

Illinois

Analysis

People living with HIV (PLHIV) may be prosecuted for engaging in unprotected sexual intercourse without first disclosing their HIV status.

PLHIV may face prosecution for engaging in condomless sexual intercourse without first disclosing their HIV status.¹ The statute requires that there be “specific intent to commit the offense.”² However, Illinois courts have not clarified whether this means specific intent to transmit HIV or specific intent to perform the acts enumerated in the statute, i.e., engaging in sexual activity, donating blood or other bodily products, or transferring non-sterile drug paraphernalia. Transmission of disease is not required for prosecution.³

It is a Class 2 felony, punishable by three to seven years in prison and a \$25,000 fine, for a PLHIV who knows their HIV status to engage in “sexual activity” with another without the use of a condom.⁴ The definition of “sexual contact” is limited to insertive vaginal and anal intercourse.⁵ It is an affirmative defense to prosecution if the defendant can prove that their sexual partner knew the defendant’s HIV status, knew that the activity could result in HIV transmission, and consented to the activity with that knowledge.⁶ Since it is an element of the offense that the PLHIV did not use a condom during sexual activity, the use of a condom can also operate as a defense to prosecution.⁷

While disclosure and use of a condom constitute defenses to prosecution, proving that either one occurred during private sexual encounters is difficult without witnesses or documentation. Evidence on these questions will normally be limited to the conflicting testimony of the complainant and the defendant.

Prosecutions under the Illinois HIV exposure statute include:

¹ 720 ILL. COMP. STAT. 5/12-5.01(a)(1), 5/12-5.01(a)(d) (specifying that disclosure is an affirmative defense) (2016).

² 720 ILL. COMP. STAT. 5/12-5.01(a) (2016).

³ 720 ILL. COMP. STAT. 5/12-5.01(c) (2016).

⁴ 720 ILL. COMP. STAT. 5/12-5.01(a)(1), 5/12-5.01(e); 730 ILL. COMP. STAT. 5/5-4.5-35(a), 5/5-4.5-50(b) (2016).

⁵ 720 ILL. COMP. STAT. 5/12-5.01(b) (2016).

⁶ 720 ILL. COMP. STAT. 5/12-5.01(d) (2016).

⁷ 720 ILL. COMP. STAT. 5/12-5.01(a)(1) (2016) (stating that a person commits criminal transmission of HIV when she/he “engages in sexual activity with another *without the use of a condom . . .*” (emphasis added)).

- In October 2016, a 46-year-old man was charged with three counts of criminal transmission of HIV after he dated three women without disclosing his HIV status.⁸ He was on antiretroviral therapy at the time.⁹
- In September 2014, a 40-year-old PLHIV pled guilty to reduced charges of reckless conduct after he had sex with a partner without disclosing his status or using a condom.¹⁰ The man had an undetectable viral load at the time.¹¹
- In April 2014, a 31-year-old man was charged with criminal transmission of HIV after failing to disclose his HIV status to a sexual partner and falsely telling her that his wife died of ovarian cancer instead of HIV-related illness.¹²
- In May 2013, a 35-year-old PLHIV was charged with criminal sexual assault, aggravated criminal sexual abuse, and criminal transmission of HIV for alleged sexual abuse of a high school student in 2011.¹³
- Also in May 2013, a 48-year-old PLHIV was charged with criminal sexual assault after he allegedly assaulted a male teenager when the teen refused to have sex for money.¹⁴ The man's bail was set at \$5 million.¹⁵

PLHIV are prohibited from donating or providing blood, tissue, semen, organs, or bodily fluids.

It is a Class 2 felony, punishable by three to seven years in prison and a \$25,000 fine, for a PLHIV to donate, transfer, or provide blood, tissue, semen, organs, or “other potentially infectious bodily fluids” for transfusion, transplant, insemination, or administration to another.¹⁶ The meaning of “potentially infectious bodily fluids” is undefined in the statute and transmission is not required for prosecution.¹⁷

PLHIV can be prosecuted and jailed for sharing non-sterile injection equipment with others.

PLHIV may be prosecuted and imprisoned for sharing or exchanging non-sterile needles and other drug paraphernalia. It is a Class 2 felony, punishable by three to seven years in prison and a \$25,000

⁸ William Lee, *Wilmette personal trainer accused of knowingly transmitting HIV*, CHICAGO TRIBUNE, Oct. 10, 2016, available at <http://www.chicagotribune.com/news/local/breaking/ct-wilmette-personal-trainer-accused-of-knowingly-transmitting-hiv-20161009-story.html>.

⁹ *Id.*

¹⁰ George Houde, *Cicero cop pleads guilty to misdemeanor in HIV case*, CHICAGO TRIB., Sept. 5, 2014, available at <http://www.chicagotribune.com/news/ct-hiv-transmission-charge-met-20140906-story.html>.

¹¹ Kim Geiger, *HIV exposure cases head to court, stoke debate*, CHICAGO TRIB., Sept. 5, 2014, available at <http://www.chicagotribune.com/news/ct-hiv-criminal-cases-met-20140905-story.html>.

