

West Virginia

Analysis

West Virginia has a communicable disease statute that criminalizes exposure to STIs.

West Virginia's Public Health Code imposes penalties of up to \$100 and 30 days in jail for knowingly exposing or infecting another person with venereal disease.¹ "Venereal disease" is not defined, but West Virginia's Sexually Transmitted Disease Program monitors HIV, chlamydia, genital herpes, hepatitis B, HPV, gonorrhea, and syphilis.²

W. VA. CODE ANN § 16-4-20 does not define exposure and it is not clear if disclosure of status or risk reduction measures such as the use of a condom would be relevant to prosecution. At the time of publication, the authors are not aware of a criminal prosecution of an individual on the basis of HIV or STI status in West Virginia.

West Virginia imposes mandatory HIV testing of defendants charged or convicted of sex-related offenses.

Depending on the circumstances, a court, on its own or at the request of a prosecuting attorney, may order mandatory HIV testing of a defendant and juvenile respondents charged or convicted of a sex-related offense as specified in W. Va. Code § 16-3C-2(f)(2).³ While generally it appears that such results are confidential⁴ and are utilized for the provision of counseling and contact notification, the results are provided to the prosecuting attorney, and there is no explicit limitation on their use.

Public health officials can mandate treatment for an STI and impose punitive measures for failure to comply.

Public health officials are directed to take measures that protect the public health from known or reasonably suspected cases of STI.⁵ The grounds for identifying someone as a suspect case are expansive: a conviction of any charge arising out of sexual behavior, failure to report for treatment, or being identified as a sexual contact of a reported case, all constitute prima facie grounds for suspecting

¹ W. VA. CODE ANN §§ 16-4-20, 16-4-26 (2016).

² *Division of STD, HIV, and Hepatitis*, DEPT. OF HEALTH & HUMAN RESOURCES, available at <http://www.dhhr.wv.gov/oeps/std-hiv-hep/Pages/default.aspx>.

³ W. VA. CSR § 64-64-4.3a-b (2016)

⁴ W. VA. CODE ANN. § 16-3C-3 (2016)

⁵ W. VA. CODE ANN. § 16-4-2(a)(3) (2016).

that someone is infected with disease.⁶ Once a person is confirmed to have an STI, they are required to submit to treatment. If the person fails to report for treatment more than 10 days after the return date requested by a health care provider, they may be charged with a misdemeanor.⁷ The failure of a person to report for treatment also authorizes a local health officer to “take any steps necessary in the matter to protect the public health, including obtaining the arrest, detention and quarantine of the patient.”⁸

Public health officials have broad authority to impose isolation, quarantine or other restrictive measures on individuals known or suspected to have an STI.

If a public health officer concludes that an individual known or suspected to have an STI is conducting themselves or is about to conduct themselves in a way that will infect or expose others to infection, the health officer may issue a warrant to local law enforcement for that individual’s arrest.⁹ The individual may be held in jail until a hearing before the health officer, who is empowered to call witnesses in order to ascertain the facts of the case.¹⁰ The statute does not outline any procedural safeguards for a person subject to arrest on this basis.

An individual with an STI may be held until it is shown they are already under the treatment of a physician or an examination demonstrates that they are no longer infectious.¹¹ Detention during this period may occur in the individual’s home or in a jail¹² and any person who refuses to comply is guilty of a misdemeanor.¹³ If a person has been rendered non-infectious during the course of detention, but is not cured, they must sign an agreement containing a variety of stipulations related to treatment, reporting, and refraining from any contact that could potentially expose others to disease, in order to be released.¹⁴ Any failure to conform to these requirements is punished as a misdemeanor.¹⁵

Important note: While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, it should not be used as a substitute for legal advice.

⁶ W. VA. CODE ANN. § 16-4-4 (2016).

⁷ W. VA. CODE ANN. § 16-4-9(c) (2016).

⁸ W. VA. CODE ANN. §§ 16-4-9(d), 16-4-12 (2016).

⁹ W. VA. CODE ANN. §§ 16-4-14, 16-4-15(a) (2016).

¹⁰ W. VA. CODE ANN. § 16-4-16 (2016).

¹¹ *Id.*

¹² *Id.*

¹³ W. VA. CODE ANN. § 16-4-21 (2016).

¹⁴ W. VA. CODE ANN. § 16-4-17 (2016).

