

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4197

(BY DELEGATES KELLY, COOPER, FAIRCLOTH, ATKINSON,
WELD, FRICH, BLAIR, WAXMAN, ZATEZALO, HOWELL
AND IRELAND)

[Originating in the Committee on Finance;

February 17, 2016.]

1 A BILL to amend and reenact §16-3C-2 of the Code of West Virginia, as amended, relating to the
2 testing for HIV or hepatitis of certain persons; authorizing the Commissioner of the Bureau
3 of Health to require HIV or hepatitis testing of certain persons who may have been
4 exposed to HIV or hepatitis while providing certain services; and authorizing the
5 Commissioner of the Bureau of Health or his or her designees to determine the appropriate
6 therapy, counseling and psychological support for the exposed person.

Be it enacted by the Legislature of West Virginia:

1 That §16-3C-2 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

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

§16-3C-2. Testing.

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

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

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

11 (3) When there is cause to believe that the results of HIV-testing of samples of blood or
12 body fluids from a source patient could provide information important in the care of medical or
13 emergency responders or other persons identified in regulations proposed by the department for
14 approval by the Legislature in accordance with the provisions of article three, chapter twenty-nine-
15 a of this code: *Provided*, That the source patient whose blood or body fluids is being tested

16 pursuant to this section must have come into contact with a medical or emergency responder or
17 other person in such a way that a significant exposure has occurred;

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

20 (b) 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
23 patient may decline HIV-related testing (opt-out); or

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

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

30 (d) Any person seeking an HIV-related test in a local or county health department or other
31 HIV test setting provided by the commissioner who wishes to remain anonymous has the right to
32 do so, and to be provided written informed consent through use of a coded system with no linking
33 of individual identity to the test request or results.

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

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

42 (2) The performance of an HIV-related test in documented bona fide medical emergencies,
43 as determined by a treating physician taking into account the nature and extent of the exposure
44 to another person, when the subject of the test is unable or unwilling to grant or withhold consent,
45 and the test results are necessary for medical diagnostic purposes to provide appropriate
46 emergency care or treatment to a medical or emergency responder, or any other person who has
47 come into contact with a source patient in such a way that a significant exposure necessitates
48 HIV-testing or to a source patient who is unable to consent in accordance with rules proposed by
49 the department for approval by the Legislature in accordance with article three, chapter twenty-
50 nine-a of this code: *Provided*, That necessary treatment may not be withheld pending HIV test
51 results: *Provided, however*, That all sampling and HIV-testing of samples of blood and body fluids,
52 without the opportunity for the source patient or patient's representative to opt-out of the testing,
53 shall be through the use of a pseudonym and in accordance with rules proposed by the
54 department for approval by the Legislature in accordance with article three, chapter twenty-nine-
55 a of this code; or

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

59 (f) Mandated testing:

60 (1) The performance of any HIV-related testing that is or becomes mandatory by court
61 order or other legal process described herein does not require consent of the subject but will
62 include counseling.

63 (2) The court having jurisdiction of the criminal prosecution shall order that an HIV-related
64 test be performed on any persons charged with any of the following crimes or offenses:

65 (i) Prostitution; or

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

67 (3) HIV-related tests performed on persons charged with prostitution, sexual abuse, sexual
68 assault, incest or sexual molestation shall be confidentially administered by a designee of the
69 bureau or the local or county health department having proper jurisdiction. The commissioner may
70 designate health care providers in regional jail facilities to administer HIV-related tests on such
71 persons if he or she determines it necessary and expedient.

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

77 (i) Require a person to be examined and tested to determine whether the person has HIV
78 infection;

79 (ii) Require a person with HIV infection to report to a qualified physician or health worker
80 for counseling; and

81 (iii) Direct a person with HIV infection to cease and desist from specified conduct which
82 endangers the health of others.

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

88 (6) A person convicted of the offenses described in this section shall be required to
89 undergo HIV-related testing and counseling immediately upon conviction and the court having
90 jurisdiction of the criminal prosecution may not release the convicted person from custody and
91 shall revoke any order admitting the defendant to bail until HIV-related testing and counseling
92 have been performed and the result is known. The HIV-related test result obtained from the

93 convicted person is to be transmitted to the court and, after the convicted person is sentenced,
94 made part of the court record. If the convicted person is placed in the custody of the Division of
95 Corrections, the court shall transmit a copy of the convicted person's HIV-related test results to
96 the Division of Corrections. The HIV-related test results shall be closed and confidential and
97 disclosed by the court and the bureau only in accordance with the provisions of section three of
98 this article.

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

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

115 ~~(9) The commissioner of the bureau or his or her designees may require an HIV test for~~
116 ~~the protection of a person who was possibly exposed to HIV infected blood or other body fluids~~
117 ~~as a result of receiving or rendering emergency medical aid, or who possibly received such~~
118 ~~exposure as a funeral director. Results of such a test of the person causing exposure may be~~

119 ~~used by the requesting physician for the purpose of determining appropriate therapy, counseling~~
120 ~~and psychological support for the person rendering emergency medical aid including good~~
121 ~~Samaritans, as well as for the patient, or individual receiving the emergency medical aid.~~

122 (9) The Commissioner of the Bureau or his or her designees may require a person to
123 undergo an HIV test or hepatitis test if a person was possibly exposed to HIV infected blood or
124 other body fluids or hepatitis infected blood or other body fluids, as a result of receiving or
125 rendering emergency medical aid, providing funeral services, or performing duties as a law
126 enforcement officer. The Commissioner of the Bureau or his or her designees may use the results
127 of the test to determine the appropriate therapy, counseling and psychological support for the
128 exposed person.

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

135 (11) The costs of mandated testing and counseling provided under this subsection and
136 pre and postconviction HIV-related testing and counseling provided the victim under the direction
137 of the bureau pursuant to this subsection shall be paid by the bureau.

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

142 (13) Any funds recovered by the state as a result of an award of restitution under this
143 subsection shall be paid into the State Treasury to the credit of a special revenue fund to be
144 known as the "HIV-testing fund" which is hereby created. The moneys so credited to the fund may

145 be used solely by the bureau for the purposes of facilitating the performance of HIV-related testing
146 and counseling under the provisions of this article.

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

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