

# Minnesota

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## Analysis

### **People living with HIV (PLHIV) or other communicable diseases must disclose the disease to their sexual partners.**

It is a criminal offense for any individual who knowingly “harbor[s] an infectious agent” to “transfer” disease by engaging in sexual penetration with another person without first informing that person that they carry that infectious agent.<sup>1</sup> “Neither the intent to transmit, nor actual transmission of disease are required for prosecution.”<sup>2</sup>

Under the statute, a “communicable disease” is defined as “a disease or condition that causes serious illness, serious disability or death; the infectious agent of which may pass or be carried from the body of one person to the body of another through direct transmission,”<sup>3</sup> which may include HIV and other STIs. “Direct transmission” is defined as “predominately sexual or blood-borne transmission.”<sup>4</sup> The term “transfer” means “to engage in behavior that has been demonstrated epidemiologically to be a mode of direct transmission of an infectious agent which causes the communicable disease.”<sup>5</sup> However, for purposes of the statute, “sexual penetration” includes anal, vaginal, and oral sex, as well as any penetration by any part of a person’s body or by an object into another person.<sup>6</sup> Thus, the statute contradicts itself, since neither oral sex<sup>7</sup> nor non-penile penetration (including with a foreign object)<sup>8</sup> pose any significant risk of HIV transmission and therefore do not meet the requirements of the term “transfer.”<sup>9</sup>

An individual “knowingly” harbors an infectious agent when they (1) are advised by a physician or health professional that they harbor an infectious agent, (2) receive educational materials about how

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<sup>1</sup> MINN. STAT. § 609.2241(2)(1) (2016).

<sup>2</sup> See § 609.2241(1)(d) (2016).

<sup>3</sup> § 609.2241(1)(a) (2016).

<sup>4</sup> § 609.2241(1)(b) (2016).

<sup>5</sup> § 609.2241(1)(d) (2016).

<sup>6</sup> §§ 609.2241(2)(1), 609.341(12) (2016).

<sup>7</sup> CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors, 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. 20, 2016) (classifying HIV transmission risk for receptive and insertive oral intercourse as “low,” while the risk for insertive penile-vaginal intercourse is identified as “4 per 10,000 exposures.”).

<sup>8</sup> *Id.* (“HIV transmission through these exposure routes is technically possible but unlikely and not well documented.”).

<sup>9</sup> It was perhaps a legislative oversight to include the entire definition of “sexual penetration” in the statute, as the law specifically notes that only behavior known to transmit an infectious agent may be prosecuted and the use of latex barrier protection is an affirmative defense. This suggests both that it was not the intent of the legislature to prosecute sexual activities that are not known to transmit an infectious agent and that the entire definition of “sexual penetration” is not applicable to Minnesota’s communicable disease statute.

the infectious agent is transmitted, and (3) are instructed on how to prevent transmission of the infectious agent.<sup>10</sup>

It is a defense to prosecution under this statute if condoms, dental dams, or other latex barriers are used during sexual intercourse,<sup>11</sup> or if the defendant took practical means to prevent transmission as advised by a doctor or health care professional.<sup>12</sup> It is also a defense if HIV (or other communicable disease) status is disclosed to sexual partners.<sup>13</sup> However, such disclosure or use of condoms or other protection during private, sexual activities may be difficult to prove without witnesses or documentation.

This offense may be charged as assault (of the first, second, third, fourth, and fifth degrees), attempted assault, murder (first or second degree), or attempted murder.<sup>14</sup> Potential prison sentences depend on the offense charged.

Prosecutions under Minnesota's communicable disease statute include:

- A. In April 2014, a 33-year-old man living with HIV pled guilty to two counts of attempted first-degree assault under the knowing transfer of a communicable disease statute after he had unprotected sex with several individuals without disclosing his status.<sup>15</sup> He was sentenced to three years' probation.<sup>16</sup>
- B. In October 2009, man living with HIV pled guilty to intentionally inflicting or attempting to inflict bodily harm after having unprotected sex with a woman without disclosing his HIV status and was sentenced to 90 days in jail.<sup>17</sup>

### **PLHIV are prohibited from donating their blood, organs, semen, or body tissues.**

Minnesota's communicable disease statute also prohibits people with communicable diseases from transferring their blood, sperm, organs, or body tissues to others.<sup>18</sup> Neither the intent to transmit nor actual transmission is required for prosecution.

