Third Edition

HIV Criminalization in the United States

A Sourcebook on State and Federal HIV Criminal Law and Practice

A publication of The Center for HIV Law and Policy

CHLP
Making Positive Justice Possible

HIV Criminalization in the United States:
A Sourcebook on State and Federal HIV Criminal Law and Practice

THE CENTER FOR HIV LAW AND POLICY (CHLP)

CHLP is an abolitionist legal and policy organization fighting to end stigma, discrimination, and violence toward communities that experience racial oppression, patriarchal violence, and/or economic divestment. We center our work in communities of people living with and deeply affected by HIV and other stigmatized health conditions, especially Black, brown, trans and/or queer, women, femmes, people who engage in sex work, use drugs, are disabled, living with stigmatized diseases, without housing, and/or are currently or formerly incarcerated. All of our work is firmly located within the larger abolitionist movement for real safety and liberation.

CHLP utilizes legal advocacy, high-impact policy and research initiatives, and the creation of multi-issue partnerships, networks, and resources to support our communities in this work. We operate within and around criminal legal and public health systems at the state and federal level to craft just policies that amplify the power of mobilizations for systemic change that are guided by racial, gender, and economic justice. We collaborate with people living with HIV, organizers and base builders, direct service providers, and national organizations to identify, create, and share expertly crafted, intersectional legal and policy resources and advocacy strategies.

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As Bayard Rustin, a heroic Black gay civil rights organizer said, "The proof that one truly believes is in action." We dedicate this work to members of the Positive Justice Project, people living with HIV, and our many partners – organizers, local service and advocacy organizations, lawyers, healthcare professionals, and others. We recognize the value of this intersectional work that reaches across movements and into state capitols to reform HIV criminal laws and end this vicious form of discrimination against people living with HIV in the United States, particularly Black, brown, and LGBTQ+ communities that bear the highest burden of enforcement and prosecution.

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Introduction

The term "HIV criminalization" is the reliance on a person's positive HIV status, either under criminal laws that apply explicitly to people living with HIV (PLHIV)[1], or under general criminal laws or sexually transmitted infection (STI)[2] laws, as the foundation for criminalizing otherwise legal conduct or for increasing crimes and punishments related to solicitation or sex offenses.

This manual includes laws and illustrative cases in each state, U.S. territory, and federal law on the treatment of PLHIV in the criminal legal system, including a summary of military prosecutions of PLHIV. Also included are public health statutes and regulations concerning penalties for STI exposure, mandatory medical treatment and the use of restrictive measures such as isolation and quarantine in response to HIV and other STIs. The overview below provides some background on the types of statutes and regulations included in this sourcebook, as well as the authors' process of selecting and organizing those contents. These sections include (I) punitive or restrictive measures and confidentiality exceptions, (II) sentence enhancements and collateral consequences, and (III) methodology.

We have created this tool to equip advocates with a comprehensive guide on the scope of criminal liability and other punitive or restrictive actions based on HIV or STI status in each U.S. jurisdiction. We try to include as many relevant facts about each case as possible without extensive comment on how one might interpret those facts.[3]

The laws generally fail to consider the possibility that a complainant may already be living with HIV. Proof of HIV transmission is generally not an element of the crime in most cases, but it is often either implied or explicitly stated that the defendant is the source of a complainant's HIV infection, even when there is little, if any, information about how the defendant, as opposed to another sexual partner, has been established as the source of transmission. The first person to test positive often is assumed to be the source of transmission even though someone else, including the complainant, may have infected that person.[4] Even if the accused party was infected first, a third party could have infected the complainant. Some prosecutors rely on "phylogenetic testing," which seeks to establish a genetic

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[1] Throughout this manual, PLHIV is used to signify a person or people living with HIV.

[2] State statutes and regulations use various terms to refer to STI, including venereal disease and sexually transmitted disease (STD). In the interest of clarity and consistency, we have attempted to follow the terminology used by the individual state in the accompanying explanation for that state but recognize that the modern convention is STI.

[3] In regard to news media reports, we caution the reader that the actual facts may differ significantly from what is reported, given the potential for sensationalized reporting on such cases. Nevertheless, we include these news reports because in many instances, there is no other published source of information available about the case.

[4] We use the pronouns "they/them/theirs/themselves" throughout this volume for hypothetical defendants or defendants who have been misgendered, in order to avoid reinforcing a gender binary or misgendering trans persons.

connection between the HIV viruses of the two parties,[5] but such evidence only indicates similarities in the viruses and does not prove direction of transmission.[6] Such technology is not well understood by law enforcement, attorneys, judges, or PLHIV, and provides inadequate evidence for prosecution on the basis of HIV transmission.[7] The laws also fail to account for situations in which PLHIV do not disclose HIV status or allegedly expose someone else to disease because they are victims of sexual assault.

It is important to keep in mind the significant amount of discretion that prosecutors have in deciding whether and how to prosecute individuals arrested for HIV or STI exposure or non-disclosure. High numbers of prosecutions in a city or state may have as much to do with a particular prosecutor's mindset or ambitions, as with the details of that state's HIV law.[8] It also is difficult to know the extent to which crimes are charged or prosecutions are actually brought in any jurisdiction, since there is no centralized database for such information. For some cases, prosecutors may never expect to go to trial and may simply bring an excess of charges, even with scant evidence, to increase the prosecutor's leverage in getting a plea bargain from a defendant.

Our analysis cannot fully capture whether defendants living with HIV are given fair trials or whether, because of the social stigma that attaches to their HIV status in what are often emotionally charged allegations of betrayal within deeply intimate relationships, their own truthful testimony is discounted, or their defense counsel are less than zealous and well-informed about the underlying medical and scientific issues.[9] When testimony conflicts, the court or jury may tend to credit the testimony of law enforcement personnel or the "morally innocent" sexual partners whose trust allegedly has been betrayed by the nondisclosure of HIV status.[10]

In some cases, the defense may not have used, or have had access to, essential expert witnesses on issues such as actual transmission risk, current treatment options, mental state or various ways that PLHIV may effectiely disclose their status.

I. Punitive or Restrictive Measures & Confidentiality Exceptions

This manual includes only those state laws and cases that have been or can be used to prosecute people for conduct on the basis of HIV or STI status. In some states, this includes general criminal

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[5] Deenan Pillay et al., HIV Phylogenetics, 335 (7618) British Medical Journal 460 (2007), available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1971185.

[6] *Id.*

[7] *Id.*

[8] Some prosecutors might select only cases in which there are multiple partners involved or sexual activities that present a non-negligible risk of HIV transmission, where the defendant has been explicitly warned that their behavior if continued will result in prosecution, where actual transmission of HIV seems to have taken place, or where a defendant has evidenced a specific intent to transmit HIV; these are types of cases that, from a law enforcement perspective, present more egregious circumstances and greater ease of conviction.

[9] *See, e.g.*, *State v. Bird*, 692 N.E.2d 1013 (Ohio 1998) (affirming conviction based on defendant's no contest plea which was deemed an admission of factual issue as to whether saliva can be a deadly weapon because of risk of HIV transmission).

[10] *See, e.g.*, *People v. Hall*, 124 Cal. Rptr. 2d 806 (Cal. Ct. App. 2002) (affirming HIV testing order on theory that sweat on defendant's hands might pose a risk of HIV transmission to prosecutor whom defendant assaulted during his criminal trial); *See, e.g.*, *Ginn v. State*, 667 S.E.2d 712 (Ga. Ct. App. 2008) (affirming conviction in a case that resulted from the defendant's former sexual partner applying for an arrest warrant with magistrate court and giving a statement to sheriff's department against the defendant for failing to inform him of her HIV status, although her HIV status was published on the front page of a local newspaper before she commenced the sexual relationship).

laws, such as reckless endangerment,[11] assault,[12] terroristic threats,[13] and homicide or attempted homicide.[14] We have not analyzed civil cases brought against PLHIV or those with other STIs for alleged exposure, non-disclosure or transmission, though civil lawsuits to collect money judgments against a partner for STI/HIV exposure are possible or have been brought in most states.

Many states have "communicable disease" or "contagious disease" control statutes (and related regulations that spell out how they will be applied in more detail) in their public health codes that criminalize exposure to communicable disease, including STIs.[15] In many states, these laws or regulations pre-date the HIV epidemic and so their applicability to HIV is an open question, particularly where there have been no prosecutions of PLHIV under such provisions. The penalties under these laws tend to be limited to misdemeanors. We have included these disease control laws as well as the laws and regulations concerning mandatory medical treatment, the application of quarantine or isolation in response to communicable disease exposure, and states' definitions of STIs and/or communicable diseases.[16]

Courts, going back more than a hundred years, have pointed out that these STI and communicable disease laws, particularly those imposing quarantine or other forms of restriction, must be narrowly and

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[11] Typically, *reckless endangerment* is defined as recklessly engaging in conduct that places or may place another person in danger of death or serious bodily injury. Model Penal Code § 211.2 (1962). *Recklessness* is defined as a conscious disregard of a substantial and unjustifiable risk. § 2.02(2)(c) (1962). Consent is not a defense to reckless endangerment because, under the Model Penal Code, consent can only be a defense when the threatened harm is "not serious." § 2.11(2)(a) (1962).

[12] Typically, *simple assault* is defined as an attempt to cause, or purposely, knowingly, or recklessly causing bodily injury to another. Model Penal Code § 211.1(1) (1962). The crime also includes negligently causing bodily injury to another with a deadly weapon. The crime becomes an *aggravated assault* if the actor causes or attempts to cause "serious" bodily injury, or if he or she knowingly or purposely causes or attempts to cause bodily injury with a deadly weapon. § 211.1(2).

[13] Typically, a *terroristic threat* is a communication, either directly or indirectly, of a threat to commit any crime of violence with intent to terrorize another or otherwise cause terror with reckless disregard of the risk of causing such terror. Model Penal Code § 211.3 (1962); *See Commonwealth v. Walker*, 836 A.2d 999 (Pa. Super. Ct. 2003) (affirming conviction on basis that defendant's statements were intended to cause terror from fear of HIV transmission; likelihood of actual HIV infection resulting from threatened conduct is immaterial).

[14] Typically, *homicide* can either be *murder* (a homicide committed purposely, knowingly, or recklessly with extreme indifference to the value of human life), Model Penal Code § 210.2 (1962), *manslaughter* (a reckless homicide), § 210.3 (1962), or *negligent homicide* (a homicide committed negligently), § 210.4 (1962). *See also* § 2.02 (general requirements of culpability: definitions of "purposely," "knowingly," "recklessly," and "negligently"). Homicide offenses relating to HIV transmission are rarely prosecuted except as attempted offenses, because HIV transmission risk is inherently low, and, when a case involves an actual transmission, it is unusual for transmission of HIV to result in death. Homicide prosecutions are also unusual because of the requirement of proof of causation and proof of intent to transmit HIV, particularly in sexual contact cases. *State v. Schmidt*, 771 So. 2d 131 (La. Ct. App. 2000) (affirming conviction and sentence of 50 years at hard labor in attempted homicide prosecution based on defendant's having intentionally injected victim with HIV), *prior opinion,* 699 So. 2d 448 (La. Ct. App. 1997) (pre-trial writ opinion ruling on admissibility of DNA evidence).

[15] *See, e.g.* CAL. HEALTH & SAFETY CODE § 120600 (West 2016); LA. REV. STAT. ANN. § 40:1121.2 (2016); MONT. CODE ANN. § 50-18-112 (2015); N.Y. PUB. HEALTH LAW § 2307 (2016); S.C. CODE ANN. § 44-29-60 (2016); TENN. CODE. ANN. § 68-10-107 (2016); VT. STAT. ANN. tit. 18 § 1106 (2016); W. VA. CODE § 16-4-20 (2016); *see also*, CTR. FOR HIV LAW & POLICY, *Chart: State –by-State Criminal Laws Used to Prosecute People with HIV* (2014), *available at* http://hivlawandpolicy.org/resources/chart-state-state-criminal-laws-used-prosecute-people-hiv-center-hiv-law-and-policy-2012.

[16] Many states have statutes or regulations in place that permit quarantine and isolation in response to communicable disease generally, as opposed to a specifically enumerated set of diseases, such as STIs. Where a state does not define "sexually transmitted infection" or the relationship between particular STIs and the broader statutory or regulatory scheme, we rely on that state's list of reportable diseases to identify STIs that may fall within the scope of the state's isolation and quarantine law. Most states' reportable diseases lists mirror Centers for Disease Control and Prevention recommendations, but states are not required to follow these recommendations. *See* CTR. FOR DISEASE CONTROL & PREVENTION, *Protocol for Public Health Agencies to Notify CDC about the Occurrence of Nationally Notifiable Conditions, 2017* (Nov. 8, 2016), *available at* https://wwwn.cdc.gov/nndss/document/NNC_2017_Notification_Requirements_By_Condition_20161108.pdf (last visited Jan. 18, 2017).

rarely applied if they are to avoid violating constitutional rights to be free to make personal decisions about medical treatment, relationships and travel. To restrict or punish someone, that person must (1) pose an actual threat to the public, and officals must (2) use interventions that are reasonable and effective, (3) in a non-discriminatory manner, (4) and with adequate procedural safeguards.[17] Because these laws have been used infrequently in modern times, it remains unclear whether each state's statutory and regulatory scheme complies with these requirements, either facially or as applied.[18] Nevertheless, it is important to be aware of these laws, as they are still in effect, and court judgments upholding their legitimacy remain good law in many states.[19] Moreover, such laws may be indicative of the state's attitudes and the climate surrounding HIV, STIs, public health, and the state's role in addressing health issues.

This sourcebook also identifies states in which the results of mandatory HIV testing for certain defendants may be used in support of criminal prosecution, including where state law is silent or ambiguous as to whether a defendant's test results may be used for this purpose. We also identify states in which there are specific confidentiality exceptions to facilitate criminal prosecution or other punitive measures for PLHIV. However, we do not address the broader requirements around a "duty to warn" for health care and other service providers that exist in some states.

II. Sentence Enhancements and Collateral Consequences[20]

Various states have sentence-enhancement statutes that increase the term of incarceration or other punishment normally imposed for an offense based on the defendant's HIV or STI status. This sourcebook also includes those provisions, which generally apply to prostitution, solicitation, or other offenses considered sexual in nature. However, it does not include an all-inclusive analysis of every sentencing determination potentially affected by a defendant's HIV status or a victim's allegation that the impact of the crime includes fear of HIV exposure.[21] These factors can be material to a sentencing court's consideration of the "impact of the crime upon the victim ... including a description of the nature

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[17] *See, e.g., Jacobson v. Massachusetts*, 197 U.S. 11, 31 (1905) ("if a statute purporting to have been enacted to protect the public health . . . has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."); *see also* Lawrence Gostin, *Public Health Law: Power, Duty, Restraint* 442-45 (University of California Press 2008) (2000) ("The [Supreme] Court has described civil commitment as a uniquely serious form of restraint because it constitutes a 'massive curtailment of liberty' . . . 'Involuntary commitment for having communicable tuberculosis impinges on the right to liberty . . . no less than involuntary commitment for being mentally ill.'" (quoting *Vitek v. Jones*, 445 U.S. 480, 491 (1980) and *Greene v. Edwards*, 263 S.E.2d 661, 663 (W. Va. 1980), respectively).

[18] *See Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886)("Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.")

[19] *See, e.g.*, Scott Stern, *The Long American Plan: the U.S. government's campaign against venereal disease and its carriers*, 38 HARV. J. L. & GENDER 373, 419-22 (2015) ("In other words, if state authorities decided to renew the American Plan tomorrow, they would likely face political backlash for going against modern public health practice and more rigorous judicial scrutiny, but would also have law on the books and an unrefuted history of public health oppression to draw upon.").

[20] Beyond the sex offender registration requirements and civil commitment schemes mentioned here, the felonies enumerated throughout this volume carry a host of other collateral consequences of conviction. They vary by state and can affect things like access to public benefits, voting rights, and education and employment opportunities. Such collateral consequences are beyond the scope of this document, but PLHIV and their advocates should be aware of their existence.

[21] Such cases typically concern sexual assault survivors who, after learning of a defendant's HIV or other STI status, may have begun to take preventative medication, feared possible infection with HIV, or have experienced alienation from family members.

and extent of any physical, psychological, or financial harm." [22] In these cases, courts and juries might treat the "physical and emotional trauma" as a level of harm beyond that of a "typical" rape victim.[23]

In numerous states, conviction for an HIV-specific criminal offense or the use of HIV as an aggravating factor in prosecutions for general sex offenses results in sex offender classification. This sourcebook identifies states in which PLHIV must register as sex offenders following conviction for these kinds of crimes, as well as some of the basic features of registration in that state, e.g., duration of requirement. However, the requirements accompanying sex offender registration are highly complex and variable from state to state; a thorough compilation of them is not included here.

Government officials may also seek to isolate PLHIV or to continue their confinement upon completion of a sentence for conviction of crimes that may be considered sexual offenses. Two such types of laws may be relevant. The first is general civil commitment laws, available to health and law enforcement officials in every state, that allow for the involuntary commitment, typically to a mental health or medical facility, of individuals determined to be a danger to the public or to themselves. Under this type of law, an individual who comes to the attention of a public health officer and who the officer believes is behaving in a way that threatens disease transmission can be subjected to a petition and court order confining the individual for a period of time until the supposed risk of harm no longer exists.[24] The second type authorizes the confinement of individuals determined to be sexually violent predators, i.e., persons who have been convicted of or charged with a sexually violent offense and who suffer from a condition affecting emotional or volitional capacity such that they pose a menace to the health and safety of others. Civil commitment is not addressed in depth beyond this introduction, but PLHIV and their advocates should be aware of these provisions.[25]

III. Methodology

This volume and the individual state analyses it contains were carefully researched and are current as of the date of publication. The law is fluid, however, and users should always check for subsequent legal or legislative developments. The statutes and cases collected here are fairly comprehensive and will provide the reader with a good sense of the statutory and regulatory frameworks affecting PLHIV

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[22] *See, e.g.*, *Torrence v. Commonwealth*, 269 S.W.3d 842, 845-46 (Ky. 2008)(citation omitted). *See also State v. Scott*, 180 P.3d 774 (Utah Ct. App. 2008).

[23] *Id.*

[24] These laws may have procedures paralleling quarantine and isolation restrictions under state public health provisions.

[25] The United States Supreme Court has upheld involuntary civil commitment or confinement of individuals, although the use of this measure has certain requirements to remain within the bounds of the federal Constitution. *See Foucha v. Louisiana*, 504 U.S. 71 (1992); *Addington v. Texas*, 441 U.S. 418 (1979). For a discussion of civil detention of individuals with HIV who pose a risk of transmission, see Ronald Bayer & Amy Fairchild-Carrino, *AIDS and the Limits of Control: Public Health Orders, Quarantine, and Recalcitrant Behavior*, 83 AM. J. PUB. HEALTH 1471 (1993) (finding very limited use of civil detention measures and advocating instead for education, counseling, voluntary testing and partner notification, drug abuse treatment, and needle exchange programs to prevent HIV transmission). However, such measures have been used against PLHIV in recent cases suggesting that a defendant's history of unprotected sexual contact (as admitted by a defendant or evidenced by contracting an STI such as gonorrhea or syphilis) without disclosure of HIV status is adequate to meet the statutory dangerousness standard for confinement. *In re Renz*, No. A08-898, 2008 Minn. App. Unpub. LEXIS 1287 (Minn. Ct. App. Oct. 28, 2008). A more recent, and perhaps more pernicious, trend is the indefinite detention of persons with HIV under sexually violent predator confinement statutes. The Supreme Court upheld such in *Kansas v. Hendricks*, 521 U.S. 346 (1997), and these kinds of statutes have been applied to PLHIV based on sexual activity posing no risk of HIV transmission. *See In re Coffel*, 117 S.W.3d 116 (Mo. Ct. App. 2003) (reversing civil confinement order after three years of confinement as a sexually violent predator based on underlying criminal offense posing no risk of HIV transmission.

and persons with other STIs. We have also included general criminal laws that may be used to prosecute PLHIV or other STIs, but only in jurisdictions where they in fact have been the basis of such prosecutions.

We researched statutes and regulations on Lexis in criminal and public health and/or safety codes; this research included the use of successive search terms, such as criminal charges and/or modes of transmission (for example, “HIV,” “STI,” “assault,” “spit,” etc.). We found case law through explanatory notes; searches paralleling the statutory and regulatory searches directed at state court databases; and searches of press archives, internet sites, and case and news reports on Lexis. Although we have attempted to include significant reported cases from either news media sources or official judicial opinions, not all cases of HIV exposure are reported in the media and many prosecutions do not result in published judicial opinions. As a result, the cases identified here should not be understood as a complete collection of all HIV-related prosecutions in the U.S. They are likely only a sampling of a much more widespread but generally undocumented use of criminal laws against people with HIV.

Each state section includes an analysis of the relevant state laws and regulations, followed by key cases interpreting these laws. State laws and regulations are listed according to their location in the statutory or regulatory code, and then further divided by the title or section in which they appear. 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. In a few jurisdictions the order is slightly different, reflecting necessary grouping or changes in order of statutes that make it easier to understand the statutory scheme, or the group of laws that together relate to the treatment of HIV in the state code.

Alabama

Analysis

People living with HIV (PLHIV) and other communicable diseases face enhanced felony penalties for exposing others to bodily fluids.

People living with a "communicable disease" face a Class C felony, punishable by up to ten years imprisonment, and/or a $15,000 fine[1] for "knowingly caus[ing] or attempt[ing] to cause another person to come into contact with a bodily fluid" unless such contact is consented to or is necessary for medical care.[2] The statute defines "bodily fluid" to include blood, saliva, mucous, seminal fluid, urine, or feces.[3] However, "communicable disease" is not defined, meaning a variety of casually transmitted conditions—such as measles, influenza, or tuberculosis—fall within the plain meaning of the statute, in addition to HIV and other STIs. "Contact" is also not defined for the purposes of the statute, meaning a whole range of behaviors posing no or negligible risk are criminalized. For instance, urine exposure is not a known means of transmitting most types of communicable disease. Urine, feces, and saliva are not known transmitters of HIV. Neither the intent to transmit disease nor disease transmission are required for prosecution. "Assault with bodily fluids" is otherwise only punishable as a Class A misdemeanor for someone who does not have a communicable disease, punishable by a maximum of one year.[4]

- In 2018, a 36-year-old PLHIV was charged with felony "assault with bodily fluids" after he allegedly sprayed a police deputy with feces.[5] Feces is not a known route of HIV transmission.
- In 2018, a 32-year-old woman was charged with felony assault after she allegedly spat at a police officer during the course of an arrest knowing that she had a communicable disease.[6]

Alabama has prosecuted incidents of HIV exposure under general criminal laws.

Under Alabama's communicable disease exposure statute, any person with a sexually transmitted disease, including HIV, may be imprisoned for up to three months and/or fined up to $500 if they "knowingly" transmit the disease, assume the risk of transmitting disease, or perform any act that will

[1] ALA. CODE §§ 13A-6-242(c), 13A-5-6(a)(3), 13A-5-11(a)(3) (2018).

[2] ALA. CODE § 13A-6-242(a) (2018); Under Alabama law, "[a] person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of that nature or that the circumstance exists." ALA. CODE § 13A-2-2(2) (2018).

[3] ALA. CODE § 13A-6-242(b) (2018).

[4] ALA. CODE §§ 13A-6-242(c), 13A-5-7(a)(1) (2018).

[5] Carol Robinson, *Gadsden drug suspect stomps bag of feces, splashes deputy, records state*, AL.COM, June 12, 2018, *available at* https://www.al.com/news/birmingham/index.ssf/2018/06/gadsden_drug_suspect_stomps_ba.html

[6] Marty Roney, *Woman charged with assault after spitting at police*, MONTGOMERY ADVERTISER, May 8, 2018, *available at* https://www.montgomeryadvertiser.com/story/news/crime/2018/05/08/casie-jane-ellis-charged-bodily-fluid-assault/589978002/

probably or likely transmit such disease to another person.[7] Neither the intent to transmit the disease nor transmission is required for prosecution.

Though HIV is classified as a sexually transmitted disease for the purpose of Alabama's statute, the authors are not aware of the law being used to prosecute someone on that basis.

In *Brock v. State*, an inmate living with HIV who was in the AIDS unit of an Alabama prison[8] was charged with attempted murder and two counts of assault when he allegedly became belligerent and bit a police officer.[9] The police officer did not test positive for HIV.[10] At trial, the jury acquitted Brock of the attempted murder charge but convicted him of first-degree assault, a crime which requires that the defendant both intend to cause and actually cause "serious physical injury" with a "deadly weapon or dangerous instrument."[11] The prosecution argued that because the defendant was living with HIV, his mouth and teeth were "highly capable of causing death or serious physical injury" and should be considered dangerous weapons or instruments for the purposes of the assault charges.[12]

On appeal, Alabama's Court of Criminal Appeals set aside the first-degree assault conviction and reduced the conviction to assault in the third degree.[13] The court held that the state failed to establish the essential elements of a case of first-degree assault against Brock.[14] The court stated that no evidence was provided that Brock's mouth and teeth were "deadly weapon[s]" as defined by Alabama law.[15] Moreover, the state did not prove that Brock intended to cause serious physical harm to the prison guard.[16] The court further noted that the state provided no evidence that AIDS can be transmitted through a human bite, and that the court did not believe it to be an established scientific fact that AIDS could be transmitted in such a manner.[17] The court's findings were consistent with the CDC's position that there exists only a "negligible" risk that HIV can be transmitted through a bite.[18] The CDC has also maintained that saliva alone does not transmit HIV.[19]

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[7] ALA. CODE §§ 22-11A-21(c), 13A-5-7(3), 13A-5-12(a)(3) (2018); ALA. ADMIN. CODE r. 420-4-1-.03, r. 420-4-1, Appendix I (2018).

[8] It should be noted that the Alabama Department of Corrections' ("ADOC") policy of categorically segregating prisoners living with HIV from the general prison population was challenged through a class action suit in 2012. *Henderson v. Thomas*, 913 F. Supp. 2d 1267, 1276 (M.D. Ala. 2012). The court found that the policy violated the Americans with Disabilities Act. *Id.* at 1306-07. Among other things, the subsequent settlement agreement ended the ADOC's practice of segregating inmates living with HIV within facilities. *Henderson v. Thomas*, Civ. A. 2:11cv224-MHT, 2013 U.S. Dist. LEXIS 140098 at *6-8 (M.D. Ala. Sept. 30, 2013).

[9] 555 So. 2d 285, 286 (Ala. Crim. App. 1989).

[10] *Id.*

[11] *Id.* at 286-87; ALA. CODE §13A-6-20 (2018).

[12] *Brock*, 555 So. 2d at 287-88.

[13] *Id.* at 288.

[14] *Id.*

[15] *Id.* at 287.

[16] *Id.* at 288.

[17] *Id.*

[18] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (December 4, 2015) *available at* http://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html (last visited July 9, 2018)

[19] CTR. FOR DISEASE CONTROL & PREVENTION, *How HIV Spreads*, (November 25, 2024) *available at* https://www.cdc.gov/hiv/causes/index.html (last visited September 24, 2026)

The Alabama State Board of Health may quarantine, isolate, or civilly commit people living with a sexually transmitted disease (STD), including HIV.

While there appear to be no reported cases in approximately the last 100 years,[20] the Alabama State Board of Health has broad discretion to quarantine, isolate, or civilly commit people living with an STD, including HIV.[21] For example, the State Health Officer can, upon notification that a person is "afflicted with any of the notifiable diseases or health conditions designated," isolate or quarantine that person.[22]

The State Health Officer may also require people to undergo testing and examination whenever there is "reasonable cause to believe" they have a sexually transmitted disease, under threat of isolation or civil commitment, until the State Health Officer considers that person to no longer be dangerous to public health.[23] The State Health Officer may also isolate or civilly commit a person known to be infected with a sexually transmitted disease for compulsory treatment, until the disease "is no longer communicable or a source of danger to public health."[24]

There is no case law interpreting what may be considered a "reasonable cause to believe" that a person has a sexually transmitted disease, so mere accusation may suffice. Nor is there guidance as to how the State Health Officer may determine a person is dangerous to public health. Moreover, in the case of HIV, the person may never reach a point at which the disease "is no longer communicable." The closest analog would be to achieve viral suppression.

The civil commitment statute is similarly problematic. To civilly commit a person, the Department of Public Health (DPH) must show by clear and convincing evidence that (1) the person was exposed to a designated disease, (2) the person has refused testing or treatment, (3), the person is dangerous to themselves and the health of the community, (4) the person conducts himself so as to expose others to the disease, (5) treatment is available for the person's illness or confinement is necessary to prevent further spread of the disease, and (6) commitment is the least restrictive alternative necessary and available for the treatment of the person's illness and the protection of public health.[25]

The only limitation on the State Health Officer is that all action must be "consistent with current medical and epidemiologic knowledge about the mode of transmission" of the respective disease.[26]

The Alabama State Board of Health may be required to testify against people living with HIV (PLHIV) or an STD in a grand jury proceeding or criminal trial.

In criminal trials or grand jury investigations where Alabama seeks to prosecute PLHIV for "murder, attempted murder, or felony assault as a result of having intentionally or recklessly exposed another to

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[20] *See Dowling v. Harden*, 18 Ala. App. 63, 88 So. 217 (Ala. Ct. of App. 1921) (quarantine enforced in 1921, last reported case).

[21] *See, e.g.*, ALA. CODE §§ 22-11A-7, 22-11A-14, 22-11A-18(b) (2016).

[22] ALA. CODE § 22-11A-3 (2016). Several STIs are notifiable conditions in Alabama, including chancroid, chlamydia, gonorrhea, HIV/AIDS, and syphilis. ALA. ADMIN. CODE r. 420-4-1, Appendix I (2018).

[23] ALA. CODE § 22-11A-18(a) (2018).

[24] ALA. CODE § 22-11A-18(b) (2018).

[25] ALA. CODE § 22-11A-32 (2018).

[26] ALA. ADMIN. CODE r. 420-4-1.05(1) (2018)

HIV infection where the exposed person is later demonstrated to be HIV infected,"[27] the State Health Officer may be required to assist the prosecution by providing information necessary to establish that the person is currently living with HIV, is aware of their HIV serostatus, and that they have been counseled about "appropriate methods to avoid infecting others with the disease."[28]

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.*

[27] ALA. CODE § 22-11A-38(h)(1)-(2) (2018).
[28] ALA. CODE § 22-11A-38(h) (2018).

Code of Alabama

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 13A, CRIMINAL CODE

ALA. CODE § 13A-6-242 (2018) **

Assault with bodily fluids

(a) A person commits the crime of assault with bodily fluids if he or she knowingly causes or attempts to cause another person to come into contact with a bodily fluid unless the other person consented to the contact or the contact was necessary to provide medical care.

(b) For purposes of this section, a bodily fluid is blood, saliva, seminal fluid, mucous fluid, urine, or feces.

(c) Assault with bodily fluids is a Class A misdemeanor; provided, however, a violation of this section is a Class C felony if the person commits the crime of assault with bodily fluids knowing that he or she has a communicable disease.

ALA. CODE § 13A-5-7 (2018)**

Prison Terms; misdemeanors and violations

(a) Sentences for misdemeanors shall be a definite term of imprisonment in the county jail or to hard labor for the county, within the following limitations:

(1) For a Class A misdemeanor, not more than one year.

(3) For a Class C misdemeanor, not more than three months.

ALA. CODE § 13A-5-11 (2018)**

Fines; felonies

(a) A sentence to pay a fine for a felony shall be for a definite amount, fixed by the court, within the following limitations:

(3) For a Class C felony, not more than $15,000;

ALA. CODE § 13A-5-12 (2018)**

Fines; misdemeanors and violations

(a) A sentence to pay a fine for a misdemeanor shall be for a definite amount, fixed by the court, within the following limitations:

(3) For a Class C misdemeanor, not more than $ 500.

TITLE 22, HEALTH

ALA. CODE § 22-11A-21 (2018) **

Sexually transmitted diseases; unauthorized treatment; knowing transmission

(c) Any person afflicted with a sexually transmitted disease who shall knowingly transmit, or assume the risk of transmitting, or do any act which will probably or likely transmit such disease to another person shall be guilty of a Class C misdemeanor.

TITLE 15, CRIMINAL PROCEDURE

ALA. CODE §15-23-102 (2018)

Definitions
As used in this article, the following words shall have the following meanings:

(1) Alleged victim. – A person or persons to whom transmission of body fluids from the perpetrator of the crime occurred or was likely to have occurred in the course of the alleged crime.

(2) Parent or guardian of the alleged victim. – A parent or legal guardian of an alleged victim who is a minor or incapacitated person.

(3) Positive reaction. – A positive test with a positive confirmatory test result as specified by the Department of Public Health.

(4) Sexually transmitted disease. – Those diseases designated by the State Board of Health as sexually transmitted diseases for the purposes of this article.

(5) Transmission of body fluids. – The transfer of blood, semen, vaginal secretions, or other body fluids identified by the Department of Public Health, from the alleged perpetrator of a crime to the mucous membranes or potentially broken skin of the victim.

ALA. CODE §15-23-101 (2018)

Testing defendant for sexually transmitted disease

When a person has been charged with the crime of rape, sodomy, or sexual misconduct and it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, upon the request of the alleged victim or the parent or guardian of an alleged victim, the district attorney shall file a motion with the court for an order requiring the person charged to submit to a test for any sexually transmitted disease.

ALA. CODE §15-23-102 (2018)

Court-ordered testing; notification of test results; results counseling

(a) If the district attorney files a motion Section 15-23-101, the court shall order the person charged to submit to testing if the court determines there is probable cause to believe that the person charged committed the crime of rape, sodomy, or sexual misconduct and the transmission of body fluids was involved.

(b) When a test is ordered under Section 15-23-101, the alleged victim of the crime or a parent or guardian of the alleged victim shall designate an attending physician who has agreed in advance to accept the victim as a patient to receive information on behalf of the alleged victim.

(c) If any sexually transmitted disease test results in a negative reaction, the court shall order the person to submit to any follow-up tests at the intervals and in the manner as shall be determined by the State Board of Health.

(d) The result of any test ordered under this section is not a public record and shall be available only to the following:

(1) The alleged victim.

(2) The parent or guardian of the alleged victim.

(3) The attending physician of the alleged victim.

(4) The person tested.

(e) If any sexually transmitted disease test ordered under this section results in a positive reaction, the individual subject to the test shall receive post-test counseling. Counseling and referral for appropriate health care, testing, and support services as directed by the State Health Officer shall be provided to the alleged victim at the request of the alleged victim or the parent or guardian of the alleged victim.

TITLE 22, HEALTH

ALA. CODE § 22-11A-1 (2018)

Designation

The State Board of Health shall designate the diseases and health conditions which are notifiable. The diseases and health conditions so designated by the Board of Health are declared to be diseases and health conditions of epidemic potential, a threat to the health and welfare of the public, or otherwise of public health importance. The occurrence of cases of notifiable diseases and health conditions shall be reported as provided by the rules adopted by the State Board of Health.

ALA. CODE §22-11A-3 (2018)

Quarantine

Whenever the State Health Officer or his representative, or the county health officer or his representative, is notified of any person or persons afflicted with any of the notifiable diseases or health conditions designated by the State Board of Health, he shall, at his discretion, isolate or quarantine such person or persons as further provided in this article. Such quarantine shall be established and maintained in accordance with the rules adopted by the State Board of Health for the control of the disease with which the person or persons are afflicted.

ALA. CODE §22-11A-7 (2018)

Compliance with boards or officers

Any person reported as having any of the notifiable diseases or health conditions designated by the State Board of Health shall conform to or obey the instructions or directions given or communicated to

him by the county board of health, county health officer or his designee, or State Board of Health, State Health Officer, or his designee, to prevent the spread of the disease.

ALA. CODE §22-11A-13 (2018)

Sexually transmitted diseases; rules

Sexually Transmitted Diseases which are designated by the State Board of Health are recognized and declared to be contagious, infectious and communicable diseases and dangerous to public health. The State Board is authorized and directed to promulgate rules for the testing, reporting, investigation and treatment of sexually transmitted diseases.

ALA. CODE §22-11A-14 (2018)

Sexually transmitted diseases; reports

(a) Any physician who diagnoses or treats a case of sexually transmitted disease as designated by the State Board of Health, or any administrator of any hospital, dispensary, correctional facility or other institution in which a case of sexually transmitted disease occurs shall report it to the State or county Health Officer or his designee in a time and manner prescribed by the State Board of Health.

(e) The reports required by this section shall be confidential and shall not be subject to public inspection or admission into evidence in any court except proceedings brought under this article to compel the examination, testing, commitment or quarantine of any person or upon the written consent of the patient.

(g) Upon receipt of a report of a case of sexually transmitted disease, the county or State Health Officer shall institute such measures as he or she deems necessary or appropriate for the protection of other persons from infection by such diseased person as said health officer is empowered to use to prevent the spread of contagious, infectious or communicable diseases.

ALA. CODE §22-11A-17 (2018)

Convicts; testing for sexually transmitted diseases

(c) At the request of the victim of a sexual offense (as defined in Section 13A-6-60, et seq.), the State Health Department shall release the results of any tests on the defendant convicted of such sexual offense, for the presence of etiologic agent for Acquired Immune Deficiency Syndrome (AIDS or HIV) to the victim of such sexual offense. The State Health Department shall also provide the victim of such sexual offense counsel regarding AIDS disease, AIDS testing, in accordance with applicable law and referral for appropriate health care and support services.

ALA. CODE §22-11A-18 (2018)

Sexually transmitted diseases; isolation upon refusal to test or receive treatment

(a) Any person where there is reasonable cause to believe has a sexually transmitted disease or has been exposed to a sexually transmitted disease shall be tested and examined by the county or State Health Officer or his designee or a licensed physician. Whenever any person so suspected refuses to be examined, such person may be isolated or committed as provided in this article until, in the judgment of the State or county Health Officer, that person is no longer dangerous to public health. . .

(b) The State Health Officer or county health officer shall require all persons infected with a sexually transmitted disease to report for treatment by the health officer or a licensed physician, and continue treatment until such disease, in the judgment of the attending physician, is no long communicable or a source of danger to public health. . . Whenever, in the judgment of the State or county Health Officer, such a course is necessary to protect public health, a person inflicted with a sexually transmitted disease may be committed or isolated for compulsory treatment and quarantine in accordance with the provisions of this article. . .

ALA. CODE § 22-11A-32 (2018)

Commitment petitions; burden of proof; findings

(a) If, at the final hearing, upon a petition seeking to commit a person to the custody of the Alabama Department of Public Health or such other facility as the court may order, the probate judge, on the basis of clear and convincing evidence, shall find:

(1) That the person sought to be committed has been exposed or is afflicted with one of the diseases designated in this article;

(2) That the person has refused testing or voluntary treatment;

(3) That, as a consequence of the disease, the person is dangerous to himself and the health of the community;

(4) That the person conducts himself so as to expose others to the disease;

(5) That treatment is available for the person's illness if confined or that confinement is necessary to prevent further spread of the disease; and

(6) That commitment is the least restrictive alternative necessary and available for the treatment of the person's illness and the protection of public health;

Then upon such findings, the probate judge shall enter an order, setting forth his findings, granting the petition and ordering the person committed to the custody of the Alabama Department of Public Health or such other facility as the court may order.

(b) If upon rehearing, the probate judge shall find, from the evidence, that one or more of the elements required for commitment, shall no longer be applicable to the person who is the subject of the rehearing, the probate judge shall discharge the person.

(c) If the probate judge finds that no treatment is presently available for the person's illness, but that confinement is necessary to prevent the person from causing harm to the health of the community, the order committing the person shall provide that, should treatment become available during the person's confinement, such curative treatment will immediately be made available to him.

ALA. CODE §22-11A-37 (2018)

Convicts; quarantine

When there is reasonable cause to believe that an inmate of any state correctional facility or any municipal or county jail has been exposed to or is afflicted with any of the diseases designated by this

article, the State or county Health Officer may petition the superintendent of the facility to isolate the inmate for compulsory testing, treatment and quarantine.

