

South Carolina

Analysis

People living with HIV (PLHIV) face criminal penalties for engaging in sexual activity without disclosing their HIV status.¹

It is felony, punishable by a fine of no more than \$5,000 and/or imprisonment for up to ten years, for a PLHIV who knows their HIV status to knowingly engage in penile-vaginal, anal, or oral sex with another person without first informing that person of their HIV status.² Neither actual transmission nor the intent to transmit HIV is necessary for prosecution.

On its face, the statute does not recognize the use of protection, such as condoms, or low viral load as defenses to prosecution. Under the wording of the statute, even if PLHIV protect their sexual partners by using a condom, they must also disclose their status to avoid prosecution.

In South Carolina there have been numerous prosecutions of PLHIV for allegedly failing to disclose their HIV status prior to engaging in consensual sex:

- In February 2015, a 24-year-old man living with HIV was arrested and charged with two counts of exposing another to HIV after he allegedly failed to disclose his status to a sexual partner.³
- In January 2011, a 30-year-old PLHIV was charged with first-degree harassment and exposing others to HIV after a sexual partner found his HIV medications and reported him to the police.⁴
- In November 2009, a PLHIV was sentenced to six years in prison and four years of probation for knowingly exposing his wife to HIV.⁵ She did not contract HIV.⁶
- In September 2009, a 35-year-old PLHIV was charged with exposing another to HIV after engaging in consensual, unprotected sex with a person to whom he did not disclose his HIV status.⁷

¹ Though there is a separate misdemeanor penalty for exposing people to venereal diseases, including HIV, S.C. CODE ANN. §§ 44-29-60, 44-29-140 (2016), this statute does appear to have been utilized in HIV exposure prosecutions, as there is an HIV-specific statute for HIV exposure, S.C. CODE ANN. § 44-29-145 (2015).

² S.C. CODE ANN. § 44-29-145 (2016).

³ Jimmy Watt, *Oconee County Sheriff's Office Arrests Walhalla Man for Exposing Person to HIV Virus*, OCONEE COUNTY SHERIFF'S OFFICE, Feb. 20, 2015, available at <http://www.oconeelaw.com/news/?p=4011>.

⁴ *Man exposed others to HIV, police say*, THE AUGUSTA CHRONICLE, Jan. 21, 2011, available at <http://chronicle.augusta.com/news/crime-courts/2011-01-21/man-exposed-others-hiv-police-say>; *Aiken Man Charged with Exposing Woman to HIV*, ABCNEWS15, Jan. 22, 2011, available at <http://wpde.com/news/local/aiken-man-charged-with-exposing-woman-to-hiv-10-23-2015?id=571012>.

⁵ Stephanie Toone, *Former Aiken County teacher found guilty of exposing others to HIV*, THE AUGUSTA CHRON., Nov. 13, 2009, available at http://chronicle.augusta.com/stories/latest/lat_703284.shtml.

⁶ *Id.*

- In August 2009, a 30-year-old PLHIV was charged with criminal sexual conduct with a minor, lewd act on a minor, and exposing another to HIV after he allegedly engaged in sex acts with a 14-year-old boy.⁸
- In March 2008, a 39-year-old PLHIV was sentenced to four years' imprisonment after pleading guilty to exposing his then-girlfriend to HIV.⁹ The local sheriff's office emphasized that the man neither disclosed his HIV status nor suggested using condoms.¹⁰
- In April 2007, a PLHIV was charged with exposing another to HIV after engaging in unprotected, consensual sex with a female partner without disclosing his HIV status.¹¹

Though disclosure is an affirmative defense to prosecution in South Carolina, whether or not disclosure actually occurred is often open to interpretation and normally depends on the word of one person against another.

General criminal laws have been used to prosecute PLHIV for alleged HIV exposure.

In July 2009, a 41-year-old PLHIV was charged with assault and battery with intent to kill after biting his neighbor.¹² The State raised the original charge of assault and battery to assault and battery with intent to kill after discovering the defendant's HIV status.¹³ This was despite the fact that the Centers for Disease Control (CDC) has concluded that there exists only a "negligible" risk that HIV could be transmitted through a bite.¹⁴ The CDC has also maintained that saliva alone does not transmit HIV.¹⁵ The man was sentenced to three years' imprisonment and two years' probation after pleading guilty.¹⁶

PLHIV can receive enhanced sentences if convicted of prostitution.