¹² Carlos Sadovi, *Man charged with knowingly infecting girlfriend with HIV*, CHICAGO TRIB., April 24, 2014, available at http://articles.chicagotribune.com/2014-04-24/news/chi-man-charged-with-knowingly-infecting-girlfriend-with-hiv-20140424_1_hiv-test-criminal-transmission-hiv-status.

¹³ Jim Suhr, *HIV-infected teacher's aide accused of molestation*, AP, May 13, 2013, available at <http://newsok.com/hiv-infected-teachers-aide-accused-of-molestation/article/feed/541253>.

¹⁴ Geoff Ziezulewicz, *\$5M bail for HIV positive man charged with sexual assault*, CHI. TRIB., May 5, 2013, available at http://articles.chicagotribune.com/2013-05-05/news/chi-5m-bail-for-hiv-positive-man-charged-with-sexual-assault-20130505_1_miller-hiv-positive-man-bathroom.

¹⁵ *Id.*

¹⁶ 720 ILL. COMP. STAT. 5/12-5.01(a)(2); 730 ILL. COMP. STAT. 5/5-4.5-35(a), 5/5-4.5-50(b) (2016).

¹⁷ 720 ILL. COMP. STAT. ANN. 5/12-5.01(c) (2016).

fine, for a PLHIV who is aware of their HIV status to dispense, deliver, exchange, sell, or otherwise transfer to another person any non-sterile “intravenous or intramuscular drug paraphernalia.”¹⁸ This includes syringes, or “any equipment, product, or material of any kind which is peculiar to and marketed for use in injecting a substance into the human body.”¹⁹ Transmission of HIV is not required for prosecution.²⁰ Although it is an affirmative defense that the person exposed was aware of a defendant’s HIV status, understood that the action could result in HIV transmission, and consented to the action with that knowledge,²¹ it must be noted that actual exposure is not required for criminal liability to attach—as drafted, a person may be prosecuted for selling, exchanging or transferring non-sterile injection equipment even if the recipient does not use it.

Transmission of HIV or other sexually transmitted diseases (STDs) can serve as an aggravating factor in certain offenses.

Transmission of HIV or other STDs can function as an aggravating factor in prosecutions for sexual assault. Circumstances that elevate sexual assault to aggravated sexual assault include causing bodily harm²² to the victim during the commission of the offense²³ or acting in a manner that threatens or endangers another person during the commission of the offense.²⁴

In *People v. Giraud*, the Illinois Supreme Court examined whether or not a PLHIV knowingly exposing someone to HIV during the commission of a sexual assault constitutes life endangerment or bodily harm sufficient to elevate the offense.²⁵ The defendant had appealed his conviction for aggravated sexual assault on the basis of the victim’s exposure to HIV during the commission of the crime, which the appellate court reduced to sexual assault because it concluded that exposure to HIV alone does not satisfy the requirements for an aggravated offense.²⁶

The court concluded that a threat must actually be communicated to a victim in word or deed, and that the mere risk of future harm is not equivalent to a threat of harm during the commission of an offense.²⁷ As to whether exposure to HIV constitutes bodily harm, the court found that only in the case of actual disease transmission would the sexual assault be aggravated due to infliction of bodily harm on the victim.²⁸ In its explanation, the court observed that relying on the State’s reasoning would have negative unintended consequences, stating that “the State’s reading of the statute, equating mere exposure to a communicable disease to endangering the life of a victim, could apply just as well to exposure to the

¹⁸ 720 ILL. COMP. STAT. ANN. 5/12-5.01(a)(3); 730 ILL. COMP. STAT. 5/5-4.5-35(a), 5/5-4.5-50(b) (2016).

¹⁹ 720 ILL. COMP. STAT. ANN. 5/12-5.01(b) (2016).

²⁰ 720 ILL. COMP. STAT. ANN. 5/12-5.01(c) (2016).

²¹ 720 ILL. COMP. STAT. ANN. 5/12-5.01(d) (2016).

²² Defined in the context of sex offenses as “physical harm,” including but not limited to “sexually transmitted disease, pregnancy, and impotence.” 720 ILL. COMP. STAT. ANN. 5/11-0.1 (2016).

²³ 720 ILL. COMP. STAT. ANN. 5/11-1.30(a)(2) (2016).

²⁴ 720 ILL. COMP. STAT. ANN. 5/11-1.30(a)(3) (2016).

²⁵ 980 N.E.2d 1107, 1109 (Ill. 2012).

²⁶ *Id.* at 1108-09.

²⁷ *Id.* at 1112.

²⁸ *Id.* at 1114-15.