ALA. CODE §22-11A-38 (2018)

Confidentiality; exceptions

(f) No physician, employee of the health department, hospitals, other health care facilities or organizations, funeral homes or any employee thereof shall incur any civil or criminal liability for revealing or failing to reveal confidential information within the approved rules. This subsection is intended to extend immunity from liability to acts which could constitute a breach of physician/patient privilege but for the protections of this subsection.

(h) Notwithstanding the provisions of this section or any other provisions of law, the State Health Officer or his or her designee shall under the circumstances set forth below disclose such information as is necessary to establish the following: That an individual is seropositive for HIV infection, confirmed by appropriate methodology as determined by the Board of Health; that the individual has been notified of the fact of his or her HIV infection; and that the individual has been counseled about appropriate methods to avoid infecting others with the disease. Such information shall be provided only under either of the following circumstances:

> (1) In response to a subpoena from a grand jury convened in any judicial circuit in the state, when such a subpoena is accompanied by a letter from the Attorney General or an Alabama District Attorney attesting that the information is necessary to the grand jury proceedings in connection with an individual who has been charged with or who is being investigated for murder, attempted murder, or felony assault as a result of having intentionally or recklessly exposed another to HIV infection where the exposed person is later demonstrated to be HIV infected. Prior to release of such evidence to the grand jury, such evidence shall be reviewed in camera by a court of competent jurisdiction to determine its probative value, and the court shall fashion a protective order to prevent disclosure of the evidence except as shall be necessary for the grand jury proceedings.
>
> (2) In response to a subpoena from the State of Alabama or the defendant in a criminal trial in which the defendant has been indicted by a grand jury for murder, attempted murder, or felony assault as a result of having intentionally or recklessly exposed another to HIV infection where the exposed person is later demonstrated to be HIV infected, and, if subpoenaed by the State of Alabama, such material has previously been presented to the appropriate grand jury for review pursuant to subdivision (1), above. Prior to the introduction of such evidence in a criminal trial, it shall be reviewed by the court in camera to determine its probative value, and the court shall fashion a protective order to prevent disclosure of the evidence except as shall be necessary to prosecute or defend the criminal matter.

ALA. CODE § 22-11A-50 (2018)

Definitions

As used in this article, the following words and phrases shall have the following meanings respectively ascribed to them, unless the context clearly indicates otherwise:

> (1) HIV. -- Human Immunodeficiency Virus.

(2) AIDS. -- Acquired Immune Deficiency Syndrome.

(3) HIV infection. -- Infection with human immunodeficiency virus as determined by antibody tests, culture or other means approved by the State Board of Health.

ADMINSTRATIVE CODE

ALA. ADMIN. CODE R. 420-4-1.05 (2018)

Control Procedures

(1) The State Health Officer may act to prevent the spread of any notifiable disease or health condition in a manner consistent with current medical and epidemiologic knowledge about the mode of transmission of said disease or health condition. Said actions for control of disease include any of the following actions, any combination thereof, or any other lawful action necessary to prevent the spread of disease.

(a) The State Health Officer, or his or her designee, may cause a person or persons to be placed in isolation and order said person or persons to remain in such status until released by said Health Officer designee as provided for in Code of Ala. 1975, § 22-11A-1, et seq.

(b) The State Health Officer, or his or her designee, may order any person or persons to restrict their activities and not engage in certain specified activities or enter certain places while they are potentially capable of transmitting a notifiable disease or health condition.

(c) The State Health Officer, or his or her designee, may order a person or persons to be quarantined in their own dwelling or such other facility as may be deemed appropriate and may order removal of said persons if not in their own home in accordance with Code of Ala. 1975, § 22-11A-8.

Alaska

Analysis

A person's HIV status may lead to higher prison sentences for felony sexual offenses.

Alaska has no statute explicitly criminalizing HIV transmission or exposure, but enhanced sentencing may be applied based on a defendant's HIV status if they are found guilty of one of several specified sex offenses.[1] If a PLHIV is found guilty of a sexually-based assault, they may receive an enhanced term of imprisonment if (1) the offense involved penetration or (2) the defendant exposed the victim to a risk or fear that HIV transmission could result.[2] Neither the intent to transmit HIV nor actual transmission is required. Nor is there a requirement that a person's "fear that the offense could result in the transmission of HIV or AIDS" be based on accurate medical science.

Alaska defines "sexual penetration" as "genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body . . . ."[3] An enhanced sentence can be imposed even if the defendant's viral load is low or non-detectable, if protection, such as a condom was used, or if the crime involved penetration with a body part or object that cannot transmit HIV.

In 1996, the HIV status of a defendant was considered an "aggravating factor," leading the court to sentence him to ten years' imprisonment for sexual abuse of a minor.[4] On appeal, the court affirmed the finding of the defendant's HIV status as an aggravating factor because the defendant knew he had HIV at the time of the sexual conduct with the minor, did not disclose his status, and did not take any measures to protect her from infection.[5] The court found that although the minor provided a condom that was used for the second sexual encounter, and that she had thus far tested negative for HIV, it was "reasonable to infer that [the minor] [would] be very fearful for some time to come that she may have contracted [HIV] . . . ."[6] The court determined that such considerations supported an enhanced sentence.[7]

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[1] ALASKA STAT. § 12.55.155 (2016).
[2] § 12.55.155(c)(33) (2016).
[3] § 11.81.900(b)(60)(A) (2016).
[4] *Wans v. State*, No. A-6188, 1996 WL 671355 at *2 (Alaska Ct. App. 1996).
[5] *Id.*
[6] *Id.*
[7] *Id.*

The Alaska Department of Health and Social Services ("Department") may quarantine or isolate people living with HIV or an STI.

The State Department of Health and Social Services is given authority to quarantine or isolate persons in order to prevent spread of communicable diseases, among them HIV/AIDS and a number of sexually transmitted infections (STI).[8] Some procedural safeguards are in place, such as the requirement that quarantine or isolation be the least restrictive means necessary to prevent transmission, as well as the provision of a hearing and certain other rights for a restricted individual; however, other basic protections, such as the right to legal representation, are notably absent.[9] Moreover, it is unclear how much and what kind of evidence is sufficient to establish "that the individual is unable or unwilling to behave so as not to expose other individuals to danger of infection."[10] For example, successful antiretroviral therapy or condom use, as in *Wans*, might not be sufficient to demonstrate the absence of any behavior posing actual risk of exposure to HIV or other STI before a court.[11]

The Alaska Department of Health and Social Services may disclose an individual's identifiable health information during the course of a legal proceeding.

Despite baseline confidentiality protections, there are two notable exceptions in which the Department may disclose an individual's ordinarily protected health information: (1) orders for quarantine and isolation, and (2) under court order, during any other legal proceeding.[12]

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.*

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[8] ALASKA STAT. §§ 18.15.370, 18.15.385 (2016). The statues specifically authorizing isolation and quarantine refer to "contagious" diseases. Contagious disease is defined as "an infectious disease that can be transmitted from individual to individual." ALASKA STAT. §§ 18.15.395(3) (2016). This broad definition clearly encompasses HIV and other reportable STIs, including chancroid, chlamydia, gonorrhea, viral hepatitis, and syphilis. ALASKA ADMIN. CODE tit. 7, § 27.005 (2016).

[9] ALASKA STAT. § 18.15.385 (2016).

[10] *Id*.

[11] *Id*.; *Wans v. State*, No. A-6188, 1996 WL 671355 at *2 (Alaska Ct. App. 1996).

[12] ALASKA ADMIN. CODE tit. 7 § 27.893(e) (2016).

Code of Alaska

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 12, CODE OF CRIMINAL PROCEDURE

ALASKA STAT. § 12.55.155 (2016) **

Factors in aggravation and mitigation

(c) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence above the presumptive range set out in AS 12.55.125:

(33) the offense was a felony specified in AS 11.41.410--11.41.455, the defendant had been previously diagnosed as having or having tested positive for HIV or AIDS, and the offense either (A) involved penetration, or (B) exposed the victim to a risk or a fear that the offense could result in the transmission of HIV or AIDS; in this paragraph, “HIV” and “AIDS” have the meanings given in AS 18.15.310.

ALASKA STAT. § 12.55.125 (2016) **

Sentences of imprisonment for felonies

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 – 12.55.175:

(2) if the offense is a first felony conviction

(A) and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, firefighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven to 11 years;

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 – 12.55.175:

(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS.12.55.155 – 12.55.175:

(i) A defendant convicted of

(1) sexual assault in the first degree, sexual abuse of a minor in the first degree . . . may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 30 years;

ALASKA STAT. § 12.55.135 (2016) **

Sentences of imprisonment for misdemeanors

(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense.

TITLE 11, CRIMINAL LAW

ALASKA STAT. § 11.41.410 (2016)

Sexual assault in the first degree

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

ALASKA STAT. § 11.41.420 (2016)

Sexual assault in the second degree

(b) Sexual assault in the second degree is a class B felony.

ALASKA STAT. § 11.41.425 (2016)

Sexual assault in the third degree

(c) Sexual assault in the third degree is a class C felony.

ALASKA STAT. § 11.41.427(2016)

Sexual assault in the fourth degree

(c) Sexual assault in the fourth degree is a class A misdemeanor.

ALASKA STAT. § 11.41.434 (2016)

Sexual abuse of a minor in the first degree

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

ALASKA STAT. § 11.41.436 (2016)

Sexual abuse of a minor in the second degree

(b) Sexual abuse of a minor in the second degree is a class B felony.

ALASKA STAT. § 11.41.438(B) (2016)

Sexual abuse of a minor in the third degree

(b) Sexual abuse of a minor in the third degree is a class C felony.

ALASKA STAT. § 11.41.440 (2016)

Sexual abuse of a minor in the fourth degree

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor.

ALASKA STAT. § 11.41.452 (2016)

Online enticement of a minor

(d) Except as provided in (e) of this section, online enticement is a class B felony.

(e) Online enticement is a class A felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

ALASKA STAT. § 11.41.450 (2016)

Incest

(b) Incest is a class C felony.

ALASKA STAT. § 11.41.455 (2016)

Unlawful exploitation of a minor

(c) Unlawful exploitation of a minor is a

> (1) class B felony; or
>
> (2) class A felony if the person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction.

ALASKA STAT. § 11.81.900 (2016)

Definitions

(a) For purposes of this title, unless the context requires otherwise,

> (1) a person acts “intentionally” with respect to a result described by a provision of law defining an offense when the person’s conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person’s only objective;
>
> (2) a person acts “knowingly” with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an

element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(15) "dangerous instrument" means

(A) any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(17) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(57) "serious physical injury" means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

TITLE 18, HEALTH, SAFETY, HOUSING, HUMAN RIGHTS, AND PUBLIC DEFENDER

ALASKA STAT. § 18.15.370 (2016)

Reportable disease list

The department shall maintain a list of reportable diseases or other conditions of public health importance that must be reported to the department. The list may include birth defects, cancers, injuries, and diseases or other conditions caused by exposure to microorganisms; pathogens; or environmental, toxic, or other hazardous substances. The department shall regularly maintain and may revise the list. The department may also establish registries for diseases and conditions that must be reported to the department.

ALASKA STAT. § 18.15.385 (2016) **

Isolation and quarantine

(a) The department may isolate or quarantine an individual or group of individuals if isolation or quarantine is the least restrictive alternative necessary to prevent the spread of a contagious or possibly contagious disease to others in accordance with regulations adopted by the department consistent with the provisions of this section and other law.

(d) Before quarantining or isolating an individual, the department shall obtain a written order from the superior court authorizing the isolation or quarantine, unless the individual consents to the quarantine or isolation. The department shall file a petition for a written order under this subsection. The petition must:

(1) allege

(A) the identity of each individual proposed to be quarantined or isolated:

(B) the premises subject to isolation or quarantine;

(C) the date and time the isolation or quarantine is to begin;

(D) the suspected contagious disease;

(E) that the individual poses a significant risk to public health;

(F) whether testing screening, examination, treatment, or related procedures are necessary;

(G) that the individual is unable or unwilling to behave so as not to expose other individuals to danger of infection; and

(H) that the department is complying or will comply with (b) of this section; and

(2) be accompanied by an affidavit signed by a state medical officer attesting to the facts asserted in the petition, including specific facts supporting the allegations required by (1)(D) and (G) of this subsection; the petition shall be personally served according to court rules, along with notice of the time and place of the hearing under (f) of this section.

(e) Notwithstanding (d) of this section, when the department has probable cause to believe that the delay involved in seeking a court order imposing isolation or quarantine would pose a clear and immediate threat to the public health and isolation or quarantine is the least restrictive alternative and is necessary to prevent the spread of a contagious or possibly contagious disease, a state medical officer in the department may issue an emergency administrative order to temporarily isolate or quarantine an individual or group of individuals. An emergency administrative order of temporary quarantine or isolation by a sate medical officer is enforceable by any peace officer in the state. Within 24 hours after implementation of the emergency administrative order, the department shall notify the superior court by filing a petition under (d) of this section that also alleges that the emergency action was necessary to prevent or limit the transmission of a contagious or possibly contagious disease to others that would pose an immediate threat to the public health. The petition must be signed by a state medical officer.

(g) During the hearing, the individual has the right to

(1) view and copy all petitions and reports in the court file of the individual's case;

(2) elect to have the hearing open to the public;

(3) have the rules of evidence and civil procedure applied so as to provide for the informal but efficient presentation of evidence;

(4) have an interpreter if the individual does not understand English;

(5) present evidence on the individual's behalf;

(6) cross-examine witnesses who testify against the individual;

(7) call experts and other witnesses to testify on the individual's behalf; and

(8) participate in the hearing; under this paragraph, participation may be by telephone if the individual presents a substantial risk of transmitting a contagious or possibly contagious disease to others.

(n) A person who knowingly violates this section or a regulation adopted under this section is guilty of a class B misdemeanor. In this subsection, "knowingly" has the meaning given in AS 11.81.900(a).

(o) A person who intentionally violates this section or a regulation adopted under this section is guilty of a class A misdemeanor. In this subsection, "intentionally" has the meaning given in AS 11.81.900(a).

ADMINSTRATIVE CODE

TITLE 7, HEALTH AND SOCIAL SERVICES

ALASKA ADMIN. CODE TIT. 7 § 27.893 (2016)

Permitted disclosures

(e) The department will not disclose identifiable health information in the course of legal discovery, subpoena, or compelled testimony of a public health agent, in any civil, criminal, administrative, or other legal proceeding, except

(1) in a legal proceeding initiated by a public health agent for quarantine or isolation of the person who is subject to the health information to be disclosed, whether the proceeding is open or closed to the public; or

(2) when a court orders the disclosure after having been fully advised of

(A) the statutes and regulations limiting disclosure;

(B) the public policy supporting the protection of identifiable health information;

(C) the facts that support the closing of the proceeding or the sealing of the records containing identifiable health information.

Arizona

Analysis

No criminal statutes explicitly addressing HIV exposure.

There are no criminal statutes criminalizing HIV transmission or exposure in Arizona. However, in some states, people living with HIV (PLHIV) have been prosecuted for HIV exposure under general criminal laws, such as reckless endangerment and aggravated assault. At the time of publication, the authors are not aware of any prosecution under general criminal laws on the basis of HIV status in Arizona.

PLHIV or other Sexually Transmitted Infections (STIs or STI if singular) may qualify for mitigation of their sentences.

In *State of Arizona v. Ellevan*, the Court of Appeals reversed the trial court's decision and remanded for new sentencing, ordering the trial court to determine whether the petitioner's HIV status warranted a shorter prison term.[1] The Court further noted "[p]ositive HIV status is material to informed plea bargaining and sentencing because it can transform into a life sentence a term of years that would otherwise end well within the recipient's probable life span."[2]

PLHIV or other STIs may be prosecuted for exposure.

Various contagious diseases, among them HIV and certain STIs listed in in Title 9 Chapter 6 Article 3 of the Arizona Administrative Code,[3] must be reported to the State Department of Health upon diagnosis. A person with a "contagious or infectious disease" who knowingly exposes themselves to another in a "public place or thoroughfare" may be punished with a class 2 misdemeanor, carrying a punishment of four months' imprisonment.[4] On the face of the statute, disease transmission is not required for prosecution. The exposure provision does not define contagious or infectious disease but communicable disease is defined as "contagious, epidemic or infectious disease required to be reported . . ."[5]

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[1] 179 Ariz. 382, 880 P.2d 139 (Ariz. Ct. App. 1994).

[2] *Id.*, 179 Ariz. at 383, 880 P.2d at 140.

[3] Including chancroid, chlamydia, gonorrhea, viral hepatitis, HIV, and syphilis. ARIZ. ADMIN. CODE §§ 9-6-313, 9-6-314, 9-6-332, 9-6-337, 9-6-338, 9-6-339, 9-6-340, 9-6-341, 9-6-375 (2016).

[4] ARIZ. REV. STAT. §§ 36-631, 13-707 (2016); *see also* ARIZ. ADMIN. CODE §§ 9-6-313, 9-6-314, 9-6-332, 9-6-337, 9-6-338, 9-6-339, 9-6-340, 9-6-341, 9-6-375 (2016). In Arizona a court is also required to consider restitution for economic loss to a victim in a criminal case, ARIZ. REV. STAT. §13-603(c) (2016), including that for medical treatment, *State v. Iniguez*, 169 Ariz. 533, 538, 821 P.2d 194, 199 (Ariz. Ct. App. 1991).

However, there are no reported cases of restitution for medical treatment in a criminal prosecution for transmission of a STI.

[5] ARIZ. REV. STAT. § 36-661(4)(2016).

The Arizona Department of Health Services may be compelled to provide information related to communicable diseases for criminal prosecutions.[6] Moreover, persons alleged to have committed a sexual offense or another offense involving significant exposure are subject to a court order requiring testing for STIs.[7] However, no such information may be compelled for HIV-specific cases.[8]

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.*

[6] ARIZ. REV. STAT. § 36-665(A), (B)(1) (2016).
[7] ARIZ. REV. STAT. § 13-1415 (2016).
[8] ARIZ. REV. STAT. § 36-665(I) (2016).

Code of Arizona

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 36, PUBLIC HEALTH AND SAFETY

ARIZ. REV. STAT. § 36-631 (2016) **

Person with contagious or infectious disease exposing himself to public; classification; exception

A person who knowingly exposes himself or another afflicted with a contagious or infectious disease in a public place or thoroughfare, except in the necessary removal of such person in a manner least dangerous to the public health, is guilty of a class 2 misdemeanor.

ARIZ. REV. STAT. § 36-665 (2016)

Order for disclosure of communicable disease related information

(B) An order for disclosure of or a search warrant for communicable disease related information may be issued on an application showing any one of the following:

> (1) A compelling need for disclosure of the information for the adjudication of a criminal, civil or administrative proceeding.
>
> (2) A clear and imminent danger to a person whose life or health may unknowingly be at significant risk as a result of contact with the person to whom the information pertains.
>
> (3) If the application is filed by a state, county or local health officer, a clear and imminent danger to the public health.
>
> (4) That the applicant is lawfully entitled to the disclosure and the disclosure is consistent with the provisions of this article.
>
> (5) A clear and imminent danger to a person or to public health or a compelling need requiring disclosure of the communicable disease related information.

(C) On receiving an application pursuant to this section, the court or administrative body shall enter an order directing that the file be sealed and not made available to any person, except to the extent necessary to conduct a proceeding in connection with the determination of whether to grant or deny the application, including an appeal. The court or administrative body shall also order that all subsequent proceedings in connection with the application be conducted in camera and, if appropriate to prevent the unauthorized disclosure of communicable disease related information, that pleadings, papers, affidavits, judgments, orders, briefs, and memoranda of law that are part of the application or the decision not state the name of the person concerning whom communicable disease related information is sought.

(G) In assessing compelling need and clear and imminent danger, the court or administrative body shall provide written findings of fact, including scientific or medical findings, citing specific evidence in the record which supports each finding, and shall weight the need for disclosure against the privacy interest

of the protected person and the public interest which may be disserved by disclosure which deters future testing or treatment or which may lead to discrimination.

(I) Notwithstanding any other law, a court or administrative body shall not order the department, a county health department or a local health department to release HIV-related information in its possession.

TITLE 13, CRIMINAL CODE

ARIZ. REV. STAT. § 13-707 (2016) **

Misdemeanors; sentencing

(A) A sentence of imprisonment for a misdemeanor shall be for a definite term to be served other than a place within custody of the state department of corrections. The court shall fix the term of imprisonment within the following maximum limitations:

(2) For a class 2 misdemeanor, four months.

(3) For a class 3 misdemeanor, thirty days.

Arkansas

Analysis

People living with HIV (PLHIV) may be criminally liable for a range of acts.

Arkansas considers people living with HIV (PLHIV) to be a danger to the public when they engage in sexual conduct without disclosing their status or in parenteral transfer of blood or blood products.[1] The law is universal and does not account for actual transmission risk.[2] Moreover, if a PLHIV engages in either of these acts with knowledge of their HIV status they are criminally liable and may be charged with a Class A felony.[3] Sexual conduct includes oral, anal, and vaginal sex, as well as any genital or anal penetration by any object.[4] Ejaculation is not required for prosecution.[5] The scope of "parenteral transfer of blood or blood products" (exposure through a mucous membrane or break in the skin) is not defined, but may potentially include blood or organ donation, sharing syringes, spitting, or biting. Neither the intent to transmit HIV nor transmission of HIV is required for prosecution.[6] Conviction can result in a sentence of six to 30 years' imprisonment and a fine of up to $15,000.[7]

PLHIV may also be charged with general criminal laws, such as aggravated assault.

In May 2010, a 41-year-old man living with HIV was charged with two counts of aggravated assault after allegedly spitting blood at a police officer.[8] Aggravated assault prohibits, under circumstances manifesting extreme indifference to the value of human life, engaging in conduct that creates a substantial danger of death or serious physical injury to another person.[9] It is a Class D felony, punishable by up to six years imprisonment and a fine of up to $10,000.[10] The man was acquitted by

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[1] ARK. CODE ANN. § 5-14-123(a) (2016).

[2] *Id.*

[3] § 5-14-123(b), (d) (2016). The language of the statute makes it clear that non-disclosure of HIV status is a required element for prosecution of someone for sexual conduct. However, is not clear whether non-disclosure as an element of the offense also applies to parenteral transfer of blood or blood products.

[4] § 5-14-123(c)(1). (2016).

[5] § 5-14-123(c)(2) (2016).

[6] § 5-14-123(c)(2) (2016).

[7] ARK. CODE ANN. §§ 5-4-401(a)(2), 5-4-201(a)(1) (2016).

[8] Gavin Lesnick, *HIV positive man spits blood at police officer, report says*, ARKANSASONLINE.COM, May 12, 2010, *available* at http://www.arkansasonline.com/news/2010/may/12/hiv-positive-man-spits-blood-officer-report-says/. *See also* Arkansas Judiciary System, Circuit Court of Pulaski County, Fourth Division, *available at* https://caseinfo.aoc.arkansas.gov/cconnect/PROD/public/ck_public_qry_doct.cp_dktrpt_frames?backto=P&case_id=60CR-10-2714&begin_date=&end_date=.

[9] ARK. CODE ANN. § 5-13-204(a)(1) (2016).

[10] §§ 5-13-204(b), 5-4-401(a)(5), 5-4-201(a)(2) (2016).

reason of mental disease or defect and ordered to civil commitment.[11] He was subsequently conditionally released.[12]

HIV status must be disclosed before receiving medical treatment.

All PLHIV in Arkansas who know their HIV status must inform doctors or dentists of their HIV status before receiving treatment.[13] Failure to meet this requirement is a Class A misdemeanor punishable by up to one year in prison, a $2,500 fine, or both.[14]

PLHIV convicted of the criminal exposure statute may be required to register as sex offenders.

The criminal exposure statute is considered a sex offense,[15] and a PLHIV convicted under it may be required by a sentencing court to register as a sex offender.[16] Persons required to register as sex offenders who move to or return to Arkansas from another jurisdiction must register with local law enforcement within seven calendar days.[17]

Registration requires submission of extensive information and has complicated verification requirements.[18] Importantly, under this statutory scheme, transgender persons registered as sex offenders who have not legally changed their names may not do so until their registration requirement has terminated.[19]

Violating any of the terms of registration is a Class C felony and may be punishable by three to ten years' imprisonment and a fine of up to $10,000.[20] Under certain circumstances, PLHIV convicted of HIV exposure may apply for the termination of the sex offender registration requirement.[21]

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[11] *State v. Jackson*, 60CR-10-2714 (Cir. Ct. Pulaski County-4th 2011), see "Judgment & Commitment Order," entry dated 04/18/2011 on docket report, available at: https://caseinfo.aoc.arkansas.gov/cconnect/PROD/public/ck_public_qry_doct.cp_dktrpt_frames?backto=D&case_id=60CR-10-2714&begin_date=&end_date=.

[12] *In re Jackson*, No. PR 11-760 (Circ. Ct. Pulaski County-12th 2011), see "Order of Conditional Release RR.12.2012.97" entry dated 03/02/2012 on docket report, available at: https://caseinfo.aoc.arkansas.gov/cconnect/PROD/public/ck_public_qry_doct.cp_dktrpt_frames?backto=P&case_id=60PR-11-760&begin_date=&end_date=.

[13] ARK. CODE ANN. § 20-15-903(a) (2016).

[14] §§ 20-15-903(b), 5-4-401(b)(1), 5-4-201(b)(1) (2016).

[15] § 12-12-903(13)(A)(i)(*p*) (2016). *See also* § 12-12-903(13)(i)-(vi) (2016) (defining as sex offenses, and thus requiring sex offender registration, a number of offenses potentially including PLHIV, including (1) attempt, solicitation, or conspiracy to commit any of the enumerated offenses, including HIV exposure; (2) conviction of another state's law that is either similar to an Arkansas law that requires registration, or requires registration in that state; (3) conviction of a military offense that is either similar to an Arkansas law that requires registration, or requires registration under federal law; and (4) conviction of a law in another foreign country requiring registration.).

[16] §§ 12-12-905(a)(1)-(4), 12-12-903(12)(A), 12-12-906(a)(1)(A)(ii) (2016).

[17] § 12-12-906(a)(2)(A) (2016).

[18] Readers are advised to carefully review all sections of ARK. CODE ANN. §12-12-908 for a complete list of requirements. *See also* §§ 12-12-909(a)(1), 12-12-909(b)(1)(A), 12-12-909(b)(1)(B), 12-12-909(b)(1)(D)(2016).

[19] § 12-12-906(f) (2016) (forbidding name changes except to reflect a change in marital status or to affect the exercise of religion).

[20] §§ 12-12-904(a)(1)(A), 5-4-401(a)(4), 5-4-201(a)(2) (2016).

[21] §§ 12-12-919(b)(1)(A)(i) (15-year requirement for application), 12-12-919(b)(2) (standard for approval), 12-12-919(c) (waiting period if application denied), 12-12-919(b)(3) (2016) (standard for second or subsequent offenses).

A person's medical files and reports may be used in the prosecution for criminal exposure to HIV.

The medical records of PLHIV are generally subject to strict confidentiality protections in Arkansas.[22] However, any prosecutor may obtain those records by subpoena to prosecute a person under the criminal HIV exposure statute.[23]

In a second trial to prosecute the defendant from *Weaver* on two additional counts of exposing another to HIV, the state obtained the defendant's medical records from the county health department by issuing an investigative subpoena, which did not require court approval.[24] The defendant appealed his conviction and sentence of 30 years for each count, arguing the medical records were obtained in violation of the state's rule of criminal procedure, rules of evidence, as well as the state and federal constitutions.[25] The Arkansas Court of Appeals upheld use of the investigative subpoena as proper under the HIV confidentiality statute.[26]

Arkansas also allows involuntary HIV testing for criminal defendants in Arkansas charged with sexual assault, incest, or prostitution.[27] The victim of the crime can request that the person charged with a sexual offense be tested for HIV, regardless of whether the person charged is in custody.[28] After a victim's request is made a court can require the person charged to be tested within 48 hours. A court can also require testing if it has found, following indictment, reasonable cause to believe that the person committed the offense and used or threatened force.[29] The person charged with the sexual offense can be required to submit to further HIV testing as "medically appropriate."[30] If the person charged is convicted, the court can require that the person be re-tested for HIV at the victim's request. [31] All test results are provided to the vicitm.[32]

People who test positive for a Sexually Transmitted Infection (STI) or other communicable disease may undergo mandatory treatment or else be subject to quarantine or isolation.

The Department of Health (the department) has broad discretion to issue regulations to limit the spread of communicable diseases.[33] Any violation of orders, rules, or regulations of the Department of Health

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[22] § 20-15-904(c)(1) (2016).
[23] § 20-15-904(c)(2) (2016).
[24] *Weaver v. State*, 990 S.W.2d 572, 573-74 (Ark. Ct. App. 1999).
[25] *Id.* at 573.
[26] *Id*. at 574-75, citing ARK. CODE ANN. § 20-15-904 (2014).
[27] ARK. CODE ANN. § 16-82-101(b)(1) (A) (2021).
[28] Ark. Code Ann. § 16-82-101(B)(i)(a) (2021)
[29]. Ark. Code Ann. § 16-82-101(b) (2021)
[30] Ark. Code Ann. § 16-82-101(ii) (2021)
[31] Ark. Code Ann. § 16-82-101(d (1) (2021)
[32] Ark. Code Ann. § 16-82-101(b)(1) (A) (2021
[33] ARK. CODE ANN. § 20-16-505 (2016)

amounts to a misdemeanor punishable by a fine of up to $100 and imprisonment for up to one month;[34] each day of violation constitutes a separate offense.[35]

Any person may be apprehended, detained, and subject to mandatory blood tests whenever the Director of the Arkansas Department of Health (the director) "has reasonable grounds to believe" they are suffering from syphilis, gonorrhea, chancroid, lymphogranuloma venereum, or granuloma inguinale in a communicable state.[36] Moreover, the director may mandate treatment for, or else quarantine or isolate, any persons who test positive and for whom the director determines such action may be necessary to protect the public health.[37] The director may also, "when in the exercise of his discretion he believes that the public health requires it, commit any commercial prostitute . . . who refuses or fails to take treatment adequate for the protection of the public health, to a hospital," or other facility for such mandatory treatment.[38] The regulation granting such authority, however, does not specify the kind of treatment that may be imposed, since there is no explicit requirement that the detained sex workers test positive for any STD; rather, sex workers seem to be categorically considered a public health risk by the state of Arkansas.

In a 1942 case, a defendant had been arrested for "immorality and prostitution," detained so that she could be tested for communicable venereal diseases, and subsequently quarantined when she tested positive for gonorrhea and syphilis.[39] Although her confinement had been held unconstitutional, the Supreme Court of Arkansas subsequently reversed that holding in *Little Rock*.[40] The Court adopted the Kansas Supreme Court's reasoning in a similar case:

> "[The regulation] affects the public health so intimately and so insidiously that consideration of delicacy and privacy may not be permitted to thwart measures necessary to avert the public peril. Only those invasions of personal privacy are unlawful which are unreasonable, and reasonableness is always relative to the gravity of the occasion. Opportunity for abuse of power is no greater than in other fields of governmental activity, and misconduct in the execution of official authority is not to be presumed."[41]

Thus the Court recognized wide discretion in the application of detention, testing, and quarantine of persons suspected of having STIs as constitutional.

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.*

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[34] ARK. CODE ANN. § 20-7-101(a)(1) (2016).

[35] § 20-7-101(a)(2) (2016).

[36] 007-15-004 ARK. CODE R. § XXI(D) (2016); 007-15-008 ARK. CODE R. § XXI(D) (2016).

[37] *See* 007-15-004 ARK. CODE R. §§ IX, X(A), (C), XXI(E) (2016); 007-15-008 ARK. CODE R. §§ IX, X(A), (C), XXI(E) (2016); 007-26-001 ARK. CODE R. §§ VII, VIII, IX, XXII(E)-(F) (2016).

[38] 007-15-004 ARK. CODE R. § XXI(E) (2016); 007-15-008 ARK. CODE R. § XXI(E) (2016).

[39] *Little Rock v. Smith*, 163 S.W.2d 705, 705-06 (Ark. 1942)

[40] *Id.* at 708.

[41] *Id.* (citing *Ex Parte McGee* 185 P. 14, 16 (Kan. 1919) (denying detainees' petition for a writ of habeas corpus because detainees were infected with a venereal disease, and "although they allowed an invasion of personal privacy, the statute, rules, and ordinance were aimed at protecting the public from loathsome communicable diseases and the measures employed were reasonable in light of the seriousness of the public health issues involved).

Arkansas Code

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 5, CRIMINAL OFFENSES

ARK. CODE ANN. § 5-14-123 (2016) **

Knowingly transmitting AIDS, HIV

(a) A person with acquired immunodeficiency syndrome or who tests positive for the presence of human immunodeficiency virus antigen or antibodies is infectious to another person through the exchange of a body fluid during sexual intercourse and through the parenteral transfer of blood or a blood product and under these circumstances is a danger to the public.

(b) A person commits the offense of exposing another person to human immunodeficiency virus if the person knows he or she has tested positive for human immunodeficiency virus and exposes another person to human immunodeficiency virus infection through the parenteral transfer of blood or a blood product or engages in sexual penetration with another person without first having informed the other person of the presence of human immunodeficiency virus.

(c)

> (1) As used in this section, “sexual penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into a genital or anal opening of another person’s body.
>
> (2) However, emission of semen is not required.

(d) Exposing another person to human immunodeficiency virus is a Class A felony.

ARK. CODE ANN. § 5-4-401 (2016) **

Sentence

(a) A defendant convicted of a felony shall receive a determinate sentence according to the following limitations:

> (2) For a Class A felony, the sentence shall be not less than six (6) years nor more than thirty (30) years;
>
> (4) For a Class C felony, the sentence shall be not less than three (3) years nor more than ten (10) years;

(b) A defendant convicted of a misdemeanor may be sentenced according to the following limitations:

> (1) For a Class A misdemeanor, the sentence shall not exceed one (1) year;

ARK. CODE ANN. § 5-4-201 (2016) **

Fines – Limitations on amount.

(a) A defendant convicted of a felony may be sentenced to pay a fine:

(1) Not exceeding fifteen thousand dollars ($15,000) if the conviction is of a Class A felony or Class B felony;

(2) Not exceeding ten thousand dollars ($10,000) if the conviction is of a Class C felony or a Class D felony; or

(b) A defendant convicted of a misdemeanor may be sentenced to pay a fine:

(1) Not exceeding two thousand five hundred dollars ($2,500) if the conviction is of a Class A misdemeanor;

TITLE 12. LAW ENFORCEMENT, EMERGENCY MANAGEMENT, AND MILITARY AFFAIRS

ARK. CODE ANN. § 12-12-903 (2016)

Definitions

As used in this subchapter:

(12) (A) "Sex Offender" means a person who is adjudicated guilty of a sex offense or acquitted on the grounds of mental disease or defect of a sex offense.

(13)(A) "Sex Offense" includes, but is not limited to:

(i) The following offenses:

(p) Exposing another person to human immunodeficiency virus, § 5-4-123, when ordered by the sentencing court to register as a sex offender;

(ii) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (13)(A);

(iii) An adjudication of guilt for an offense of the law of another state:

(a) Which is similar to any of the offenses enumerated in subdivision (13)(A)(i) of this section; or

(b) When that adjudication of guilt requires registration under another state's sex offender registration laws;

(iv) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (13)(A);

(v) An adjudication of guilt for an offense in any federal court, the District of Columbia, a United States territory, a federally recognized Indian tribe, or for a military offense:

(1) Which is similar to any of the offenses enumerated in subdivision (13)(A)(i) of this section;

(2) When the adjudication of guilt requires registration under sex offender registration laws of another state or jurisdiction; or

(vi) An adjudication of guilt for an offense requiring registration under the laws of Canada, the United Kingdom, Australia, New Zealand, or any other foreign country where an independent judiciary enforces a right to a fair trial during the year in which the conviction occurred.

(B) (i) The sentencing court has the authority to order the registration of any offender shown in court to have attempted to commit or to have committed a sex offense even though the offense is not enumerated in subdivision (13)(A)(i) of this section.

ARK. CODE ANN. § 12-12-905 (2016)

Applicability

(a) The registration or registration verification requirements of this subchapter apply to a person who:

(1) Is adjudicated guilty on or after August 1, 1997, of a sex offense, aggravated sex offense, or sexually violent offense;

(2) Is serving a sentence of incarceration, probation, parole, or other form of community supervision as a result of an adjudication of guilt on or after August 1, 1997, for a sex offense, aggravated sex offense, or sexually violent offense;

(3) Is acquitted on or after August 1, 1997, on the grounds of mental disease or defect for a sex offense, aggravated sex offense, or sexually violent offense;

(4) Is serving a commitment as a result of an acquittal on or after August 1, 1997, on the grounds of mental disease or defect for a sex offense, aggravated sex offense, or sexually violent offense; or

ARK. CODE ANN. § 12-12-906 (2016) **

Duty to register or verify registration generally – Review of requirements with offenders.

(f)(1) An offender required to register under this subchapter shall not change his or her name unless the change is:

(A) Incident to a change in the marital status of the sex offender; or

(B) Necessary to effect the exercise of the religion of the sex offender.

(2) The change in the sex offender's name shall be reported to the local law enforcement agency having jurisdiction within ten (10) calendar days after the change in name.

(3) A violation of this subsection is a Class C felony.

TITLE 20, PUBLIC HEALTH AND WELFARE

ARK. CODE ANN. § 20-15-903 (2016) **

Advising physician or dentist required – Penalty.

(a) Prior to receiving any health care services of a physician or dentist, any person who is found to have human immunodeficiency virus (HIV) infection shall advise the physician or dentist that the person has human immunodeficiency virus (HIV) infection.
(b) Any person failing or refusing to comply with the provisions of subsection (a) of this section shall be guilty of a Class A misdemeanor and punished accordingly.

ARK. CODE ANN. § 20-15-904 (2016)

Reporting – Confidentiality – Subpoenas.

(a) A person with acquired immunodeficiency syndrome (AIDS) or who tests positive for the presence of human immunodeficiency virus (HIV) antigen or antibodies is infectious to others through the exchange of body fluids during sexual intercourse and through the parenteral transfer of blood or blood products and under these circumstances is a danger to the public.

(c)(1) All information and reports in connection with persons suffering from or suspected to be suffering from the diseases specified in this section shall be regarded as confidential by every person, body, or committee whose duty it is or may be to obtain, make, transmit, and receive information and reports.

(2) However, any prosecuting attorney of this state may subpoena information as may be necessary to enforce the provisions of this section and §§ 5-14-123 and 16-82-101, provided that any information acquired pursuant to the subpoena shall not be disclosed except to the courts to enforce this section.

ARK. CODE ANN. § 20-16-505 (2016)

Notification – Authority to regulate.

The Infectious Disease Branch of the Department of Health may enact each rule and regulation as is necessary to assure compliance with §§ 201-16-501 – 20-16-506.

ARK. CODE ANN. § 20-7-101 (2016) **

Violations – Penalties

(a)

> (1) Every firm, person, or corporation violating any of the provisions of this act or any of the orders, rules, or regulations made and promulgated in pursuance hereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment not exceeding one (1) month, or both.
>
> (2) Each day of violation shall constitute a separate offense.

TITLE 16, PRACTICE, PROCEDURE AND COURTS

ARK. CODE ANN. § 16-82-101 (2021)

Testing for human immunodeficiency virus – Sexual offenses.

(b) (1)(A) A person arrested and charged with violating § 5-14-103, § 5-14-110, § § 5-14-124 -- 5-14-127, § 5-26-202, or § 5-70-102 may be required by the court having jurisdiction of the criminal prosecution, upon a finding of reasonable cause to believe that the person committed the offense and subject to constitutional limitations, to be tested for the presence of human immunodeficiency virus (HIV) or an antibody to human immunodeficiency virus (HIV) unless the court determines that testing the defendant would be inappropriate and documents the reasons for that determination in the court record.

