

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 15**

4 (By Senator Stollings)

5 _____
6 [Originating in the Committee on Health and Human Resources;
7 reported January 31, 2014.]

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10
11 A BILL to amend and reenact §16-3C-2 of the Code of West Virginia,
12 1931, as amended; and to amend and reenact §16-4-19 of said
13 code, all relating generally to testing for HIV and sexually
14 transmitted diseases; removing limitations on billing patients
15 for HIV and sexually transmitted disease testing or sexually
16 transmitted disease treatment done by state or local public
17 health agencies; and clarifying the procedures relating to
18 performing HIV or sexually transmitted disease tests on
19 persons charged with sexual offenses.

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

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

24 **ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS**

1 **CONFIDENTIALITY ACT.**

2 **§16-3C-2. Testing.**

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

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

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

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

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

4 (b) All healthcare providers, the bureau, or a local health
5 department, that routinely bill insurance companies or other third-
6 party providers may bill for HIV-related testing and treatment.

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

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

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

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

21 ~~(d)~~ (e) Any person seeking an HIV-related test ~~in~~ at a local
22 or county health department, or other HIV test setting provided by
23 the commissioner, who wishes to remain anonymous has the right to
24 do so, and to be provided written informed consent through use of

1 a coded system with no linking of individual identity to the test
2 request or results. County or local health departments that
3 routinely bill insurance companies or other third party payers for
4 service may bill for an HIV-related test if the person requesting
5 the test does not request to remain anonymous as provided in
6 subsection (e) of this section. No person shall be refused a test
7 at a local health department because of a lack of insurance or due
8 to a request to remain anonymous.

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

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

21 (2) The performance of an HIV-related test in documented bona
22 fide medical emergencies, as determined by a treating physician
23 taking into account the nature and extent of the exposure to
24 another person, when the subject of the test is unable or unwilling

1 to grant or withhold consent, and the test results are necessary
2 for medical diagnostic purposes to provide appropriate emergency
3 care or treatment to a medical or emergency responder, or any other
4 person who has come into contact with a source patient in such a
5 way that a significant exposure necessitates HIV testing or to a
6 source patient who is unable to consent in accordance with rules
7 proposed by the department for approval by the Legislature in
8 accordance with article three, chapter twenty-nine-a of this code:
9 *Provided*, That necessary treatment may not be withheld pending HIV
10 test results: *Provided, however*, That all sampling and HIV testing
11 of samples of blood and body fluids, without the opportunity for
12 the source patient or patient's representative to opt out of the
13 testing, shall be through the use of a pseudonym and in accordance
14 with rules proposed by the department for approval by the
15 Legislature in accordance with article three, chapter twenty-nine-a
16 of this code; or

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

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

22 (1) The performance of any HIV-related testing that is or
23 becomes mandatory by a magistrate or circuit court order or other
24 legal process described herein does not require consent of the

1 subject but ~~will~~ may include counseling.

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

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

11 ~~(ii)~~ (B) Sexual abuse, sexual assault, or incest ~~or sexual~~
12 molestation.

13 (3) The court shall require the defendant or juvenile
14 respondent to submit to the testing not later than forty-eight
15 hours after the issuance of the order, unless good cause for delay
16 is shown upon a request for a hearing: *Provided*, That no such delay
17 shall cause the HIV-related testing to be administered later than
18 forty-eight hours after the filing of any indictment regarding an
19 adult defendant or the adjudication order regarding a juvenile
20 respondent. As soon as practical, test results shall be provided
21 to the prosecuting attorney, who shall promptly provide the results
22 to the victim or victim's parent or legal guardian, and to counsel
23 for the defendant or juvenile respondent. The test results shall
24 also be transmitted to the court having jurisdiction over the trial

1 of the matter, to be maintained pursuant to the provisions of this
2 article.

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

1 performing the test may bill the individuals insurance for the cost
2 of the test. Individuals receiving HIV-related tests ordered by a
3 magistrate or circuit court shall not be permitted to request to
4 remain anonymous and a local health department may administer and
5 bill for the test.

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

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

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

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

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

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

9 ~~(5)~~ (7) If any person violates a cease-and-desist order issued
10 pursuant to this section and, by virtue of that violation, the
11 person presents a danger to the health of others, the commissioner
12 shall apply to the circuit court of Kanawha County to enforce the
13 cease-and-desist order by imposing any restrictions upon the person
14 that are necessary to prevent the specific conduct that endangers
15 the health of others.

16 ~~(6)~~ (8) A person convicted or a juvenile adjudicated of the
17 offenses described in this section shall be required to undergo
18 HIV-related testing and counseling immediately upon conviction or
19 adjudication and the court having jurisdiction of the ~~criminal~~
20 ~~prosecution~~ matter may not release the convicted or adjudicated
21 person from custody and shall revoke any order admitting the
22 defendant or juvenile to bail until HIV-related testing and
23 counseling have been performed and the result is known: Provided,
24 That if the person convicted or adjudicated has been tested in

1 accordance with the provisions of this subsection, and the result
2 was positive, that person need not be retested. The HIV-related
3 test result obtained from the convicted or adjudicated person is to
4 be transmitted to the court and, after the convicted or adjudicated
5 person is sentenced or disposition ordered for the adjudicated
6 juvenile, made part of the court record. If the convicted or
7 adjudicated person is placed in the custody of the Division of
8 Corrections or Regional Jail and Correctional Facility Authority,
9 or if the adjudicated juvenile is placed in the custody of the
10 Division of Juvenile Services or other out-of-home placement, the
11 court shall transmit a copy of the convicted or adjudicated
12 person's HIV-related test results to the ~~Division of Corrections~~
13 appropriate custodial agency. The HIV-related test results shall
14 be closed and confidential and disclosed by the court and the
15 bureau only in accordance with the provisions of section three of
16 this article.

