

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 15**

6 (By Senator Stollings)

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported February 13, 2014.]
10 _____

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

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

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

1 and reenacted, all to read as follows:

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

4 **§16-3C-2. Testing.**

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

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

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

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

1 come into contact with a medical or emergency responder or other
2 person in such a way that a significant exposure has occurred; or

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

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

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

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

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

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

23 ~~(d)~~ (e) Any person seeking an HIV-related test ~~in~~ at a local
24 or county health department, or other HIV test setting provided by

1 the commissioner, who wishes to remain anonymous has the right to
2 do so, and to be provided written informed consent through use of
3 a coded system with no linking of individual identity to the test
4 request or results. County or local health departments that
5 routinely bill insurance companies or other third party payers for
6 service may bill for an HIV-related test if the person requesting
7 the test does not request to remain anonymous as provided in this
8 section. No person shall be refused a test at a local health
9 department because of a lack of insurance, inability to pay or due
10 to a request to remain anonymous.

11 ~~(e)~~ (f) No option to opt out of HIV-related testing ~~is~~
12 ~~required~~ exists and the provisions of subsection (a) and ~~(b)~~ (c) of
13 this 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~~ of semen
20 provided for the purpose of artificial insemination, and ~~such~~ the
21 test is necessary to assure medical acceptability of a recipient or
22 ~~such~~ the 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

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

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

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

24 (1) The performance of any HIV-related testing that is or

1 becomes mandatory by a magistrate or circuit court order or other
2 legal process described herein does not require consent of the
3 subject but ~~will~~ may include counseling.

4 (2) The court shall order the defendant or juvenile respondent
5 to submit to the testing not later than forty-eight hours after the
6 issuance of the order or the date on which the initial appearance
7 is made, unless good cause for delay is shown upon a request for a
8 hearing: *Provided*, That no such delay shall cause the HIV-related
9 testing to be administered later than forty-eight hours after the
10 filing of any indictment or information regarding an adult
11 defendant or a petition regarding a juvenile respondent. As soon
12 as practical, test results shall be provided to the court having
13 jurisdiction over the matter. The court shall then provide the
14 test results to the prosecuting attorney, who shall promptly
15 provide the results to the victim or victim's parent or legal
16 guardian, and to counsel for the defendant or juvenile respondent.
17 The court having jurisdiction shall maintain the results pursuant
18 to the provisions of section three of this article.

19 ~~(2)~~ (3) ~~The court having jurisdiction of the criminal~~
20 ~~prosecution shall order that an~~ prosecuting attorney shall, upon
21 the request of the victim or the victims's parent or legal
22 guardian, and with notice to the defendant or juvenile respondent,
23 apply to the court for an order directing that an appropriate HIV-
24 related test be performed on ~~any persons~~ a defendant charged with

1 any of the following crimes or a juvenile subject to a petition
2 involving any of these offenses:

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

4 ~~(ii)~~ (B) Sexual abuse, sexual assault or incest ~~or sexual~~
5 ~~molestation.~~

6 ~~(3)~~ (4) HIV-related tests performed on persons charged with
7 prostitution, sexual abuse, sexual assault or incest ~~or sexual~~
8 ~~molestation~~ shall be confidentially administered by a designee of
9 the bureau or the local or county health department having proper
10 jurisdiction.

11 (A) The commissioner ~~may designate~~ designates and authorizes
12 health care providers in regional ~~jail~~ jails or other correctional
13 facilities to administer HIV-related tests on ~~such~~ any persons ~~if~~
14 ~~he or she determines it necessary and expedient~~ subject to the
15 provisions of this subsection. Regional jails and correctional
16 facilities may take oral or blood specimens and transmit them to
17 the Office of Laboratory Services in accordance with guidelines set
18 forth on the website of the Office of Laboratory Services (OLS).

19 (B) Nothing in this section shall be construed to prevent the
20 court from ordering at any time, during which the charge or
21 juvenile petition is pending, that the defendant or juvenile submit
22 to one or more appropriate tests to determine if he or she is
23 infected with HIV.

24 (C) The court may also order follow-up tests for HIV as may be

1 medically appropriate. All persons whose HIV test result is
2 negative from the testing done forty-eight hours after their
3 initial appearance shall be retested by court order six weeks after
4 the first test was done to eliminate the possibility of a false-
5 negative result from the first test.

