

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 428**

4 (By Senator Stollings)

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6 [Originating in the Committee on Health and Human Resources;
7 reported March 8, 2013.]

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9
10 A BILL to amend and reenact §16-3C-2 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §16-4-19 of said
12 code, all relating generally to testing for HIV and sexually
13 transmitted diseases; removing limitations on billing patients
14 for HIV and sexually transmitted disease testing done by state
15 or local public health agencies; and clarifying the provisions
16 relating to performing HIV or STD tests on persons accused of
17 a sexual offense.

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

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

22 **CHAPTER 16. PUBLIC HEALTH.**

23 **§16-3C-2. Testing.**

24 (a) HIV-related testing ~~on a voluntary basis~~ should be

1 recommended by ~~any~~ healthcare providers ~~in a health facility~~ as
2 part of a routine screening for treatable conditions and as part of
3 routine prenatal and perinatal care. A physician, dentist, nurse
4 practitioner, nurse midwife, physician assistant or the
5 commissioner may ~~also~~ request targeted testing for any of the
6 following:

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

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

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

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

24 (b) All patients who seek an HIV test shall be responsible for

1 paying the costs of the testing, whether they are tested by a
2 private healthcare provider, the Bureau or at a local health
3 department. Local health departments may charge in accordance with
4 their existing fee schedules and may charge patients on a sliding
5 fee scale.

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

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

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

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

19 ~~(d)~~ (e) Any person seeking an HIV-related test in a local or
20 county health department or other HIV test setting provided by the
21 commissioner who wishes to remain anonymous has the right to do so,
22 and to be provided written informed consent through use of a coded
23 system with no linking of individual identity to the test request
24 or results. Such persons may arrange to pay the costs of the HIV-

1 related testing.

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

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

14 (2) The performance of an HIV-related test in documented bona
15 fide medical emergencies, as determined by a treating physician
16 taking into account the nature and extent of the exposure to
17 another person, when the subject of the test is unable or unwilling
18 to grant or withhold consent, and the test results are necessary
19 for medical diagnostic purposes to provide appropriate emergency
20 care or treatment to a medical or emergency responder, or any other
21 person who has come into contact with a source patient in such a
22 way that a significant exposure necessitates HIV-testing or to a
23 source patient who is unable to consent in accordance with rules
24 proposed by the department for approval by the Legislature in

1 accordance with article three, chapter twenty-nine-a of this code:
2 *Provided*, That necessary treatment may not be withheld pending HIV
3 test results: *Provided, however*, That all sampling and HIV-testing
4 of samples of blood and body fluids, without the opportunity for
5 the source patient or patient's representative to opt-out of the
6 testing, shall be through the use of a pseudonym and in accordance
7 with rules proposed by the department for approval by the
8 Legislature in accordance with article three, chapter twenty-nine-a
9 of this code; or

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

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

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

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

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

6 (i) Prostitution; or

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

9 The test result shall be transmitted to the court having
10 jurisdiction over the trial of the person charged, to be maintained
11 pursuant to the provisions of this article. The test result shall
12 also be provided to the person charged and to the prosecuting
13 attorney.

14 (3) HIV-related tests performed on persons ~~charged with~~
15 accused of prostitution, sexual abuse, sexual assault, incest or
16 sexual molestation shall be confidentially administered by a
17 designee of the bureau or the local or county health department
18 having proper jurisdiction. The commissioner may designate health
19 care providers in regional jail or other correctional facilities to
20 administer HIV-related tests on such persons if he or she
21 determines it necessary and expedient. Nothing in this section
22 shall be construed to prevent the court from ordering at any time
23 during which the complaint, information or indictment is pending,
24 that the accused submit to one or more appropriate tests to

1 determine if the accused is suffering from a sexually transmitted
2 disease (STD) or from the human immunodeficiency virus (HIV). The
3 cost of testing and treatment may be charged to and paid by the
4 accused.

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

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

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

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

18 (iv) Bill that person for the necessary laboratory and
19 associated costs for testing either directly or by billing the
20 person's medical insurance provider.