(B)(i)(a) Subject to constitutional limitations, the victim of an offense listed under subdivision (b)(1)(A) of this section may request that the person arrested and charged with the offense be tested for the presence of human immunodeficiency virus (HIV) or an antibody to human immunodeficiency virus (HIV), whether or not he or she is in custody, and the results of the tests provided to the victim.

(b) Upon the victim's request under subdivision (b)(1)(B)(i)(a) of this section, the court shall require that the person be tested within forty-eight (48) hours of the information's or indictment's being presented to the person if the court finds that there is a reasonable cause to believe that the person committed the offense and the charge against the person has an element of forcible compulsion or the threat of forcible compulsion.

(ii) Subsequent tests for the presence of human immunodeficiency virus (HIV) or an antibody to human immunodeficiency virus (HIV) shall be required as medically appropriate with results of the subsequent tests also provided to the victim as soon as practicable.

(d)(1) Upon request of the victim, and conviction of the defendant, a court of competent jurisdiction shall order the convicted person to submit to testing to detect in the defendant the presence of the etiologic agent for acquired immunodeficiency syndrome (AIDS).

Code of Arkansas Rules and Regulations

007 DEPARTMENT OF HEALTH

15 Health Maintenance/Epidemiology

007-15-004 ARK. CODE R. §§ VIII; IX; X; XXI (2016)

Communicable Disease Control

Section VIII. Cease and Desist Orders.
If the Director has reasonable cause to suspect that any person who is HIV positive is intentionally engaging in conduct that is likely to cause the transmission of the virus, the Director may issue an order to said person to cease and desist such conduct. Failure to comply immediately shall constitute a violation of these rules and regulations. Such violation shall be promptly reported to the prosecuting attorney in the county where the person resides for appropriate action.

Section IX. Isolation.
It shall be the duty of the attending physician, immediately upon discovering a disease requiring isolation, to cause the patient to be isolated pending official action by the Director. Such physician also shall advise other members of the household regarding precautions to be taken to prevent further spread of the disease, and shall inform them-as to appropriate, specific, preventive measures. He shall, in addition, furnish the patient's attendant with such detailed instructions regarding the disinfection and disposal of infective secretions and excretions as may be prescribed by the Director of the Arkansas Department of Health.

Section X. State and Local Quarantine.
(A) The Director shall impose such quarantine restrictions and regulations upon commerce and travel by railway, common carriers, or any other means, and upon all individuals as in his judgment may be necessary to prevent the introduction of communicable disease into the State, or from one place to another within the State.

(C) No person shall interfere with any health authority having jurisdiction, or carry or remove from one building to another, or from one locality to another within or without the State, any patient affected with a communicable disease dangerous to the public health except as provided under the rules governing the transportation of same.

Section XXI. Venereal Disease (Syphilis, Gonorrhea, Chancroid, Lymphogranuloma Venereum, Granuloma Inguinale) and Ophthalmia Neonaturum (Gonorrheal Ophthalmia).
(D) Whenever the Director has reasonable grounds to believe that any person is suffering from Syphilis, Gonorrhea, Chancroid, Lymphogranuloma Venereum or Granuloma Inguinale in a communicable state, he is authorized to cause such person to be apprehended and detained for the necessary tests and examination, including an approved blood serologic test and other approved laboratory tests, to ascertain the existence of said disease or diseases: provided, that any evidence so acquired shall not be used against such person in any criminal prosecution.

(E) The Director may, when in the exercise of his discretion he believes that the public health requires it, commit any commercial prostitute, or other persons apprehended and examined and found afflicted with said diseases, or either of them who refuses or fails to take treatment adequate for the protection of the public health, to a hospital or other place in the State of Arkansas for such treatment even over the objection of the person so diseased and treated provided the commitment can be done without endangering the life of the patient.

007-15-008 ARK. CODE R. § VII; IX; X; XXI (2016)

Reportable Disease (Health Maintenance/Epidemiology)

Section VIII. Cease and Desist Orders.
If the Director has reasonable cause to suspect that any person who is HIV positive is intentionally engaging in conduct that is likely to cause the transmission of the virus, the Director may issue an order to said person to cease and desist such conduct. Failure to comply immediately shall constitute a violation of these rules and regulations. Such violation shall be promptly reported to the prosecuting attorney in the county where the person resides for appropriate action.

Section IX. Isolation.
It shall be the duty of the attending physician, immediately upon discovering a disease requiring isolation, to cause the patient to be isolated pending official action by the Director. Such physician also shall advise other members of the household regarding precautions to be taken to prevent further spread of the disease, and shall inform them as to appropriate, specific, preventive measures. He shall, in addition, furnish the patient's attendant with such detailed instructions regarding the disinfection and disposal of infective secretions and excretions as may be prescribed by the Director of the Arkansas Department of Health.

Section X. State and Local Quarantine.
(A) The Director shall impose such quarantine restrictions and regulations upon commerce and travel by railway, common carriers, or any other means, and upon all individuals as in his judgment may be necessary to prevent the introduction of communicable disease into the State, or from one place to another within the State.

(C) No person shall interfere with any health authority having jurisdiction, or carry or remove from one building to another, or from one locality to another within or without the State, any patient affected with a communicable disease dangerous to the public health except as provided under the rules governing the transportation of same.

Section XXI. Sexually Transmitted Disease (Syphilis, Gonorrhea, Chancroid, Lymphogranuloma Venereum, Granuloma Inguinale) and Ophtalmia Neonaturum (Gonorrheal Ophthalmia).
(D) Whenever the Director has reasonable grounds to believe that any person is suffering from Syphilis, Gonorrhea, Chancroid, Lymphogranuloma Venereum or Granuloma Inguinale in a communicable state, he is authorized to cause such person to be apprehended and detained for the necessary tests and examination, including an approved blood serologic test and other approved laboratory tests, to ascertain the existence of said disease or diseases: provided, that any evidence so acquired shall not be used against such person in any criminal prosecution.

(E) The Director may, when in the exercise of his discretion he believes that the public health requires it, commit any commercial prostitute, or other persons apprehended and examined and found afflicted with said diseases, or either of them who refuses or fails to take treatment adequate for the protection of the public health, to a hospital or other place in the State of Arkansas for such treatment even over the objection of the person so diseased and treated provided the commitment can be done without endangering the life of the patient.

007 DEPARTMENT OF HEALTH

26 AIDS/STD (Bureau of Public Health Programs)

007-26-001 ARK. CODE R. §§ VII; VIII; IX; XXII (2016)

Communicable Disease Control

Section VII. Isolation
It shall be the duty of the attending physician, immediately upon discovering a disease requiring isolation, to cause the patient to be isolated pending official action by the local health authority. Such physician also shall advise other members of the household regarding precautions to be taken to prevent further spread of the disease, and shall inform them as to appropriate, specific, preventive measures. He shall, in addition, furnish the patient's attendant with such detailed instructions regarding

the disinfection and disposal of infective secretions and excretions as may be prescribed by the Director of the Arkansas Department of Health.

Section VIII. Quarantine Defined
(A) Complete quarantine: The limitation of freedom of movement of such well persons or domestic animals as have been exposed to a communicable disease, for a period of time not longer than the longest usual incubation period of the disease, in such manner as to prevent effective contact with those not so exposed.

(B) Modified quarantine: A selective, partial limitation of freedom of movement of persons or domestic animals, commonly on the basis of known or presumed differences in susceptibility, but sometimes because of danger of disease transmission. It may be designed to meet particular situations. Examples are exclusion of children from school; exemption of immune persons from provisions required of susceptible persons (e.g., contacts acting as food handlers); restriction of military populations to the post or quarters.

(C) Personal surveillance: The practice of close medical or other supervision of contacts in order to promote prompt recognition of infection or illness, but without restricting their movements.

(D) Segregation: The separation for special consideration, control or observation of some part of a group of persons or domestic animals from the others to facilitate control.

Section IX. State and Local Quarantine
The Director of the Arkansas Department of Health shall impose such quarantine restrictions and Regulations upon commerce and travel by railway, common carriers, or any other means, and upon all individuals as in his judgment may be necessary to prevent the introduction of communicable disease into the State, or from one place to another within the State.

No quarantine regulations of commerce or travel shall be instituted or operated by any place, city, town or county against another place or county in this or in any other State except by authority of the Director of the Arkansas Department of Health.

No person shall interfere with any health authority having jurisdiction, or carry or remove from one building to another, or from one locality to another within or without the State, any patient affected with a communicable disease dangerous to the public health except as provided under the rules governing the transportation of same.

Section XXII. Venereal Disease (Syphilis, Gonorrhea, Chancroid, Lyphogranuloma Venerum, Granuloma Inguinale) and Ophthalmia Neonatorum (Gonorrheal Ophthalmia)
(E) Detention of Suspects. Whenever any health authority has reasonable grounds to believe that any person is suffering from Syphilis, Gonorrhea, Chancroid, Lymphogranuloma Venereum or Granuloma Inguinale in a communicable state, he is authorized to cause such person to be apprehended and detained for the necessary tests and examination, including an approved blood serologic test and other approved laboratory tests, to ascertain the existence of said disease or diseases: Provided, That any evidence so acquired shall not be used against such person in any criminal prosecution.

(F) Isolation of Infectious Cases Until Rendered Non-Infectious. Any health authority may, when in the exercise of his discretion he believes that the public health requires it, commit any commercial prostitute, or other persons apprehended and examined and found afflicted with said diseases, or either of them who refuses or fails to take treatment adequate for the protection of the public health, to a

hospital or other place in the State of Arkansas for such treatment even over the objection of the person so diseased and treated provided the commitment can be done without endangering the life of the patient.

California

Analysis[1]

People living with HIV (PLHIV) and other communicable conditions may be prosecuted for specific intent to transmit disease.
Under California's intentional transmission of an infectious or communicable disease statute, imprisonment for not more than six months may occur if a person with an infectious or communicable disease (1) knowing that they have an infectious or communicable disease, (2) acts with "specific intent" to transmit the disease, (3) engages in conduct that "poses a substantial risk of transmission," (4) "transmits the infectious or communicable disease" to that person, and (5) does so without the knowledge of the person exposed that the defendant had the disease.[2]

A person who does all of the above but who does not transmit disease is guilty of a misdemeanor punishable for not more than 90 days, regardless of whether the disease involved is HIV or another communicable or infectious disease covered under the law.[3]

A person can't be prosecuted for acting with the "specific intent" (a conscious desire to transmit the disease), if they take, or attempt to take, practical means to prevent transmission.[4, 5] This includes "any method, device, behavior, or activity demonstrated scientifically to measurably limit or reduce the risk of transmission of an infectious or communicable disease, including, but not limited to, the use of a condom, barrier protection or prophylactic device, or good faith compliance with a medical treatment regimen for the infectious or communicable disease prescribed by a health officer or physician."[6]

But the new law also makes it clear that a person who doesn't take any of these steps to avoid transmission is not presumed to be guilty of specific intent to transmit disease required for conviction

[1] Effective January 1, 2018, several of California's HIV criminal exposure laws were repealed and/or amended. Before the repeal, it was a felony, punishable by imprisonment for three, five or eight years, for a PLHIV with knowledge of their HIV status to engage in condomless anal or vaginal sex without disclosing their HIV status and with specific intent to transmit HIV. CAL. HEALTH & SAFETY CODE § 120291 (2017), repealed by Chapter 537, SB 239. Also repealed under the same bill were heightened penalties for PLHIV engaging in sex work or soliciting sex, CAL. PENAL CODE § 647f (2017), and the statute providing for disclosure of a PLHIV's status in a criminal investigation, CAL. HEALTH & SAFETY CODE §120292 (2017). Finally, CAL. HEALTH & SAFETY CODE § 1621.5 (2017), making it illegal for PLHIV to donate blood, semen, organs or tissue, punishable by two, four or six years imprisonment was also repealed under SB 239.

[2] CAL. HEALTH & SAFETY CODE § 120290(a)(1) (2018). This statute also encompasses circumstances where an individual causes a third party with an infectious or communicable disease to transmit disease to another person via conduct that poses a substantial risk of transmission.

[3] CAL. HEALTH & SAFETY CODE § 120290(g)(2) (2018).

[4] CAL. HEALTH & SAFETY CODE § 120290(b) (2018).

[5] CAL. HEALTH & SAFETY CODE § 120290(e)(3) (2018).

[6] CAL. HEALTH & SAFETY CODE § 120290(e)(3)(2018).

under the revised law.[7] In other words, the failure to do something to prevent transmission isn't enough for a prosecutor to prove actual specific intent to transmit. Becoming pregnant, continuing a pregnancy, or declining treatment while pregnant and living with an infectious disease also are not crimes under the law.[8]

Conduct that poses a substantial risk of transmission means "an activity that has a reasonable probability of disease transmission as proven by competent medical or epidemiological evidence."[9] Conduct that poses a low or negligible risk of transmission does not meet the definition of substantial risk of transmission.[10]

The definition of infectious or communicable disease is broad, including any disease that "spreads from person to person, directly or indirectly, that has significant public health implications."[11] The definition can be interpreted to encompass diseases such as influenza, tuberculosis, measles, or other casually transmitted conditions.

In addition to any defenses that are specifically raised under the statute (for example, the defendant did not know that they were living with the disease), a defendant is allowed to present any "common law" arguments in their defense. "Common law" means arguments that have been developed under other cases to defeat prosecutions, but are not identified in the statute itself.[12]

A person with an infectious or communicable disease who disregards a health officer's instructions by engaging in certain conduct may be charged with a misdemeanor.
Under a separate section of the same statute, a person with an infectious or communicable disease is guilty of "willful exposure" if (1) a health officer or their designee, (2) acting under circumstances that make securing a quarantine or health officer order infeasible (3) instructs a person not to engage in "particularized" conduct that poses a substantial risk of transmission of the disease, and (4) the person engages in that conduct within 96 hours of receiving the instruction.[13] Violation of this provision is a misdemeanor, punishable by up to 6 months' imprisonment.[14]

This section of the statute is written much more broadly than the first section of the statute.[15] Conviction of a defendant is easier because neither "specific intent" to transmit the disease, nor transmission of the disease, are elements required to be proven for conviction. It also does not define the circumstances under which securing a quarantine or health officer order is "infeasible." Additionally, prosecution may

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[7] CAL. HEALTH & SAFETY CODE § 120290(c) (2018).
[8] CAL. HEALTH & SAFETY CODE § 120290(d) (2018).
[9] CAL. HEALTH & SAFETY CODE § 120290(e)(1) (2018).
[10] *Id*.
[11] CAL. HEALTH & SAFETY CODE § 120290(e)(2) (2018).
[12] CAL. HEALTH & SAFETY CODE § 120290(f) (2018).
[13] CAL. HEALTH & SAFETY CODE § 120290(a)(2) (2018).
[14] CAL. HEALTH & SAFETY CODE § 120290(g)(1) (2018).
[15] California had a "willful exposure" statute in place prior to the changes made by SB 239. The revision narrowed the scope of this section of the law in several ways. Before 2018, it was a misdemeanor, punishable by up to 6 months' imprisonment, for a person with a "contagious, infectious, or communicable disease" to "willfully expose" themselves to someone else. CAL. HEALTH & SAFETY CODE § 120290 (2017). SB 239 added the requirements for a health officer instruction and conduct that poses a "substantial risk" of transmission.

occur under this section even if the person exposed to the disease was aware of the defendant's condition.

More fundamentally, however, the conduct prohibited by a health officer could include a larger range of activities, such as an instruction that a person with tuberculosis not to go out in public until that person has completed medical treatment that makes them non-infectious.

A defendant charged under section (a) of California's intentional transmission of an infectious or communicable disease statute, and the complaining witnesses in the case, are entitled to privacy protections.

Under section (a) of the statute the defendant and the complaining witness(es) (the person(s) subject to the defendant's actions and who complained to the police or other authority) are afforded certain privacy protections that differ slightly. The name and identifying characteristics of the complaining witness must be worded in all documents submitted to the court in a way that protects their privacy. For example, the name of the complaining witness would be replaced in all documents filed in court with a pseudonym, a "made-up name," such as John Doe.[16] This requirement is applied unless the complaining witness tells the court that they do not want that protection. Additionally, as early as possible after a case is initiated in a court, the court will order the lawyers, law enforcement personnel, and court staff to refrain from discussing or releasing in public the name or any identifying characteristics of the complaining witness, unless the complaining witness does not want those protections.[17]

Similarly, at any time before a verdict, unless the defendant requests otherwise, a court will issue an order that lawyers, law enforcement personnel, and court staff are not to publicly disclose the name or other identifying characteristics of the defendant," except in very limited circumstances, by counsel, or during the investigation of the matter.[18] If the defendant is found guilty, then those protections no longer apply.

PLHIV may receive increased sentences or aggravated assault charges for sex crimes.

PLHIV who know their HIV status and are convicted of rape, unlawful intercourse with a person under 18 years of age, rape of a spouse, sodomy or oral copulation with a person less than 18 years of age or against another person's will, are subject to three additional years in prison for each offense.[19] Neither the intent to transmit HIV, nor HIV transmission, is required for the sentence enhancement. The enhancement is also applied regardless of the actual transmission risk posed by the conduct at issue, meaning factors such as use of antiretroviral medication or condom use are not considered. Prosecuting attorneys may use test results obtained from mandatory testing pursuant to previous sex offenses to establish a defendant's HIV status and their knowledge of that status.[20]

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[16] CAL. HEALTH & SAFETY CODE § 120290(h)(2) (2018).
[17] CAL. HEALTH & SAFETY CODE § 120290(h)(3) (2018).
[18] CAL. HEALTH & SAFETY CODE § 120290(h)(4) (2018).
[19] CAL. PENAL CODE § 12022.85 (2017).
[20] CAL. PENAL CODE § 12022.85(c) (2017). Testing may be mandated for any of the enumerated offenses for which the sentence enhancement applies, and for various other sexual offenses if the court finds there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV have been transferred from the defendant to the victim. CAL. PENAL CODE § 1202.1(e)(6)(A) (2018).

This statute has withstood constitutional challenge. In 1998, a PLHIV received a sentence enhancement of nine additional years in prison for having unprotected sex with a minor while knowing his HIV status.[21] Examining the defendant's challenge to the sentencing enhancement statute, the California Court of Appeal declined to label the application of the statute as "cruel and unusual punishment" in violation of the Eighth Amendment to the U.S. Constitution because it punished the defendant's conduct, not the HIV status itself.[22]

Mandatory HIV testing is imposed upon conviction for certain sex offenses.
Persons convicted of certain enumerated sex offenses can be required to undergo mandatory HIV testing.[23] The offenses include rape, aiding and abetting rape, unlawful intercourse with a person under 18, sexual intercourse by fraud or fear, rape of a spouse, aiding and abetting the rape of a spouse, and sodomy or oral copulation with a person less than 18 years of age, against another person's will, or by fraud or fear.[24] If a court finds that there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV was transferred from the defendant to the victim, it may also order testing for several additional kinds of sex offenses or their attempt.[25] The court shall note its finding of probable cause on the court docket and/or the "minute order" (a written order that records a verbal ruling by a judge in a court hearing), if applicable.[26]

The test shall be performed within 180 days of conviction and the person tested shall be informed of the results.[27] The test results are also transmitted by the court to the California Department of Justice and the local health officer.[28] If the test results are on file with the California Department of Justice, they are provided to defense counsel upon request, and to the prosecuting attorney under specified circumstances, including for sentencing enhancement of certain sex offenses.[29]

Additionally, if the person is convicted of one of the sex offenses listed above, or has been placed on probation or made a ward of the court as a result of committing one of these offenses, the prosecutor or victim-witness assistance bureau shall advise the victim of their right to receive the test results, and

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[21] *Guevara v. Superior Court*, 73 Cal. Rptr. 2d 421 (Cal. Ct. App. 1998).

[22] *Id.* at 424-25; (distinguishing *Robinson v. California*, 370 U.S. 660 (1962), where a "narcotics addiction" statute was invalidated, because unlike *Robinson*, the statute at issue in *Guevara* "does not criminalize the *status* of being HIV positive because it applies only where a knowingly HIV positive individual commits specified criminal *conduct*." (emphasis not added)).

[23] CAL. PENAL CODE § 1202.1(a) (2018). Persons under the age of 18 years can also be required to submit to an HIV test if: (1) they are within the jurisdiction of the juvenile court as the result of repeated disobedience to their parents or guardians, or violation of a curfew based solely on age, or school truancy, or who are found to have violated a city or county ordinance, state or federal law, other than a curfew based solely on age, and (2) have committed a sexual offense, which causes that person to be placed on probation or made a ward of the court. CAL. WEL. & INST. CODE §§ 601, 602 (2017).

[24] CAL. PENAL CODE § 1202.1(e) (2018).

[25] CAL. PENAL CODE § 1202.1(e)(6)(A) (2018). Aiding or abetting rape; inducing consent by fraud or fear to sexual intercourse, sexual penetration, oral copulation, or sodomy; penetration by foreign object; aggravated sexual assault of a child; lewd or lascivious conduct with a child; continuous sexual abuse of a child; or attempting to commit any of the aforementioned offenses. CAL. PENAL CODE §§ 264.1, 266c, 289, 269, 288, 288.5 (2017).

[26] CAL. PENAL CODE § 1202.1(e)(6)(B) (2018).

[27] CAL. PENAL CODE § 1202.1(a) (2018).

[28] CAL. PENAL CODE § 1202.1(b) (2018).

[29] *Id.;* CAL. PENAL CODE § 12022.85(c) (2018).

refer them to the local health department for counseling.[30] Upon request, the local health officer is responsible for disclosing the test results to the victim with appropriate counseling.[31]

Convictions for solicitation or engaging in prostitution while positive under CAL. PENAL CODE § 647f are invalid and vacated.

Prior to 2018, if a PLHIV who had previously been convicted of a prostitution[32] or sex offense[33] and at that time tested positive for HIV, was found guilty of either soliciting or engaging in prostitution, they were guilty of a felony and could be imprisoned for up to three years.[34, 35] Convictions for a violation of this section are now invalid and vacated.[36] All charges alleging a violation of this section are dismissed and all arrests are treated as though they never happened.[37] Any information pertaining to a person's arrest, charge, or conviction for violating Section 647f may not be used in any way adverse to their interests, including denial of any employment, benefit, license or certificate.[38]

Dismissal or recall of a sentence as a result of a conviction for soliciting or engaging in prostitution while positive

A person who engaged in sex work and is currently serving a sentence for violating CAL. PENAL CODE § 647f may request the court that imposed the sentence to dismiss it.[39] The court shall vacate the conviction and resentence on the remaining counts.[40] Credit shall be given for time served and the defendant shall be subject to whatever supervision time they would have otherwise been subject to after release, whatever is shorter, unless the court decides to release the defendant from supervision.[41] Resentencing under this section may not result in the imposition of a term longer than the original sentence, or reinstatement of charges dismissed pursuant to a plea agreement.[42]

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[30] CAL. PENAL CODE § 1202.1(d)(1) (2018).

[31] CAL. PENAL CODE § 1202.1(d)(2) (2018).

[32] See CAL. PENAL CODE § 647(b) (2018).

[33] Sex offenses are defined under CAL. PENAL CODE § 1202.1(d), (e) (2018), and include rape, unlawful intercourse with a person under 18 years of age, rape of a spouse, sodomy or oral copulation with a person under 18 years of age or against another person's will, or sexual penetration, aggravated sexual assault, assault of a child, lewd or lascivious conduct with a child, continuous sexual abuse of a child, or attempt of these offenses.

[34] CAL. PENAL CODE § 647f (2017).

[35] As the Williams Institute found in a 2015 report, California's enforcement of HIV criminal laws disproportionately affected sex workers, Latinx, and Black people. A startling 95% of all HIV-specific criminal incidents between 1988 and 2014 concerned people engaged in or suspected of engaging in sex work. Women made up 43% of those who came into contact with the criminal legal system, but less than 13% of California's HIV-positive population. White men were significantly more likely to be released and not charged than any other group, with a more pronounced contrast within sex work crimes. With the repeal of section 647f, California's HIV laws may be imposed in a fairer and less disproportionate fashion. *See* Amira Hasenbush, Ayako Miyashita & Bianca Wilson, *HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS* (updated 2016), *available at* https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-Updated-June-2016.pdf

[36] CAL. PENAL CODE § 1170.21 (2018).

[37] *Id*.

[38] *Id*.

[39] CAL. PENAL CODE § 1170.22(a) (2018).

[40] CAL. PENAL CODE § 1170.22(b) (2018).

[41] CAL. PENAL CODE § 1170.22(c) (2018).

[42] CAL. PENAL CODE § 1170.22(d) (2018).

PLHIV have also been convicted under general criminal laws.[43]

Before California's HIV criminal exposure laws were revised, effective January 1, 2018, defendants were occasionally convicted for HIV-related exposure crimes under general criminal laws, such as for making "criminal threats." For example, in *Beauford v. People*, the California Court of Appeal confirmed a conviction for, among other charges, making criminal threats.[44] While resisting arrest, the defendant spit at the officers and made comments including, "I'll make your life miserable because I'm infected with HIV."[45] A criminal threat under California law is a threat intended to, and that causes, fear in the person threatened.[46] The State must prove that (1) the defendant threatened to kill or inflict great bodily injury on another person, (2) intended the threat to be understood as such, (3) communicated the serious intention that the threat would be carried out, (4) the threat caused the person to be in fear and (5) such fear was reasonable.[47] The court held that the language and actions of the defendant could reasonably be found to be criminal threats by a jury.[48] In all likelihood prosecution for HIV-related exposure crimes under general criminal laws will continue to be rare, but does not seem to be precluded under the revised statutes.

People with venereal disease may be punished with a misdemeanor for exposing or transmitting disease to others and can be subject to mandatory treatment.

Different and separate provisions under California's Health and Safety Code also provide for imprisonment and/or a fine for exposing someone else to a venereal disease (a narrower class of diseases than under the intentional transmission of an infectious or communicable disease statute), including syphilis, gonorrhea, chancroid, lymphogranuloma venereum, granuloma inguinale, and chlamydia.[49] An individual who exposes or transmits one of these diseases to another person may be punished with a misdemeanor.[50] The statute does not define the term "expose" and there is no indication that an exposed person's knowledge of the defendant's condition would matter for the purposes of prosecution. If a person has a venereal disease, is aware that the condition is currently infectious, and has sexual intercourse, that person may also be punished with a misdemeanor.[51] Violation of these provisions may result in up to six months of imprisonment and a $1,000 fine.[52]

Persons with venereal disease who are in the infectious or potentially infectious stage and lapse from treatment for more than ten days are deemed to be in violation of control measures[53] and may be found

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[43] In a 1987 case, the defendant successfully sued the San Diego Police Department for taking and testing his blood for HIV without consent or a warrant after he bit the officers. *Barlow v. Superior Court (People)*, 236 Cal.Rptr. 134 (Cal. Ct. App. 1987). He was originally charged with two counts of battery against a police officer and one count of obstructing a police officer. *Barlow v. Ground*, 943 F.2d 1132, 1134 (9th Cir. 1991). After his HIV status was discovered, "the municipal court granted an order authorizing the [blood] tests to support charges the defendant bit the officers with intent to kill them and to inflict great bodily injury on them." *Barlow*, 236 Cal.Rptr. at 135. A jury later acquitted him of all criminal charges. *Barlow*, 943 F.2d, at 1134.

[44] No. B196860, 2008 WL 5091389, at *1 (Cal. Ct. App. Dec. 4, 2008).

[45] *Id.*

[46] CAL. PENAL CODE § 422 (2017).

[47] *Id.*

[48] *Beauford*, 2008 WL 5091389, at *3-4.

[49] CAL. HEALTH & SAFETY CODE § 120500 (2017); CAL. CODE REGS. tit. 17, § 2636(a) (2016).

[50] CAL. HEALTH & SAFETY CODE § 120600 (2017).

[51] *Id.*

[52] CAL. PENAL CODE § 19 (2017).

[53] CAL. CODE REGS. tit. 17, § 2636(j) (2017).

guilty of a misdemeanor, punishable by six months' imprisonment and a fine of up to $1,000.[54] For the purposes of prosecuting such violations, physicians and health officers may be required to testify against a defendant.[55]

People with venereal disease may be subject to quarantine and isolation.
In addition to the Health & Safety Code provisions that allow for imprisonment for certain types of exposure to venereal disease, other provisions of the same code authorize quarantine or isolation. Under certain circumstances,[56] people with venereal disease may be subject to examination to determine the "condition of the disease."[57] Additionally, persons with such conditions are required to remain under adequate and proper treatment until the treatment is completed.[58] Local health officers may make all reasonable efforts to induce compliance, including mandating inspection and quarantine.[59] Although not considered a venereal disease, persons with viral hepatitis may also be subject to isolation during acute symptoms.[60] It is unclear what procedural protections, including appeals procedures, may be in place for persons subject to public health control measures, particularly isolation, based on venereal disease status. As of publication, the authors are unaware of any case law that provides clarification.

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.*

*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.*

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[54] CAL. HEALTH & SAFETY CODE §§ 120275, 120600 (2017); CAL. PENAL CODE § 19 (2017).

[55] CAL. HEALTH & SAFETY CODE § 120595 (2017).

[56] "The department shall investigate conditions affecting the prevention and control of venereal diseases and approved procedures for prevention and control, and shall disseminate educational information relative thereto." CAL. HEALTH & SAFETY CODE § 120515 (2017).

[57] CAL. HEALTH & SAFETY CODE § 120560 (2017).

[58] CAL. CODE REGS. tit. 17, § 2636(i) (2017).

[59] CAL. HEALTH & SAFETY CODE §§ 120565, 120585 (2017); CAL. CODE REGS. tit. 17, § 2636(h), (l), (m) ("A case of gonococcus infection . . . shall be regarded as subject to isolation until the local health officer is . . .satisfied that the disease is no longer communicable. . . . A case of syphilis shall be regarded as subject to isolation until, under treatment, all syphilitic lesions of the skin or mucous membrane are completely healed . . .") (2016). Sex workers with any STI may also be subject to isolation. CAL. CODE REGS. tit. 17, § 2636(i) (2017).

[60] CAL. CODE REGS. tit. 17, § 2581 (2017).

Annotated California Codes

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.*

HEALTH & SAFETY CODE

CAL. HEALTH & SAFETY CODE § 120290 (2018)**

Intentional transmission of an infectious or communicable disease

(a) (1) A defendant is guilty of intentional transmission of an infectious or communicable disease if all of the following apply:

> (A) The defendant knows that he or she or a third party is afflicted with an infectious or communicable disease.
>
> (B) The defendant acts with the specific intent to transmit or cause an afflicted third party to transmit that disease to another person.
>
> (C) The defendant or the afflicted third party engages in conduct that poses a substantial risk of transmission to that person.
>
> (D) The defendant or the third party transmits the infectious or communicable disease to the other person.
>
> (E) If exposure occurs through interaction with the defendant and not a third party, the person exposed to the disease during voluntary interaction with the defendant did not know that the defendant was afflicted with the disease. A person's interaction with the defendant is not involuntary solely on the basis of his or her lack of knowledge that the defendant was afflicted with the disease.

(2) A defendant is guilty of willful exposure to an infectious or communicable disease if a health officer, or the health officer's designee, acting under circumstances that make securing a quarantine or health officer order infeasible, has instructed the defendant not to engage in particularized conduct that poses a substantial risk of transmission of an infectious or communicable disease, and the defendant engages in that conduct within 96 hours of the instruction. A health officer, or the health officer's designee, may issue a maximum of two instructions to a defendant that may result in a violation of this paragraph.

(b) The defendant does not act with the intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) if the defendant takes, or attempts to take, practical means to prevent transmission.

(c) Failure to take practical means to prevent transmission alone is insufficient to prove the intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(d) Becoming pregnant while infected with an infectious or communicable disease, continuing a pregnancy while infected with an infectious or communicable disease, or declining treatment for an infectious or communicable disease during pregnancy does not constitute a crime for purposes of this section.

(e) For purposes of this section, the following definitions shall apply:

(1) “Conduct that poses a substantial risk of transmission” means an activity that has a reasonable probability of disease transmission as proven by competent medical or epidemiological evidence. Conduct posing a low or negligible risk of transmission as proven by competent medical or epidemiological evidence does not meet the definition of conduct posing a substantial risk of transmission.

(2) “Infectious or communicable disease” means a disease that spreads from person to person, directly or indirectly, that has significant public health implications.

(3) “Practical means to prevent transmission” means a method, device, behavior, or activity demonstrated scientifically to measurably limit or reduce the risk of transmission of an infectious or communicable disease, including, but not limited to, the use of a condom, barrier protection or prophylactic device, or good faith compliance with a medical treatment regimen for the infectious or communicable disease prescribed by a health officer or physician.

(f) This section does not preclude a defendant from asserting any common law defense.

(g) (1) A violation of paragraph (1) of subdivision (a) or paragraph (2) of subdivision (a) is a misdemeanor, punishable by imprisonment in a county jail for not more than six months.

(2) A person who attempts to intentionally transmit an infectious or communicable disease by engaging in the conduct described in subparagraphs (A), (B), (C), and (E) of paragraph (1) of subdivision (a) is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than 90 days.

(h) (1) When alleging a violation of subdivision (a), the prosecuting attorney or the grand jury shall substitute a pseudonym for the true name of a complaining witness. The actual name and other identifying characteristics of a complaining witness shall be revealed to the court only in camera, unless the complaining witness requests otherwise, and the court shall seal the information from further disclosure, except by counsel as part of discovery.

(2) Unless the complaining witness requests otherwise, all court decisions, orders, petitions, and other documents, including motions and papers filed by the parties, shall be worded so as to protect the name or other identifying characteristics of the complaining witness from public disclosure.

(3) Unless the complaining witness requests otherwise, a court in which a violation of this section is filed shall, at the first opportunity, issue an order that prohibits counsel, their agents, law enforcement personnel, and court staff from making a public disclosure of the name or any other identifying characteristic of the complaining witness.

(4) Unless the defendant requests otherwise, a court in which a violation of this section is filed, at the earliest opportunity, shall issue an order that counsel and their agents, law enforcement personnel, and court staff, before a finding of guilt, not publicly disclose the name or other identifying characteristics of the defendant, except by counsel as part of discovery or to a limited number of relevant individuals in its investigation of the specific charges under this section. In any public disclosure, a pseudonym shall be substituted for the true name of the defendant.

(5) For purposes of this subdivision, "identifying characteristics" includes, but is not limited to, the name or any part of the name, address or any part of the address, city or unincorporated area of residence, age, marital status, relationship of the defendant and complaining witness, place of employment, or race or ethnic background.

(i) (1) A court, upon a finding of probable cause that an individual has violated this section, shall order the production of the individual's medical records or the attendance of a person with relevant knowledge thereof, so long as the return of the medical records or attendance of the person pursuant to the subpoena is submitted initially to the court for an in-camera inspection. Only upon a finding by the court that the medical records or proffered testimony are relevant to the pleading offense, the information produced pursuant to the court's order shall be disclosed to the prosecuting entity and admissible if otherwise permitted by law.

(2) A defendant's medical records, medications, prescriptions, or medical devices shall not be used as the sole basis of establishing the specific intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(3) Surveillance reports and records maintained by state and local health officials shall not be subpoenaed or released for the purpose of establishing the specific intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(4) A court shall take judicial notice of any fact establishing an element of the offense upon the defendant's motion or stipulation.

(5) A defendant is not prohibited from submitting medical evidence to show the absence of the stated intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(j) Before sentencing, a defendant shall be assessed for placement in one or more community-based programs that provide counseling, supervision, education, and reasonable redress to the victim or victims.

(k) (1) This section does not apply to a person who donates an organ or tissue for transplantation or research purposes.

(2) This section does not apply to a person, whether a paid or volunteer donor, who donates breast milk to a medical center or breast milk bank that receives breast milk for purposes of distribution.

PENAL CODE

CAL. PENAL CODE § 12022.85 (2017) **

Sentence enhancement for specified violations; Prosecutor's use of test results

(a) Any person who violates one or more of the offenses listed in subdivision (b) with knowledge that he or she has acquired immune deficiency syndrome (AIDS) or with the knowledge that he or she carries antibodies of the human immunodeficiency virus at the time of the commission of those offenses shall receive a three-year enhancement for each violation in addition to the sentence provided under those sections.

(b) Subdivision (a) applies to the following crimes:

(1) Rape in violation of Section 261.

(2) Unlawful intercourse with a person under 18 years of age in violation of Section 261.5.

(3) Rape of a spouse in violation of Section 262.

(4) Sodomy in violation of Section 286.

(5) Oral copulation in violation of Section 288a.

(c) For purposes of proving the knowledge requirement of this section, the prosecuting attorney may use test results received under subdivision (c) of Section 1202.1 or subdivision (g) of Section 1202.6.

HEALTH & SAFETY CODE

CAL. HEALTH & SAFETY CODE § 120275 (2017) **

Noncompliance with department rules

Any person who, after notice, violates, or who, upon the demand of any health officer, refuses or neglects to conform to, any rule, order, or regulation prescribed by the department respecting a quarantine or disinfection of persons animals, things, or places, is guilty of a misdemeanor.

CAL. HEALTH & SAFETY CODE § 120500 (2017)

"Venereal diseases"

As used in the Communicable Disease Prevention and Control Act (Section 27) "venereal diseases" means syphilis, gonorrhea, chancroid, lymphopathia venereum, granuloma inguinale, and chlamydia.

CAL. HEALTH & SAFETY CODE § 120560 (2017)

Submission by diseased person to examination

Every diseased person shall from time to time submit to approved examinations to determine the condition of the disease.

CAL. HEALTH & SAFETY CODE § 120565 (2017)

Investigation of a diseased person's failure to continue control measures

If any person subject to proper venereal disease control measures discontinues any control procedure required by this chapter, the agency administering the procedure prior to the discontinuance shall make reasonable efforts to determine whether the person is continuing to comply with the procedure elsewhere.

CAL. HEALTH & SAFETY CODE § 120585 (2017)

Inspection and quarantine by local health officer

Local health officers may inspect and quarantine any place or person when the procedure is necessary to enforce the regulations of the board or the department.

CAL. HEALTH & SAFETY CODE § 120595 (2017)

Proceedings on violation of chapter

In any prosecution for a violation of any provision of this chapter, or any rule or regulation of the board made pursuant to this chapter, or in any quarantine proceeding authorized by this chapter, or in any habeas corpus or other proceeding in which the legality of the quarantine is questioned, any physician, health officer, spouse, or other person shall be competent and may be required to testify against any person against whom the prosecution or other proceeding was instituted, and the privileges provided by Sections 970, 971, 980, 994, and 1014 of the Evidence Code are not applicable to or in any such prosecution or proceeding.

CAL. HEALTH & SAFETY CODE § 120600 (2017) **

Violations of chapter as misdemeanor

Any person who refuses to give any information to make any report, to comply with any proper control measure or examination, or to perform any other duty or act required by this chapter, or who violates any provision of this chapter or any rule or regulation of the state board issued pursuant to this chapter, or who exposes any person to or infects any person with any venereal disease; or any person infected with a venereal disease in an infectious state who knows of the condition and who marries or has sexual intercourse, is guilty of a misdemeanor.

PENAL CODE

CAL. PENAL CODE § 1170.21 (2018) **

Dismissal of charges under former Cal. Penal Code § 647f

A conviction for a violation of Section 647f as it read on December 31, 2017, is invalid and vacated. All charges alleging violation of Section 647f are dismissed and all arrests for violation of Section 647f are deemed to have never occurred. An individual who was arrested, charged, or convicted for a violation of Section 647f may indicate in response to any question concerning his or her prior arrest, charge, or conviction under Section 647f that he or she was not arrested, charged, or convicted for a violation of Section 647f. Notwithstanding any other law, information pertaining to an individual's arrest, charge, or conviction for violation of Section 647f shall not, without the individual's consent, be used in any way adverse to his or her interests, including, but not limited to, denial of any employment, benefit, license, or certificate.

CAL. PENAL CODE § 1170.22 (2018)**

Convictions under former Cal. Penal Code § 647f are vacated and defendants resentenced

(a) A person who is serving a sentence as a result of a violation of Section 647f as it read on December 31, 2017, whether by trial or by open or negotiated plea, may petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case.

