

Rhode Island

Analysis

There are no criminal statutes explicitly addressing HIV exposure.

A person with an STI may be punished for exposing others to disease.

It is an offense punishable by up to three months' imprisonment or a \$100 fine for an individual with an STI to "knowingly, while in the infectious condition" expose another to infection.¹ STIs are defined in Rhode Island to include syphilis, gonorrhea, chancroid, granuloma inguinale, and lymphogranuloma venereum and other diseases that the director of health may by regulation determine to constitute a sexually transmitted disease.² The law does not define "expose" and it is unclear what role disclosure of status or protective measures such as condoms would play. The authors are not aware of any prosecutions occurring under this law, which was drafted prior to HIV's discovery. Whether the statute could be interpreted by a prosecutor to include HIV, though it is not specifically included in the statute's definition of STIs, remains ambiguous.

Refusal to submit to an examination for the presence of an STI may be punished.

Health officials are empowered to examine "persons reasonably suspected of having a sexually transmitted disease"³ Persons must be informed of the right to have a health care provider of their own choosing at the examination.⁴ Refusal to submit to an examination is punishable as a misdemeanor, with a penalty of 30 days' imprisonment and/or a \$50 fine.⁵ However, a prosecutor must demonstrate that the defendant was informed of and afforded their right to select a provider to be present at the examination.⁶ The same requirement is extended to individuals who undergo mandatory examination for a communicable disease deemed to pose a threat to the public health.⁷

¹ R.I. GEN. LAWS § 23-11-1 (2016).

² *Id.* Note that HIV is not included in this definition.

³³ R.I. GEN. LAWS § 23-11-11 (2016); Note that health care providers are required to immediately report all cases of STI and may be fined for failure to timely report. R.I. GEN. LAWS §§ 23-11-3, 23-11-7 (2016).

⁴ *Id.*

⁵ R.I. GEN. LAWS § 23-11-12 (2016).

⁶ R.I. GEN. LAWS § 23-11-11 (2016).

⁷ R.I. GEN. LAWS §§ 23-8-4, 23-8-4.1 (2016).

Persons convicted of certain kinds of crimes are required to undergo testing for STIs and can be punished for non-compliance.

In addition to the general public health authority to mandate examination for STIs, persons convicted of certain kinds of crimes are required to undergo testing for HIV and other STIs.⁸ Any person convicted for any violation of Chapter 34.1: Commercial Sexual Activity, which includes offenses such as prostitution and soliciting, is required to undergo testing for HIV and other STIs.⁹ For those who test positive for the presence of an STI in an infectious stage, the person is required to undergo treatment. If determined to be a “menace to society,” they may be quarantined consistent with rules and regulations issued by the Department of Health.¹⁰ Refusal to comply is a misdemeanor and is punishable by up to three months’ incarceration, a \$250 fine, or both.¹¹

Additionally, any person convicted of a sexual offense involving sexual penetration may be ordered to undergo HIV testing upon petition by the victim.¹² Review and disclosure of the results by a court is required to be closed and confidential, but as above, there is no explicitly stated limit on the use of the information.¹³

Finally, anyone convicted for possession of a controlled substance that has been administered with a hypodermic instrument or other similar instrument for the administration of drugs is required to undergo HIV testing.¹⁴ Although the primary purpose of testing appears to be identification of individuals for referral to health services, there is no specific language excluding its use in other legal proceedings.

A person with an STI may be subject to mandatory treatment and can be isolated and punished for non-compliance.

A person with an STI may be required to report for treatment and continue treatment until cured.¹⁵ Refusal to report for or continue treatment may result in isolation and involuntary treatment until the “person has been pronounced by a licensed physician to be noninfectious and no longer a danger to the public health.”¹⁶ Rhode Island law provides for up to 30 days’ imprisonment and a \$100 fine for violation of the chapter governing control of STIs.¹⁷

The procedural requirements for a person with an STI who is the subject of control measures such as mandatory treatment or isolation are not specified. However, Rhode Island’s general Department of Health statutes describe procedures for issuing a compliance order in response to a violation of “any law any law administered by [the Director] or of any rule or regulation adopted pursuant to authority granted to [the Director],” a hearing before a superior court on the order, enforcement of the order, and

⁸ R.I. GEN. LAWS §§ 11-34.1-11, 11-34.1-12, 11-34.1-17 (2016).

⁹ R.I. GEN. LAWS §§ 11-34.1-11, 11-34.1-12(a) (2016); CRIR 14-040-006(2.9)(c) (2016).

¹⁰ R.I. GEN. LAWS § 11-34.1-11 (2016)

¹¹ *Id.*

¹² R.I. GEN. LAWS § 11-37-17(a) (2016); CRIR 14-040-006(2.9)(d) (2016).