HPV virus, which causes cervical cancer, or to exposure to hepatitis, which can lead to liver cancer, or exposure to tuberculosis, which can be fatal.”²⁹

The court also pointed to the fact that a defendant who exposes someone to HIV during a sexual assault, but which does not result in HIV transmission, will serve consecutive sentences for criminal exposure to HIV and the underlying assault.³⁰ Consecutive sentences are mandatory when a defendant has been convicted of criminal sexual assault, aggravated criminal sexual assault, or predatory criminal assault of a child.³¹ A defendant who exposes someone to HIV during a sexual assault can thus face up to 22 years of incarceration if sentenced to the maximum available term for each offense.³² Where transmission results, a defendant may be charged with aggravated sexual assault on the basis of harm to the victim, a Class X felony, and punishable by up to 30 years’ incarceration.³³

Under the previous Illinois HIV criminal law, PLHIV could be imprisoned for exposing others to their “bodily fluids.”

The Illinois HIV criminal law underwent significant change in 2012.³⁴ Under the previous statute, PLHIV faced prosecution for engaging in “intimate contact,” which was defined as the exposure of the body of one person to the bodily fluid of another person in a manner that could result in the transmission of HIV.³⁵ Because the definition of “bodily fluids” under the previous HIV exposure law was not limited to fluids known to transmit HIV, actions that posed at best only a theoretical risk of HIV transmission, such as biting, spitting, and scratching, were subject to prosecution.³⁶ Further, the old law did not allow for condom use as a defense, in spite of the fact that their use is known to significantly reduce the risk of HIV transmission.³⁷

The only affirmative defense to prosecution was disclosure to the complainant, awareness of the complainant that the activity could result in HIV transmission, and consent of the complainant to the activity.³⁸ Numerous prosecutions occurred under the prior version of the law.³⁹

²⁹ *Id.*

³⁰ *Id.* at 1114.

³¹ 730 ILL. COMP. STAT. 5/5-8-4(d)(2)(2016).

³² 730 ILL. COMP. STAT. 5/5-4.5-30(a), 5/5-4.5-35(a)(2016).

³³ 730 ILL. COMP. STAT. 5/5-4.5-25(a) (2016).

³⁴ Ramon Gardenhire, *How Illinois’ HIV Criminalization Law has Changed*, AIDS FOUND. OF CHICAGO, July 27, 2012, available at <http://aidschicago.org/illinois-news/522-how-illinois-hiv-criminalization-law-has-changed>.

³⁵ 720 ILL. COMP. STAT. 5/12-16.2 (amended 2012, current version at 720 ILL. COMP. STAT. 5/12-5.01).

³⁶ See 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 Dec. 9, 2016) (stating that there exists only a “negligible” risk that HIV can be transmitted through a bite); CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?*, (Dec. 21, 2016), available at <http://www.cdc.gov/hiv/basics/transmission.html> (last visited Jan. 10, 2017) (“HIV isn’t spread through saliva, and there is no risk of transmission from scratching because no body fluids are transferred between people.”).

³⁷ See, e.g., CTR. FOR DISEASE CONTROL & PREVENTION, *Condoms and STDs: Fact sheet for public health personnel*, (March 5, 2013), available at <https://www.cdc.gov/condomeffectiveness/latex.html> (last visited Dec. 9, 2016).

³⁸ 720 ILL. COMP. STAT. 5/12-16.2(3)(d) (amended 2012, current version at 720 ILL. COMP. STAT. ANN. 5/12-5.01).

³⁹ See, e.g., Jim Jaworski, *Man accused of biting cop, charged with transmission of HIV*, TRIBLOCAL.COM, Nov. 23, 2011, available at <http://www.triblocal.com/oak-park-river-forest/2011/11/23/man-accused-of-biting-cop-charged-with-transmitting-hiv>; *Metro-East Man Charged With Knowingly Spreading HIV*, CBS St. Louis/KMOX Radio, October 13, 2011, available at <http://stlouis.cbslocal.com/2011/10/13/metro-east-man-charged-with-knowingly-spreading-hiv>; Dave Fopay, *Man pleads guilty in Coles County Court for knowingly spreading HIV*, HERALD-REVIEW.COM, Feb. 16, 2010, available at <http://www.herald->

A person with HIV or other STD may be required to undergo mandatory examination or treatment.

A person who is reasonably suspected of being infected with or having been exposed a sexually transmissible disease (STD) may be required to undergo mandatory examination and treatment.⁴⁰ Illinois defines “sexually transmissible disease” as including chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/Acute Salpingitis, syphilis, Acquired Immunodeficiency Syndrome (AIDS), and Human Immunodeficiency Virus (HIV).⁴¹

Mandatory treatment may continue until the disease is rendered non-communicable or the Department of Health concludes that “the person does not present a real and present danger to public health.”⁴² A person may be required to undergo treatment against their will if the Department obtains a warrant on the basis that they “[are] infectious and that a real and present danger to the public health exists” and all other “reasonable means of obtaining compliance have been exhausted.”⁴³ Any legal proceedings related to the issuance of such a warrant are conducted in camera and sealed.⁴⁴

Illinois law does not precisely define what kind of conduct rises to the level of “a real and present danger.” Thus, for conditions that cannot be rendered completely non-infectious, it is unclear what criteria a person would need to meet in order to be released when they are considered to no longer pose a threat to others.

