency responders" means paid or volunteer
28 firefighters, law-enforcement officers, emergency medical

1 technicians, paramedics, or other emergency service personnel,
2 providers or entities acting within the usual course of their
3 duties; good samaritans and other nonmedical and nonemergency
4 personnel providing assistance in emergencies; funeral directors;
5 health care providers; commissioner of the Bureau ~~of~~ for Public
6 Health; and all employees thereof and volunteers associated
7 therewith.

8 (o) "Patient" or "test subject" or "subject of the test" means
9 the person upon whom a HIV test is performed, or the person who has
10 legal authority to make health care decisions for the test subject.

11 ~~(o)~~ (p) "Permitted purpose" is a disclosure permitted by the
12 Health Insurance Portability and Accountability Act of 1996 as
13 amended, or a disclosure consented to or authorized by a patient or
14 test subject.

15 ~~(p)~~ (q) "Person" includes any natural person, partnership,
16 association, joint venture, trust, public or private corporation or
17 health facility.

18 ~~(q)~~ (r) "Release of test results" means a ~~written~~
19 ~~authorization for~~ permitted or authorized disclosure of HIV-
20 related test results. ~~that is signed, dated and specifies to whom~~
21 ~~disclosure is authorized and the time period the release is to be~~
22 ~~effective.~~

23 ~~(r)~~ (s) "Significant exposure" means:

24 (1) Exposure to blood or body fluids through needlestick,
25 instruments, sharps, surgery or traumatic events; or

26 (2) Exposure of mucous membranes to visible blood or body
27 fluids, to which universal precautions apply according to the
28 national ~~centers for disease control~~ Centers for Disease Control

1 and Prevention, and laboratory specimens that contain HIV (e.g.
2 suspensions of concentrated virus); or

3 (3) Exposure of skin to visible blood or body fluids, when the
4 exposed skin is chapped, abraded or afflicted with dermatitis or
5 the contact is prolonged or involving an extensive area.

6 ~~(s)~~ (t) "Source patient" means any person whose body fluids
7 have been the source of a significant exposure to a medical or
8 emergency responder.

9 (u) "Targeted testing" means performing an HIV-related test
10 for sub-populations at higher risk, typically defined on the basis
11 of behavior, clinical or demographic characteristics.

12 ~~(t)~~ (v) "Victim" means the person or persons to whom
13 transmission of bodily fluids from the perpetrator of the crimes of
14 sexual abuse, sexual assault, incest or sexual molestation occurred
15 or was likely to have occurred in the commission of such crimes.

16 **§16-3C-2. Testing.**

17 (a) HIV-related testing on a voluntary basis should be
18 recommended ~~may be requested by a~~ any healthcare provider in a
19 health facility as part of a routine screening for treatable
20 conditions and as part of routine prenatal and perinatal care. A
21 physician, dentist, nurse practitioner, nurse midwife, physician
22 assistant or the commissioner may also request targeted testing for
23 any of the following:

24 (1) When there is cause to believe that the test could be
25 positive. Persons who engage in high risk behavior should be
26 encouraged to be screened for HIV at least annually;

27 (2) When there is cause to believe that the test could provide
28 information important in the care of the patient; or

1 (3) When there is cause to believe that the results of HIV-
2 testing of samples of blood or body fluids from a source patient
3 could provide information important in the care of medical or
4 emergency responders or other persons identified in regulations
5 proposed by the department for approval by the Legislature in
6 accordance with the provisions of article three, chapter twenty-
7 nine-a of this code: *Provided*, That the source patient whose blood
8 or body fluids is being tested pursuant to this section must have
9 come into contact with a medical or emergency responder or other
10 person in such a way that a significant exposure has occurred;

11 (4) ~~When any person voluntarily consents to the test~~ there is
12 no record of any HIV-related testing during pregnancy and the woman
13 presents for labor and delivery.