(b) If the court's records show that the petitioner was convicted for a violation of Section 647f as it read on December 31, 2017, the court shall vacate the conviction and resentence the person for any remaining counts.

(c) A person who is serving a sentence and resentenced pursuant to subdivision (b) shall be given credit for any time already served and shall be subject to whatever supervision time he or she would have otherwise been subject to after release, whichever is shorter, unless the court, in its discretion, as part of its resentencing order, releases the person from supervision.

(d) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

(e) Upon completion of sentence for a conviction under Section 647f as it read on December 31, 2017, the provisions of Section 1170.21 shall apply.

(f) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this section.

(g) A resentencing hearing ordered under this section shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution.

(h) The provisions of this section apply to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not have been guilty of an offense or would not have been guilty of an offense governed by this section.

(i) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of petitions and applications provided in this section.

CAL. PENAL CODE § 1202.1 (2018)**

Requirement of HIV test upon conviction of sex offense

(a) Notwithstanding Sections 120975 and 120990 of the Health and Safety Code, the court shall order every person who is convicted of, or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of a violation of, a sexual offense listed in subdivision (e), whether or not a sentence or fine is imposed or probation is granted, to submit to a blood or oral mucosal transudate saliva test for evidence of antibodies to the probable causative agent of acquired immunodeficiency syndrome (AIDS) within 180 days of the date of conviction. Each person tested under this section shall be informed of the results of the blood or oral mucosal transudate saliva test.

(b) Notwithstanding Section 120980 of the Health and Safety Code, the results of the blood or oral mucosal transudate saliva test to detect antibodies to the probable causative agent of AIDS shall be transmitted by the clerk of the court to the Department of Justice and the local health officer.

(c) Notwithstanding Section 120980 of the Health and Safety Code, the Department of Justice shall provide the results of a test or tests as to persons under investigation or being prosecuted under Section 12022.85, if the results are on file with the department, to the defense attorney upon request and the results also shall be available to the prosecuting attorney upon request for the purpose of either preparing counts for a sentence enhancement under Section 12022.85 or complying with subdivision (d).

(d) (1) In every case in which a person is convicted of a sexual offense listed in subdivision (e) or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of the commission of a sexual offense listed in subdivision (e), the prosecutor or the prosecutor's victim-witness assistance bureau shall advise the victim of his or her right to receive the results of the blood or oral mucosal transudate saliva test performed pursuant to subdivision (a). The prosecutor or the prosecutor's victim-witness assistance bureau shall refer the victim to the local health officer for counseling to assist him or her in understanding the extent to which the particular circumstances of the crime may or may not have placed the victim at risk of transmission of the human immunodeficiency virus (HIV) from the accused, to ensure that the victim understands the limitations and benefits of current tests for HIV, and to assist the victim in determining whether he or she should make the request.

(2) Notwithstanding any other law, upon the victim's request, the local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, as specified in subdivision (g), positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances as follows:

(A) To help the victim understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the perpetrator.

(B) To ensure that the victim understands both the benefits and limitations of the current tests for HIV.

(C) To obtain referrals to appropriate health care and support services.

(e) For purposes of this section, "sexual offense" includes any of the following:

(1) Rape in violation of Section 261 or 264.1.

(2) Unlawful intercourse with a person under 18 years of age in violation of Section 261.5 or 266c.

(3) Rape of a spouse in violation of Section 262 or 264.1.

(4) Sodomy in violation of Section 266c or 286.

(5) Oral copulation in violation of Section 266c or 288a.

(6) (A) Any of the following offenses if the court finds that there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the defendant to the victim:

(i) Sexual penetration in violation of Section 264.1, 266c, or 289.

(ii) Aggravated sexual assault of a child in violation of Section 269.

(iii) Lewd or lascivious conduct with a child in violation of Section 288.

(iv) Continuous sexual abuse of a child in violation of Section 288.5.

(v) The attempt to commit any offense described in clauses (i) to (iv), inclusive.

(B) For purposes of this paragraph, the court shall note its finding on the court docket and minute order if one is prepared.

(f) Any blood or oral mucosal transudate saliva tested pursuant to subdivision (a) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the person who is tested unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances.

(h) The local health officer and the victim shall comply with all laws and policies relating to medical confidentiality, subject to the disclosure authorized by subdivisions (g) and (i).

(i) Any victim who receives information from the local health officer pursuant to subdivision (g) may disclose the information as he or she deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person who transmits test results or discloses information pursuant to this section shall be immune from civil liability for any action taken in compliance with this section.

California Code of Regulations

TITLE 17. PUBLIC HEALTH

CAL. CODE REGS. TIT. 17, § 2581 (2017)

Hepatitis, Serum (Homologous Serum Jaundice)

The patient shall be isolated in accordance with Section 2518 during the acute symptoms. There are no restrictions on contacts.

CAL. CODE REGS. TIT. 17, § 2636 (2017)

Venereal Diseases

(a) Sections 2636 to 2636(m) inclusive pertain to the venereal diseases and, unless otherwise specified, shall include syphilis, gonococcus infection, granuloma inguinale, lymphogranuloma venereum, and chancroid. (See Chapter 765, Statutes 1947; also Section 21100, Health and Safety Code.)

(h) Investigation. All city, county and other local health officers are hereby directed to use every available means to ascertain the existence of, and immediately to investigate, all reported or suspected cases of venereal disease in the infectious stages within their several territorial jurisdictions, and to ascertain the sources of such infections. The attending physician, in every case of venereal disease coming to him for treatment, shall endeavor to discover the source of infection, as well as any sexual or other intimate contacts which the patient was in the communicable stage of the disease. The physician shall make an effort, through the cooperation of the patient, to bring these cases in for examination and,

if necessary, treatment. If, within 10 days of identification, any such source of infection or any such contact has not given satisfactory evidence of being under the care of a physician, such person shall be reported to the health officer, the physician's name being kept confidential in any investigation by the health department. In cases in which prostitutes are named as sources of infection, all obtainable information as to name, description, residence, etc., shall be given to the health officer at once.

In carrying out such investigations, all health officers are hereby invested with full powers of inspection, examination and isolation of all persons known to be infected with a venereal disease in an infectious stage, or suspected of being infected with a venereal disease in an infectious stage and are hereby directed:

(1) To make such examinations as are deemed necessary of persons reasonably suspected of having a venereal disease in an infectious stage.

(2) When the individual to be examined is a woman, to provide the services of a woman physician if such physician is available, when so requested by the individual to be examined.

(3) To isolate such person, whenever deemed necessary for the protection of the public health. In establishing isolation the health officer shall proceed as provided in Sections 2636(i), 2636(j), 2636(l) and 2636(m).

(i) Isolation. Any person who presents himself (or herself) to any physician or person for treatment or diagnosis of any venereal disease except late syphilis shall be considered to be in modified isolation. The requirements of this isolation shall be considered fulfilled if the patient remains under adequate and proper treatment until the completion of the course of treatment, except in instances in which, because of occupation, suspicion of prostitution, or other reason, the health officer deems more strict isolation necessary to safeguard other persons.

(j) Violation of Isolation to be Reported. Whenever any person while in the infectious or potentially infectious stage of a venereal disease, lapses from treatment for a period of more than 10 days after the time appointed for such treatment, the said diseased person shall be deemed to have violated the requirements of isolation, and the physician or person in attendance upon such case shall report the same at once to the local health department, giving the person's name, address, and report number, together with such other information as requested on the card provided for this purpose, except that this shall not be required in instances in which a report has been received that the patient is under treatment elsewhere.

(l) Gonorrhea. A case of gonococcus infection of the genitourinary tract shall be regarded as subject to isolation until the local health officer is reasonable satisfied that the disease is no longer communicable.

(m) Syphilis. A case of syphilis shall be regarded as subject to isolation until, under treatment, all syphilitic lesions of the skin or mucous membrane are completely healed and a competent clinical examination fails to show the presence of any area from which infection may be spread. Any patient who refuses or otherwise fails to receive a full course of a currently accepted method of treatment, or who discontinues treatment prematurely, may be subjected to strict isolation if the health officer deems it necessary.

Colorado

Analysis

People living with HIV (PLHIV) convicted of sex offenses receive enhanced mandatory sentences.

PLHIV in Colorado may receive more severe sentences because of their HIV status if they are convicted of a sex offense, such as sexual assault.[1] Specifically, if a PLHIV is convicted of a sexual offense involving penetration,[2] was aware of their HIV status at the time of the offense,[3] and transmission of HIV occurred,[4] a sentencing judge is required to impose a term of incarceration between the upper limit authorized for the offense committed and life.[5] "Sexual penetration" is defined as penile-vaginal sex, oral sex, oral stimulation of the anus, or anal sex.[6] Even under a lenient application of this statute, a PLHIV will receive triple the minimum sentence a defendant would otherwise be eligible to receive for the same crime.[7]

Although transmission of HIV is required for application of the harsher mandatory penalty, intent to transmit disease is not. The statute is also silent on the role of risk reduction measures, such as using condoms or being virally suppressed through adherence to treatment. Thus, conduct that poses minimal risk of HIV transmission-including oral sex, sex with condoms, and sex while a defendant is virally suppressed—may still be punished with the elevated mandatory penalty if transmission improbably results.

The current law is the result of amendments to the law that occurred in May 2016.[8] Prior to this change in the law, transmission of HIV was not required to apply the sentence enhancement for sex offenses—exposure alone was sufficient for imposition of mandatory harsher sentences.[9] Moreover, the mandatory penalties were considerably harsher. If a court concluded that a defendant had notice of their HIV status prior to the commission of the offense, the judge was required to impose a minimum

[1] COLO. REV. STAT. § 18-3-415.5(5)(b) (2016).
[2] COLO. REV. STAT. § 18-3-415.5(1) (2016).
[3] COLO. REV. STAT. § 18-3-415.5(5)(a)(I) (2016).
[4] COLO. REV. STAT. § 18-3-415.5(5)(a)(II) (2016).
[5] COLO. REV. STAT. § 18-3-415.5(5)(b) (2016).
[6] COLO. REV. STAT. § 18-3-401(5) (2016).
[7] COLO. REV. STAT. § 18-1.3-401(V)(A) (For Class 2, 3, and 4 felonies, the maximum authorized punishment is triple the length of the minimum authorized punishment)
[8] Victoria Law, *Activists Win Legislative Overhaul of Colorado's HIV Criminalization Laws, Await Governor's Signature*, THEBODY.COM, May 24, 2016, *available at* http://www.thebody.com/content/77636/activists-win-legislative-overhaul-of-colorados-hi.html.
[9] COLO. REV. STAT. § 18-1.3-401(5)(b) (amended 2016, current version at COLO. REV. STAT. § 18-3-415.5(5)(b) (2016)).

penalty of at least three times the upper limit authorized for the offense.[10] Mandatory HIV testing for sex workers and the felony penalty for PLHIV engaging in sex work with knowledge of HIV status[11] were also eliminated.[12]

HIV exposure cases have been prosecuted under general criminal laws in Colorado.

Incidents of HIV exposure in Colorado have been prosecuted under a variety of general criminal laws, including reckless endangerment, regardless of the actual likelihood of transmission. In a 1999 case, a PLHIV was charged with attempted manslaughter when, knowing his HIV status, he sexually assaulted a 12-year-old boy without using a condom.[13] The man was convicted of two counts of sexual assault and one count of reckless endangerment, the latter being a lesser included offense of attempted manslaughter.[14] In Colorado, reckless endangerment is defined as exposing another to a "substantial risk of serious bodily injury."[15] Proof of intent to transmit HIV is not required and it does not matter whether HIV is transmitted, so long as there was a risk of transmission.

Felony menacing charges may also apply if a PLHIV knowingly, by any threat or physical action, places or attempts to place another person in fear of "imminent serious bodily injury."[16] Menacing is a class 5 felony if it is committed by the use of a deadly weapon or by representing that the person is armed with a deadly weapon.[17] In *People v. Shawn,* the Colorado Court of Appeals held that, because HIV is capable of causing significant injury, a person's HIV status could constitute a deadly weapon for the purposes of the menacing statute.[18] In that case, a PLHIV was convicted of menacing when he allegedly scratched and pinched a store manager, broke his skin, and shouted "I'm HIV positive, let go of me, let go of me."[19] Despite the complainant's testimony that he was not in imminent fear of serious bodily injury, the court concluded that the defendant's statements were intended to cause such fear and, as such, were menacing.[20] Citing state Supreme Court precedent, the court also reasoned that HIV was a deadly weapon because a deadly weapon does not have to be *likely* to cause serious bodily injury, only *capable* of doing so.[21] The court determined that "the dangers of HIV are widely known," and the man's HIV status was "used" as a weapon when he broke the store manager's skin, giving

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[10] *Id.*

[11] Under the current and former law, engaging in prostitution is a misdemeanor for someone who does not have HIV. COLO. REV. STAT. § 18-7-201(3) (2016).

[12] Formerly at COLO. REV. STAT. §§ 18-7-201.5, 18-7-201.7(2) (repealed in 2016). The related penalty for "patronizing a prostitute with knowledge of being infected with acquired immune deficiency syndrome" was also repealed. Formerly at COLO. REV. STAT. § 18-7-205.7 (2016).

[13] *People v. Dembry*, 91 P.3d 431, 433 (Colo. Ct. App. 2003).

[14] *Id.*

[15] COLO. REV. STAT. § 18-3-208 (2016).

[16] COLO. REV. STAT § 18-3-206(1) (2016).

[17] COLO. REV. STAT §§ 18-3-206(1)(a), 18-3-206(1)(b) (2016).

[18] 107 P.3d 1033, 1036 (Colo. App. 2004).

[19] *Id.* at 1035.

[20] *Id.*

[21] *Id.* at 1036 (citing *People v. Stewart*, 55 P.3d 107, 117 (Colo. 2002) (emphasis added).

himself "ready access to means of transmitting HIV and thus used the infection to attempt to induce fear in the victim."[22]

In *People v. Perez*, a PLHIV was convicted of attempted extreme indifference murder[23] and two counts of sexual abuse when he allegedly made his stepdaughter engage in masturbation, oral sex, and penile-vaginal sex with him while knowing that his HIV status.[24] On appeal, the defendant argued that he did not act with the "universal malice" necessary for a conviction of attempted extreme indifference murder.[25] "Universal malice" is defined as the "depravity of the human heart which determines to take life upon slight or insufficient provocation, without knowing or caring who may be the victim."[26] On appeal, the Colorado Court of Appeals found that there was not sufficient evidence to show that there was any universal malice because the defendant knew the victim and his conduct was directed towards her alone, as opposed to other unknown victims.[27] On this basis, the conviction for attempted extreme indifference murder was overturned.[28]

Other cases of HIV exposure being prosecuted under general criminal laws in Colorado include:

- In June 2010, a PLHIV was charged with attempted second-degree assault with a deadly weapon after he allegedly spat on a technician while being fitted for an electronic monitoring bracelet.[29]
- In 2009, a PLHIV man pled guilty to felony child abuse and was sentenced to 15 years imprisonment for not disclosing his HIV status to his pregnant fiancée. His fiancée and son tested positive for HIV after doctors were puzzled why the four-month-old baby failed to thrive. [30]

State or local health authorizes may impose restrictive measures on persons infected with a sexually transmitted infection (STI).

When a health official has cause to believe "that a person has a sexually transmitted infection and poses a credible risk to the public health" on the basis of evidence-based, medical, or epidemiological information,[31] they may respond with a range of orders: an order for the person to be examined and tested; an order to report to a qualified health professional; or an order to cease and desist from specific conduct that poses a risk to public health.[32] Colorado defines sexually transmitted diseases as including "chlamydia, syphilis, gonorrhea, HIV, and relevant types of hepatitis, as well as any other

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[22] *Id.* at 1037.

[23] The crime has since been renamed "murder in the first degree." COLO. REV. STAT. § 18-3-102(1)(d) (2016).

[24] 972 P.2d 1072, 1073 (Colo. Ct. App. 1998).

[25] *Id.* at 1073-74.

[26] *Id.* at 1074 (referring to COLO. REV. STAT. § 18-3-102(1)(d) (1997)). Murder in the first degree convictions of this type now require, "circumstances evidencing an attitude of universal malice manifesting extreme indifference to the value of human life generally." COLO. REV. STAT. § 18-3-102(1)(d) (2016).

[27] *Id.*

[28] *Id.*

[29] Joseph Boven, *Denver HIV-positive Man Charged With Using Spit as a Deadly Weapon*, COLORADO INDEPENDENT, June 9, 2010, *available at* http://coloradoindependent.com/55114/denver-hiv-positive-man-charged-with-using-spit-as-deadly-weapon.

[30] Jessica Zartler, *HIV Positive Man Charged with Child Abuse*, NBC11NEWS.COM, Jan. 6, 2009, *available at* http://www.nbc11news.com/home/headlines/37152584.html; *Man Gets 15 Years for Infecting Son*, KKTV.COM, July 19, 2009, *available at* http://www.kktv.com/home/headlines/51137102.html.

[31] COLO. REV. STAT. § 25-4-412(2) (2016).

[32] COLO. REV. STAT. §§ 25-4-412(2)(a), 25-4-412(2)(b), 25-4-412(2)(c) (2016).

sexually transmitted infection, regardless of mode of transmission."[33] Of note, an order or restrictive measure is to be directed at someone with an STI only when "other measures to protect the public health have failed, including all reasonable efforts, which must be documented, to obtain the voluntary cooperation of the person who may be subject to the order or restrictive measure."[34] Health officials bear the burden of proof to show that the terms proposed are no more restrictive than necessary to protect public health.[35]

If a person fails to comply with a cease and desist order, health official may enforce the order by imposing whatever restrictions are necessary to prevent the conduct that poses a risk to public health.[36] Any restriction must be in writing, describe the period of restriction (not to exceed three months), and other terms of the restriction.[37] Notice provided to the individual must state that they have the right to refuse to comply and may also appear in a judicial hearing in district court to review the order.[38] Should a person refuse to cooperate with the order, health officials may petition a district court for an order of compliance.[39] The court hears the matter within 14 days of the request in a closed and confidential hearing—again, health officials bear the burden of proof to demonstrate by clear and convincing evidence that the necessary grounds exist for the issuance of the order, the need for compliance, and that the terms of the order are not more restrictive than necessary.[40] Health officials must petition the court for enforcement within 30 days of the individual's refusal to comply—otherwise, the individual may petition the district court for dismissal of the order, which will be expunged from public health records upon the court's granting of the dismissal.[41]

If the above procedures have been exhausted and cannot be observed, health officials may pursue emergency public health procedures, such as bringing an action in district court to enjoin the individual from continuing to engage in conduct that poses an "evidence-based risk to public health."[42] A court may also issue a custody order, which permits an individual to be detained for up to 72 hours so that they may undergo examination, testing or treatment. [43] If a person contests testing or treatment procedures, no such procedures will be performed prior to a hearing.[44] The required procedures for a hearing on the matter are similar to those outlined above.[45]

Specific public health restrictions are available for PLHIV.

When public health officials believe, on the basis of medical or epidemiological information, that a PLHIV is a danger to the public, they may order such person to 1) be examined or tested to confirm HIV infection; 2) report to a health care provider to receive counseling and information on how to avoid

[33] COLO. REV. STAT. § 25-4-402 (2016).
[34] COLO. REV. STAT. § 25-4-412(1) (2016).
[35] *Id.*
[36] COLO. REV. STAT. § 25-4-412(3)(a) (2016).
[37] COLO. REV. STAT. § 25-4-412(3)(b) (2016).
[38] COLO. REV. STAT. § 25-4-412(4)(a)(I) (2016).
[39] COLO. REV. STAT. § 25-4-412(4)(a)(II) (2016).
[40] COLO. REV. STAT. §§ 25-4-412(4)(a)(III), 25-4-412(5) (2016).
[41] COLO. REV. STAT. § 25-4-412(V)(b) (2016).
[42] COLO. REV. STAT. § 25-4-413(1) (2016).
[43] COLO. REV. STAT. § 25-4-413(2)(a) (2016).
[44] COLO. REV. STAT. § 25-4-413(2)(c)(2016).
[45] COLO. REV. STAT. §§ 25-4-413(3), 25-4-413(4), 25-4-413(5), 25-4-413(6) (2016).

infecting others; 3) cease and desist conduct which endangers the health of others, but only if there is clear and convincing evidence that the person has received counseling from a health care provider and continued to engage in conduct that endangers others.[46]

A PLHIV's violation of a cease and desist order authorizes public health officials to impose restrictions on the person "as are necessary to prevent the specific conduct which endangers the health of others."[47] As above, any restriction must be in writing, set out the terms and duration of the order, and rely on the least restrictive means necessary to protect public health. [48] The State Health Department reviews and approves any order issued at the county, district or municipal level.[49] If a person refuses to voluntarily comply with the order once they have received notice, health officials may petition the district court for an order of compliance with the order.[50] The court holds a closed and confidential hearing within ten days of the request and notice of the place, date and time of the hearing are provided by personal service or certified mail. [51] Health officials must demonstrate by clear and convincing evidence that the specified grounds for the order exist, the necessity for compliance, and that the conditions imposed are the least restrictive necessary to protect public health.[52] As above, if health officials fail to petition the court for an order of compliance within 30 days of a PLHIV's initial refusal to comply, the individual can petition the district court to dismiss the order.[53]

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.*

[46] COLO. REV. STAT. § 25-4-1406(2) (2016).
[47] COLO. REV. STAT. § 25-4-1406(3) (2016).
[48] *Id.*
[49] *Id.*
[50] COLO. REV. STAT. § 25-4-1406(4)(a) (2016).
[51] *Id.* COLO. REV. STAT. § 25-4-1406(5) (2016).
[52] COLO. REV. STAT. § 25-4-1406(4)(b) (2016).
[53] *Id.*

Code of Colorado

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 18, CRIMINAL CODE

COLO. REV. STAT. § 18-3-415.5 (2016) **

Testing persons charged with certain sexual offenses for serious sexually transmitted infections – mandatory testing

(1) For purposes of this section, "sexual offense" is limited to a sexual offense that consists of sexual penetration, as defined in section 18-3-401 (6), involving sexual intercourse or anal intercourse, and "HIV" has the same meaning as set forth in section 25-4-402 (4).

(2) The court shall order any adult or juvenile who is bound over for trial subsequent to a preliminary hearing or after having waived the right to a preliminary hearing on a charge of committing a sexual offense to submit to a diagnostic test for the human immunodeficiency virus (HIV) and HIV infection, said diagnostic test to be ordered in conjunction with the diagnostic test ordered pursuant to section 18-3-415. The results of the diagnostic test must be reported to the district attorney. The district attorney shall keep the results of such diagnostic test strictly confidential, except for purposes of pleading and proving the mandatory sentencing provisions specified in subsection (5) of this section.

(3)

(a) If the person tested pursuant to subsection (2) of this section tests positive for the human immunodeficiency virus (HIV) and HIV infection, the district attorney may contact the state department of public health and environment or any county, district, or municipal public health agency to determine whether the person had been notified prior to the date of the offense for which the person has been bound over for trial that he or she tested positive for the human immunodeficiency virus (HIV) and HIV infection.

(b) If the district attorney determines that the person tested pursuant to subsection (2) of this section had notice of his or her HIV infection prior to the date the offense was committed, the district attorney may file an indictment or information alleging such knowledge and seeking the mandatory sentencing provisions authorized in subsection (5) of this section. Any such allegation must be kept confidential from the jury and under seal of court.

(c) The state department of public health and environment or any county, district, or municipal public health agency shall provide documentary evidence limited to whether the person tested pursuant to subsection (2) of this section had notice of or had discussion concerning his or her HIV infection and the date of such notice or discussion. The parties may stipulate that the person identified in the documents as having notice or discussion of his or her HIV infection is the person tested pursuant to subsection (2) of this section. Such stipulation shall constitute conclusive proof that said person had notice of his or her HIV infection prior to committing the substantive offense, and the court shall sentence said person in accordance with subsection (5) of this section.

(5)

(a) If a verdict of guilty is returned on the substantive offense with which the person tested pursuant to subsection (2) of this section is charged, the court shall conduct a separate sentencing hearing as soon as practicable to determine whether said person had notice of his or her HIV infection prior to the date the offense was committed, as alleged. The judge who presided at trial or before whom the guilty plea was entered or a replacement for said judge in the event he or she dies, resigns, is incapacitated, or is otherwise disqualified as provided in section 16-6-201, C.R.S, shall conduct the hearing. At the sentencing hearing, the district attorney has the burden of proving beyond a reasonable doubt that:

(I) The person had notice of his or her HIV infection prior to the date the offense was committed, as alleged; and

(II) The infectious agent of the HIV infection was in fact transmitted.

(b) If the court determines that the person tested pursuant to subsection (2) of this section had notice of the HIV infection prior to the date the offense was committed and the infectious agent of the HIV infection was in fact transmitted, the judge shall sentence the person to a mandatory term of incarceration of at least the upper limit of the presumptive range for the level of offense committed, up to the remainder of the person's natural life, as provided in section 18-1.3-1004.

COLO. REV. STAT. § 18-3-401 (2016)

Definitions

(6) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, analingus, or anal intercourse. Emission need not be proved as an element of any sexual penetration. Any penetration, however slight, is sufficient to complete the crime.

COLO. REV. STAT. § 18-1.3-401 (2016) **

Felonies classified – presumptive penalties

(V) (A) Except as otherwise provided in section 18-1.3-401.5[54] for offenses contained in article 18 of this title committed on or after October 1, 2013, as to any person sentenced for a felony committed on or after July 1, 1993, felonies are divided into six classes that are distinguished from one another by the following presumptive ranges of penalties that are authorized upon conviction:

Class	Minimum Sentence	Maximum Sentence	Parole
1	Life imprisonment	Death	None
2	Eight years imprisonment	24 years imprisonment	Five years
3	Four years imprisonment	12 imprisonment	Five years
4	Two years imprisonment	Six years imprisonment	Three years
5	One year imprisonment	Three years imprisonment	Two years
6	One year imprisonment	18 months imprisonment	One year

[54] Refers to drug felonies.

COLO. REV. STAT. § 18-1.3-501 (2016) **

Misdemeanors classified – drug misdemeanors and drug petty offenses classified – penalties – definitions

(1) (a) Except as otherwise provided in paragraph (d) of this subsection (1), misdemeanors are divided into three classes that are distinguished from one another by the following penalties that are authorized upon conviction except as provided in subsection (1.5) of this section: 18-1.3-501-01 1 =c2 Six months imprisonment, or five =c3 Eighteen months imprisonment, or =c2 hundred dollars fine, or both =c3 five thousand dollars fine, or both 2 =c2 Three months imprisonment, or two =c3 Twelve months imprisonment, or one =c2 hundred fifty dollars fine, or both =c3 thousand dollars fine, or both 3 =c2 Fifty dollars fine =c3 Six months imprisonment, or seven =c3 hundred fifty dollars fine, or both =te.[55]

TITLE 25, PUBLIC HEALTH AND ENVIRONMENT

COLO. REV. STAT. § 25-4-401 (2016)

Legislative declaration

(1) The general assembly declares that:

> (a) Sexually transmitted infections, regardless of the mode of transmission, impact the public health of the state and are a matter of statewide concern;

(2) The general assembly further declares that:

> (b) Efforts to control sexually transmitted infections include public education, counseling, voluntary testing, linkage to treatment, prevention, and access to services;
>
> (c) Restrictive enforcement measures may be used only when necessary to protect the public health;

COLO. REV. STAT. § 25-4-402 (2016)

Definitions

As used in this part 4:

(10) "Sexually transmitted infection" refers to chlamydia, syphilis, gonorrhea, HIV, and relevant types of hepatitis, as well as any other sexually transmitted infection, regardless of mode of transmission, as designated by the state board by rule upon making a finding that the particular sexually transmitted infection is contagious.

COLO. REV. STAT. § 25-4-412 (2016)

Public safety – public health procedures – orders for compliance – petitions – hearings

(1) An order or restrictive measure directed to a person with a sexually transmitted infection must only be used as the last resort when other measures to protect the public health have failed, including all

[55] This is the official language in the statute; the *erratum* are in the original.

reasonable efforts, which must be documented, to obtain the voluntary cooperation of the person who may be subject to the order or restrictive measure. The order or restrictive measure must be applied serially with the least intrusive measures used first. The state department or local public health agency has the burden of proof to show that specified grounds exist for the issuance of the order or restrictive measure and that the terms and conditions imposed are no more restrictive than necessary to protect the public health.

(2) When the executive director or the local director, within his or her respective jurisdiction, knows or has reason to believe, because of evidence-based, medical, or epidemiological information, that a person has a sexually transmitted infection and poses a credible risk to the public health, he or she may issue an order to:

(a) Require the person to be examined and tested to determine whether he or she has acquired a sexually transmitted infection;

(b) Require him or her to report to a qualified health care provider for counseling regarding sexually transmitted infections, information on treatment, and how to avoid transmitting sexually transmitted infections to others; or

(c) Direct a person with a sexually transmitted infection to cease and desist from specific conduct that poses risks to the public health, but only if the executive director or local director has determined that clear and convincing evidence exists to believe that such person has been ordered to report for counseling or has received counseling by a qualified health care provider and continues to demonstrate behavior that poses an evidence-based risk to the public health.

(3)

(a) If a person violates a cease-and-desist order issued pursuant to paragraph (c) of subsection (2) of this section and it is shown that the person poses an evidence-based risk to the public health, the executive director or the local director may enforce the cease-and-desist order by imposing such restrictions upon the person as are necessary to prevent the specific conduct that risks the public health. Restrictions may include required participation in evaluative, therapeutic, and counseling programs.

(b) Any restriction must be in writing, setting forth the name of the person to be restricted; the initial period of time that the restrictive order is effective, not to exceed three months; the terms of the restrictions; and any other conditions necessary to protect the public health. Restrictions must be imposed in the least restrictive manner necessary to protect the public health.

(c) The executive director or local director who issues an order pursuant to this subsection (3) shall review petitions for reconsideration from the person affected by the order. Restriction orders issued by local directors shall be submitted for review and approval by the executive director.

(4)

(a)

(I) Upon the issuance of an order by the state department or a local public health agency pursuant to subsection (2) or (3) of this section, the state department or local public

health agency shall give notice promptly, personally, and confidentially to the person who is the subject of the order. The notice must state the grounds and provisions of the order and notify the person who is the subject of the order that he or she has the right to refuse to comply with the order, that he or she has the right to be present at a judicial hearing in the district court to review the order, and that he or she may have an attorney appear on his or her behalf at the hearing. If a respondent to any such action cannot afford an attorney, one shall be appointed for him or her at the commencement of the court process.

(II) If the person who is the subject of the order refuses to comply with the order and refuses to voluntarily cooperate with the executive director or local director, the executive director or local director may petition the district court for an order of compliance with the order. The executive director or local director shall request that the county or city and county attorney, or district public health agency, file such petition in the district court. However, if the county or city and county attorney, or district public health agency, refuses to act, the executive director may file such petition and be represented by the attorney general.

(III) If an order of compliance is requested, the court shall hear the matter within fourteen days following the request. Notice of the place, date, and time of the hearing must be by personal service or, if the person who is the subject of the order is not available, mailed by prepaid certified mail, return receipt requested, at the person's last-known address. Proof of mailing by the state department or local public health agency is sufficient notice under this section. The state department or local public health agency has the burden of proof to show by clear and convincing evidence that the specified grounds exist for the issuance of the order, the need for compliance, and the terms and conditions imposed in the order are no more restrictive than necessary to protect the public health.

(IV) An officer or employee of the state department or a local public health agency must not be examined in any judicial, legislative, executive, or other proceedings as to the existence or content of any individual's report, other than the respondent in a proceeding authorized by this section, made by such department or agency pursuant to this part 4; the existence of the content of the reports received pursuant to section 25-4-405; or the result of an investigation conducted pursuant to section 25-5-408.

(V) Upon the conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the original order.

(b) If the executive director or local director does not petition the district court for an order of compliance within thirty days after the person who is the subject of the order refuses to comply, the person may petition the district court for dismissal of the order. If the district court dismisses the order, the fact that the order was issued must be expunged from the records of the state department or the local public health agency.

(5) Any hearing conducted pursuant to this section must be closed and confidential, and any transcripts or records related to the hearing are also confidential.

COLO. REV. STAT. § 25-4-413 (2016)

Emergency public health procedures – injunctions

(1) When the procedures set forth in section 25-4-412 have been exhausted or cannot be satisfied and the executive director or a local director, within his or her respective jurisdiction, knows or has reason to believe, based on accurate, evidence-based, and medical and epidemiological information, that a person has acquired a sexually transmitted infection and that the person presents an imminent risk to the public health, the executive director or the local director may bring an action in district court, pursuant to rule 65 of the Colorado rules of civil procedure, to enjoin the person from engaging in or continuing to engage in specific conduct that poses an evidence-based risk to the public health. The executive director or the local director shall request the district attorney to file such an action in the district court. However, if the district attorney refuses to act, the executive director may file the action and be represented by the attorney general. The court is authorized to hold an ex parte proceeding when necessary.

(2)

(a) Under the circumstances outlined in subsection (1) of this section, in addition to the injunction order, the district court may issue other appropriate court orders, including an order to take the person into custody for a period not to exceed seventy-two hours and place him or her in a facility designated or approved by the executive director. A custody order issued for the purpose of counseling and testing to determine whether the person has a sexually transmitted infection must provide for the immediate release from custody of a person who tests negative and may provide for counseling or other appropriate measures to be imposed on a person who tests positive.

(b) The state department or local public health agency shall give notice of the order, promptly, personally, and confidentially, to the person who is the subject of the order. The order must state the grounds and provisions of the order and notify the person that he or she has the right to refuse to comply with the order, that he or she has the right to be present at a hearing to review the order, and that he or she may have an attorney appear on his or her behalf at the hearing. If a respondent to any such action cannot afford an attorney, one shall be appointed for him or her at the commencement of the proceedings.

(c) If the person contests testing or treatment, invasive medical procedures shall not be carried out prior to a hearing held pursuant to subsection (3) of this section.

(3) An order issued by a district court pursuant to subsection (2) of this section is subject to review in a court hearing. Notice of the place, date, and time of the court hearing shall be given promptly, personally, and confidentially to the person who is the subject of the court order. The court shall conduct the hearing no later than forty-eight hours after the issuance of the order. The person has the right to be present at the hearing and have an attorney appear on his or her behalf at the hearing. If a respondent to any such action cannot afford an attorney, one shall be appointed for him or her at the beginning of the injunction process. Upon the conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the original order.

(4) The state department or local public health agency has the burden of proof to show by clear and convincing evidence that evidence-based grounds exist for the issuance of any court order made pursuant to subsection (2) or (3) of this section.

(5) A hearing conducted by the district court pursuant to this section must be closed and confidential, and any transcripts or records relating to the hearing are also confidential.

(6) An order entered by the district court pursuant to subsection (2) or (3) of this section must impose terms and conditions no more restrictive than necessary to protect the public health.

COLO. REV. STAT. § 25-4-1406 (2016)

Public health procedures for persons with HIV infection

(1) Orders directed to individuals with HIV infection or restrictive measures on individuals with HIV infection, as described in this part 14, shall be used as the last resort when other measures to protect the public health have failed, including all reasonable efforts, which shall be documented, to obtain the voluntary cooperation of the individual who may be subject to such an order. The orders and measures shall be applied serially with the least intrusive measures used first. The burden of proof shall be on the state department of public health and environment or the county, district, or municipal public health agency to show that specified grounds exist for the issuance of the orders or restrictive measures and that the terms and conditions imposed are no more restrictive than necessary to protect the public health.

(2) When the executive director of the state department of public health and environment or the director of the county, district, or municipal public health agency, within his or her respective jurisdiction, knows or has reason to believe, because of medical or epidemiological information, that a person has HIV infection and is a danger to the public health, he or she may issue an order to:

(a) Require a person to be examined and tested to determine whether he has HIV infection;

(b) Require a person with HIV infection to report to a qualified physician or health worker for counseling on the disease and for information on how to avoid infecting others;

(c) Direct a person with HIV infection to cease and desist from specified conduct which endangers the health of others, but only if the executive director or local director has determined that clear and convincing evidence exists to believe that such person has been ordered to report for counseling or has received counseling by a qualified physician or health worker and continues to demonstrate behavior which endangers the health of others.

(3) If a person violates a cease-and-desist order issued pursuant to paragraph (c) of subsection (2) of this section and it is shown that the person is a danger to others, the executive director of the state department of public health and environment or the director of the county, district, or municipal public health agency may enforce the cease-and-desist order by imposing such restrictions upon the person as are necessary to prevent the specific conduct which endangers the health of others. Restrictions may include required participation in evaluative, therapeutic, and counseling programs. Any restriction shall be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed three months, during which the order shall remain effective, the terms of the restrictions, and such other conditions as may be necessary to protect the public health. Restrictions shall be imposed in the least restrictive manner necessary to protect the public health. The executive director or the director issuing an order pursuant to this subsection (3) shall review petitions for reconsideration from the person affected by the order. Restriction orders issued by directors of county, district, or municipal public health agencies shall be submitted for review and approval of the executive director of the state department of public health and environment.

(4)

(a) Upon the issuance of any order by the state department of public health and environment or the county, district, or municipal public health agency pursuant to subsection (2) or (3) of this section, such department or agency shall give notice promptly, personally, and confidentially to the person who is the subject of the order stating the grounds and provisions of the order and notifying the person who is the subject of the order that he or she has a right to refuse to comply with such order and a right to be present at a judicial hearing in the district court to review the order and that he or she may have an attorney appear on his or her behalf in said hearing. If the person who is the subject of the order refuses to comply with such order and refuses to cooperate voluntarily with the executive director of the state department of public health and environment or the director of the county, district, or municipal public health agency, the executive director or county, district, or municipal director may petition the district court for an order of compliance with such order. The executive director or county, district, or municipal director shall request the district attorney to file such petition in the district court, but, if the district attorney refuses to act, the executive director or county, district, or municipal director may file such petition and be represented by the attorney general. If an order of compliance is requested, the court shall hear the matter within ten days after the request. Notice of the place, date, and time of the court hearing shall be made by personal service or, if the person is not available, shall be mailed to the person who is the subject of the order by prepaid certified mail, return receipt requested, at his or her last-known address. Proof of mailing by the state department of public health and environment or the county, district, or municipal public health agency shall be sufficient notice under this section. The burden of proof shall be on the state department of public health and environment or the county, district, or municipal public health agency to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed therein are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order.

(b) If the executive director or the director of a county, district, or municipal public health agency does not petition the district court for an order of compliance within thirty days after the person who is the subject of the order refuses to comply, such person may petition the court for dismissal of the order. If the district court dismisses the order, the fact that such order was issued shall be expunged from the records of the state department of public health and environment or the county, district, or municipal public health agency.

(5) Any hearing conducted pursuant to this section shall be closed and confidential, and any transcripts or records relating thereto shall also be confidential.

Connecticut

Analysis

No criminal statutes explicitly addressing HIV exposure.

There are no statutes explicitly criminalizing HIV transmission or exposure in Connecticut. However, in some states, people living with HIV have been prosecuted for HIV exposure under general criminal laws, such as reckless endangerment and aggravated assault. At the time of this publication, the authors are not aware of a criminal prosecution of an individual on the basis of that person's HIV status in Connecticut.

A person with a sexually transmitted infection (STI) in a correctional institution may be barred from release.

An individual who is housed in a correctional facility or charitable institution may be barred from release on the basis of infection with a venereal disease.[1] "Venereal disease" is not defined in Connecticut's code—however, it is typically understood to include a range of STIs, such as syphilis and gonorrhea. Like many other states, Connecticut requires standard reporting of various STIs: chancroid, chlamydia, gonorrhea, viral hepatitis, HIV, and syphilis.[2]

Upon a report from the medical officer and/or physician employed in a correctional or charitable institution that an individual's release "would be dangerous to public health," the individual may be detained. Their release is not authorized until the medical officer and/or physician reports in writing that the person may be "discharged… without danger to the public health."[3] The criteria to be relied upon by the health care provider in this assessment are not enumerated. As drafted, the statute may be interpreted to enable an individual's indefinite detention simply because an institutional health care provider has concluded that their conduct or condition would pose a "danger to the public health."[4]

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.*

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[1] CONN. GEN. STAT. § 18-94 (2016).