It is not a violation of the statute if (1) the transfer of blood, semen, organ, or tissue was deemed necessary for medical research, or (2) the PLHIV disclosed their status on donation forms before transferring the bodily fluids or tissues.<sup>19</sup>

In *State v. Rick*, the Supreme Court of Minnesota affirmed that this subsection does not apply to sexual conduct.<sup>20</sup> In 2009, Rick was charged with attempted first-degree assault in violation of MINN. STAT.

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<sup>10</sup> See MINN. STAT. § 609.2241(1)(c) (2016).

<sup>11</sup> § 609.2241(1)(e) (2016).

<sup>12</sup> § 609.2241(3) (2016).

<sup>13</sup> § 609.2241(2)(1) (2016).

<sup>14</sup> §§ 2241(2), 609.17, 609.18, 609.19, 609.221, 609.222, 609.223, 609.2231, 609.224 (2016).

<sup>15</sup> David Chanen, *Minneapolis Man pleads guilty to having unprotected sex when he knew he was HIV-positive*, STARTRIBUNE, April 17, 2014, available at <http://www.startribune.com/mpls-man-with-hiv-pleads-guilty-to-knowingly-having-unprotected-sex/255556111/>.

<sup>16</sup> *Id.*

<sup>17</sup> *Minnesota Man Receives 90 Days in Jail for Allegedly Exposing Woman to HIV*, POZ, Oct. 28, 2009, available at <https://www.poz.com/article/duluth-hiv-exposure-17491-1414>. Intentionally inflicting or attempting to inflict bodily harm is misdemeanor assault in the fifth degree. MINN. STAT. § 609.224(1)(2) (2016).

<sup>18</sup> MINN. STAT. § 609.2241(2)(2).

<sup>19</sup> *Id.*

609.2241, subdivision 2, for engaging in unprotected consensual sexual activity with a partner on multiple occasions.<sup>21</sup> The State argued that Rick had either violated subdivision 2(1) by engaging in “sexual penetration” without disclosing his status, or that he had violated subdivision 2(2) by transferring sperm to his partner during the relevant sexual conduct.<sup>22</sup>

The jury found Rick not guilty of violating subdivision 2(1) because he had disclosed his HIV status, but they found him guilty of violating subdivision 2(2).<sup>23</sup> The court of appeals reversed Rick’s conviction, finding that subdivision 2(2) only applied to medical procedures.<sup>24</sup> The State appealed this reversal, arguing that subdivision 2(2) “criminalizes sexual conduct that involves the transfer of sperm.”<sup>25</sup>

In affirming the reversal, the Supreme Court of Minnesota examined the relevant legislative history of the communicable disease statute and noted that the exemptions provided in subdivision 2(2) pertain solely to “situations involving ‘medical research’ or ‘donor screening forms,’”<sup>26</sup> and thus held “subdivision 2(2) applies only to the donation or exchange for value of ‘blood, sperm, organs, or tissue, except as deemed necessary for medical research or if disclosed on donor screening forms.”<sup>27</sup>

### **Sharing needles or syringes may lead to criminal penalties.**

It is unlawful for a person who is aware they are living with a communicable disease to share non-sterile needles or syringes for the purpose of injecting drugs.<sup>28</sup> Neither the intent to transmit nor actual disease transmission is required for prosecution.

Although disclosing one’s infection with communicable disease to sexual partners may prevent prosecution, disclosure before sharing needles with another person is not a defense on the face of the statute.<sup>29</sup> Prosecution for communicable disease exposure may thus result even if the needle sharing occurs between people aware of each other’s communicable disease status and knowledgeable of exposure risks. However, it is an affirmative defense if the person took practical means to prevent transmission as advised by a physician or other health professional.<sup>30</sup>

### **HIV status results in enhanced prison sentences for sex offenses.**

Under Minnesota’s sentencing guidelines, a defendant may receive a higher sentence than what is recommended if aggravating circumstances make their conduct more serious than the conduct

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<sup>20</sup> *State v. Rick*, 835 N.W.2d 478, 487 (Minn. 2013).

<sup>21</sup> *Id.* at 481.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 481-82.

<sup>26</sup> *Id.* at 482-485.

<sup>27</sup> *Id.* at 486.

<sup>28</sup> MINN. STAT § 609.2241(2)(3) (2016).