A person with HIV or other STD may be subject to isolation and quarantine.

The Department of Health may order someone with an STD to be isolated or quarantined to “prevent the probable spread of a sexually transmitted disease, until such time as the condition can be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public’s health any longer exists.”⁴⁵ A court will only issue an order for involuntary isolation or quarantine upon the Department of Health’s showing, by clear and convincing evidence, that “the public’s health and welfare are significantly endangered by a person with a sexually transmissible disease or by a place where there is a significant amount of sexual activity likely to spread a sexually transmissible disease”⁴⁶ and proof that all other reasonable means of corrected the problem have been exhausted.⁴⁷ As above, the terms “substantial danger” and “significantly endangered,” are not defined,

[review.com/news/local/article_77a9af98-13b8-5a12-aa55-88997f84b5b3.html](http://www.review.com/news/local/article_77a9af98-13b8-5a12-aa55-88997f84b5b3.html); Art Barnum, *Woman Pleads Guilty in HIV Case*, CHI. TRIB., Feb. 4, 2003, available at http://articles.chicagotribune.com/2003-02-04/news/0302040089_1_hiv-lesser-crime-guilty; Mark Shuman, *Prostitution Suspect faces HIV Charge*, CHI. TRIB., May 6, 1999, available at http://articles.chicagotribune.com/1999-05-06/news/9905060289_1_hiv-and-prostitution-criminal-transmission-arrest-tuesday-night.

⁴⁰ 410 ILL. COMP. STAT. ANN. 325/6(a), 325/6(b) (2016); 77 ILL. ADMIN. CODE § 693.50 (2016) (Note that the Administrative Code provisions do not apply to STDs generally—only syphilis, gonorrhea, chlamydia, HIV, and chancroid).

⁴¹ 410 ILL. COMP. STAT. ANN. 325/3(3) (2016).

⁴² 410 ILL. COMP. STAT. ANN. 325/6(b)(2016).

⁴³ 410 ILL. COMP. STAT. ANN. 325/6(c)(2016).

⁴⁴ *Id.*

⁴⁵ 410 ILL. COMP. STAT. ANN. 325/7(a) (2016); 77 ILL. ADMIN. CODE § 693.60(a) (2016) (Note that these Administrative Code provisions do not apply to STIs generally—only syphilis, gonorrhea, chlamydia, HIV and chancroid).

⁴⁶ 410 ILL. COMP. STAT. ANN. 325/7(b) (2016).

⁴⁷ *Id.*

leaving the statute open to potentially broad interpretation and application to people with HIV or other STDs.

Illinois' Administrative Code outlines various procedural requirements related to the issuance of an order for isolation or quarantine.⁴⁸ A written order from a health department must include a variety of information, including the basis for the order, anticipated duration of the order, and a restricted individual's right to counsel.⁴⁹ If a health department petitions a court for a court order of restriction, an individual must receive notice at least 24 hours' notice prior to the resulting hearing.⁵⁰ With respect to the required showing that no less restrictive alternative exists, the reviewing court will consider whether, given the facts of the case, quarantine or isolation is a measure provided for in Department of Health guidelines or in guidelines issued by the Centers for Disease Control or the World Health Organization.⁵¹ Isolation or quarantine as a result of a court order may not exceed 30 days from the date of issuance;⁵² any request to continue the order beyond that period may also be for no more than 30 days.⁵³

Public health officials will release patient medical information in support of criminal prosecutions.

The Department of Health initiates an investigation when it receives notification of HIV infection and determines that the subject of the notification may present a possible risk of HIV transmission.⁵⁴ All information obtained pursuant as a result of the investigation is confidential and generally not admissible as evidence or discoverable in any legal action.⁵⁵ However, this general rule has exceptions, including when authorized under court order or subpoena pursuant to a prosecution under Illinois' HIV criminal statute.⁵⁶ The information may also be released for the purpose of obtaining a warrant in order to examine, treat, isolate or quarantine someone.⁵⁷

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.*

⁴⁸ 77 ILL. ADMIN. CODE § 690.1330(2016).

⁴⁹ 77 ILL. ADMIN. CODE §§ 690.1330(b)(2)(C), 690.1330(b)(2)(G), 690.1330(b)(2)(E) (2016).

⁵⁰ 77 ILL. ADMIN. CODE § 690.1330(f) (2016).

⁵¹ 77 ILL. ADM. CODE § 690.1330(g) (2016).

⁵² 77 ILL. ADMIN. CODE § 690.1330(g)(1) (2016).

⁵³ 77 ILL. ADMIN. CODE § 690.1330(g)(4)(B) (2016).

⁵⁴ 410 ILL. COMP. STAT. ANN. 325/5.5(a) (2016).

⁵⁵ 410 ILL. COMP. STAT. ANN. 325/5.5(d)(2016).

⁵⁶ 410 ILL. COMP. STAT. ANN. 325/5.5(d)(2) (2016).