[2] *See* CONN. DEPT. OF PUBLIC HEALTH, REPORTABLE DISEASE CONFIDENTIAL CASE REPORT, PD-23 (January 2017), *available at* http://www.ct.gov/dph/lib/dph/infectious_diseases/pdf_forms_/reportablediseases.pdf.

[3] CONN. GEN. STAT. § 18-94 (2016).

[4] *Id.*

General Statutes of Connecticut

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 18, CORRECTIONAL INSTITUTIONS AND DEPARTMENT OF CORRECTIONS

CONN. GEN. STAT. § 18-94 (2016) **

Retention of diseased inmates in correctional or charitable institutions

When the medical officer of, or any physician employed in, any correctional or charitable institution reports in writing to the warden, superintendent or other officer in charge of such institution that any inmate thereof committed thereto by any court or supported therein in whole or in part at public expense is afflicted with any venereal disease so that his discharge from such institution would be dangerous to the public health, such inmate shall, with the approval of such warden, superintendent or other officer in charge, be detained in such institution until such medical officer or physician reports in writing to the warden, superintendent or officer in charge of such institution that such inmate may be discharged therefrom without danger to the public health. During detention the person so detained shall be supported in the same manner as before such detention.

Delaware

Analysis

There is no explicit statute criminalizing HIV exposure except for donations.

There are no statutes explicitly criminalizing HIV transmission or exposure in Delaware other than in the context of organ, tissue, or semen donations. Under Delaware public health laws, it is a felony to intentionally, knowingly, recklessly or negligently use the semen, corneas, bones, organs or other human tissue of a donor who has not been tested for HIV.[1] It is also a felony to intentionally, knowingly, recklessly or negligently use the semen, corneas, bones, organs, or other human tissues donations of a person who has tested positive for HIV.[2] Violation of this statute is punishable by up to five years in prison.[3]

Though there are no statutes explicitly criminalizing HIV transmission or exposure in Delaware, in some states, PLHIV have been prosecuted for HIV exposure under general criminal laws, such as reckless endangerment and aggravated assault. At the time of this publication, the authors are not aware of a criminal prosecution of an individual on the basis of that person's HIV status in Delaware.

Persons with a sexually transmitted disease ("STD") may be required to undergo mandatory examination and treatment.

The Director of the Division of Public Health or authorized deputies may mandate that a person reasonably suspected of being infected with an STD undergo examination or treatment.[4] Designation as a suspect case can occur in three ways: 1) a person has positive laboratory results or clinical findings of an STD; 2) A person for whom there is epidemiologic evidence an STD or; 3) A person identified as a sexual contact of an STD case.[5] A person's failure to cooperate voluntarily may result in restrictive measures, including isolation or quarantine.

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[1] DEL. CODE ANN. tit. 16, §§ 2801(b), 2801(c) (2016).

[2] DEL. CODE ANN. tit. 16, § 2801(c) (2016).

[3] DEL CODE ANN. tit. 11, § 4205 (2016).

[4] DEL. CODE ANN. tit.16, § 703 (2016). STDs are defined as conditions that "shall be designated by the Department of Health and Social Services as reportable through rules and regulations published by the Department of Health and Social Services." DEL. CODE ANN. tit. 16, § 201 (2016). Delaware's list of designated reportable conditions include the following: AIDS, chancroid, chlamydia, granuloma inguinale gonorrhea, hepatitis B, herpes, HPV, HIV, lymphogranuloma venereum, pelvic inflammatory disease, and syphilis. 16-4000-4202 DEL. CODE. REGS. § 6, Appendix I (2016).

[5] DEL. CODE ANN. tit.16, § 701(f) (2016).

Persons with an STD may be subject to isolation or quarantine and penalized with a fine for non-compliance.

A person known or suspected to have an STD may be subject to restrictive measures if, in the judgment of public health officials, they are a danger to public health and "reasonable efforts . . . to obtain the voluntary cooperation" of the person have failed.[6] The Director of Health may order that the person be examined or tested to confirm the presence of disease, that they report to a health care professional for counseling on the disease and how to avoid infecting others, or that they cease and desist from specified conduct that "endangers the health of others," despite counseling.[7] Any such order must notify the person that they have a right to be present at a judicial hearing on the order in the Justice of the Peace Court and that they may have an attorney appear on their behalf in the hearing.[8]

Upon refusal of a person to comply with an order, the Director may petition the Justice of the Peace Court for an order of compliance with such order.[9] A hearing on the request is required within 10 days and notice of the place, date and time of the court hearing is made by personal service or certified mail.[10] The Director bears the burden of proof in demonstrating by clear and convincing evidence that the required grounds for the order have been established and it is necessary to protect the public's health.[11]

If these procedures cannot be satisfied because the Director knows or has reason to believe that a person with an STD presents an "imminent danger to public health," the Director may bring an action in the Justice of the Peace Court seeking an emergency injunction prohibiting the person from engaging in conduct which threatens the public health or an order for the person to be taken into custody.[12] The person may only be held in custody for 72 hours and any order issued by the court must be subject to review a hearing within 48 hours after the issuance of the order.[13] Notice of both the order and the review hearing must be provided to the individual under restriction "promptly, personally and confidentially." [14] As above, the Director bears the burden of proof to demonstrate by clear and convincing evidence that the grounds exist for the order.[15] Any resulting order issued by the court must impose conditions no more restrictive than necessary to protect public health.[16] Isolation or quarantine may occur in a state, county, or city prison if no other suitable place is available.[17] The procedural requirements for imposition of isolation or quarantine are also outlined in Delaware's Administrative Code.[18]

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[6] DEL. CODE ANN. tit.16, §§ 704(a), 704(b) (2016).
[7] DEL. CODE ANN. tit.16, §§ 704(b)(1), 704(b)(2), 704(b)(3) (2016).
[8] DEL. CODE ANN. tit.16, § 704(d)(1) (2016).
[9] DEL. CODE ANN. tit.16, § 704(d)(2) (2016).
[10] *Id.*
[11] *Id.*
[12] DEL. CODE ANN. tit.16, §§ 705(a)(1), 705(a)(2) (2016).
[13] DEL. CODE ANN. tit.16, §§ 705(b), 705(c) (2016).
[14] *Id.*
[15] DEL. CODE ANN. tit.16, § 705(d) (2016).
[16] DEL. CODE ANN. tit.16, § 705(f) (2016).
[17] DEL. CODE ANN. tit.16, § 706(b) (2016).
[18] **16-4000-4202 DEL. CODE. REGS.** § 6 (2016).

A person who violates an order issued by the Director may be subject to a fine of $100-$1000.[19] Each separate day that a violation occurs is considered a separate offense for penalty purposes.[20]

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

[19] DEL. CODE ANN. tit.16, § 713(a) (2016).
[20] DEL. CODE ANN. tit.16, § 713(b) (2016).

Delaware Code 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 16, HEALTH AND SAFETY

DEL. CODE ANN. TIT. 16, § 2801 (2016) **

Establishment of registry; testing of donors; penalties

(b) All donors of semen for purposes of artificial insemination, or donors of corneas, bones, organs or other human tissue for the purpose of injecting, transfusing or transplanting any of them in the human body, shall be tested for evidence of exposure to human immunodeficiency virus (HIV) and any other identified causative agent of Acquired Immunodeficiency Syndrome (AIDS) at the time of or after the donation, but prior to the semen, corneas, bones, organs or other human tissue being made available for such use. However, when in the opinion of the attending physician the life of a recipient of a bone, organ or other human tissue donation would be jeopardized by delays caused by testing for evidence for exposure to HIV and any other causative agent of AIDS, testing shall not be required prior to the life-saving measures.

(c) No person may intentionally, knowingly, recklessly or negligently use the semen, corneas, bones, organs or other human tissue of a donor unless the requirements of subsection (b) of this section have been met. No person may knowingly, recklessly or intentionally use the semen, corneas, bones, organs or other human tissue of a donor who has tested positive for exposure to HIV or any other identified causative agent of AIDS. Violation of this subsection shall be a class E felony.

TITLE 11, CRIMES AND CRIMINAL PROCEDURE

DEL. CODE ANN. TIT. 11, § 4205 (2016) **

Sentence for felonies

(a) A sentence of incarceration for a felony shall be a definite sentence.

(b) The term of incarceration which the court may impose for a felony is fixed as follows:

(5) For a class E felony up to 5 years to be served at Level V.

TITLE 16, HEALTH AND SAFETY

DEL. CODE ANN. TIT.16, § 701 (2016)

Definitions

(e) "Sexually transmitted diseases" (formerly referred to as "venereal diseases"), abbreviated STD, shall be designated by the Department of Health and Social Services as reportable through rules and regulations published by the Department of Health and Social Services pursuant to § 706 of this title upon finding that such diseases:

(1) Cause significant morbidity and mortality; and

(2) Can be screened, diagnosed and treated in a public health control program, or if not, are a major public health concern such that surveillance of disease occurrence is in the public interest.

(f) Any person falling into 1 or more of the following categories is designated as “suspect”:

(1) A person having positive laboratory results or clinical findings of an STD.

(2) A person in whom epidemiologic evidence an STD may exist; and

(3) A person identified as a sexual contact of an STD case.

DEL. CODE ANN. TIT.16, § 703 (2016)

Examination, investigation and treatment of suspected persons

The Director shall, when in the Director's own judgment it is necessary to protect the public health, make examinations of persons reasonably suspected of being infected with an STD of a communicable nature; examine medical records of suspect or diagnosed cases which may be maintained by a health facility or health care professional; require persons infected with an STD of a communicable nature to report for treatment to a health care professional, public or private, qualified to provide treatment and continue treatment until cured, if possible, and also, when in the Director's own judgment it is necessary to protect the public health, may issue an order seeking to examine, isolate or quarantine persons infected with an STD of a communicable nature or persons suspected of being infected with an STD.

DEL. CODE ANN. TIT.16, § 704 (2016)

Procedure for apprehension, commitment, treatment and quarantine of an infected person

a) Orders directed to persons with an STD of a communicable nature or restrictive measures on individuals with a communicable STD, as described in this section and in § 705 of this title shall be used when other measures to protect the public health have failed, including reasonable efforts, which shall be documented, to obtain the voluntary cooperation of the individual who may be subject to such an order.

(b) When the Director knows or has reason to believe, because of medical or epidemiological information, that a person has an STD of a communicable nature and is a danger to the public health, the Director may issue an order to:

(1) Require the person to be examined and tested to determine whether the person has an STD of a communicable nature;

(2) Require the person with an STD of a communicable nature to report to a qualified health care professional for counseling on the disease and for information on how to avoid infecting others;

(3) Direct a person with an STD of a communicable nature to cease and desist from specified conduct which endangers the health of others when the Director has determined that reliable information exists to believe that such person has been ordered to report for counseling as provided in paragraph (2) of this subsection and continues to demonstrate behavior which endangers the health of others.

(c) If a person violates a cease and desist order issued pursuant to paragraph (3) of subsection (b) of this section and it is shown that the person is a danger to others, the Director may enforce the cease and desist order by imposing such restrictions upon the person as are necessary to prevent the specific conduct which endangers the health of others. Any restriction shall be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed 3 months, during which the order shall remain effective, the terms of the restrictions and such other conditions as may be necessary to protect the public health. The Director shall review appeals for reconsideration from the subject of the order issued pursuant to this subsection.

(d)

(1) Any order by the Director pursuant to subsection (b) or (c) of this section shall indicate to the subject of the order the grounds and provisions of the order and notify such person that if the person refuses to comply with the order the person has a right to be present at a judicial hearing in the Justice of the Peace Court to review the order and that the person may have an attorney appear on the person's behalf in said hearing. Notice of any order by the Director shall either be by personal service or by prepaid certified mail, return receipt requested, at the subject's last known address.

(2) If the subject of the order refuses to comply with the order the Director may petition the Justice of the Peace Court for an order of compliance with such order. If an order of compliance is requested, the Court shall hear the matter within 10 days after the request. Notice of the place, date and time of the court hearing shall be made by personal service or, if the person is not available, shall be mailed to the subject of the order by prepaid certified mail, return receipt requested, at the person's last known address. The burden of proof shall be on the Director to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed are necessary to protect the public health. Upon conclusion of the hearing, the Court shall issue appropriate orders affirming, modifying or dismissing the order.

(3) If the Director does not petition the Justice of the Peace Court for an order of compliance within 30 days after the subject of the order refuses to comply, the Director's order shall expire automatically and upon application to the Director by the subject of the order, the fact that the order was issued shall be expunged from the records of the Division of Public Health.

(e) Any hearing conducted pursuant to this section shall be closed and confidential, and any transcripts or records relating thereto shall also be confidential.

DEL. CODE ANN. TIT.16, § 705 (2016)

Emergency public health measures

(a) When the procedures of § 704 of this title have been exhausted or cannot be satisfied as a result of threatened criminal behavior and the Director knows or has reason to believe, because of medical or epidemiological information, that a person has an STD of a communicable nature and that such person presents an imminent danger to the public health, he may bring an action in the Justice of the Peace Court, seeking the following relief:

(1) An injunction prohibiting such person from engaging in or continuing to engage in specific conduct which endangers the public health;

(2) Other appropriate court orders including, but not limited to, an order to take such person into custody, for a period not to exceed 72 hours, and place him in a facility designated or approved by the Director.

(b) A custody order issued pursuant to subsection (a) of this section for the purpose of counseling and testing to determine whether such person has an STD of a communicable nature shall provide for the immediate release from custody and from the facility of any person who tests negative and may provide for counseling or other appropriate measures to be imposed on any person who tests positive. The subject of the order shall be given notice of the order promptly, personally and confidentially, stating the grounds and provisions of the order and notifying such person that if that person refuses to comply with such order that person has a right to be present at a hearing to review the order and that he may have an attorney appear on that person's own behalf at the hearing. If such person contests testing or treatment, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to subsection (c) of this section. Nothing in this section shall be construed to deny a person, as an exercise of religious freedom, the right to rely solely on spiritual means through prayer to prevent or cure disease, provided that the person complies with all control measures, other than treatment, imposed by the health authority or the department that are reasonable and necessary to prevent the introduction, transmission and spread of the disease.

(c) Any order issued by the Justice of the Peace Court pursuant to subsection (a) or (b) of this section shall be subject to review in a court hearing. Notice of the place, date and time of the court hearing shall be given promptly, personally and confidentially to the subject of the court order by the sheriff of the appropriate county or by special process server appointed by the Court. Such hearing shall be conducted by the Court no later than 48 hours after the issuance of the order. Such person has a right to be present at the hearing and may have an attorney appear on that person's own behalf at the hearing. Upon conclusion of the hearing, the Court shall issue appropriate orders affirming, modifying or dismissing the order.

(d) The burden of proof shall be on the Director to show by clear and convincing evidence that grounds exist for the issuance of any court order pursuant to subsection (a), (b) or (c) of this section.

(e) Any hearing conducted by the Justice of the Peace Court pursuant to subsection (a), (b) or (c) of this section shall be closed and confidential, and any transcripts or records relating thereto shall also be confidential.

(f) Any order entered by the Justice of the Peace Court pursuant to subsection (a), (b) or (c) of this section shall impose terms and conditions no more restrictive than necessary to protect the public health.

DEL. CODE ANN. TIT.16, § 706 (2016)

Examination and treatment of prisoners

(b) Prison authorities of any state, county or city prison shall make available to the Division of Public Health such portion of any state, county or city prison as may be necessary to isolate or quarantine persons known or suspected to have an STD of a communicable nature under the provisions of §§ 703, 704 and 705 of this title, provided that no other suitable place for such isolation or quarantine is available, and shall cooperate with the Division of Public Health in the provision of care and treatment to such persons.

DEL. CODE ANN. TIT.16, § 713 (2016)

Penalties; jurisdiction

(a) Except for § 702 of this title, whoever violates this chapter or any lawful rule or regulations made by the Department of Health and Social Services under § 707 of this title, or fails to obey any lawful order issued by the Director under this chapter shall be fined not less than $ 100 nor more than $ 1,000.

(c) Each separate day that a violation of 6.7 – 6.9his chapter as defined under subsections (a) and (b) of this section continues shall be deemed a separate offense for penalty purposes.

(d) Justices of the peace shall have jurisdiction of offenses under this chapter.

Delaware Administrative Code

TITLE 16, HEALTH AND SAFETY

16-4000-4202 **CODE DEL. REGS. § 6, APPENDIX I (2016)**

Control of communicable and other disease conditions

Section 6.0: Quarantine and Isolation
6.2.1 Persons shall be isolated or quarantined if it is determined by clear and convincing evidence that the person to be isolated or quarantined poses a significant risk of transmitting a disease to others with serious consequences. A person's refusal to accept medical examination, vaccination or treatment shall constitute prima facie evidence that said person should be quarantined or isolated.

6.2.2 Isolation or quarantine of any person shall be terminated when such person no longer poses a significant risk of transmitting a disease to others with serious consequences.

6.7 Procedures for isolation and quarantine. The following procedures shall protect the due process rights of individuals:

6.7.1 The Division shall petition the Superior Court for an order authorizing the isolation or quarantine of an individual or groups of individuals. Said petition shall specify the following:

6.7.1.1 The identity of the individual or group of individuals subject to isolation or quarantine;

6.7.1.2 The premises subject to isolation or quarantine;

6.7.1.3 The date and time at which the Division requests isolation or quarantine to commence;

6.7.1.4 The suspected contagious disease, if known;

6.7.1.5 A statement of compliance with the conditions and principles for isolation and quarantine;

6.7.1.6 A statement of the basis upon which isolation or quarantine is justified.

6.7.1.7 A statement of what effort, if any, has been made to give notice of the hearing to the individual or group of individuals to be isolated or quarantined, or the reason supporting the claim that notice should not be required.

6.7.2 Ex parte orders. Before isolating or quarantining a person, the Division shall obtain a written order, which may be an ex parte order, from the Superior Court authorizing such action. An order, which may be an ex parte order, shall be requested as part of a petition filed in compliance with 6.1 through 6.2. The Court shall grant an order, which may be an ex parte order, upon finding by clear and convincing evidence that isolation or quarantine is warranted pursuant to the provisions of this Section. A copy of the authorizing order shall be given to the person ordered to be isolated or quarantined, along with notification that the person has a right to a hearing under subsection (6.7).

6.7.3 Temporary quarantine or isolation pending filing of a petition. Notwithstanding the preceding subsections, the Division may isolate or quarantine a person without first obtaining a written order, which may be an ex parte order, from the Court if a physician determines that any delay in the isolation or quarantine of the person would pose an immediate and severe danger to the public health. Following such isolation or quarantine, the Division shall file a petition within 24 hours. In addition, if the Division exercises its powers, it must provide a written directive to the individuals or groups under temporary quarantine or isolation indicating the identities of the individuals or groups subject to the directive, the premises subject to isolation or quarantine, the date and time that the directive commences, the suspected contagious disease (if known).

6.7.4 Speedy hearing. The Court shall grant a hearing within 72 hours of the filing of a petition when an individual has been isolated or quarantined.

6.7.5 Consolidation of claims. The Court may order consolidation of individual claims into a group of claims where:

6.7.5.1 The number of individuals involved or to be affected is so large as to render individual participation impractical;

6.7.5.2 There are questions of law or fact common to the individual claims or rights to be determined;

6.7.5.3 The group claims or rights to be determined are typical of the affected individuals' claims or rights; and

6.7.5.4 The entire group will be adequately represented in the consolidation, giving due regard to the rights of affected individuals.

6.8 Relief for isolated and quarantined persons.

6.8.1 On or after 10 days following a hearing, a person isolated or quarantined pursuant to the provisions of this section may request in writing a Court hearing to contest his or her continued isolation or quarantine. The hearing shall be held within 72 hours of receipt of such request, excluding Saturdays, Sundays and legal holidays. A request for a hearing shall not alter the order of isolation or quarantine. At the hearing, the Division must show by clear and convincing evidence that continuation of the isolation or quarantine is warranted because the person poses a significant risk of transmitting a disease to others with serious consequences.

6.8.2 A person isolated or quarantined pursuant to the provisions of this section may request a hearing in the Superior Court for remedies regarding his or her treatment and the terms and conditions of such quarantine or isolation. Upon receiving a request for either type of hearing, the Court shall fix a date for a hearing. The hearing shall take place within 10 days of the receipt of the request by the Court. The request for a hearing shall not alter the order of isolation or quarantine.

6.8.3 If upon a hearing, the Court finds that the isolation or quarantine of the individual is not warranted under the provisions of this section, then the person shall be immediately released from isolation or quarantine. If the Court finds that the isolation or quarantine of the individual is not in compliance with the provisions of this section, the Court may then fashion remedies appropriate to the circumstances of the necessity for the isolation or quarantine and in keeping with the provisions of this section.

6.8.4 No person shall be permanently terminated from employment by a Delaware employer as a result of being isolated or quarantined pursuant to this section. However, this paragraph shall not apply to a person who has been quarantined as a result of refusing to comply with an examination, treatment or vaccination program, nor shall it apply to a person whose conduct caused the necessity for the isolation or quarantine.

6.9 Additional due process protections.

6.9.1 A record of proceedings before the Court shall be made and retained for at least 3 years.

6.9.2 The petitioner shall have the right to be represented by counsel or other lawful representative, and the State shall provide counsel to indigent persons against whom proceedings are initiated pursuant to this section.

6.9.3 The manner in which the request for a hearing is filed and acted upon will be in accordance with the existing laws and rules of the Superior Court or any such rules that are developed by the Court, provided that hearings should be held by any means that will allow all necessary persons to participate in the event that a public health emergency makes personal appearances impractical.

District of Columbia

Analysis

People living with HIV (PLHIV) or other sexually transmitted infections (STIs) may be subject to quarantine, isolation, and mandatory treatment.

The Mayor may issue rules to prevent and control the spread of communicable diseases, including HIV, viral hepatitis, and "venereal diseases," to include chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, and syphilis.[1] Pursuant to such rules, the Mayor may direct the removal of persons for whom there is probable cause to believe they are affected with a communicable disease for the purpose of isolation, quarantine, or treatment.[2] To that end, the Mayor may enlist the aid of the Chief of Police, upon issuance of an arrest warrant from the Superior Court of the District of Columbia.[3]

Orders for detention expire within 24 hours of issuance unless a judge of the Superior Court of the District of Columbia, upon finding probable cause that the detained person's presence in the general population is likely to cause death or seriously impair the health of others, extends its force for a longer period.[4] However, persons diagnosed as affected by a communicable disease "may be detained as long as necessary to protect the public health."[5] Upon either a continuation from a Superior Court judge, or a diagnosis of the person as affected by a communicable disease, the person may petition for a discharge hearing to determine whether their release into the general population is likely to cause death or seriously impair the health of others.[6] In the case of a diagnosis, the person has the right to legal counsel.[7]

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[1] D.C. CODE §§ 7-131(a), 7-132(2); D.C. MUN. REGS. tit. 22 § 201.5(a), (h), (t). *See also* D.C. CODE § 7-144 ("Each and every provision of this subchapter shall be constructed liberally in aid of the powers vested in the public authorities looking to the protection of the public health, comfort, and welfare and not by way of limitation.").

[2] D.C. CODE §§ 7-131(a), 7-133(a), 7-135(a) D.C. MUN. REGS. tit. 22 §§ 210.1, 210.4, 210.5, 210.8. *See also* D.C. MUN. REGS. tit. 22 §§ 210.6, 210.7 ("The Director may authorize or order a placard to be posted on the premises occupied by any person affected with a communicable disease. No placard authorized or ordered by the Director to be posted shall be mutilated, defaced, obliterated, concealed, or removed, except by authorization of the Director.").

[3] D.C. CODE § 7-137; D.C. MUN. REGS. tit. 22 § 210.2.

[4] D.C. CODE § 7-134(a).

[5] D.C. CODE § 7-135(b). It is unclear how long such periods may last for communicable diseases, such as HIV, for which there is no cure. Interpretations based on transmission risks call into question the existence of such provisions in the first place, since transmission of sexually transmitted infections (STIs) does not occur through casual contact. Moreover, risk reduction measures such as condom use and, in the case of HIV, adherence to antiretroviral therapy, further reduces risk of transmission

[6] D.C. CODE §§ 7-134(b), 7-135(b).

[7] D.C. CODE § 7-135(b).

It is unlawful for detained persons to leave their place of detention without discharge.[8] It is similarly unlawful for any person to knowingly obstruct, resist, oppose, or interfere with any person performing any duty under laws or regulations to control the spread of communicable disease.[9] In case of violation, persons may be found guilty of a misdemeanor and receive up to 90 days' imprisonment and a fine of up to $5,000.[10] Any person who willfully violates any rule or regulations issued pursuant to the control of communicable diseases may be found guilty of a misdemeanor and punished with up to 30 days' imprisonment and a fine of up to $1,000.[11]

Medical records may be used as evidence in a criminal prosecution.

Records related to preventing the spread of communicable diseases are to be kept confidential, unless a court finds, upon clear and convincing evidence and after granting the opportunity to contest the disclosure, that the disclosure would afford evidence probative of guilt or innocence in a criminal prosecution.[12]

In 2022, D.C. amended D.C. Code § 7-1605 to strengthen protections for HIV surveillance information collected under the AIDS Health-Care Response Act. The amendment clarifies that records and identifying information obtained, collected, or created by the Department of Health under the Act may be used only for statistical and public health purposes and generally may not be disclosed without the individual's prior written consent, except when disclosure is essential to safeguard the physical health of others.[13] The amendment also prohibits HIV surveillance information collected under the Act from being discoverable or admissible in civil or criminal proceedings without the individual's prior written consent.[14]

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.*

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[8] D.C. CODE § 7-136.
[9] D.C. CODE § 7-139.
[10] D.C. CODE § 7-140.
[11] D.C. CODE § 7-140; D.C. MUN. REGS. tit. 22 § 210.9.
[12] D.C. CODE § 7-131(b)(1)(B) (Disclosures may also be permitted if the court finds such disclosures are essential to safeguard the physical health of others.).
[13] D.C. Code § 7-1605.
[14] *Id*.

District of Columbia Code

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 7. HUMAN HEALTH CARE AND SAFETY

D.C. CODE § 7-131

Regulations to prevent spread of communicable diseases.

(a) The Mayor may, upon the advice of the Director of the Department of Health and pursuant to subchapter I of Chapter 5 of Title 2, issue rules to prevent and control the spread of communicable diseases, environmentally or occupationally related diseases, and other diseases or medical conditions that the Director of the Department of Health has advised should be monitored for epidemiological or other public health reasons. These rules may include, but shall not necessarily be limited to:

(1) A list of reportable diseases and conditions;

(2) Reporting procedures; and

(3) Requirements and procedures for restriction of movement, isolation, and quarantine not inconsistent with this subchapter.

(b)

(1) Except as provided in paragraph (2) of this subsection, the Director of the Department of Health shall use the records incident to the case of a disease or medical condition reported under this subchapter for statistical and public health purposes only, and identifying information contained in these records shall be disclosed only when essential to safeguard the physical health of others. No person shall otherwise disclose or redisclose identifying information derived from these records unless:

(A) The person reported gives his or her prior written permission; or

(B) A court finds, upon clear and convincing evidence and after granting the person reported an opportunity to contest the disclosure, that disclosure:

(i) Is essential to safeguard the physical health of others; or

(ii) Would afford evidence probative of guilt or innocence in a criminal prosecution.

(2) The constraints on disclosure and redisclosure of identifying information set forth in paragraph (1) of this subsection shall not apply to the disclosure and use of information disclosed and used pursuant to:

(A) Subchapter I of Chapter 13 of Title 4 [§ 4-1301.01 et seq.]; or

(B) Chapter 23 of Title 16.

D.C. CODE § 7-132

Definitions.

For the purposes of this subchapter, the term:

(1) "Affected with a communicable disease" means a person infected with a communicable disease or exposed to a chemical or radiological agent who is capable of infecting others with the same disease or chemical or radiological agent if permitted to move freely in the general public, or a person who, while not infected with a communicable disease or exposed to a chemical or radiological agent, is a carrier of, or contaminated with, an infectious disease or chemical or radiological agent and capable of infecting others with the disease or chemical or radiological agent.

(2) "Communicable disease" means any disease:

> (A) Denominated a reportable disease pursuant to § 7-131, including any illness due to an infectious agent or its toxic product that is transmitted:
>
> > (i) Directly or indirectly to a well person from an infected person, animal, or ectoparasite; or
> >
> > (ii) Through the agency of an intermediate host or vector, or by exposure to chemical or radiological agents within the immediate environment.
>
> (B) Occurring as an outbreak of illness or toxic conditions, regardless of etiology, in an institution or other identifiable group of people.

D.C. CODE § 7-133

Persons believed to be carriers of communicable diseases – Order for removal.

(a) Whenever the Mayor, after consultation with the Director of the Department of Health, has probable cause to believe that a person is affected with a communicable disease or is a carrier of a communicable disease and that the person's presence in the general population is likely to cause death or seriously impair the health of others, the Mayor may, by written order, direct the removal of that person for the purpose of isolation, quarantine, or treatment. The order shall state a place of detention within the District of Columbia or outside of the District of Columbia; provided, that any place of detention outside the District of Columbia is under the supervision of the District of Columbia government.

D.C. CODE § 7-134

Persons believed to be carriers of communicable diseases – Detention; expiration of order; continuation; hearing on detention; minors.

(a) A copy of the order provided for in § 7-133 shall be delivered to the person in charge of any place or institution where a person or group of persons has been taken or detained, or, if the place of detention is a residence, to any person of suitable age and discretion then present in the residence. The order shall constitute the authority for detention until the order expires. The order shall expire within 24 hours of its issuance unless a judge of the Superior Court of the District of Columbia continues its force and effect for a longer period. The judge shall continue the force and effect of an order if the judge finds that

probable cause exists to believe that the detained person's presence in the general population is likely to cause death or seriously impair the health of others.

(b) If a judge continues an order, any person or group of persons detained pursuant to the order may petition for a hearing to determine whether the person or group of persons is affected with a communicable disease, and, if the person or group of persons is affected with a communicable disease, whether release of the person or group of persons into the general population is likely to cause death or seriously impair the health of others. The hearing shall take place as soon as practicable, but no later than 10 days after the court receives the petition.

D.C. CODE § 7-135

Persons believed to be carriers of communicable diseases – Examination; diagnosis; detention for quarantine; discharge; public hearing

(a) The Mayor shall cause to be conducted, by medical personnel designated by the Mayor, medical examinations of all detained persons to determine whether any detained person is affected with a communicable disease and immediately discharge any person who is not affected with a communicable disease. The diagnosis resulting from the examination shall be in writing and signed by the examining physician. A copy of the signed diagnosis shall be retained by any person in charge of the place or institution of detention, or, if the place of detention is a residence, by any person of suitable age and discretion who resides there. A copy of the signed diagnosis also shall be given to the detained person for whom the diagnosis was made. Another copy of the signed diagnosis shall be transmitted to the appropriate health official as designated by the Mayor.

(b) A person who has been diagnosed as being affected with a communicable disease may be detained for as long as necessary to protect the public health. A person detained pursuant to this subsection may at any time petition the Superior Court of the District of Columbia for a discharge hearing. A person detained pursuant to this subsection who chooses to petition the Superior Court of the District of Columbia for a discharge hearing shall be provided with counsel if the person detained cannot afford counsel.

D.C. CODE § 7-136

Persons believed to be carriers of communicable diseases – Leaving detention without discharge.

It shall be unlawful for a person detained in a place or institution pursuant to an order of the Mayor to leave said place or institution unless discharged in the manner provided in § 7-134 or 7-135.

D.C. CODE § 7-137

Persons believed to be carriers of communicable diseases – Arrest.

(a) In aid of the powers vested in the Mayor to cause the removal to and detention in a place or institution of a person who is affected or is believed, upon probable cause, to be affected with any communicable disease or is or is believed, upon probable cause, to be a carrier of communicable disease as provided in this subchapter, the Superior Court of the District of Columbia, or any judge thereof, is authorized to issue a warrant for the arrest of such person and his removal to a place or institution as defined in § 7-133, which warrant shall be directed to the Chief of Police. When such person has been removed to such place or institution under authority of a warrant issued pursuant to this section, such person shall not be discharged from such place or institution except in the manner provided in § 7-135.

(b) No such warrant of arrest and removal shall be issued except upon probable cause supported by affidavit or affidavits particularly describing the person to be taken, which said affidavit or affidavits shall set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(d) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(e) A warrant must be returned to the Court within 10 days after its date; after the expiration of this time the warrant, unless executed, is void.

(f) It shall be the duty of the said Court to maintain and keep records of all warrants issued and the returns thereon.

D.C. CODE § 7-139

Interference unlawful.

It shall be unlawful for any person knowingly to obstruct, resist, oppose, or interfere with any person performing any duty or function under the authority of this subchapter or any rule or regulation promulgated thereunder.

D.C. CODE § 7-140 **

Violation of § 7-136, § 7-138, § 7-139, or rules or regulations

Any person who willfully violates § 7-136, 7-138, or 7-139 or who willfully discloses, receives, uses, or permits the use of information in violation of § 7-131(b) shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding $ 5,000, imprisonment for not more than 90 days, or both. Any person who willfully violates any rule or regulation issued pursuant to this subchapter shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding $ 1,000, imprisonment for not more than 30 days, or both. All prosecutions for violations of § 7-136, 7-138 or 7-139 or the rules and regulations issued pursuant to this subchapter shall be in the Criminal Division of the Superior Court of the District of Columbia, in the name of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants. The Court may impose conditions upon any person found guilty under the aforesaid provisions and so long as such person shall comply therewith to the satisfaction of the Court the imposition or execution of sentence may be suspended for such period as the Court may direct; and the Court may at or before the expiration of such period vacate such sentence or cause it to be executed. Conditions thus imposed by the Court may include submission to medical and mental examination, diagnosis, and treatment by proper public health and welfare authorities or by any licensed physician approved by the Court, and such other terms and conditions as the Court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant.

D.C. CODE § 7-144

Construction.

Each and every provision of this subchapter shall be construed liberally in aid of the powers vested in the public authorities looking to the protection of the public health, comfort, and welfare and not by way of limitation.

D.C. CODE § 7–1605

Confidentiality of medical records and information.

The Director shall use the records incident to a case of HIV infection or AIDS reported under this subchapter for statistical and public-health purposes only. Identifying information contained in these records, as well as all identifying information obtained, collected, or created by the Department of Health ("Department") shall be disclosed by the Director only when essential to safeguard the physical health of others. No person shall otherwise disclose such identifying information unless the person about whom the information pertains gives his or her prior written permission. All identifying information obtained, collected, or created by the Department under this subchapter shall not be discoverable or admissible as evidence in a civil or criminal action unless the person about whom the information pertains gives his or her prior written permission.

D.C. LAW 24-170

HIV/AIDS Data Privacy Protection and Health Occupation Revision Clarification Amendment Act of 2022.

To amend the AIDS Health-Care Response Act of 1986 to remove the court's ability to collect and release surveillance information and data collected by the Department of Health for statistical and public health purpose concerning incidents of HIV and AIDS within the District of Columbia and to protect HIV surveillance data and information; to amend the District of Columbia Health Occupations Revision Act of 1985 to clarify the role of doulas and to establish criteria for doula certification, and to provide the criteria under which Health Occupations Boards may consider convictions of applicants and those licensed, certified, or registered by a Health Occupations Board; to amend the Department of Health Functions Clarification Act of 2001 to create an Advisory Committee on Maternal Care Professionals; and to amend the Specialty Drug Copayment Limitations Act of 2016 to allow cost sharing to be applied to an insured's deductible and maximum out of pocket obligations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as "HIV/AIDS Data Privacy Protection and Health Occupation Revision Clarification Amendment Act of 2022".

Sec. 2. Section 6 of the AIDS Health-Care Response Act of 1986, effective June 10, 1986 (D.C. Law 6-121; D.C. Official Code § 7-1605), is amended to read as follows:

"The Director shall use the records incident to a case of HIV infection or AIDS reported under this act for statistical and public-health purposes only. Identifying information contained in these records, as well as all identifying information obtained, collected, or created by the Department of Health ("Department") shall be disclosed by the Director only when essential to safeguard the physical health of others. No person shall otherwise disclose such identifying information unless the person about whom the information pertains gives his or her prior written permission. All identifying information obtained, collected, or created by the Department under this act shall not be discoverable or admissible as evidence in a civil or criminal action unless the person about whom the information pertains gives his or her prior written permission."

Code of D.C. Municipal Regulations

TITLE 22. PUBLIC HEALTH AND MEDICINE

D.C. MUN. REGS. TIT. 22 § 201.5

Communicable diseases.

The following diseases shall be considered communicable diseases and shall be reported in writing within forty-eight (48) hours of diagnosis or the appearance of suspicious symptoms in the manner indicated in § 200 of chapter 2 of this title.

(a) Human Immunodeficiency Virus (HIV) infection;

(h) Hepatitis, infectious and serum;

(t) Venereal diseases, including chancroid, gonorrhea, granuloma inguinale, lympho-granuloma venereum, and syphilis.

D.C. MUN. REGS. TIT. 22 § 210

Investigations and Enforcement.

210.1 Upon receiving a report of the existence of a case or suspected case of a communicable disease, or of a communicable disease contact or carrier, the Director shall make any investigation that he or she deems necessary for the purpose of determining the source of infection and of determining if the proper management and control measures are in effect.

210.2 In order to make an investigation under this section, the Director may enter upon and inspect any public or private property in the District.

210.3 Where the Director has probable cause to believe that vectors of a communicable disease or sources of a communicable disease have been identified, the Director shall cause to be instituted whatever preventive measures as the Director may deem necessary to eradicate immediately the vectors and sources of the communicable disease.

210.4 Any person having or suspected of having a communicable disease, or any person who is suspected of being a communicable disease contact or carrier, shall, when directed by the Director, submit to an examination for the purpose of determining the existence of a communicable disease.

210.5 A person suspected of having a communicable disease, or a person who is suspected of being a communicable disease contact or carrier, shall submit specimens or permit the obtaining of authentic specimens of body secretions, excretions, body fluids, and discharges for laboratory examinations, when required by the Director. These specimens shall be authenticated, when required by the Director.

210.6 The Director may authorize or order a placard to be posted on the premises occupied by any person affected with a communicable disease.

210.7 No placard authorized or ordered by the Director to be posted shall be mutilated, defaced, obliterated, concealed, or removed, except by authorization of the Director.

210.8 The Director shall issue a Removal and Detention Order and take whatever further proceedings may be required by sections 1 through 14 of the Act (D.C. Official Code §§ 7-131 through 7-144) (2001), whenever the Director has probable cause to believe that any person is affected with, or is a carrier of, a communicable disease, and whenever the Director has probable cause to believe that that person is likely to be dangerous to the life or health of any other person because of the following reasons:

(a) Improper facilities or the lack of facilities for isolation; or

(b) Because of the person's non-cooperation or carelessness, including his or her refusal to submit to examination or refusal to be properly treated or cared for, the person is likely to be a danger to public health.

210.9 Each infected person, contact, or carrier shall comply with the instructions given him or her by the physician or other person responsible for the control of a case of communicable disease.

210.10 Each parent, guardian, or person in charge of an infected person or infected animal, carrier, or contact shall comply with instructions given by the physician, veterinarian, or other person in charge of the case concerning the control of the infected person or infected animal, carrier, or contact.

Florida

Analysis

People living with HIV (PLHIV) may face felony charges for failing to disclose their status to sexual partners.

In Florida, a PLHIV may be prosecuted for not disclosing their HIV status to sexual partners. It is a third-degree felony, punishable by up to five years in prison and/or a $5,000 fine, if a PLHIV (1) knows their HIV status, (2) has been informed that HIV may be transmitted through sexual intercourse,[1] and (3) has sexual intercourse[2] with any other person without disclosing their HIV status.[3] It is a first-degree felony punishable by up to 30 years' imprisonment if there is a failure to disclose one's HIV status on multiple occasions.[4]

It is an affirmative defense if a person is aware of their sexual partner's HIV status and consents to engage in sexual conduct with that knowledge.[5] It is not a defense to prosecution if protection, such as a condom, was used during sex. Neither the intent to transmit HIV nor actual transmission is required for prosecution.