<sup>29</sup> *Id.* See *cf.* § 609.2241(2)(1) (2016) (“sexual penetration with another person *without having first informed the other person that the person has a communicable disease.*”) (emphasis added) (disclosure is explicitly a defense for sexual conduct).

<sup>30</sup> MINN. STAT § 609.2241(3)(1) (2016).

normally involved in the commission of the offense.<sup>31</sup> A defendant's exposure of sexual assault victims to STIs or HIV has been used as a basis for elevated prison sentences.<sup>32</sup>

Defendants living with HIV may also receive enhanced sentences. In *State v. Sebasky*, the Court of Appeals of Minnesota affirmed the defendant's conviction for three counts of criminal sexual conduct in the first degree and his sentence of 516 months' imprisonment, a triple departure from the presumptive sentence.<sup>33</sup> The court reasoned that, although a court must impose the presumptive sentence under the Minnesota Sentencing Guidelines absent substantial and compelling circumstances, and although courts usually should restrict sentences to double departures, the triple departure was nevertheless justified, at least in part because the defendant knew his HIV status while sexually abusing two boys.<sup>34</sup> Other aggravating factors included the multiple incidents, multiple types of abuse, defendant's planning and manipulation, and his violation of his position of trust and authority.<sup>35</sup>

In *Perkins v. State*, the Supreme Court of Minnesota affirmed the 30-year sentence and \$12,000 fine for a man living with HIV who pled guilty to one count of first-degree criminal sexual conduct.<sup>36</sup> The plea petition provided that any agreement as to sentence would be a recommendation only, and that the defendant could not withdraw the guilty plea if the court chose not to follow the recommendation.<sup>37</sup> The defendant sought post-conviction relief when the court imposed the statutory maximum sentence, a departure more than three times higher than recommended in the sentencing guidelines.<sup>38</sup> The trial judge remarked that he could not "fathom on the face of this earth if there was a more devastating offense to a victim than being sexually assaulted by a person with AIDS . . . . The victim of this offense will not know for several months whether or not she contracted the HIV virus."<sup>39</sup>

### **People living with a communicable disease may be subject to testing, treatment, and institutional commitment.**

The Department of Health has authority to give health directives to people with a communicable disease, or who are reasonably believed to have a communicable disease, and considered a health threat to others. The Department may require any number of actions, such as participation in education

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<sup>31</sup> MINN. STAT. § 244.10(5a)(a)(3) (2016).

<sup>32</sup> See *Kilcoyne v. State*, 344 N.W.2d 394, 397 (Minn. 1984) (finding that defendant's transmission of trichomonas vaginalis, a "less serious, easily cured form of venereal disease," to sexual assault victim was one of several aggravating factors justifying an elevated sentence); *State v. Vance*, 392 N.W.2d 679, 684-85 (Minn. Ct. App. 1986) (finding that the trial court appropriately considered both the victim's young age and the defendant's transmission of public lice and venereal warts as factors justifying an elevated sentence); *State v. Taylor*, No. C3-88-74, 1988 LEXIS 688, at \*5 (Minn. Ct. App. July 26, 1988) ("Finally, the supreme court has indicated that transmission of a venereal disease, even a less-serious form, may be an aggravating factor, at least where the disease causes pain to the victim.") (citing *Kilcoyne*); *State v. Banks*, No. C1-94-1491, 1995 LEXIS 384, at \*2 (Minn. Ct. App. Mar. 21, 1995) (finding the defendant's transmission of venereal disease to sexual assault victim as one of several aggravating factors justifying a sentence of 300 months in prison, an upward durational departure of two and one-half times the presumptive sentence).

<sup>33</sup> *State v. Sebasky*, 547 N.W.2d 93, 93-94, 101 (Minn. Ct. App. 1996) (One count was predicated on the victim being under 13 years of age, while two counts were predicated on the victim being under 16 years of age and the defendant having a "significant relationship" with the victim).

<sup>34</sup> *Id.* at 100.

<sup>35</sup> *Id.* at 101.

<sup>36</sup> *Perkins v. State*, 559 N.W.2d 678, 683-85 (Minn. 1997).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 684.