If a PLHIV knows their HIV status and is convicted of prostitution, they face penalties of up to ten years in prison and/or up to a \$5,000 fine.¹⁷ In contrast, the penalty for a first prostitution offense is limited to

⁷ *Deputies: Man illegally exposes victim to HIV virus*, WMBFNEWS.COM, Sept. 11, 2009, available at <http://www.wmbfnews.com/Global/story.asp?S=11115609>.

⁸ *Deputies: Sex offender arrested, exposed teen to HIV*, WMBFNEWS.COM, Aug. 20, 2009, available at <http://www.wmbfnews.com/story/10964992/deputies-sex-offender-arrested-exposed-teen-to-hiv>.

⁹ *US; South Carolina Man Charged with HIV Exposure*, HIV JUSTICE NETWORK, Mar. 25, 2008, available at <http://www.hivjustice.net/case/us-south-carolina-man-charged-with-hiv-exposure/>.

¹⁰ *Id.*

¹¹ *Athens Police Say Man May Have Deliberately Spread HIV*, THE AUGUSTA CHRONICLE, Apr. 17, 2010, available at <http://chronicle.augusta.com/news/crime-courts/2010-04-17/athens-police-say-man-may-have-deliberately-spread-hiv>.

¹² *Man's HIV Status Raises Assault Charges in Biting Attack*, POZ.COM, July 24, 2009, available at <https://www.poz.com/article/assault-charges-bite-hiv-16982-5891>.

¹³ *Id.*

¹⁴ CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission Risk, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (July 1, 2014) available at <http://www.cdc.gov/hiv/policies/law/risk.html> (last visited Dec. 3, 2014).

¹⁵ CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?*, (Sept. 23, 2014) available at <http://www.cdc.gov/hiv/basics/transmission.html> (last visited Jan. 3, 2017).

¹⁶ *State v. Chambers*, No. J215965 (York County Disposition Oct. 8, 2009), available at <http://publicindex.sccourts.org/York/PublicIndex/CaseDetails.aspx?County=46&CourtAgency=46001&Casenum=J215965&CaseType=C&HKey=78561169053881159050577877669085517411211478103108838811781107671211215171486980551121226910211250115>.

¹⁷ S.C. CODE ANN. § 44-29-145 (2016).

no more than 30 days in prison and/or up to a \$200 fine.¹⁸ Thus, a sex worker's HIV status may make them subject to sentences over 120 times greater, and fines 25 times greater, than usual.

South Carolina's HIV exposure statute potentially targets activities that pose no risk of HIV transmission. Prostitution is defined as "engaging or offering to engage in sexual activity with or for another in exchange for anything of value."¹⁹ Under this definition, the mere offer of a sexual act could result in imprisonment under the HIV exposure statute. Further, there is no consideration about whether the sexual act itself poses a risk of HIV exposure or transmission, since "sexual activity" includes masturbation (even self-masturbation); oral sex; touching of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a woman; an act or condition that depicts bestiality, sado-masochistic abuse, or the condition of being physically restrained; excretory functions; or the simulation of any of these acts.²⁰

- In July 2014, a 23-year-old PLHIV was charged with exposing another person to HIV after being arrested for soliciting undercover officers. No contact between the defendant or the officers occurred.²¹

PLHIV can face criminal penalties for donating blood, organs, human tissue, semen, or other body fluids.

It is a felony, punishable by a fine of no more than \$5,000 and/or imprisonment for up to ten years, for a PLHIV who knows their HIV status to knowingly donate or sell blood, semen, tissue, organs or other bodily fluids.²² Neither the intent to transmit HIV nor actual transmission is required for liability.

PLHIV can be prosecuted and jailed for sharing used syringes with others.

It is felony, punishable by up to ten years' imprisonment and/or a maximum fine of \$5,000 for a PLHIV who knows their HIV status to knowingly share equipment used for injecting drugs with another without disclosing their HIV status.²³

PLHIV in South Carolina should not share, or exchange, or otherwise transfer to any other person unsterilized needles used to inject substances into the human body. Simply giving someone a used syringe without disclosing one's HIV status is sufficient for a conviction; neither the intent to transmit HIV nor actual transmission is required.

¹⁸ *Id.* S.C. CODE ANN. §§ 16-15-90, 16-15-110 (2016).

¹⁹ *See id.* S.C. CODE ANN. § 16-15-375(4) (2016).