¹⁵ *Id.*

Code of West Virginia

*Note: Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

CHAPTER 16, PUBLIC HEALTH

W. VA. CODE ANN. § 16-4-20 (2016) **

Communication of disease; certificate

It shall be unlawful for any person suffering with an infectious venereal disease to perform any act which exposes another person to infection with said disease, or knowingly to infect or expose another person to infection with such disease; and no physician, health officer or other person shall give any certificate showing a person to be free from a venereal disease, but such certificate shall simply state the results of tests and examinations that may have been made, and what tests were made to arrive at the results stated.

W. VA. CODE ANN. § 16-4-26 (2016) **

Offenses generally; penalties; jurisdiction of justices; complaints.

Any person violating any provision of this article, where no other punishment is provided, shall be punished by a fine of not less than ten nor more than one hundred dollars, and may in addition thereto, at the discretion of the judge or justice trying the case, be imprisoned in jail for a period of not to exceed thirty days.

W. VA. CODE ANN. § 16-3C-2 (2016)

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

(h) Mandated testing:

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

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

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

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

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

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

W. VA. CODE ANN. § 16-4-1 (2016)

Diseases designated as sexually transmitted

Sexually transmitted diseases, as designated by the secretary of the department of health and human resources in rules proposed for legislative approval in accordance with the provisions of article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, are hereby declared to be infectious, contagious, communicable and dangerous to the public health. If a conflict exists between a provision of this article and a provision of article three-c [§§ 16-3C-1 et seq.] of this chapter, the provision of article three-c prevails.

W. VA. CODE ANN. § 16-4-2 (2016)

Investigations by local health officers

(a) All municipal and county health officers shall:

- (1) Use every available means to ascertain the existence of, and to investigate all cases of sexually transmitted disease coming within their respective jurisdictions and, when it is necessary, have all cases treated, if they are not already under treatment;
- (2) To ascertain the sources and transmission of the infection; and
- (3) To institute measures for the protection of other persons from infection by the infected person, or from persons reasonably suspected of being so infected, and for the protection of the public health at all times.

W. VA. CODE ANN. § 16-4-4 (2016)

Evidence of infection

The following are prima facie grounds and reasons for suspecting that a person is infected with a sexually transmitted disease:

- (a) Being a person who has been convicted in any court, or before a police judge, or before a magistrate, upon any charge growing out of sexual behavior;
- (b) Being a person reported by a physician as infected with a sexually transmitted disease, where the person is afterwards reported as having failed to return for treatment; and
- (c) Being a person designated in a sexually transmitted disease report as having a sexual exposure to the infected person reported.

W. VA. CODE ANN. § 16-4-6 (2016)

Reports by physicians

(a) Every practicing physician or other person who makes a diagnosis in or treats a case of sexually transmitted disease and every superintendent or manager of a hospital, dispensary or charitable or penal institution in which there is a case of sexually transmitted disease shall make two reports of the case, as follows:

(1) One report shall be made to the local municipal health officer, if the party for whom the diagnosis was made or case treated lives within any municipality having a health officer, and if the municipality has no health officer, or if the party lives outside of a municipality, then to the health officer of the county in which the person lives;

(2) The second report shall be made to the director of health of the state.

W. VA. CODE ANN. § 16-4-7 (2016)

False report of information

Any physician or other person required to make reports of a venereal disease hereunder, or who is required to report the failure of any patient to return for further treatment, who fails or refuses to make any such reports, or who knowingly reports a person under a false or fictitious name or address, or who makes any other statements on any report which he has reason to believe are untrue, shall be guilty of a misdemeanor, and shall be punished as hereinafter provided; and each report that should have been made, and each name that should have been given, and each address that should have been given, or has been wrongfully reported or given, shall be a separate offense; and a second conviction of a physician for failure to comply with any provision of this section shall be sufficient ground and reason for the director of health, upon the recommendation of the medical licensing board [West Virginia Board of Medicine], to revoke the license of such physician. Any person suffering with a venereal disease, whose name is required to be reported hereunder, who gives to the physician or person required to make reports herein required a false or fictitious name or address, or who shall fail or refuse to answer any proper question required to be reported hereunder, or who makes any false statement in answer to any such question, shall be guilty of a misdemeanor, and shall be punished as hereinafter provided.