<sup>39</sup> *Id.* at 684.

or treatment programs, considered necessary to prevent or control transmission of the communicable disease.<sup>40</sup> According to the public health code, a person is a health threat to others when they demonstrate “an inability or unwillingness to act in such a manner as to not place others at risk of exposure to infection that causes serious illness, serious disability, or death,” which can include, “repeated behavior . . . which has been demonstrated epidemiologically to transmit or which evidences a careless disregard for the transmission of the disease to others.”<sup>41</sup> Any health care worker, “who has knowledge or reasonable cause to believe that a person is a health threat to others or has engaged in noncompliant behavior . . . may report that information to the commissioner.”<sup>42</sup>

Refusal to comply with a health directive can result in a court order mandating testing and treatment, part-time or full-time residence in a supervised setting for a period of time set by the court, and commitment to a facility for up to six months or until rendered noninfectious.<sup>43</sup> However, the Department must first establish before a court, by clear and convincing evidence, the underlying facts, including its efforts to alleviate the alleged health threat and issuance of the health directive, that justify the legal relief sought.<sup>44</sup> There are some procedural protections in place, such as the rights to timely notice, to legal representation, and the right to appeal.<sup>45</sup> However, there is no right to refrain from self-incrimination by giving testimony or producing documents, although such testimony cannot be used in a criminal case.<sup>46</sup> As of publication, the authors are not aware of any cases illustrating how “direct health threat” petitions may be analyzed by a court.

### **Note on civil commitment:**

Under the civil commitment laws of Minnesota, an individual found to be “sexually dangerous,” having a “sexual psychopathic personality,” or “mentally ill and dangerous” can be indefinitely confined by the state to protect the public safety.<sup>47</sup> In 2008, a civil commitment proceeding was initiated against a PLHIV in *In re Renz*.<sup>48</sup> Renz appealed his commitment for being “mentally ill and dangerous,” arguing that though he was mentally ill, he was not dangerous and his commitment should only be for his mental illness.<sup>49</sup> To be classified as “mentally ill and dangerous,” an individual must be mentally ill, present a “clear danger to the safety of others” because they have “engaged in an overt act causing or attempting to cause serious physical harm to another,” and there must be a “substantial likelihood that

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<sup>40</sup> MINN. STAT. §§ 144.4172(6), (1), (2), (5) (2016).

<sup>41</sup> MINN. STAT. §§ 144.4172(8)(2), (8)(3) (2016). (Other behavior that may trigger a health directive includes, “a substantial likelihood that a carrier will repeatedly transmit a communicable disease to others as is evidenced by a carrier’s past behavior, or by statements of a carrier that are credible indicators of a carrier’s intention; or affirmative misrepresentation by a carrier of the carrier’s status prior to engaging in any behavior which has been demonstrated epidemiologically to transmit the disease.” MINN. STAT. § 144.4172(8)(2)(c) (2016)).

<sup>42</sup> MINN. STAT. § 144.4175 (2016).

<sup>43</sup> MINN. STAT. §§ 144.4172(10), 144.4173, 144.4180 (2016).

<sup>44</sup> MINN. STAT. §§ 144.4176(1), 144.4178 (2016).

<sup>45</sup> MINN. STAT. §§ 144.4176(2), 144.4181 (2016).

<sup>46</sup> MINN. STAT. § 144.4178 (2016). Testimony can, however, be used to prosecute persons for perjury committed in the testimony.

<sup>47</sup> MINN. STAT. §§ 253B.18, 253D.07 (2016).

<sup>48</sup> *In re Renz*, No. A08-898, 2008 LEXIS 1287 (Minn. Ct. App. 2008).

<sup>49</sup> *Id.* at \*1. It should be noted that there are stark differences between civil commitment for being “mentally ill” and civil commitment for being “mentally ill and dangerous.” This includes the place and duration of commitment as well as the procedures for being discharged. MINN. STAT. §§ 253B.09, 253B.18 (2014).

the person will engage in acts capable of inflicting serious harm on another.”<sup>50</sup> Renz contended that there was no clear and convincing evidence that he engaged in any act causing or attempting to cause physical harm to another.<sup>51</sup>

The court found that, because he knew his HIV status and engaged in unprotected sexual activity, Renz had committed “an overt act causing or attempting to cause physical harm to another.”<sup>52</sup> The court relied on medical testimony that Renz must have engaged in unprotected sex because he had contracted gonorrhea and syphilis, and that he took his HIV medication only intermittently.<sup>53</sup> The court also noted that, although earlier case law held that “the risk posed by [a PLHIV] who intended to have intercourse with others without advising them of his HIV status should [be] addressed by the Health Threat Procedures Act, rather than civil commitment,” an individual’s HIV status would not preclude civil commitment if other requirements of the law were met.<sup>54</sup> Here, the court found that Renz met the requirements for commitment as mentally ill and dangerous because of his sexual history and lack of adherence to medication.<sup>55</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, should not be used as a substitute for legal advice.*

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<sup>50</sup> MINN. STAT. § 253B.02(17) (2016).

