

# Indiana

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## Analysis

### **People living with HIV (PLHIV) or hepatitis B can face felony charges for not disclosing their HIV status to their sexual and needle-sharing partners.**

PLHIV or hepatitis B must disclose their health status to sexual or needle-sharing partners, including past partners, that have engaged or will engage in activities that have been “demonstrated epidemiologically, as determined by the federal Centers for Disease Control and Prevention, to bear a significant risk of transmitting” HIV or hepatitis B.<sup>1</sup> Knowingly or intentionally violating the disclosure statute amounts to a Level 6 felony, punishable by up to two and one-half years’ imprisonment and an up to \$10,000 fine.<sup>2</sup> Recklessly violating or failing to comply with the duty amounts to a Class B misdemeanor, punishable by up to 180 days’ imprisonment and a fine of up to \$1,000.<sup>3</sup> In either case, each day a violation continues constitutes a separate offense.<sup>4</sup> Thus, someone who becomes aware of a positive or reactive test for HIV or hepatitis B, and who does not disclose that information to past sexual or needle-sharing partners, may be prosecuted for multiple charges—one for each day they do not disclose their health status to each of their previous partners.

The statute defines “high risk activities” as those identified by the CDC as “bearing a significant risk” of transmission.<sup>5</sup> While an improvement over previous statutory language, the exact application of this language remains unclear. Information provided by the CDC identifies anal and vaginal sex, as well as the sharing of needles and other injection equipment, as activities that represent the greatest risk of transmission of HIV, and as such these activities are likely to fall under the purview of the statute.<sup>6</sup> While the statutory language does not identify specific defenses to prosecution that a person accused can raise, the CDC clearly states that the use of preventative measures, such as condoms, dramatically reduces the risk of transmission associated with these “high risk activities.”<sup>7</sup> Further, the CDC conclusively declares that “a person with HIV who takes HIV medicine as prescribed and gets and stays virally suppressed or undetectable can stay healthy and will not transmit HIV to their sex partners.”<sup>8</sup> Consequently, a person accused may now have the opportunity to assert that, due to their

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<sup>1</sup> IND. CODE. § 16-41-7-1 (2023).

<sup>2</sup> IND. CODE. §§ 35-45-21-3(b), 35-50-2-7(b) (2023).

<sup>3</sup> IND. CODE. §§ 35-45-21-3(a), 35-50-3-3; 16-41-7-5(a) (2023).

<sup>4</sup> IND. CODE. §§ 35-45-21-3(c); 16-41-7-5(b) (2023).

<sup>5</sup> IND. CODE. § 16-41-7-1 (2023).

<sup>6</sup> CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Basics: Ways HIV Can Be Transmitted*, (Jul 12, 2021 10:10AM), <https://www.cdc.gov/hiv/basics/hiv-transmission/ways-people-get-hiv.html>.

<sup>7</sup> *Id.*

<sup>8</sup> CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Treatment as Prevention* (Aug. 9, 2023), <https://www.cdc.gov/hiv/risk/art/index.html>.

use of these prophylactic measures, their behavior no longer represents a significant risk of transmission and should therefore not be covered by the statute.

The CDC also states that certain activities covered by previous iterations of the statute, such as oral sex, do not represent a significant risk of transmission.<sup>9</sup> However, these resources do acknowledge that transmission through these routes is not impossible.<sup>10</sup> Because the exact treatment of “significant risk” has not yet been codified, and because the statute does not require transmission to actually occur for these provisions to take place, it is possible that these behaviors are still criminalized. This may be especially true if certain factors that exacerbate the risk of these unlikely routes of transmission, such as oral sores or broken skin, were present at the time of the incident in question.<sup>11</sup>

As previously stated, neither the intent to transmit nor the transmission of HIV is required for these provisions to attach, and the statute does not acknowledge specific affirmative defenses to prosecution.<sup>12</sup> Additionally, since failure to inform is a required element of the crime, the ability to prove disclosure of health status, or the lack thereof, may remain the determinative factor when assessing crimes charged under this statute.<sup>13</sup>

Notable cases and prosecutions of persons for not disclosing their health status include:

- In December 2016, a 37-year-old man living with HIV was charged with four counts of the “malicious mischief” statute (explained in the following section), instead of the “duty to disclose” statute, after having sex with various women without disclosing his HIV status.<sup>14</sup>
- In April 2012, a man was sentenced to seven and a half years’ imprisonment after pleading guilty to charges for not disclosing his HIV status to five sexual partners.<sup>15</sup> This followed a three-year sentence that the man had received for similar prior charges.<sup>16</sup>
- In March 2011, a 20-year-old woman living with HIV was charged with two counts of failure to warn after having unprotected sex with a man without disclosing her status.<sup>17</sup>

It is important to note that these prosecutions took place under a previous iteration of the statutory language but may provide some insight into how the updated language may be implemented.

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<sup>9</sup> *Johnson v. State*, 785 N.E.2d 1134 (Ind. Ct. App. 2003). In *Johnson v. State*, the Court of Appeals of Indiana upheld a conviction for the statute based on oral and penile-vaginal sex.

<sup>10</sup> CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Basics: Ways HIV Can Be Transmitted*, (Jul 12, 2021 10:10AM), <https://www.cdc.gov/hiv/basics/hiv-transmission/ways-people-get-hiv.html>.