14 (b) ~~The requesting physician, dentist or the commissioner~~
15 ~~shall provide the patient with written information in the form of~~
16 ~~a booklet or pamphlet prepared or approved by the bureau or, in the~~
17 ~~case of persons who are unable to read, shall either show a video~~
18 ~~or film prepared or approved by the bureau to the patient, or read~~
19 ~~or cause to be read to the patient the information prepared or~~
20 ~~approved by the bureau which contains the following information~~ A
21 patient voluntarily consents to the test as follows:

22 (1) ~~An explanation of the test, including its purpose,~~
23 ~~potential uses, limitations, the meaning of its results and any~~
24 ~~special relevance to pregnancy and prenatal care~~ The patient is
25 informed either orally or in writing that HIV-related testing will
26 be performed as part of his or her routine care, that HIV-related
27 testing is voluntary and that the patient may decline HIV-related
28 testing (opt-out); or

1 ~~(2) An explanation of the procedures to be followed~~ The
2 patient is informed that the patient's general consent for medical
3 care includes consent for HIV-related testing.

4 ~~(c) An explanation that the test is voluntary and may be~~
5 ~~obtained anonymously~~ A patient refuses to consent to the test if a
6 patient opts-out of HIV-related testing, the patient is informed
7 when the health care provider in the provider's professional
8 opinion believes HIV-related testing is recommended, and that HIV-
9 related testing may be obtained anonymously at a local or county
10 health department.

11 ~~(4) An explanation that the consent for the test may be~~
12 ~~withdrawn at any time prior to drawing the sample for the test and~~
13 ~~that such withdrawal of consent may be given orally if the consent~~
14 ~~was given orally, or shall be in writing if the consent was given~~
15 ~~in writing;~~

16 ~~(5) An explanation of the nature and current knowledge of~~
17 ~~asymptomatic HIV infection, ARC and AIDS and the relationship~~
18 ~~between the test result and those diseases; and~~

19 ~~(6) Information about behaviors known to pose risks for~~
20 ~~transmission of HIV infection.~~

21 ~~(c) A person seeking an HIV-related test who wishes to remain~~
22 ~~anonymous has the right to do so, and to provide written, informed~~
23 ~~consent through use of a coded system with no linking or individual~~
24 ~~identity to the test requests or results. A health care provider~~
25 ~~who does not provide HIV-related tests on an anonymous basis shall~~
26 ~~refer such a person to a test site which does provide anonymous~~
27 ~~testing, or to any local or county health department which shall~~
28 ~~provide for performance of an HIV-related test and counseling.~~

1 (d) Any person seeking an HIV-related test in a local or
2 county health department or other HIV test setting provided by the
3 commissioner who wishes to remain anonymous has the right to do so,
4 and to be provided written informed consent through use of a coded
5 system with no linking of individual identity to the test request
6 or results.

7 ~~(d) At the time of learning of any test result, the patient~~
8 ~~shall be provided with counseling or referral for counseling for~~
9 ~~coping with the emotional consequences of learning any test result.~~
10 ~~This may be done by brochure or personally, or both.~~

11 (e) No ~~consent for~~ option to opt-out of HIV-related testing is
12 required and the provisions of subsection (a) and (b) of this
13 section do not apply for the following:

14 (1) A health care provider or health facility performing an
15 HIV-related test on the donor or recipient when the health care
16 provider or health facility procures, processes, distributes or
17 uses a human body part (including tissue and blood or blood
18 products) donated for a purpose specified under the uniform
19 anatomical gift act, or for transplant recipients, or semen
20 provided for the purpose of artificial insemination and such test
21 is necessary to assure medical acceptability of a recipient or such
22 gift or semen for the purposes intended;

23 (2) The performance of an HIV-related test in documented bona
24 fide medical emergencies, as determined by a treating physician
25 taking into account the nature and extent of the exposure to
26 another person, when the subject of the test is unable or unwilling
27 to grant or withhold consent, and the test results are necessary
28 for medical diagnostic purposes to provide appropriate emergency

1 care or treatment to a medical or emergency responder, or any other
2 person who has come into contact with a source patient in such a
3 way that a significant exposure necessitates HIV-testing or to a
4 source patient who is unable to consent in accordance with
5 ~~regulations~~ rules proposed by the department for approval by the
6 Legislature in accordance with article three, chapter twenty-nine-a
7 of this code: *Provided*, That necessary treatment may not be
8 withheld pending HIV test results: *Provided, however*, That all
9 sampling and HIV-testing of samples of blood and body fluids,
10 without the ~~expressed written consent of the test subject~~
11 opportunity for the source patient or patient's representative to
12 opt-out of the testing, shall be through the use of a pseudonym and
13 in accordance with ~~regulations~~ rules proposed by the department for
14 approval by the Legislature in accordance with article three,
15 chapter twenty-nine-a of this code; or ~~Provided further~~, That the
16 department shall propose emergency rules pursuant to the provisions
17 of section fifteen, article three, chapter twenty-nine-a of this
18 code on or before September 1, 1998, addressing such matters as,
19 but not limited to:

