

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2835

BY DELEGATES LOVEJOY AND HORNBUCKLE

[Introduced February 4, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §62-11D-2 of the Code of West Virginia, 1931, as amended, relating
2 to changing provisions regarding polygraph examinations of sex offenders.

Be it enacted by the Legislature of West Virginia:

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

**§62-11D-2. Polygraph examinations as a condition of supervision for certain sex offenders
released on probation, parole or on supervised release.**

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

2 (1) Who has been determined to be a sexually violent predator pursuant to the provisions
3 of §15-12-2a of this code; or

4 (2) Who is required to register as a sex offender pursuant to the provisions of article 12
5 chapter 15 of this code and who is ordered by a circuit court or supervising entity to undergo
6 polygraph examination as a condition of probation, parole or supervised release, shall, as a
7 condition of said probation, parole or supervised release, submit to polygraph examinations as
8 prescribed in this section.

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

16 (c) In the event a person required to submit to polygraph examinations as required by the
17 provisions of this section is unable to pay for the polygraph examination or examinations, that
18 person may present an affidavit reflecting the inability to pay for such testing to the circuit court of

19 the county of supervision. If it appears to the satisfaction of the court that such person is in fact
20 financially unable to pay for such testing, the court shall issue an order reflecting such findings
21 and forward such order to the supervising entity. Upon receipt of such order, the supervising entity
22 shall then be responsible for paying for such testing.

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

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

27 (1) Conduct more than two full disclosure or sexual history polygraph examinations in a
28 twenty-four hour period;

29 (2) Disclose any information gained during any full disclosure or sexual history polygraph
30 examination to any law-enforcement agency or other party, other than the supervising entity,
31 without the supervised person's consent, nor shall any information or disclosure be admissible in
32 any court of this state, unless such information disclosed indicates the intention or plan to commit
33 a criminal violation of the laws of this or another state or of the United States in which case such
34 information may be released only to such persons as might be necessary solely to prevent the
35 commission of such crime;

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

37 ~~(4) Conduct more than one full disclosure or sexual history polygraph examination and~~
38 ~~more than two maintenance tests in a twenty-four hour period; or~~

39 ~~(5) (3) Conduct more than five four polygraph examinations of the same sex offender in a~~
40 ~~calendar year, not including retesting due to a lack of resolution during an initial or earlier~~
41 ~~examination;~~

42 ~~(4) Conduct more than five polygraph examinations in a single day; or~~

43 ~~(5) Conduct examinations of less than 90 minutes in duration from the start of the pretest~~
44 ~~interview through the end of the post-test interview absent exigent circumstances, such as when~~

45 an examinee is not suitable for testing, an examinee refuses to continue with the examination, or
46 when the issue under investigation is resolved prior to the collection of data.

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

NOTE: The purpose of this bill is to change provisions regarding polygraph examinations of sex offenders.

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