

Tennessee

Analysis

People living with HIV (PLHIV) may face criminal penalties for engaging in sexual activities without disclosing their HIV status.

In Tennessee, it is against the law for a PLHIV who knows their HIV status to engage in “intimate contact” with another without first disclosing their HIV status.¹ Intimate contact is defined as contact between the body of one person and the bodily fluid of another person in a manner that presents a significant risk of HIV transmission.² Because the statute is silent on condom use, “[i]t is not clear if an individual who engages solely in condom-protected sex could be charged with violating [the law].”³ Actual transmission of HIV is not necessary for prosecution.⁴ Violating this statute is a Class C felony, punishable by three to fifteen years’ imprisonment and a fine of up to \$10,000.⁵ It is an affirmative defense to prosecution if it can be demonstrated by a preponderance of the evidence that the person exposed to HIV was aware of the defendant’s status, knew that the activity could result in HIV transmission, and provided “advance consent” to the activity.⁶ Proving disclosure can be challenging because there is rarely documentation or other incontrovertible evidence of disclosure, with the result that the defendant and complainant’s versions of the events are pitted against one another.

In *State v. Smith*, there was a discrepancy between the defendant’s and complainant’s evidence regarding whether or not the defendant had disclosed his HIV status.⁷ The defendant, who was charged with criminal exposure to HIV, among other charges, testified that he disclosed his HIV status and assumed the complainant had used a condom before they engaged in anal sex.⁸ The defendant maintained that he discovered later that the complainant had not used the condom.⁹ The complainant testified otherwise, alleging that though the sex was consensual, the defendant never disclosed his HIV status and the complainant only found out the information from a friend afterwards.¹⁰

Tennessee’s criminal exposure statute requires that there be “exposure” of a person to the bodily fluids of a PLHIV and that said exposure poses a significant risk of transmission. However, the statute does

¹ TENN. CODE ANN. § 39-13-109(a)(1) (2016).

² § 39-13-109(b)(2).

³ Carol L. Galletly & Zita Lazzarini, *Charges for Criminal Exposure to HIV and Aggravated Prostitution Filed in Nashville, Tennessee Prosecutorial Region 2000-2010*, 17 AIDS & BEHAV. 2624, 2625 (2013).

⁴ TENN. CODE ANN. § 39-13-109(d)(1) (2016).

⁵ TENN. CODE ANN. §§ 39-13-109(e)(1), 40-35-111(b)(3) (2016)

⁶ TENN. CODE ANN. § 39-1309(c)(1) (2016).

⁷ 2008 Tenn. Crim. App. LEXIS 159, *2-3 (Tenn. Crim. App. 2008).

⁸ *Id.* at *3-4.

⁹ *Id.* at *4.

¹⁰ *Id.*

not define the scope of such exposure, and also fails to define “significant risk.”¹¹ In *State v. Bonds*, the Tennessee Court of Appeals concluded that exposure did not require actual contact with or transfer of bodily fluids—rather, the prosecutor need only establish that the “defendant subjected a victim to risk of contact with bodily fluids in a manner that would present a significant risk of HIV transmission.”¹² The defendant in *Bonds* was sentenced to six years for criminal exposure of HIV and an additional 25 years for aggravated rape.¹³ On appeal, the defendant argued he never “exposed” the complainant to HIV within the meaning of the statute because there was no proof that there had been any exchange of bodily fluids during the commission of the crime.¹⁴

The court determined because the defendant knew his HIV status and anally raped the victim, the defendant “made his bodily fluids accessible to the victim, in a manner that presented a significant risk of HIV transmission.”¹⁵ After reviewing previous cases of HIV exposure in Tennessee, the court in *Bonds* found successful prosecutions hinged on the fact that the sex was unprotected, increasing the possible “risk of contact with bodily fluids.”¹⁶ However, the court also noted that such a risk was “substantially more prevalent” in instances of unprotected sex relative to sex where some kind of prophylactic is used.¹⁷ This reasoning suggests that use of a condom could potentially operate as a defense to a claim of HIV exposure.

In 2014, the Supreme Court of Tennessee clarified the meaning of “significant risk” in *State v. Hogg*.¹⁸ The defendant had been convicted of seven counts of criminal exposure to HIV, amongst other crimes, and challenged the sufficiency of the evidence supporting his conviction on appeal.¹⁹ Specifically, he argued that his conduct did not pose a “significant risk” of transmitting HIV, as required by the statute.²⁰ The court rejected the defendant’s argument that substantial risk required “risks so great they are almost certain to materialize if nothing is done.”²¹ Instead, the court held that significant risk requires a possibility of HIV transmission that is “more definite than a faint, speculative risk, as shown by expert medical proof.”²² The court explained that this determination requires a fact-specific inquiry, including an assessment of both the severity of consequences and the likelihood that HIV will be transmitted.²³

Applying this standard, and relying on testimony by an infectious disease physician, the court found that there was insufficient evidence to support the defendant’s conviction for three of the seven counts of criminal exposure to HIV. Analyzing each activity in turn, the court concluded that the defendant licking the complainant’s anus, performing oral sex on the complainant, and manually manipulating the

¹¹ TENN. CODE ANN. § 39-13-109(b)(2)

¹² *State v. Bonds*, 189 S.W.3d 249, 258 (Tenn. Crim. App. 2005).

¹³ *Id.* at 251.

¹⁴ *Id.* at 257.

¹⁵ *Id.* at 258-59.

¹⁶ *Id.* at 259

¹⁷ *Id.*

¹⁸ 448 S.W.3d 877 (Tenn. 2014).

¹⁹ *Id.* at 887.

²⁰ *Id.*

²¹ *Id.* at 887-88 (citing *Brown v. Budz*, 398 F.3d 904, 911 (7th Cir. 2005)).

²² *Id.* at 888-89.

²³ *Id.* at 888.

complainant's penis all entailed a level of risk that was insufficient for conviction.²⁴ The court affirmed the other four counts finding that the defendant's performing unprotected anal sex on the complainant, digitally penetrating the complainant's anus, and the complainant's performance of oral sex on the defendant all posed more than a faint, speculative risk of HIV transmission.²⁵ With respect to digital penetration, the court reasoned that since it occurred following other sexual activity, a jury could infer that there was pre-ejaculate on the defendant's finger that was capable of transmitting HIV.²⁶

Other prosecutions of HIV exposure involving "intimate contact" in Tennessee appear to be primarily limited to cases where PLHIV did not disclose their HIV status and a condom or other protection was not used during sexual intercourse. Additional prosecutions of criminal exposure to HIV involving intimate contact include:

- In September 2016, a PLHIV was charged with two counts of criminal exposure to HIV, in addition to other charges, for having sex with a minor without disclosing his HIV status.²⁷
- In April 2016, a PLHIV was charged with criminal exposure to HIV after he had unprotected sex without disclosing his HIV status to his sexual partner.²⁸
- In September 2015, a 41-year-old PLHIV was charged with criminal exposure to HIV after having sex without disclosing his status to a sexual partner, who subsequently tested positive for HIV.²⁹
- In July 2014, a 34-year-old PLHIV was charged with criminal exposure to HIV after a single sexual encounter with a partner to whom he allegedly did not disclose his HIV status.³⁰
- In September 2013, a man was arrested for criminal exposure to HIV after his mistress, with whom he had been having unprotected sex, discovered his HIV status from his wife.³¹
- In October 2010, a PLHIV was charged with four counts of criminal exposure of HIV after allegedly having sex with at least two women.³²
- A 24-year-old PLHIV was sentenced to 14 years' imprisonment for HIV exposure and an additional six years' imprisonment for statutory rape for having unprotected sex with a 14-year-old.³³ The defendant did not disclose his HIV status.³⁴

²⁴ *Id.* at 889-890.

