

COMMITTEE SUBSTITUTE

FOR

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FOR

## **Senate Bill No. 15**

(By Senator Stollings)

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[Originating in the Committee on the Judiciary;  
reported February 13, 2014.]

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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 generally to testing for HIV and sexually transmitted diseases; removing certain limitations on billing patients for HIV and sexually transmitted disease testing or sexually transmitted disease treatment done by state or local public health agencies; and clarifying the procedures relating to performing HIV or sexually transmitted disease tests on persons charged with sexual offenses.

*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.**

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

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

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

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

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

27 (b) All healthcare providers, the bureau or local health  
28 departments that routinely bill insurance companies or other  
29 third-party providers may bill for HIV-related testing and  
30 treatment.

31       ~~(b)~~ (c) A patient ~~voluntarily~~ consents to the test ~~as~~  
32 ~~follows~~ when:

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

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

40       ~~(c)~~ (d) A patient ~~refuses to consent to the test if a patient~~  
41 who opts out of HIV-related testing, ~~the patient is informed~~  
42 ~~when the health care provider in the provider's professional~~  
43 ~~opinion believes HIV-related testing is recommended, and~~  
44 shall be informed that HIV-related testing may be obtained  
45 anonymously at a local or county health department.

46       ~~(d)~~ (e) Any person seeking an HIV-related test ~~in~~ at a  
47 local or county health department, or other HIV test setting  
48 provided by the commissioner, who wishes to remain  
49 anonymous has the right to do so, and to be provided written

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50 informed consent through use of a coded system with no  
51 linking of individual identity to the test request or results.  
52 County or local health departments that routinely bill  
53 insurance companies or other third party payers for service  
54 may bill for an HIV-related test if the person requesting the  
55 test does not request to remain anonymous as provided in this  
56 section. No person shall be refused a test at a local health  
57 department because of a lack of insurance, inability to pay or  
58 due to a request to remain anonymous.

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

62 (1) A health care provider or health facility performing an  
63 HIV-related test on the donor or recipient when the health  
64 care provider or health facility procures, processes,  
65 distributes or uses a human body part (including tissue and  
66 blood or blood products) donated for a purpose specified  
67 under the uniform anatomical gift act, or for transplant  
68 recipients, ~~or~~ of semen provided for the purpose of artificial

69 insemination, and ~~such~~ the test is necessary to assure medical  
70 acceptability of a recipient or ~~such~~ the gift or semen for the  
71 purposes intended;

72 (2) The performance of an HIV-related test in  
73 documented bona fide medical emergencies, as determined  
74 by a treating physician taking into account the nature and  
75 extent of the exposure to another person, when the subject of  
76 the test is unable or unwilling to grant or withhold consent,  
77 and the test results are necessary for medical diagnostic  
78 purposes to provide appropriate emergency care or treatment  
79 to a medical or emergency responder, or any other person  
80 who has come into contact with a source patient in such a  
81 way that a significant exposure necessitates HIV testing or to  
82 a source patient who is unable to consent in accordance with  
83 rules proposed by the department for approval by the  
84 Legislature in accordance with article three, chapter twenty-  
85 nine-a of this code: *Provided*, That necessary treatment may  
86 not be withheld pending HIV test results: *Provided, however*,  
87 That all sampling and HIV testing of samples of blood and

88 body fluids, without the opportunity for the source patient or  
89 patient's representative to opt out of the testing, shall be  
90 through the use of a pseudonym and in accordance with rules  
91 proposed by the department for approval by the Legislature  
92 in accordance with article three, chapter twenty-nine-a of this  
93 code; or

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

98 (f) (g) Mandated testing:

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

103 (2) The court shall order the defendant or juvenile  
104 respondent to submit to the testing not later than forty-eight  
105 hours after the issuance of the order or the date on which the  
106 initial appearance is made, unless good cause for delay is

107 shown upon a request for a hearing: *Provided*, That no such  
108 delay shall cause the HIV-related testing to be administered  
109 later than forty-eight hours after the filing of any indictment  
110 or information regarding an adult defendant or a petition  
111 regarding a juvenile respondent. As soon as practical, test  
112 results shall be provided to the court having jurisdiction over  
113 the matter. The court shall then provide the test results to the  
114 prosecuting attorney, who shall promptly provide the results  
115 to the victim or victim's parent or legal guardian, and to  
116 counsel for the defendant or juvenile respondent. The court  
117 having jurisdiction shall maintain the results pursuant to the  
118 provisions of section three of this article.