²⁰ S.C. CODE ANN. § 16-15-375(5) (2016); CTR. FOR DISEASE CONTROL & PREVENTION, *Oral Sex and HIV Risk*, (July 8, 2016), available at <http://www.cdc.gov/hiv/risk/behavior/oralsex.html> (last visited Aug. 8, 2016).

²¹ *Man dressed as woman arrested for prostitution, exposing others to HIV*, SC NOW MORNING NEWS, July 2, 2014, available at http://www.scnow.com/news/article_8b1d4850-023b-11e4-95cb-001a4bcf6878.html.

²² S.C. CODE ANN. § 44-29-145.

²³ *Id.*

It is unlawful for anyone infected with a sexually transmitted disease (STD) to knowingly expose another to infection.²⁴

A person who knowingly exposes another to STD infection is guilty of a misdemeanor and, upon conviction, must be fined no more than \$200 or be imprisoned for no more than 30 days.²⁵ The South Carolina Department of Health and Environmental Control, which has authority to promulgate regulations to implement all STD-related statutes,²⁶ defines STDs to include syphilis, gonorrhea, granuloma inguinale, lymphogranuloma venereum, chancroid, genital herpes, chlamydia infection, nongonococcal urethritis, hepatitis B, hepatitis C, pelvic inflammatory disease, and HIV.²⁷ Exposure, meanwhile, is defined as “direct contact with semen, vaginal fluids, blood, tissue, organs or body fluids containing blood, or other body fluids designated as infectious.”²⁸ Moreover, although condoms and various “chemical agents” are acknowledged as “recommended by public authorities” to reduce risk of exposure to HIV, it is unclear whether they would operate as defenses under the exposure statute.²⁹

People with STDs, including HIV, may be isolated by the Department of Health and Environmental Control.

The Department of Health and Environmental Control has the authority to isolate “persons infected or reasonably suspected of being infected with a sexually transmitted disease”³⁰ for no longer than 90 days.³¹ Although HIV is included in the definition of “sexually transmitted disease,”³² there appear to be additional procedures required to isolate a PLHIV: namely, that such persons refuse to comply with “specified behavior modifications.”³³ Moreover, specified behavior modifications may include that the person, “use a condoms and nonoxynol-9 or other chemical agents recommended by public authorities during anal, vaginal, or oral intercourse and exercise caution when using condoms due to possible condom failure or improper use.”³⁴ This provision may be relevant to exposure prosecutions under §§ 44-29-60, 44-29-145.

To isolate someone, the Department must submit a complaint to the probate court of the county where the person is located, stating the specific harm thought probable and the factual basis for this belief.³⁵ If the court is satisfied that the petition is well founded, it may order the person be isolated,³⁶ although there are no explicit guidelines regarding how the court may make such a determination. The Center for HIV Law and Policy is aware of no such isolation cases at this time.

²⁴ S.C. CODE ANN. § 44-29-60 (2016).

²⁵ S.C. CODE ANN. § 44-29-140 (2016).

²⁶ S.C. CODE ANN. § 44-29-130 (2016).

²⁷ S.C. CODE ANN. REGS. 61-21(A)(1) (2015).

²⁸ S.C. CODE ANN. REGS. 61-21(A)(10) (2015).

²⁹ *Id.*

³⁰ S.C. CODE ANN. § 44-29-130 (2016).

³¹ S.C. CODE ANN. § 44-29-115 (2016)

³² S.C. CODE ANN. REGS. 61-21(A)(1) (2015).

³³ S.C. CODE ANN. REGS. 61-21(K)(5) (2015).

³⁴ S.C. CODE ANN. REGS. 61-21(K)(4)(c) (2015).

³⁵ S.C. CODE ANN. § 44-29-115.

³⁶ *Id.*

The State Department of Health and Environmental Control may be required to aid in the prosecution of persons with HIV or STDs.

Any and all information and records held by the Department of Health and Environmental Control are subject to release to the extent necessary to enforce the STD or HIV exposure statutes and related regulations concerning the control and treatment of STDs.³⁷ Such disclosure requires a court order upon a finding by the court that there exists a compelling need for the information.³⁸ In determining compelling need, the court must weigh the need for disclosure against both the privacy interest of the person whose records are sought and the potential harm to the public interest if disclosure deters future testing and counseling.³⁹ Moreover, the person whose records are sought must be given notice and opportunity to participate in such court hearings, including the opportunity to cross-examine the source of the information underlying the court order sought.⁴⁰

Inmates infected with an STD, including HIV, may be isolated.