20 (A) ~~Sampling and testing of blood and body fluids for HIV-~~
21 ~~related infections including: (i) The taking of samples from~~
22 ~~source patients; (ii) testing samples; (iii) confidentiality; (iv)~~
23 ~~documentation; (v) post-test counseling; and (vi) notices to the~~
24 ~~department by health care providers of: (I) Test results found to~~
25 ~~be positive and situations where sampling; and (II) testing was~~
26 ~~performed without the written consent of the test subject; and~~

27 (B) ~~Costs associated with sampling, testing, counseling,~~
28 ~~initial prophylactic treatment and compliance with this article:~~

1 ~~Provided, That: (i) The ordering of samples of blood or body~~
2 ~~fluids for HIV test or testing of available samples by: (I) A~~
3 ~~treating physician of a medical or emergency responder; or (II) a~~
4 ~~treating physician of the source patient; and (ii) the disclosure~~
5 ~~of the results of HIV testing of the source patient, in accordance~~
6 ~~with regulations proposed by the department for approval by the~~
7 ~~Legislature pursuant to article three, chapter twenty nine a of~~
8 ~~this code, shall be deemed within acceptable standards of medical~~
9 ~~care in the State of West Virginia and shall not create a legal~~
10 ~~cause of action on the part of the source patient against: (i) The~~
11 ~~treating physician of the medical or emergency responder; or (ii)~~
12 ~~the treating physician of the source patient; or (iii) any health~~
13 ~~care provider or laboratory assisting such treating physicians.~~

14 (3) The performance of an HIV-related test for the purpose of
15 research if the testing is performed in a manner by which the
16 identity of the test subject is not known and may not be retrieved
17 by the researcher.

18 (f) Mandated testing:

19 (1) The performance of any HIV-related testing that is or
20 becomes mandatory by court order or other legal process described
21 herein ~~shall~~ does not require consent of the subject but will
22 include counseling.

23 (2) The court having jurisdiction of the criminal prosecution
24 shall order that an HIV-related test be performed on any persons
25 ~~convicted of~~ charged with any of the following crimes or offenses:

26 (i) Prostitution; or

27 (ii) Sexual abuse, sexual assault, incest or sexual
28 molestation.

1 (3) HIV-related tests performed on persons ~~convicted~~ of
2 charged with prostitution, sexual abuse, sexual assault, incest or
3 sexual molestation shall be confidentially administered by a
4 designee of the bureau or the local or county health department
5 having proper jurisdiction. The commissioner may designate health
6 care providers in regional jail facilities to administer HIV-
7 related tests on such ~~convicted~~ persons if he or she ~~deems~~
8 determines it necessary and expedient.

9 (4) When the ~~director of the department~~ Commissioner of the
10 Bureau of Public Health knows or has reason to believe, because of
11 medical or epidemiological information, that a person, including,
12 but not limited to, a person such as an IV drug abuser, or a person
13 who may have a sexually transmitted disease, or a person who has
14 sexually molested, abused or assaulted another, has HIV infection
15 and is or may be a danger to the public health, he or she may issue
16 an order to:

17 (i) Require a person to be examined and tested to determine
18 whether the person has HIV infection;

19 (ii) Require a person with HIV infection to report to a
20 qualified physician or health worker for counseling; and

21 (iii) Direct a person with HIV infection to cease and desist
22 from specified conduct which endangers the health of others.

23 (5) If any person violates a cease and desist order issued
24 pursuant to this rule and, by virtue of that violation, the person
25 presents a danger to the health of others, the director shall apply
26 to the circuit court of Kanawha County to enforce the cease and
27 desist order by imposing any restrictions upon the person that are
28 necessary to prevent the specific conduct that endangers the health

1 of others.