<sup>11</sup> *Id.*

<sup>12</sup> IND. CODE. § 16-41-7-1 (2023).

<sup>13</sup> *Id.*

<sup>14</sup> *Indiana man charged – again – with hiding HIV status from sexual partners*, CBS North Carolina WNCN.com, Dec. 14, 2016, available at <http://wncn.com/2016/12/14/indiana-man-charged-again-with-hiding-hiv-status-from-sexual-partners/>.

<sup>15</sup> *Indiana man sentenced for not disclosing HIV status*, WLKY.com, Apr. 16, 2012, available at <http://www.wlky.com/news/local-news/indiana-news/Indiana-man-sentenced-for-not-disclosing-HIV-status/10919288#!7xzzN>.

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

<sup>17</sup> *Woman Accused of Not Telling Partner About HIV*, theindychannel.com, Mar. 30, 2011, available at <http://www.theindychannel.com/news/woman-accused-of-not-telling-partner-about-hiv>.

## **It is a felony for PLHIV to expose others to any bodily fluid, including those known not to transmit HIV.**

Under the battery by bodily fluid offense, knowingly or intentionally exposing others to bodily fluid or waste is a Class B misdemeanor, punishable by up to 180 days' imprisonment and a fine of up to \$1,000.<sup>18</sup> For the purposes of the statute, "any bodily fluid" is not clearly defined.<sup>19</sup>

However, if the bodily fluid or waste is "infected with" HIV, hepatitis, or tuberculosis, the offense is a Level 6 felony, punishable by up to two and one-half years' imprisonment and a fine of up to \$10,000.<sup>20</sup> If the exposure was additionally toward a public safety official, the offense is a Level 5 felony, punishable by up to six years' imprisonment and a fine of up to \$10,000.<sup>21</sup>

Under the malicious mischief by bodily fluid offense, a person who recklessly, knowingly, or intentionally places bodily fluid or fecal waste in a location with the intent that another person will involuntarily touch the bodily fluid or fecal waste may be charged with malicious mischief, a Class B misdemeanor punishable by up to 180 days' imprisonment and a fine of up to \$1,000.<sup>22</sup> If the same act is done with the intent that another person will ingest the body fluid or fecal waste, the offense is a Class A misdemeanor, punishable by up to one year imprisonment and a fine of up to \$5,000.<sup>23</sup> For the purposes of the malicious mischief statute, "body fluid" includes "blood, saliva, sputum, semen, vaginal secretions, human milk, urine, sweat, tears, any other liquid produced by the body, or any aerosol generated form of liquids listed in this subsection."<sup>24</sup>

If either of the "malicious mischief" charges are brought for bodily fluid or fecal waste that the person knew or recklessly failed to know was "infected with infectious hepatitis, HIV, or tuberculosis,"<sup>25</sup> the offense is a Level 6 felony, punishable by up to two and one half years' imprisonment and a fine of up to \$10,000.<sup>26</sup> If the exposure results in transmission of infectious hepatitis or tuberculosis, the offense is a Level 5 felony, punishable by up to six years' imprisonment and a fine of up to \$10,000.<sup>27</sup> If the exposure results in transmission of HIV, the offense is a Level 4 felony, punishable by up to 12 years' imprisonment and a fine of up to \$10,000.<sup>28</sup>

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<sup>18</sup> IND. CODE. §§ 35-42-2-1(c), 35-50-3-3 (2023).

<sup>19</sup> IND. CODE. §§ 35-45-16-2(a), 35-31.5-2-28.5, 35-31.5-1-1 (2023). The article restricts the definition of "body fluid" in the malicious mischief offense to the listed fluids, but "bodily fluid" is not clearly defined in the battery offense. Courts have interpreted "bodily fluid" according to its ordinary meaning and have not restricted it to the definition in the malicious mischief offense, § 35-45-16-2(a). See, e.g., *Coleman v. State*, 149 N.E.3d 313. ("[A] person of ordinary intelligence would, from the phrase 'bodily fluid' as used in the battery statute, know that spitting or placing saliva, on another person's face was included in the proscribed conduct of placing bodily fluid on another person").

<sup>20</sup> IND. CODE. §§ 35-42-2-1(f), 35-50-2-7(b) (2023).

<sup>21</sup> IND. CODE. §§ 35-42-2-1(h), 35-50-2-6(b) (2023).

<sup>22</sup> IND. CODE. §§ 35-45-16-2(c), 35-50-3-3 (2023).

<sup>23</sup> IND. CODE. §§ 35-45-16-2(e), 35-50-3-2 (2023).

<sup>24</sup> IND. CODE. §§ 35-45-16-2(a) (2023).

<sup>25</sup> "Infectious hepatitis" is hepatitis A, B, C, D, E or G. IND. CODE. §§ 35-45-16-2(b); 35-31.5-2-169.5.

<sup>26</sup> IND. CODE. §§ 35-45-16-2(d)(1), (f)(1); 35-50-2-7(b) (2023).

<sup>27</sup> IND. CODE. §§ 35-45-16-2(d)(2), (f)(2); 35-50-2-6(b) (2023).