If an inmate, at the time of expiration of their term of imprisonment, is infected with an STD, including HIV, they cannot be discharged from imprisonment, but instead must be isolated until they are cured or, if no cure is available, upon recommendation of the Department of Health and Environmental Control.⁴¹ However, “[i]t is the recommendation of the Department that no prisoner be confined beyond the expiration of [their] sentence simply because [they are] infected with HIV or any other sexually transmitted disease for which there is no cure.”⁴²

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.*

³⁷ S.C. CODE ANN. § 44-29-135(c) (2016); S.C. CODE ANN. REGS. 61-21(G) (2015).

³⁸ S.C. CODE ANN. § 44-29-136(A) (2016); S.C. CODE ANN. REGS. 61-21(E) (2015).

³⁹ S.C. CODE ANN. § 44-29-136(A) (2016); S.C. CODE ANN. REGS. 61-21(E) (2015).

⁴⁰ S.C. CODE ANN. § 44-29-136(A)(B) (2016).

⁴¹ S.C. CODE ANN. §§ 44-29-100, 44-29-110 (2016).

⁴² S.C. CODE ANN. REGS. 61-21(L)(2) (2015).

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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 44, HEALTH

S.C. CODE ANN. § 44-29-145 (2016) **

Penalty for exposing others to Human Immunodeficiency Virus

It is unlawful for a person who knows that he is infected with Human Immunodeficiency Virus (HIV) to:

- (1) knowingly engage in sexual intercourse, vaginal, anal, or oral, with another person without first informing that person of his HIV infection;
- (2) knowingly commit an act of prostitution with another person;
- (3) knowingly sell or donate blood, blood products, semen, tissue, organs, or other body fluids;
- (4) forcibly engage in sexual intercourse, vaginal, anal, or oral, without the consent of the other person, including one's legal spouse; or
- (5) knowingly share with another person a hypodermic needle, syringe, or both, for the introduction of drugs or any other substance into, or for the withdrawal of blood or body fluids from the other person's body without first informing that person that the needle, syringe, or both, has been used by someone infected with HIV.

A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than ten years.

S.C. CODE ANN. § 44-29-60 (2016) **

Sexually transmitted diseases declared dangerous to public health; infection of another with sexually transmitted disease

Sexually transmitted diseases which are included in the annual Department of Health and Environmental Control List of Reportable Diseases are declared to be contagious, infectious, communicable, and dangerous to the public health. Sexually transmitted diseases include all venereal diseases. It is unlawful for anyone infected with these diseases to knowingly expose another to infection.

S.C. CODE ANN. § 44-29-90 (2016)

Examination, treatment and isolation of persons infected with venereal disease.

State, district, county, and municipal health officers, in their respective jurisdictions, when in their judgment it is necessary to protect the public health, shall make examination of persons infected or suspected of being infected with a sexually transmitted disease, require persons infected with a sexually transmitted disease to report for treatment appropriate for their particular disease provided at public expense, and request the identification of persons with whom they have had sexual contact or intravenous drug use contact, or both. The health officer may isolate persons infected or reasonably

suspected of being infected with a sexually transmitted disease. To the extent resources are available to the Department of Health and Environmental Control for this purpose, when a person is identified as being infected with Human Immunodeficiency Virus (HIV), the virus which causes Acquired Immunodeficiency Syndrome (AIDS), his known sexual contacts or intravenous drug use contacts, or both, must be notified but the identity of the person infected must not be revealed. Efforts to notify these contacts may be limited to the extent of information provided by the person infected with HIV. Public monies appropriated for treatment of persons infected with a sexually transmitted disease must be expended in accordance with priorities established by the department, taking into account the cost effectiveness, curative capacity of the treatment, and the public health benefit to the population of the State.

S.C. CODE ANN. § 44-29-100 (2016)

Examination and treatment of prisoners for sexually transmitted disease; isolation and treatment after serving sentence.

Any person who is confined or imprisoned in any state, county, or city prison of this State may be examined and treated for a sexually transmitted disease by the health authorities or their deputies. The state, county, and municipal boards of health may take over a portion of any state, county, or city prison for use as a board of health hospital. Persons who are confined or imprisoned and who are suffering with a sexually transmitted disease at the time of expiration of their terms of imprisonment must be isolated and treated at public expense as provided in Section 44-29-90 until, in the judgment of the local health officer, the prisoner may be medically discharged. In lieu of isolation, the person, in the discretion of the board of health, may be required to report for treatment to a licensed physician or submit for treatment provided at public expense by the Department of Health and Environmental Control as provided in Section 44-29-90.