<sup>51</sup> *Renz*, 2008 WL 4706962, at \*2.

<sup>52</sup> *Id.* at \*3, 7.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at \*4 (citing *In re Stilinovich*, 479 N.W.2d 731, 735-36 (Minn. Ct. App. 1992) (finding the use of Minnesota’s “psychopathic personality” statute inappropriate for civil commitment where defendant, a PLHIV, failed to show concern for the risk of HIV transmission through sexual intercourse)). *In re Stilinovich* pre-dates Minnesota’s communicable disease and “sexually dangerous person” statutes.

<sup>55</sup> *Id.* at \*5.

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## Minnesota 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 609, CRIMINAL CODE

#### MINN. STAT. § 609.2241 (2016) \*\*

##### *Knowing transfer of communicable disease*

Subdivision 1. Definitions. -- As used in this section, the following terms have the meanings given:

(a) "Communicable disease" means a disease or condition that causes serious illness, serious disability, or death; the infectious agent of which may pass or be carried from the body of one person to the body of another through direct transmission.

(b) "Direct transmission" means predominately sexual or blood-borne transmission.

(c) "A person who knowingly harbors an infectious agent" refers to a person who receives from a physician or other health professional:

- (1) advice that the person harbors an infectious agent for a communicable disease;
- (2) educational information about behavior which might transmit the infectious agent; and
- (3) instruction of practical means of preventing such transmission.

(d) "Transfer" means to engage in behavior that has been demonstrated epidemiologically to be a mode of direct transmission of an infectious agent which causes the communicable disease.

(e) "Sexual penetration" means any of the acts listed in section 609.341, subdivision 12, when the acts described are committed without the use of a latex or other effective barrier.

Subd. 2. *Crime.* -- It is a crime, which may be prosecuted under section 609.17, 609.185, 609.19, 609.221, 609.222, 609.223, 609.2231, or 609.224, for a person who knowingly harbors an infectious agent to transfer, if the crime involved:

- (1) sexual penetration with another person without having first informed the other person that the person has a communicable disease;
- (2) transfer of blood, sperm, organs, or tissue, except as deemed necessary for medical research or if disclosed on donor screening forms; or
- (3) sharing of nonsterile syringes or needles for the purpose of injecting drugs.

Subd. 3. *Affirmative defense.* -- It is an affirmative defense to prosecution, if it is proven by a preponderance of the evidence, that:

(1) the person who knowingly harbors an infectious agent for a communicable disease took practical means to prevent transmission as advised by a physician or other health professional;  
or

(2) the person who knowingly harbors an infectious agent for a communicable disease is a health care provider who was following professionally accepted infection control procedures. Nothing in this section shall be construed to be a defense to a criminal prosecution that does not allege a violation of subdivision 2.

Subd. 4. *Health Department data.* -- Data protected by section 13.3805, subdivision 1, and information collected as part of a Health Department investigation under sections 144.4171 to 144.4186 may not be accessed or subpoenaed by law enforcement authorities or prosecutors without the consent of the subject of the data.

## CHAPTER 144, HEALTH CODE

### MINN. STAT. § 144.4172 (2016)

#### *Definitions*

Subdivision 1. *Carrier.* -- "Carrier" means a person who serves as a potential source of infection and who harbors or who the commissioner reasonably believes to be harboring a specific infectious agent whether or not there is present discernible clinical disease. In the absence of a medically accepted test, the commissioner may reasonably believe an individual to be a carrier only when a determination based upon specific facts justifies an inference that the individual harbors a specific infectious agent.

Subd. 2. *Communicable disease.* -- "Communicable disease" means a disease or condition that causes serious illness, serious disability, or death, the infectious agent of which may pass or be carried, directly or indirectly, from the body of one person to the body of another.

Subd. 3. *Commissioner.* -- "Commissioner" means the commissioner of health.