W. VA. CODE ANN. § 16-4-9 (2016)

Treatment

(a) Every physician or other person who examines or treats a person having a sexually transmitted disease shall instruct the person in measures for preventing the spread of the disease, and to inform him or her of the necessity of taking treatment until cured.

(b) Any person who has been examined and found infected, or is being treated for a sexually transmitted disease as provided by this section, shall follow the directions given by the treating physician or other person and take precautions as are necessary and are recommended. Any person starting to take treatment shall continue the treatment until discharged by the physician or other person treating him or her.

(c) Any infected person who fails to return for further treatment within ten days after the last date set by the physician or other person for the patient to return for further treatment, without lawful excuse therefor, is guilty of a misdemeanor and shall be punished as provided in section twenty-six [§ 16-4-26] of this article.

(d) After the expiration of the ten days provided in subsection (c) of this section, the physician or other person to whom the patient should have returned for treatment shall, unless he or she has knowledge of good reasons why the patient failed to return, make a report of the facts in the case to the local health officer having proper jurisdiction. The local health officer shall at once make an investigation to ascertain why the patient failed to return, and shall take any steps necessary in the matter to protect the public health, including obtaining the arrest, detention and quarantine of the patient.

W. VA. CODE ANN. § 16-4-11 (2016)

Precautions as to exposure to disease

Whenever any attending physician or other person knows or has good reasons to believe that any person having a sexually transmitted disease is conducting himself or herself, or is about to conduct himself or herself, in a manner as to expose other persons to infection, the physician or other person shall at once notify the local health officer having jurisdiction of the facts in the case, giving the name and address of the person. The local health officer, upon receipt of the notice, shall at once cause an investigation to be made to ascertain what should be done in the premises, and may do whatever is necessary to protect the public health.

W. VA. CODE ANN. § 16-4-12 (2016)

Persons not under treatment

Where a venereal disease report shows the person is suffering with such disease in an infectious stage, and is not under treatment, the local health officer shall at once investigate and ascertain whether such person so reported is conducting himself so as to expose others to infection, and shall take such action as is necessary to protect the public health, and may arrest, detain and quarantine such person if necessary.

W. VA. CODE ANN. § 16-4-14 (2016)

Issuance of warrant or order as to custody

Upon receipt of a written report or of any other reliable information by the local health officer that any person infected with a venereal disease in an infectious stage is conducting himself, or herself, or is about to conduct himself or herself, so as to infect others, or expose others to infection; or that a person infected with a venereal disease under treatment; or that any person is a prostitute, or person associating with prostitutes, and is reasonably suspected of being infected, or of conducting himself or herself so as to infect others; or that a person has been convicted in any court or municipality, or before a justice of the peace [magistrate], of an offense growing out of sex immorality; or that a person is being held by any court, municipality, or justice of the peace, pending an examination for a venereal disease; or that a certain person has been reported in a venereal disease report as the source of a venereal disease; or when any other facts are brought to the attention of the local health officer having proper jurisdiction, showing that any person is reasonably suspected of being infected with a venereal disease, or is about to conduct himself or herself so as to infect others, said health officer shall at once issue his warrant or order, if the party be not already in custody, and shall proceed as hereinafter provided

W. VA. CODE ANN. § 16-4-15 (2016)

Form and execution of warrant

(a) Any warrant or order issued pursuant to the provisions of section fourteen [§ 16-4-14] of this article shall be directed to the chief of police if within a municipality, or to the county sheriff if not in a municipality or to any other officer qualified to execute process, directing the officer to apprehend the person mentioned, and to bring him or her before the health officer at a time and place set out in the warrant or order, there to be further dealt with as provided by law. The officer to whom the warrant is directed shall execute the warrant in the same manner as other papers of like character or kind.

(b) Pending a hearing in the matter the officer may for safekeeping, lodge the person apprehended under warrant, in jail or in any other place of detention that has been provided for such persons. The health officer may at his or her discretion and by indorsement (sic) on the warrant at the time of its issuance, direct any other disposition to be made of the person arrested, before trial. The officer executing the warrant shall be guided by the warrant, but may not be held responsible if the person arrested escapes.

