

# WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Enrolled

Committee Substitute

for

**Senate Bill 404**

BY SENATORS FERNS, PLYMALE, STOLLINGS AND

PREZIOSO, *original sponsors*

[Passed March 12, 2016; in effect 90 days from  
passage]

1 AN ACT to amend and reenact §16-3C-2 of the Code of West Virginia, 1931, as amended; and  
2 to amend and reenact §16-4-19 of said code, all relating to testing for HIV and sexually  
3 transmitted diseases; authorizing billing of persons for HIV and sexually transmitted  
4 disease testing or sexually transmitted disease treatment done by state or local public  
5 health agencies; informing persons who wish to opt-out of HIV-related testing that  
6 anonymous testing is available; providing that costs associated with testing may be borne  
7 by the state when the person charged with certain sex crimes is financially unable to pay;  
8 authorizing billing of a person charged with certain sex crimes health insurance provider;  
9 providing for mandatory disease testing when a person renders or receives certain  
10 services and comes in contact with infected bodily fluids; providing that the costs for  
11 mandated testing and counseling are to be paid by the individual receiving the tests or  
12 counseling; providing that a person who is tested for sexually transmitted diseases at a  
13 local health department are responsible for the costs of such testing; providing for fee  
14 schedules by which local health departments may charge for such testing; removing  
15 limitation on amount that can be charged for medication used to treat sexually transmitted  
16 diseases; and removing language related to testing of sexually transmitted diseases.

*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; 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. HIV-related testing; methods for obtaining consent; billing patient health care providers.**

1 (a) HIV-related testing should be recommended by healthcare providers as part of a  
2 routine screening for treatable conditions and as part of routine prenatal and perinatal care. A  
3 physician, dentist, nurse practitioner, nurse midwife, physician assistant or the commissioner may  
4 also request targeted testing for any of the following:

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

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

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

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

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

20 (c) A patient consents to HIV-related testing when:

21 (1) The patient is informed either orally or in writing that:

22 (A) HIV-related testing will be performed as part of his or her routine care;

23 (B) HIV-related testing is voluntary; and

24 (C) He or she may decline HIV-related testing (opt-out); or

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

27 (d) A patient who opts-out of HIV-related testing must be informed that HIV-related testing  
28 may be obtained anonymously at a local or county health department.

29 (e) Any person seeking an HIV-related test in a local or county health department or at  
30 other HIV test setting provided by the commissioner who wishes to remain anonymous has the

31 right to do so and must be provided written informed consent through the use of a coded system  
32 with no linking of individual identity to the test request or results.

33 (f) County or local health departments that routinely bill insurance companies or other  
34 third-party payers for service may bill for an HIV-related test if the person requesting the test does  
35 not request anonymity. No person may be refused a test at a local health department due to a  
36 lack of insurance or due to a request to remain anonymous.

37 (g) A person may not decline or opt-out of HIV-related testing and the provisions of  
38 subsections (a) and (c) of this section do not apply when:

39 (1) A health care provider or health facility procures, processes, distributes or uses:

40 (A) A human body part, including tissue and blood or blood products, donated for:

41 (i) A purpose specified under the uniform anatomical gift act; or

42 (ii) Transplant recipients;

43 (B) Semen provided for the purpose of artificial insemination and an HIV-related test is  
44 necessary to ensure medical acceptability of a recipient or such gift or semen for the purposes  
45 intended;

46 (2) A person is unable or unwilling to grant or withhold consent as the result of a  
47 documented bona fide medical emergency, as determined by a treating physician taking into  
48 account the nature and extent of the exposure to another person and the HIV-related test results  
49 are necessary for medical diagnostic purposes to provide appropriate emergency care or  
50 treatment to a medical or emergency responder, or any other person who has come into contact  
51 with a source patient in such a way that a significant exposure necessitates HIV testing or to a  
52 source patient who is unable to consent in accordance with rules proposed by the department for  
53 approval by the Legislature in accordance with article three, chapter twenty-nine-a of this code:

54 *Provided*, That necessary treatment may not be withheld pending HIV test results: *Provided*,  
55 *however*, That all sampling and HIV testing of samples of blood and body fluids, without the  
56 opportunity for the source patient or patient's representative to opt-out of the testing, shall be

57 through the use of a pseudonym and in accordance with rules proposed by the department for  
58 approval by the Legislature in accordance with article three, chapter twenty-nine-a of this code;  
59 or

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

63 (h) Mandated testing:

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

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

69 (i) Prostitution; or

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

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

76 (4) Costs associated with tests performed on persons charged with prostitution, sexual  
77 abuse, sexual assault, incest or sexual molestation may be charged to the defendant or juvenile  
78 respondent unless a court determines that the person charged with prostitution, sexual abuse,  
79 sexual assault, incest or sexual molestation is pecuniary unable to pay.

80 (A) If a person charged with prostitution, sexual abuse, sexual assault, incest or sexual  
81 molestation who is ordered to be tested is unable to pay, the cost of the HIV testing may be borne  
82 by the regional jail or other correctional or juvenile facility, the bureau or the local health

83 department.

84 (B) If persons charged with prostitution, sexual abuse, sexual assault, incest or sexual  
85 molestation who is ordered to be tested has health insurance, the local health department or other  
86 providers performing the test may bill the health insurance of the person charged with prostitution,  
87 sexual abuse, sexual assault, incest or sexual molestation for the cost of the test.