17 ~~(7)~~ (9) The prosecuting attorney shall inform the victim, or
18 parent or guardian of the victim, at the earliest stage of the
19 proceedings of the availability of voluntary HIV-related testing
20 and counseling conducted by the bureau and that his or her best
21 health interest would be served by submitting to HIV-related
22 testing and counseling. HIV-related testing for the victim shall
23 be administered at his or her request on a confidential basis and
24 shall be administered in accordance with the Centers for Disease

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

10 ~~(8)~~ (10) If a person receives counseling or is tested under
11 this subsection and is found to be HIV infected and the person is
12 not incarcerated, the person shall be referred by the health care
13 provider performing the counseling or testing for appropriate
14 medical care and support services. The local or county health
15 departments or any other agency under this subsection ~~may~~ shall not
16 be held financially responsible for medical care and support
17 services.

18 ~~(9)~~ (11) The commissioner of the bureau or his or her
19 designees may require an HIV test for the protection of a person
20 who was possibly exposed to HIV-infected blood or other body fluids
21 as a result of receiving or rendering emergency medical aid or who
22 possibly received such exposure as a funeral director. Results of
23 such a test of the person causing exposure may be used by the
24 requesting physician for the purpose of determining appropriate

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

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

14 ~~(11)~~ (13) The costs of mandated testing and counseling
15 provided under this subsection and ~~pre~~ preconviction and post-
16 conviction HIV-related testing and counseling provided the victim
17 under the direction of the bureau pursuant to this subsection shall
18 be paid by ~~the bureau~~ the individual to be tested or his or her
19 medical insurance provider, if possible.

20 ~~(12)~~ (14) The court having jurisdiction of the criminal
21 prosecution shall order a person convicted of prostitution, sexual
22 abuse, sexual assault or incest ~~or sexual molestation~~ to pay
23 restitution to the state for the costs of any HIV-related testing
24 and counseling provided the convicted person and the victim, unless

1 the court has determined the convicted person to be indigent.

2 ~~(13)~~ (15) Any funds recovered by the state as a result of an
3 award of restitution under this subsection shall be paid into the
4 State Treasury to the credit of a special revenue fund to be known
5 as the HIV-Testing Fund which is hereby created. The moneys so
6 credited to the fund may be used solely by the bureau for the
7 purposes of facilitating the performance of HIV-related testing and
8 counseling under the provisions of this article.

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

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

19 **ARTICLE 4. SEXUALLY TRANSMITTED DISEASES.**

20 **§16-4-19. Voluntary submission to examination and treatment;**
21 **charges; disposition of money collected.**

22 ~~(a) Any resident of the state person may at any time report go~~
23 ~~to any municipal or county health officer having jurisdiction of~~
24 ~~the case department and voluntarily submit himself or herself to~~

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

15 (b) If such tests and examinations show ~~said party so applying~~
16 ~~to be so infected~~ the person to have a sexually transmitted
17 disease, then ~~said party~~ the person shall elect whether he or she
18 will take treatment ~~of~~ from a private physician, or whether he or
19 she will take treatment ~~to be provided by~~ from the local health
20 ~~officer through a clinic or otherwise~~ department, and if he or she
21 elects to take treatment through the local health ~~officer's~~
22 ~~arrangement~~ department, he or she may be required to pay for such
23 treatment ~~at a charge which shall in no case exceed the sum of \$5~~
24 ~~for each dose of "neo" or arsphenamine administered for syphilis,~~

1 ~~and at a nominal cost for other medicines used; but if the patient~~
2 ~~is unable to pay anything, he or she shall be treated free of~~
3 ~~charge under the direction of the local health officer, at a clinic~~
4 ~~or otherwise~~ either directly or by the local health department
5 billing the person's health insurance provider. Local health
6 departments may charge in accordance with their existing fee
7 schedules and may charge patients for treatment on a sliding fee
8 scale No individual may be refused treatment at a local health
9 department because of a lack of insurance ro inability to pay.

10 (c) All proper charges for such examination and treatment as
11 that may be necessary hereunder shall be a proper charge against
12 the municipality or county, paid by the individual or by that
13 person's health insurance provider. as the case may be, whether
14 said party so taking treatment lived in or out of a municipal
15 corporation. And whether said person proposing to take treatment
16 as provided hereunder elect to take from a private physician or
17 elect to take treatment under the direction of the local health
18 officer, he or she shall first sign the agreement required to be
19 signed by persons about to be released from detention or
20 quarantine, and shall observe all its provisions, and so long as
21 such person so signing shall so observe these provisions he or she
22 need not be detained or quarantined pending treatment, except that
23 no person who is known as a prostitute, or as a person associating
24 with such, or as a person who resides in any house having the

1 ~~reputation of being a house of prostitution, or who frequents the~~
2 ~~same, shall be allowed at liberty if infected with a venereal~~
3 ~~disease in an infectious stage, even though he or she does~~
4 ~~voluntarily submit for examination and treatment and does take~~
5 ~~treatment under the provisions of this section.~~

6 (d) All money collected under this section shall be paid into
7 ~~a clinic fund, if one is provided, and if not then into the county~~
8 ~~or city treasury, as the case may be; to the local health~~
9 ~~department doing the testing and the local health officer having~~
10 ~~jurisdiction department shall collect and account for ~~such~~ the~~
11 ~~funds collected hereunder.~~