2 ~~(5)~~ (6) A person convicted of ~~such~~ the offenses described in
3 this section shall be required to undergo HIV-related testing and
4 counseling immediately upon conviction and the court having
5 jurisdiction of the criminal prosecution ~~shall~~ may not release ~~such~~
6 the convicted person from custody and shall revoke any order
7 admitting the defendant to bail until HIV-related testing and
8 counseling have been performed and the result is known. The HIV-
9 related test result obtained from the convicted person is to be
10 transmitted to the court and, after the convicted person is
11 sentenced, made part of the court record. If the convicted person
12 is placed in the custody of the Division of Corrections, the court
13 shall transmit a copy of the convicted person's HIV-related test
14 results to the Division of Corrections. The HIV-related test
15 results shall be closed and confidential and disclosed by the court
16 and the bureau only in accordance with the provisions of section
17 three of this article.

18 ~~(6) A person charged with prostitution, sexual abuse, sexual~~
19 ~~assault, incest or sexual molestation shall be informed upon~~
20 ~~initial court appearance by the judge or magistrate responsible for~~
21 ~~setting the person's condition of release pending trial of the~~
22 ~~availability of voluntary HIV-related testing and counseling~~
23 ~~conducted by the bureau.~~

24 (7) The prosecuting attorney shall inform the victim, or
25 parent or guardian of the victim, at the earliest stage of the
26 proceedings of the availability of voluntary HIV-related testing
27 and counseling conducted by the bureau and that his or her best
28 health interest would be served by submitting to HIV-related

1 testing and counseling. HIV-related testing for the victim shall
2 be administered at his or her request on a confidential basis and
3 shall be administered in accordance with the ~~centers for disease~~
4 ~~control~~ Centers for Disease Control and Prevention guidelines of
5 the United States Public Health Service in effect at the time of
6 such request. The victim who obtains an HIV-related test shall be
7 provided with pre and post-test counseling regarding the nature,
8 reliability and significance of the HIV-related test and the
9 confidential nature of the test. HIV-related testing and
10 counseling conducted pursuant to this subsection shall be performed
11 by the designee of the commissioner of the bureau or by any local
12 or county health department having proper jurisdiction.

13 (8) If a person receives counseling or is tested under this
14 subsection and is found to be HIV infected and the person is not
15 incarcerated, the person shall be referred by the health care
16 provider performing the counseling or testing for appropriate
17 medical care and support services. The local or county health
18 departments or any other agency ~~providing counseling or testing~~
19 under this subsection ~~shall~~ may not be financially responsible for
20 medical care and support services. ~~received by a person as a result~~
21 ~~of a referral made under this subsection.~~

22 (9) The commissioner of the bureau or his or her designees may
23 require an HIV test for the protection of a person who was possibly
24 exposed to HIV infected blood or other body fluids as a result of
25 receiving or rendering emergency medical aid or who possibly
26 received such exposure as a funeral director. Results of such a
27 test of the person causing exposure may be used by the requesting
28 physician for the purpose of determining appropriate therapy,

1 counseling and psychological support for the person rendering
2 emergency medical aid including good Samaritans, as well as for the
3 patient, or individual receiving the emergency medical aid.

4 (10) If an HIV-related test required on persons convicted of
5 prostitution, sexual abuse, sexual assault, incest or sexual
6 molestation results in a negative reaction, upon motion of the
7 state, the court having jurisdiction over the criminal prosecution
8 may require the subject of the test to submit to further HIV-
9 related tests performed under the direction of the bureau in
10 accordance with the ~~centers for disease control~~ Centers for Disease
11 Control and Prevention guidelines of the United States Public
12 Health Service in effect at the time of the motion of the state.

13 (11) The costs of mandated testing and counseling provided
14 under this subsection and pre and postconviction HIV-related
15 testing and counseling provided the victim under the direction of
16 the bureau pursuant to this subsection shall be paid by the bureau.

17 (12) The court having jurisdiction of the criminal prosecution
18 shall order a person convicted of prostitution, sexual abuse,
19 sexual assault, incest or sexual molestation to pay restitution to
20 the state for the costs of any HIV-related testing and counseling
21 provided the convicted person and the victim, unless the court has
22 determined ~~such~~ the convicted person to be indigent.

23 (13) Any funds recovered by the state as a result of an award
24 of restitution under this subsection shall be paid into the State
25 Treasury to the credit of a special revenue fund to be known as the
26 "HIV-testing fund" which is hereby created. The moneys so credited
27 to ~~such~~ the fund may be used solely by the bureau for the purposes
28 of facilitating the performance of HIV-related testing and

1 counseling under the provisions of this article.