<sup>28</sup> IND. CODE. §§ 35-45-16-2(d)(3), (f)(3); 35-50-2-5.5 (2023).

Notably, though HIV transmission may be impossible under the circumstances,<sup>29</sup> there have been prosecutions under these statutes involving PLHIV exposing others to saliva.<sup>30</sup>

### **It is a felony for PLHIV to donate, transfer, or sell their semen for artificial insemination, their blood, or their plasma.**

It is a Level 5 felony, punishable by up to six years' imprisonment and a fine of up to \$10,000, for a person to recklessly, knowingly, or intentionally donate, sell, or transfer blood or semen for artificial insemination that contains HIV.<sup>31</sup> If the act results in transmission, the offense is either a Level 4 felony, punishable by up to 12 years' imprisonment and a fine of up to \$10,000, or a Level 3 felony.<sup>32</sup>

It should be noted that this provision of the statute does not apply to those who donate semen, blood, or plasma containing HIV antibodies for the purpose of research.<sup>33</sup>

### **PLHIV have also been charged under general criminal laws.**

In *State v. Haines*, the Court of Appeals of Indiana reinstated a conviction for three counts of attempted murder for a man living with HIV who scratched, bit, and threw blood at police officers.<sup>34</sup> The defendant had attempted suicide and, when he awoke to law enforcement and emergency responders attempting to provide aid, he began yelling at them not to come any closer or else he would infect them with HIV.<sup>35</sup>

The trial court vacated the conviction of three counts of attempted murder and entered a judgment of conviction for three counts of battery as a Class D felony, with a sentence of two years' imprisonment

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<sup>29</sup> CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, How is HIV passed from one person to another?* (Dec. 9, 2016), available at <https://www.cdc.gov/hiv/basics/hiv-transmission/body-fluids.html> (last visited Dec. 31, 2023) (stating that “[o]nly certain fluids—blood, semen (*cum*), pre-seminal fluid (*pre-cum*), rectal fluids, vaginal fluids, and breast milk—from an HIV-infected person can transmit HIV”).

<sup>30</sup> See, e.g., *Newman v. State*, 677 N.E.2d 590, 591-92 (Ind. Ct. App. 1997) (affirming defendant's conviction of a Class D felony under the battery by body waste statute, noting evidence the defendant “intentionally swung her head around causing saliva to land on [police] officers” was sufficient to support the conviction). Until the large-scale revision of the criminal code, effective July 1, 2014, Indiana had a “battery by body waste statute,” under which it was a Class C felony, punishable by up to eight years imprisonment and up to a \$10,000 fine, for a person to intentionally or knowingly in a rude, insolent, or angry manner place blood, bodily fluid, or waste contaminated with HIV on a law enforcement officer, corrections officer, firefighter, or first responder. IND. CODE §§ 35-50-2-6(a) (2014), 35-42-2-6(e)(1), repealed by P.L.158-2013, SEC.429, eff. July 1, 2014. The offense became a Class A felony if it resulted in transmission. IND. CODE § 35-42-2-6(e)(3)(B). The same statute applied, with less severe penalties, when a person intentionally caused another person, who was not a law enforcement officer or first responder, to come in contact with bodily fluids “infected with HIV.” § 35-42-2-6(f). Prosecution only required the bodily fluid make contact with another's skin or clothing. *Thomas v. State*, 749 N.E.2d 1231 (Ind. Ct. App. 2001) (affirming defendant's conviction and finding the statute did not require the fluid, defendant's saliva, pose risk of transmission – only that it landed on the officer – because it was “plausible the legislature intended to penalize the offensive and disgusting nature of such [contact] . . .”).

<sup>31</sup> IND. CODE. §§ 16-41-14-17(b); 35-45-21-1(b); 35-50-2-6(b) (2023).

<sup>32</sup> IND. CODE. §§ 16-41-14-17(b); 35-50-2-5.5; 35-45-21-1; 35-50-2-5 (2023). It appears that during the major revision of Indiana's criminal code—which in fact added § 35-45-21-1 as a new statute, effective July 1, 2014—an oversight occurred which resulted in this contradiction. Indeed, before the revision, both § 16-41-14-17 and § 35-42-1-7, which were replaced by § 35-45-21-1 and contained almost identical wording, provided the same punishments for both the initial act and for if transmission of HIV resulted (a Class C felony and a Class A felony, respectively). See IND. P.L.158-2013, SEC.429, eff. July 1, 2014, at 1288, 1402-03.

<sup>33</sup> IND. CODE. §§ 16-41-14-17(b); 35-45-21-1(b); 35-50-2-6(b) (2023).

<sup>34</sup> *State v. Haines*, 545 N.E.2d 834 (Ind. Ct. App. 1989).

