

1 COMMITTEE SUBSTITUTE

2 FOR

3 COMMITTEE SUBSTITUTE

4 FOR

5 **Senate Bill No. 428**

6 (By Senator Stollings)

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported March 26, 2013.]
10 _____

11
12 A BILL to amend and reenact §16-3C-2 of the Code of West Virginia,
13 1931, as amended; and to amend and reenact §16-4-19 of said
14 code, all relating generally to testing for HIV and sexually
15 transmitted diseases; removing limitations on billing patients
16 for HIV and sexually transmitted disease testing or sexually
17 transmitted disease treatment done by state or local public
18 health agencies; and clarifying the procedures relating to
19 performing HIV or sexually transmitted disease tests on
20 persons charged with sexual offenses.

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

22 That §16-3C-2 of the Code of West Virginia, 1931, as amended,
23 be amended and reenacted; and that §16-4-19 of said code be amended
24 and reenacted, all to read as follows:

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

27 **§16-3C-2. Testing.**

1 (a) HIV-related testing ~~on a voluntary basis~~ should be
2 recommended by ~~any healthcare provider~~ providers ~~in a health~~
3 ~~facility~~ as part of a routine screening for treatable conditions
4 and as part of routine prenatal and perinatal care. A physician,
5 dentist, nurse practitioner, nurse midwife, physician assistant or
6 the commissioner may ~~also~~ request targeted testing for any of the
7 following:

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

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

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

23 (4) When there is no record of any HIV-related or other
24 sexually transmitted disease testing during pregnancy and the woman
25 presents for labor and delivery.

26 (b) All patients who seek an HIV test shall be responsible for
27 paying the costs of the testing, whether they are tested by a
28 private healthcare provider, the bureau or at a local health

1 department. A local health department may charge in accordance
2 with its existing fee schedules and may charge patients on a
3 sliding fee scale.

4 ~~(b)~~ (c) A patient voluntarily consents to the test as follows
5 when:

6 (1) The patient is informed either orally or in writing that
7 HIV-related testing will be performed as part of his or her routine
8 care, that HIV-related testing is voluntary and that the patient
9 may decline HIV-related testing (opt out); or

10 (2) The patient is informed that the patient's general consent
11 for medical care includes consent for HIV-related testing.

12 ~~(c)~~ (d) A patient ~~refuses to consent to the test if a patient~~
13 who opts out of HIV-related testing, ~~the patient is informed when~~
14 ~~the health care provider in the provider's professional opinion~~
15 ~~believes HIV-related testing is recommended, and shall be informed~~
16 that HIV-related testing may be obtained anonymously at a local or
17 county health department.

18 ~~(d)~~ (e) Any person seeking an HIV-related test ~~in~~ at a local
19 or county health department, or other HIV test setting provided by
20 the commissioner, who wishes to remain anonymous has the right to
21 do so, and to be provided written informed consent through use of
22 a coded system with no linking of individual identity to the test
23 request or results. Such persons may be required to pay the costs
24 of the HIV-related testing.

25 ~~(e)~~ (f) No option to opt out of HIV-related testing ~~is~~
26 ~~required~~ exists and the provisions of subsection (a) and ~~(b)~~ (c) of
27 this section do not apply for the following:

28 (1) A health care provider or health facility performing an

1 HIV-related test on the donor or recipient when the health care
2 provider or health facility procures, processes, distributes or
3 uses a human body part (including tissue and blood or blood
4 products) donated for a purpose specified under the uniform
5 anatomical gift act, or for transplant recipients, ~~or~~ of semen
6 provided for the purpose of artificial insemination, and such test
7 is necessary to assure medical acceptability of a recipient or such
8 gift or semen for the purposes intended;

9 (2) The performance of an HIV-related test in documented bona
10 fide medical emergencies, as determined by a treating physician
11 taking into account the nature and extent of the exposure to
12 another person, when the subject of the test is unable or unwilling
13 to grant or withhold consent, and the test results are necessary
14 for medical diagnostic purposes to provide appropriate emergency
15 care or treatment to a medical or emergency responder, or any other
16 person who has come into contact with a source patient in such a
17 way that a significant exposure necessitates HIV testing or to a
18 source patient who is unable to consent in accordance with rules
19 proposed by the department for approval by the Legislature in
20 accordance with article three, chapter twenty-nine-a of this code:
21 *Provided*, That necessary treatment may not be withheld pending HIV
22 test results: *Provided, however*, That all sampling and HIV testing
23 of samples of blood and body fluids, without the opportunity for
24 the source patient or patient's representative to opt out of the
25 testing, shall be through the use of a pseudonym and in accordance
26 with rules proposed by the department for approval by the
27 Legislature in accordance with article three, chapter twenty-nine-a
28 of this code; or

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

5 ~~(f)~~ (g) Mandated testing:

6 (1) The performance of any HIV-related testing that is or
7 becomes mandatory by a magistrate or circuit court order or other
8 legal process described herein does not require consent of the
9 subject but ~~will~~ may include counseling.