6 (D) The results of any test shall be provided as soon as
7 practical in accordance with subdivision (2) of this subsection.
8 The cost of testing may be charged to the defendant or juvenile
9 respondent, unless determined unable to pay by the court having
10 jurisdiction over the matter. If the defendant or juvenile is
11 unable to pay, the cost of the HIV testing may be borne by the
12 bureau or by the local health department. If the individual
13 ordered to be tested has health insurance, a local health
14 department or other provider performing the test may bill the
15 individual's insurance provider for the cost of the test. An
16 individual receiving a HIV-related test ordered by a magistrate or
17 circuit court shall not be permitted to request to remain
18 anonymous.

19 (5) In the event the victim, parent or legal guardian fails to
20 request HIV-related testing of the defendant or juvenile respondent
21 within the time period set forth in this subsection, the victim,
22 parent or legal guardian may request that HIV-related testing be
23 performed on the defendant or juvenile respondent at any subsequent
24 time after the date of the defendant's conviction or the juvenile's

1 disposition: Provided, That the prosecuting attorney shall make
2 application to the court for the test as provided in subdivision
3 (3) of this subsection.

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

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

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

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

19 (D) Bill a person for the necessary laboratory and associated
20 costs for counseling and testing either directly or by billing the
21 person's medical insurance provider.

22 ~~(5)~~ (7) If any person violates a cease-and-desist order issued
23 pursuant to this section and, by virtue of that violation, the
24 person presents a danger to the health of others, the commissioner

1 shall apply to the circuit court of Kanawha County to enforce the
2 cease-and-desist order by imposing any restrictions upon the person
3 that are necessary to prevent the specific conduct that endangers
4 the health of others.

5 ~~(6)~~ (8) A person convicted or a juvenile adjudicated of the
6 offenses described in this section ~~shall~~ may be required to undergo
7 HIV-related testing and counseling immediately upon conviction ~~and~~
8 ~~the court having jurisdiction of the criminal prosecution may not~~
9 ~~release the convicted person from custody and shall revoke any~~
10 ~~order admitting the defendant to bail until HIV-related testing and~~
11 ~~counseling have been performed and the result is known: or~~
12 ~~adjudication: *Provided*, That if the person convicted or adjudicated~~
13 ~~has been tested in accordance with the provisions of this~~
14 ~~subsection—that person need not be retested.~~ The HIV-related test
15 result obtained from the convicted or adjudicated person is to be
16 transmitted to the court and, after the convicted or adjudicated
17 person is sentenced or disposition ordered for the adjudicated
18 juvenile, be made part of the court record. If the convicted or
19 adjudicated person is placed in the custody of the Division of
20 Corrections or Regional Jail and Correctional Facility Authority,
21 or if the adjudicated juvenile is placed in the custody of the
22 Division of Juvenile Services or other out-of-home placement, the
23 court shall transmit a copy of the convicted or adjudicated
24 person's HIV-related test results to the ~~Division of Corrections~~

1 appropriate custodial agency. The HIV-related test results shall
2 be closed and confidential and disclosed by the court and the
3 bureau only in accordance with the provisions of section three of
4 this article.

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

22 ~~(8)~~ (10) If a person receives counseling or is tested under
23 this subsection and is found to be HIV infected and the person is
24 not incarcerated, the person shall be referred by the health care

1 provider performing the counseling or testing for appropriate
2 medical care and support services. The local or county health
3 departments or any other agency under this subsection ~~may~~ shall not
4 be held financially responsible for medical care and support
5 services.

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

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

1 effect at the time of the motion of the state.

2 ~~(11)~~ (13) The costs of mandated testing and counseling
3 provided under this subsection and ~~pre~~ preconviction and post-
4 conviction HIV-related testing and counseling provided the victim
5 under the direction of the bureau pursuant to this subsection shall
6 be paid by ~~the bureau~~ the individual to be tested or his or her
7 medical insurance provider, if possible.

8 ~~(12)~~ (14) The court having jurisdiction of the criminal
9 prosecution shall order a person convicted of prostitution, sexual
10 abuse, sexual assault or incest ~~or sexual molestation~~ to pay
11 restitution to the state for the costs of any HIV-related testing
12 and counseling provided the convicted person and the victim, unless
13 the court has determined the convicted person to be indigent.