⁵⁷ 410 ILL. COMP. STAT. ANN. 325/5.5(d)(3) (2016).

Illinois Compiled Statutes

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 720, CRIMINAL OFFENSES, CRIMINAL CODE

720 ILL. COMP. STAT. § 5/12-5.01 (2016) **

Criminal transmission of HIV

(a) A person commits criminal transmission of HIV when he or she, with the specific intent to commit the offense:

(1) engages in sexual activity with another without the use of a condom knowing that he or she is infected with HIV;

(2) transfers, donates, or provides his or her blood, tissue, semen, organs, or other potentially infectious body fluids for transfusion, transplantation, insemination, or other administration to another knowing that he or she is infected with HIV; or

(3) dispenses, delivers, exchanges, sells, or in any other way transfers to another any nonsterile intravenous or intramuscular drug paraphernalia knowing that he or she is infected with HIV.

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

“Sexual activity” means the insertive vaginal or anal intercourse on the part of an infected male, receptive consensual vaginal intercourse on the part of an infected woman with a male partner, or receptive consensual anal intercourse on the part of an infected man or woman with a male partner.

“Intravenous or intramuscular drug paraphernalia” means any equipment, product, or material of any kind which is peculiar to and marketed for use in injecting a substance into the human body.

(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 criminal transmission of HIV.

(d) It shall be an affirmative defense that the person exposed knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and consented to the action with that knowledge.

(d-5) A court, upon a finding of reasonable suspicion that an individual has committed the crime of criminal transmission of HIV, shall order the production of records of a person accused of the offense of criminal transmission of HIV or the attendance of a person with relevant knowledge thereof so long as the return of the records or attendance of the person pursuant to the subpoena is submitted initially to the court for an in camera inspection. Only upon a finding by the court that the records or proffered testimony are relevant to the pending offense, the information produced pursuant to the court’s order shall be disclosed to the prosecuting entity and admissible if otherwise permitted by law.

(e) A person who commits criminal transmission of HIV commits a Class 2 felony.

720 ILL. COMP. STAT. ANN. 5/11-0.1 (2016)

Definitions

"Bodily harm" means physical harm, and includes, but is not limited to, sexually transmitted disease, pregnancy, and impotence.

720 ILL. COMP. STAT. ANN. 5/11-1.30 (2016)

Aggravated criminal sexual assault

(a) A person commits aggravated criminal sexual assault if that person commits criminal sexual assault and any of the following aggravating circumstances exist during the commission of the offense or, for purposes of paragraph (7), occur as part of the same course of conduct as the commission of the offense:

(2) the person causes bodily harm to the victim, except as provided in paragraph (10);

CHAPTER 730, CORRECTIONS, UNIFIED CODE OF CORRECTIONS

730 ILL. COMP. STAT. § 5/5-4.5-35 (2016) **

Class 2 Felonies; Sentence

For a Class 2 felony:

(a) TERM. The sentence of imprisonment shall be a determinate sentence of not less than 3 years and not more than 7 years. The sentence of imprisonment for an extended term Class 2 felony, as provided in Section 5-8-2 (730 ILCS 5/5-8-2), shall be a term not less than 7 years and not more than 14 years.

(d) PROBATION; CONDITIONAL DISCHARGE. Except as provided in Section 5-5-3 or 5-6-2 (730 ILCS 5/5-5-3 or 5/5-6-2), the period of probation or conditional discharge shall not exceed 4 years. The court shall specify the conditions of probation or conditional discharge as set forth in Section 5-6-3 (730 ILCS 5/5-6-3).

(e) FINE. Fines may be imposed as provided in Section 5-4.5-50(b) (730 ILCS 5/5-4.5-50(b)).

(l) PAROLE; MANDATORY SUPERVISED RELEASE. Except as provided in Section 3-3-8 or 5-8-1 (730 ILCS 5/3-3-8 or 5/5-8-1), the parole or mandatory supervised release term shall be 2 years upon release from imprisonment.

730 ILL. COMP. STAT. § 5/5-4.5-50 **

Sentence Provisions; All Felonies

(b) FELONY FINES. An offender may be sentenced to pay a fine not to exceed, for each offense, \$25,000 or the amount specified in the offense, whichever is greater, or if the offender is a corporation, \$50,000 or the amount specified in the offense, whichever is greater. A fine may be imposed in addition to a sentence of conditional discharge, probation, periodic imprisonment, or imprisonment. See Article 9 of Chapter V (730 ILCS 5/Ch. V, Art. 9 [(730 ILCS 5/5-9-1 et seq.)]) for imposition of additional amounts and determination of amounts and payment.

CHAPTER 410, PUBLIC HEALTH, COMMUNICABLE DISEASES

410 ILL. COMP. STAT. ANN. 325/3 (2016)

Definitions

(3) "Sexually transmissible disease" means a bacterial, viral, fungal or parasitic disease, determined by rule of the Department to be sexually transmissible, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for regulation and treatment. In considering which diseases are to be designated sexually transmissible diseases, the Department shall consider such diseases as chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/Acute Salpingitis, syphilis, Acquired Immunodeficiency Syndrome (AIDS), and Human Immunodeficiency Virus (HIV) for designation, and shall consider the recommendations and classifications of the Centers for Disease Control and other nationally recognized medical authorities. Not all diseases that are sexually transmissible need be designated for purposes of this Act.