²⁵ *Id.*

²⁶ *Id.* at 889.

²⁷ Mark Green, *Dance coach in Tennessee arrested for statutory rape, criminal exposure to HIV*, Fox13, Sept. 17, 2016, available at <http://fox13now.com/2016/09/17/dance-coach-in-tennessee-arrested-for-statutory-rape-criminal-exposure-to-hiv/>.

²⁸ *Man accused of exposing others to HIV*, LOCALMEMPHIS.COM, April 15, 2016, available at <http://www.localmemphis.com/news/local-news/man-accused-of-exposing-others-to-hiv>.

²⁹ Yolanda Jones, *Man accused of knowingly transmitting HIV to woman*, COMMERCIAL APPEAL, Sept. 10, 2015, available at <http://www.pressreader.com/usa/the-commercial-appeal/20150911/282561606953850>.

³⁰ Nichole Manna, *Man accused of criminal exposure to HIV*, JACKSON SUN, July 2, 2015, available at <http://www.jacksonsun.com/story/news/local/2014/07/03/man-accused-of-criminal-exposure-to-hiv/12120837/>.

³¹ Beth Burger, Red Bank, Tenn., man accused of exposing woman to HIV, TIMES FREE PRESS, Sept. 18, 2013, available at <http://www.timesfreepress.com/news/2013/sep/18/red-bank-man-accused-of-exposing-woman-to-hiv/?news>.

³² Claire Galofaro, "Flipper" Sensabaugh indicted on charges of criminal exposure to HIV, HERALDCOURIER.COM, Oct. 29, 2010, available at http://www.heraldcourier.com/news/flipper-sensabaugh-indicted-on-charges-of-criminal-exposure-to-hiv/article_35f0b597-e42e-5e71-8c55-c229709c992c.html.

³³ *State v. Harvey*, 2002 Tenn. Crim. App. LEXIS 478, *1-2 (Tenn. Crim. App. 2002)

³⁴ *Id.* at *5.

- In 2000, a PLHIV pled guilty to 22 counts of criminal exposure to HIV and was sentenced to 26 years and six months' imprisonment.³⁵ The defendant allegedly engaged in unprotected sex with multiple men without disclosing her HIV status.³⁶ Though the defendant claimed that she told her partners about her HIV status, the complainants testified otherwise.³⁷ The men maintained that the defendant purposefully denied her HIV status and they did not use condoms.³⁸ After ten years' imprisonment the defendant was released in 2008 and remains on parole until 2020.³⁹
- In 1999 a 31-year-old PLHIV pled guilty to criminal exposure to HIV and was sentenced to five concurrent four-year sentences.⁴⁰ The defendant engaged in five consensual, unprotected sexual encounters with the same female and did not disclose his status.⁴¹
- In October 1999, a PLHIV pled guilty to nine counts of criminal exposure to HIV and three counts of statutory rape.⁴² He was sentenced to 17 years' imprisonment.⁴³ The defendant did not disclose his HIV status and, when asked by his sexual partners, he denied that he had HIV.⁴⁴ At least one of his partners tested positive for HIV.⁴⁵

Though most of the prosecutions for HIV exposure in Tennessee involve unprotected sexual activity without disclosure of HIV status, there have been multiple cases of arrests and prosecutions for criminal exposure to HIV that presented only a remote risk of HIV transmission:

- In September 2016, a 27-year-old woman was charged with criminal exposure to HIV and assault after she cut herself and touched another woman with her bloodied hand during an altercation.⁴⁶
- In August 2016, a 38-year-old woman was charged with criminal exposure to HIV after she allegedly bit a police officer during a traffic stop.⁴⁷
- In May 2016, a 48-year old woman was charged with three counts of criminal exposure to HIV for deliberately coughing and spitting at store employees following a shoplifting incident.⁴⁸
- In June 2013, a man was arrested for criminal exposure to HIV when he spit on a hospital worker who was trying to restrain him.⁴⁹ He was in the hospital for treatment of seizures.⁵⁰

³⁵ *State v. Wiser*, 2000 Tenn. Crim. App. LEXIS 852, *1-2 (Tenn. Crim. App. 2000).

³⁶ *Id.* at *5-12.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Woman who spread HIV leaves prison*, TIMES GAZETTE, Dec. 31, 2008, available at <http://www.t-g.com/story/1489830.html>.

⁴⁰ *State v. Bennett*, 1999 Tenn. Crim. App. LEXIS 762, *1-2 (Tenn. Crim. App. 1999).

⁴¹ *Id.* at *2-3.

⁴² 2 *State v. Jones*, 2001 Tenn. Crim. App. LEXIS 365, *1-2 (Tenn. Crim. App. 2001)

⁴³ *Id.* at *2.

⁴⁴ *Id.* at *4.

⁴⁵ *Id.*

⁴⁶ Collins Parkers, *Woman charged with scheme to give another woman HIV*, WDEF.COM, Sept. 21, 2016, available at <http://www.wdef.com/2016/10/21/woman-charged-scheme-give-another-woman-hiv/>.

⁴⁷ Stephanie Norton, *Woman charged with criminal exposure to HIV after allegedly biting Memphis police officer*, COMMERCIAL APPEAL, Aug. 4, 2016, available at <http://archive.commercialappeal.com/news/crime/woman-charged-with-criminal-exposure-to-hiv-after-allegedly-biting--memphis-police-officer-3942cf01--389200481.html>.

⁴⁸ Erik Avancier, *Rossville woman charged with criminal exposure to HIV*, WDEF.COM, May 8, 2016, available at <http://www.wdef.com/2016/05/08/rossville-woman-charged-criminal-exposure-hiv/>.

⁴⁹ *Man With HIV Arrested After He Spits On Hospital Worker*, THE CHATTANOOGAN, June 28, 2013, available at <http://www.chattanooga.com/2013/6/28/254206/Man-With-HIV-Arrested-After-He-Spits.aspx>.

⁵⁰ *Id.*

- In November 2010, a man was charged with aggravated assault and criminal exposure of another to HIV for allegedly spitting on a detention officer.⁵¹
- From January 1, 2000 to December 31, 2010, “[e]ven of the 27 arrests for HIV exposure (41%) [in the Nashville prosecutorial region] involved scratching, spitting (some with saliva, some with saliva mixed with blood), biting, or flinging or splattering blood.”⁵²

In 2012, a criminal appeals court reversed a conviction for criminal exposure to HIV and modified the sentence to attempt to expose one to HIV.⁵³ The court found that in order for the State to establish that the defendant’s spitting into the complainant’s face posed a significant risk of HIV transmission, the State must provide expert medical testimony because a layperson does not have the necessary medical knowledge to make this determination.⁵⁴

PLHIV engaging in sex work face enhanced criminal penalties.

