

**Senate Bill No. 20**

(By Senator Stollings)

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[Introduced January 14, 2015; referred to the Committee on Health and Human Resources; and

then to the Committee on the Judiciary.]

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A BILL to amend and reenact §16-3C-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-4-19 of said code, all relating to removing limitations on billing patients for HIV and sexually transmitted disease (STD) testing done by state or local public health agencies; and clarifying provisions relating to performing HIV or STD tests on person accused of sexual offense.

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

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

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

**§16-3C-2. Testing.**

(a) HIV-related testing ~~on a voluntary basis~~ should be recommended by ~~any~~ healthcare ~~provider in a health facility~~ providers as part of a routine screening for treatable conditions and as

1 part of routine prenatal and perinatal care. A physician, dentist, nurse practitioner, nurse midwife,  
2 physician assistant or the commissioner may ~~also~~ request targeted testing for any of the following:

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

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

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

14 (4) When there is no record of any HIV-related testing during pregnancy and the woman  
15 presents for labor and delivery.

16 (b) All patients who seek an HIV test shall be responsible for paying the costs of the testing,  
17 whether they are tested by a private healthcare provider, the bureau or at a local health department.  
18 Local health departments may charge in accordance with their existing fee schedules and may charge  
19 patients on a sliding fee scale.

20 ~~(b)~~ (c) A patient voluntarily consents to the test as follows:

21 (1) The patient is informed either orally or in writing that HIV-related testing will be  
22 performed as part of his or her routine care, that HIV-related testing is voluntary and that the patient

1 may decline HIV-related testing (opt-out); or

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

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

8 ~~(d)~~ (e) Any person seeking an HIV-related test in a local or county health department or other  
9 HIV test setting provided by the commissioner who wishes to remain anonymous has the right to do  
10 so, and to be provided written informed consent through use of a coded system with no linking of  
11 individual identity to the test request or results. Those individuals may arrange to pay the costs of  
12 the HIV-related testing.

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

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

21 (2) The performance of an HIV-related test in documented bona fide medical emergencies,  
22 as determined by a treating physician taking into account the nature and extent of the exposure to

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

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

15 (f) (g) Mandated testing:

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

19 (2) The arresting authorities or a magistrate or circuit court having jurisdiction of the criminal  
 20 prosecution judge, upon the request of the prosecutor in the case or upon the request of the victim,  
 21 shall order that an HIV-related test be performed cause the accused to submit to one or more  
 22 appropriate tests to determine if the accused is infected with human immunodeficiency virus (HIV)

1 within forty-eight hours after the date on which the complaint, information or indictment is filed or  
 2 within forty-eight hours after the date on which the complaint, information, or indictment is served  
 3 on the accused, whichever date is later, ~~on for any persons charged with any person accused~~ of the  
 4 following crimes or offenses:

5       (i) (A) Prostitution; or

6       (ii) (B) Sexual abuse, sexual assault, incest or sexual molestation.

7       (3) HIV-related tests performed on persons ~~charged with~~ accused of prostitution, sexual  
 8 abuse, sexual assault, incest or sexual molestation shall be confidentially administered by a designee  
 9 of the bureau or the local or county health department having proper jurisdiction. The commissioner  
 10 may designate health care providers in regional jail or other correctional facilities to administer  
 11 HIV-related tests on such persons if he or she determines it necessary and expedient. Nothing in this  
 12 section may be construed to prevent the court from ordering at any time during which the complaint,  
 13 information or indictment is pending, that the accused submit to one or more appropriate tests to  
 14 determine if the accused is suffering from a sexually transmitted disease (STD) or from the human  
 15 immunodeficiency virus (HIV). The cost of testing and treatment may be charged to and paid by the  
 16 accused.

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

22       (i) (A) Require a person to be examined and tested to determine whether the person has HIV

1 infection;

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

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

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

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

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

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

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

17           (9) The commissioner of the bureau or his or her designees may require an HIV test for the  
18 protection of a person who was possibly exposed to HIV infected blood or other body fluids as a  
19 result of receiving or rendering emergency medical aid or who possibly received such exposure as  
20 a funeral director. Results of such a test of the person causing exposure may be used by the  
21 requesting physician for the purpose of determining appropriate therapy, counseling and  
22 psychological support for the person rendering emergency medical aid including good Samaritans,

1 as well as for the patient, or individual receiving the emergency medical aid.

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

8 (11) The costs of mandated testing and counseling provided under this subsection and pre  
9 and post-conviction HIV-related testing and counseling provided the victim under the direction of  
10 the bureau pursuant to this subsection shall be paid by ~~the bureau~~ the individual to be tested or his  
11 or her medical insurance provider, if possible.

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

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

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



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

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

6 **ARTICLE 4. SEXUALLY TRANSMITTED DISEASES.**

7 **§16-4-19. Voluntary submission to examination and treatment; charges; disposition of money**  
8 **collected.**

9 (a) Any resident of the state may at any time report to any municipal or county health officer  
10 ~~having jurisdiction of the case,~~ and voluntarily submit himself or herself to all tests and examination  
11 ~~as are necessary to ascertain whether in fact the person submitting himself for examination is~~  
12 ~~infected with a venereal sexually transmitted disease. and said The health officer to whom any party~~  
13 ~~has applied as above for tests and examination shall provide for making all such conduct and~~  
14 ~~administer all necessary tests and examinations as are necessary to ascertain whether in fact said~~  
15 ~~party so applying be so infected with a venereal the person has any sexually transmitted disease.~~

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

1 used, but if the patient is unable to pay anything, he shall be treated free of charge under the direction  
 2 of the local health officer, at a clinic or otherwise either directly or by the local health department  
 3 billing the person's health insurance provider.

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

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

NOTE: The purpose of this bill is to remove the prohibition on billing persons for HIV testing or testing for sexually transmitted diseases conducted by the State Bureau for Public Health

or county or local health departments. The bill allows public health agencies to charge patients or their medical insurance providers for the reasonable costs for testing. It also clarifies the procedures for testing persons accused of a sexual offense for HIV or STDs.

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