¹³ R.I. GEN. LAWS § 11-37-17(b) (2016).

¹⁴ CRIR 14-040-006(2.9)(b) (2016).

¹⁵ R.I. GEN. LAWS § 23-11-3 (2016).

¹⁶ *Id.*

¹⁷ R.I. GEN. LAWS § 23-11-16 (2016).

review by the state supreme court.¹⁸ Violating a compliance order is punishable by 90 days in jail and/or \$300 fine.¹⁹ More generally, violating the laws administered by the Department of Health or of any of the rules or regulations that it adopts can be punished with imprisonment for 30 days and/or a fine of \$100.²⁰

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.*

¹⁸ R.I. GEN. LAWS §§ 23-1-20, 23-1-21, 23-1-22, 23-1-23, 23-1-24 (2016).

¹⁹ R.I. GEN. LAWS § 23-1-25 (2016).

²⁰ *Id.*

General Laws of Rhode Island

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 11, CRIMINAL OFFENSES

R.I. GEN. LAWS § 11-34.1-11 (2016)

Examination and treatment for venereal disease

Any person convicted for any violation of this chapter or of any other statute relating to lewd or lascivious behavior or unlawful sexual intercourse, and who shall be confined or imprisoned in any correctional institution for more than ten (10) days, may be examined by the department of health for venereal disease, through duly appointed, licensed physicians as agents. Any person that is examined may be detained until the result of the examination is duly reported. If found with venereal disease in an infectious stage, the person shall be treated, and if a menace to the public, quarantined, in accordance with rules and regulations, not inconsistent with law, of the director of health, who is authorized to formulate and issue them. Refusal to comply with or obey the rules or regulations shall constitute a misdemeanor and be punishable by fine not to exceed two hundred fifty dollars (\$ 250), or a sentence of incarceration of up to three (3) months, or both.

R.I. GEN. LAWS § 11-34.1-12 (2016)

Human Immunodeficiency Virus (HIV)

(a) Any person convicted of a violation of any provisions of this chapter shall be required to be tested for Human Immunodeficiency Virus (HIV). No consent for the testing shall be required.

R.I. GEN. LAWS § 11-37-17 (2016)

Human Immunodeficiency Virus (HIV) -- Mandatory testing

(a) Any person who has admitted to or been convicted of or adjudicated wayward or delinquent by reason of having committed any sexual offense involving sexual penetration, as defined in § 11-37-1, whether or not sentence or fine is imposed or probation granted, shall be ordered by the court upon the petition of the victim, immediate family members of the victim or legal guardian of the victim, to submit to a blood test for the presence of a sexually transmitted disease including, but not limited to, the Human Immunodeficiency Virus (HIV) which causes Acquired Immune Deficiency Syndrome (AIDS) as provided for in chapter 23-6.3.

(b) Notwithstanding the limitations imposed by §§ 23-6.3-7 and 5-37.3-4, the results of the HIV test shall be reported to the court, which shall then disclose the results to any victim of the sexual offense who requests disclosure. Review and disclosure of blood test results by the courts shall be closed and confidential, and any transaction records relating to them shall also be closed and confidential.

TITLE 23, HEALTH AND SAFETY

R.I. GEN. LAWS § 23-1-20 (2016)

Compliance order

Whenever the director determines that there are reasonable grounds to believe that there is a violation of any law administered by him or her or of any rule or regulation adopted pursuant to authority granted to him or her, the director may give notice of the alleged violation to the person responsible for it. The notice shall be in writing, shall set forth the alleged violation, shall provide for a time within which the alleged violation shall be remedied, and shall inform the person to whom it is directed that a written request for a hearing on the alleged violation may be filed with the director within ten (10) days after service of the notice. The notice will be deemed properly served upon a person if a copy of the notice is served upon him or her personally, or sent by registered or certified mail to the last known address of that person, or if that person is served with notice by any other method of service now or later authorized in a civil action under the laws of this state. If no written request for a hearing is made to the director within ten (10) days of the service of notice, the notice shall automatically become a compliance order.

R.I. GEN. LAWS § 23-1-21 (2016)

Immediate compliance order

Whenever the director determines that there exists a violation of any law, rule, or regulation within the jurisdiction of the director which requires immediate action to protect the health, welfare, or safety of the public or any member of the public, the director may, without prior notice of violation or hearing, issue an immediate compliance order stating the existence of the violation and the action he or she deems necessary. The compliance order shall become effective immediately upon service or within the time specified by the director in the order. No request for a hearing on an immediate compliance order may be made.