410 ILL. COMP. STAT. ANN. 325/5.5 (2016)

Risk assessment

(a) Whenever the Department receives a report of HIV infection or AIDS pursuant to this Act and the Department determines that the subject of the report may present or may have presented a possible risk of HIV transmission, the Department shall, when medically appropriate, investigate the subject of the report and that person's contacts as defined in subsection (c), to assess the potential risks of transmission. Any investigation and action shall be conducted in a timely fashion. All contacts other than those defined in subsection (c) shall be investigated in accordance with Section 5 of this Act [410 ILCS 325/5]

(d) All information and records held by the Department and local health authorities pertaining to activities conducted pursuant to this Section shall be strictly confidential and exempt from copying and inspection under the Freedom of Information Act [5 ILCS 140/1 et seq.]. Such information and records shall not be released or made public by the Department or local health authorities, and shall not be admissible as evidence, nor discoverable in any action of any kind in any court or before any tribunal, board, agency or person and shall be treated in the same manner as the information and those records subject to the provisions of Part 21 of Article VIII of the Code of Civil Procedure [735 ILCS 5/2-2101 et seq.] except under the following circumstances:

(2) When authorized under Section 8 [410 ILCS 325/8] to be released under court order or subpoena pursuant to Section 12-5.01 or 12-16.2 of the Criminal Code of 1961 or the Criminal Code of 2012 [720 ILCS 5/12-5.01 or 720 ILCS 5/12-16.2]; or

(3) When made by the Department for the purpose of seeking a warrant authorized by Sections 6 and 7 of this Act. Such disclosure shall conform to the requirements of subsection (a) of Section 8 of this Act.

410 ILL. COMP. STAT. ANN. 325/6 (2016)

Physical examination and treatment

(a) Subject to the provisions of subsection (c) of this Section, the Department and its authorized representatives may examine or cause to be examined persons reasonably believed to be infected with or to have been exposed to a sexually transmissible disease.

(b) Subject to the provisions of subsection (c) of this Section, persons with a sexually transmissible disease shall report for complete treatment to a physician licensed under the provisions of the Medical Practice Act of 1987 [225 ILCS 60/1 et seq.], or shall submit to treatment at a facility provided by a local health authority or other public facility, as the Department shall require by rule or regulation until the disease is noncommunicable or the Department determines that the person does not present a real and present danger to the public health. This subsection (b) shall not be construed to require the Department or local health authorities to pay for or provide such treatment.

(c) No person shall be apprehended, examined or treated for a sexually transmissible disease against his will, under the provisions of this Act, except upon the presentation of a warrant duly authorized by a court of competent jurisdiction. In requesting the issuance of such a warrant the Department shall show by a preponderance of evidence that the person is infectious and that a real and present danger to the public health and welfare exists unless such warrant is issued and shall show that all other reasonable means of obtaining compliance have been exhausted and that no other less restrictive alternative is available. The court shall require any proceedings authorized by this subsection (c) to be conducted in camera. A record shall be made of such proceedings but shall be sealed, impounded and preserved in the records of the court, to be made available to the reviewing court in the event of an appeal.

410 ILL. COMP. STAT. ANN. 325/7 (2016)

Quarantine and Isolation

(a) Subject to the provisions of subsection (b) of this Section, the Department may order a person to be isolated or a place to be quarantined and made off limits to the public to prevent the probable spread of a sexually transmissible disease, until such time as the condition can be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists.

(b) No person may be ordered to be isolated, and no place may be ordered to be quarantined, except with the consent of such person or owner of such place or upon the order of a court of competent jurisdiction and upon proof by the Department, by clear and convincing evidence, that the public's health and welfare are significantly endangered by a person with a sexually transmissible disease or by a place where there is a significant amount of sexual activity likely to spread a sexually transmissible disease, and upon proof that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists.

Illinois Administrative Code

TITLE 77, PUBLIC HEALTH, CHAPTER I, DEPARTMENT OF PUBLIC HEALTH

77 ILL. ADMIN. CODE § 690.1330 (2016)

Order and Procedure for Isolation, Quarantine and Closure

a) The Department or certified local health department may order a person or group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public on an immediate basis without prior consent or court order if, in the reasonable judgment of the Department or certified local health department, immediate action is required to protect the public from a dangerously contagious or infectious disease. (Section 2(c) of the Act) The determination that immediate action is required shall be based on the following:

(1) The Department or the certified local health department has reason to believe that a person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a dangerously contagious or infectious disease that could spread to or contaminate others if remedial action is not taken; and

(2) The Department or the certified local health department has reason to believe that the person or group of persons would pose a serious and imminent risk to the health and safety of others if not detained for isolation; and

(3) The Department or the certified local health department has first made efforts, which shall be documented, to obtain voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination of persons or animals, isolation, and inspection and closure of facilities, or has determined that seeking voluntary compliance would create a risk of serious harm.