10 (2) ~~The court having jurisdiction of the criminal prosecution~~
11 ~~shall order that an~~ prosecuting attorney shall, upon the request of
12 the victim or the victims's parent or legal guardian, and with
13 notice to the defendant or juvenile respondent, apply to the court
14 for an order directing that an appropriate human immunodeficiency
15 virus, HIV-related test be performed on ~~any persons~~ a defendant
16 charged with any of the following crimes or a juvenile subject to
17 a petition involving any of these offenses:

18 ~~(i)~~ (A) Prostitution; or

19 ~~(ii)~~ (B) Sexual abuse, sexual assault, or incest ~~or sexual~~
20 ~~molestation.~~

21 (3) The court shall require the defendant or juvenile
22 respondent to submit to the testing not later than forty-eight
23 hours after the issuance of the order, unless good cause for delay
24 is shown upon a request for a hearing: Provided, That no such delay
25 shall cause the HIV-related testing to be administered later than
26 forty-eight hours after the filing of any indictment regarding an
27 adult defendant or the adjudication order regarding a juvenile

1 respondent. As soon as practical, test results shall be provided
2 to the prosecuting attorney, who shall promptly provide the results
3 to the victim or victim's parent or legal guardian, and to counsel
4 for the defendant or juvenile respondent. The test results shall
5 also be transmitted to the court having jurisdiction over the trial
6 of the matter, to be maintained pursuant to the provisions of this
7 article.

8 ~~(3)~~ (4) HIV-related tests performed on persons charged with
9 prostitution, sexual abuse, sexual assault or incest ~~or sexual~~
10 molestation shall be confidentially administered by a designee of
11 the bureau or the local or county health department having proper
12 jurisdiction. The commissioner may designate health care providers
13 in regional ~~jail~~ jails or other correctional facilities to
14 administer HIV-related tests on such persons if he or she
15 determines it necessary and expedient. Nothing in this section
16 shall be construed to prevent the court from ordering at any time,
17 during which the charge or juvenile petition is pending, that the
18 defendant or juvenile submit to one or more appropriate tests to
19 determine if he or she is infected with HIV. The court may also
20 order follow-up tests for HIV as may be medically appropriate. The
21 results of any such test shall be provided as soon as practical in
22 accordance with subdivision (3) of this subsection. The cost of
23 testing may be charged to the defendant or juvenile respondent,
24 unless determined unable to pay by the court having jurisdiction
25 over the matter. If the defendant or juvenile is unable to pay, the
26 cost of the HIV testing may be borne by the regional jail or other
27 correctional or juvenile facility, the bureau or by the local
28 health department.

1 (5) In the event the victim, parent or legal guardian fails to
2 request HIV-related testing of the defendant or juvenile respondent
3 within the time period set forth in this subsection, the victim,
4 parent or legal guardian may request that HIV-related testing be
5 performed on the defendant or juvenile respondent at any subsequent
6 time after the date of the defendant's conviction or the juvenile's
7 disposition: *Provided*, That the prosecuting attorney shall make
8 application to the court as provided in subdivision (2) of this
9 subsection.

10 ~~(4)~~ (6) When the Commissioner of the Bureau of Public Health
11 knows or has reason to believe, because of medical or
12 epidemiological information, that a person, including, but not
13 limited to, a person such as an IV drug abuser, or a person who may
14 have a sexually transmitted disease, or a person who has sexually
15 ~~molested~~, abused or assaulted another, has HIV infection and is or
16 may be a danger to the public health, he or she may issue an order
17 to:

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

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

22 ~~(iii)~~ (C) Direct a person with HIV infection to cease and
23 desist from specified conduct which endangers the health of others;
24 and

25 (D) Bill that person for the necessary laboratory and
26 associated costs for counseling and testing either directly or by
27 billing the person's medical insurance provider.

28 ~~(5)~~ (7) If any person violates a cease-and-desist order issued

1 pursuant to this section and, by virtue of that violation, the
2 person presents a danger to the health of others, the commissioner
3 shall apply to the circuit court of Kanawha County to enforce the
4 cease-and-desist order by imposing any restrictions upon the person
5 that are necessary to prevent the specific conduct that endangers
6 the health of others.