R.I. GEN. LAWS § 23-1-22 (2016)

Hearing

If a person upon whom a notice of violation has been served under the provisions of [§ 23-1-20](#) or if a person aggrieved by any notice of violation requests a hearing before the director within ten (10) days of the service of notice of violation, the director shall set a time and place for the hearing, and shall give the person requesting a hearing at least five (5) days written notice of the hearing. After the hearing, the director may make findings of fact and shall sustain, modify, or withdraw the notice of violation. If the director sustains or modifies the notice, that decision shall be deemed a compliance order and shall be served upon the person responsible in any manner provided for the service of the notice in [§ 23-1-20](#). The compliance order shall state a time within which the violation shall be remedied, and the original time specified in the notice of violation shall be extended to the time set in that order.

R.I. GEN. LAWS § 23-1-23 (2016)

Enforcement of compliance orders

Whenever a compliance order has become effective, whether automatically where no hearing has been requested, where an immediate compliance order has been issued, or upon decision following a hearing, the director may institute injunction proceedings in the superior court of the state for

enforcement of the compliance order and for appropriate temporary relief, and in the proceeding the correctness of a compliance order shall be presumed and the person attacking the order shall bear the burden of proving error in the compliance order, except that the director shall bear the burden of proving in the proceeding the correctness of an immediate compliance order. The remedy provided for in this section shall be cumulative and not exclusive and shall be in addition to remedies relating to the removal or abatement of nuisances or any other remedies provided by law.

R.I. GEN. LAWS § 23-1-24 (2016)

Review by supreme court

Any party aggrieved by a final judgment of the superior court may, within thirty (30) days from the date of entry of the judgment, petition the supreme court for a writ of certiorari to review any questions of law. The petition shall set forth the errors claimed. Upon the filing of the petition with the clerk of the supreme court, the supreme court may, if it sees fit, issue its writ of certiorari.

R.I. GEN. LAWS § 23-1-25 (2016) **

Penalties

Unless another penalty is provided by the laws of this state, any person who violates any law administered by the director or any rule or regulation adopted pursuant to authority granted to the director shall, upon conviction, be punished by a fine of not more than one hundred dollars (\$ 100) or by imprisonment for not more than thirty (30) days, or both, and for violation of a compliance order of the director by a fine of not more than three hundred dollars (\$ 300) or by imprisonment for not more than ninety (90) days, or both, for each offense or violation, and each day's failure to comply with any such law, rule, regulation, or order shall constitute a separate offense.

R.I. GEN. LAWS § 23-8-4 (2016)

Quarantine

If the state director of health, or his or her duly authorized agent, determines, upon investigation, that a threat to the public health exists because any person is suffering, or appears to be suffering, from a communicable disease, the director or his or her authorized agent may require or provide that person to be confined, in some proper place, for the purpose of isolation or quarantine, or another less restrictive intervention treatment, including, but not limited to, immunization, treatment, exclusion or other protective actions until the threat to the public health has abated. Nothing in this section shall be construed to prevent a person who is unable or unwilling for reasons of health, religion, or conscience to undergo immunization or treatment from choosing to submit to quarantine or isolation as an alternative to immunization or treatment. Orders under this chapter shall be in accordance with the procedures for compliance order and immediate compliance orders set forth in §§ 23-1-20 -- 23-1-24. A person subject to quarantine under this section shall be entitled to file a petition for relief from such order at any time, included, but not limited to, a petition based upon compliance with a treatment under less restrictive alternatives.

R.I. GEN. LAWS § 23-8-4.1 (2016)

Power to examine suspected cases – Right of individual to own physician

For the purpose of carrying out the provisions of this chapter, the state department of health is empowered to make examinations of persons reasonably suspected of having a communicable

disease; provided, however, that any person so examined shall have the right to have present at that examination, a physician of his or her own choice, at his or her own expense. The state department of health shall inform him or her of this right and afford him or her a reasonable opportunity to exercise that right; and at the trial of any person being prosecuted under the provisions of § 23-1-25, the prosecution must demonstrate that he or she was so informed and was afforded that opportunity.

R.I. GEN. LAWS § 23-11-1 (2016) **

Diseases declared contagious – Exposure of another to infection

Sexually transmitted diseases shall include, but not be limited to, syphilis, gonorrhea, chancroid, granuloma inguinale, and lymphogranuloma venereum and other diseases that the director of health may by regulation determine to constitute a sexually transmitted disease. Sexually transmitted diseases are declared to be contagious, infectious, communicable, and dangerous to the public health. It shall be unlawful for anyone knowingly, while in the infectious condition with these diseases, or any of them, to expose another person to infection. Any person found guilty of violating the provisions of this section shall be fined not more than one hundred dollars (\$ 100) or imprisoned for not more than three (3) months.