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

for each count.<sup>36</sup> Notably, it reasoned, “the State failed in its burden of establishing . . . that spitting, biting or throwing blood at the victims is a method of transmitting AIDS or [AIDS Related Complex].”<sup>37</sup>

The Court of Appeals reinstated the attempted murder convictions, reasoning that it was sufficient for the defendant to know his HIV status and intend to transmit HIV through his actions, even if it was not actually possible to do so.<sup>38</sup>

### **Persons with sexually transmitted diseases (STIs) may face sentence enhancement for child molestation convictions.**

Any person who knowingly or intentionally submits to sexual intercourse or sexual conduct with a person under 14 years of age may be convicted of a Level 3 felony, punishable by a sentence of three to 16 years’ imprisonment and a fine up to \$10,000.<sup>39</sup> If, however, the defendant knew they had an STI and the sexual act results in transmission of disease, the offense becomes a Level 1 felony, punishable by a sentence of 20 to 40 years’ imprisonment and a fine of up to \$10,000.<sup>40</sup> If, additionally, the defendant is over 21 years of age and the victim is under 12 years of age, the offense may be punishable by a sentence of 20 to 50 years’ imprisonment, with the advisory sentence being 30 years, and a fine of up to \$10,000.<sup>41</sup>

### **A person’s medical records may be accessed to aid in their prosecution.**

Medical information may be used to prosecute any person “charged with a potentially disease transmitting offense.”<sup>42</sup> Upon a petition from a prosecuting attorney, the court of jurisdiction may authorize such use of a person’s medical records if it “finds probable cause to believe that the medical information is relevant to the prosecution or defense of a person who has been charged with a potentially disease transmitting offense.”<sup>43</sup> A “potentially disease transmitting offense” is a battery or domestic battery “involving placing a bodily fluid or waste on another person” or “[a]n offense relating to a criminal sexual act if sexual intercourse or other sexual conduct occurred.”<sup>44</sup>

### **PLHIV and persons with other STIs may be subject to quarantine.**

The local board of health or health officer may take steps to create a “sexually transmitted infection prevention and control program,” which may include hospitalization and quarantine, when (1) there is

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<sup>36</sup> *Id.* at 836-37.

<sup>37</sup> *Id.* at 837.

<sup>38</sup> *Id.* at 838-40 (also giving some weight to medical testimony that HIV transmission could occur “by blood,” generally, including blood that, “[g]ets] into the eyes and mouth as well as onto the skin”).

<sup>39</sup> IND. CODE §§ 35-42-4-3(a); 35-50-2-5 (2023) (Notably, there are no age requirements for the defendant.).

<sup>40</sup> IND. CODE §§ 35-42-4-3(a)(5); 35-50-2-4(b) (2023).

<sup>41</sup> IND. CODE §§ 35-42-4-3(a)(5); 35-50-2-4(c)(1); 35-31.5-2-72(1) (2023).

<sup>42</sup> IND. CODE § 16-41-8-4 (2023).

<sup>43</sup> *Id.*

<sup>44</sup> IND. CODE § 16-41-8-1(a) (2023). Although the definition certainly includes battery offenses, such as battery by bodily fluid, it is unclear whether it includes malicious mischief by bodily fluid. The offenses that relate “to a criminal sexual act” are specifically listed in § 35-31.5-2-216 and include rape, child molesting, child seduction, prostitution, making an unlawful proposition, incest, and sexual misconduct with a minor under § 35-42-4-9(a). Furthermore, a “potentially disease transmitting offense” includes “an attempt to commit an offense, if sexual intercourse or other sexual conduct” occurred. It additionally includes “a delinquent act that would be a crime if committed by an adult.”

prevalence of disease that is “inimical” to public health, or (2) disease is causing economic interference with any phase of public welfare.<sup>45</sup> Under Indiana criminal law, “serious” STIs are defined to include HIV, herpes, gonorrhea, syphilis, chlamydia, and hepatitis.<sup>46</sup> Within the disease reporting and control subdivision, the Indiana Administrative Code’s list of “sexually transmitted diseases” also includes chancroid and granuloma inguinale.<sup>47</sup> Persons living with an STI may not be quarantined without establishment of such a prevention and control program,<sup>48</sup> although it is unclear what constitutes a threshold prevalence level, or what level of economic interference can suffice to trigger its creation.

In the event that the state attempts to quarantine people living with STIs, it must first prove by clear and convincing evidence to a circuit or superior court that, “an individual has been infected or exposed to a serious communicable disease or outbreak and the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual’s ability to come into contact with an uninfected individual.”<sup>49</sup> Persons subject to quarantine hearings have the rights to notice and an opportunity to be heard, to cross-examine witnesses, and to legal representation.<sup>50</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>45</sup> IND. CODE § 16-41-15-3 (2023).

<sup>46</sup> IND. CODE § 35-31.5-2-292.9.

<sup>47</sup> 410 IND. ADMIN. CODE 1-2.5-66 (2023).

<sup>48</sup> See, e.g., IND. CODE § 16-41-9-1.5 (2023) (“The public health authority shall impose the least restrictive conditions of isolation or quarantine that are consistent with the protection of the public.”); 10 IND. ADMIN. CODE 1-2.5-20 (2023) (“Control measures may include . . . quarantine.”). See also 410 IND. ADMIN. CODE 1-2.5-109, 105, 106, 99, 89, 136, 88, 100 (2023) (stating quarantine is not necessary for epidemiological control of HIV, hepatitis B, hepatitis C, gonorrhea, chlamydia, syphilis, chancroid, or granuloma inguinale, respectively).

<sup>49</sup> IND. CODE § 16-41-9-1.5 (2023).