The following cases illustrate prosecutions under this statute:

- In October 2016, a 64-year-old man was sentenced to three years in prison and two years' probation after he pled guilty to failing to disclose his status to three sexual partners.[6]
- In August 2016, a 38-year-old man living with HIV was arrested and charged for allegedly not disclosing his HIV status to a sexual partner who later tested positive for HIV.[7]

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[1] Florida law defines "sexual intercourse" as the "penetration of the female sex organ by the male sex organ, however slight, emission of semen is not required. § 826.04 (statute on incest). Florida's district courts of appeals are currently split on whether the term "sexual intercourse" applies to sexual intercourse between people of the same sex. *Compare State v. Debaun*, 2013 Fla. App. LEXIS 17238 (Fla. 3rd Dist. Ct. App., Oct. 30, 2013) (holding that the legislative intent to deal with sexually-transmitted HIV could not plausibly be construed to only apply to vaginal intercourse), and *State v. D.C.,* 114 So.3d 440 (5th Dist. Ct. App., May 31, 2013) (claiming that the legislative intent to deal with sexually transmitted HIV intended to broadly criminalize both heterosexual and homosexual sex), with *L.A.P. v. State*, 62 So.3d 693 (Fla. 2nd Dist. Ct. App., May 31, 2013) (finding that sexual intercourse as used in the statute meant exclusively sexual intercourse between a man and a woman involving penile insertion in a vagina). There is no statutory indication that oral sex is considered "sexual intercourse."

[2] Currently limited to penile-vaginal sex.

[3] FLA. STAT. ANN. §§ 775.082, 775.083, 384.24(2) (2016).

[4] *Id*. §§ 384.34(5), 775.082 (2016).

[5] *Id*. § 384.24(2) (2016).

[6] *Ex-bus driver pleads guilty to failing to disclose HIV status*, NEWS 4 JAX, Oct. 12, 2016, *available at* http://www.news4jax.com/health/partner-of-man-accused-of-failing-to-disclose-hiv-infection-speaks-out.

[7] Francesca Amiker, *Man accused of knowingly transmitting HIV*, NEWS 4 JAX, Aug. 19, 2016, *available at* http://www.news4jax.com/news/man-accused-of-knowingly-transmitting-hiv.

- In May 2015, a 47-year-old man was arrested after he allegedly failed to disclose his HIV status to sexual partner whom he met on Craigslist.[8]
- In August 2014, a 52-year-old man living with HIV was arrested after allegedly not disclosing his HIV status to a sexual partner, though condoms were always used during the course of the sexual relationship. [9]
- In August 2013, a man living with HIV was arrested for allegedly not disclosing his HIV status to a sexual partner, who later tested positive for the virus.[10]
- In April 2013, a 46-year-old man living with HIV was charged with criminal transmission of HIV, among other things, after kidnapping and raping a 10-year-old boy.[11]
- In January 2013, two men living with HIV were arrested after allegedly engaging in unprotected sex with a 16-year-old boy whom they met on Grindr without disclosing their status.[12]
- In December 2012, a 35-year-old man living with HIV was arrested after allegedly not disclosing his HIV status to sexual partners.[13]
- In September 2012, a 30-year-old man living with HIV was charged with attempted second-degree murder and criminal transmission of HIV, among other things, for allegedly having sex with a 15-year-old boy.[14] The boy later tested positive for HIV.[15]
- In May 2011, a man living with HIV was charged with criminal transmission of HIV after he attempted to bite a deputy while being arrested for shoplifting.[16]
- In March 2011, a 47-year-old man living with HIV was charged with failing to disclose his status to a sexual partner, among other things, for allegedly raping a 13-year-old boy he met through Craigslist.[17]

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[8] Harrison Barus, *Police: Man did not tell partner of HIV status*, NEWS 4 JAX, May 5, 2015, *available at* http://www.news4jax.com/news/florida/clay-county/police-man-did-not-tell-partner-of-hiv-status.

[9] Jeff Weiner, *HIV-positive man charged with having sex without alerting partner*, ORLANDO SENTINEL, Aug. 6, 2014, *available at* http://articles.orlandosentinel.com/2014-08-06/news/os-hiv-sex-arrest-orange-county-inmate-20140806_1_hiv-positive-man-state-prison-orange-county-jail.

[10] *Fort Myers man arrested for knowingly spreading HIV*, NBC-2 NEWS, Aug. 19, 2013, *available at* http://www.nbc-2.com/story/23174195/man-arrested-for-knowingly-spreading-hiv#.V45SCSMrJaQ.

[11] Brian Hamacher, *HIV-Positive Man Raped 10-Year-Old Boy: BSO*, NBC 6 NEWS SOUTH FLORIDA, Apr. 4, 2013, *available at* http://www.nbcmiami.com/news/HIV-Positive-Man-Raped-10-Year-Old-Boy-BSO-201269651.html.

[12] Tonya Alanez, *Pines men accused of sex with boy, not revealing HIV status*, SUN SENTINEL, Jan. 17, 2013, *available at* http://articles.sun-sentinel.com/2013-01-17/news/fl-men-accused-of-hiv-crime-20130117_1_hiv-status-catherine-hanssens-grindr.

[13] *Police: Man with HIV didn't tell sex partners – Investigators looking for other possible victims*, NEWS 4 JAX, Jan. 2, 2012, *available at* http://www.news4jax.com/news/local/police-man-with-hiv-didnt-tell-sex-partners.

[14] Carli Teproff and Steve Rothaus, *Man, 30, charged with attempted murder after boy, 15, contracts HIV after sex*, MIAMI HERALD, Sept. 7, 2012, *available at* http://www.miamiherald.com/2012/09/07/2989939/man-30-charged-with-attempted.html.

[15] *Id*.

[16] Danielle A. Alavarez, *BSO accuses man with HIV of trying to bite deputy*, SUN SENTINEL, May 31, 2011, *available at* http://articles.sun-sentinel.com/2011-05-31/health/fl-home-depot-hiv-20110531_1_hiv-bso-deputy; *see also Jamerson v. State*, 77 So. 3d 737 (Fla. Dist. Ct. App. 2011) (affirming aggravated battery conviction – which requires intentionally or knowingly causing great bodily harm, permanent disability, or permanent disfigurement, or use of a deadly weapon – for defendant who bit a law enforcement officer while knowing he had HIV.

[17] Rene Stutzman, *Judge orders Craigslist sex offender held on $150,000 bail*, ORLANDO SENTINEL, Mar. 14, 2011, *available at* http://articles.orlandosentinel.com/2011-03-14/news/os-craigslist-sex-offender-20110314_1_casselberry-boy-craigslist-arrest-report.

- In February 2010, a 45-year-old man living with HIV was charged with the first-degree felony of unlawful acts related to HIV exposure after allegedly not disclosing his HIV status to his long-term sexual partner.[18]

- In August 2009, a 39-year-old woman living with HIV was arrested after she allegedly had unprotected sex with a man and lied about her HIV status.[19]
- In May 2009, a woman living with HIV was arrested for allegedly not disclosing her HIV status to multiple sexual partners.[20] She was charged separately for each sexual encounter with each sexual partner.[21]
- In 2008, a 27-year-old woman living with HIV was sentenced to five years' imprisonment after biting a police officer during an arrest for a charge that was later dropped.[22] She was diagnosed with cancer four months into her sentence, and, following a public campaign, she was granted a conditional release by the Florida Parole Commission, allowing her to die at home.[23]

Donation of blood, organs, or other human tissues to others is a third-degree felony.

PLHIV in Florida should be aware that they may receive up to five years in prison and/or a $5,000 fine if they know their HIV status and donate blood, plasma, organs, skin, or human tissues.[24] It is a defense if the person has not been informed that HIV can be transmitted through human blood, plasma, organ, and tissue donations.[25] Neither the intent to transmit HIV nor actual transmission of the virus is required for prosecution.

Engaging in prostitution with knowledge of one's HIV status is a felony.

Up to five years imprisonment and/or a $5,000 fine can be imposed upon conviction if an individual (1) has tested positive for HIV, (2) been informed that HIV can be transmitted through sexual activity, and (3) commits prostitution, offers to commit prostitution, or procures another for prostitution by engaging in sexual activity in a manner likely to transmit HIV.[26]

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[18] Katie Thomas, *Equestrian Charged with H.I.V.-Related Offenses*, N.Y TIMES, Apr. 11, 2010, *available at* http://www.nytimes.com/2010/04/12/sports/12hiv.html?pagewanted=all&_r=0.

[19] *HIV positive woman arrested*, OCALA STAR BANNER, Aug. 14, 2009, *available at* http://www.ocala.com/article/20090814/ARTICLES/908149971.

[20] *US: Florida Woman Accused of HIV Exposure*, HIV JUSTICE NETWORK, May 9, 2009, *available at* http://www.hivjustice.net/case/us-florida-woman-accused-of-hiv-exposure/.

[21] *Id.*

[22] *HIV-Positive Woman Released from Prison Dies at Home*, CBS MIAMI, Feb. 1, 2011, *available at* http://miami.cbslocal.com/2011/02/01/hiv-positive-woman-released-from-prison-dies-at-home/.

[23] *Id.*

[24] FLA. STAT. ANN. §§ 381.0041(11)(b), 775.082(3)(e), 775.083(1)(c) (2016).

[25] § 381.0041(11)(b) (2016) (stating "[a]ny person who has human immunodeficiency virus infection, who knows he or she is infected with human immunodeficiency virus, *and who has been informed that he or she may communicate this disease by donating blood, plasma, organs, skin, or other human tissue* . . . . (emphasis added)).

[26] §§ 796.08(5), 775.082(3)(e), 775.083(1)(c) (2016).

Neither the intent to transmit HIV, actual transmission of HIV, nor engaging in activities known to transmit HIV is required for prosecution.

Florida defines "prostitution" as "the giving or receiving of the body for sexual activity for hire . . ."[27] Much of what Florida defines as "sexual activity" carries zero, or very low, HIV transmission risk, including: oral penetration by the sexual organ of another, anal or vaginal penetration of another by *any object* other than the sexual organ of another, and the handling or fondling of the sexual organ of another for the purpose of masturbation.[28] Under this statute, sex workers can face penalties for conduct that poses absolutely no risk of exposing another to HIV. In HIV exposure cases involving prostitution, disclosure of HIV status is not a defense, whether condoms or other forms of protection were used is not a consideration, and ejaculation or the exchange of bodily fluids known to transmit HIV is not required for prosecution.[29]

Prosecutions of PLHIV engaged in sex work in Florida include:

- In August 2009, a 32-year-old PLHIV engaged in sex work was arrested under Florida's criminal exposure prostitution statute after allegedly offering to perform a sexual act on an undercover officer for $20.[30]
- In June 2013, a 19-year-old PLHIV engaged in sex work was arrested after allegedly offering to perform a sex act on an undercover police officer.[31] She was charged with offering to commit prostitution and criminal transmission of HIV.[32]
- In February 2012, a 36-year-old woman living with HIV was arrested during an undercover prostitution sting.[33] She was charged with failing to disclose her HIV status to her sexual partners.[34]

Prosecution under this statute is also possible if a PLHIV "procures" another for prostitution by engaging in sexual activity in a "manner likely to transmit" HIV.[35] At least one case in Florida suggests that "procurement" goes beyond mere solicitation and that it instead requires bringing about the result sought by the initial solicitation, such as obtaining someone to provide sexual services to a third party (i.e., a pimp).[36] The meaning of "likely to transmit HIV" is not defined. If "likely" is construed to mean more probable than not, few if any sexual activities would be likely to transmit HIV.[37] However, the

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[27] § 796.07(1)(a) (2016).
[28] *Id*. § 796.07(1)(d) (2016).
[29] §§ 796.08(5), 775.082(3)(e), 775.083(1)(c) (2016).
[30] *HIV-Positive Florida Woman Arrested on Prostitution Charges for Third Time*, POZ, Aug. 24, 2009, *available at* http://www.poz.com/articles/prostitution_charge_hiv_florida_1_17141.shtml.
[31] *Police: Nebraska Avenue prostitute didn't disclose HIV*, TAMPA BAY TIMES, June 30, 2013, *available at* http://www.tampabay.com/news/publicsafety/crime/police-nebraska-avenue-prostitute-didnt-disclose-hiv/2129361.
[32] *Id.*
[33] *Cops: Woman hooking with HIV, arrested*, WPTV NBC5 WEST PALM BEACH, Feb. 8, 2012, *available at* http://www.clipsyndicate.com/video/play/3258487.
[34] *Id.*
[35] FLA. STAT. ANN. § 796.08(5) (2016).
[36] *See generally Register v. State*, 715 So. 2d 274, 276 (Fla. Dist. Ct. App. 1998) (comparing the meanings of "solicitation" and "procurement" under a statute criminalizing procurement of a minor for prostitution).
[37] Carol L. Galletly & Steven D. Pinkerton, *Toward Rational Criminal HIV Exposure Laws*, 32 J.L. MED. & ETHICS 327, 330 (2004).

criminal transmission of HIV, which includes both prostitution provisions as enumerated offenses, applies strict liability for second- or subsequent- defendants who test positive for HIV and who are convicted or plead no contest or guilty to the underlying offense.[38]

Prosecution for HIV exposure in Florida has occurred under general criminal laws.

In at least one Florida case, HIV was considered a deadly weapon for prosecution under general criminal laws. In August 2009, a 35-year-old man living with HIV in Florida was charged with attempted murder when he allegedly yelled that he had HIV and threatened to kill a police officer before biting him in the shin and leaving a permanent bruise.[39] He was convicted of the lesser included offense of aggravated battery on a law enforcement officer and sentenced to 15 years in prison, the maximum possible sentence.[40] The officer did not test positive for HIV.[41] The crime of aggravated battery requires that a person intentionally and knowingly cause great bodily harm or use a deadly weapon.[42]

During the trial, the Florida prosecutor told the jury that the police officer had to avoid intimate "contact with his wife or children for fear he could severely affect them," for eight months before he was cleared by doctors as being HIV negative.[43] The prosecutor's statement ignores the fact that the CDC has concluded there exists only a negligible risk of HIV infection from a bite.[44] The scientific and factual misrepresentations created by criminal HIV exposure laws and the prosecution of PLHIV only increase the risk that PLHIV may be prosecuted for conduct that cannot transmit HIV.

PLHIV may face additional felony penalties for committing or attempting to commit an identified crime(s) after a previous conviction for a similar offense.

PLHIV who commit one of the crimes enumerated by statute after a previous conviction for a statutorily enumerated offense can face additional felony charges. Under Florida law, an individual must be tested for HIV if they are convicted of, plead guilty to, or plead no contest to, an offense or attempted offense involving the transmission of bodily fluids (i.e., the sex-based or assault/battery offenses noted in the statute).[45] If an individual tests positive for HIV, knows of their HIV status, and commits another such offense involving the transmission of bodily fluids, they are guilty of an additional felony, punishable by

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[38] FLA. STAT. ANN. § 775.0877(1)(M), (2), (3) (2016).

[39] *Jamerson v. State*, 77 So. 3d 737 (Fla. Dist. Ct. App. 2011) (review subsequently denied by the Supreme Court of Florida in *Jamerson v. State*, 103 So. 3d 140 (Fla. 2012)).

[40] *Id.*; FLA. STAT. ANN. §§ 784.045, 775.082(3)(d) (2016).

[41] *HIV-Positive Miami Man Sentenced 15 Years for Biting Police Officer*, POZ, August 31, 2009, *available at* https://www.poz.com/article/miami-bite-officer-hiv-17196-3690.

[42] FLA. STAT. ANN. §§ 784.045, 775.082(3)(d) (2016).

[43] *Jamerson*, 77 So. 3d at 738; *Miami Man Gets 15 Years in Prison for Biting Cop,* HIV JUSTICE NETWORK, Aug. 17, 2009, *available at* http://www.hivjustice.net/news/us-miami-man-gets-15-years-in-prison-for-biting-cop/.

[44] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors*, *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 July 20, 2016).

[45] FLA. STAT. ANN. § 775.0877 (2016).

up to five years in prison and/or a $5,000 fine.[46] Although this statute is labeled a "criminal transmission" law, actual transmission of HIV is not required.[47]

Felonies that may trigger additional penalties under this statute include:

- Sexual battery
- Incest
- Lewd or lascivious offenses committed upon or in the presence of any person less than 16 years of age
- Assault or aggravated assault
- Battery or aggravated battery
- Child abuse or aggravated child abuse
- Abuse or aggravated abuse of any elderly person or disabled adult
- Sexual performance by a person less than 18 years of age
- Prostitution
- Donation of blood, plasma, organs, skin, or other human tissue
- Human trafficking.[48]

It is an affirmative defense to prosecution under this statute if the person exposed knew that the offender was infected with HIV, knew that the action being taken could result in transmission of the HIV infection, and voluntarily consented to the action.[49]

Although the statute enumerates several underlying offenses, the authors are only aware of this law applying in prosecutions of sex workers, despite the fact that there is a separate HIV-specific prostitution statute. Such prosecutions include:

- In May 2012, a 41-year-old woman living with HIV was charged with felony prostitution and criminal transmission of HIV.[50]
- In 2007, a sex worker was charged with criminal transmission of HIV for offering oral sex to an undercover police officer.[51]

Florida courts have also imposed sentencing enhancements based on HIV status.

Early in the epidemic, Florida courts imposed sentence enhancements based on a person's HIV status. The cases noted here are from the late 1980s and mid-1990s, and there are no recent cases, to the authors' knowledge, demonstrating that Florida courts continue to apply sentence enhancements based

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[46] §§ 775.0877(3), 775.082, 775.083 (2016).
[47] § 775.0877(5) (2016).
[48] §§ 775.0877(1)(a)-(n) (2016).
[49] § 775.0877(6) (2016).
[50] *Manatee Sheriff: Prostitute transmitted HIV*, HERALD-TRIBUNE, May 27, 2012, *available at* http://www.heraldtribune.com/article/20120527/BREAKING/120529620/2071/NEWS?Title=Manatee-Sheriff-Prostitute-transmitted-HIV.
[51] Michael Scarcella, *Woman Charged With Exposing Men to HIV*, TAMPA BAY TIMES, Oct. 10. 2007, *available at* http://www.tbo.com/news/breaking-news/2007/oct/10/woman-charged-exposing-men-hiv-ar-177190/.

on HIV status. The following cases are included as a comprehensive review of Florida's approach to HIV criminalization, but are not necessarily reflective of current trends in criminal sentencing in Florida.

In *Morrison v. State*, the defendant was convicted of aggravated battery and was sentenced to ten years' imprisonment and ten years of parole.[52] The trial court justified its departure from the sentencing guidelines because in the course of the robbery the defendant bit a 90-year-old man to the bone who later tested positive for HIV.[53] Confirming the lower court's sentencing, the court of appeals held that the departure was justified due to the nature of the crime and that HIV could give rise to AIDS, a "fatal disease."[54]

One Florida case held a defendant's sentence could be enhanced even if there was no proof that he knew his HIV status at the time of the crime. In *Cooper v. State*, the defendant was convicted of aggravated battery, solicitation, and sexual battery and sentenced to 30 years' imprisonment and ten years' probation, reflecting an upward departure from the sentencing guidelines.[55] Four days prior to trial, the defendant received test results that showed he had tested positive for HIV.[56] Though the jury never received this information, the sentencing judge found that the defendant's total disregard of the likelihood that the complainant would be exposed to HIV through the sexual contact supported an enhanced sentence.[57] On appeal, the court agreed with the sentencing, holding that "[b]ecause of his lifestyle, [the defendant] knew or should have known that he had been exposed to the AIDS virus and that by sexual battery upon his victim there was a strong likelihood that the victim would be exposed to AIDS."[58] By "lifestyle" the court was referring to the fact that the defendant had been an "admitted homosexual for years."[59] There was no evidence presented that showed the defendant knew of his HIV status at the time of the assault and, in fact, had only tested positive immediately before trial.[60] This opinion rests on the assumption that gay men should know they have been exposed to HIV even if they have not tested positive.

In *Brooks v. State*, a judge sentenced a sex worker convicted of theft to a sentence above the state sentencing guidelines because she had AIDS, despite the fact that the crime had nothing to do with her HIV status.[61] On appeal, the sentence was reversed because the court found that her HIV status was in no way relevant to the crime.[62]

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[52] 673 So.2d 953, 954 (Fla. Dist. Ct. App. 1996).
[53] *Id.*
[54] *Id.*
[55] 539 So. 2d 508, 509-10 (Fla. Dist. Ct. App. 1989).
[56] *Id.* at 510.
[57] *Id.*
[58] *Id.* at 511.
[59] *Id.* at 512.
[60] *See generally id.*
[61] 519 So.2d 1156, 1156 (Fla. Dist. Ct. App. 1988).
[62] *Id.*

The Florida Department of Health may quarantine or isolate people living with HIV or another STD.

The State Department of Health may petition a court to hospitalize or isolate persons in order to prevent the spread of sexually transmitted disease,[63] including HIV.[64] Some procedural safeguards are in place, such as the requirement that quarantine or isolation be the least restrictive means necessary to accomplish prevention of transmission, written notification at least 72 hours before a hearing, and certain other rights, including the right to legal representation.[65]

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.*

[63] FLA. STAT. ANN. § 384.23 (2016); *See also* FLA. ADMIN CODE r. 64D-3.038 (2016)
[64] FLA. ADMIN CODE r. 64D-3.028 (23) (2016).
[65] FLA. STAT. ANN. § 384.28 (2016).

Code of Florida

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 XLVI, CRIMES

FLA. STAT. ANN. § 775.0877 (2016) **

Criminal transmission of HIV; procedures; penalties

(1) In any case in which a person has been convicted of or has pled nolo contendere or guilty to, regardless of whether adjudication is withheld, any of the following offenses, or the attempt thereof, which offense or attempted offense involves the transmission of body fluids from one person to another:

(a) Section 794.011, relating to sexual battery;

(b) Section 826.04, relating to incest;

(c) Section 800.04, relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;

(d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d), relating to assault;

(e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b), relating to aggravated assault;

(f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c), relating to battery;

(g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a), relating to aggravated battery;

(h) Section 827.03(2)(c), relating to child abuse;

(i) Section 827.03(2)(a), relating to aggravated child abuse;

(j) Section 825.102(1), relating to abuse of an elderly person or disabled adult;

(k) Section 825.102(2), relating to aggravated abuse of an elderly person or disabled adult;

(l) Section 827.071, relating to sexual performance by person less than 18 years of age;

(m) Sections 796.07 and 796.08, relating to prostitution;

(n) Section 381.0041(11)(b), relating to donation of blood, plasma, organs, skin, or other human tissue; or

(o) Sections 787.06(3)(b), (d), (f), and (g), relating to human trafficking,

the court shall order the offender to undergo HIV testing, to be performed under the direction of the Department of Health in accordance with s. 381.004, unless the offender has undergone HIV testing voluntarily or pursuant to procedures established in s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or rule providing for HIV testing of criminal offenders or inmates, subsequent to her or his arrest for an offense enumerated in paragraphs (a)-(n) for which she or he was convicted or to which she or he pled nolo contendere or guilty. The results of an HIV test performed on an offender

pursuant to this subsection are not admissible in any criminal proceeding arising out of the alleged offense.

(2) The results of the HIV test must be disclosed under the direction of the Department of Health, to the offender who has been convicted of or pled nolo contendere or guilty to an offense specified in subsection (1), the public health agency of the county in which the conviction occurred and, if different, the county of residence of the offender, and, upon request pursuant to s. 960.003, to the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor.

(3) An offender who has undergone HIV testing pursuant to subsection (1), and to whom positive test results have been disclosed pursuant to subsection (2), who commits a second or subsequent offense enumerated in paragraphs (1)(a)-(n), commits criminal transmission of HIV, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime enumerated in paragraphs (1)(a)-(n).

(4) An offender may challenge the positive results of an HIV test performed pursuant to this section and may introduce results of a backup test performed at her or his own expense.

(5) Nothing in this section requires that an HIV infection have occurred in order for an offender to have committed criminal transmission of HIV.

(6) For an alleged violation of any offense enumerated in paragraphs (1)(a)-(n) for which the consent of the victim may be raised as a defense in a criminal prosecution, it is an affirmative defense to a charge of violating this section that the person exposed knew that the offender was infected with HIV, knew that the action being taken could result in transmission of the HIV infection, and consented to the action voluntarily with that knowledge.

FLA. STAT. ANN. § 775.082 (2016) **

Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison

(3) A person who has been convicted of any other designated felony may be punished as follows:

> (b)For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.
>
> (e) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

> (a) for a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year

FLA. STAT. ANN. § 775.083 (2016) **

Fines

(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he

or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

(b) $10,000, when the conviction is of a felony of the first or second degree.

(c) $5,000, when the conviction of a felony is of the third degree.

(d) $1,000, when the conviction is of a misdemeanor of the first degree.

FLA. STAT. ANN. § 796.08 (2016) **

Screening for HIV and sexually transmissible diseases; providing penalties

(1)

(a) For the purposes of this section, "sexually transmissible disease" means a bacterial, viral, fungal, or parasitic disease, determined by rule of the Department of Health to be sexually transmissible, a threat to the public health and welfare, and a disease for which a legitimate public interest is served by providing for regulation and treatment.

(b) In considering which diseases are designated as sexually transmissible diseases, the Department of Health shall consider such diseases as chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, syphilis, and human immunodeficiency virus infection for designation and shall consider the recommendations and classifications of the Centers for Disease Control and Prevention and other nationally recognized authorities. Not all diseases that are sexually transmissible need be designated for purposes of this section.

(4) A person who commits prostitution or procures another for prostitution and who, prior to the commission of such crime, had tested positive for a sexually transmissible disease other than human immunodeficiency virus infection and knew or had been informed that he or she had tested positive for such sexually transmissible disease and could possibly communicate such disease to another person through sexual activity commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.

(5) A person who:

(a) Commits or offers to commit prostitution; or

(b) Procures another for prostitution by engaging in sexual activity in a manner likely to transmit the human immunodeficiency virus,

and who, prior to the commission of such crime, had tested positive for human immunodeficiency virus and knew or had been informed that he or she had tested positive for human immunodeficiency virus and could possibly communicate such disease to another person through sexual activity commits criminal transmission of HIV, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution or procurement of prostitution.

TITLE XXIX, PUBLIC HEALTH

FLA. STAT. ANN. §381.0041 (2016)

HIV Testing

(1) Definitions. – As used in this section:

(f) "Significant exposure" means:

1. Exposure to blood or body fluids through needlestick, instruments, or sharps;

2. Exposure of mucous membranes to visible blood or body fluids to which universal precautions apply according to the National Centers for Disease Control and Prevention, including, without limitations, the following body fluids:

a. Blood.

b. Semen.

c. Vaginal secretions.

d. Cerebrospinal fluid (CSF).

e. Synovial fluid.

f. Pleural fluid.

g. Peritoneal fluid.

h. Pericardial fluid.

i. Amniotic fluid.

j. Laboratory specimens that contain HIV (e.g., suspensions of concentrated virus); or

3. Exposure of skin to visible blood or body fluids, especially when the exposed skin is chapped, abraded, or afflicted with dermatitis or the contact is prolonged or involving an extensive area.

(2) Human immunodeficiency virus testing; informed consent; results; counseling; confidentiality.

(a) Before performing an HIV test:

1. In a health care setting, the person to be tested shall be notified orally or in writing that the test is planned and that he or she has the right to decline the test. If the person to be tested declines the test, such decision shall be documented in the medical record. A person who has signed a general consent form for medical care is not required to sign or otherwise provide a separate consent for an HIV test during the period in which the general consent form is in effect.

2. In a nonhealth care setting, a provider shall obtain the informed consent of the person upon whom the test is to be performed. Informed consent shall be preceded by an

explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test as provided by law.

The test subject shall also be informed that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and of the availability and location of sites at which anonymous testing is performed. As required in paragraph (3)(c), each county health department shall maintain a list of sites at which anonymous testing is performed, including the locations, telephone numbers, and hours of operation of the sites.

(e) Except as provided in this section, the identity of any person upon whom a test has been performed and test results are confidential and exempt from the provisions of s. 119.07(1). No person who has obtained or has knowledge of a test result pursuant to this section may disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except to the following persons:

9. A person allowed access by a court order which is issued in compliance with the following provisions:

a. No court of this state shall issue such order unless the court finds that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records.

b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.

c. Before granting any such order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party.

d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

(h) Paragraph (a) does not apply:

1. When testing for sexually transmissible diseases is required by state or federal law, or by rule, including the following situations

a. HIV testing pursuant to s. 796.08 of persons convicted of prostitution or of procuring another to commit prostitution.

7. If an HIV test is mandated by court order.

FLA. STAT. ANN. §381.0041(11)(B) (2016)

Donation and transfer of human tissue; testing requirements

(11)(b) Any person who has human immunodeficiency virus infection, who knows he or she is infected with human immunodeficiency virus, and who has been informed that he or she may communicate this disease by donating blood, plasma, organs, skin, or other human tissue who donates blood, plasma, organs, skin, or other human tissue is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084

FLA. STAT. ANN. § 384.23 (2016)

Definitions

(1) "Department" means the Department of Health

(3) "Sexually transmissible disease" means a bacterial, viral, fungal, or parasitic disease determined by rule of the department to be sexually transmissible, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for prevention, elimination, control, and treatment. The department must, by rule, determine which diseases are to be designated as sexually transmissible diseases and shall consider the recommendations and classifications of the Centers for Disease Control and Prevention and other nationally recognized medical authorities in that determination. Not all diseases that are sexually transmissible need be designated for the purposes of this act.

FLA. STAT. ANN. § 384.24 (2016) **

Unlawful acts

(1) It is unlawful for any person who has chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, or syphilis, when such person knows he or she is infected with one or more of these diseases and when such person has been informed that he or she may communicate this disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual intercourse.

(2) It is unlawful for any person who has human immunodeficiency virus infection, when such person knows he or she is infected with this disease and when such person has been informed that he or she may communicate this disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmissible disease and has consented to the sexual intercourse.

FLA. STAT. ANN. §384.28 (2016)

Hospitalization, placement, and residential isolation.

(1) Subject to the provisions of subsections (2) and (3), the department may petition the circuit court to order a person to be isolated, hospitalized, placed in another health care or residential facility, or isolated from the general public in his or her own or another's residence, or a place to be made off limits to the public as a result of the probable spread of a sexually transmissible disease, until such time as the condition can be corrected or the threat to the public's health eliminated or reduced in such a manner that a substantial threat to the public's health no longer exists.

(2) No person may be ordered to be isolated, hospitalized, placed in another health care or residential facility, or isolated from the public in his or her own or another's residence, and no place may be ordered to be made off limits, except upon the order of a court of competent jurisdiction and upon proof:

> (a) By the department by clear and convincing evidence that the public's health and welfare are significantly endangered by a person with a sexually transmissible disease or by a place where there is a significant amount of sexual activity likely to spread a sexually transmissible disease;
>
> (b) That the person with the sexually transmissible disease has been counseled about the disease, about the significant threat the disease poses to other members of the public, and about methods to minimize the risk to the public and despite such counseling indicates an intent to expose the public to infection from the sexually transmissible disease; and
>
> (c) That all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists.

(3) No person may be ordered to be hospitalized, placed in another health care or residential facility, or isolated in his or her own or another's residence by a court unless:

> (a) A hearing has been held of which the person has received at least 72 hours' prior written notification and unless the person has received a list of the proposed actions to be taken and the reasons for each one.
>
> (b) The person has the right to attend the hearing, to cross-examine witnesses, and to present evidence.
>
> (c) The person has a right to an attorney to represent him or her, and to have an attorney appointed on the person's behalf if he or she cannot afford one.

FLA. STAT. ANN. §384.34 (2016) **

Penalties

(1) Any person who violates the provisions of s. 384.24(1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083

(4) Any person who violates the provisions of the department's rules pertaining to sexually transmissible diseases may be punished by a fine not to exceed $500 for each violation. Any penalties enforced under this subsection shall be in addition to other penalties provided by this chapter. The department may enforce this section and adopt rules necessary to administer this section.

(5) Any person who violates s. 384.24(2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who commits multiple violations of s. 384.24(2) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

FLA. STAT. ANN. §395.3025 (2016)

Patient and personnel records; copies; examination

(4) Patient records are confidential and must not be disclosed without the consent of the patient or his or her legal representative, but appropriate disclosure may be made without such consent to:

> (d) In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records to the patient or his or her legal representative.

Florida Administrative Code

TITLE 64, DEPARTMENT OF HEALTH

FLA. ADMIN. CODE R. 64D-3.028 (2016)

Definitions

When used in Chapter 64D-3, F.A.C., the following terms shall mean:

> (23) "Sexually Transmissible Disease" - Acquired Immune Deficiency Syndrome (AIDS), Chancroid, Chlamydia trachomatis, Gonorrhea, Granuloma Inguinale, Hepatitis A through D, Herpes simplex virus (HSV), Human immunodeficiency virus Infection (HIV), Human papillomavirus (HPV), Lymphogranuloma Venereum (LGV), and Syphilis.

FLA. ADMIN. CODE R. 64D-3.038 (2016)

Quarantine Orders and Requirements

(1) Quarantine orders shall be issued by the State Health Officer, or the county health department director or administrator, or their designee in writing; include an expiration date or specify condition(s) for ending of quarantine; and restrict or compel movement and actions by or regarding persons, animals or premises consistent with the protection of public health and accepted health practices except as otherwise governed by subsection (6).

(2) For the purpose of orders regarding quarantine, the term "actions" encompasses isolation, closure of premises, testing, destruction, disinfection, treatment, protocols during movement and preventive treatment, including immunization.

Georgia

Analysis[1]

People living with HIV (PLHIV) may be prosecuted for specific intent to transmit disease.

Georgia's reckless conduct statute specifically criminalizes PLHIV who, without disclosing their status, "engage in a sexual act" with the "intent to transmit."[2] The sexual act must pose "a significant risk of transmission based on current scientifically supported levels of risk of transmission."[3] If a PLHIV is found guilty of reckless conduct, it is a felony punishable by not more than five years' imprisonment.[4]

PLHIV face heightened criminal penalties for engaging in sex work.

Georgia's reckless conduct statute also imposes criminal penalties on PLHIV who offer or consent to perform a sexual act for money with the "intent to transmit HIV" without disclosing their HIV status, when such an act has "a significant risk of transmission."[5] A violation of this statute results in felony penalties of up to five years' imprisonment.[6]

Prosecution under this statute entails proving that persons accused of criminal conduct under the statute consented to perform a sexual act with another person without disclosing their HIV status, that the person had an intent to transmit HIV via such an act, and that there was a significant risk of transmission of HIV to that sexual partner.[7] Disclosure of one's HIV status is a possible affirmative defense but it continues to be difficult to prove when it involves reliance on conflicting testimony between two parties.[8]

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[1] Effective July 1, 2022, several of Georgia's HIV criminal exposure laws were amended. Before the repeal, it was a felony, punishable by imprisonment for up to 10 years, for a PLHIV with knowledge of their HIV status to engage in anal, oral, and/or penile-vaginal sex with another person without first disclosing their HIV status. GA. CODE ANN. § 16-5-60, repealed by 2021 Ga. S.B. 164 (Ga. 2022). The bill repealed the enhancement for PLHIV who share hypodermic needles or syringes without disclosure of their HIV status; the offense punishing PLHIV who donate blood, other bodily fluids, or organs without disclosure of their HIV status; the enhancement for PLHIV assaulting a peace or correctional officer using bodily fluids with intent to transmit HIV; and the enhancement for PLHIV who solicit "an act of sodomy."

[2] Ga. Code Ann. § 16-5-60.

[3] Ga. Code Ann. § 16-5-60(c)(1).

[4] Ga. Code Ann. § 16-5-60(c)(2).

[5] *Id*.

[6] Ga. Code Ann. § 16-5-60.

[7] *Id.*

[8] Prior to the amendment, disclosure was the *only* defense to prosecution. Even in cases where there existed evidence outside of the testimony of the defendant and the defendant's sexual partner, such as a 2008 case in which two witnesses testified that defendant's sexual partner was aware of her HIV status and the defendant testified that her partner knew her HIV status because it had been published on the front page of a local newspaper, defendants were often found guilty based on that

PLHIV have also been prosecuted under aggravated assault charges.

In *Scroggins v. State*, the defendant, while struggling with a police officer, bit the officer.[9] When the defendant was treated at the hospital he "told a nurse he was HIV positive."[10] He was convicted of aggravated assault with intent to murder.[11] On appeal, the Court of Appeals of Georgia found that the impossibility of transmitting HIV via a bite or saliva was not a defense, as long as the defendant believed HIV could be transmitted in such a manner.[12] The court ruled that a wanton and reckless state of mind could be the equivalent of a specific intent to kill for the purposes of the charges, and that the defendant's' biting of the officer while knowing that his HIV status was sufficient evidence to establish a wanton and reckless disregard for whether HIV was transmitted.[13]

In Georgia, a person commits aggravated assault when there is intent to murder, rape, or rob someone using a deadly weapon that does or is likely to result in serious bodily injury.[14] The application in *Scroggins* exemplifies the way the aggravated assault offense has been used to prosecute PLHIV for behaviors that pose a negligible risk of HIV transmission. For example, the Centers for Disease Control and Prevention maintain there exists only a "negligible" possibility that HIV could be transmitted through a bite,[15] and it unequivocally states that "HIV isn't spread through saliva."[16]

Other prosecutions under Georgia's HIV reckless conduct statute include:

- In May 2026, a 37-year-old man living with HIV was charged with reckless conduct after allegedly spitting on a police officer when being put into the officer's patrol car.[17]
- In November 2025, a 36-year-old man living with HIV was charged with reckless conduct after allegedly spitting in a store clerk's mouth.[18]
- In July 2025, a 60-year-old man living with HIV was charged with reckless conduct after allegedly not disclosing that he had a needle in his pocket. The officer was subsequently stuck by the needle when searching the man's pockets.[19]

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evidence. *Ginn v. State*, 667 S.E.2d 712, 713-714 (Ga. Ct. App. 2008). In a January 2009 case, a 38-year-old man living with HIV was sentenced to two years' imprisonment and eight years' probation after pleading guilty to reckless conduct by an HIV-positive person for having sex with a woman without disclosing his status. The first day they met and had sex, the man and his partner—who later tested negative for HIV—went to the defendant's home at a housing center for PLHIV; the fact that the defendant was living at a home solely for PLHIV was not adequate to constitute disclosure for the purpose of the statute. It is unclear exactly how these applications will change under the new statute and what will constitute evidence of intent.

[9] 401 S.E.2d 13, 15 (Ga. Ct. App. 1990), overruled on other grounds in *Dunagan v. State*, 502 S.E.2d 726 (Ga. 1998).

[10] *Id*.

[11] *Id*.

[12] *Id.* at 16-20.

[13] *Id.* at 19.

[14] GA. CODE ANN. § 16-5-21.

[15] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk and Prevention Estimates*, (Nov. 5, 2024) *available at* https://www.cdc.gov/hivpartners/php/riskandprevention/index.html (last visited Jul. 2, 2026).

[16] CTR. FOR DISEASE CONTROL & PREVENTION, *How HIV Spreads*, (Nov. 25, 2024) *available at* https://www.cdc.gov/hiv/causes/index.html (last visited Jul. 20, 2026).

[17] *Roman Jailed for Assaulting Police Officer with Bodily Fluid*, Coosa Valley News, May 2026, available at Roman Jailed for Assaulting Police Officer with Bodily Fluid - Coosa Valley News.

[18] *Report: Man Said to Have HIV Spit in Store Clerk's Mouth*, Mymcr.net, Nov. 26, 2025, available at Report: Man said to have HIV spit in store clerk's mouth | News | mymcr.net.

[19] *Rome Man Arrested After Exposing Police Officer to HIV*, Coosa Valley News, July 2025, available at Rome Man Arrested After Exposing Police Officer to HIV - Coosa Valley News.