(b) All police officers, sheriffs and all other officers and employees of the State or any locality shall enforce the rules and regulations so adopted and orders issued by the Department or the certified local health department. (Section 2(a) of the Act) The Department or certified local health department may request the assistance of police officers, sheriffs, and all other officers and employees of any political subdivision within the jurisdiction of the Department or certified local health department to immediately enforce an order given to effectuate the purposes of this Subpart.

(c) If the Department or certified local health department orders the immediate isolation or quarantine of a person or group of persons:

(1) The immediate isolation or quarantine order shall be for a period not to exceed the period of incubation and communicability, as determined by the Department or certified local health department, for the dangerously contagious or infectious disease.

(2) The Department or certified local health department shall issue a written isolation or quarantine order within 24 hours after the commencement of isolation or quarantine pursuant to a verbal order, which shall specify the following:

(A) The identity of all persons or groups subject to quarantine or isolation, if known;

- (B) The premises subject to quarantine, isolation or closure;
- (C) Notice of the right to counsel;
- (D) Notice that if the person or owner is indigent, the court will appoint counsel for that person or owner;
- (E) Notice of the reason for the order for isolation, quarantine or closure, including the suspected dangerously contagious or infectious disease, if known;
- (F) Notice of whether the order is an immediate order, and if so, the time frame for the Department or certified local health department to seek consent or to file a petition requesting a court order;
- (G) Notice of the anticipated duration of the isolation, quarantine, or closure, including the dates and times at which isolation, quarantine, or closure commences and ends (Section 2(c) of the Act);
- (H) A statement of the measures taken by the Department or the certified local health department to seek voluntary compliance or the basis on which the Department or the certified local health department determined that seeking voluntary compliance would create a risk of serious harm;
- (I) A statement regarding the medical basis on which isolation, quarantine, or closure is justified, e.g., clinical manifestations; physical examination; laboratory tests, diagnostic tests or other medical tests; epidemiologic information; or other evidence of exposure or infection available to the Department or certified local health department at the time;
- (J) A statement that such persons may refuse examination, medical monitoring, medical treatment, prophylaxis, or vaccination, but remain subject to isolation or quarantine; and
- (K) A statement that, at any time while the isolation, quarantine or closure order is in effect, persons under isolation, quarantine, or closure may request a hearing to review the isolation, quarantine or closure order as set forth in Section 690.1345 of this Subpart.

(f) Upon filing a petition requesting a court order authorizing the isolation, quarantine or closure, or a petition requesting continued isolation, quarantine, or closure, the Department or certified local health department shall serve a notice of the hearing upon the person or persons who are being quarantined or isolated or upon the owner of the property that is being closed at least 24 hours before the hearing. If it is impractical to provide individual notice to large groups who are isolated or quarantined, a copy of the notice shall be posted in a designated location. The notice shall contain the following information:

- (1) The time, date and place of the hearing;
- (2) The grounds and underlying facts upon which continued isolation, quarantine or closure is sought;
- (3) The person's right to appear at the hearing; and
- (4) The person's right to counsel, including the right, if the person is indigent, to be represented by counsel designated by the court.

(g) To obtain a court order, the Department or certified local health department, by clear and convincing evidence, must prove that the public's health and welfare are significantly endangered by a person or group of persons that has, that is suspected of having, that has been exposed to, or that is reasonably believed to have been exposed to a dangerously contagious or infectious disease, including non-compliant tuberculosis patients or that the public's health and welfare have been significantly endangered by a place where there is a significant amount of activity likely to spread a dangerously contagious or infectious disease. The Department or certified local health department must also prove that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists. For purposes of this subsection, in determining whether no less restrictive alternative exists, the court shall consider evidence showing that, under the circumstances presented by the case in which an order is sought, quarantine or isolation is the measure provided for in a rule of the Department or in guidelines issued by the Centers for Disease Control and Prevention or the World Health Organization. (Section 2(c) of the Act)

(1) Isolation, quarantine, or closure authorized as a result of a court order shall be for a period not to exceed 30 days from the date of issuance of the court order.

(2) The Department or certified local health department may petition the court to continue the isolation, quarantine, or closure beyond the initial 30 days.

(3) The Department or the certified local health department may petition the court to provide interpreters.

(4) Prior to the expiration of a court order for continued isolation, quarantine, or closure, the Department or certified local health department may petition the court to continue isolation, quarantine, or closure, provided that:

(A) The Department or certified local health department provides the court with a reasonable basis to require continued isolation, quarantine, or closure to prevent a serious and imminent threat to the health and safety of others.

(B) The request for a continued order shall be for a period not to exceed 30 days.