<sup>50</sup> *Id.*

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## Indiana Statutes Annotated

**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 35. CRIMINAL LAW AND PROCEDURE

#### **IND. CODE § 35-42-2-1 (2023)** \*\*

##### *Battery*

(a) As used in this section, “public safety official” means:

- (1) a law enforcement officer, including an alcoholic beverage enforcement officer;
- (2) an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71);
- (3) an employee of the department of correction;
- (4) a probation officer;
- (5) a parole officer;
- (6) a community corrections worker;
- (7) a home detention officer;
- (8) a department of child services employee;
- (9) a firefighter;
- (10) an emergency medical services provider; or
- (11) a judicial officer.
- (12) a bailiff of any court; or
- (13) a special deputy (as described in [IC 36-8-10-10.6](#)).

(c) Except as provided in subsections (d) through (k), a person who knowingly or intentionally:

- (1) touches another person in a rude, insolent, or angry manner; or
- (2) in a rude, insolent, or angry manner places any bodily fluid or waste on another person; commits battery, a class B misdemeanor.

(f) The offense described in subsection (c)(2) is a Level 6 felony if the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with hepatitis, tuberculosis, or human immunodeficiency virus.

(h) The offense described in subsection (c)(2) is a Level 5 felony if:

(1) the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with hepatitis, tuberculosis, or human immunodeficiency virus; and

(2) the person placed the bodily fluid or waste on a public safety official, unless the offense is committed by a person detained or committed under IC 12-26.

**IND. CODE § 35-42-4-3 (2023) \*\***

*Child molesting*

(a) A person who, with a child under fourteen (14) years of age, knowingly or intentionally performs or submits to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) commits child molesting, a Level 3 felony. However, the offense is a Level 1 felony if:

(5) it results in the transmission of a serious sexually transmitted disease and the person knew that the person was infected with the disease.

**IND. CODE § 35-31.5-1-1 (2023)**

*Applicability of article.*

Except as otherwise provided, the definitions in this article apply throughout this title and to all other statutes relating to penal offenses.

**IND. CODE § 35-31.5-2-28.5 (2023)**

*Body fluid*

“Body fluid,” for purposes of IC 35-45-16-2, has the meaning set forth in IC 35-45-16-2(a).

**IND. CODE § 35-38-1-9.5 (2023)**

*Confidential information; individual with human immunodeficiency virus (HIV); sex crimes and controlled substances*

A probation officer shall obtain confidential information from the state department of health under [IC 16-41-8-1](#) to determine whether a convicted person was an individual with the human immunodeficiency virus (HIV) when the crime was committed if the person is:

(1) convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV);  
or

(2) convicted of an offense relating to controlled substances and the offense involved:

(A) the delivery by any person to another person; or

(B) the use by any person on another person; of a contaminated sharp (as defined in [IC 16-41-16-2](#)) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.



**IND. CODE § 35-38-1-10.5 (2023)**

*Screening test for serious diseases; sex crimes and controlled substances; confirmatory test; presentence investigation; privileged communications; civil and criminal immunity*

(a) The court:

(1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:

(A) convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or

(B) convicted of an offense relating to controlled substances and the offense involved:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in [IC 16-41-16-2](#)) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact; and

(2) may order that a person undergo a screening test for a serious disease (as defined in [IC 16-41-8-5](#)) in accordance with [IC 16-41-8-5](#).

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

(1) obtain the medical record of the convicted person from the state department of health under [IC 16-41-8-1\(b\)\(3\)](#); and

(2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in [IC 34-6-2-80](#)) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

**IND. CODE § 35-45-16-2 (2023) \*\***

*Malicious mischief*

(a) As used in this section, “body fluid” means:

- (1) blood;
- (2) saliva;
- (3) sputum
- (4) semen;
- (5) vaginal secretions;
- (6) human milk;
- (7) urine;
- (8) sweat;
- (9) tears;
- (10) any other liquid produced by the body; or
- (11) any aerosol generated form of liquids listed in this subsection.

(c) A person who recklessly, knowingly, or intentionally places human:

- (1) body fluid; or
- (2) fecal waste;

in a location with the intent that another person will involuntarily touch the bodily fluid or fecal waste commits malicious mischief, a Class B misdemeanor.

(d) An offense described in subsection (c) is a:

(1) Level 6 felony if the person knew or recklessly failed to know that the body fluid or fecal waste was infected with:

- (A) infectious hepatitis;
- (B) HIV; or
- (C) tuberculosis;

(2) Level 5 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with hepatitis and the offense results in the transmission of infectious hepatitis to the other person; or

(B) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) Level 4 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

(e) A person who recklessly, knowingly, or intentionally places human:

(1) body fluid; or

(2) fecal waste;

in a location with the intent that another person will ingest the body fluid or fecal waste commits malicious mischief with food, a Class A misdemeanor.

(f) An offense described in subsection (e) is:

(1) a Level 6 felony if the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with:

(A) infectious hepatitis;

(B) HIV; or

(C) tuberculosis;

(2) a Level 5 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with infectious hepatitis and the offense results in the transmission of infectious hepatitis to the other person; or

(B) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Level 4 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

**IND. CODE § 35-45-21-1 (2023) \*\***

*Transferring contaminated body fluids.*

a) As used in this section, “blood” has the meaning set forth in [IC 16-41-12-2.5](#).