It is a Class C felony, punishable by three to 15 years in prison, for persons who know their HIV status to engage in acts of prostitution,⁵⁵ defined as engaging in or offering to engage in sexual activity as a business, being an inmate of a house of prostitution, or loitering in a public place for the purpose of being hired to engage in sexual activity.⁵⁶ Actual transmission of HIV is not required for prosecution. A conviction for prostitution is generally a Class B misdemeanor punishable by no more than a six-month sentence and/or a \$500 fine, but a PLHIV faces a 30-times greater penalty for the same offense.⁵⁷ A 2009 article reported that approximately 39 women in Tennessee had been convicted of aggravated prostitution.⁵⁸

Tennessee law does not require any physical contact for a conviction of aggravated prostitution.⁵⁹ Sex workers have been charged with aggravated prostitution for offering or arranging to perform sex acts on undercover police officers.⁶⁰ Even if intimate contact did occur, it is not required that the activity pose significant risk of HIV transmission for conviction. For instance, a PLHIV engaged in sex work was charged with aggravated prostitution in December 2015 for performing oral sex on a client,⁶¹ an activity that the CDC classifies as posing a “low” risk of HIV transmission.⁶² On the face of the statute, it would

⁵¹ *Inmate charged with exposing jailer to HIV*, WKRN.COM, Nov. 8, 2010, available at <http://wkrn.com/2010/11/08/inmatecharged-with-exposing-jailer-to-hiv/>.

⁵² Galletly & Lazzarini, *supra* note 3, at 2627

⁵³ *State v. Ingram*, 2012 Tenn. Crim. App. LEXIS 887, *2 (Tenn. Crim. App. 2012).

⁵⁴ 4 *Id.* at *13-14.

⁵⁵ TENN. CODE ANN. §§ 39-13-516, 40-35-111(b)(3) (2016)

⁵⁶ TENN. CODE ANN. § 39-13-512(6) (2016).

⁵⁷ TENN. CODE ANN. §§ 39-13-513(b)(1), (§ 40-35-111(e)(2) (2016)

⁵⁸ J.J. Stambaugh, *HIV-positive Knoxville woman a walking felony*, KNOXNEWS.COM, June 30, 2009, available at <http://archive.knoxnews.com/news/local/hiv-positive-knoxville-woman-a-walking-felony-ep-409876648-359335371.html>.

⁵⁹ Galletly & Lazzarini, *supra* note 3, at 2626.

⁶⁰ *Metro Detectives Arrest Prostitute Who Knowingly Has HIV*, FOX17.COM, Dec. 9, 2015, available at <http://fox17.com/news/local/metro-detectives-arrest-prostitute-who-knowingly-has-hiv>; *Woman with HIV arrested for soliciting officer*, WKRN.COM, Oct. 9, 2014, available at <http://wkrn.com/2014/10/09/woman-with-hiv-arrested-for-soliciting-officer/>.

⁶¹ Erik Avancier, *HIV positive prostitute busted again; customers advised to get tested*, WDEF.COM, Dec. 9, 2016, available at <http://www.wdef.com/2015/12/09/hiv-positive-prostitute-busted-again-customers-advised-to-get-tested/>.

⁶² CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission Risk, Estimated Per-Act Probability of Acquiring HIV from an Infected Source*, by Exposure Act (Dec. 4, 2015), available at <http://www.cdc.gov/hiv/policies/law/risk.html> (last visited Nov. 28, 2016).

also be irrelevant whether condoms or other protection were used, or if the defendant had a low viral load.

On December 1, 2023, the U.S. Department of Justice (DOJ) announced that the enforcement of Tennessee’s aggravated prostitution law violates the Americans with Disabilities Act (ADA) by discriminating against people living with HIV, a protected disability.⁶³ The DOJ found that the aggravated prostitution law impermissibly treats actions by PLHIV as felonies instead of misdemeanors, solely based on the person’s HIV status. As the named state officials have not issued a response to the findings or implemented the proposed remedial measures, PLHIV engaging in sex work remain threatened by the law.

A person who is convicted of aggravated prostitution is required to register as a sex offender.⁶⁴

A person convicted of aggravated prostitution when the offense occurred prior to 2010 is classified as a “sex offender” and must register as an offender for a minimum of 10 years.⁶⁵ A person convicted of aggravated prostitution when the offense occurred after 2010 is classified as a “violent sex offender” and must register as an offender for the remainder of their life.⁶⁶ Sex offender registration is accompanied by a variety of reporting requirements and restrictions on where an individual may live or work.⁶⁷

In its December 2023 letter, the DOJ also found that the aggravated prostitution law discriminates against PLHIV by subjecting them to lifetime sex offender registration solely based on their HIV status.⁶⁸ As the named state officials have not issued a response to the findings or implemented the proposed remedial measures, PLHIV convicted of aggravated prostitution are still required to register as a sex offender.

A person’s HIV status may also be considered as an aggravating factor in sentencing.

A sentencing court may consider defendant’s HIV status in sentencing for the crimes of aggravated rape, rape, rape of a child, or statutory rape.⁶⁹ In order to sustain a sentence enhancement under this provision, defendants must have known or should have known their HIV status during the commission

⁶³ U.S. DEP’T OF JUSTICE, *The United States’ Findings and Conclusions Based on its Investigation of the State of Tennessee and the Shelby County District Attorney General’s Office under Title II of the Americans with Disabilities Act*, DJ No. 204-70-85 (Dec. 1, 2023), available at https://www.justice.gov/d9/2023-12/2023.11.30_tn_hiv_lof_final.pdf.

⁶⁴ In 2023, TENN. CODE ANN. 40-39-202 was amended by deleting subsection (31)(N) in its entirety. The law removes criminal exposure to HIV from the list of violent sexual offenses when previously a conviction required an individual to register as a sex offender for life.

⁶⁵ TENN. CODE ANN. §§ 40-39-202(19), 40-39-202(20)(A)(iii), 40-39-207(a)(1) (2016) (A person required to register as a sex offender because of a conviction for aggravated prostitution may petition a court for earlier termination of registration requirements if she/he is the victim of a human trafficking offense, a sexual offense or a domestic abuse. § 40-39-218 (2016)).

⁶⁶ TENN. CODE ANN. §§ 40-39-202(31)(X); 40-39-202(30); 40-39-207(g)(2)(b).

⁶⁷ TENN. CODE ANN. §§ 40-39-203, 40-39-211(a)(2) (2016).

⁶⁸ U.S. DEP’T OF JUSTICE, *The United States’ Findings and Conclusions Based on its Investigation of the State of Tennessee and the Shelby County District Attorney General’s Office under Title II of the Americans with Disabilities Act*, DJ No. 204-70-85 (Dec. 1, 2023), available at https://www.justice.gov/d9/2023-12/2023.11.30_tn_hiv_lof_final.pdf.

