

Wisconsin

Analysis

HIV status or infection with an STI may lead to heightened penalties for certain sex offenses.

While Wisconsin has no statute explicitly criminalizing HIV transmission or exposure, the law provides that HIV status or infection with an STI¹ serves as an “aggravating factor” for serious sex offenses, which may lead to additional prison time.² HIV status or infection with an STI may be considered an aggravating factor in sentencing for the following offenses: first or second-degree sexual assault;³ first or second-degree sexual assault of a child;⁴ repeated acts of sexual assault against the same child;⁵ or sexual assault of a child placed in substitute care.⁶

In order for an individual’s HIV status to serve as an aggravating factor in sentencing, the following conditions must be met: 1) the individual must have HIV or an STI or have tested positive for HIV; 2) the individual must have known of their HIV status, infection with an STI, or their HIV test result, and; 3) the crime must have “significantly exposed” the victim to HIV or an STI.⁷ The statute defines “significantly exposed” as “sustaining a contact that carries a potential for transmission of a sexually transmitted disease or HIV” by one or more of the following:⁸

1. Transmission, into a body orifice or onto mucous membrane, of blood; semen; vaginal secretions; cerebrospinal,⁹ synovial,¹⁰ pleural,¹¹ peritoneal,¹² pericardial,¹³ or amniotic fluid;¹⁴ or other body fluid that is visibly contaminated with blood.
2. Exchange, during the accidental or intentional infliction of a penetrating wound, including a needle puncture, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural,

¹ Including syphilis, gonorrhea, hepatitis B, hepatitis C, or chlamydia. WIS. STAT. § 973.017(4)(a)(3) (2016).

² WIS. STAT. § 973.017(4) (2016).

³ WIS. STAT. §§ 940.225(1), 940.225(2), 973.017(4)(a)(2) (2016).

⁴ WIS. STAT. §§ 948.02(1), 948.02(2), 973.017(4)(a)(2) (2016).

⁵ WIS. STAT. §§ 948.025, 973.017(4)(a)(2) (2016).

⁶ WIS. STAT. §§ 948.085, 973.017(4)(a)(2) (2016).

⁷ WIS. STAT. § 973.017(b) (2016).

⁸ WIS. STAT. § 973.017(a)(1m)(4) (2016).

⁹ Cerebrospinal fluid is a bodily fluid that surrounds the brain and spinal cord.

¹⁰ Synovial fluid is bodily fluid that surrounds the joints.

¹¹ Pleural fluid is a bodily fluid that surrounds the lungs.

¹² Peritoneal fluid is a bodily fluid that surrounds organs in the abdominal cavity.

¹³ Pericardial fluid is a bodily fluid that surrounds the heart.

¹⁴ Amniotic fluid is a bodily fluid that surrounds a fetus in the womb.

peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

3. Exchange, into an eye, an open wound, an oozing lesion, or other place where a significant breakdown in the epidermal barrier has occurred, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

Neither the intent to transmit disease nor actual disease transmission is required for a defendant's HIV status or STI infection to serve as an aggravating factor in sentencing. Aggravating factors may increase prison sentences by several years and even decades, depending on the specific offense and other factors considered in sentencing.

Theoretical risk of contracting HIV may lead to an increased sentence, even if the defendant is HIV negative.

At least one Wisconsin court has considered an HIV negative defendant's risk of contracting and transmitting HIV in sentencing. In *State v. Holloway*, the trial court sentenced a woman convicted of prostitution to the maximum term, in part because of the "high HIV risk, both to herself and others, presented by [her] extensive prostitution record," even though the woman was HIV negative.¹⁵

Arrests and prosecutions for HIV exposure have also occurred under general criminal laws.

In August 2012, a 36-year-old person living with HIV (PLHIV) pled no contest to three charges of second degree reckless endangerment for having sex with two underage girls.¹⁶ He was later sentenced to 15 years' imprisonment with 10 years extended supervision upon release.¹⁷ In 2008, an 18-year-old was charged with second-degree reckless endangerment, a felony punishable by up to 10 years' imprisonment, for allegedly having unprotected sex with a fellow teenager and not disclosing his HIV status.¹⁸ The defendant denied that he and the woman had ever had sex.¹⁹ In 2008, a PLHIV was found guilty of six counts of first-degree reckless endangerment after he allegedly failed to disclose his HIV status to a sexual partner. He was sentenced to 15 years' imprisonment.²⁰ The same man pled guilty to the same charge in 2003, and received two and half years' imprisonment with seven and a half years' extended supervision. A condition of his release was that he inform any prospective sexual partner about his HIV status.²¹

¹⁵ 551 N.W.2d 841, 843-844 (Wis. Ct. App. 1996).