21 (5) If any person violates a cease and desist order issued
22 pursuant to this section and, by virtue of that violation, the
23 person presents a danger to the health of others, the commissioner
24 shall apply to the circuit court of Kanawha County to enforce the

1 cease and desist order by imposing any restrictions upon the person
2 that are necessary to prevent the specific conduct that endangers
3 the health of others.

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

19 (7) The prosecuting attorney shall inform the victim, or
20 parent or guardian of the victim, at the earliest stage of the
21 proceedings of the availability of voluntary HIV-related testing
22 and counseling conducted by the bureau and that his or her best
23 health interest would be served by submitting to HIV-related
24 testing and counseling. HIV-related testing for the victim shall be

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

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

19 (9) The commissioner of the bureau or his or her designees may
20 require an HIV test for the protection of a person who was possibly
21 exposed to HIV infected blood or other body fluids as a result of
22 receiving or rendering emergency medical aid or who possibly
23 received such exposure as a funeral director. Results of such a
24 test of the person causing exposure may be used by the requesting

1 physician for the purpose of determining appropriate therapy,
2 counseling and psychological support for the person rendering
3 emergency medical aid including good Samaritans, as well as for the
4 patient, or individual receiving the emergency medical aid.

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

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

20 (12) The court having jurisdiction of the criminal prosecution
21 shall order a person convicted of prostitution, sexual abuse,
22 sexual assault, incest or sexual molestation to pay restitution to
23 the state for the costs of any HIV-related testing and counseling
24 provided the convicted person and the victim, unless the court has

1 determined the convicted person to be indigent.

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

9 ~~(g) Nothing in this section is applicable to any insurer~~
10 ~~regulated under chapter thirty three of this code: Provided, That~~
11 ~~the commissioner of insurance shall develop standards regarding~~
12 ~~consent for use by insurers which test for the presence of the HIV~~
13 ~~antibody.~~

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

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

21 (a) Any resident of the state may at any time report to any
22 municipal or county health officer ~~having jurisdiction of the case,~~
23 and voluntarily submit himself or herself to all tests and
24 examination ~~as are~~ necessary to ascertain whether ~~in fact~~ the

1 person ~~submitting himself for examination~~ is infected with a
2 ~~venereal~~ sexually transmitted disease, ~~and said~~ The health officer
3 ~~to whom any party has applied as above for tests and examination~~
4 shall ~~provide for making all such~~ conduct and administer all
5 necessary tests and examinations ~~as are necessary~~ to ascertain
6 whether in fact said party ~~so applying be so infected with a~~
7 ~~venereal~~ the person has any sexually transmitted disease.

8 (b) If such tests and examinations show ~~said party so applying~~
9 ~~to be so infected~~ the person to have a sexually transmitted
10 disease, then ~~said party~~ the person shall elect whether he or she
11 will take treatment ~~of~~ from a private physician, or whether he or
12 she will take treatment ~~to be provided by~~ from the local health
13 ~~officer through a clinic or otherwise~~ department, and if he or she
14 elects to take treatment through the local health ~~officer's~~
15 ~~arrangement~~ department, he or she may be required to pay for such
16 treatment ~~at a charge which shall in no case exceed the sum of five~~
17 ~~dollars for each dose of "neo" or arsphenamine administered for~~
18 ~~syphilis, and at a nominal cost for other medicines used; but if~~
19 ~~the patient is unable to pay anything, he shall be treated free of~~
20 ~~charge under the direction of the local health officer, at a clinic~~
21 ~~or otherwise~~ either directly or by the local health department
22 billing the person's health insurance provider.

23 (c) All proper charges for such examination and treatment ~~as~~
24 that may be necessary hereunder shall be ~~a proper charge against~~

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

19 (d) All money collected under this section shall be paid into
20 ~~a clinic fund, if one is provided, and if not then into the county~~
21 ~~or city treasury, as the case may be; to the local health~~
22 ~~department doing the testing and the local health officer ~~having~~~~
23 ~~jurisdiction shall collect and account for such funds collected~~
24 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.