W. VA. CODE ANN. § 16-4-16 (2016)

Hearing on warrant; detention

When a party is brought in for a hearing upon arrest under the warrant provided in the preceding section [§ 16-4-15], the health officer shall at once proceed to ascertain the facts in the case, and to this end he may summon witnesses, and administer oaths to such witnesses touching their testimony, and may commit for contempt for failure to answer proper questions, and may, if proper, discharge the party from further custody; but if from the testimony it appears that the party so apprehended is properly classifiable under any subdivision of section four [§ 16-4-4] of this article, touching persons reasonably suspected of being infected with a venereal disease, then such party shall not be released from custody until proof has been made showing the party is already under treatment from a reputable physician, or other person, or until an examination has been made to ascertain whether in fact said party is so infected, and results of all tests and examinations are known, and shall make all orders touching the care, custody, and examination of the party as are reasonably necessary in the premises, and if it is found that said party is infected, then he may make any other orders that may be necessary touching the treatment of such party, and if said party is suffering with one or more venereal diseases in an infectious stage, said party shall not be released from custody until the diseases are past such infectious stage, and said party may be detained or quarantined in any place or institution provided for the purpose, or in the patient's own home if the health officer thinks best; and if no other place is available for such purposes, then such party shall be detained in the city or county jail, as the case may be. And it shall be the duty of every city and every county in the State to take this contingency in hand when they are making up their estimates for taxation and levy purposes and to provide therefor.

W. VA. CODE ANN. § 16-4-17 (2016)

Release from detention

If as a result of the tests and examination provided to be made in the preceding section [§ 16-4-16], it is shown that the party so examined is suffering with a venereal disease, not in an infectious state, said party may be released from further detention upon signing the agreement herein required to be provided, and which agreement shall be signed by the persons who have become noninfectious under treatment and detention, but who have not been cured. All persons signing the agreement mentioned above shall observe its provisions; and any failure to do so shall be deemed a misdemeanor, and shall be punished as hereinafter provided.

W. VA. CODE ANN. § 16-4-21 (2016)

Quarantine

In establishing quarantine for a venereal disease under the provisions of this article, the health officer establishing said quarantine may confine any person infected, or reasonably suspected of having such venereal disease, or any other person liable to spread such disease, to the house or premises in which such infected person lives, or he may require any such person to be quarantined in any other place,

hospital or institution in his jurisdiction that may have been provided. If no such place has been provided, then such person shall be confined in the county or city jail under a quarantine order, and such jails shall always be available for such purposes. But if such person is to be quarantined in his home, then said health officer shall designate the area, room or rooms, that such person is to occupy while so confined, and no one except the attending physician or his immediate attendants shall enter or leave such room or rooms so designated without permission of said health officer, and no one except the local health officer shall terminate said quarantine, and this shall not be done until the diseased person has become noninfectious as determined by thorough clinical tests, or permission has been given by the West Virginia state director of health. If, to make any quarantine effective as provided herein, it becomes necessary, the local health officer may summon a sufficient guard for the enforcement of his orders in the premises. And every person who fails or refuses to obey or comply with any order made by said health officer hereunder, or under any other section concerning quarantine, and every person summoned as a guard who shall, without a lawful excuse therefor, fail or refuse to obey the orders and directions of the health officer in enforcement of said quarantine, shall be guilty of a misdemeanor, and shall be punished as hereinafter provided.

W. VA. CODE ANN. § 16-4-27 (2016)

Additional power and authority of local health officers.

The local health officer, in exercising any of the powers or authority vested in him by sections nine, ten, eleven, twelve, sixteen and twenty-one [§§ 16-4-9 to 16-4-12, 16-4-16 and 16-4-21] of this article with respect to any patient, minor or other person suffering or believed by him to be suffering from any venereal disease or diseases, may forthwith cause any such patient, minor or other person to be delivered into the custody of the state Department of Health for detention and treatment as provided in this article.

W. VA. CODE ANN. § 16-4-29 (2016)

Detention and treatment

There shall be accepted and received into the custody of the state Department of Health at such place or places provided for in the next preceding section [§ 16-4-28], persons found upon investigation and examination to be suffering from venereal diseases as defined in section one [§ 16-4-1] of this article, for the purpose of detention and necessary medical attention and treatment thereat or therein, until found to be and pronounced cured of the venereal disease or diseases from which they are suffering.

W. VA. CODE ANN. § 16-4-30 (2016)

Continuous jurisdiction

The state Department of Health is vested with and given continuous jurisdiction, authority and control over all persons received at and to be detained in or on the place or places provided for in the preceding sections, for all the purposes of this article, and until such persons are found upon proper examination to be and pronounced entirely free from and cured of any venereal disease or symptoms of such disease existing.