¹⁶ Raymond Neupert, *HIV-positive Rothschild man gets 15 years for having sex with underage girls*, WSAU.COM, Sept. 11, 2012, available at <http://wsau.com/news/articles/2012/sep/11/hiv-positive-rothschild-man-gets-15-years-for-having-sex-with-underage-girls/>.

¹⁷ *Id.*

¹⁸ Crocker Stephenson, *Teen charged with no disclosing HIV status*, MILWAUKEE-WIS. J. SENTINEL, April 23, 2008, available at <http://www.hivjustice.net/case/us-wisconsin-teen-charged-with-hiv-exposure/>.

¹⁹ *Id.*

²⁰ Janine Anderson & Bridget Thoreson, *HIV-positive man sentenced to 15 years in prison for not telling his lover*, THE JOURNAL TIMES, March 19, 2008, available at http://journaltimes.com/news/local/hiv-positive-man-sentenced-to-years-in-prison-for-not/article_87898cf5-3eba-5d42-9efa-caedb2a2a531.html.

²¹ *Id.*

A person with an STI who willfully violates the recommendations of a local health officer may be punished.

Health care providers are required to report to the local health officers if one of their patients has a communicable disease.²² A person who knows they have a communicable disease may not willfully violate the instructions of a local health officer or “subject others to danger of contracting disease.”²³ What constitutes “danger” is not defined in the statute. However, Wisconsin’s Administrative Code enumerates various factors to consider for a finding that someone who has a contagious disease poses a threat to others, including “a careless disregard for the transmission of the disease” and the refusal to submit to examination or treatment.²⁴ A person who violates these requirements may be punished with 30 days’ imprisonment, a \$500 fine, or both.²⁵

A person with an STI can be isolated if they refuse to submit to an examination or treatment.

If a person who is known or suspected to have syphilis, gonorrhea, chlamydia, or other disease that the Department may designate by rule refuses to submit to examination or treatment, a health officer may seek to have the person committed to a facility for examination, treatment, or observation.²⁶ The officer may petition a court, which will summon the person to appear between 48 and 96 hours after service.²⁷ Should the person fail to appear or refuse commitment without reasonable cause, the court may cite the person for contempt.²⁸ The court may issue a warrant for the person’s arrest if it finds that the summons will be ineffectual.²⁹ The commitment hearing occurs summarily, and a person remains committed until the disease is no longer communicable or other provisions for treatment are made which satisfy the health department.³⁰ These available restrictions are in addition to general powers of isolation and quarantine in response to communicable disease.³¹

Procedures for committing a person due to infection with a contagious disease³² that poses a threat to others are also outlined in Wisconsin’s Administrative Code, with slightly different procedural requirements. When a health officer becomes aware that a person is known or suspected of having contagious disease that poses a threat to others, the officer may direct the person to undergo examination and treatment,³³ to appear before the health officer,³⁴ to cease and desist in conduct or employment that poses a threat to others,³⁵ or to be confined in a facility until non-infectious.³⁶ Upon

²² Wis. STAT. § 252.05 (2016).

²³ Wis. STAT. § 252.19 (2016).

²⁴ Wis. ADMIN. CODE DHS § 145.06(2) (2016).

²⁵ Wis. STAT. § 252.25 (2016).

²⁶ Wis. STAT. § 252.11(2) (2016)

²⁷ Wis. STAT. § 252.11(5) (2016)

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Wis. STAT. § 252.06(3) (2016)

³² Defined as all communicable diseases that appear in Appendix A of DHS 145. The list includes several STIs: chancroid, chlamydia, gonorrhea, viral hepatitis, syphilis, and HIV. See Wis. ADMIN. CODE DHS 145, APPENDIX A: COMMUNICABLE DISEASES AND OTHER NOTIFIABLE CONDITIONS (2016), available at https://docs.legis.wisconsin.gov/code/admin_code/dhs/110/145_a.

³³ Wis. ADMIN. CODE DHS § 145.06(4)(b)-(c) (2016).

³⁴ Wis. ADMIN. CODE DHS § 145.06(4)(d) (2016).

³⁵ Wis. ADMIN. CODE DHS § 145.06(4)(e) (2016).

failure of a person to comply with any such directive, the officer may petition a court of record to order that person to comply.³⁷ However, the petitioning health officer must meet the following requirements: 1) the petition is supported by clear and convincing evidence;³⁸ 2) the person has been provided the directive in writing, including the evidence supporting the health officer's allegations, and afforded the opportunity to seek counsel;³⁹ 3) the remedy sought is the least restrictive alternative that will serve to protect the public's health.⁴⁰

Important note: While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, it should not be used as a substitute for legal advice

³⁶ WIS. ADMIN. CODE DHS § 145.06(4)(g) (2016).

