

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4623

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[Originating in the House Committee on Health and
Human Resources; Reported on February 20, 2018.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new
2 sections, §16-53-4 and §16-53-5; to amend and reenact §27-1-11 of said code; and to
3 amend and reenact §61-8D-3 of said code, all relating to obtaining substance abuse
4 treatment services; permitting certain testing; requiring reporting to the department;
5 requiring the department to conduct an assessment; permitting a petition for involuntary
6 commitment to be filed in certain circumstances providing rulemaking authority; permitting
7 the department to report abuse and neglect in certain situations; and setting forth a
8 criminal penalty;

Be it enacted by the Legislature of West Virginia:

§16-53-4. EXPOSURE DURING PREGNANCY TO CONTROLLED SUBSTANCES.

1 (a) A health care practitioner may administer a urine drug screen test and/or serum blood
2 test to a pregnant person under his or her care during the antenatal and/or postpartum period.
3 The healthcare practitioner may perform additional testing at his or her discretion.

4 (b) A health care practitioner shall report a positive urine or serum drug screen for a
5 nonprescribed controlled substance within five days to the Department of Health and Human
6 Resources.

7 (c) Upon receipt of a report, the department shall within five days contact the pregnant or
8 postpartum person to schedule an assessment and may refer the pregnant or postpartum person
9 to the appropriate services. The department shall inform the pregnant or postpartum person that
10 refusal to accept services may lead to ineligibility for public assistance.

11 (d) If the pregnant person refuses recommended voluntary services. the department may
12 file an involuntary commitment petition under §27-1-1 et seq.

§16-53-5. NEWBORN EXPOSURE TO CONTROLLED SUBSTANCES.

1 (a) A health care practitioner shall administer a toxicology test through an accepted
2 modality to determine whether there is evidence the newborn has been exposed to a
3 nonprescribed controlled substance. The results may be reported to the department.

4 (b) The department shall immediately refer the postpartum person to the appropriate
5 services. If services are refused, the department may report the results as neglect and abuse
6 under §49-1-1 et seq. of this code.

7 (c) Drug screenings accompanied by a brief intervention and referral and treatments
8 administered pursuant to this section may be provided in a primary care setting including
9 maternity care provider offices and any primary care private medical practice. Counseling for
10 persons testing positive may be provided by a licensed certified masters level provider in any
11 primary care setting, including maternity care provider offices and any private medical practice.
12 The services provided pursuant to this subsection shall be included as a covered benefit under
13 the Bureau of Medical Services. Any negative sanctions contained in this article shall not apply
14 to persons complying with the provisions of this section and section four of this article.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-11. Addiction.

1 (a) As used in this chapter, “addiction” means a maladaptive pattern of substance use
2 leading to clinically significant impairment or distress as manifested by one or more of the
3 following occurring within thirty days prior to the filing of the petition:

4 (1) Recurrent substance use resulting in a failure to fulfill major role obligations at work,
5 school or home, including, but not limited to, repeated absences or poor work performance related
6 to substance use; substance-related absences, suspensions or expulsions from school; or neglect
7 of children, or household;

8 (2) Recurrent use in situations in which it is physically hazardous, including, but not limited
9 to, driving while intoxicated or operating a machine when impaired by substance use;

10 (3) Nonprescribed controlled substance use during pregnancy;

11 ~~(3)~~ (4) Recurrent substance-related legal problems; or

12 ~~(4)~~ (5) Continued use despite knowledge or having persistent or recurrent social or
13 interpersonal problems caused or exacerbated by the effects of the substance.

14 (b) As used in this section, “substance” may mean alcohol, controlled substances as
15 defined in sections two hundred four, two hundred six, two hundred eight and two hundred ten,
16 article two, chapter sixty-a of this code or anything consumed for its psychoactive effect whether
17 or not designed for human consumption.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8D. CHILD ABUSE.

§61-8D-3. Child abuse resulting in injury; child abuse creating risk of injury; criminal penalties.

1 (a) If any parent, guardian or custodian may abuse a child and by such abuse cause such
2 child bodily injury as such term is defined in section one, article eight-b of this chapter, then such
3 parent, guardian or custodian may be guilty of a felony and, upon conviction thereof, may be fined
4 not less than \$100 nor more than \$1,000 and imprisoned in a state correctional facility for not less
5 than one nor more than five years, or in the discretion of the court, be confined in jail for not more
6 than one year.

7 (b) If any parent, guardian or custodian may abuse a child and by such abuse cause said
8 child serious bodily injury as such term is defined in section one, article eight-b of this chapter,
9 then such parent, guardian or custodian may be guilty of a felony and, upon conviction thereof,
10 may be fined not less than \$1,000 nor more than \$5,000 and committed to the custody of the
11 Division of Corrections not less than two nor more than ten years.

12 (c) If a pregnant person exposes a fetus to a nonprescribed controlled substance, and the
13 person refuses to enter treatment, the person may be found guilty of a misdemeanor and, upon
14 conviction thereof, may be fined no more than \$500 and shall be referred to the Department of
15 Health and Human Resources to be assessed for appropriate services or treatment.

16 ~~(e)~~ (d) Any parent, guardian or custodian who abuses a child and by the abuse creates a
17 substantial risk of death or serious bodily injury, as serious bodily injury is defined in section one,
18 article eight-b of this chapter, to the child is guilty of a felony and, upon conviction thereof, may
19 be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than one
20 nor more than five years, or both.

21 ~~(d)~~ (e) (1) If a parent, guardian or custodian who has not previously been convicted under
22 this section, section four of this article or a law of another state or the federal government with the
23 same essential elements abuses a child and by the abuse creates a substantial risk of bodily
24 injury, as bodily injury is defined in section one, article eight-b of this chapter, to the child is guilty
25 of a misdemeanor and, upon conviction thereof, may be fined not less than \$100 nor more than
26 \$1,000 or confined in jail not more than six months, or both.

27 (2) For a second offense under this subsection or for a person with one prior conviction
28 under this section, section four of this article or a law of another state or the federal government
29 with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor
30 and, upon conviction thereof, may be fined not more than \$1,500 and confined in jail not less than
31 thirty days nor more than one year, or both.

32 (3) For a third or subsequent offense under this subsection or for a person with two or
33 more prior convictions under this section, section four of this article or a law of another state or
34 the federal government with the same essential elements, the parent, guardian or custodian is
35 guilty of a felony and, upon conviction thereof, may be fined not more than \$3,000 and imprisoned
36 in a state correctional facility not less than one year nor more than three years, or both.

37 ~~(e)~~ (f) Any person convicted of a misdemeanor offense under this section:

38 (1) May be required to complete parenting classes, substance abuse counseling, anger
39 management counseling, or other appropriate services, or any combination thereof, as
40 determined by Department of Health and Human Resources, Bureau for Children and Families

41 through its services assessment evaluation, which may be submitted to the court of conviction
42 upon written request;

43 (2) May not be required to register pursuant to article thirteen, chapter fifteen of this code;

44 and

45 (3) May not, solely by virtue of the conviction, have their custody, visitation or parental
46 rights automatically restricted.

47 ~~(f)~~ (g) Nothing in this section may preclude a parent, guardian or custodian from providing
48 reasonable discipline to a child.

NOTE: The purpose of this bill is to provide a process for pregnant and postpartum persons to receive substance use treatment.

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