S.C. CODE ANN. § 44-29-110 (2016)

No discharge from confinement until cured of sexually transmitted disease; subsequent treatment.

No person suffering from any of the sexually transmitted diseases described in Section 44-29-60 may be discharged from confinement unless he is pronounced cured of the disease by a state, county, or municipal health officer or, if no cure is available, upon the recommendation of the Department of Health and Environmental Control. If any person is released before a complete cure of the sexually transmitted disease of which he is suffering, the department shall direct the individual as to whom to report for further treatment, and failure to report at the stated intervals as directed, in each instance, constitutes a violation of the provisions of Sections 44-29-60 to 44-29-140 and subjects him, upon conviction, to the penalty set forth in Section 44-29-140.

S.C. CODE ANN. § 44-29-115 (2016)

Procedure for isolation.

If the Department of Health and Environmental Control believes that a person must be isolated pursuant to Section 44-29-90, 44-29-100, or 44-29-110, it shall file a petition with the probate court of the county where the person is located or where the person resides. The complaint must state the specific harm thought probable and the factual basis for this belief. If the court, after due notice and hearing, is satisfied that the petition is well-founded, it may order that the person must be isolated.

Any person isolated pursuant to Section 44-29-90, 44-29-100, or 44-29-110 has the right to appeal to any court having jurisdiction for review of the evidence under which he was isolated.

A court may not order isolation for more than ninety days. If the department determines that the grounds for isolation no longer exist, it shall file a notice of intent to discharge with the court before the person isolated is released.

The person for whom isolation is sought must be represented by counsel at all proceedings and, if he cannot afford to hire an attorney, the court shall appoint an attorney to represent him. The attorney for the person isolated must have access to any documents regarding the isolation.

S.C. CODE ANN. § 44-29-130 (2016)

Adoption of regulations pertaining to sexually transmitted disease.

The Department of Health and Environmental Control shall promulgate regulations necessary to carry out the purposes of Sections 44-29-60 to 44-29-140, other than Section 44-29-120, including regulations providing for labor on the part of isolated persons considered necessary to provide in whole or in part for their subsistence and to safeguard their general health and regulations concerning sexually transmitted diseases as it considers advisable. All regulations so made are binding upon all county and municipal health officers and other persons affected by Sections 44-29-60 to 44-29-140.

S.C. CODE ANN. § 44-29-135 (2016)

Confidentiality of sexually transmitted disease records.

All information and records held by the Department of Health and Environmental Control and its agents relating to a known or suspected case of a sexually transmitted disease are strictly confidential except as provided in this section. The information must not be released or made public, upon subpoena or otherwise, except under the following circumstances:

- (c) release is made of medical or epidemiological information to the extent necessary to enforce the provisions of this chapter and related regulations concerning the control and treatment of a sexually transmitted disease;

S.C. CODE ANN. § 44-29-136 (2016)

Court orders for disclosure of records for law enforcement purposes; confidentiality safeguards.

(A) A portion of a person's sexually transmitted disease test results disclosed to a solicitor or state criminal law enforcement agency pursuant to Section 44-29-135(c) must be obtained by court order upon a finding by the court that the request is valid under Section 44-29-135(c) and that there is a compelling need for the test results. In determining a compelling need, the court must weigh the need for disclosure against both the privacy interest of the test subject and the potential harm to the public interest if disclosure deters future Human Immunodeficiency Virus-related testing and counseling or blood, organ, and semen donation. No information regarding persons other than the subject of the test results must be released. The court shall provide the department and the person who is the subject of the test results with notice and an opportunity to participate in the court hearing.

(B) No court may issue an order solely on the basis of anonymous tips or anonymous information. A person who provides information relied upon by a law enforcement agency or solicitor to obtain records under Section 44-29-135(c) shall sign a sworn affidavit setting forth the facts upon which he bases his

allegations. This person shall appear and be subject to examination and cross-examination at the hearing to determine whether an order requiring disclosure should be granted.

(C) Pleadings pertaining to disclosure of test results must substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name must be communicated in documents sealed by the court. Court proceedings must be conducted in camera unless the subject of the test results requests a hearing in open court. All files regarding the court proceedings must be sealed unless waived by the subject of the test results.