Subd. 4. *Contact notification program.* -- "Contact notification program" means an ongoing program established by the commissioner to encourage carriers of a communicable disease whose primary route of transmission is through an exchange of blood, semen, or vaginal secretions, such as *treponema pallidum*, *neisseria gonorrhoea*, *chlamydia trachomatis*, and human immunodeficiency virus, to identify others who may be at risk by virtue of contact with the carrier.

Subd. 5. *Directly transmitted.* -- "Directly transmitted" means predominately:

- (1) sexually transmitted;
- (2) blood borne; or
- (3) transmitted through direct or intimate skin contact.

Subd. 6. *Health directive.* -- "Health directive" means a written statement, or, in urgent circumstances, an oral statement followed by a written statement within three days, from the commissioner, or community health board as defined in section 145A.02, subdivision 5, with delegated authority from the commissioner, issued to a carrier who constitutes a health threat to others. A health directive must be individual, specific, and cannot be issued to a class of persons. The directive may require a carrier to

cooperate with health authorities in efforts to prevent or control transmission of communicable disease, including participation in education, counseling, or treatment programs, and undergoing medical tests necessary to verify the person's carrier status. The written directive shall be served in the same manner as a summons and complaint under the Minnesota Rules of Civil Procedure.

Subd. 7. *Licensed health professional.* -- "Licensed health professional" means a person licensed in Minnesota to practice those professions described in section 214.01, subdivision 2.

Subd. 8. *Health threat to others.* -- "Health threat to others" means that a carrier demonstrates an inability or unwillingness to act in such a manner as to not place others at risk of exposure to infection that causes serious illness, serious disability, or death. It includes one or more of the following:

(2) With respect to a directly transmitted communicable disease:

- (a) repeated behavior by a carrier which has been demonstrated epidemiologically to transmit or which evidences a careless disregard for the transmission of the disease to others;
- (b) a substantial likelihood that a carrier will repeatedly transmit a communicable disease to others as is evidenced by a carrier's past behavior, or by statements of a carrier that are credible indicators of a carrier's intention;
- (c) affirmative misrepresentation by a carrier of the carrier's status prior to engaging in any behavior which has been demonstrated epidemiologically to transmit the disease; or
- (d) the activities referenced in clause (1) if the person whom the carrier places at risk is:
  - (i) a minor, (ii) of diminished capacity by reason of mood altering chemicals, including alcohol, (iii) has been diagnosed as having significantly subaverage intellectual functioning, (iv) has an organic disorder of the brain or a psychiatric disorder of thought, mood, perception, orientation, or memory which substantially impairs judgment, behavior, reasoning, or understanding; (v) adjudicated as an incompetent; or (vi) a vulnerable adult as defined in section 626.5572.

(3) Violation by a carrier of any part of a court order issued pursuant to this chapter.

Subd. 10. *Noncompliant behavior.* -- "Noncompliant behavior" means a failure or refusal by a carrier to comply with a health directive.

Subd. 11. *Respondent.* -- "Respondent" means any person against whom an action is commenced under sections 144.4171 to 144.4186.

### **MINN. STAT. § 144.4173 (2016)**

#### *Cause of Action*

Subdivision 1. *Compliance with directive.* -- Failure or refusal of a carrier to comply with a health directive is grounds for proceeding under subdivision 2.

Subd. 2. *Commencement of action.* -- The commissioner, or a community health board as defined in section 145A.02, subdivision 5, with express delegated authority from the commissioner, may commence legal action against a carrier who is a health threat to others and, unless a court order is sought under section 144.4182, who engages in noncompliant behavior, by filing with the district court

in the county in which respondent resides, and serving upon respondent, a petition for relief and notice of hearing.

**MINN. STAT. § 144.4175 (2016)**

*Reporting*

Subdivision 1. *Voluntary reporting.* -- Any licensed health professional or other human services professional regulated by the state who has knowledge or reasonable cause to believe that a person is a health threat to others or has engaged in noncompliant behavior, as defined in section 144.4172, may report that information to the commissioner.

**MINN. STAT. § 144.4176 (2016)**

*Petition; Notice*

Subdivision 1. *Petition.* -- The petition must set forth the following:

- (1) the grounds and underlying facts that demonstrate that the respondent is a health threat to others and, unless an emergency court order is sought under section 144.4182, has engaged in noncompliant behavior;
- (2) the petitioner's efforts to alleviate the health threat to others prior to the issuance of a health directive, unless an emergency court order is sought under section 144.4182;
- (3) the petitioner's efforts to issue the health directive to the respondent in person, unless an emergency court order is sought under section 144.4182;
- (4) the type of relief sought; and
- (5) a request for a court hearing on the allegations contained in the petition.