⁶⁹ TENN. CODE ANN. § 40-35-114(21) (2016).

of the offense.⁷⁰ In *State v. Banks*, the Tennessee Court of Criminal Appeals vacated a trial court's imposition of consecutive sentencing for a defendant convicted of aggravated kidnapping and aggravated rape because there was no trial court finding that the defendant knew his HIV status during the offense.⁷¹ The defendant was originally sentenced to two 23-year consecutive sentences, for a total of 46 years' imprisonment.⁷²

Donating blood, organs, tissue, semen, or other body fluids by PLHIV is prohibited.

PLHIV must not donate or sell blood, semen, or any other body part meant for transfer to another person.⁷³ Actual transmission of HIV is not necessary for a conviction and a violation of this statute could result in up to 15 years imprisonment.⁷⁴ PLHIV may be criminally prosecuted for sharing needles. PLHIV who know their HIV status may be criminally liable for providing another person with any non-sterile equipment used for injecting drugs.⁷⁵ Actual transmission of HIV is not necessary for a conviction.⁷⁶

PLHIV may be isolated or quarantined by the Department of Health.

The Department of Health has the authority to isolate or quarantine a PLHIV if, after attempting other "appropriate measures," the person continues to pose a "direct threat of significant risk to the health and safety of the public."⁷⁷ Neither "appropriate measures" nor a "direct threat of significant risk" is defined in the statute. It is not clear what kinds of procedural protections, if any, are extended to a PLHIV who is subject to these restrictive measures. It is a Class E felony, punishable by one to six years' imprisonment and/or a \$3000 fine, for a person who has been subject to restrictive measures because of HIV status to intentionally escape quarantine or isolation.⁷⁸

Public health officials are empowered to mandate examination, treatment and quarantine/isolation of a person who is known or suspected of having an STI.

A state, county, district or municipal health officer may examine a person who is reasonably suspected of being infected with a communicable STI on the basis of "known clinical or epidemiological evidence."⁷⁹ However, absent any such evidence, a person's loitering about or residing in a house of prostitution is sufficient to establish a reasonable suspicion of infection.⁸⁰ Sexually transmitted disease is defined as "any disease that is transmitted primarily through sexual practices and is identified in rules and regulations of the department."⁸¹ Upon a finding that a person has an STI of a communicable

⁷⁰ Id.

⁷¹ 2010 Tenn. Crim. App. LEXIS 314, *6-7, 15-16 (Tenn. Crim. App. 2010).

⁷² Id. at *6-7.

⁷³ TENN. CODE ANN. § 39-13-109(a)(2) (2016)

⁷⁴ TENN. CODE ANN. § 40-35-111(b)(3) (2016).

⁷⁵ TENN. CODE ANN. § 39-13-109(a)(3) (2016).

⁷⁶ Galletly & Lazzarini, *supra* note 3, at 2626.

⁷⁷ TENN. CODE ANN. § 39-13-108(b) (2016).

⁷⁸ Id

⁷⁹ TENN. CODE ANN. § 68-10-104(a)(1)(2016).

⁸⁰ TENN. CODE ANN. § 68-10-104(a)(2)(2016).

⁸¹ TENN. CODE ANN § 68-10-101(4)(2016).

nature, the health officer may require that person to undergo medical treatment until non-infectious.⁸² The health officer can also elect to isolate or quarantine a person with an STI if they judge it “necessary to protect the public health.”⁸³ Case law demonstrates that Tennessee has employed quarantine as a measure to combat “venereal disease.”⁸⁴ Only a health officer has the authority to establish or terminate isolation and/or quarantine for a person with an STI—the decision is made on the basis of “available medical and epidemiological information concerning the STD diagnosis, modes of transmission, available treatment, and the necessity of the protection of the public health.”

Should an individual refuse to submit to the initial examination, a health officer may seek an immediate warrant for their arrest from a magistrate or judge, which is issued if there is a showing of reasonable cause on the basis of clinical and epidemiological evidence.⁸⁵ If the court determines after an examination and hearing that the person is infected with an STI, then it may commit the person to an isolation hospital until the person is rendered non-infectious or reaches a stage where infectious relapse will not occur.⁸⁶ A person may appeal the decision of the court, but the appeal will not stay the commitment to an isolation facility, which occurs immediately.⁸⁷

Exposing another person to an STI may be punished with a misdemeanor.

It is a violation of law punishable by up to 30 days in jail and a \$50 fine for any person infected with an STI to expose another person to infection.⁸⁸ The statute does not require actual transmission, and, unlike the law criminalizing HIV exposure, it does not specify the need for “significant risk” of transmission.

Public health officials and others may disclose confidential medical information related to HIV and other STIs under various circumstances.

Records relating to known or suspected cases of STI are generally confidential. However, information may be released to “appropriate state agencies” in order to enforce laws and regulations governing the control and treatment of STIs.⁸⁹ This has been interpreted by the Tennessee Office of the Attorney General to authorize release of records concerning HIV status to a district attorney if they are considering or pursuing prosecution of a PLHIV for intentionally escaping quarantine/isolation or for any other violation of the public health code provisions governing control of STIs.⁹⁰ Otherwise, release is only authorized with a court order obtained during a legal proceeding under the following conditions: the information sought is material, relevant, and reasonably calculated to be admissible as evidence; the probative value of the evidence outweighs the interest in maintaining its confidentiality; the merits of the litigation cannot be fairly resolved absent the disclosure and; the disclosure necessary to avoid

⁸² TENN. CODE ANN. § 68-10-104(a)(1)(2016).

⁸³ *Id.*

⁸⁴ See, e.g., *State ex. rel. Kennedy v. Head*, 182 Tenn. 249, 250-52 (Tenn. 1945).

⁸⁵ TENN. CODE ANN. §§ 68-10-110(a), 68-10-110(b) (2016).

⁸⁶ TENN. CODE ANN. § 68-10-110(f) (2016).

⁸⁷ TENN. CODE ANN. §§ 68-10-110(g), 68-10-110(h) (2016).

⁸⁸ TENN. CODE ANN. §§ 40-35-111(e)(3), 68-10-107 (2016).

⁸⁹ TENN. CODE ANN. § 68-10-113(3) (2016).

⁹⁰ TENN. OFFICE OF THE ATTORNEY GENERAL, Opinion No. 01-146: Records Concerning HIV Patients, Sept. 14, 2001, pp. 4-5, available at <https://www.tn.gov/assets/entities/attorneygeneral/opinions/op01-146.pdf>.

substantial injustice to the party seeking it and, either the disclosure will result in no significant harm to the person examined or treated, or it would be substantially unfair not to require the disclosure.⁹¹

Despite the general requirement for confidentiality, if a person has a reasonable belief that an individual has knowingly exposed someone else to HIV, they may inform the victim of the exposure without incurring any liability.⁹² This provision permits a health care provider, or anyone else, to disclose a person's HIV status to third parties, which can potentially subject the person to criminal liability and/or restrictive measures such as quarantine or isolation.⁹³ What constitutes an appropriate basis for "reasonable belief" is not specified in the statute.

Criminal exposure to HIV removed from the list of offenses requiring sex offender registration.