(D) Upon issuance of an order to disclose the test results pursuant to Section 44-29-135(c), the court may impose appropriate safeguards against the unauthorized disclosure of the information including, but not limited to, specifying who may have access to the information, the purposes for which the information must be used, and prohibitions against further disclosure of the information.

S.C. CODE ANN. § 44-29-140 (2016) **

Penalties pertaining to venereal disease

Any person who violates any of the provisions of Sections 44-29-60 to 44-29-140, other than Section 44-29-120, or any regulation made by the Department of Health and Environmental Control pursuant to the authority granted by law, or fails or refuses to obey any lawful order issued by any state, county, or municipal health officer, pursuant to Sections 44-29-60 to 44-29-140, or any other law or the regulations prescribed by law, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or be imprisoned for not more than 30 days.

South Carolina Code of Regulations

CHAPTER 61 DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

S.C. CODE ANN. REGS. § 61-21 (2015)

Sexually Transmitted Diseases.

(A) Definitions

(1) Sexually transmitted diseases or STDs – Any of a diverse group of infections caused by biologically dissimilar pathogens and transmitted by sexual contact. Sexual transmission is the only important mode of spread of some of the infections in the group while others can also be acquired by non-sexual means. These infections include but are not limited to: syphilis, gonorrhea, granuloma inguinale, lymphogranuloma venereum, chancroid, genital herpes, chlamydia infection, nongonococcal urethritis, hepatitis B, hepatitis C, pelvic inflammatory disease, and human immunodeficiency virus infection.

(2) AIDS – Acquired Immunodeficiency Syndrome; that medical condition that meets the most recent AIDS case definition of the Centers for Disease Control (CDC).

(3) Department –The South Carolina Department of Health and Environmental Control.

(7) HIV Infection or HIV Infected –Infected with HIV, as evidenced by a positive HIV test validated by an approved confirmatory HIV test or other test or combination of tests considered valid by the Department.

(8) Contact (referring to a person) –A person who has been exposed or has been reported to have been exposed to semen, vaginal fluids, blood, or body fluids containing blood, or other body fluids designated as infectious for HIV by the CDC or the Department.

(9) Contact (referring to a behavior) –A behavior that may result in exposure to another person’s semen, vaginal fluids, blood, or body fluids containing blood, or other body fluids designated as infectious for HIV by the CDC or the Department. These behaviors include but are not limited to sexual activity, needle/drug paraphernalia sharing activities, or perinatal transmission which may result in such exposure.

(10) Expose –To present or subject another person to direct contact with semen, vaginal fluids, blood, tissue, organs or body fluids containing blood, or other body fluids designated as infectious by the Department. For purposes of determining sexual exposure to HIV, the proper use of condoms and nonoxynol-9 or other chemical agents recommended by public authorities reduces but does not eliminate the risk of exposure of a sexual partner to HIV infection. The use of bleach to clean needles and/or IV drug equipment reduces but does not eliminate the risk of exposure to a needlesharing partner to HIV infection.

(11) Suspected STD infection or person suspected of being infected with STD –Person who has had an exposure to STD infection or has been identified as a contact to an STD infected person and whose STD status is unknown.

(12) Lay healthcare giver –Person who is not a licensed health professional and who is or soon will be providing direct hands on healthcare, which poses a significant risk of exposure that may result in HIV or Hepatitis B transmission to the lay healthcare giver from the infected person.

(E) Use of HIV test reports, AIDS case reports, and other STD reports. The Department may utilize the reports of HIV, AIDS and other STD cases for the following purposes: partner notification services, counseling services, referral for medical management and social services, epidemiologic surveillance, protection of the public health, control of the spread of the disease, and offering laboratory services for monitoring disease progression. To the extent resources are available, the Department may develop cooperatively with the reporting physician or other health professional a plan for providing the above services.

(G) Confidentiality.

(6) No access to the Department STD/HIV/AIDS Records. No institution, facility, organization, agency, other entity or person shall have access to the Department STD/HIV/AIDS Records under any circumstances other than those outlined in Section 44-29-135 or Section G of these regulations.

(K) Recalcitrant HIV infected persons.

(1) For purposes of this section, a recalcitrant person is defined as one who is infected with HIV and who either:

(a) refuses curative treatment, or

(b) if while receiving treatment continues to be infectious and engages in behavior which exposes another person or the public to HIV, or

(c) if no cure is available, refuses to receive counseling or, parasite counseling, the person continues to engage in behavior, which exposes another person or the public to HIV.

