

1 **H. B. 3162**

2
3 (By Delegates Miley, Brown, Frazier, Hunt, Moore,
4 Poore, Armstead, Hamilton and Lane)

5 [Introduced February 16, 2011; referred to the
6 Committee on the Judiciary.]

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10 A BILL to amend and reenact §62-11D-2 of the Code of West Virginia,
11 1931, as amended, relating to polygraph examinations required
12 as a condition of supervision for certain sex offenders
13 released on probation, parole or supervised release; amending
14 the number of polygraph examinations that may be conducted by
15 an examiner within a twenty-four hour period; and amending the
16 number of conclusive examinations that may be conducted on a
17 sex offender by the same examiner within one year.

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

19 That §62-11D-2 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted to read as follows:

21 **ARTICLE 11D. HEIGHTENED EXAMINATION AND SUPERVISION FOR CERTAIN**
22 **SEX OFFENDERS.**

23 **§62-11D-2. Polygraph examinations as a condition of supervision**
24 **for certain sex offenders released on probation,**

parole or on supervised release.

(a) Notwithstanding any provision of this code to the contrary, any person:

(1) Who has been determined to be a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code; or

(2) Who is required to register as a sex offender pursuant to the provisions of article twelve, chapter fifteen of this code and who is ordered by a circuit court or supervising entity to undergo polygraph examination as a condition of probation, parole or supervised release, shall, as a condition of said probation, parole or supervised release, submit to polygraph examinations as prescribed in this section.

(b) Any person required to undergo polygraph examination pursuant to subsection (a) of this section shall, at his or her expense, submit to at least one polygraph examination each year to answer questions relating to his or her compliance with conditions of supervision, including conditions related to treatment. Additional examinations may be required, not to exceed a total of five. The results of any examination are not admissible in evidence and are to be used solely as a risk assessment and treatment tool. Examination results shall be made available to the person under supervision, upon request.

(c) In the event a person required to submit to polygraph

1 examinations as required by the provisions of this section is
2 unable to pay for the polygraph examination or examinations, that
3 person may present an affidavit reflecting the inability to pay for
4 such testing to the circuit court of the county of supervision. If
5 it appears to the satisfaction of the court that such person is in
6 fact financially unable to pay for such testing, the court shall
7 issue an order reflecting such findings and forward such order to
8 the supervising entity. Upon receipt of such order, the
9 supervising entity shall then be responsible for paying for such
10 testing.

11 (d) Any polygraph examination conducted pursuant to the
12 provisions of this section shall be conducted by a certified
13 polygraph analyst.

14 (e) In the conduct of polygraph examinations of a sex offender
15 performed pursuant to the provisions of this section, no certified
16 polygraph analyst may:

17 (1) Conduct more than ~~two~~ three full disclosure or sexual
18 history polygraph examinations in a twenty-four hour period;

19 (2) Disclose any information gained during any full disclosure
20 or sexual history polygraph examination to any law-enforcement
21 agency or other party, other than the supervising entity, without
22 the supervised person's consent, nor shall any information or
23 disclosure be admissible in any court of this state, unless such
24 information disclosed indicates the intention or plan to commit a

1 criminal violation of the laws of this or another state or of the
2 United States in which case such information may be released only
3 to such persons as might be necessary solely to prevent the
4 commission of such crime;

5 (3) Conduct more than ~~two~~ five maintenance tests in a twenty-
6 four hour period;

7 (4) Conduct more than a combined total of five ~~one~~ full
8 disclosure or sexual history polygraph ~~examination~~ examinations and
9 ~~more than two~~ maintenance tests in a twenty-four hour period; or

10 (5) Conduct more than five polygraph examinations, with
11 conclusive results, of the same sex offender in a calendar year.
12 This limitation shall not restrict retesting of the sex offender
13 due to a lack of resolution during an initial or earlier
14 examination.

15 (f) No polygraph examination performed pursuant to the
16 provisions of this section may be conducted by a person who is a
17 sworn peace officer, within the boundaries of that officer's
18 jurisdiction.

NOTE: The purpose of this bill is to amend the number of
polygraph examinations which may be administered by an examiner, to
be consistent with the Model Policy for Post-conviction Sex
Offender Testing established by the American Polygraph Association.

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