2 ~~(h) (g) The commissioner of the bureau may obtain and test~~
3 ~~specimens for AIDS or HIV infection for research or epidemiological~~
4 ~~purposes without consent of the person from whom the specimen is~~
5 ~~obtained if all personal identifying information is removed from~~
6 ~~the specimen prior to testing.~~

7 ~~(i) (g)~~ Nothing in this section is applicable to any insurer
8 regulated under chapter thirty-three of this code: *Provided, That*
9 the commissioner of insurance shall develop standards regarding
10 consent for use by insurers which test for the presence of the HIV
11 antibody.

12 ~~(j) (h)~~ Whenever consent of the subject to the performance of
13 HIV-related testing is required under this article, any such
14 consent obtained, whether orally or in writing, shall be ~~deemed~~
15 considered to be a valid and informed consent if it is given after
16 compliance with the provisions of subsection (b) of this section.

17 **§16-3C-3. Confidentiality of records; permitted disclosure; no**
18 **duty to notify.**

19 (a) No person may disclose or be compelled to disclose the
20 identity of any person upon whom an HIV-related test is performed,
21 or the results of such a test in a manner which permits
22 identification of the subject of the test, except to the following
23 persons:

24 (1) The subject of the test;

25 (2) The victim of the crimes of sexual abuse, sexual assault,
26 incest or sexual molestation at the request of the victim or the
27 victim's legal guardian, or of the parent or legal guardian of the
28 victim if the victim is ~~an infant~~ a minor where disclosure of the

1 HIV-related test results of the convicted sex offender are
2 requested;

3 (3) Any person who secures a specific release of test results
4 executed by the subject of the test;

5 (4) A funeral director or an authorized agent or employee of
6 a health facility or health care provider if the funeral
7 establishment, health facility or health care provider itself is
8 authorized to obtain the test results, the agent or employee
9 provides patient care or handles or processes specimens of body
10 fluids or tissues and the agent or employee has a need to know ~~such~~
11 that information: *Provided*, That ~~such~~ the funeral director, agent
12 or employee shall maintain the confidentiality of ~~such~~ this
13 information;

14 (5) Licensed ~~medical personnel~~ health care providers or
15 appropriate health ~~care~~ facility personnel providing care to the
16 subject of the test: ~~when knowledge of the test results is~~
17 ~~necessary or useful to provide appropriate care or treatment, in an~~
18 ~~appropriate manner~~: *Provided*, That such personnel shall maintain
19 the confidentiality of ~~such~~ the test results and may redisclose the
20 results only for a permitted purpose or as permitted by law. The
21 entry on a patient's chart of an HIV-related illness by the
22 attending or other treating physician or other health care provider
23 shall not constitute a breach of confidentiality requirements
24 imposed by this article;

25 (6) The ~~bureau~~ Bureau or the ~~centers for disease control~~
26 Centers for Disease Control and Prevention of the United States
27 Public Health Service in accordance with reporting requirements for
28 HIV and a diagnosed case of AIDS, or a related condition;

1 (7) A health facility or health care provider which procures,
2 processes, distributes or uses: (A) A human body part from a
3 deceased person with respect to medical information regarding that
4 person; (B) semen provided prior to the effective date of this
5 article for the purpose of artificial insemination; (C) blood or
6 blood products for transfusion or injection; or (D) human body
7 parts for transplant with respect to medical information regarding
8 the donor or recipient;

9 (8) Health facility staff committees or accreditation or
10 oversight review organizations which are conducting program
11 monitoring, program evaluation or service reviews so long as any
12 identity remains anonymous; ~~and~~

13 (9) Claims management personnel employed by or associated with
14 an insurer, health care service contractor, health maintenance
15 organization, self-funded health plan, state-administered health
16 care claims payer or any other payer of health care claims, where
17 the disclosure is to be used solely for the prompt and accurate
18 evaluation and payment of medical or related claims. Information
19 released under this subsection is confidential and may not be
20 released or available to persons who are not involved in handling
21 or determining medical claims payment;

22 (10) Persons, health care providers or health facilities
23 engaging in or providing for the exchange of protected health
24 information among the same in order to provide health care services
25 to the patient, including, but not limited to, disclosure through
26 a health information exchange, disclosure and exchange within
27 health care facilities, and disclosure for a permitted purpose,
28 including disclosure to a legally authorized public health