7 ~~(6)~~ (8) A person convicted or a juvenile adjudicated of the
8 offenses described in this section shall be required to undergo
9 HIV-related testing and counseling immediately upon conviction or
10 adjudication and the court having jurisdiction of the ~~criminal~~
11 ~~prosecution~~ matter may not release the convicted or adjudicated
12 person from custody and shall revoke any order admitting the
13 defendant or juvenile to bail until HIV-related testing and
14 counseling have been performed and the result is known: Provided,
15 That if the person convicted or adjudicated has been tested in
16 accordance with the provisions of this subsection, and the result
17 was positive, that person need not be retested. The HIV-related
18 test result obtained from the convicted or adjudicated person is to
19 be transmitted to the court and, after the convicted or adjudicated
20 person is sentenced or disposition ordered for the adjudicated
21 juvenile, made part of the court record. If the convicted or
22 adjudicated person is placed in the custody of the Division of
23 Corrections or Regional Jail and Correctional Facility Authority,
24 or if the adjudicated juvenile is placed in the custody of the
25 Division of Juvenile Services or other out-of-home placement, the
26 court shall transmit a copy of the convicted or adjudicated
27 person's HIV-related test results to the ~~Division of Corrections~~
28 appropriate custodial agency. The HIV-related test results shall

1 be closed and confidential and disclosed by the court and the
2 bureau only in accordance with the provisions of section three of
3 this article.

4 ~~(7)~~ (9) The prosecuting attorney shall inform the victim, or
5 parent or guardian of the victim, at the earliest stage of the
6 proceedings of the availability of voluntary HIV-related testing
7 and counseling conducted by the bureau and that his or her best
8 health interest would be served by submitting to HIV-related
9 testing and counseling. HIV-related testing for the victim shall
10 be administered at his or her request on a confidential basis and
11 shall be administered in accordance with the Centers for Disease
12 Control and Prevention guidelines of the United States Public
13 Health Service in effect at the time of such request. The victim
14 who obtains an HIV-related test shall be provided with ~~pre~~ pretest
15 and post-test counseling regarding the nature, reliability and
16 significance of the HIV-related test and the confidential nature of
17 the test. ~~HIV-related testing and counseling conducted pursuant to~~
18 ~~this subsection shall be performed by the designee of the~~
19 ~~commissioner of the bureau or by any local or county health~~
20 ~~department having proper jurisdiction.~~

21 ~~(8)~~ (10) If a person receives counseling or is tested under
22 this subsection and is found to be HIV infected and the person is
23 not incarcerated, the person shall be referred by the health care
24 provider performing the counseling or testing for appropriate
25 medical care and support services. The local or county health
26 departments or any other agency under this subsection ~~may~~ shall not
27 be held financially responsible for medical care and support
28 services.

1 ~~(9)~~ (11) The commissioner of the bureau or his or her
2 designees may require an HIV test for the protection of a person
3 who was possibly exposed to HIV-infected blood or other body fluids
4 as a result of receiving or rendering emergency medical aid or who
5 possibly received such exposure as a funeral director. Results of
6 such a test of the person causing exposure may be used by the
7 requesting physician for the purpose of determining appropriate
8 therapy, counseling and psychological support for the person
9 rendering emergency medical aid including good Samaritans, as well
10 as for the patient or individual receiving the emergency medical
11 aid.

12 ~~(10)~~ (12) If an HIV-related test required on persons charged
13 with or convicted of prostitution, sexual abuse, sexual assault or
14 ~~incest or sexual molestation~~ results in a negative reaction, upon
15 motion of the state, the court having jurisdiction over the
16 criminal prosecution may require the subject of the test to submit
17 to further HIV-related tests performed under the direction of the
18 bureau in accordance with the Centers for Disease Control and
19 Prevention guidelines of the United States Public Health Service in
20 effect at the time of the motion of the state.

21 ~~(11)~~ (13) The costs of mandated testing and counseling
22 provided under this subsection and ~~pre~~ preconviction and post-
23 conviction HIV-related testing and counseling provided the victim
24 under the direction of the bureau pursuant to this subsection shall
25 be paid by ~~the bureau~~ the individual to be tested or his or her
26 medical insurance provider, if possible.

27 ~~(12)~~ (14) The court having jurisdiction of the criminal
28 prosecution shall order a person convicted of prostitution, sexual

1 abuse, sexual assault or incest ~~or sexual molestation~~ to pay
2 restitution to the state for the costs of any HIV-related testing
3 and counseling provided the convicted person and the victim, unless
4 the court has determined the convicted person to be indigent.