Subd. 2. *Hearing notice.* -- The notice must contain the following information:

- (1) the time, date, and place of the hearing;
- (2) respondent's right to appear at the hearing;
- (3) respondent's right to present and cross-examine witnesses; and
- (4) respondent's right to counsel, including the right, if indigent, to representation by counsel designated by the court or county of venue.

**MINN. STAT. § 144.4178 (2016)**

*Criminal Immunity*

In accordance with section 609.09, subdivision 2, no person shall be excused in an action under sections 144.4171 to 144.4186 from giving testimony or producing any documents, books, records, or correspondence, tending to be self-incriminating; but the testimony or evidence, or other testimony or evidence derived from it, must not be used against the person in any criminal case, except for perjury committed in the testimony.

**MINN. STAT. § 144.4179 (2016)**

*Standard of proof; Evidence*

Subdivision 1. *Clear and convincing.* -- The commissioner must prove the allegations in the petition by clear and convincing evidence.

Subd. 3. *Carrier status.* -- Upon a finding by the court that the commissioner's suspicion of carrier status is reasonable as established by presentation of facts justifying an inference that the respondent harbors a specific infectious agent, there shall exist a rebuttable presumption that the respondent is a carrier. This presumption may be rebutted if the respondent demonstrates noncarrier status after undergoing medically accepted tests.

**MINN. STAT. § 144.4180 (2016)**

*Remedies*

Subdivision 1. *Remedies available.* -- Upon a finding by the court that the commissioner has proven the allegations set forth in the petition, the court may order that the respondent must:

- (1) participate in a designated education program;
- (2) participate in a designated counseling program;
- (3) participate in a designated treatment program;
- (4) undergo medically accepted tests to verify carrier status or for diagnosis, or undergo treatment that is consistent with standard medical practice as necessary to make respondent noninfectious;
- (5) notify or appear before designated health officials for verification of status, testing, or other purposes consistent with monitoring;
- (6) cease and desist the conduct which constitutes a health threat to others;
- (7) live part time or full time in a supervised setting for the period and under the conditions set by the court;
- (8) subject to the provisions of subdivision 2, be committed to an appropriate institutional facility for the period and under the conditions set by the court, but not longer than six months, until the respondent is made noninfectious, or until the respondent completes a course of treatment prescribed by the court, whichever occurs first, unless the commissioner shows good cause for continued commitment; and
- (9) comply with any combination of the remedies in clauses (1) to (8), or other remedies considered just by the court. In no case may a respondent be committed to a correctional facility.

Subd. 2. *Commitment review panel.* –

The court may not order the remedy specified in subdivision 1, clause (8), unless it first considers the recommendation of a commitment review panel appointed by the commissioner to review the need for commitment of the respondent to an institutional facility.

The duties of the commitment review panel shall be to:

- (1) review the record of the proceeding;
- (2) interview the respondent. If the respondent is not interviewed, the reasons must be documented; and
- (3) identify, explore, and list the reasons for rejecting or recommending alternatives to commitment.

Subd. 3. *Construction.* -- This section shall be construed so that the least restrictive alternative is used to achieve the desired purpose of preventing or controlling communicable disease.

Subd. 4. *Additional requirements.* -- If commitment or supervised living is ordered, the court shall require the head of the institutional facility or the person in charge of supervision to submit: (a) a plan of treatment within ten days of initiation of commitment or supervised living; and (b) a written report, with a copy to both the commissioner and the respondent, at least 60 days, but not more than 90 days, from the start of respondent's commitment or supervised living arrangement, setting forth the following:

- (1) the types of support or therapy groups, if any, respondent is attending and how often respondent attends;
- (2) the type of care or treatment respondent is receiving, and what future care or treatment is necessary;
- (3) whether respondent has been cured or made noninfectious, or otherwise no longer poses a threat to public health;
- (4) whether continued commitment or supervised living is necessary; and
- (5) other information the court considers necessary.

**MINN. STAT. § 144.4181 (2016)**

*Appeal*

The petitioner or respondent may appeal the decision of the district court. The Court of Appeals shall hear the appeal within 30 days after service of the notice of appeal. However, respondent's status as determined by the district court remains unchanged, and any remedy ordered by the district court remains in effect while the appeal is pending.