(2) For purposes of this section, counseling is defined as providing information about HIV infection, the significant threat HIV infection poses to other members of the public and methods to minimize the risk to the public.

(3) The Department must when feasible attempt to work with the recalcitrant person to modify his or her behavior before seeking isolation of the recalcitrant person. This requirement will be satisfied by the Department's fulfilling the following:

(a) Attempting on at least three occasions at various times of day, to set up an appointment for counseling or to meet the person at a designated location and provide counseling. If the person cannot be located, a generic appointment letter, without identifying any infection by name, requiring the person to report to the local health department, may be sent to the person by certified mail, return receipt requested, or may be left at the person's residence. If counseling is obtained at a place other than the local health department, verification of that counseling in the form of a statement signed by the counselor must be provided to the Department.

(b) Offering counseling and/or referring to other appropriate professional and/or agencies for support services,

(c) If the Department has been unable to locate the recalcitrant person or the person has refused counseling, the Department must mail to the person's last known address a certified letter stating the behavior modifications listed below and the recalcitrant person's obligation to follow these modifications. The letter must also state that failure to comply with these control measures may result in the issuance of a public health order and/or petition for isolation. If the recalcitrant person refuses to avail himself of counseling or referral services, the Department will have been deemed to have met its obligation to attempt to work with the recalcitrant person to modify his or her behavior.

(4) In cases of recalcitrant persons who have HIV infection, modification of behavior must include cessation of behaviors that expose other persons to HIV. The Department may issue a public health order requiring the recalcitrant person to comply with appropriate directives to protect the public health. These directives may include, but are not limited to, any or all of the following:

(a) Immediately report for counseling, social work assessment, testing, or treatment;

(b) Refrain from anal, vaginal or oral intercourse, unless partner is informed of risk of infection and consents to sexual activity;

- (c) Always use condoms and nonoxynol-9 or other chemical agents recommended by public authorities during anal, vaginal or oral intercourse and exercise caution when using condoms due to possible condom failure or improper use;
- (d) Do not share needles or syringes unless the needle and syringes have been properly cleaned after each person uses them;
- (e) Have a skin test for tuberculosis;
- (f) Notify all sexual and/or needle-sharing partners of the infection;
- (g) If the exact time or general time period of initial infection is known, notify or request the Department to notify sexual and/or needle-sharing partners since the date or time period of infection;
- (h) If the time of initial infection is unknown, notify or request the Department to notify sexual and/or needle-sharing partners for at least the previous three years;
- (i) Do not donate or sell body parts or body fluids.

(5) If the Department has reason to believe that a recalcitrant person has failed to comply with the specified behavior modifications, has forcibly or without forewarning exposed another person to HIV infection, and should be isolated pursuant to Section 44-29-115 South Carolina Code of Laws, the Department may seek isolation of that person. Isolation may be sought after reasonable means of correcting the problem have been exhausted. In order to protect the public health and encourage persons to seek HIV testing and counseling, it may be necessary for the Department and other necessary state agencies to work with persons over time to modify recalcitrant behavior.

(L) Prisons and STD/HIV infected prisoners.

(2) If a prisoner is suffering from HIV infection, AIDS or any sexually transmitted disease for which there is no cure, the prisoner's medical condition shall not be a reason for further confinement. It is the recommendation of the Department that no prisoner be confined beyond the expiration of his/her sentence simply because he/she is infected with HIV or any other sexually transmitted disease for which there is no cure. When it is known to the prison or jail that a prisoner to be released is infected with HIV, or any other STD upon the release of the infected prisoner, the facility from which the prisoner has been released shall provide the prisoner with the telephone number and address of the local health department of the prisoner's anticipated county of residence. Prior to the release of the prisoner, the prison or jail must also provide the Department of Health and Environmental Control with the name, release date, sex, date of birth, race, and, if available, address and other locating/identifying information concerning the prisoner. The Department may then require the infected prisoner to report for counseling and/or other related services.

(S) Sexually Transmitted Diseases other than HIV. Where these regulations specifically refer to only HIV, they shall be applicable only to HIV/AIDS and not to other sexually transmitted diseases. Where these regulations refer to sexually transmitted diseases generally or HIV and other sexually transmitted diseases, they shall be applicable to all sexually transmitted diseases.