119 ~~(2)~~ (3) ~~The court having jurisdiction of the criminal~~  
120 ~~prosecution shall order that an~~ prosecuting attorney shall,  
121 upon the request of the victim or the victims's parent or legal  
122 guardian, and with notice to the defendant or juvenile  
123 respondent, apply to the court for an order directing that an  
124 appropriate HIV-related test be performed on any persons a



125 defendant charged with any of the following crimes or a  
126 juvenile subject to a petition involving any of these offenses:

127       ~~(i)~~ (A) Prostitution; or

128       ~~(ii)~~ (B) Sexual abuse, sexual assault or incest ~~or sexual~~  
129 ~~molestation.~~

130       ~~(3)~~ (4) HIV-related tests performed on persons charged  
131 with prostitution, sexual abuse, sexual assault or incest ~~or~~  
132 ~~sexual molestation~~ shall be confidentially administered by a  
133 designee of the bureau or the local or county health  
134 department having proper jurisdiction.

135       (A) The commissioner ~~may designate~~ designates and  
136 authorizes health care providers in regional ~~jail~~ jails or other  
137 correctional facilities to administer HIV-related tests on ~~such~~  
138 any persons ~~if he or she determines it necessary and~~  
139 ~~expedient~~ subject to the provisions of this subsection.

140 Regional jails and correctional facilities may take oral or  
141 blood specimens and transmit them to the Office of  
142 Laboratory Services in accordance with guidelines set forth  
143 on the website of the Office of Laboratory Services (OLS).

144 (B) Nothing in this section shall be construed to prevent  
145 the court from ordering at any time, during which the charge  
146 or juvenile petition is pending, that the defendant or juvenile  
147 submit to one or more appropriate tests to determine if he or  
148 she is infected with HIV.

149 (C) The court may also order follow-up tests for HIV as  
150 may be medically appropriate. All persons whose HIV test  
151 result is negative from the testing done forty-eight hours after  
152 their initial appearance shall be retested by court order six  
153 weeks after the first test was done to eliminate the possibility  
154 of a false-negative result from the first test.

155 (D) The results of any test shall be provided as soon as  
156 practical in accordance with subdivision (2) of this  
157 subsection. The cost of testing may be charged to the  
158 defendant or juvenile respondent, unless determined unable  
159 to pay by the court having jurisdiction over the matter. If the  
160 defendant or juvenile is unable to pay, the cost of the HIV  
161 testing may be borne by the bureau or by the local health  
162 department. If the individual ordered to be tested has health

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163 insurance, a local health department or other provider  
164 performing the test may bill the individual's insurance  
165 provider for the cost of the test. An individual receiving a  
166 HIV-related test ordered by a magistrate or circuit court shall  
167 not be permitted to request to remain anonymous.

168 (5) In the event the victim, parent or legal guardian fails  
169 to request HIV-related testing of the defendant or juvenile  
170 respondent within the time period set forth in this subsection,  
171 the victim, parent or legal guardian may request that HIV-  
172 related testing be performed on the defendant or juvenile  
173 respondent at any subsequent time after the date of the  
174 defendant's conviction or the juvenile's disposition:  
175 Provided, That the prosecuting attorney shall make  
176 application to the court for the test as provided in subdivision  
177 (3) of this subsection.

178 ~~(4)~~ (6) When the Commissioner of the Bureau of for  
179 Public Health knows or has reason to believe, because of  
180 medical or epidemiological information, that a person,  
181 including, but not limited to, a person such as an IV drug

182 abuser, or a person who may have a sexually transmitted  
183 disease, or a person who has sexually ~~molested~~; abused or  
184 assaulted another, has HIV infection and is or may be a  
185 danger to the public health, he or she may issue an order to:

186     ~~(i)~~ (A) Require a person to be examined and tested to  
187 determine whether the person has HIV infection;

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

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

193     (D) Bill a person for the necessary laboratory and  
194 associated costs for counseling and testing either directly or  
195 by billing the person's medical insurance provider.

196     ~~(5)~~ (7) If any person violates a cease-and-desist order  
197 issued pursuant to this section and, by virtue of that violation,  
198 the person presents a danger to the health of others, the  
199 commissioner shall apply to the circuit court of Kanawha  
200 County to enforce the cease-and-desist order by imposing any

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201 restrictions upon the person that are necessary to prevent the  
202 specific conduct that endangers the health of others.