5 ~~(13)~~ (15) Any funds recovered by the state as a result of an
6 award of restitution under this subsection shall be paid into the
7 State Treasury to the credit of a special revenue fund to be known
8 as the HIV-Testing Fund which is hereby created. The moneys so
9 credited to the fund may be used solely by the bureau for the
10 purposes of facilitating the performance of HIV-related testing and
11 counseling under the provisions of this article.

12 ~~(g) Nothing in this section is applicable to any insurer~~
13 ~~regulated under chapter thirty-three of this code: Provided, That~~
14 ~~the commissioner of insurance shall develop standards regarding~~
15 ~~consent for use by insurers which test for the presence of the HIV~~
16 ~~antibody.~~

17 (h) Whenever consent of the subject to the performance of HIV-
18 related testing is required under this article, any such consent
19 obtained, whether orally or in writing, shall be considered to be
20 a valid and informed consent if it is given after compliance with
21 the provisions of subsection ~~(b)~~ (c) of this section.

22 **ARTICLE 4. SEXUALLY TRANSMITTED DISEASES.**

23 **§16-4-19. Voluntary submission to examination and treatment;**
24 **charges; disposition of money collected.**

25 ~~(a) Any resident of the state~~ person may at any time report go
26 to any municipal or county health ~~officer having jurisdiction of~~
27 ~~the case~~ department and voluntarily submit ~~himself or herself~~ to
28 all tests and examination ~~as are~~ necessary to ascertain whether ~~in~~

1 ~~fact the person submitting himself or herself for examination is~~
2 ~~infected with a venereal sexually transmitted disease. and said~~
3 ~~The health officer to whom any party has applied as above for tests~~
4 ~~and examination department shall provide for making all such~~
5 ~~conduct and administer all necessary tests and examinations as are~~
6 ~~necessary to ascertain whether in fact said party so applying be so~~
7 ~~infected with a venereal the person has any sexual transmitted~~
8 ~~disease. Any person who is tested for sexually transmitted~~
9 ~~diseases at a local health department shall be responsible for~~
10 ~~paying the reasonable costs of testing, either directly or through~~
11 ~~billing the person's medical provider. Local health departments~~
12 ~~may charge in accordance with their existing fee schedules and may~~
13 ~~charge patients for such testing on a sliding fee scale.~~

14 ~~(b) If such tests and examinations show said party so applying~~
15 ~~to be so infected the person to have a sexually transmitted~~
16 ~~disease, then said party the person shall elect whether he or she~~
17 ~~will take treatment ~~of~~ from a private physician, or whether he or~~
18 ~~she will take treatment ~~to be provided by~~ from the local health~~
19 ~~officer ~~through a clinic or otherwise~~ department, and if he or she~~
20 ~~elects to take treatment through the local health officer's~~
21 ~~~~arrangement~~ department, he or she may be required to pay for such~~
22 ~~treatment at a charge which shall in no case exceed the sum of \$5~~
23 ~~for each dose of "neo" or arsphenamine administered for syphilis,~~
24 ~~and at a nominal cost for other medicines used; but if the patient~~
25 ~~is unable to pay anything, he or she shall be treated free of~~
26 ~~charge under the direction of the local health officer, at a clinic~~
27 ~~or otherwise either directly or by the local health department~~
28 ~~billing the person's health insurance provider. Local health~~

1 departments may charge in accordance with their existing fee
2 schedules and may charge patients for treatment on a sliding fee
3 scale.

4 (c) All proper charges for such examination and treatment as
5 that may be necessary hereunder shall be a proper charge against
6 the municipality or county, paid by the individual or by that
7 person's health insurance provider. as the case may be, whether
8 said party so taking treatment lived in or out of a municipal
9 corporation. And whether said person proposing to take treatment
10 as provided hereunder elect to take from a private physician or
11 elect to take treatment under the direction of the local health
12 officer, he or she shall first sign the agreement required to be
13 signed by persons about to be released from detention or
14 quarantine, and shall observe all its provisions, and so long as
15 such person so signing shall so observe these provisions he or she
16 need not be detained or quarantined pending treatment, except that
17 no person who is known as a prostitute, or as a person associating
18 with such, or as a person who resides in any house having the
19 reputation of being a house of prostitution, or who frequents the
20 same, shall be allowed at liberty if infected with a venereal
21 disease in an infectious stage, even though he or she does
22 voluntarily submit for examination and treatment and does take
23 treatment under the provisions of this section.

24 (d) All money collected under this section shall be paid into
25 a clinic fund, if one is provided, and if not then into the county
26 or city treasury, as the case may be; to the local health
27 department doing the testing and the local health officer having
28 jurisdiction department shall collect and account for such the

1 funds collected hereunder.