(b) A person who recklessly, knowingly, or intentionally donates, sells, or transfers blood, or semen for artificial insemination (as defined in IC 16-41-14-2) that contains the human immunodeficiency virus (HIV) commits transferring contaminated body fluids, a Level 5 felony.

(c) However, the offense under subsection (b) is a Level 3 felony if it results in the transmission of the human immunodeficiency virus (HIV) to any person other than the defendant.

(d) This section does not apply to:

(1) a person who, for reasons of privacy, donates, sells, or transfers blood at a blood center (as defined in [IC 16-41-12-3](#)) after the person has notified the blood center that the blood must be disposed of and may not be used for any purpose;

(2) a person who transfers blood semen, or another body fluid that contains the human immunodeficiency virus (HIV) for research purposes; or

(3) a person who is an autologous blood donor for stem cell transplantation.

**IND. CODE § 35-45-21-3 (2023) \*\***

*Person recklessly violating or failing to comply with IC 16-41-7*

(a) A person who recklessly violates or fails to comply with IC 16-41-7 commits a Class B Misdemeanor

(b) A person who knowingly or intentionally violates or fails to comply with IC 16-41-7-1 Commits a Level 6 Felony.

(c) Each day a violation described in this section continues constitutes a separate offense.

**IND. CODE § 35-50-2-4 (2023) \*\***

*Class A felony.*

(a) A person who commits a Class A felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) Except as provided in subsection (c), a person who commits a Level 1 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between twenty (20) and forty (40) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IND. CODE § 35-31.5-2-72 (2023) \*\***

*Credit restricted felon.*

“Credit restricted felon” means a person who has been convicted of at least one (1) of the following offenses:

(1) Child molesting involving sexual intercourse, deviate sexual conduct (IC 35-42-4-3(a), before its amendment on July 1, 2014) for a crime committed before July 1, 2014, or other sexual conduct (as defined in IC 35-31.5-2-221.5) for a crime committed after June 30, 2014, if:

(A) the offense is committed by a person at least twenty-one (21) years of age; and

(B) the victim is less than twelve (12) years of age.

(2) Child molesting ([IC 35-42-4-3](#)) resulting in serious bodily injury or death.

**IND. CODE § 35-50-2-5 (2023)** \*\*

*Class B or Level 3 felony*

(a) A person who commits a Class B felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) A person who commits a Level 3 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between three (3) and sixteen (16) years, with the advisory sentence being nine (9) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IND. CODE § 35-50-2-5.5 (2023)** \*\*

*Level 4 felony*

A person who commits a Level 4 felony shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being six (6) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IND. CODE § 35-50-2-6 (2023)** \*\*

*Level 5 or Class C felony*

(a) A person who commits a Class C felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) A person who commits a Level 5 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IND. CODE § 35-50-2-7 (2023)** \*\*

*Class D felony – Conversion to Class A misdemeanor.*

(a) A person who commits a Class D felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 ½) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) A person who commits a Level 6 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(c) Notwithstanding subsections (a) and (b), if a person has committed a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014), the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) if:

(1) the court finds that:

(A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and

(B) the prior felony was committed less than three (3) years before the second felony was committed;

(2) the offense is domestic battery as a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) under [IC 35-42-2-1.3](#); or

(3) the offense is possession of child pornography ([IC 35-42-4-4\(d\)](#)). The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.

(d) Notwithstanding subsections (a) and (b), the sentencing court may convert a Class D felony conviction (for a crime committed before July 1, 2014) or a Level 6 felony conviction (for a crime committed after June 30, 2014) to a Class A misdemeanor conviction if, after receiving a verified petition as described in subsection (e) and after conducting a hearing of which the prosecuting attorney has been notified, the court makes the following findings:

(1) The person is not a sex or violent offender (as defined in [IC 11-8-8-5](#)).

(2) The person was not convicted of a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) that resulted in bodily injury to another person.

(3) The person has not been convicted of perjury under [IC 35-44.1-2-1](#) (or [IC 35-44-2-1](#) before its repeal) or official misconduct under [IC 35-44.1-1-1](#) (or [IC 35-44-1-2](#) before its repeal).

(4) The person has not been convicted of domestic battery as a Class D felony (for a crime committed before July 1, 2014) or a Level 6 felony (for a crime committed after June 30, 2014) under [IC 35-42-2-1.3](#) in the fifteen (15) year period immediately preceding the commission of the current offense.

(5) At least three (3) years have passed since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D or Level 6 felony.

(6) The person has not been convicted of a felony since the person:

(A) completed the person's sentence; and

(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D or Level 6 felony.

(7) No criminal charges are pending against the person.

(e) A petition filed under subsection (d) or (f) must be verified and set forth:

(1) the crime the person has been convicted of;

(2) the date of the conviction;

(3) the date the person completed the person's sentence;

(4) any obligations imposed on the person as part of the sentence;

(5) the date the obligations were satisfied; and

(6) a verified statement that there are no criminal charges pending against the person.