1 authority; and

2 ~~(9)~~ (11) A person allowed access to ~~said~~ the record by a court
3 order ~~which~~ that is issued in compliance with the following
4 provisions:

5 (i) No court of this state may issue ~~such~~ the order unless the
6 court finds that the person seeking the test results has
7 demonstrated a compelling need for the test results which cannot be
8 accommodated by other means. In assessing compelling need, the
9 court shall weigh the need for disclosure against the privacy
10 interest of the test subject and the public interest;

11 (ii) Pleadings pertaining to disclosure of test results shall
12 substitute a pseudonym for the true name of the test subject of the
13 test. The disclosure to the parties of the test subject's true
14 name shall be communicated confidentially in documents not filed
15 with the court;

16 (iii) Before granting any such order, the court shall, if
17 possible, provide the individual whose test result is in question
18 with notice and a reasonable opportunity to participate in the
19 proceedings if he or she is not already a party;

20 (iv) Court proceedings as to disclosure of test results shall
21 be conducted in camera unless the subject of the test agrees to a
22 hearing in open court or unless the court determines that the
23 public hearing is necessary to the public interest and the proper
24 administration of justice; and

25 (v) Upon the issuance of an order to disclose test results,
26 the court shall impose appropriate safeguards against unauthorized
27 disclosure, which shall specify the person who may have access to
28 the information, the purposes for which the information may be used

1 and appropriate prohibitions on future disclosure.

2 (b) No person to whom the results of an HIV-related test have
3 been disclosed pursuant to subsection (a) of this section may
4 disclose the test results to another person except as authorized by
5 said subsection.

6 ~~(c) Whenever disclosure is made pursuant to this section,~~
7 ~~except when such disclosure is made to persons in accordance with~~
8 ~~subdivisions (1) and (6), subsection (a) of this section, it shall~~
9 ~~be accompanied by a statement in writing which includes the~~
10 ~~following or substantially similar language: "This information has~~
11 ~~been disclosed to you from records whose confidentiality is~~
12 ~~protected by state law. State law prohibits you from making any~~
13 ~~further disclosure of the information without the specific written~~
14 ~~consent of the person to whom it pertains, or as otherwise~~
15 ~~permitted by law. A general authorization for the release of~~
16 ~~medical or other information is NOT sufficient for this purpose."~~

17 (d) (c) Notwithstanding the provisions set forth in
18 subsections (a) through (c) of this section, the use of HIV test
19 results to inform individuals named or identified as spouses, sex
20 partners or contacts, or persons who have shared needles that they
21 may be at risk of having acquired the HIV infection as a result of
22 possible exchange of body fluids, is permitted: *Provided*, That the
23 ~~bureau~~ Bureau shall make a good faith effort to inform spouses, sex
24 partners, contacts or persons who have shared needles that they may
25 be at risk of having acquired the HIV infection as a result of
26 possible exchange of body fluids: *Provided, however*, That the
27 ~~bureau~~ Bureau ~~shall have~~ has no notification obligations when the
28 ~~bureau~~ Bureau determines that there has been no likely exposure of

1 ~~such~~ these persons to HIV from the infected test subject within the
2 ten-year period immediately prior to the diagnosis of the
3 infection. The name or identity of the person whose HIV test
4 result was positive is to remain confidential. Spouses, contacts,
5 or sex partners or persons who have shared needles may be tested
6 anonymously at the State Bureau ~~of~~ for public Health's designated
7 test sites, or at their own expense by a health care provider or an
8 approved laboratory of their choice confidentially should the test
9 be positive. A cause of action ~~will~~ may not arise against the
10 ~~bureau~~ Bureau, a physician or other health care provider from any
11 such notification.

12 ~~(e)~~ (d) There is no duty on the part of the physician or
13 health care provider to notify the spouse or other sexual partner
14 of, or persons who have shared needles with, an infected individual
15 of their HIV infection and a cause of action ~~will~~ may not arise
16 from any failure to make such notification. However, if contact is
17 not made, the ~~bureau~~ Bureau will be so notified.

(NOTE: The purpose of this bill is to revise the West Virginia HIV testing statute to conform with the most recent recommendations from the Centers for Disease Control and Prevention.)

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)