

# Arizona

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## Analysis

### **No criminal statutes explicitly addressing HIV exposure.**

There are no criminal statutes criminalizing HIV transmission or exposure in Arizona. However, in some states, people living with HIV (PLHIV) have been prosecuted for HIV exposure under general criminal laws, such as reckless endangerment and aggravated assault. At the time of publication, the authors are not aware of any prosecution under general criminal laws on the basis of HIV status in Arizona.

### **PLHIV or other Sexually Transmitted Infections (STIs or STI if singular) may qualify for mitigation of their sentences.**

In *State of Arizona v. Ellevan*, the Court of Appeals reversed the trial court's decision and remanded for new sentencing, ordering the trial court to determine whether the petitioner's HIV status warranted a shorter prison term.<sup>1</sup> The Court further noted "[p]ositive HIV status is material to informed plea bargaining and sentencing because it can transform into a life sentence a term of years that would otherwise end well within the recipient's probable life span."<sup>2</sup>

### **PLHIV or other STIs may be prosecuted for exposure.**

Various contagious diseases, among them HIV and certain STIs listed in Title 9 Chapter 6 Article 3 of the Arizona Administrative Code,<sup>3</sup> must be reported to the State Department of Health upon diagnosis. A person with a "contagious or infectious disease" who knowingly exposes themselves to another in a "public place or thoroughfare" may be punished with a class 2 misdemeanor, carrying a punishment of four months' imprisonment.<sup>4</sup> On the face of the statute, disease transmission is not required for prosecution. The exposure provision does not define contagious or infectious disease but communicable disease is defined as "contagious, epidemic or infectious disease required to be reported . . ."<sup>5</sup>

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<sup>1</sup> 179 Ariz. 382, 880 P.2d 139 (Ariz. Ct. App. 1994).

<sup>2</sup> *Id.*, 179 Ariz. at 383, 880 P.2d at 140.

<sup>3</sup> Including chancroid, chlamydia, gonorrhea, viral hepatitis, HIV, and syphilis. ARIZ. ADMIN. CODE §§ 9-6-313, 9-6-314, 9-6-332, 9-6-337, 9-6-338, 9-6-339, 9-6-340, 9-6-341, 9-6-375 (2016).

<sup>4</sup> ARIZ. REV. STAT. §§ 36-631, 13-707 (2016); see also ARIZ. ADMIN. CODE §§ 9-6-313, 9-6-314, 9-6-332, 9-6-337, 9-6-338, 9-6-339, 9-6-340, 9-6-341, 9-6-375 (2016). In Arizona a court is also required to consider restitution for economic loss to a victim in a criminal case, ARIZ. REV. STAT. §13-603(c) (2016), including that for medical treatment, *State v. Iniguez*, 169 Ariz. 533, 538, 821 P.2d 194, 199 (Ariz. Ct. App. 1991).

However, there are no reported cases of restitution for medical treatment in a criminal prosecution for transmission of a STI.

<sup>5</sup> ARIZ. REV. STAT. § 36-661(4)(2016).

The Arizona Department of Health Services may be compelled to provide information related to communicable diseases for criminal prosecutions.<sup>6</sup> Moreover, persons alleged to have committed a sexual offense or another offense involving significant exposure are subject to a court order requiring testing for STIs.<sup>7</sup> However, no such information may be compelled for HIV-specific cases.<sup>8</sup>

***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.*

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<sup>6</sup> ARIZ. REV. STAT. § 36-665(A), (B)(1) (2016).

<sup>7</sup> ARIZ. REV. STAT. § 13-1415 (2016).

<sup>8</sup> ARIZ. REV. STAT. § 36-665(I) (2016).

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## Code of Arizona

**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 36, PUBLIC HEALTH AND SAFETY

#### **ARIZ. REV. STAT. § 36-631 (2016) \*\***

*Person with contagious or infectious disease exposing himself to public; classification; exception*

A person who knowingly exposes himself or another afflicted with a contagious or infectious disease in a public place or thoroughfare, except in the necessary removal of such person in a manner least dangerous to the public health, is guilty of a class 2 misdemeanor.

#### **ARIZ. REV. STAT. § 36-665 (2016)**

*Order for disclosure of communicable disease related information*

(B) An order for disclosure of or a search warrant for communicable disease related information may be issued on an application showing any one of the following:

- (1) A compelling need for disclosure of the information for the adjudication of a criminal, civil or administrative proceeding.
- (2) A clear and imminent danger to a person whose life or health may unknowingly be at significant risk as a result of contact with the person to whom the information pertains.
- (3) If the application is filed by a state, county or local health officer, a clear and imminent danger to the public health.
- (4) That the applicant is lawfully entitled to the disclosure and the disclosure is consistent with the provisions of this article.
- (5) A clear and imminent danger to a person or to public health or a compelling need requiring disclosure of the communicable disease related information.

(C) On receiving an application pursuant to this section, the court or administrative body shall enter an order directing that the file be sealed and not made available to any person, except to the extent necessary to conduct a proceeding in connection with the determination of whether to grant or deny the application, including an appeal. The court or administrative body shall also order that all subsequent proceedings in connection with the application be conducted in camera and, if appropriate to prevent the unauthorized disclosure of communicable disease related information, that pleadings, papers, affidavits, judgments, orders, briefs, and memoranda of law that are part of the application or the decision not state the name of the person concerning whom communicable disease related information is sought.

(G) In assessing compelling need and clear and imminent danger, the court or administrative body shall provide written findings of fact, including scientific or medical findings, citing specific evidence in the record which supports each finding, and shall weight the need for disclosure against the privacy interest

of the protected person and the public interest which may be disserved by disclosure which deters future testing or treatment or which may lead to discrimination.

(l) Notwithstanding any other law, a court or administrative body shall not order the department, a county health department or a local health department to release HIV-related information in its possession.

## **TITLE 13, CRIMINAL CODE**

### **ARIZ. REV. STAT. § 13-707 (2016) \*\***

#### *Misdemeanors; sentencing*

(A) A sentence of imprisonment for a misdemeanor shall be for a definite term to be served other than a place within custody of the state department of corrections. The court shall fix the term of imprisonment within the following maximum limitations:

(2) For a class 2 misdemeanor, four months.

(3) For a class 3 misdemeanor, thirty days.