203 ~~(6)~~ (8) A person convicted or a juvenile adjudicated of  
204 the offenses described in this section ~~shall~~ may be required to  
205 undergo HIV-related testing and counseling immediately  
206 upon conviction ~~and the court having jurisdiction of the~~  
207 ~~criminal prosecution may not release the convicted person~~  
208 ~~from custody and shall revoke any order admitting the~~  
209 ~~defendant to bail until HIV-related testing and counseling~~  
210 ~~have been performed and the result is known.~~ or adjudication:  
211 Provided, That if the person convicted or adjudicated has  
212 been tested in accordance with the provisions of this  
213 subsection that person need not be retested. The HIV-related  
214 test result obtained from the convicted or adjudicated person  
215 is to be transmitted to the court and, after the convicted or  
216 adjudicated person is sentenced or disposition ordered for the  
217 adjudicated juvenile, be made part of the court record. If the  
218 convicted or adjudicated person is placed in the custody of  
219 the Division of Corrections or Regional Jail and Correctional

220 Facility Authority, or if the adjudicated juvenile is placed in  
221 the custody of the Division of Juvenile Services or other out-  
222 of-home placement, the court shall transmit a copy of the  
223 convicted or adjudicated person's HIV-related test results to  
224 the ~~Division of Corrections~~ appropriate custodial agency.  
225 The HIV-related test results shall be closed and confidential  
226 and disclosed by the court and the bureau only in accordance  
227 with the provisions of section three of this article.

228 (7) (9) The prosecuting attorney shall inform the victim,  
229 or parent or guardian of the victim, at the earliest stage of the  
230 proceedings of the availability of voluntary HIV-related  
231 testing and counseling conducted by the bureau and that his  
232 or her best health interest would be served by submitting to  
233 HIV-related testing and counseling. HIV-related testing for  
234 the victim shall be administered at his or her request on a  
235 confidential basis and shall be administered in accordance  
236 with the Centers for Disease Control and Prevention  
237 guidelines of the United States Public Health Service in effect  
238 at the time of such request. The victim who obtains an HIV-

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239 related test shall be provided with ~~pre~~ pretest and post-test  
240 counseling regarding the nature, reliability and significance  
241 of the HIV-related test and the confidential nature of the test.  
242 ~~HIV-related testing and counseling conducted pursuant to this~~  
243 ~~subsection shall be performed by the designee of the~~  
244 ~~commissioner of the bureau or by any local or county health~~  
245 ~~department having proper jurisdiction.~~

246       ~~(8)~~ (10) If a person receives counseling or is tested under  
247 this subsection and is found to be HIV infected and the  
248 person is not incarcerated, the person shall be referred by the  
249 health care provider performing the counseling or testing for  
250 appropriate medical care and support services. The local or  
251 county health departments or any other agency under this  
252 subsection ~~may~~ shall not be held financially responsible for  
253 medical care and support services.

254       ~~(9)~~ (11) The commissioner of the bureau or his or her  
255 designees may require an HIV test for the protection of a  
256 person who was possibly exposed to HIV-infected blood or  
257 other body fluids as a result of receiving or rendering

258 emergency medical aid or who possibly received such  
259 exposure as a funeral director. Results of such a test of the  
260 person causing exposure may be used by the requesting  
261 physician for the purpose of determining appropriate therapy,  
262 counseling and psychological support for the person  
263 rendering emergency medical aid including good Samaritans,  
264 as well as for the patient or individual receiving the  
265 emergency medical aid.

266       ~~(10)~~ (12) If an HIV-related test required on persons  
267 charged with or convicted of prostitution, sexual abuse,  
268 sexual assault or incest ~~or sexual molestation~~ results in a  
269 negative reaction, upon motion of the state, the court having  
270 jurisdiction over the criminal prosecution may require the  
271 subject of the test to submit to further HIV-related tests  
272 performed under the direction of the bureau in accordance  
273 with the Centers for Disease Control and Prevention  
274 guidelines of the United States Public Health Service in effect  
275 at the time of the motion of the state.



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276       ~~(11)~~ (13) The costs of mandated testing and counseling  
277 provided under this subsection and ~~pre~~ preconviction and  
278 post-conviction HIV-related testing and counseling provided  
279 the victim under the direction of the bureau pursuant to this  
280 subsection shall be paid by ~~the bureau~~ the individual to be  
281 tested or his or her medical insurance provider, if possible.

282       ~~(12)~~ (14) The court having jurisdiction of the criminal  
283 prosecution shall order a person convicted of prostitution,  
284 sexual abuse, sexual assault or incest ~~or sexual molestation~~ to  
285 pay restitution to the state for the costs of any HIV-related  
286 testing and counseling provided the convicted person and the  
287 victim, unless the court has determined the convicted person  
288 to be indigent.