In 2023, § 40-39-202 was amended by deleting subdivision (31)(N) in its entirety. The repeal removed criminal exposure to HIV from the list of violent sexual offenses, thereby eliminating the requirement for sex offender registration and continued registration. Prior to the change in the law, persons convicted of this crime were required to register as violent sex offenders for the remainder of their lives. However, the new amendment does not remove aggravated prostitution from the list of violent sexual offenses requiring registration as a sex offender under § 40-39-202.

Under the new law, § 40-39-207(a) was amended to add a subdivision outlining the process for individuals previously convicted of criminal exposure to HIV to request their name be removed from the sex offender registry. Anyone convicted of criminal exposure to HIV prior to July 1, 2023, may also file a request to terminate registration requirements with the Tennessee Bureau of Investigation (TBI). Those registered as sex offenders for a conviction of criminal exposure to HIV who wish to have their names removed can do so through a fingerprint-based state and federal criminal history check process. The process determines whether additional convictions exist for sexual offenses or violent sexual offenses. If the requirements of the amendment are satisfied, TBI will remove the individual from the registry and notify them that they are no longer required to comply with the registration requirements.

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 in your specific situation and, as such, it should not be used as a substitute for legal advice.*

⁹¹ TENN. CODE ANN. § 68-10-113(6) (2016).

⁹² TENN. CODE ANN. § 68-10-115 (2016).

⁹³ TENN. CODE ANN. §§ 39-13-108, 39-13-109(a) (2016).

Code of Tennessee

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.

TITLE 39, CRIMINAL OFFENSES

TENN. CODE ANN. § 39-13-108

Rules and regulations regarding transmission of HIV — Quarantine — Violations

a) The department of health, acting pursuant to § 68-10-109, shall promulgate rules regarding transmission of human immunodeficiency virus (HIV). The rules shall include specific procedures for quarantine or isolation, as may be necessary, of any person who clearly and convincingly demonstrates willful and knowing disregard for the health and safety of others, and who poses a direct threat of significant risk to the health and safety of the public regarding transmission of HIV.

(b) The department is authorized to quarantine or isolate a person within a secure facility, after exercising other appropriate measures, if the person continues to pose a direct threat of significant risk to the health and safety of the public. Any person so quarantined or isolated within a secure facility, who intentionally escapes from the facility, commits a Class E felony.

TENN. CODE ANN. § 39-13-109

Criminal exposure to HIV, HBV, HCV — Defenses — Penalty

(a) A person commits the offense of criminal exposure of another to human immunodeficiency virus (HIV), to hepatitis B virus (HBV), or to hepatitis C virus (HCV) when, knowing that the person is infected with HIV, with HBV, or with HCV, the person knowingly:

- (1) Engages in intimate contact with another;
- (2) Transfers, donates, or provides blood, tissue, semen, organs, or other potentially infectious body fluids or parts for transfusion, transplantation, insemination, or other administration to another in any manner that presents a significant risk of HIV, HBV or HCV transmission; or
- (3) Dispenses, delivers, exchanges, sells, or in any other way transfers to another any non sterile intravenous or intramuscular drug paraphernalia.

(b) As used in this section:

- (1) “HIV” means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome;
- (2) “Intimate contact with another” means the exposure of the body of one person to a bodily fluid of another person in any manner that presents a significant risk of HIV, HBV or HCV transmission; and
- (3) “Intravenous or intramuscular drug paraphernalia” means any equipment, product, or material of any kind that is peculiar to and marketed for use in injecting a substance into the human body.

(c)

(1) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the person exposed to HIV knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and gave advance consent to the action with that knowledge.

(2) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the person exposed to HBV knew that the infected person was infected with HBV, knew that the action could result in infection with HBV, and gave advance consent to the action with that knowledge.

(3) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the person exposed to HCV knew that the infected person was infected with HCV, knew that the action could result in infection with HCV, and gave advance consent to the action with that knowledge.

(d)

(1) Nothing in this section shall be construed to require the actual transmission of HIV in order for a person to have committed the offense of criminal exposure of another to HIV.

(2) Nothing in this section shall be construed to require the actual transmission of HBV in order for a person to have committed the offense of criminal exposure to HBV.

(3) Nothing in this section shall be construed to require the actual transmission of HCV in order for a person to have committed the offense of criminal exposure to HCV.

(e)

(1) Criminal exposure of another to HIV is a Class C felony.

(2) Criminal exposure of another to HBV or HCV is a Class A misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000), restitution to the victim or victims, or both a fine and restitution. The clerk shall transmit all money collected from a fine imposed for a violation of this section to the criminal injuries compensation fund created pursuant to § 40-24-107. In addition, a victim of criminal exposure HBV or HCV may maintain an action for the expenses and the actual loss of service resulting from such exposure.

TENN. CODE ANN. § 39-13-516

Aggravated prostitution

(a) A person commits aggravated prostitution when, knowing that such person is infected with HIV, the person engages in sexual activity as a business or is an inmate in a house of prostitution or loiters in a public place for the purpose of being hired to engage in sexual activity.

(b) For the purposes of this section, “HIV” means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

(c) Nothing in this section shall be construed to require that an infection with HIV has occurred in order for a person to have committed aggravated prostitution.

(d) Aggravated prostitution is a Class C felony.

TENN. CODE ANN. § 39-13-521

HIV testing of persons convicted of sexual offenses Release of test results.

(a) When a person is initially arrested for allegedly violating § 39-13-502, § 39-13-503, § 39-13-506, or § 39-13-522, that person shall undergo human immunodeficiency virus (HIV) testing immediately. A licensed medical laboratory shall perform the test at the expense of the arrestee. The arrestee shall obtain a confirmatory test when necessary. The arrestee shall be referred to appropriate counseling.

A licensed medical laboratory shall perform the test at the expense of the person arrested. The person arrested shall obtain a confirmatory test when necessary and shall be referred to appropriate counseling.

(b)

(1) The licensed medical laboratory shall report the results of the HIV test required under this section immediately to the victim.

(2) The result of any HIV test required under this section is not a public record and shall be available only to:

(A) The victim;

(B) The parent or guardian of a minor or incapacitated victim;

(C) The attending physician of the person tested and of the victim;

(D) The department of health;

(E) The department of correction;

(F) The person tested; and

(G) The district attorney general prosecuting the case.

(c) If the arrestee is convicted, the court shall review the HIV test results prior to sentencing.

(d)

(1) For purposes of this section, "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

(2) For purposes of this section, "HIV test" means a test of an individual for the presence of human immunodeficiency virus, or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV. The department of health shall promulgate rules designating the proper test method to be used for this purpose.

(3) Nothing in this section shall be construed to require the actual transmission of HIV in order for the court to consider it as a mandatory enhancement factor.

(e) Upon the conviction of the defendant for a violation of § 39-13-513, § 39-13-514 or § 39-13-515, the court shall order the convicted person to submit to an HIV test. The test shall be performed by a licensed medical laboratory at the expense of the defendant. The defendant shall obtain a confirmatory test when necessary. The defendant shall be referred to appropriate counseling. The defendant shall return a certified copy of the results of all tests to the court. The court shall examine results in camera and seal the record. For the sole purpose of determining whether there is probable cause to prosecute a person for aggravated prostitution under § 39-13-516, the district attorney general may view the record, notwithstanding subdivision (b)(2). The district attorney general shall be required to file a written, signed request with the court stating the reason the court should grant permission for the district attorney general to view the record. If the test results indicate the defendant is infected with HIV, then the district attorney general may use the results of the test in a prosecution for aggravated prostitution.