- In July 2023, a 61-year-old man living with HIV was charged with three counts of reckless conduct, malice murder, and felony murder for allegedly transmitting HIV to his partner and failing to disclose his status to another sexual partner.[20]
- In December 2022, a 51-year-old woman living with HIV was charged with reckless conduct for allegedly spitting from the back seat of a patrol car onto a police officer's arm while being transported to jail.[21]
- In November 2013, a 52-year-old man living with HIV was charged with reckless conduct after allegedly not disclosing his HIV status to a sexual partner.[22]
- In October 2013, a 23-year-old man living with HIV was charged with statutory rape and reckless conduct after allegedly transmitting HIV to a teenage girl.[23]
- In March 2013, a 21-year-old man living with HIV was arrested and charged with the HIV-specific reckless conduct offense after allegedly not disclosing his HIV status to sexual partners.[24] At least one partner claimed to have acquired the virus from him.[25]
- In February 2012, a man living with HIV was sentenced to ten years imprisonment for reckless conduct after allegedly not disclosing his HIV status to multiple sexual partners.[26]
- In August 2011, a man living with HIV was charged with reckless conduct by an HIV-positive person after allegedly not disclosing his HIV status to his girlfriend.[27]
- In April 2011, a 32-year-old man living with HIV was charged with contributing to the delinquency of a minor, aggravated child molestation, and reckless conduct after allegedly having sex with his 15-year-old student.[28]
- In August 2009, a 42-year-old man living with HIV was charged with aggravated assault after he bit an Atlanta police officer, allegedly shouting “I have full-blown AIDS” and claiming that his bite would transmit HIV to the officer.[29] He later received 18 months’ imprisonment for aggravated assault.[30]

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[20] Ciara Cummings & Tim Darnell, *HIV-Positive Metro Atlanta Man Charged with Murder in Wife’s Death*, Atlanta News First, Apr. 22, 2025, available at HIV-positive metro Atlanta man charged with murder in wife’s death.

[21] *SPD: HIV Positive Suspect Spit on Officer*, Times-Herald, Mar. 13, 2023, available at SPD: HIV positive suspect spit on officer | Local News | times-herald.com.

[22] Evan Bleier, *HIV-positive Georgia man arrested for having unprotected sex*, UPI.COM, Nov. 15, 2013, *available at* http://www.upi.com/Odd_News/Blog/2013/11/15/HIV-positive-Georgia-man-arrested-for-having-unprotected-sex/3521384541636/; Joe Johnson, *HIV-infected Athens man arrested for having unprotected sex*, ATHENS BANNER-HERALD, Dec. 5, 2013, *available at* http://onlineathens.com/local-news/2013-11-13/hiv-infected-athens-man-arrested-having-unprotected-sex.

[23] *Police: Savannah man with HIV knowingly infected teenage girl*, SAVANNAH MORNING NEWS, Oct. 21, 2013, *available at* http://savannahnow.com/crime/2013-10-21/police-savannah-man-knowingly-infected-teenage-girl-hiv#.Ury1q2RDsqQ.

[24] *Baldwin Co. Deputies Arrest Man for Spreading HIV Without Telling Sexual Partners*, 41NBC.COM, Mar. 12, 2013, *available at* http://www.41nbc.com/2013/03/12/baldwin-co-deputies-arrest-man-for-spreading-hiv-without-telling-sexual-partners/.

[25] *Id*.

[26] Erica Byfield, *Man knowingly spreads HIV*, WSB-TV2 ATLANTA, Feb. 29, 2012, *available at* http://www.wsbtv.com/news/news/local/man-convicted-knowingly-spreading-hiv/nK8Pc/.

[27] *Douglas County man charged with infecting girlfriend with HIV*, THE ATLANTA JOURNAL-CONSTITUTION, Aug. 4, 2011, *available at* http://www.ajc.com/news/news/local/douglas-county-man-charged-with-infecting-girlfrie/nQKLL/.

[28] Edecio Martinez, *Band Teacher with HIV Allegedly Had Sex with 15-Year-Old Student*, CBSNEWS.COM, Apr. 14, 2011, *available at* http://www.cbsnews.com/news/band-teacher-with-hiv-allegedly-had-sex-with-15-year-old-student/.

[29] Edwin J. Bernard, *US: Georgia Judge Branded ‘Too Lenient’ After 18 Month Sentence for Cop Biter*, HIV JUSTICE NETWORK, Sept. 6, 2009, *available at* http://www.hivjustice.net/news/us-georgia-judge-branded-too-lenient-after-18-month-sentence-for-cop-biter/.

[30] *Id*.

- In a July 2008 case, a 43-year-old woman living with HIV was charged with aggravated assault when she spat in the face of another person.[31] The woman pled guilty and was sentenced to three years in jail.[32]

The Georgia Department of Health may quarantine or isolate PLHIV for a "venereal disease."

The Department of Health is empowered to make examinations of persons living with or suspected of living with HIV and, with the person's consent, administer a test for HIV.[33] If the person refuses to consent to the administration of an HIV test, the department may petition the court for an order authorizing the test.[34] The subject of such a petition has the right to legal counsel, and in the event the person cannot afford counsel, counsel will be appointed by the court. After consideration of the evidence, the court may order the person to submit to an HIV test and require procedures to protect public health consistent with the least restrictive alternative if the result is positive.[35]

Separately, the Department of Health may require a person living with or suspected of living with a "venereal disease"[36] to report to a physician for treatment until cured and may also order isolation of any such person.[37]

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.*

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[31] Alan Riquelmy, *HIV positive woman gets 3 years for spitting*, LEDGER-ENQUIRER, July 22, 2008, *available at* http://www.ledger-enquirer.com/news/local/article29009494.html.
[32] *Id*.
[33] GA CODE ANN. §31-17A-2.
[34] *Id*.
[35] GA CODE ANN. § 31-17A-3.
[36] Including syphilis, gonorrhea or chancroid. GA CODE ANN. § 31-17-1.
[37] GA CODE ANN. § 31-17-3.

Code of Georgia

TITLE 16, CRIMES AND OFFENSES

GA. CODE ANN. § 16-5-60

Reckless conduct causing harm to or endangering the bodily safety of another; conduct by HIV infected persons

(a)

(1) As used in this subsection, the terms “independent activity,” “legal custodian,” and “neglect” shall have the same meaning as provided in Code Section 15-11-2.

(2) A person who causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his or her act or omission will cause harm or endanger the safety of the other person and the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation is guilty of a misdemeanor; provided, however, that it shall not be a violation of this subsection for a legal custodian to permit a child to engage in one or more independent activities unless doing so constitutes neglect.

(c) A person living with HIV who

(1) Knowingly engages in a sexual act with the intent to transmit HIV and does not disclose his or her status as being a person living with HIV to the other person prior to that sexual act when such act has a significant risk of transmission based on current scientifically supported levels of risk of transmission; provided, however, that this paragraph shall not apply to a person living with HIV who is forced into a sexual act against his or her will; or

(2) Offers or consents to perform with another person a sexual act for money with the intent to transmit HIV without disclosing his or her status as being a person living with HIV to that other person prior to offering or consenting to perform the sexual act when such act has a significant risk of transmission based on current scientifically supported levels of risk of transmission, is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than five years.

TITLE 17, CRIMINAL PROCEDURE

GA. CODE ANN. § 17-10-15

AIDS transmitting crimes; requiring defendant to submit to HIV test; report of results

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) A victim or the parent or legal guardian of a minor or incompetent victim of a sexual offense as defined in Code Section 31-22-9.1 or other crime which involves significant exposure as defined by subsection (f) of this Code section may request that the agency responsible for prosecuting the alleged offense request that the person arrested for such offense submit to a test for the human

immunodeficiency virus and consent to the release of the test results to the victim. If the person so arrested declines to submit to such a test, the judge of the superior court in which the criminal charge is pending, upon a showing of probable cause that the person arrested for the offense committed the alleged crime and that significant exposure occurred, may order the test to be performed in compliance with the rules adopted by the Department of Public Health. The cost of the test shall be borne by the victim or by the arrested person, in the discretion of the court.

(c) Upon a verdict or plea of guilty or a plea of nolo contendere to any AIDS transmitting crime, the court in which that verdict is returned or plea entered shall require the defendant in such case to submit to an HIV test within 45 days following the date of such verdict or plea.

(d) Any person required under this Code section to submit to the HIV test who fails or refuses to submit to the test shall be subject to such measures deemed necessary by the court in which the order was entered, verdict was returned, or plea was entered to require involuntary submission to the HIV test, and submission thereto may also be made a condition of suspending or probating any part of that person's sentence for the AIDS transmitting crime.

(e) If a person is required by this Code section to submit to an HIV test and is thereby determined to be infected with HIV, that determination and the name of the person shall be reported to:

> (1) The Department of Public Health, which shall disclose the name of the person as necessary to provide counseling to each victim of that person's AIDS transmitting crime if that crime is other than one specified in subparagraph (a)(3)(J) of Code Section 31-22-9.1 or to any parent or guardian of any such victim who is a minor or incompetent person;
>
> (2) The court which ordered the HIV test, which court shall make that report a part of that person's criminal record. That report shall be sealed by the court; and
>
> (3) The officer in charge of any penal institution or other facility in which the person has been confined by order or sentence of the court for purposes of enabling that officer to confine the person separately from those not infected with HIV.

(f) For the purpose of subsection (b) of this Code section, "significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or body fluids of the person arrested for such offense, other than tears, saliva, or perspiration, of a magnitude that the Centers for Disease Control and Prevention have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

(g) The state may not use the fact that a medical procedure or test was performed on a person under this Code section or use the results of the procedure or test in any criminal proceeding arising out of the alleged offense.

TITLE 15, COURTS

GA. CODE ANN. § 15-11-471

Definitions

As used in this article, the term:

(1) “AIDS transmitting crime” shall have the same meaning as set forth in Code Section 31-22-9.1.

(4) “Determined to be infected with HIV” means having a confirmed positive human immunodeficiency virus (HIV) test or having been clinically diagnosed as having AIDS.

(7) “HIV test” means any antibody, antigen, viral particle, viral culture, or other test to indicate the presence of HIV in the human body.

GA. CODE ANN. § 15-11-603

Disposition of child adjudged to have committed delinquent act constituting AIDS transmitting crime; HIV testing; reports

(a) As part of any order of disposition regarding a child adjudged to have committed a delinquent act constituting an AIDS transmitting crime, the court may in its discretion and after conferring with the director of the health district, order that such child submit to an HIV test within 45 days following the adjudication of delinquency. The court shall mail DJJ a copy of the order within three days following its issuance.

(d) If a child is determined to be infected with HIV, that determination and the name of the child shall be deemed to be AIDS confidential information and shall only be reported to:

(3) Those persons in charge of any facility to which such child has been confined by order of the court. In addition to any other restrictions regarding the confinement of a child, a child determined to be an HIV infected person may be confined separately from any other children in that facility other than those who have been determined to be infected with HIV if:

(A) That child is reasonably believed to be sexually active while confined;

(B) That child is reasonably believed to be sexually predatory either during or prior to detention; or

(C) The commissioner of juvenile justice reasonably determines that other circumstances or conditions exist which indicate that separate confinement would be warranted.

TITLE 31, HEALTH

GA. CODE ANN. § 31-17-1

Enumeration of diseases deemed dangerous to public health

As used in this chapter, the term "sexually transmitted diseases" means syphilis, gonorrhea, chlamydia, and any other diseases that the Department of Public Health, through rule or regulation, declares to be contagious, infectious, communicable, and dangerous to the public health.

GA. CODE ANN. § 31-17-3

Examination and treatment by health authorities

The authorized agent or agents of the Department of Public Health and county boards of health are directed and empowered, when in their judgment it is necessary to protect the public health, to make

examination of persons infected or suspected of being infected with a sexually transmitted disease; to require persons infected with a sexually transmitted disease to report for treatment to a physician licensed to practice medicine under Chapter 34 of Title 43 and to continue treatment until cured, or to submit to treatment provided at public expense; and to isolate persons infected or reasonably suspected of being infected with a sexually transmitted disease. Law enforcement authorities of the jurisdiction wherein any such person so infected or suspected of being infected is located shall offer such assistance, including restraint and arrest, as shall be necessary to assure examination and treatment in accordance with this chapter.

GA. CODE ANN. § 31-17-8

Penalty

Any person who violates any provision of this chapter or any rule or regulation promulgated under this chapter shall be guilty of a misdemeanor.

GA. CODE ANN. § 31-17A-1

HIV deemed dangerous to public health

(a) Any term used in this chapter and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) HIV and the degenerative diseases associated with it are declared to be contagious, infectious, communicable, and extremely dangerous to the public health.

GA. CODE ANN. § 31-17A-2

Examination of infected persons; administration of HIV test

The authorized agent or agents of the Department of Public Health are directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations of persons infected or suspected of being infected with HIV and to administer an HIV test with the consent of the person being tested. In the event the person infected or suspected of being infected with HIV refuses to consent to the administration of an HIV test, the authorized agent or agents of the Department of Public Health are authorized to petition the court for an order authorizing the administration of an HIV test pursuant to the procedure set forth in Code Section 31-17A-3.

GA. CODE ANN. § 31-17A-3

Refusal to consent to test; procedure

(a) If a person refuses to consent to an HIV test, as provided in Code Section 31-17A-2, the Department of Public Health may file a civil complaint with the superior court of the county of the residence of the person refusing the test. The complaint shall allege with specificity the basis for the allegations which the department believes support the conclusion that the person is infected with HIV, as well as the scope, nature, and threat to the public health created thereby, and the proposed plan to be adopted to protect the public health in the event the court orders the administration of the HIV test and the person is found to be an HIV infected person. The person against whom the complaint is filed shall be represented by counsel, and, in the event the person against whom the complaint is filed cannot afford counsel, counsel shall be appointed by the court.

(b) The superior court shall hear the complaint on an expedited basis without a jury. All proceedings before the court shall be sealed.

(c) If after consideration of the evidence, the court finds clear and convincing evidence that the person is reasonably likely to be infected with HIV and that there is a compelling need to protect the public health, the court may order the person to submit to an HIV test, shall retain jurisdiction to render such orders as are appropriate to effectuate that order, and, in the event the person so tested is determined to be infected with HIV, to require such procedures to protect the public health consistent with the least restrictive alternative which is available within the limits of state funds specifically appropriated therefor.

GA. CODE ANN. § 31-22-9.1

Definition of AIDS and HIV related terms

(a) As used in this Code section, the term:

(3) "AIDS transmitting crime" means any of the following offenses specified in Title 16:

(A) Rape;

(B) Sodomy;

(C) Aggravated sodomy;

(D) Child molestation;

(E) Aggravated child molestation;

(F) Prostitution;

(G) Solicitation of sodomy;

(H) Incest;

(I) Statutory rape; or

(J) Any offense involving a violation of Article 2 of Chapter 13 of Title 16, regarding controlled substances, if that offense involves heroin, cocaine, derivatives of either, or any other controlled substance in Schedule I, II, III, IV, or V and that other substance is commonly intravenously injected, as determined by the regulations of the department.

(11) "HIV infected person" means a person who has been determined to be infected with HIV, whether or not that person has AIDS, or who has been clinically diagnosed as having AIDS.

(14) "Knowledge of being infected with HIV" means actual knowledge of:

(A) A confirmed positive HIV test; or

(B) A clinical diagnosis of AIDS.

TITLE 42, PENAL INSTITUTIONS

GA. CODE ANN. § 42-5-52.1

Submission to HIV test; separate housing for HIV infected persons

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for that term in Code Section 31-22-9.1.

(b) Where any person is committed to the custody of the commissioner to serve time in any penal institution of this state on and after July 1, 1988, the department shall require that person to submit to an HIV test within 30 days after the person is so committed unless that person is in such custody because of having committed an AIDS transmitting crime and has already submitted to an HIV test pursuant to Code Section 17-10-15.

(c) No later than December 31, 1991, the department shall require to submit to an HIV test each person who has been committed to the custody of the commissioner to serve time in a penal institution of this state and who remains in such custody, or who would be in such custody but for having been transferred to the custody of the Department of Human Resources (now known as the Department of Behavioral Health and Developmental Disabilities) under Code Section 42-5-52, if that person has not submitted to an HIV test following that person's most recent commitment to the custody of the commissioner and unless that person is in such custody because of having committed an AIDS transmitting crime and has already submitted to an HIV test pursuant to Code Section 17-10-15.

(d) Upon failure of an inmate to cooperate in HIV test procedures under this Code section, the commissioner may apply to the superior court for an order authorizing the use of such measures as are reasonably necessary to require submission to the HIV test. Nothing in this Code section shall be construed to limit the authority of the department to require inmates to submit to an HIV test.

(e) Any person determined by the department to be an HIV infected person, whether or not by the test required by this Code section, should be housed separately at existing institutions from any other persons not infected with HIV if:

(1) That person is reasonably believed to be sexually active while incarcerated;

(2) That person is reasonably believed to be sexually predatory either during or prior to incarceration; or

(3) The commissioner determines that other conditions or circumstances exist indicating that separate confinement would be in the best interest of the department and the inmate population, but neither the department nor any officials, employees, or agents thereof shall be civilly or criminally liable for failing or refusing to house HIV infected persons separately from any other persons who are not HIV infected persons.

Hawaii

Analysis

No criminal statutes explicitly addressing HIV or STI exposure.

There are no statutes explicitly criminalizing HIV and/or STI exposure or transmission in Hawaii. However, in some states, PLHIV have been prosecuted for HIV exposure under general criminal laws, such as reckless endangerment and aggravated assault. At the time of this publication, the authors are not aware of a criminal prosecution of an individual on the basis of that person's HIV or STI status in Hawaii.

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.*

Idaho

Analysis

People living with HIV (PLHIV) can face felony charges for failure to disclose HIV status to sexual partners.

In Idaho it is against the law for PLHIV to engage in sex without first disclosing their HIV status to their partners. It is a felony, punishable by to up 15 years in prison and/or a $5,000 fine, for a PLHIV to expose another person in "any manner with the intent to infect."[1] Where intent to transmit disease is present, exposure by any means is sufficient for prosecution. As drafted, the statute may criminalize conduct that poses no risk of HIV transmission, such as a PLHIV spitting at another individual, so long as there is intent to transmit disease.[2]

It is also a felony for a PLHIV who is aware of their HIV status to transfer or attempt to transfer any body fluid, body tissue, or organs to another person.[3] "Body fluid" includes semen, blood, saliva, vaginal secretion, breast milk, and urine.[4] "Transfer" is also defined broadly as including genital-genital contact, oral-genital contact and anal-genital contact.[5] The statute criminalizes exposure to bodily fluids that are known not to transmit HIV (saliva, urine) as well as activities that involve "little to no risk" of HIV transmission, such as oral sex.[6]

Actual transmission is not required for prosecution, under either the exposure with intent to transmit or the transfer of body fluids with non-disclosure of HIV status statutes. It is an affirmative defense if the defendant can prove that the sexual activity was consensual and their partner was informed "of the risk of such activity."[7] Disclosing one's HIV status to a partner without also informing them of the risk presented by the activity is not a sufficient defense on the face of the statute. The use of condoms or other protection is not a defense. PLHIV prosecuted under the statute also have an affirmative defense if it can be demonstrated that a licensed physician informed the defendant that they were

[1] IDAHO CODE ANN. § 39-608(1) (2016).
[2] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?*, (Nov. 10, 2016) *available at* http://www.cdc.gov/hiv/basics/transmission.html (last visited Dec. 11, 2016) (stating that HIV cannot be spread through saliva or from being scratched by a PLHIV)
[3] IDAHO CODE ANN. § 39-608(1) (2016).
[4] IDAHO CODE ANN. § 39-608(2)(a) (2016).
[5] IDAHO CODE ANN. § 39-608(2)(b) (2016).
[6] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from Oral Sex?*, (Nov. 10, 2016) *available at* http://www.cdc.gov/hiv/basics/transmission.html (last visited Dec. 11, 2016) (stating that "there's little to no risk of getting or transmitting HIV through oral sex.")
[7] IDAHO CODE ANN § 39-608(3)(a) (2016).

"noninfectious" prior to the transfer of body fluids, tissues, or organs.[8] This defense may be applicable for a defendant who is counseled by a physician that they are virally suppressed prior to sexual activity.

Whether or not disclosure of HIV status actually occurred is challenging for a defendant to prove—typically the only available evidence is the conflicting testimony of the defendant and the complainant. In *State v. Thomas*, a PLHIV appealed his conviction and 15 year sentence for not disclosing his HIV status before engaging in oral and anal sex, though he did not ejaculate.[9] At trial, the defendant had questioned his accuser's credibility, presenting evidence of her drug use, psychological problems, reputation for "untruthful and dramatic" behavior, and alcohol consumption prior to sex with him that could have undermined her recall of the evening's events.[10] Friends of the complainant, however, testified that they could hear the sexual encounter, saw the defendant leave the residence, and that the complainant was very upset when they informed her of defendant's HIV status.[11] The Idaho Court of Appeals concluded that it was up to the jury to determine which testimony was the most credible, and that there was "substantial and competent evidence presented to support the jury's verdict finding [the defendant] guilty . . . ."[12]

In 2009, over a decade after his 1996 conviction, the defendant in *State v. Thomas* pled guilty to two more counts of criminal transfer of body fluids.[13] The deputy prosecuting attorney chastised the defendant for potentially giving his sexual partners a "death sentence"[14] and Thomas received 30 years in prison with ten years fixed.[15] The complainant in the case did not test positive for HIV, though whether transmission of HIV occurred is irrelevant under the statute.[16] The defendant later tried to withdraw his guilty plea, but his motion was denied by the district court, and this denial was subsequently affirmed by the Court of Appeals of Idaho.[17]

Prosecutions of PLHIV under Idaho's transfer of bodily fluids statute include:

- In December 2013, a 40-year-old PLHIV was charged with transfer of bodily fluids which may contain HIV for allegedly failing to disclose his status to a sexual partner.[18]
- In September 2013, a 52-year-old man was charged with transfer of bodily fluids which may contain HIV after allegedly failing to disclose his HIV status to multiple sexual partners.[19]

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[8] IDAHO CODE ANN. § 39-608(3)(b) (2016).

[9] *State v. Thomas*, 983 P.2d 245, 246-47 (Idaho Ct. App. 1999).

[10] *Id.* at 247.

[11] *Id.* at 248.

[12] *Id.*

[13] Taylor Craig Newbold, *Full Disclosure: Idaho's HIV Disclosure Laws Causing Their Own Issues*, BOISE WEEKLY, Jan. 23, 2013, *available at* http://www.boiseweekly.com/boise/full-disclosure-idahos-hiv-disclosure-laws-causing-their-own-issues/Content?oid=2803038&storyPage=2.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *State v. Thomas*, 297 P.3d 268, 271 (Idaho Ct. App. 2013).

[18] George Prentice, *Police Blotter: HIV-Related Charges and Vandalizing Small Business*, BOISE WEEKLY, Dec. 13, 2013, *available at* http://www.boiseweekly.com/CityDesk/archives/2013/12/13/police-blotter-hiv-related-charges-and-vandalizing-small-business.

[19] John Funk, *Man charged with transmitting HIV gets 15 years for probation violation*, IDAHO PRESS-TRIBUNE, Sept. 11, 2013, *available at* http://www.idahopress.com/members/man-charged-with-transmitng-hiv-gets-years-for-probatonviolaton/artcle_cc57d346-1a9a-11e3-99fa-001a4bcf887a.html.

Though the defendant argued that his original HIV test had been a false positive, and in fact subsequent tests for HIV were all negative, the prosecution stated that this was irrelevant, as the defendant in fact believed at the time of the sexual encounters that he had HIV and was required to disclose this information.[20] The defendant made an Alford plea, under which he maintained his innocence but acknowledged that a jury would likely find him guilty.[21] Under the terms of his plea, the man received five to 15 years in prison for the transmission charge and associated violation of his probation.[22]

- In May 2012, a 37-year-old PLHIV was charged with knowingly exposing another to HIV after he allegedly failed to disclose his status to two sexual partners.[23]
- In September 2010, a 31-year-old PLHIV was charged with knowingly transferring bodily fluids and failing to disclose his status to sexual partners he met through the Internet.[24] He later pled guilty and was sentenced to 15 years in prison.[25]

PLHIV have also been prosecuted under Idaho's statute for engaging in acts that are not known to transmit HIV. In *State v. Mubita*, a man living with HIV appealed his conviction for 11 counts of transferring bodily fluids which may contain HIV and resulting 44-year sentence.[26] His crimes included performing oral sex on his female partner and ejaculating on her thigh.[27] On appeal, defendant argued that it was factually impossible to violate the purpose of Idaho's HIV criminal exposure statute by engaging in oral sex, since the Idaho legislature intended to criminalize "behavior which may result in the spread of HIV or AIDS"[28] and a PLHIV performing oral sex poses little or no risk of transmitting HIV.[29] The Supreme Court of Idaho found that the defendant had nonetheless violated the law because, when looking to the plain language of the statute, it "unambiguously dictate[d] that one can 'transfer' one's body fluid via 'oral-genital contact,' and the statute expressly define[d] 'body fluid' to include saliva."[30]

Idaho's definition of bodily fluids, which includes saliva and urine, disregards scientific fact surrounding the risks of HIV transmission, only adding to public confusion concerning how the disease is transmitted

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[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Meridian man charged with exposing others to HIV*, IDAHO PRESS-TRIBUNE May 28, 2012, *available at* http://www.idahopress.com/news/state/meridian-man-charged-with-exposing-others-to-hiv/article_cee48871-7eef-5de5-b196-bf6bc8997696.html.

[24] *Boise man charged with transferring HIV*, IDAHO PRESS-TRIBUNE, Sept. 14, 2010, *available at* http://www.idahopress.com/news/article_bbfc76ac-c032-11df-9d38-001cc4c002e0.html.

[25] *Boise man with HIV sentenced for unprotected sex*, IDAHO PRESS-TRIBUNE, Mar. 25, 2011, *available at* http://www.idahopress.com/news/state/boise-man-with-hiv-sentenced-for-unprotected-sex/article_fa614fac-1593-5f83-b83f-5b1068ba6be4.html.

[26] 188 P.3d 867, 871 (Idaho 2008).

[27] *Id.* at 882-83.

[28] *Id.* at 881-82.

[29] *Id.*

[30] *Id.* at 883 (Note that the established rule of statutory construction relied upon in *Mubita* was subsequently overruled in *Verska v. St. Alphonsus Reg'l Med. Ctr.* In that case, the Court clarified that its role is not to determine whether an "unambiguous statute [is] palpably absurd" in its assessment of a statute's meaning. 151 Idaho 889, 895-96 (Idaho 2011) In *Mubita*, the Court merely confirmed that oral sex was unambiguously included in the statute without reaching the question of whether that was a "palpably absurd" result. 188 P.3d 867, 882-83 (Idaho 2008).

and worsening the stigma faced by people living with HIV.[31] It ignores the fact that the CDC has long maintained that saliva and urine do not transmit HIV.[32] Further, while breast milk is included in this statute's list of "bodily fluids," breastfeeding, which can transfer HIV, is not included in a list of activities that constitute "transfer" of bodily fluids.[33]

Sharing needles/syringes is a felony for PLHIV.

Idaho's HIV statute specifically targets intravenous drug users and others who share their needles and syringes. It is a felony, punishable by up to 15 years in prison and/or a $5,000 fine, for a PLHIV who knows their HIV status to "transfer" bodily fluids by allowing others to use their hypodermic syringes, needles, or similar devices without sterilization.[34]

Neither the intent to transmit HIV nor actual transmission is required for prosecution. Unlike those charged for transfer of bodily fluids that occurs via sexual activity under the law, disclosure of HIV status is not a defense for individuals charged with sharing a syringe.[35] A PLHIV sharing unsterilized needles or syringes only has a defense to prosecution if they can prove that a licensed physician advised them that they were "noninfectious."[36]

HIV status must be disclosed before donating blood, semen, body tissues, or organs.

It is a felony, punishable by up to 15 years in prison and/or a $5,000 fine, for a PLHIV who knows their HIV status to give blood, semen, organs, or body tissues to any person, blood bank, hospital, or medical facility for the purposes of transfer to another person.[37] Neither the intent to transmit HIV nor actual transmission is required. However, a PLHIV donating blood, semen, organs, or body tissues does have an affirmative defense if they can prove that the donation(s) occurred after a licensed physician advised that they were "noninfectious."[38]

A person with venereal disease, including HIV, can be prosecuted for exposing another to the risk of transmission.

Under Idaho's public health code it is a unlawful for a person with a venereal disease to knowingly expose another person to that disease.[39] The code defines venereal disease to include syphilis, gonorrhea, HIV, chlamydia, and hepatitis B.[40] However, the statute only references exposing another to syphilis, gonorrhea or chancroid as a misdemeanor offense ; if found guilty an individual can face up to

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[31] CTR. FOR DISEASE CONTROL & PREVENTION, *How is HIV passed from one person to another?*, (Sept. 23, 2014), *available at* http://www.cdc.gov/hiv/basics/transmission.html (last visited Dec. 11, 2016) (noting that HIV can only be transmitted through certain fluids: blood, semen, pre-seminal fluid, rectal fluids, vaginal fluids, and breast milk).
[32] *Id.*
[33] IDAHO CODE ANN. §§ 39-608(2)(a), 39-608(2)(b) (2016).
[34] IDAHO CODE ANN. §§ 39-608(1), 39-608(2)(b) (2016).
[35] IDAHO CODE ANN. § 39-608(3)(a) (2016).
[36] IDAHO CODE ANN § 39-608(3)(b) (2016).
[37] IDAHO CODE ANN § 39-608(2)(b) (2016).
[38] IDAHO CODE ANN § 39-608(3)(b) (2016).
[39] IDAHO CODE ANN §§ 39-601, 39-607 (2016).
[40] IDAHO CODE ANN § 39-601(2016).

six months' imprisonment and/or a fine of up to $300.[41] Unlike Idaho's felony exposure statute, disclosure is not a defense to prosecution; and neither the intent to transmit disease nor actual transmission is required.

Although hepatitis B and chlamydia are both defined as a venereal disease, the Idaho code is otherwise silent about the penalty for a person with hepatitis B who knowingly exposes another to the disease..[42]

Persons with venereal disease also may be subject to restrictive measures, including mandatory examination, treatment, isolation and quarantine.

A public health official may require that a person "known or suspected to be infected with venereal disease" undergo mandatory examination or treatment if "in their judgment it is necessary to protect the public health."[43] Mandatory treatment may continue until a person is "cured," [44] which makes it unclear how the statute would apply to a person with HIV or any other condition that cannot be eliminated or rendered completely non-infectious.

Health officials also have the power to impose isolation or quarantine on an individual with venereal disease if deemed "necessary to protect the public health."[45] The statute does not enumerate any procedural safeguards for a person subject to these kinds of measures and the authors are not aware of any Idaho case law that demonstrates the limits of public health authority to control venereal disease.

Public health officials, in fulfilling their duty "to investigate sources of infection of venereal diseases," are also instructed to "cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution."[46]

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 substitute for legal advice.*

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[41] IDAHO CODE ANN § 39-607(2016).
[42] *Id.*
[43] IDAHO CODE ANN § 39-603 (2016).
[44] *Id.*
[45] *Id. See also* IDAHO CODE ANN § 39-605 (2016).
[46] IDAHO CODE ANN § 39-603 (2016).

Idaho Code 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.*

GENERAL LAWS, TITLE 39, HEALTH AND SAFETY

IDAHO CODE ANN. § 39-608 (2016) **

Transfer of body fluid which may contain the HIV virus--Punishment--Definitions--Defenses

(1) Any person who exposes another in any manner with the intent to infect or, knowing that he or she is or has been afflicted with acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), or other manifestations of human immunodeficiency virus (HIV) infection, transfers or attempts to transfer any of his or her body fluid, body tissue or organs to another person is guilty of a felony and shall be punished by imprisonment in the state prison for a period not to exceed fifteen (15) years, by fine not in excess of five thousand dollars ($ 5,000), or by both such imprisonment and fine.

(2) Definitions. As used in this section:

> (a) “Body fluid” means semen (irrespective of the presence of spermatozoa), blood, saliva, vaginal secretion, breast milk, and urine.
>
> (b) “Transfer” means engaging in sexual activity by genital-genital contact, oral-genital contact, anal-genital contact; or permitting the use of a hypodermic syringe, needle, or similar device without sterilization; or giving, whether or not for value, blood, semen, body tissue, or organs to a person, blood bank, hospital, or other medical care facility for purposes of transfer to another person.

(3) Defenses:

> (a) Consent. It is an affirmative defense that the sexual activity took place between consenting adults after full disclosure by the accused of the risk of such activity.
>
> (b) Medical advice. It is an affirmative defense that the transfer of body fluid, body tissue, or organs occurred after advice from a licensed physician that the accused was noninfectious.

IDAHO CODE ANN. § 39-601 (2016) **

Venereal diseases enumerated

Syphilis, gonorrhea, human immunodeficiency virus (HIV), chlamydia and hepatitis B virus (HBV), hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable and dangerous to public health; and it shall be unlawful for anyone infected with these diseases or any of them to knowingly expose another person to the infection of such diseases.

IDAHO CODE ANN. § 39-603 (2016)

Examination, treatment, and quarantine—Repression of prostitution

State, county and municipal health officers, or their authorized deputies, within their respective jurisdiction, are hereby directed and empowered, when in their judgment it is necessary to protect the

public health, to make examinations, or have examinations made by competent physician, of persons reasonably suspected of being infected with venereal disease, and to require persons infected with venereal disease to report for treatment to a reputable physician and continue treatment until cured, or to submit to treatment provided at public expense until cured, and also, when in their judgment it is necessary to protect the public health, to isolate or quarantine persons affected with venereal disease. It shall be the duty of all local and state health officers to investigate sources of infection of venereal diseases, to cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution.

IDAHO CODE ANN. § 39-605 (2016)

Rules for carrying out law

The state board of health and welfare is hereby empowered and directed to make such rules as shall, in its judgment, be necessary for the carrying out of the provisions of this chapter, including rules providing for the control and treatment of persons isolated or quarantined under the provisions of section 39-603, Idaho Code, and such other rules, not in conflict with provisions of this chapter, concerning the control of venereal diseases, and concerning the care, treatment and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules so made shall be of force and binding upon all county and municipal health officers and other persons affected by this chapter, and shall have the force and effect of law. Such rules may be amended from time to time by the state board of health and welfare. All rules must be entered on the minutes of the state board of health and welfare and copies shall be furnished to all county and municipal health officers and to anyone else who may apply for same. Such rules shall be adopted and become effective in accordance with the provisions of chapter 52, title 67, Idaho Code.

IDAHO CODE ANN. § 39-607 (2016) **

Penalties for violations

Any person who shall violate any lawful rule or regulation made by the state board of health and welfare, pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any public health authority, pursuant to the authority granted in this chapter, or any person who, knowing that he or she is infected with syphilis, gonorrhea or chancroid, exposes another person to the infection of such disease, shall be deemed guilty of a misdemeanor, and shall be punished, on conviction thereof, by a fine of not more than three hundred dollars ($300) or by imprisonment in the county jail for not more than six (6) months; or by both such fine and imprisonment..

Illinois

Analysis

Illinois repealed its criminal statutes explicitly targeting HIV exposure, but transmission of HIV or other sexually transmitted diseases (STIs) still can serve as an aggravating factor in sexual assault offenses.

In 2021, Illinois became the second state, after Texas in 1994, to fully repeal its HIV-specific criminal law, removing any specific mention of HIV from the Illinois Criminal Code.[1]

However, transmission of HIV or other STIs are still potential aggravating factors in prosecutions for sexual assault. Circumstances that elevate sexual assault to aggravated sexual assault include causing bodily harm[2] to the victim during the commission of the offense[3] or acting in a manner that threatens or endangers another person during the commission of the offense.[4]

In *People v. Giraud* (2012), the Illinois Supreme Court examined whether a PLHIV knowingly exposing someone to HIV during the commission of a sexual assault constitutes life endangerment or bodily harm sufficient to elevate the offense to the level of a felony.[5] The defendant had appealed his conviction for aggravated sexual assault on the basis of the victim's exposure to HIV during the commission of the crime, which the appellate court reduced to sexual assault because it concluded that exposure to HIV alone does not satisfy the requirements for an aggravated offense.[6]

The court concluded that a threat must actually be communicated to a victim in word or deed, and that the mere risk of future harm is not equivalent to a threat of harm during the commission of an offense.[7] As to whether exposure to HIV constitutes bodily harm, the court found that only in the case of actual disease transmission would the sexual assault be aggravated due to infliction of bodily harm on the

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[1] *Illinois Becomes Second State to Repeal HIV Criminalization Laws*, CENTER FOR HIV LAW AND POLICY, July 28, 2021, *available at* https://www.hivlawandpolicy.org/news/illinois-becomes-second-state-repeal-hiv-criminalization-laws. Under the previous Illinois HIV criminal law, PLHIV could face prosecution for: 1) engaging in condomless sexual intercourse without first disclosing their HIV status; 2) donating, transferring, or providing blood, tissue, semen, organs, or "other potentially infectious bodily fluids" for transfusion, transplant, insemination, or administration to another; or 3) sharing or exchanging non-sterile needles and other drug paraphernalia. PLHIV who violated the statute could be subject to a Class 2 felony, punishable by three to seven years in prison and a $25,000 fine. 720 ILL. COMP. STAT. 5/12-5.01 (repealed 2021).

[2] Defined in the context of sex offenses as "physical harm," including but not limited to "sexually transmitted disease, pregnancy, and impotence." 720 ILL. COMP. STAT. ANN. 5/11-0.1 (2023).

[3] 720 ILL. COMP. STAT. ANN. 5/11-1.30(a)(2) (2023).

[4] 720 ILL. COMP. STAT. ANN. 5/11-1.30(a)(3) (2023).

[5] 980 N.E.2d 1107, 1109 (Ill. 2012).

[6] *Id.* at 1108-09.

[7] *Id.* at 1112.

victim.[8] In its explanation, the court observed that relying on the State's reasoning would have negative unintended consequences, stating that "the State's reading of the statute, equating mere exposure to a communicable disease to endangering the life of a victim, could apply just as well to exposure to the HPV virus, which causes cervical cancer, or to exposure to hepatitis, which can lead to liver cancer, or exposure to tuberculosis, which can be fatal."[9]

The court also pointed to the fact that a defendant who exposes someone to HIV during a sexual assault that does not result in HIV transmission, will serve consecutive sentences for criminal exposure to HIV and the underlying assault.[10] A consecutive sentence is when an individual who is sentenced to two or more offenses cannot serve the sentences at the same time and one sentence does not begin to run until the expiration of the prior sentence. Consecutive sentences are mandatory when a defendant has been convicted of criminal sexual assault, aggravated criminal sexual assault, or predatory criminal assault of a child.[11]

However, this case was decided before Illinois repealed its criminal HIV exposure law. Because exposure to HIV alone is no longer a crime, a person would only serve time for the underlying sexual assault. Where transmission results, a defendant may be charged with aggravated sexual assault on the basis of harm to the victim, a Class X felony, and punishable by up to 30 years' incarceration.[12]

Under Illinois' public health code, a person living with HIV or other STI may be required to undergo mandatory examination or treatment.

A person who is reasonably suspected of being infected with or having been exposed a sexually transmissible disease (STI) may be required to undergo mandatory examination and treatment.[13] Illinois defines "sexually transmissible disease" as including chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/Acute Salpingitis, syphilis, Acquired Immunodeficiency Syndrome (AIDS), and Human Immunodeficiency Virus (HIV).[14]

Mandatory treatment may continue until the disease is rendered non-communicable or the Department of Health concludes that "the person does not present a real and present danger to public health."[15] A person may be required to undergo treatment against their will if the Department obtains a warrant on the basis that they "[are] infectious and that a real and present danger to the public health exists" and

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[8] *Id.* at 1114-15.

[9] *Id.*

[10] *Id.* at 1114.

[11] 730 ILL. COMP. STAT. 5/5-8-4(d)(2) (2023).