289       ~~(13)~~ (15) Any funds recovered by the state as a result of  
290 an award of restitution under this subsection shall be paid  
291 into the State Treasury to the credit of a special revenue ~~fund~~  
292 account to be known as the HIV-Testing Fund which is  
293 hereby created. The moneys so credited to the fund ~~may~~ are  
294 to be used solely by the bureau for the purposes of facilitating

295 the performance of HIV-related testing and counseling under  
296 the provisions of this article.

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

302 (h) Whenever consent of the subject to the performance  
303 of HIV-related testing is required under this article, any ~~such~~  
304 consent obtained, whether orally or in writing, shall be  
305 considered to be a valid and informed consent if it is given  
306 after compliance with  
307 the provisions of subsection ~~(b)~~ (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) Any resident of the state~~ person may at any time  
2 ~~report go to~~ any municipal or county health officer having  
3 ~~jurisdiction of the case~~ department and voluntarily submit

4 ~~himself or herself~~ to all tests and ~~examination~~ examinations  
5 ~~as are~~ necessary to ascertain whether ~~in fact~~ the person  
6 ~~submitting himself or herself for examination~~ is infected with  
7 a venereal sexually transmitted disease. ~~and said~~ The health  
8 officer to whom any party has applied as above for tests and  
9 ~~examination~~ department shall ~~provide for making all such~~  
10 conduct and administer all necessary tests and examinations  
11 ~~as are necessary~~ to ascertain whether ~~in fact~~ said party so  
12 ~~applying be so infected with a venereal~~ the person has any  
13 sexually transmitted disease. If such tests and examinations  
14 show said party so ~~applying to be so infected~~ then said party  
15 shall elect whether he will take treatment of a private  
16 physician, or whether he will take treatment to be provided  
17 by the health officer through a clinic or otherwise, and if he  
18 ~~elects to take treatment through the local health officer's~~  
19 arrangement, he may be required to pay for such treatment at  
20 a charge which shall in no case exceed the sum of \$5 for each  
21 ~~dose of "neo" or arsphenamine administered for syphilis, and~~

22 ~~at a nominal cost for other medicines used, but if the patient~~  
23 ~~is unable to pay anything, he or she shall be treated free of~~  
24 ~~charge under the direction of the local health officer, at a~~  
25 ~~clinic or otherwise.~~ Any person who is tested for sexually  
26 transmitted diseases at a local health department shall be  
27 responsible for paying the reasonable costs of testing, either  
28 directly or through billing the person's medical insurance  
29 provider. Local health departments may charge in accordance  
30 with their existing fee schedules and may charge patients for  
31 the testing on a sliding fee scale: *Provided*, That no person  
32 seeking testing for sexually transmitted diseases at their local  
33 health department may be refused if they have no health  
34 insurance or ability to pay.

35 (b) All proper charges for ~~such~~ examination and  
36 treatment ~~as~~ that may be necessary ~~hereunder~~ shall be a  
37 ~~proper charge against the municipality or county, as the case~~  
38 ~~may be, whether said party so taking treatment lived in or out~~  
39 ~~of a municipal corporation. And whether said person~~

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40 ~~proposing to take treatment as provided hereunder elect to~~  
41 ~~take from a private physician or elect to take treatment under~~  
42 ~~the direction of the local health officer, he or she shall first~~  
43 ~~sign the agreement required to be signed by persons about to~~  
44 ~~be released from detention or quarantine, and shall observe~~  
45 ~~all its provisions, and so long as such person so signing shall~~  
46 ~~so observe these provisions he or she need not be detained or~~  
47 ~~quarantined pending treatment, except that no person who is~~  
48 ~~known as a prostitute, or as a person associating with such, or~~  
49 ~~as a person who resides in any house having the reputation of~~  
50 ~~being a house of prostitution, or who frequents the same,~~  
51 ~~shall be allowed at liberty if infected with a venereal disease~~  
52 ~~in an infectious stage, even though he or she does voluntarily~~  
53 ~~submit for examination and treatment and does take treatment~~  
54 ~~under the provisions of this section. paid by the individual or~~  
55 ~~by his or her health insurance provider.~~

56 (c) All money collected under this section shall be paid  
57 ~~into a clinic fund, if one is provided, and if not then into the~~

58 ~~county or city treasury, as the case may be;~~ to the local health  
59 department doing the testing and the local health ~~officer~~  
60 ~~having jurisdiction~~ department shall collect and account for  
61 ~~such~~ the funds collected hereunder.