14 ~~(13)~~ (15) Any funds recovered by the state as a result of an
15 award of restitution under this subsection shall be paid into the
16 State Treasury to the credit of a special revenue ~~fund~~ account to
17 be known as the HIV-Testing Fund which is hereby created. The
18 moneys so credited to the fund ~~may~~ are to be used solely by the
19 bureau for the purposes of facilitating the performance of HIV-
20 related testing and counseling under the provisions of this
21 article.

22 ~~(g) Nothing in this section is applicable to any insurer~~
23 ~~regulated under chapter thirty-three of this code: Provided, That~~
24 ~~the commissioner of insurance shall develop standards regarding~~

1 ~~consent for use by insurers which test for the presence of the HIV~~
2 ~~antibody.~~

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

8 **ARTICLE 4. SEXUALLY TRANSMITTED DISEASES.**

9 **§16-4-19. Voluntary submission to examination and treatment;**
10 **charges; disposition of money collected.**

11 ~~(a) Any resident of the state person may at any time report go~~
12 ~~to any municipal or county health officer having jurisdiction of~~
13 ~~the case department and voluntarily submit himself or herself to~~
14 ~~all tests and examination examinations as are necessary to~~
15 ~~ascertain whether in fact the person submitting himself or herself~~
16 ~~for examination is infected with a venereal sexually transmitted~~
17 ~~disease. and said The health officer to whom any party has applied~~
18 ~~as above for tests and examination department shall provide for~~
19 ~~making all such conduct and administer all necessary tests and~~
20 ~~examinations as are necessary to ascertain whether in fact said~~
21 ~~party so applying be so infected with a venereal the person has any~~
22 ~~sexually transmitted disease. If such tests and examinations show~~
23 ~~said party so applying to be so infected then said party shall~~
24 ~~elect whether he will take treatment of a private physician, or~~

1 ~~whether he will take treatment to be provided by the health officer~~
2 ~~through a clinic or otherwise, and if he elects to take treatment~~
3 ~~through the local health officer's arrangement, he may be required~~
4 ~~to pay for such treatment at a charge which shall in no case exceed~~
5 ~~the sum of \$5 for each dose of "neo" or arsphenamine administered~~
6 ~~for syphilis, and at a nominal cost for other medicines used; but~~
7 ~~if the patient is unable to pay anything, he or she shall be~~
8 ~~treated free of charge under the direction of the local health~~
9 ~~officer, at a clinic or otherwise. Any person who is tested for~~
10 sexually transmitted diseases at a local health department shall be
11 responsible for paying the reasonable costs of testing, either
12 directly or through billing the person's medical insurance
13 provider. Local health departments may charge in accordance with
14 their existing fee schedules and may charge patients for the
15 testing on a sliding fee scale: *Provided*, That no person seeking
16 testing for sexually transmitted diseases at their local health
17 department may be refused if they have no health insurance or
18 ability to pay.

19 (b) All proper charges for ~~such~~ examination and treatment ~~as~~
20 ~~that~~ may be necessary hereunder shall be a proper charge against
21 the municipality or county, as the case may be, whether said party
22 so taking treatment lived in or out of a municipal corporation.
23 And whether said person proposing to take treatment as provided
24 hereunder elect to take from a private physician or elect to take

1 ~~treatment under the direction of the local health officer, he or~~
2 ~~she shall first sign the agreement required to be signed by persons~~
3 ~~about to be released from detention or quarantine, and shall~~
4 ~~observe all its provisions, and so long as such person so signing~~
5 ~~shall so observe these provisions he or she need not be detained or~~
6 ~~quarantined pending treatment, except that no person who is known~~
7 ~~as a prostitute, or as a person associating with such, or as a~~
8 ~~person who resides in any house having the reputation of being a~~
9 ~~house of prostitution, or who frequents the same, shall be allowed~~
10 ~~at liberty if infected with a venereal disease in an infectious~~
11 ~~stage, even though he or she does voluntarily submit for~~
12 ~~examination and treatment and does take treatment under the~~
13 ~~provisions of this section. paid by the individual or by his or her~~
14 ~~health insurance provider.~~

15 (c) All money collected under this section shall be paid into
16 ~~a clinic fund, if one is provided, and if not then into the county~~
17 ~~or city treasury, as the case may be; to the local health~~
18 ~~department doing the testing and the local health officer having~~
19 ~~jurisdiction department shall collect and account for ~~such~~ the~~
20 ~~funds collected hereunder.~~