TITLE 40, CRIMINAL PROCEDURE

TENN. CODE ANN. § 40-35-111 (2016) **

Authorized terms of imprisonment and fines for felonies and misdemeanors

(a) A sentence for a felony is a determinate sentence.

(b) The authorized terms of imprisonment and fines for felonies are:

(3) Class C felony, not less than three (3) years nor more than fifteen (15) years. In addition, the jury may assess a fine not to exceed ten thousand dollars (\$10,000), unless otherwise provided by statute;

(5) Class E felony, not less than one (1) year nor more than six (6) years. In addition, the jury may assess a fine not to exceed three thousand (\$3,000) dollars, unless otherwise provided by statute.

(e) The authorized terms of imprisonment and fines for misdemeanors are:

(1) Class A misdemeanor, not greater than eleven (11) months, twenty-nine (29) days or a fine not to exceed two thousand five hundred dollars (\$2,500), or both, unless otherwise provided by statute;

(3) Class C misdemeanor, not greater than thirty (30) days or a fine not to exceed fifty dollars (\$50.00), or both, unless otherwise provided by statute.

TENN. CODE ANN. § 40-35-114 (2023)

Enhancement factors

If appropriate for the offense and if not already an essential element of the offense, the court shall consider, but is not bound by, the following advisory factors in determining whether to enhance a defendant's sentence:

(21) If the defendant is convicted of the offenses of aggravated rape pursuant to § 39-13-502, rape pursuant to § 39-13-503, rape of a child pursuant to § 39-13-522 or statutory rape pursuant to § 39-13-506, the defendant knew or should have known that, at the time of the offense, the defendant was HIV positive;

TENN. CODE ANN. § 40-39-202 (2023)

Part definitions

As used in this part, unless the context otherwise requires:

(19) "Sexual offender" means a person who has been convicted in this state of committing a sexual offense or has another qualifying conviction;

(20) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constitutes the criminal offense of:

(iii) Aggravated prostitution, under § 39-13-516, provided the offense occurred prior to July 1, 2010;

(30) "Violent sexual offender" means a person who has been convicted in this state of committing a violent sexual offense or has another qualifying conviction;

(31) "Violent sexual offense" means the commission of any act that constitutes the criminal offense of:

(X) Aggravated prostitution, under § 39-13-516; provided, that the offense occurs on or after July 1, 2010;

TENN. CODE ANN. § 40-39-207 (2023)

Request for termination of registration requirements—Tolling of reporting period—Review of decisions to deny termination of reporting requirements

(a)

(1) Except as otherwise provided in subdivision (a)(3), unless a plea was taken in conjunction with § 40-35-313, no sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration, or no sooner than ten (10) years after discharge from incarceration without supervision, an offender required to register under this part may file a request for termination of registration requirements with TBI headquarters in Nashville. If the person is required to register under this part due to a plea taken in conjunction with § 40-35-313, an offender required to register under this part may file a request for termination of registration upon successful completion of a term of judicial diversion pursuant to § 40-35-313 and upon receiving an order from a court of competent jurisdiction signifying the successful completion of the term of judicial diversion and the dismissal of charges pursuant to § 40-35-313.

(2) Notwithstanding subdivision (a)(1), if a court of competent jurisdiction orders that an offender's records be expunged pursuant to § 40-32-101, and the offense being expunged is an offense eligible for expunction under § 40-32-101, the TBI shall immediately remove the offender from the SOR and the offender's records shall be removed as provided in § 40-39-209.

(3) Notwithstanding subdivision (a)(1), no sooner than three (3) years after termination of active supervision on probation, parole, or any other alternative to incarceration, or no sooner than three (3) years after discharge from incarceration without supervision, an offender required to

register under this part due to conviction under § 39-16-408 may file a request for termination of registration requirements with TBI headquarters in Nashville.

(4) Notwithstanding subdivision (a)(1), if a court of competent jurisdiction grants an offender's petition, filed pursuant to § 40-39-218, for termination of the requirements imposed by this part based on the offender's status as a victim of a human trafficking offense, as defined by § 39-13-314, sexual offense, under title 39, chapter 13, part 5, or domestic abuse, as defined by § 36-3-601, the Tennessee bureau of investigation shall, immediately upon receiving a copy of the order, remove the offender from the SOR.

(5) Notwithstanding subdivision (a)(1), an offender who is required to register pursuant to this part because the offender was convicted of the offense of criminal exposure of another to human immunodeficiency virus (HIV) under § 39-13-109(a)(1) and the offense was committed prior to July 1, 2023, may file a request for termination of registration requirements with TBI headquarters in Nashville.

(b) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR, to determine whether the offender has complied with this part. In addition, the TBI shall conduct fingerprint-based state and federal criminal history checks, to determine whether the offender has been convicted of any additional sexual offenses, as defined in § 40-39-202, or violent sexual offenses, as defined in § 40-39-202.

(c) The TBI shall remove an offender's name from the SOR and notify the offender that the offender is no longer required to comply with this part if it is determined that:

(1) The offender has successfully completed a term of judicial diversion, pursuant to § 40-35-313, for an offense under § 39-13-505 or § 39-13-506(a) or (b), for which the person is required to register under this part;

(2) The offender previously entered a term of judicial diversion, pursuant to § 40-35-313, prior to May 24, 2019, for the offense for which the person is required to register under this part and subsequently successfully completes the term of judicial diversion; or

(3) The offender has not been convicted of any additional sexual offense or violent sexual offense during the ten-year period and the offender has substantially complied with this part and former part 1 of this chapter [repealed].

(d) If it is determined that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the ten-year period or has not substantially complied with this part and former part 1 of this chapter [repealed], the TBI shall not remove the offender's name from the SOR and shall notify the offender that the offender has not been relieved of the provisions of this part.

(e) If an offender is denied a termination request based on substantial noncompliance, the offender may petition again for termination no sooner than five (5) years after the previous denial.

(f) Immediately upon the failure of a sexual offender to register or otherwise substantially comply with the requirements established by this part, the running of the offender's ten-year reporting period shall be tolled, notwithstanding the absence or presence of any warrant or indictment alleging a violation of this part.

(g)

(1) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if the county is in Tennessee, for review of the decision. The review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons the request was denied.

(2) An offender required to register under this part shall continue to comply with the registration, verification and tracking requirements for the life of that offender, if that offender:

(B) Has been convicted of a violent sexual offense, as defined in § 40-39-202.

TENN. CODE ANN. § 40-39-218 (2016)

Termination of registration requirements based on status as a victim of human trafficking, sexual offenses or domestic abuse - Lifetime

(a) A person who is mandated to comply with the requirements of this part, based solely upon a conviction for aggravated prostitution, under § 39-13-516, may petition the sentencing court for termination of the registration requirements based on the person's status as a victim of a human trafficking offense, as defined by § 39-13-314, a sexual offense, under title 39, chapter 13, part 5, or domestic abuse, as defined by § 36-3-601.