³⁷ WIS. ADMIN. CODE DHS § 145.06(5) (2016).

³⁸ WIS. ADMIN. CODE DHS § 145.06(5)(a) (2016).

³⁹ WIS. ADMIN. CODE DHS § 145.06(5)(b) (2016).

⁴⁰ WIS. ADMIN. CODE DHS § 145.06(5)(c) (2016).

Wisconsin Annotated 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.

CRIMINAL PROCEDURE, CHAPTER 973: SENTENCING

Wis. STAT. §973.017 (2016) **

Bifurcated sentences; use of guidelines; consideration of aggravating and mitigating factors.

(4) AGGRAVATING FACTORS; SERIOUS SEX CRIMES COMMITTED WHILE INFECTED WITH CERTAIN DISEASES.

(a) In this subsection:

1. "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

1m. "HIV test" has the meaning given in s. 252.01 (2m).

2. "Serious sex crime" means a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.085.

3. "Sexually transmitted disease" means syphilis, gonorrhea, hepatitis B, hepatitis C, or chlamydia.

4. "Significantly exposed" means sustaining a contact that carries a potential for transmission of a sexually transmitted disease or HIV by one or more of the following:

a. Transmission, into a body orifice or onto mucous membrane, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

b. Exchange, during the accidental or intentional infliction of a penetrating wound, including a needle puncture, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

c. Exchange, into an eye, an open wound, an oozing lesion, or other place where a significant breakdown in the epidermal barrier has occurred, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

(b) When making a sentencing decision concerning a person convicted of a serious sex crime, the court shall consider as an aggravating factor the fact that the serious sex crime was committed under all of the following circumstances:

1. At the time that he or she committed the serious sex crime, the person convicted of committing the serious sex crime had a sexually transmitted disease or acquired immunodeficiency syndrome or had had a positive HIV test.

2. At the time that he or she committed the serious sex crime, the person convicted of committing the serious sex crime knew that he or she had a sexually transmitted disease or acquired immunodeficiency syndrome or that he or she had had a positive HIV test.
3. The victim of the serious sex crime was significantly exposed to HIV or to the sexually transmitted disease, whichever is applicable, by the acts constituting the serious sex crime.

HEALTH, CHAPTER 252: COMMUNICABLE DISEASE

Wis. STAT. § 252.05 (2016)

Reports of cases.

(1) Any health care provider, as defined in s. 146.81 (1) (a) to (p), who knows or has reason to believe that a person treated or visited by him or her has a communicable disease, or having a communicable disease, has died, shall report the appearance of the communicable disease or the death to the local health officer . . .

(11) If a violation of this section is reported to a district attorney by a local health officer or by the department, the district attorney shall forthwith prosecute the proper action, and upon request of the department, the attorney general shall assist.

Wis. STAT. § 252.06 (2016)

Isolation and quarantine.

(3) If a local health officer suspects or is informed of the existence of any communicable disease, the officer shall at once investigate and make or cause such examinations to be made as are necessary. The diagnostic report of a physician, the notification or confirmatory report of a parent or caretaker of the patient, or a reasonable belief in the existence of a communicable disease shall require the local health officer immediately to quarantine, isolate, require restrictions or take other communicable disease control measures in the manner, upon the persons and for the time specified in rules promulgated by the department. If the local health officer is not a physician, he or she shall consult a physician as speedily as possible where there is reasonable doubt or disagreement in diagnosis and where advice is needed. The local health officer shall investigate evasion of the laws and rules concerning communicable disease and shall act to protect the public. . .

Wis. STAT. §252.11 (2016)

Sexually transmitted disease

(1) In this section, "sexually transmitted disease" means syphilis, gonorrhea, chlamydia and other diseases the department includes by rule.

(2) An officer of the department or a local health officer having knowledge of any reported or reasonably suspected case or contact of a sexually transmitted disease for which no appropriate treatment is being administered, or of an actual contact of a reported case or potential contact of a reasonably suspected case, shall investigate or cause the case or contact to be investigated as necessary. If, following a request of an officer of the department or a local health officer, a person reasonably suspected of being infected with a sexually transmitted disease refuses or neglects examination by a physician, physician assistant, or advanced practice nurse prescriber or treatment, an officer of the department or a local

health officer may proceed to have the person committed under sub. (5) to an institution or system of care for examination, treatment, or observation.