(f) If a person whose Class D or Level 6 felony conviction has been converted to a Class A misdemeanor conviction under subsection (d) is convicted of a felony not later than five (5) years after the conversion under subsection (d), a prosecuting attorney may petition a court to convert the person's Class A misdemeanor conviction back to a Class D felony conviction (for a crime committed before July 1, 2014) or a Level 6 felony conviction (for a crime committed after June 30, 2014).

**IND. CODE § 35-50-3-2 (2023)** \*\*

*Class A misdemeanor*

A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars (\$5,000).

**IND. CODE § 35-50-3-3 (2023)** \*\*

*Class B misdemeanor*

A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days; in addition, he may be fined not more than one thousand dollars (\$1,000).

**IND. CODE § 35-31.5-292.9 (2023)**

*Serious Sexually Transmitted Disease.*

“Serious sexually transmitted disease” means:

(1) the human immunodeficiency virus (HIV);

(2) herpes;

(3) gonorrhea;

(4) syphilis;

(5) chlamydia; or

(6) hepatitis.

## **TITLE 16. HEALTH**

### **IND. CODE § 16-41-1-2 (2023)**

#### *Rules*

The state department may adopt rules under IC 4-22-2 to implement this article.

### **IND. CODE § 16-41-7-1 (2023) \*\***

*Definitions – Carriers of dangerous communicable disease have duty to warn persons at risk.*

(a) This section applies to the following serious communicable diseases:

(1) Human immunodeficiency virus (HIV).

(2) Hepatitis B.

(b) As used in this section, “high risk activity” means sexual or needle sharing contact that has been epidemiologically demonstrated, as determined by the federal Centers for Disease Control and Prevention, to bear a significant risk of transmitting a serious communicable disease described in subsection (a).

(c) As used in this section, “person at risk” means:

(1) past and present sexual or needle sharing partners who may have engaged in high risk activity; or

(2) sexual or needle sharing partners before engaging in high risk activity; with an individual with a communicable disease who has a serious communicable disease described in subsection (a).

(d) Individuals with a communicable disease who know of their status as an individual with a communicable disease and have a serious communicable disease described in subsection (a) have a duty to inform or cause to be notified by a third party a person at risk of the following:

(1) The individual with a communicable disease’s disease status.

(2) The need to seek health care such as counseling and testing.

### **IND. CODE § 16-41-7-5 (2023) \*\***

*Reckless violation – Failure to comply – Penalty.*

(a) Except as provided in IC 35-45-21-3, a person who recklessly violates or fails to comply with this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.



**IND. CODE § 16-41-8-1 (2023)**

*Disclosure or compelled disclosure of information involving a communicable or dangerous disease — Violation — Penalty.*

(a) As used in this chapter, “potentially disease transmitting offense” means any of the following:

- (1) Battery (IC 35-42-2-1) or domestic battery (IC 35-42-2-1.3) involving placing a bodily fluid or waste on another person.
- (2) An offense relating to a criminal sexual act (as defined in IC 35-31.5-2-216), if sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) occurred.

The term includes an attempt to commit an offense, if sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) occurred, and a delinquent act that would be a crime if committed by an adult.

**IND. CODE § 16-41-8-4 (2023)**

*Release of medical information that may be relevant to prosecution or defense of person charged with potentially disease transmitting offense.*

(a) This section applies to the release of medical information that may be relevant to the prosecution or defense of a person who has been charged with a potentially disease transmitting offense.

(b) A:

- (1) prosecuting attorney may seek to obtain access to a defendant's medical information if the defendant has been charged with a potentially disease transmitting offense;

(f) The court shall examine the person's medical information in camera. If, after examining the medical information in camera and considering the evidence presented at the hearing, the court finds probable cause to believe that the medical information is relevant to the prosecution or defense of a person who has been charged with a potentially disease transmitting offense, the court may order the release of a person's medical information to the petitioner.

(g) In an order issued under subsection (f), the court shall:

- (1) permit the disclosure of only those parts of the person's medical information that are essential to fulfill the objective of the order;
- (2) restrict access to the medical information to those persons whose need for the information is the basis of the order; and
- (3) include in its order any other appropriate measures to limit disclosure of the medical information to protect the right to privacy of the person who is the subject of the medical information.

(h) A hearing for the release of a person's medical information may be closed to the public. The transcript of the hearing, the court's order, and all documents filed in connection with the hearing are confidential. In addition, if a person's medical information is disclosed in a legal proceeding, the court shall order the record or transcript of the testimony to be preserved as a confidential court record.

**IND. CODE § 16-41-9-1.5 (2023)**

*Procedures to obtain court order imposing isolation or quarantine – Procedures for emergency and immediate orders – Petitions for renewal of orders – Violation of order is Class A misdemeanor – State department to establish rules to implement chapter.*

(a) If a public health authority has reason to believe that:

(1) an individual:

(A) has been infected with; or

(B) has been exposed to;

a serious communicable disease or outbreak; and

(2) the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual's ability to come into contact with an uninfected individual;

the public health authority may petition a circuit or superior court for an order imposing isolation or quarantine on the individual. A petition for isolation or quarantine filed under this subsection must be verified and include a brief description of the facts supporting the public health authority's belief that isolation or quarantine should be imposed on an individual, including a description of any efforts the public health authority made to obtain the individual's voluntary compliance with isolation or quarantine before filing the petition.