R.I. GEN. LAWS § 23-11-3 (2016)

Compulsory treatment of infected persons

The department of health is empowered to require persons who are in an infectious condition with a sexually transmitted disease to report for treatment to a licensed physician and to continue treatment until cured of his or her infectious condition. Any person suffering from any sexually transmitted disease while in the infectious and contagious stage of that disease who refuses to report for treatment, or who refuses to continue treatment, shall be isolated and treated until that person has been pronounced by a licensed physician to be noninfectious and no longer a danger to the public health.

R.I. GEN. LAWS § 23-11-6 (2016)

Reports by physicians

Any physician who diagnoses and/or treats a case of sexually transmitted disease shall immediately make a report of that case to the state department of health in the manner and form that the department shall direct.

R.I. GEN. LAWS § 23-11-7 (2016)

Penalty for failure to report

Any person who shall neglect for a period of ten (10) days to make a report as provided in §§ 23-11-5, 23-11-6, and 23-11-14 shall be fined not more than one hundred dollars (\$100).

R.I. GEN. LAWS § 23-11-10 (2016)

Investigation of suspected cases and sources

In all suspected cases of sexually transmitted disease, the state department of health is empowered to take appropriate measures to determine whether the person or persons suspected of being infected are suffering from any sexually transmitted disease; and whenever any sexually transmitted disease is found to exist, the state department of health shall, whenever possible, ascertain the sources of the

infections. In these investigations, the state department of health is vested with full powers of inspection and examination and treatment as determined by the director of health.

R.I. GEN. LAWS § 23-11-11 (2016)

Power to examine suspected cases – Right of suspect to own physician

For the purpose of carrying out the provisions of this chapter, the state department of health is empowered to make examinations of persons reasonably suspected of having sexually transmitted disease; provided, however, that any person so examined shall have the right to have present at that examination, at his or her own expense, a physician selected by him or her. The state department of health shall inform him or her of this right and afford him or her a reasonable opportunity to exercise that right; and at the trial of any person being prosecuted under the provisions of § 23-11-12, the prosecution must prove that he or she was so informed and was afforded that opportunity. Persons under eighteen (18) years of age may give legal consent for examination and treatment for any sexually transmitted disease. For the purposes of this section, physical examination and treatment by a licensed physician or his or her designated representative upon the person of a minor who has given consent shall not constitute an assault or an assault and battery upon the person.

R.I. GEN. LAWS § 23-11-12 (2016) **

Refusal to submit to examination

Any person refusing to permit the department of health to examine him or her, as provided in § 23-11-11, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of fifty dollars (\$ 50.00), or by imprisonment for thirty (30) days, or by both fine and imprisonment.

R.I. GEN. LAWS § 23-11-16 (2016) **

Violations – Penalties

Unless another penalty is provided by the laws of this state, any person who shall violate any provision of this chapter, or any rule or regulation adopted under this chapter, shall, upon conviction, be punished by a fine of not more than one hundred dollars (\$ 100), or by imprisonment for not more than thirty (30) days, or both.

Code of Rhode Island Rules

AGENCY 14, DEPARTMENT OF HEALTH

CRIR 14-040-006

HIV Counseling, Testing, Reporting, and Confidentiality

2.9 Mandatory HIV Counseling and Testing

(a) In accordance with the provisions of RIGL § 42-56-37, entitled "HIV Testing", every individual who is committed to the adult correctional institutions to any criminal offense, after conviction, is required to be tested for HIV.

(b) Any individual convicted of possession of any controlled substance as defined in RIGL Chapter 21-28 entitled "Uniform Controlled Substances Act", that has been administered with a hypodermic instrument, retractable hypodermic syringe, needle, intra-nasally, or any similar instrument adapted for the administration of drugs shall be required to be tested for HIV unless already documented HIV positive.

(c) Any individual convicted of a violation of any provisions of RIGL Chapter 11-34 entitled "Prostitution and Lewdness", shall be required to be tested for HIV unless already documented HIV positive.

(d) In accordance with the provisions of RIGL Chapter 11-37, entitled, "Sexual Assault", any individual who has admitted to or been convicted of or adjudicated wayward or delinquent by reason of having committed any sexual offense involving penetration whether or not a sentence or fine is imposed or probation granted, shall be ordered by the court upon petition of the victim, immediate family members of the victim or legal guardian of the victim, to submit to a blood test for the presence of a sexually transmitted disease including, but not limited to, HIV.

(e) All individuals tested under §§ 2.9(b), (c) or (d) of these Regulations shall be informed of their test results.