West Virginia Code of State Rules

TITLE 64, LEGISLATIVE RULE, WEST VIRGINIA STATE BOARD OF HEALTH

W. VA. CSR § 64-64-4 (2016)

Testing

4.2. Consent Not Required.

4.2.a. Consent for testing is not required and the provisions of W. Va. Code §16-3C-2(b) and Subsection 4.1. of this rule does not apply for the performance of an HIV test:

4.3. Mandated HIV Testing.

4.3.a. The testing of a person charged with or convicted of a sex-related offense as specified in W. Va. Code §16-3C-2(f) does not require consent of that person and is under the direction of the magistrate or circuit court as specified in this subsection. Counseling may be offered.

4.3.b. The magistrate or circuit court having jurisdiction of the initial stages of the criminal prosecution or juvenile delinquency proceeding shall order that an HIV-related test be performed on any person charged with a sexual offense. The testing shall occur as follows:

4.3.b.1. A court shall order a defendant or juvenile charged with an offense set forth in W. Va. Code §16-3C-2(f)(2), to undergo a test for HIV not later than 48 hours after the date on which the initial appearance is made.

4.3.b.1.A. The court shall require the defendant or juvenile respondent to submit to the testing not later than forty-eight hours after the issuance of the order described in paragraph 4.3.b.1 of this subsection, unless good cause for delay is shown upon a request for a hearing: Provided, That no such delay shall cause the HIV-related testing to be administered later than forty-eight hours after the filing of any indictment or information regarding an adult defendant or the filing of a petition regarding a juvenile respondent.

4.3.b.1.B. The prosecuting attorney may, upon the request of the victim or the victim's parent or legal guardian, and with notice to the defendant or juvenile respondent, apply to the court for an order directing that an appropriate human immunodeficiency virus (HIV) test or other STD test, be performed on a defendant charged with or a juvenile subject to a petition involving the offenses of prostitution, sexual abuse, sexual assault or incest.

4.3.b.2. As soon as practical, test results shall be provided to the magistrate court clerk in the county where the defendant or juvenile respondent is charged. If the criminal matter or juvenile delinquency proceeding is then pending before the circuit court, the magistrate clerk shall immediately forward the test results to the circuit clerk. The clerk shall also promptly provide a copy of the test results to: 1) the prosecuting attorney, who shall inform the victim, or parent or legal guardian of the victim; and 2) counsel for the defendant or juvenile respondent.

4.3.b.3. The court may, at any time during which the charge or juvenile petition is pending, order that the defendant or juvenile submit to one or more appropriate tests to determine if he or she is infected with any sexually transmitted disease.

4.3.b.4. The court may also order follow-up tests for HIV as may be medically necessary or appropriate. The results of any such follow-up tests shall be provided as soon as possible in accordance with paragraph 4.3.b.3. of this subdivision. . .

4.3.c. The Commissioner shall request access to all convicted sex offenders who test HIV positive for the purposes of contact notification consultation under the direction of the Commissioner. Contact notification information obtained from the convicted sex offender is protected information and shall be used by the Commissioner solely for referring individuals with a potential HIV exposure to HIV counseling and testing sources.

4.3.d. A person convicted or a juvenile adjudicated of the offenses described in this subsection may be required to undergo HIV-related testing and counseling immediately upon conviction or adjudication: Provided, That if the person convicted or adjudicated has been tested in accordance with the provisions of subdivision 4.3.b. of this subsection, that person need not be retested.

4.3.e. The HIV-related test result obtained from the convicted or adjudicated person is to be transmitted to the court and to the victim or the parent or legal guardian of the victim and after the convicted or adjudicated person is sentenced or disposition ordered for the adjudicated juvenile, the result of the HIV test shall be made part of the court record. If the convicted or adjudicated person is placed in the custody of the Division of Corrections or Regional Jail and Correctional Facility Authority, or if the adjudicated juvenile is placed in the custody of the Division of Juvenile Services or other out-of-home placement, the court shall transmit a copy of the convicted or adjudicated person's HIV-related test results to the appropriate custodial agency. The HIV-related test results shall be closed and confidential and disclosed by the court and the bureau only in accordance with the provisions of this subsection and section three of this article.