88 (C) A person charged with prostitution, sexual abuse, sexual assault, incest or sexual  
89 molestation ordered to submit to a HIV-related test may not be permitted to remain anonymous  
90 and a local health department may administer and bill for the test.

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

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

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

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

102 (6) If any person violates a cease and desist order issued pursuant to this section and, by  
103 virtue of that violation, the person presents a danger to the health of others, the commissioner  
104 shall apply to the circuit court of Kanawha County to enforce the cease and desist order by  
105 imposing any restrictions upon the person that are necessary to prevent the specific conduct that  
106 endangers the health of others.

107 (7) A person convicted of the offenses described in this section shall be required to  
108 undergo HIV-related testing and counseling immediately upon conviction and the court having

109 jurisdiction of the criminal prosecution may not release the convicted person from custody and  
110 shall revoke any order admitting the defendant to bail until HIV-related testing and counseling  
111 have been performed and the result is known. The HIV-related test result obtained from the  
112 convicted person is to be transmitted to the court and, after the convicted person is sentenced,  
113 made part of the court record. If the convicted person is placed in the custody of the Division of  
114 Corrections, the court shall transmit a copy of the convicted person's HIV-related test results to  
115 the Division of Corrections. The HIV-related test results shall be closed and confidential and  
116 disclosed by the court and the bureau only in accordance with the provisions of section three of  
117 this article.

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

129 (9) If a person receives counseling or is tested under this subsection and is found to be  
130 HIV infected and the person is not incarcerated, the person shall be referred by the health care  
131 provider performing the counseling or testing for appropriate medical care and support services.  
132 The local or county health departments or any other agency under this subsection may not be  
133 financially responsible for medical care and support services.

134 (10) The commissioner of the bureau or his or her designees may require a person to

135 undergo an HIV or other sexually transmitted disease test if a person was possibly exposed to  
136 HIV or other sexually transmitted disease infected blood or other body fluids as a result of  
137 receiving or rendering emergency medical aid, providing funeral services or providing law-  
138 enforcement services. The commissioner of the bureau or his or her designees may use the  
139 results to determine the appropriate therapy, counseling and psychological support for the  
140 exposed person.(11) If an HIV-related test required on persons convicted of prostitution, sexual  
141 abuse, sexual assault, incest or sexual molestation results in a negative reaction, upon motion of  
142 the state, the court having jurisdiction over the criminal prosecution may require the subject of the  
143 test to submit to further HIV-related tests performed under the direction of the bureau in  
144 accordance with the Centers for Disease Control and Prevention guidelines of the United States  
145 Public Health Service in effect at the time of the motion of the state.

146 (12) The costs of mandated testing and counseling provided under this subsection and  
147 pre and postconviction HIV-related testing and counseling provided the victim under the direction  
148 of the bureau pursuant to this subsection shall be paid by the by the individual to be tested or  
149 counseled or his or her medical insurance provider, if possible.

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

154 (14) Any funds recovered by the state as a result of an award of restitution under this  
155 subsection shall be paid into the State Treasury to the credit of a special revenue fund to be  
156 known as the HIV-testing Fund which is hereby created. The moneys so credited to the fund may  
157 be used solely by the bureau for the purposes of facilitating the performance of HIV-related testing  
158 and counseling under the provisions of this article.

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



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

162 (j) Whenever consent of the subject to the performance of HIV-related testing is required  
163 under this article, any such consent obtained, whether orally or in writing, shall be considered to  
164 be a valid and informed consent if it is given after compliance with the provisions of subsection  
165 (c) of this section.

**ARTICLE 4. SEXUALLY TRANSMITTED DISEASES.**

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

1 (a)(1) Any person may report to any municipal or county health department and voluntarily  
2 submit himself or herself to all tests and examinations necessary to ascertain whether he or she  
3 is infected with a sexually transmitted disease; and the health department shall conduct and  
4 administer all necessary tests and examinations to ascertain whether the person has any sexually  
5 transmitted disease.

6 (2) A person who is tested for sexually transmitted diseases at a local health department  
7 pursuant to this subsection shall be responsible for paying the reasonable costs of testing, either  
8 directly or through billing the person's medical provider.

9 (3) Local health departments may charge in accordance with their existing fee schedules  
10 and may charge patients for such testing on a sliding fee scale.

11 (b)(1) If tests and examinations show a person tested and examined pursuant to  
12 subsection (a) of this section to have a sexually transmitted disease, then the person shall elect  
13 whether he or she will take treatment from a private physician, or whether he or she will take  
14 treatment from the local health department.

15 (2) If a person elects to take treatment through the local health department, he or she  
16 may be required to pay for such treatment either directly or by the local health department billing  
17 the person's health insurance provider.

18 (3) Local health departments may charge in accordance with their existing fee schedules

19 and may charge patients for treatment on a sliding fee scale.

20 (4) No individual may be refused treatment at a local health department due to a lack of  
21 insurance or inability to pay.

22 (c) All proper charges for examination and treatment that may be necessary pursuant to  
23 this section shall be paid by the individual or by that person's health insurance provider.

24 (d) All money collected under this section shall be paid to the local health department and  
25 the local health officer having jurisdiction shall collect and account for such funds collected  
26 hereunder.