

Timeline of State Reforms and Repeals of HIV Criminal Laws

States with most significant changes to their HIV laws



1994: TEXAS

- The first state to repeal its HIV specific law; legislative history indicates one representative included it in an omnibus crime bill.
- Repeal did not end prosecutions. PLHIV in Texas prosecuted for HIV exposure since repeal have been charged with attempted murder, aggravated assault.



2014: IOWA

- Removed sex offender registration requirement, including retroactively.
- Did not affect felony convictions of those already convicted and incarcerated.
- Added defense to prosecution if a person took practical measures to prevent transmission (e.g., prophylactic device, viral suppression).
- Still HIV-specific, but added new felonies for people living with TB, hepatitis, and meningococcal disease.
- Exposure with intent to transmit when transmission occurs is still a felony (up to 25 years). Intentional exposure without transmission is a felony (up to 5 years).
- Exposure with “reckless disregard” if transmission occurs is a felony when transmission occurs (up to 5 years), and a misdemeanor (up to one year) if it does not.



2017: CALIFORNIA

- Extensive reform reduced penalties for intentional exposure, solicitation, and performing sex work from felonies to misdemeanors.
- It is no longer a felony to donate blood, tissue, semen, or breast milk.
- Prosecution requires specific intent to transmit coupled with conduct likely to transmit and transmission results.
- Provides privacy protections for PLHIV charged under current law.
- Now applies to “infectious or communicable diseases” with “significant public health consequences.”
- Prohibits disclosure of defendant’s identity prior to a conviction.
- Limits use of medical records; records can’t be only source of proof of intent.
- Anyone convicted must be assessed for community placement prior to sentencing.



2018: MICHIGAN

- Reform removed types of physical contact likely transmit HIV.
- Anal or vaginal sex without first disclosing status with a “specific intent” to transmit is a felony (up to 4 years). Transmission is not required for prosecution.
- Reckless exposure: sexual activity prior to disclosure resulting in transmission but without intent to transmit is a felony (up to 4 years).
- Reckless exposure without transmission is a misdemeanor.
- PLHIV who can show that they have been virally suppressed for at least six months and are following their physician’s treatment plan may use that as a defense to prove that they did not act with reckless disregard. Does not apply to acting with intent to transmit provisions of the new law.



2012: ILLINOIS

- Narrowed types of prohibited contact to vaginal and anal intercourse.
- PLHIV must have intent to transmit HIV and engage in the acts listed in the statute (anal/vaginal intercourse, organ/blood donation).
- Disclosure of HIV status or using a condom is now a defense to prosecution, but difficult to prove in court.
- Other forms of prevention not considered, although could be evidence of lack of intent.
- Intercourse without disclosure of status and without a condom can still be a felony (up to 7 years).



2016: COLORADO

- Reduced the maximum authorized sentence enhancement to double the sentence for PLHIV who are charged with an underlying sex offense if transmission occurs.
- Intent to transmit is not required for prosecution.
- Eliminated felony offenses involving sex work and HIV, and mandatory HIV testing for someone accused of engaging in sex work.



2018: NORTH CAROLINA

- No HIV-specific criminal statute. PLHIV required to comply with public health administrative regulations and “control measures.” Violating these regulations is a misdemeanor (up to 2 years).
- PLHIV must disclose their status and use condoms unless certain exceptions apply: they have been virally suppressed for at least six months, their partner is taking pre-exposure prophylaxis (PrEP), or their partner is also HIV positive.
- Neither intent to transmit nor transmission is required for public health violations.



2020: WASHINGTON

- Reform reduces penalty for HIV exposure from a felony to a misdemeanor.
- Specific intent to transmit and transmission must occur for prosecution. Previously, exposure carried a felony conviction (punishable by up to life in prison) and required neither intent to transmit nor transmission.
- Affords affirmative defenses against prosecution, including disclosure of status and the use of a condom or other “practical means to prevent transmission.”
- Removes the requirement for sex offender registration.
- Misrepresenting HIV status to a sexual partner, intent to transmit, and transmission carry a higher penalty of gross misdemeanor.
- Retains felony penalty for PLHIV convicted of transmitting HIV to a child or vulnerable adult, and registration as a sex offender; and amends law allowing health authorities to intervene when person with sexually transmitted disease threatens public health.