(4) If a person infected with a sexually transmitted disease ceases or refuses treatment before reaching what in a physician's, physician assistant's, or advanced practice nurse prescriber's opinion is the noncommunicable stage, the physician, physician assistant, or advanced practice nurse prescriber shall notify the department. The department shall without delay take the necessary steps to have the person committed for treatment or observation under sub. (5), or shall notify the local health officer to take these steps.

(5) Any court of record may commit a person infected with a sexually transmitted disease to any institution or may require the person to undergo a system of care for examination, treatment, or observation if the person ceases or refuses examination, treatment, or observation under the supervision of a physician, physician assistant, or advanced practice nurse prescriber. The court shall summon the person to appear on a date at least 48 hours, but not more than 96 hours, after service if an officer of the department or a local health officer petitions the court and states the facts authorizing commitment. If the person fails to appear or fails to accept commitment without reasonable cause, the court may cite the person for contempt. The court may issue a warrant and may direct the sheriff, any constable, or any police officer of the county immediately to arrest the person and bring the person to court if the court finds that a summons will be ineffectual. The court shall hear the matter of commitment summarily. Commitment under this subsection continues until the disease is no longer communicable or until other provisions are made for treatment that satisfy the department. The certificate of the petitioning officer is prima facie evidence that the disease is no longer communicable or that satisfactory provisions for treatment have been made.

Wis. STAT. §252.19 (2016)

Communicable diseases; suspected cases; protection of public.

No person who is knowingly infected with a communicable disease may willfully violate the recommendations of the local health officer or subject others to danger of contracting the disease. No person may knowingly and willfully take, aid in taking, advise or cause to be taken, a person who is infected or is suspected of being infected with a communicable disease into any public place or conveyance where the infected person would expose any other person to danger of contracting the disease.

Wis. STAT. §252.25 (2016) **

Violation of law relating to health

Any person who willfully violates or obstructs the execution of any state statute or rule, county, city or village ordinance or departmental order under this chapter and relating to the public health, for which no other penalty is prescribed, shall be imprisoned for not more than 30 days or fined not more than 500 or both.

Wisconsin Administrative Code

DEPARTMENT OF HEALTH SERVICES, CHAPTER DHS 145, CONTROL OF COMMUNICABLE DISEASES

Wis. Admin. Code DHS 145.06 (2016)

General statement of powers to control communicable disease

(1) APPLICABILITY. The general powers under this section apply to all communicable diseases listed in Appendix A of this chapter and any other infectious disease which the chief medical officer deems poses a threat to the citizens of the state.

(4) AUTHORITY TO CONTROL COMMUNICABLE DISEASES. When it comes to the attention of an official empowered under s. 250.02 (1), 250.04 (1) or 252.02 (4) and (6), Stats., or under s. 252.03 (1) and (2), Stats., that a person is known to have or is suspected of having a contagious medical condition which poses a threat to others, the official may direct that person to comply with any of the following, singly or in combination, as appropriate:

- (a) Participate in a designated program of education or counseling.
- (b) Participate in a defined program of treatment for the known or suspected condition.
- (c) Undergo examination and tests necessary to identify a disease, monitor its status or evaluate the effects of treatment on it.
- (d) Notify or appear before designated health officials for verification of status, testing or direct observation of treatment.
- (e) Cease and desist in conduct or employment which constitutes a threat to others.
- (f) Reside part-time or full-time in an isolated or segregated setting which decreases the danger of transmission of the communicable disease.
- (g) Be placed in an appropriate institutional treatment facility until the person has become noninfectious.

(5) FAILURE TO COMPLY WITH DIRECTIVE. When a person fails to comply with a directive under sub. (4), the official who issued the directive may petition a court of record to order the person to comply. In petitioning a court under this subsection, the petitioner shall ensure all of the following:

- (a) That the petition is supported by clear and convincing evidence of the allegation.
- (b) That the respondent has been given the directive in writing, including the evidence that supports the allegation, and has been afforded the opportunity to seek counsel.
- (c) That the remedy proposed is the least restrictive on the respondent which would serve to correct the situation and to protect the public's health.

Wis. ADMIN. CODE DHS 145.14 (2016)

Definitions

In this subchapter:

(1) "Commitment" means the process by which a court of record orders the confinement of a person to a place providing treatment.

(4) "Sexually transmitted diseases" means syphilis, gonorrhea, chancroid, genital herpes infection, chlamydia trachomatis, and sexually transmitted pelvic inflammatory disease.

Wis. ADMIN. CODE DHS 145.20 (2016)

Commitment of suspects

If, following the order of a local health officer or the department, a suspect refuses or neglects examination or treatment, a local health officer or the department shall file a petition with a court to have the person committed to a health care facility for examination, treatment or observation.