

# H. B. 3162

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(BY DELEGATES MILEY, BROWN, FRAZIER, HUNT, MOORE,  
POORE, ARMSTEAD, HAMILTON AND LANE)

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[Introduced February 16, 2011; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §62-11D-2 of the Code of West Virginia, 1931, as amended, relating to polygraph examinations required as a condition of supervision for certain sex offenders released on probation, parole or supervised release; amending the number of polygraph examinations that may be conducted by an examiner within a twenty-four hour period; and amending the number of conclusive examinations that may be conducted on a sex offender by the same examiner within one year.

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

That §62-11D-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 11D. HEIGHTENED EXAMINATION AND SUPERVISION FOR CERTAIN SEX OFFENDERS.**

**§62-11D-2. Polygraph examinations as a condition of supervision for certain sex offenders released on probation, parole or on supervised release.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, any person:

3 (1) Who has been determined to be a sexually violent  
4 predator pursuant to the provisions of section two-a, article  
5 twelve, chapter fifteen of this code; or

6 (2) Who is required to register as a sex offender pursuant  
7 to the provisions of article twelve, chapter fifteen of this code  
8 and who is ordered by a circuit court or supervising entity to  
9 undergo polygraph examination as a condition of probation,  
10 parole or supervised release, shall, as a condition of said  
11 probation, parole or supervised release, submit to polygraph  
12 examinations as prescribed in this section.

13       (b) Any person required to undergo polygraph  
14 examination pursuant to subsection (a) of this section shall,  
15 at his or her expense, submit to at least one polygraph  
16 examination each year to answer questions relating to his or  
17 her compliance with conditions of supervision, including  
18 conditions related to treatment. Additional examinations may  
19 be required, not to exceed a total of five. The results of any  
20 examination are not admissible in evidence and are to be  
21 used solely as a risk assessment and treatment tool.  
22 Examination results shall be made available to the person  
23 under supervision, upon request.

24       (c) In the event a person required to submit to polygraph  
25 examinations as required by the provisions of this section is  
26 unable to pay for the polygraph examination or examinations,  
27 that person may present an affidavit reflecting the inability to  
28 pay for such testing to the circuit court of the county of  
29 supervision. If it appears to the satisfaction of the court that  
30 such person is in fact financially unable to pay for such  
31 testing, the court shall issue an order reflecting such findings

32 and forward such order to the supervising entity. Upon  
33 receipt of such order, the supervising entity shall then be  
34 responsible for paying for such testing.

35 (d) Any polygraph examination conducted pursuant to  
36 the provisions of this section shall be conducted by a  
37 certified polygraph analyst.

38 (e) In the conduct of polygraph examinations of a sex  
39 offender performed pursuant to the provisions of this section,  
40 no certified polygraph analyst may:

41 (1) Conduct more than ~~two~~ three full disclosure or sexual  
42 history polygraph examinations in a twenty-four hour period;

43 (2) Disclose any information gained during any full  
44 disclosure or sexual history polygraph examination to any  
45 law-enforcement agency or other party, other than the  
46 supervising entity, without the supervised person's consent,  
47 nor shall any information or disclosure be admissible in any  
48 court of this state, unless such information disclosed  
49 indicates the intention or plan to commit a criminal violation  
50 of the laws of this or another state or of the United States in

51 which case such information may be released only to such  
52 persons as might be necessary solely to prevent the  
53 commission of such crime;

54 (3) Conduct more than ~~two~~ five maintenance tests in a  
55 twenty-four hour period;

56 (4) Conduct more than a combined total of five ~~one~~ full  
57 disclosure or sexual history polygraph ~~examination~~  
58 examinations and ~~more than two~~ maintenance tests in a  
59 twenty-four hour period; or

60 (5) Conduct more than five polygraph examinations, with  
61 conclusive results, of the same sex offender in a calendar  
62 year. This limitation shall not restrict retesting of the sex  
63 offender due to a lack of resolution during an initial or earlier  
64 examination.

65 (f) No polygraph examination performed pursuant to the  
66 provisions of this section may be conducted by a person who  
67 is a sworn peace officer, within the boundaries of that  
68 officer's jurisdiction.

NOTE: The purpose of this bill is to amend the number of polygraph examinations which may be administered by an examiner, to be consistent with the Model Policy for Post-conviction Sex Offender Testing established by the American Polygraph Association.

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