(b)

(1) Upon receiving a petition, the court shall, at least thirty (30) days prior to a hearing on the petition, cause the office of the district attorney general responsible for prosecuting the person to be notified of the person's petition for release from the registration requirements. Upon being notified, the district attorney general shall conduct a criminal history check on the person to determine if the person has been convicted of a sexual offense or violent sexual offense during the period the person was required to comply with the requirements of this part. The district attorney general shall report the results of the criminal history check to the court, together with any other comments the district attorney general may have concerning the person's petition for release. The district attorney general may also appear and testify at the hearing in lieu of, or in addition to, submitting written comments.

(2) Notwithstanding subdivision (b)(1), a petition for termination of the registration requirements mandated by this part may be filed at any time following a verdict or finding of guilty. If the petition is filed prior to the sentencing hearing required by § 40-35-209, the court shall combine the hearing on the petition with the sentencing hearing. When the petition is filed prior to the sentencing hearing, the thirty-day notice requirement imposed pursuant to subdivision (b)(1) shall not apply; provided, however, that the district attorney general's office shall be given notice of the petition and reasonable time to comply with the requirements of subdivision (b)(1).

(c)

(1) If the report of the district attorney general indicates that the petitioner has been convicted of a sexual offense or violent sexual offense while mandated to comply with the requirements of this part, the court shall deny the petition without conducting a hearing.

(2) If the report of the district attorney general indicates that the petitioner has not been convicted of a sexual offense or violent sexual offense while mandated to comply with the requirements of this part, the court shall conduct a hearing on the petition. At the hearing, the court shall call such witnesses, including, if applicable, an examining psychiatrist or licensed psychologist with health service designation or the prosecuting district attorney general, as the court deems necessary to reach an informed and just decision on whether the petitioner should be released from the requirements of this part. The petitioner may offer such witnesses and other proof at the hearing as is relevant to the petition.

(3) If a petition for release from the requirements of this part is denied by the court, the person may not file another such petition for a period of three (3) years.

(4) If the court determines that the petitioner has been a victim of a human trafficking offense, as defined by § 39-13-314, sexual offense, under title 39, chapter 13, part 5, or domestic abuse, as defined by § 36-3-601, and that the person should not be required to comply with the requirements of this part, the court shall grant the petition.

(d) Upon the court's order granting the petition, the petitioner shall file a request for termination of registration requirements with the Tennessee bureau of investigation headquarters in Nashville, pursuant to § 40-39-207.

TITLE 41, CORRECTIONAL INSTITUTIONS AND INMATES

TENN. CODE ANN. § 41-4-138

Physical examination of prisoners

TENN. CODE ANN. § 41-21-107

Information recorded on reception

(a) It is the duty of the warden of the Tennessee state penitentiary upon the reception of any inmate to:

(5)

(A) Have the inmate undergo HIV testing, with or without the inmate's consent, through a licensed medical laboratory, unless the inmate has been tested pursuant to § 39-13-521 before reception. Unless previously tested, the inmate shall undergo HIV testing and shall also undergo a confirmatory test and be referred to appropriate counseling when necessary.

(B) The result of any HIV test ordered under this subdivision (a)(5) is not a public record and shall be available only to:

- (i) The person tested;
- (ii) The attending physician of the person tested;
- (iii) The department of health; and
- (iv) The department of correction;

(C) For purposes of this section, "HIV test" means a test of an individual for the presence of human immunodeficiency virus (HIV), or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV. The department of correction shall promulgate rules providing for the testing of inmates for HIV, and those rules shall be consistent with the rules and procedures of the department of health;

(D) This subdivision (a)(5) only applies to inmates less than twenty-one (21) years of age.

TITLE 68, HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION

TENN. CODE ANN. § 68-10-101 (2016)

Chapter definitions

As used in this chapter, unless the context otherwise requires:

(4) "Sexually transmitted disease (STD)" means any disease that is transmitted primarily through sexual practices and is identified in rules and regulations of the department; and

(5) "Test" means a test approved by the department to determine possible infection with STDs.

TENN. CODE ANN. § 68-10-102 (2016)

Notice to health officer of name and address of diseased person exposing others to infection

If any attending physician or other person knows or has good reason to suspect that a person having a STD is behaving so as to expose other persons to infection, or is about to so behave, the attending physician or other person shall notify the municipal or county health officer of the name and address of the diseased person and the essential facts in the case.

TENN. CODE ANN. § 68-10-104 (2016)

Officers to examine suspected persons and require treatment – Sources of infections to be investigated

(a)

(1) State, district, county and municipal health officers or their authorized deputies, within their respective jurisdictions, are directed and empowered, when, in their judgment, it is necessary to protect the public health, to make an examination of a person reasonably suspected because of known clinical or epidemiological evidence of being infected with a STD of a communicable nature, and to require such person when found infected to report for treatment to a reputable physician or clinic, and continue treatment until discharged by the physician or clinic as noninfectious, or in a stage of the disease in which an infectious relapse will not occur, or to submit to treatment provided at public expense until discharged as noninfectious, or in a stage of the disease in which an infectious relapse will not occur; and also, when in the judgment of the state, municipal or county health officer, it is necessary to protect the public health, to isolate and quarantine the person infected with a STD; provided, that any person so suspected may have present at the time of examination a physician of the person's own choosing to participate in the examination.

(2) Loitering about or residing in a house of assignation or prostitution or any other place where lewdness is practiced shall be construed as sufficient to suspect a person of being infected with a STD.

(b) It is the duty of all health officers to investigate sources of infection of STDs and to cooperate with the proper officers whose duty it is to enforce laws directed against prostitution, lewdness and assignation and the spread of STDs.

(c) The following healthcare officers and providers licensed in this state may examine, diagnose, and treat minors infected with STDs without the knowledge or consent of the parents of the minors, and shall incur no civil or criminal liability in connection with the examination, diagnosis, or treatment, except for negligence:

(1) Any state, district, county, or municipal health officer; or

(2) Any physician, nurse practitioner with a certificate of fitness and an appropriate supervising physician, nurse midwife who is an advanced practice registered nurse under § 63-7-126 and who has an appropriate supervising physician, or physician assistant with an appropriate supervising physician.

TENN. CODE ANN. § 68-10-106 (2016)

Quarantine of infected persons

(a)

(1) No one but a state, municipal, district or county health officer or such officer's duly authorized representative shall establish and terminate quarantine of persons infected with STDs.

(2) A decision to establish or terminate quarantine shall be based upon the judgment of the state, municipal, district or county health officer or such officer's duly authorized representative, considering available medical and epidemiological information concerning the STD diagnosis, modes of transmission, available treatment, and the necessity of the protection of the public health.

(b) It is the duty of the commissioner to set up the clinical and laboratory criteria necessary for the guidance of health officers in the performance of their duties as outlined in this section.

TENN. CODE ANN. § 68-10-107 (2016) **

Exposure of others by infected persons

It is a violation of this chapter for any person infected with a STD to expose another person to such infection.