77 ILL. ADMIN. CODE § 693.50 (2016)

Physical Examination and Medical Treatment for Syphilis, Gonorrhea, Chlamydia, HIV or Chancroid

(a) The Department and certified local health departments may examine or cause to be examined persons reasonably believed to be infected with or to have been exposed to a reportable STI. (Section 6(a) of the Act)

(b) Persons with syphilis, gonorrhea, chlamydia, or chancroid shall report for complete treatment to a physician licensed under the provisions of the Medical Practice Act of 1987, or shall submit to treatment at a facility provided by a certified local health department or other public facility until the disease is noncommunicable or the Department or the certified local health department determines that the person does not present a real and present danger to the public health. This subsection shall not be construed to require the Department or the certified local health department to pay for or provide such treatment. (Section 6(b) of the Act)

(c) Persons with HIV shall report for treatment to a physician licensed under the provisions of the Medical Practice Act of 1987, or shall submit to treatment at a facility provided by a certified local health

department or other public facility. This subsection shall not be construed to require the Department or the certified local health department to pay for or provide such treatment. (Section 6(b) of the Act).

(2) If a medical examination or appropriate treatment has not been provided, the certified local health department shall request that individual to report for examination or treatment at a specific date, time and location, or otherwise submit verifiable proof of examination or treatment by a specific date. For persons with HIV, if a medical examination or treatment has not been provided, the certified local health department shall request that individual to consider examination, testing and treatment;

(e) No person shall be apprehended, examined or treated for syphilis, gonorrhea, chlamydia, HIV or chancroid against his or her will, except upon the presentation of a warrant duly authorized by a court of competent jurisdiction. In requesting the issuance of such a warrant, the Department or certified local health department shall show by a preponderance of the evidence that the person is infectious and that a real and present danger to the public health and welfare exists unless the warrant is issued and shall show that all other reasonable means of obtaining compliance have been exhausted and that no other less restrictive alternative is available. (Section 6(c) of the Act) The Department does not delegate the responsibility to seek a court order to a delegated agency.

(1) In determining whether no less restrictive means exist, the court shall consider evidence showing that, under the circumstances presented by the case in which an order is sought, apprehension, examination or treatment is the measure provided for in guidelines issued by the Centers for Disease Control and Prevention.

(2) The court shall require any proceedings authorized by this Section to be conducted in camera. A record shall be made of such proceedings but shall be sealed, impounded and preserved in the records of the court, to be made available to the reviewing court in the event of an appeal. (Section 6(c) of the Act)

(3) The individual shall be given a written notice of any court proceedings conducted under this Section. The notice shall follow the procedures listed in 77 Ill. Adm. Code 690.1330 (Control of Communicable Diseases Code).

77 ILL. ADMIN. CODE § 693.60 (2016)

Quarantine and Isolation for Syphilis, Gonorrhea, Chlamydia, HIV and Chancroid

(a) The Department or certified local health department may order a person to be isolated or a place to be quarantined and made off limits to the public to prevent the probable spread of syphilis, gonorrhea, chlamydia, HIV or chancroid, until such time as the condition can be corrected or the danger to the public health is eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists. (Section 7(a) of the Act) The determination that action is required shall be based on the following:

(1) The Department or certified local health department has reason to believe that a person infected with syphilis, gonorrhea, chlamydia, HIV or chancroid is noncompliant and is likely to spread syphilis, gonorrhea, chlamydia, HIV or chancroid if not detained for isolation;

(2) The Department or the certified local health department has reason to believe that a place where there is significant sexual activity is likely to contribute to the spread of syphilis,

gonorrhea, chlamydia, HIV or chancroid if quarantine procedures are not initiated; and

(3) The Department or the certified local health department has first made efforts, which shall be documented, to obtain voluntary compliance with requests for medical examination, testing, treatment and counseling of a noncompliant person infected with syphilis, gonorrhea, chlamydia, HIV or chancroid or the owner of a place where there is significant sexual activity that is likely to contribute to the spread of syphilis, gonorrhea, chlamydia, HIV or chancroid.

(b) No person may be ordered to be isolated, and no place may be ordered to be quarantined, except with the consent of such person or owner of such place or upon the order of a court of competent jurisdiction and upon proof by the Department or certified local health department, by clear and convincing evidence, that the public's health and welfare are significantly endangered by a person with syphilis, gonorrhea, chlamydia, HIV or chancroid or by a place where there is a significant amount of sexual activity likely to spread syphilis, gonorrhea, chlamydia, HIV or chancroid, and upon proof that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists. (Section 7(b) of the Act)

(1) A "significant danger to the public's health", for purposes of this Section, means that the continued operation or existence of the place in question would result in irreparable injury to individuals engaging in sexual activity at that place.

(2) The order and procedure for quarantine and isolation for purposes of this Section shall be the same as the order and procedure for quarantine and isolation set forth in 77 Ill. Adm. Code 690.1330 (Control of Communicable Diseases Code).

77 ILL. ADMIN. CODE § 693.120 (2016)

Certificate of Freedom from STIs

No health care professional, local health department, designated agent or other person, including the Department, shall issue certificates of freedom from STIs to or for any person.