(b) Except as provided in subsections (e) and (k), an individual described in subsection (a) is entitled to notice and an opportunity to be heard, in person or by counsel, before a court issues an order imposing isolation or quarantine. A court may restrict an individual's right to appear in person if the court finds that the individual's personal appearance is likely to expose an uninfected person to a serious communicable disease or outbreak.

(c) If an individual is restricted from appearing in person under subsection (b), the court shall hold the hearing in a manner that allows all parties to fully and safely participate in the proceedings under the circumstances.

(d) If the public health authority proves by clear and convincing evidence that:

(1) an individual has been infected or exposed to a serious communicable disease or outbreak;  
and

(2) the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual's ability to come into contact with an uninfected individual;

the court may issue an order imposing isolation or quarantine on the individual. The court shall establish the conditions of isolation or quarantine, including the duration of isolation or quarantine. The court shall impose the least restrictive conditions of isolation or quarantine that are consistent with the protection of the public.

(e) If the public health authority has reason to believe that an individual described in subsection (a) is likely to expose an uninfected individual to a serious communicable disease or outbreak before the individual described in subsection (a) can be provided with notice and an opportunity to be heard, the public health authority may seek in a circuit or superior court an emergency order of quarantine or isolation by filing a verified petition for emergency quarantine or isolation. The verified petition must include a brief description of the facts supporting the public health authority's belief that:

- (1) isolation or quarantine should be imposed on an individual; and
- (2) the individual described in subsection (a) may expose an uninfected individual to a serious communicable disease or outbreak before the individual described in subsection (a) can be provided with notice and an opportunity to be heard.

The verified petition must include a description of any efforts the public health authority made to obtain the individual's voluntary compliance with isolation or quarantine before filing the petition.

(f) If the public health authority proves by clear and convincing evidence that:

- (1) an individual has been infected or exposed to a serious communicable disease or outbreak;
- (2) the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual's ability to come into contact with an uninfected individual; and
- (3) the individual may expose an uninfected individual to a serious communicable disease or outbreak before the individual can be provided with notice and an opportunity to be heard;

the court may issue an emergency order imposing isolation or quarantine on the individual. The court shall establish the duration and other conditions of isolation or quarantine. The court shall impose the least restrictive conditions of isolation or quarantine that are consistent with the protection of the public.

(l) The public health authority may seek to renew an order of isolation or quarantine or an immediate order of isolation or quarantine issued under this section by doing the following:

- (3) By informing the individual who is the subject of the emergency order of isolation or quarantine or the immediate order of isolation or quarantine that the individual has the right to:
  - (A) appear, unless the court finds that the individual's personal appearance may expose an uninfected person to a serious communicable disease or outbreak;
  - (B) cross-examine witnesses; and
  - (C) counsel, including court appointed counsel in accordance with subsection (c).

**IND. CODE § 16-41-14-17 (2023) \*\***

*Sale or transfer of semen containing HIV antibodies unlawful except for research purposes – Penalty.*

(a) This section does not apply to a person who transfers for research purposes semen that contains antibodies for the human immunodeficiency virus (HIV).

(b) A person who, for the purpose of artificial insemination, recklessly, knowingly, or intentionally donates, sells, or transfers semen that contains antibodies for the human immunodeficiency virus (HIV)

commits transferring contaminated semen, a Level 5 felony. The offense is a Level 4 felony if the offense results in the transmission of the virus to another person.

**IND. CODE § 16-41-15-3 (2023)**

*Sexually transmitted infection prevention and control program.*

The local board of health or health officer may request from the appropriate body an appropriation for a sexually transmitted infection prevention and control program, which may include hospitalization and quarantine, when the local board of health or health officer determines that either of the following conditions exist:

- (1) There is a prevalence of sexually transmitted infection inimical to the public health, safety, and welfare of the citizens.
- (2) Sexually transmitted infection is causing economic interference with any phase of public welfare in the local health board's or health officer's jurisdiction.

**IND. CODE § 16-41-15-14 (2023)**

*Admission of infected persons to charitable and penal institutions*

The fact that a person has a sexually transmitted infection may not bar the person's admission to a benevolent, charitable, or penal institution or correctional facility supported and maintained in any part by state funds.

**IND. CODE § 16-41-15-15 (2023)**

*Treatment of infected persons admitted to charitable and penal institutions*

Whenever a person with a sexually transmitted infection is admitted to a benevolent, charitable, or penal institution or correctional facility of Indiana, the warden or official in charge of the institution or correctional facility shall institute and provide the proper treatment for the person and shall carry out laboratory tests necessary to determine the nature, course, duration, and results of the treatment.

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## Indiana Administrative Code

### TITLE 410: INDIANA STATE DEPARTMENT OF HEALTH

**410 IND. ADMIN. CODE 1-2.5-66 (2023)**

*"Sexually transmitted disease" defined*

"Sexually transmitted disease" means local or systemic communicable diseases due to infectious agents, generally transmitted person-to-person by sexual intercourse or genital mucosal contact, including, but not limited to, the following:

- (1) HIV.
- (2) HBV.
- (3) HCV.

(4) Gonorrhea.

(5) Chlamydia.

(6) Syphilis.

(7) Chancroid.

(8) Granuloma inguinale.