TENN. CODE ANN. § 68-10-109 (2016)

Rules and bylaws for control of sexually transmitted diseases

(a) The department of health is empowered and directed to make such rules and bylaws for the control of STDs, not in conflict with this chapter, including the reporting of STDs and isolating and quarantining of infected persons, as it may from time to time deem advisable.

(b) All rules and bylaws made pursuant to subsection (a) shall be of force and binding upon the state, municipal and county health officers, and all other persons affected by the rules and regulations, and shall have the force and effect of law.

TENN. CODE ANN. § 68-10-110 (2016)

Arrest and temporary commitment for treatment authorized—Hearing—Examination—Appeal.

(a) Whenever in the judgment of the municipal, county or district health officer, there is reasonable clinical or epidemiological evidence to suspect that any person or persons are infected with a STD as defined in this chapter, and the person or persons refuse to be examined as provided in § 68-10-104, the health officer or the health officer's authorized deputy may go before a magistrate or judge of a court of general sessions and swear out a warrant of arrest for the person or persons.

(b) The magistrate or judge is not bound to issue the warrant pursuant to subsection (a), unless and until there is a showing of reasonable cause on the basis of sound clinical and epidemiological evidence.

(c) If reasonable cause is shown for the arrest and examination of the person or persons, the magistrate or judge shall direct that an examination be made of the person or persons to determine whether or not they are infected.

(d) The examination shall be made by the health officer or by a duly licensed and practicing physician of this state, to be selected by the health officer. The accused person or persons may also have a physician of their own choosing present to participate in the examination.

(e) If the physicians are not in accordance as to their diagnosis, then the court shall reach its decision after a hearing.

(f) If, after a full hearing, the court is of the opinion that the person examined is infected with a STD as defined in this chapter, the court may commit the person to an isolation hospital maintained by the state or local government for the purpose of detaining and treating such persons, who shall remain under treatment until the disease, in the opinion of the health officer, is no longer communicable or no longer in a stage in which infectious relapse may occur.

(g) No appeal or certiorari from the decision of the court committing the person to the isolation hospital shall stay the commitment, nor shall any court have power to supersede such order, but the person or persons shall immediately be placed in the isolation hospital, there to remain until released by the health officer as no longer communicable or in a stage of the disease in which infectious relapse may occur, or released by order of the court.

(h) Any person committed under this chapter may appeal from the judgment of the magistrate or court of general sessions as now provided by law for civil cases.

TENN. CODE ANN. § 68-10-111 (2016) **

Violation of chapter—Penalty

Any health officer or any other persons who fail to perform the duties required of them in this chapter, or violate any of the provisions of this chapter, or of any rule or bylaw promulgated under its authority, commit a Class C misdemeanor. Each violation is a separate offense.

TENN. CODE ANN. § 68-10-113 (2016)

Confidentiality of records and information

All records and information held by the department or a local health department relating to known or suspected cases of STDs shall be strictly confidential. This information shall not be released or made public upon subpoena, court order, discovery, search warrant or otherwise, except that release may be made under the following circumstances:

(3) Release is made of medical or epidemiological information to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter and related regulations governing the control and treatment of STDs;

(5) In a case involving a minor not more than thirteen (13) years of age, only the name, age, address and STD treated shall be reported to appropriate agents as required by § 37-1-403. No other information shall be released. If the information to be disclosed is required in a court proceeding involving child abuse, the information shall be disclosed in camera; or

(6)

(A) Release is made during a legal proceeding when ordered by a trial court judge, designated by § 16-2-502, or a juvenile court judge through an order explicitly finding each of the following:

(i) The information sought is material, relevant, and reasonably calculated to be admissible evidence during the legal proceeding;

(ii) The probative value of the evidence outweighs the individual's and the public's interest in maintaining its confidentiality;

(iii) The merits of the litigation cannot be fairly resolved without the disclosure; and

(iv) The evidence is necessary to avoid substantial injustice to the party seeking it and, either the disclosure will result in no significant harm to the person examined or treated, or it would be substantially unfair as between the requesting party and the person examined or treated not to require the disclosure.

TENN. CODE ANN. § 68-10-114 (2016)

Knowledge of governmental persons regarding records

Except as provided in § 68-10-113, no state or local department officer or employee shall be examined in a civil, criminal, special or other proceeding as to the existence or contents of pertinent records of a person examined or treated for a STD by a state or local health department, or of the existence or contents of such reports received from a private physician or private health facility.

TENN. CODE ANN. § 68-10-115 (2016)

Immunity from liability for informing person of potential HIV infection

A person who has a reasonable belief that a person has knowingly exposed another to HIV may inform the potential victim without incurring any liability. A person making such disclosure is immune from liability for making disclosure of the condition to the potential victim.

Rules and Regulations of Tennessee

RULES OF THE TENNESSEE DEPARTMENT OF HEALTH

Bureau of Health Services Administration Division of Communicable and Environmental Disease
Services AIDS Program Division

TENN. COMP. R. & REGS. R. 1200-14-01-.01

Definition of Terms

(a) Carrier - A person who harbors, or who is reasonably believed by the Commissioner, health officer, or designee to harbor a specific pathogenic organism and who is potentially capable of spreading the organism to others, whether or not there are presently discernible signs and symptoms of the disease.

(d) Commissioner - Means the Commissioner of the Tennessee Department of Health or a designated representative

(e) Communicable Disease - An illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a well person from an infected person or animal, or through the agency of an intermediate animal host, vector, or inanimate environment.

(j) Disinfestation - Any physical or chemical-process by which undesired animal forms, especially arthropods or rodents, present upon the person, the clothing, or in the environment of an individual or on domestic animals, may be destroyed upon the person, his clothing, upon the animal or in the environment of the person.

(k) Epidemic (or Disease Outbreak) - The occurrence in a community or region of one or more cases of illness that is in excess of normal expectancy.

(s) Isolation - The separation for the period of communicability of infected persons, or persons reasonably suspected to be infected, from other persons, in such places and under such conditions as will prevent the direct or indirect conveyance of the infectious agent from infected persons to other persons who are susceptible or who may spread the agent to others.

(w) Quarantine - Limitation of freedom of movement or isolation of a person, or preventing or restricting access to premises upon which the person, cause or source of a disease may be found, for a period of time as may be necessary to confirm or establish a diagnosis, to determine the cause or source of a disease, and/or to prevent the spread of a disease. These limitations may be accomplished by placing a person in a health care facility or a supervised living situation, by restricting a person to the person's home, or by establishing some other situation appropriate under the particular circumstances.

TENN. COMP. R. & REGS. R. 1200-14-01-.15 (2016)

General measures for the effective control of reportable diseases

(1) The local health officer or the Commissioner or a designated representative of the Commissioner, upon receiving a report of a reportable disease or of a suspected epidemic of disease or of a suspected case of a disease of public health significance or event, shall:

(e) Establish appropriate control measures which may include examination, treatment, isolation, quarantine, exclusion, disinfection, immunization, disease surveillance, closure of establishment, education, and other measures considered appropriate by medical experts for the protection of the public's health.