[12] 730 ILL. COMP. STAT. 5/5-4.5-25(a) (2023). If a court finds that a defendant's actions presented aggravating factors, such as the age of the victim or the "brutal or heinous" nature of the assault, the sentence may be extended to up to 60 years. 30 ILL. COMP. STAT. 5/5-5-3.2 (2023).

[13] 410 ILL. COMP. STAT. ANN. 325/6(a), 325/6(b) (2023); 77 ILL. ADMIN. CODE § 693.50 (2016) (Note that the Administrative Code provisions do not apply to STIs generally—only syphilis, gonorrhea, chlamydia, HIV, and chancroid).

[14] 410 ILL. COMP. STAT. ANN. 325/3(3) (2023).

[15] 410 ILL. COMP. STAT. ANN. 325/6(b) (2023).

all other "reasonable means of obtaining compliance have been exhausted."[16] Any legal proceedings related to the issuance of such a warrant are conducted in camera and sealed.[17]

Illinois law does not precisely define what kind of conduct rises to the level of "a real and present danger." Thus, for conditions that cannot be rendered completely non-infectious, it is unclear what criteria a person would need to meet in order to be released when they are considered to no longer pose a threat to others.

A person living with HIV or other STI may be subject to isolation and quarantine.

The Department of Health may order someone with an STI to be isolated or quarantined to "prevent the probable spread of a sexually transmitted disease, until such time as the condition can be corrected or the danger to the public health eliminated or reduced in such a manger that no substantial danger to the public's health any longer exists."[18] A court will only issue an order for involuntary isolation or quarantine upon the Department of Health's showing, by clear and convincing evidence, that "the public's health and welfare are significantly endangered by a person with a sexually transmissible disease or by a place where there is a significant amount of sexual activity likely to spread a sexually transmissible disease"[19] and proof that all other reasonable means of correcting the problem have been exhausted.[20] As above, the terms "substantial danger" and "significantly endangered," are not defined, leaving the statute open to potentially broad interpretation and application to people with HIV or other STIs.

Illinois' Administrative Code outlines various procedural requirements related to the issuance of an order for isolation or quarantine.[21] A written order from a health department must include a variety of information, including the basis for the order, anticipated duration of the order, and a restricted individual's right to counsel.[22] If a health department petitions a court for a court order of restriction, an individual must receive notice at least 24 hours' notice prior to the resulting hearing.[23] With respect to the required showing that no less restrictive alternative exists, the reviewing court will consider whether, given the facts of the case, quarantine or isolation is a measure provided for in Department of Health guidelines or in guidelines issued by the Centers for Disease Control or the World Health Organization.[24] Isolation or quarantine as a result of a court order may not exceed 30 days from the

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[16] 410 ILL. COMP. STAT. ANN. 325/6(c)(2023).

[17] *Id.*

[18] 410 ILL. COMP. STAT. ANN. 325/7(a) (2023); 77 ILL. ADMIN. CODE § 693.60(a) (2016) (Note that these Administrative Code provisions do not apply to STIs generally—only syphilis, gonorrhea, chlamydia, HIV and chancroid).

[19] 410 ILL. COMP. STAT. ANN. 325/7(b) (2023).

[20] *Id.*

[21] 77 ILL. ADMIN. CODE § 690.1330 (2023).

[22] 77 ILL. ADMIN. CODE §§ 690.1330(b)(2)(C), 690.1330(b)(2)(G), 690.1330(b)(2)(E) (2023).

[23] 77 ILL. ADMIN. CODE § 690.1330(f) (2023).

[24] 77 ILL. ADM. CODE § 690.1330(g) (2023).

date of issuance;[25] any request to continue the order beyond that period may also be for no more than 30 days.[26]

Public health officials may release patient medical information for the purpose of obtaining a warrant to quarantine PLHIV.

The Department of Health initiates an investigation when it receives notification of HIV infection and determines that the subject of the notification may present a possible risk of HIV transmission.[27] All information obtained pursuant as a result of the investigation is confidential and generally not admissible as evidence or discoverable in any legal action.[28] However, the information may be released for the purpose of obtaining a warrant in order to examine, treat, isolate or quarantine someone.[29]

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.*

[25] 77 ILL. ADMIN. CODE § 690.1330(g)(1) (2023).
[26] 77 ILL. ADMIN. CODE § 690.1330(g)(4)(B) (2023).
[27] 410 ILL. COMP. STAT. ANN. 325/5.5(a) (2023).
[28] 410 ILL. COMP. STAT. ANN. 325/5.5(d) (2023).
[29] 410 ILL. COMP. STAT. ANN. 325/5.5(d)(3) (2023).

Illinois Compiled Statutes

Note: *Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

CHAPTER 720, CRIMNAL OFFENSES, CRIMINAL CODE

720 ILL. COMP. STAT. ANN. 5/11-0.1 (2023)

Definitions

"Bodily harm" means physical harm, and includes, but is not limited to, sexually transmitted disease, pregnancy, and impotence.

720 ILL. COMP. STAT. ANN. 5/11-1.30 (2016)

Aggravated criminal sexual assault

(a) A person commits aggravated criminal sexual assault if that person commits criminal sexual assault and any of the following aggravating circumstances exist during the commission of the offense or, for purposes of paragraph (7), occur as part of the same course of conduct as the commission of the offense:

(2) the person causes bodily harm to the victim, except as provided in paragraph (10);

CHAPTER 730, CORRECTIONS, UNIFIED CODE OF CORRECTIONS

730 ILL. COMP. STAT. § 5/5-4.5-35 (2016) **

Class 2 Felonies; Sentence

For a Class 2 felony:

(a) TERM. The sentence of imprisonment shall be a determinate sentence of not less than 3 years and not more than 7 years. The sentence of imprisonment for an extended term Class 2 felony, as provided in Section 5-8-2 (730 ILCS 5/5-8-2), shall be a term not less than 7 years and not more than 14 years.

(d) PROBATION; CONDITIONAL DISCHARGE. Except as provided in Section 5-5-3 or 5-6-2 (730 ILCS 5/5-5-3 or 5/5-6-2), the period of probation or conditional discharge shall not exceed 4 years. The court shall specify the conditions of probation or conditional discharge as set forth in Section 5-6-3 (730 ILCS 5/5-6-3).

(e) FINE. Fines may be imposed as provided in Section 5-4.5-50(b) (730 ILCS 5/5-4.5-50(b)).

(l) PAROLE; MANDATORY SUPERVISED RELEASE. Except as provided in Section 3-3-8 or 5-8-1 (730 ILCS 5/3-3-8 or 5/5-8-1), the parole or mandatory supervised release term shall be 2 years upon release from imprisonment.

730 ILL. COMP. STAT. § 5/5-4.5-50 **

Sentence Provisions; All Felonies

(b) FELONY FINES. An offender may be sentenced to pay a fine not to exceed, for each offense, $25,000 or the amount specified in the offense, whichever is greater, or if the offender is a corporation, $50,000 or the amount specified in the offense, whichever is greater. A fine may be imposed in addition to a sentence of conditional discharge, probation, periodic imprisonment, or imprisonment. See Article 9 of Chapter V (730 ILCS 5/Ch. V, Art. 9 [(730 ILCS 5/5-9-1 et seq.)]) for imposition of additional amounts and determination of amounts and payment.

CHAPTER 410, PUBLIC HEALTH, COMMUNICABLE DISEASES

410 ILL. COMP. STAT. ANN. 325/3 (2016)

Definitions

(3) "Sexually transmissible disease" means a bacterial, viral, fungal or parasitic disease, determined by rule of the Department to be sexually transmissible, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for regulation and treatment. In considering which diseases are to be designated sexually transmissible diseases, the Department shall consider such diseases as chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/Acute Salpingitis, syphilis, Acquired Immunodeficiency Syndrome (AIDS), and Human Immunodeficiency Virus (HIV) for designation, and shall consider the recommendations and classifications of the Centers for Disease Control and other nationally recognized medical authorities. Not all diseases that are sexually transmissible need be designated for purposes of this Act.

410 ILL. COMP. STAT. ANN. 325/5.5 (2021)

Risk assessment

(a) Whenever the Department receives a report of HIV infection or AIDS pursuant to this Act and the Department determines that the subject of the report may present or may have presented a possible risk of HIV transmission, the Department shall, when medically appropriate, investigate the subject of the report and that person's contacts as defined in subsection (c), to assess the potential risks of transmission. Any investigation and action shall be conducted in a timely fashion. All contacts other than those defined in subsection (c) shall be investigated in accordance with Section 5 of this Act [410 ILCS 325/5]

(d) All information and records held by the Department and local health authorities pertaining to activities conducted pursuant to this Section shall be strictly confidential and exempt from copying and inspection under the Freedom of Information Act [5 ILCS 140/1 et seq.]. Such information and records shall not be released or made public by the Department or local health authorities, and shall not be admissible as evidence, nor discoverable in any action of any kind in any court or before any tribunal, board, agency or person and shall be treated in the same manner as the information and those records subject to the provisions of Part 21 of Article VIII of the Code of Civil Procedure [735 ILCS 5/2-2101 et seq.] except under the following circumstances:

(3) When made by the Department for the purpose of seeking a warrant authorized by Sections 6 and 7 of this Act. Such disclosure shall conform to the requirements of subsection (a) of Section 8 of this Act.

410 ILL. COMP. STAT. ANN. 325/6 (2023)

Physical examination and treatment

(a) Subject to the provisions of subsection (c) of this Section, the Department and its authorized representatives may examine or cause to be examined persons reasonably believed to be infected with or to have been exposed to a sexually transmissible disease.

(b) Subject to the provisions of subsection (c) of this Section, persons with a sexually transmissible disease shall report for complete treatment to a physician licensed under the provisions of the Medical Practice Act of 1987, or shall submit to treatment at a facility provided by a local health authority or other public facility, as the Department shall require by rule or regulation until the disease is noncommunicable or the Department determines that the person does not present a real and present danger to the public health. This subsection (b) shall not be construed to require the Department or local health authorities to pay for or provide such treatment.

(c) No person shall be apprehended, examined or treated for a sexually transmissible disease against his will, under the provisions of this Act, except upon the presentation of a warrant duly authorized by a court of competent jurisdiction. In requesting the issuance of such a warrant, the Department shall show by a preponderance of evidence that the person is infectious and that a real and present danger to the public health and welfare exists unless such warrant is issued and shall show that all other reasonable means of obtaining compliance have been exhausted and that no other less restrictive alternative is available. The court shall require any proceedings authorized by this subsection (c) to be conducted in camera. A record shall be made of such proceedings but shall be sealed, impounded and preserved in the records of the court, to be made available to the reviewing court in the event of an appeal.

410 ILL. COMP. STAT. ANN. 325/7 (2023)

Quarantine and Isolation

(a) Subject to the provisions of subsection (b) of this Section, the Department may order a person to be isolated or a place to be quarantined and made off limits to the public to prevent the probable spread of a sexually transmissible disease, until such time as the condition can be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists.

(b) No person may be ordered to be isolated, and no place may be ordered to be quarantined, except with the consent of such person or owner of such place or upon the order of a court of competent jurisdiction and upon proof by the Department, by clear and convincing evidence, that the public's health and welfare are significantly endangered by a person with a sexually transmissible disease or by a place where there is a significant amount of sexual activity likely to spread a sexually transmissible disease, and upon proof that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists.

Illinois Administrative Code

TITLE 77, PUBLIC HEALTH, CHAPTER I, DEPARTMENT OF PUBLIC HEALTH

77 ILL. ADMIN. CODE § 690.1330 (2016)

Order and Procedure for Isolation, Quarantine and Closure

a) The Department or certified local health department may order a person or group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public on an immediate basis without prior consent or court order if, in the reasonable judgment of the Department or certified local health department, immediate action is required to protect the public from a dangerously contagious or infectious disease. (Section 2(c) of the Act) The determination that immediate action is required shall be based on the following:

> (1) The Department or the certified local health department has reason to believe that a person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a dangerously contagious or infectious disease that could spread to or contaminate others if remedial action is not taken; and
>
> (2) The Department or the certified local health department has reason to believe that the person or group of persons would pose a serious and imminent risk to the health and safety of others if not detained for isolation; and
>
> (3) The Department or the certified local health department has first made efforts, which shall be documented, to obtain voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination of persons or animals, isolation, and inspection and closure of facilities, or has determined that seeking voluntary compliance would create a risk of serious harm.

(b) All police officers, sheriffs and all other officers and employees of the State or any locality shall enforce the rules and regulations so adopted and orders issued by the Department or the certified local health department. (Section 2(a) of the Act) The Department or certified local health department may request the assistance of police officers, sheriffs, and all other officers and employees of any political subdivision within the jurisdiction of the Department or certified local health department to immediately enforce an order given to effectuate the purposes of this Subpart.

(c) If the Department or certified local health department orders the immediate isolation or quarantine of a person or group of persons:

> (1) The immediate isolation or quarantine order shall be for a period not to exceed the period of incubation and communicability, as determined by the Department or certified local health department, for the dangerously contagious or infectious disease.
>
> (2) The Department or certified local health department shall issue a written isolation or quarantine order within 24 hours after the commencement of isolation or quarantine pursuant to a verbal order, which shall specify the following:
>
> (A) The identity of all persons or groups subject to quarantine or isolation, if known;

(B) The premises subject to quarantine, isolation or closure;

(C) Notice of the right to counsel;

(D) Notice that if the person or owner is indigent, the court will appoint counsel for that person or owner;

(E) Notice of the reason for the order for isolation, quarantine or closure, including the suspected dangerously contagious or infectious disease, if known;

(F) Notice of whether the order is an immediate order, and if so, the time frame for the Department or certified local health department to seek consent or to file a petition requesting a court order;

(G) Notice of the anticipated duration of the isolation, quarantine, or closure, including the dates and times at which isolation, quarantine, or closure commences and ends (Section 2(c) of the Act);

(H) A statement of the measures taken by the Department or the certified local health department to seek voluntary compliance or the basis on which the Department or the certified local health department determined that seeking voluntary compliance would create a risk of serious harm;

(I) A statement regarding the medical basis on which isolation, quarantine, or closure is justified, e.g., clinical manifestations; physical examination; laboratory tests, diagnostic tests or other medical tests; epidemiologic information; or other evidence of exposure or infection available to the Department or certified local health department at the time;

(J) A statement that such persons may refuse examination, medical monitoring, medical treatment, prophylaxis, or vaccination, but remain subject to isolation or quarantine; and

(K) A statement that, at any time while the isolation, quarantine or closure order is in effect, persons under isolation, quarantine, or closure may request a hearing to review the isolation, quarantine or closure order as set forth in Section 690.1345 of this Subpart.

(f) Upon filing a petition requesting a court order authorizing the isolation, quarantine or closure, or a petition requesting continued isolation, quarantine, or closure, the Department or certified local health department shall serve a notice of the hearing upon the person or persons who are being quarantined or isolated or upon the owner of the property that is being closed at least 24 hours before the hearing. If it is impractical to provide individual notice to large groups who are isolated or quarantined, a copy of the notice shall be posted in a designated location. The notice shall contain the following information:

(1) The time, date and place of the hearing;

(2) The grounds and underlying facts upon which continued isolation, quarantine or closure is sought;

(3) The person's right to appear at the hearing; and

(4) The person's right to counsel, including the right, if the person is indigent, to be represented by counsel designated by the court.

(g) To obtain a court order, the Department or certified local health department, by clear and convincing evidence, must prove that the public's health and welfare are significantly endangered by a person or group of persons that has, that is suspected of having, that has been exposed to, or that is reasonably believed to have been exposed to a dangerously contagious or infectious disease, including non-compliant tuberculosis patients or that the public's health and welfare have been significantly endangered by a place where there is a significant amount of activity likely to spread a dangerously contagious or infectious disease. The Department or certified local health department must also prove that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists. For purposes of this subsection, in determining whether no less restrictive alternative exists, the court shall consider evidence showing that, under the circumstances presented by the case in which an order is sought, quarantine or isolation is the measure provided for in a rule of the Department or in guidelines issued by the Centers for Disease Control and Prevention or the World Health Organization. (Section 2(c) of the Act)

(1) Isolation, quarantine, or closure authorized as a result of a court order shall be for a period not to exceed 30 days from the date of issuance of the court order.

(2) The Department or certified local health department may petition the court to continue the isolation, quarantine, or closure beyond the initial 30 days.

(3) The Department or the certified local health department may petition the court to provide interpreters.

(4) Prior to the expiration of a court order for continued isolation, quarantine, or closure, the Department or certified local health department may petition the court to continue isolation, quarantine, or closure, provided that:

(A) The Department or certified local health department provides the court with a reasonable basis to require continued isolation, quarantine, or closure to prevent a serious and imminent threat to the health and safety of others.

(B) The request for a continued order shall be for a period not to exceed 30 days.

77 ILL. ADMIN. CODE § 693.50 (2023)

Physical Examination and Medical Treatment for Syphilis, Gonorrhea, Chlamydia, HIV or Chancroid

(a) The Department and certified local health departments may examine or cause to be examined persons reasonably believed to be infected with or to have been exposed to a reportable STI. (Section 6(a) of the Act)

(b) Persons with syphilis, gonorrhea, chlamydia, or chancroid shall report for complete treatment to a physician licensed under the provisions of the Medical Practice Act of 1987, or shall submit to treatment at a facility provided by a certified local health department or other public facility until the disease is

noncommunicable or the Department or the certified local health department determines that the person does not present a real and present danger to the public health. This subsection shall not be construed to require the Department or the certified local health department to pay for or provide such treatment. (Section 6(b) of the Act)

(c) Persons with HIV shall report for treatment to a physician licensed under the provisions of the Medical Practice Act of 1987, or shall submit to treatment at a facility provided by a certified local health department or other public facility. This subsection shall not be construed to require the Department or the certified local health department to pay for or provide such treatment. (Section 6(b) of the Act).

> (2) If a medical examination or appropriate treatment has not been provided, the certified local health department shall request that individual to report for examination or treatment at a specific date, time and location, or otherwise submit verifiable proof of examination or treatment by a specific date. For persons with HIV, if a medical examination or treatment has not been provided, the certified local health department shall request that individual to consider examination, testing and treatment;

(e) No person shall be apprehended, examined or treated for syphilis, gonorrhea, chlamydia, HIV or chancroid against his or her will, except upon the presentation of a warrant duly authorized by a court of competent jurisdiction. In requesting the issuance of such a warrant, the Department or certified local health department shall show by a preponderance of the evidence that the person is infectious and that a real and present danger to the public health and welfare exists unless the warrant is issued and shall show that all other reasonable means of obtaining compliance have been exhausted and that no other less restrictive alternative is available. (Section 6(c) of the Act) The Department does not delegate the responsibility to seek a court order to a delegated agency.

> (1) In determining whether no less restrictive means exist, the court shall consider evidence showing that, under the circumstances presented by the case in which an order is sought, apprehension, examination or treatment is the measure provided for in guidelines issued by the Centers for Disease Control and Prevention.
>
> (2) The court shall require any proceedings authorized by this Section to be conducted in camera. A record shall be made of such proceedings but shall be sealed, impounded and preserved in the records of the court, to be made available to the reviewing court in the event of an appeal. (Section 6(c) of the Act)
>
> (3) The individual shall be given a written notice of any court proceedings conducted under this Section. The notice shall follow the procedures listed in 77 Ill. Adm. Code 690.1330 (Control of Communicable Diseases Code).

77 ILL. ADMIN. CODE § 693.60 (2023)

Quarantine and Isolation for Syphilis, Gonorrhea, Chlamydia, HIV and Chancroid

(a) The Department or certified local health department may order a person to be isolated or a place to be quarantined and made off limits to the public to prevent the probable spread of syphilis, gonorrhea, chlamydia, HIV or chancroid, until such time as the condition can be corrected or the danger to the public health is eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists. (Section 7(a) of the Act) The determination that action is required shall be based on the following:

(1) The Department or certified local health department has reason to believe that a person infected with syphilis, gonorrhea, chlamydia, HIV or chancroid is noncompliant and is likely to spread syphilis, gonorrhea, chlamydia, HIV or chancroid if not detained for isolation;

(2) The Department or the certified local health department has reason to believe that a place where there is significant sexual activity is likely to contribute to the spread of syphilis, gonorrhea, chlamydia, HIV or chancroid if quarantine procedures are not initiated; and

(3) The Department or the certified local health department has first made efforts, which shall be documented, to obtain voluntary compliance with requests for medical examination, testing, treatment and counseling of a noncompliant person infected with syphilis, gonorrhea, chlamydia, HIV or chancroid or the owner of a place where there is significant sexual activity that is likely to contribute to the spread of syphilis, gonorrhea, chlamydia, HIV or chancroid.

(b) No person may be ordered to be isolated, and no place may be ordered to be quarantined, except with the consent of such person or owner of such place or upon the order of a court of competent jurisdiction and upon proof by the Department or certified local health department, by clear and convincing evidence, that the public's health and welfare are significantly endangered by a person with syphilis, gonorrhea, chlamydia, HIV or chancroid or by a place where there is a significant amount of sexual activity likely to spread syphilis, gonorrhea, chlamydia, HIV or chancroid, and upon proof that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists. (Section 7(b) of the Act)

(1) A "significant danger to the public's health", for purposes of this Section, means that the continued operation or existence of the place in question would result in irreparable injury to individuals engaging in sexual activity at that place.

(2) The order and procedure for quarantine and isolation for purposes of this Section shall be the same as the order and procedure for quarantine and isolation set forth in 77 Ill. Adm. Code 690.1330 (Control of Communicable Diseases Code).

77 ILL. ADMIN. CODE § 693.120 (2023)

Certificate of Freedom from STIs

No health care professional, local health department, designated agent or other person, including the Department, shall issue certificates of freedom from STIs to or for any person.

Indiana

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.[1] 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.[2] 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.[3] In either case, each day a violation continues constitutes a separate offense.[4] 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.[5] 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.[6] 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."[7] 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."[8] Consequently, a person accused may now have the opportunity to assert that, due to their

[1] IND. CODE. § 16-41-7-1 (2023).
[2] IND. CODE. §§ 35-45-21-3(b), 35-50-2-7(b) (2023).
[3] IND. CODE. §§ 35-45-21-3(a), 35-50-3-3; 16-41-7-5(a) (2023).
[4] IND. CODE. §§ 35-45-21-3(c); 16-41-7-5(b) (2023).
[5] IND. CODE. § 16-41-7-1 (2023).
[6] 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.
[7] *Id*.
[8] 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 statue, such as oral sex, do not represent a significant risk of transmission.[9] However, these resources do acknowledge that transmission through these routes is not impossible.[10] 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.[11]

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.[12] 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.[13]

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.[14]
- 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.[15] This followed a three-year sentence that the man had received for similar prior charges.[16]
- 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.[17]

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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[9] *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.

[10] 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.

[11] *Id*.

[12] IND. CODE. § 16-41-7-1 (2023).

[13] *Id*.

[14] *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/.

[15] *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.

[16] *Id*.

[17] *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.[18] For the purposes of the statute, "any bodily fluid" is not clearly defined.[19]

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.[20] 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.[21]

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.[22] 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.[23] 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.[24]

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,"[25] 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.[26] 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.[27] 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.[28]

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[18] IND. CODE. §§ 35-42-2-1(c), 35-50-3-3 (2023).

[19] 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").

[20] IND. CODE. §§ 35-42-2-1(f), 35-50-2-7(b) (2023).

[21] IND. CODE. §§ 35-42-2-1(h), 35-50-2-6(b) (2023).

[22] IND. CODE. §§ 35-45-16-2(c), 35-50-3-3 (2023).

[23] IND. CODE. §§ 35-45-16-2(e), 35-50-3-2 (2023).

[24] IND. CODE. §§ 35-45-16-2(a) (2023).

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

[26] IND. CODE. §§ 35-45-16-2(d)(1), (f)(1); 35-50-2-7(b) (2023).

[27] IND. CODE. §§ 35-45-16-2(d)(2), (f)(2); 35-50-2-6(b) (2023).

[28] 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,[29] there have been prosecutions under these statutes involving PLHIV exposing others to saliva.[30]

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.[31] 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.[32]

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.[33]

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.[34] 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.[35]

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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[29] 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").

[30] *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] . . . ").

[31] IND. CODE. §§ 16-41-14-17(b); 35-45-21-1(b); 35-50-2-6(b) (2023).

[32] 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.

[33] IND. CODE. §§ 16-41-14-17(b); 35-45-21-1(b); 35-50-2-6(b) (2023).

[34] *State v. Haines*, 545 N.E.2d 834 (Ind. Ct. App. 1989).

[35] *Id*.

for each count.[36] 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]."[37]

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.[38]

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.[39] 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.[40] 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.[41]

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."[42] 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."[43] 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."[44]

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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[36] *Id.* at 836-37.

[37] *Id.* at 837.

[38] *Id.* at 838-40 (also giving some weight to medical testimony that HIV transmission could occur "by blood," generally, including blood that, "[gets] into the eyes and mouth as well as onto the skin").

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

[40] IND. CODE §§ 35-42-4-3(a)(5); 35-50-2-4(b) (2023).

[41] IND. CODE §§ 35-42-4-3(a)(5); 35-50-2-4(c)(1); 35-31.5-2-72(1) (2023).

[42] IND. CODE § 16-41-8-4 (2023).

[43] *Id*.

[44] 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.[45] Under Indiana criminal law, "serious" STIs are defined to include HIV, herpes, gonorrhea, syphilis, chlamydia, and hepatitis.[46] Within the disease reporting and control subdivision, the Indiana Administrative Code's list of "sexually transmitted diseases" also includes chancroid and granuloma inguinale.[47] Persons living with an STI may not be quarantined without establishment of such a prevention and control program,[48] 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."[49] Persons subject to quarantine hearings have the rights to notice and an opportunity to be heard, to cross-examine witnesses, and to legal representation.[50]

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.*

[45] IND. CODE § 16-41-15-3 (2023).

[46] IND. CODE § 35-31.5-2-292.9.

[47] 410 IND. ADMIN. CODE 1-2.5-66 (2023).

[48] *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).

[49] IND. CODE § 16-41-9-1.5 (2023).

[50] *Id*.

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 16-14-7 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.

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.

Iowa

Analysis

Intentional or reckless exposure to HIV may result in prosecution.[1]

The intentional or reckless exposure of another to HIV, hepatitis, meningococcal disease, or tuberculosis, may result in prosecution and imprisonment under Iowa's criminal transmission of a contagious or infectious disease statute.[2] Under this statute there are several levels of crime and punishment, based on the defendant's intent and whether disease was actually transmitted.

If a person living with HIV (PLHIV) exposes another to HIV with the intent to transmit the virus and the act results in transmission, it is a Class B felony, punishable by up to 25 years' imprisonment.[3] If a PLHIV exposes another to HIV with the intent to transmit the virus and the act does not result in transmission it is a Class D felony, punishable by up to five years imprisonment and a $7,500 fine.[4]

If a PLHIV exposes another to HIV acting with a reckless disregard as to whether transmission occurs and the act results in transmission, it is a Class D felony, punishable by up to five years' imprisonment and a $7,500 fine.[5] If a PLHIV exposes another to HIV acting with a reckless disregard as to whether transmission occurs and the act does not result in transmission, it is a serious misdemeanor, punishable by up to one year of imprisonment and a $1,875 fine.[6]

Evidence that a PLHIV was aware of their HIV status and engaged in conduct that exposed another, regardless of how often this conduct occurred, is insufficient on its own to prove the individual had the intent to transmit HIV within the meaning of the statute.[7] Further, if a PLHIV takes practical measures to prevent transmission or discloses their status to a partner and offers to take such practical measures,

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[1] Effective May 30, 2014, Iowa's HIV criminal transmission law was revised. Before the revision, it was a Class B felony, punishable by up to 25 years in prison, for a PLHIV who knew their HIV status to engage in intimate contact with another. §§ 709C.1(1)(a), (3), repealed by Acts 2014 (85 G.A.) S.F. 2297, § 9, eff. May 30, 2014, § 902.9(1)(b). "Intimate contact" was defined as the intentional exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV. § 709C.1(2)(b), repealed by Acts 2014 (85 G.A.) S.F. 2297, § 9, eff. May 30, 2014. The use of condoms or other protection during sexual activity was not a defense to prosecution without prior disclosure of one's HIV status. Unlike the current law, neither the intent to transmit HIV nor actual transmission was required for prosecution. Defendants convicted under the law were also required to register as sex offenders. § 692A.102(1)(c)(23), subsection deleted by Acts 2014 (85 G.A.) S.F. 2297, § 9, eff. May 30, 2014. Under the 2014 revision, those who were previously required to register as sex offenders pursuant to the prior law will have their records expunged and their names removed from the registry. § 692A.102(1)(c)(23), subsection deleted by Acts 2014 (85 G.A.) S.F. 2297, § 9, eff. May 30, 2014.

[2] IOWA CODE § 709D.3 (2016).

[3] *Id.* §§ 709D.3(1), 902.9(1)(b) (2016).

[4] §§ 709D.3(2), 902.9(1)(e) (2016).

[5] §§ 709D.3(3), 902.9(1)(e) (2016).

[6] §§ 709D.3(4), 903.1(1)(b) (2016).

[7] § 709D.3(6) (2016).

then they have not acted with the mental state required for prosecution.[8] It is an affirmative defense if the exposed individual knew of the other's HIV status and consented to the exposure.[9]

PLHIV who become pregnant, choose to continue a pregnancy, or decline treatment for HIV while pregnant, are not subject to prosecution under this law.[10]

Only one prosecution has been identified under the revised statute:

- In October 2016, a 34-year-old PLHIV pled guilty to two counts of reckless exposure of a contagious disease not resulting in transmission. [11] In exchange for the plea, prosecutors agreed to recommend that the defendant be sentenced to a year in jail and receive credit for time served,[12] which appears to have occurred.[13] The defendant had been convicted previously of "knowingly spreading HIV." [14]

Knowingly exposing another to a communicable disease may result in prosecution.

A person who knowingly exposes another to a communicable disease may be found guilty of a simple misdemeanor, punishable by up to 30 days' imprisonment and a $625 fine.[15] Communicable diseases include sexually transmitted diseases, including but not limited to, chlamydia, gonorrhea, hepatitis B, hepatitis C, HIV/AIDS, HPV, and syphilis.[16]

It is a serious misdemeanor to knowingly give false information regarding the person's infected state on a blood plasma sale application, punishable by up to one year imprisonment and a $1,875 fine.[17]

A person with a sexually transmitted disease (STD) may be subject to mandatory treatment and examination.

A person "reasonably suspected, on the basis of epidemiological investigation, of having any sexually transmitted disease or infection in the infectious stages" is subject to examination to determine if they are infected and, if infected, to treatment.[18] There is no case law interpreting what may be considered "reasonable suspicion" that a person has a sexually transmitted disease, so mere accusation may suffice.

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[8] § 709D.3(7) (2016).
[9] § 709D.3(8) (2016).
[10] § 709D.3(5) (2016).
[11] Sarah Tisinger, *"Coralville man pleads guilty to lesser counts in HIV Exposure Case,"* WGAD8, October 29, 2016, available at http://wqad.com/2016/10/29/coralville-man-pleads-guilty-to-lesser-counts-in-hiv-exposure-case/.
[12] *Id.*
[13] *State of Iowa v. Musser*, 06521 FECR 109220, available at http://www.iowacourts.state.ia.us.
[14] *Id.*
[15] §§ 139A.20, 139A.25(1); 903.1(1)(a) (2016).
[16] § 139A.2(4), (23); IOWA ADMIN. CODE r. 641-1.1 (2016).
[17] IOWA CODE §§ 139A.24; 903.1(1)(b) (2016).
[18] § 139A.34 (2016).

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.*

Iowa Code

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 XVI, CRIMINAL LAW AND PROCEDURE

IOWA CODE § 709D.3 (2016) **

Criminal transmission of a contagious or infectious disease

1. A person commits a class "B" felony when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease with the intent that the uninfected person contract the contagious or infectious disease, and the conduct results in the uninfected person becoming infected with the contagious or infectious disease.

2. A person commits a class "D" felony when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease with the intent that the uninfected person contract the contagious or infectious disease, but the conduct does not result in the uninfected person becoming infected with the contagious or infectious disease.

3. A person commits a class "D" felony when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease acting with a reckless disregard as to whether the uninfected person contracts the contagious or infectious disease, and the conduct results in the uninfected person becoming infected with the contagious or infectious disease.

4. A person commits a serious misdemeanor when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease acting with a reckless disregard as to whether the uninfected person contracts the contagious or infectious disease, but the conduct does not result in the uninfected person becoming infected with the contagious or infectious disease.

5. The act of becoming pregnant while infected with a contagious or infectious disease, continuing a pregnancy while infected with a contagious or infectious disease, or declining treatment for a contagious or infectious disease during pregnancy shall not constitute a crime under this chapter.

6. Evidence that a person knows the person is infected with a contagious or infectious disease and has engaged in conduct that exposes others to the contagious or infectious disease, regardless of the frequency of the conduct, is insufficient on its own to prove the intent to transmit the contagious or infectious disease.

7. A person does not act with the intent required pursuant to subsection 1 or 2, or with the reckless disregard required pursuant to subsection 3 or 4, if the person takes practical means to prevent transmission, or if the person informs the uninfected person that the person has a contagious or infectious disease and offers to take practical means to prevent transmission but that offer is rejected by the uninfected person subsequently exposed to the infectious or contagious disease.

8. It is an affirmative defense to a charge under this section if the person exposed to the contagious or infectious disease knew that the infected person was infected with the contagious or infectious disease at the time of the exposure and consented to exposure with that knowledge.

IOWA CODE § 709D.2 (2016)

Definitions

As used in this chapter, unless the context otherwise requires:

1. "Contagious or infectious disease" means hepatitis in any form, meningococcal disease, AIDS or HIV as defined in section 141A.1, or tuberculosis.

2. "Exposes" means engaging in conduct that poses a substantial risk of transmission.

3. "Practical means to prevent transmission" means substantial good faith compliance with a treatment regimen prescribed by the person's health care provider, if applicable, and with behavioral recommendations of the person's health care provider or public health officials, which may include but are not limited to the use of a medically indicated respiratory mask or a prophylactic device, to measurably limit the risk of transmission of the contagious or infectious disease.

IOWA CODE § 709D.4 (2016)

Additional remedies

This chapter shall not be construed to preclude the use of any other civil or criminal remedy available relating to the transmission of a contagious or infectious disease.

IOWA CODE § 902.9 (2016) **

Maximum sentence for felons

1. The maximum sentence for any person convicted of a felony shall be that prescribed by statute or, if not prescribed by statute, if other than a class "A" felony shall be determined as follows:

b. A class "B" felon shall be confined for no more than twenty-five years.

c. An habitual offender shall be confined for no more than fifteen years.

e. A class "D" felon, not an habitual offender, shall be confined for no more than five years, and in addition shall be sentenced to a fine of at least seven hundred fifty dollars but not more than seven thousand five hundred dollars.

IOWA CODE § 903.1 (2016) **

Maximum sentence for misdemeanants

1. If a person eighteen years of age or older is convicted of a simple or serious misdemeanor and a specific penalty is not provided for or if a person under eighteen years of age has been waived to adult court pursuant to section 232.45 on a felony charge and is subsequently convicted of a simple, serious, or aggravated misdemeanor, the court shall determine the sentence, and shall fix the period of confinement or the amount of fine, which fine shall not be suspended by the court, within the following limits:

a. For a simple misdemeanor, there shall be a fine of at least sixty-five dollars but not to exceed six hundred twenty-five dollars. The court may order imprisonment not to exceed thirty days in lieu of a fine or in addition to a fine.

b. For a serious misdemeanor, there shall be a fine of at least three hundred fifteen dollars but not to exceed one thousand eight hundred seventy-five dollars. In addition, the court may also order imprisonment not to exceed one year.

TITLE IV, PUBLIC HEALTH

IOWA CODE § 139A.2 (2016)

Definitions

4. "Communicable disease" means any disease spread from person to person or animal to person.

5. "Contagious or infectious disease" means hepatitis in any form, meningococcal disease, AIDS or HIV as defined in section 141A.1, tuberculosis, and any other disease determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

20. “Quarantinable disease” means any communicable disease designated by rule adopted by the department as requiring quarantine or isolation to prevent its spread.

23. "Sexually transmitted disease or infection" means a disease or infection as identified by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

24. “Significant exposure” means a situation in which there is a risk of contracting disease through exposure to a person’s infectious bodily fluids in a manner capable of transmitting an infectious agent as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

IOWA CODE § 139A.4 (2016)

Type and length of isolation or quarantine

1. The type and length of isolation or quarantine imposed for a specific communicable disease shall be in accordance with rules adopted by the department.

2. The department and the local boards may impose and enforce isolation and quarantine restrictions.

4. The department and local boards may impose and enforce area quarantine restrictions according to rules adopted by the department. Area quarantine shall be imposed by the least restrictive means necessary to prevent or contain the spread of the suspected or confirmed quarantinable disease or suspected or known hazardous toxic agent.

IOWA CODE § 139A.20 (2016) **

Exposing to communicable disease

A person who knowingly exposes another to a communicable disease or who knowingly subjects another to a child or other legally incapacitated person who has contracted a communicable disease, with the intent that another person contract the communicable disease, shall be liable for all resulting damages and shall be punished as provided in this chapter.

IOWA CODE § 139A.24 (2016)

Blood donation or sale – penalty

A person suffering from a communicable disease dangerous to the public health who knowingly gives false information regarding the person's infected state on a blood plasma sale application to a blood plasma-taking personnel commits a serious misdemeanor.

IOWA CODE § 139A.25 (2016) **

Penalties

1. Unless otherwise provided in this chapter, a person who knowingly violates any provision of this chapter, or of the rules of the department or a local board, or any lawful order, written or oral, of the department or board, or of their officers or authorized agents, is guilty of a simple misdemeanor.

IOWA CODE § 139A.34 (2016)

Examination of persons suspected

The local board shall cause an examination to be made of every person reasonably suspected, on the basis of epidemiological investigation, of having any sexually transmitted disease or infection in the infectious stages to ascertain if such person is infected and, if infected, to cause such person to be treated. A person who is under the care and treatment of a health care provider for the suspected condition shall not be subjected to such examination. If a person suspected of having a sexually transmitted disease or infection refuses to submit to an examination voluntarily, application may be made by the local board to the district court for an order compelling the person to submit to examination and, if infected, to treatment. The person shall be treated until certified as no longer infectious to the local board or to the department. If treatment is ordered by the district court, the attending health care provider shall certify that the person is no longer infectious.

Kansas

Analysis

People living with HIV (PLHIV) or other communicable diseases may be charged with a felony for having sex with the intent to expose another to disease.

It is a "severity level 7, person felony" for a person who knows they are "infected with a life threatening communicable disease" to have vaginal or anal sex with the intent to expose another person to the disease.[1] "Sexual intercourse" only includes penetration by the penis.[2] Neither ejaculation nor the emission of bodily fluids is required for prosecution.[3] Under the terms of the intentional exposure statute, "sodomy" does not include anal penetration by any object other than the penis.[4,5] "Life threatening communicable disease" is not defined, but at least one PLHIV has been convicted for HIV exposure under this statute.

In *State v. Richardson (Richardson I)*, a PLHIV appealed his conviction for two counts of exposing another to a life-threatening disease after having sex with two women, even though he had an undetectable viral load.[6] He argued (1) the intentional exposure law was unconstitutionally vague because it failed to give adequate notice as to what constitutes a "life threatening" disease,[7] and (2) the State did not show he acted with the required specific intent.[8] The Supreme Court of Kansas rejected his first argument, reasoning "[a] person of ordinary intelligence would understand what the statute means by the term 'life threatening'."[9] However, the Court reversed the convictions based on the second argument, that the intentional exposure statute required *specific intent* to expose sexual

[1] KAN. STAT. ANN. § 21-5424 (2018). Punishment for a severity level 7, person felony depends on the criminal history of the convicted person. The range of presumptive sentences spans from 22 to 26 months of probation for a person with no prior criminal history, up to 30 to 34 months of imprisonment for a person with two prior convictions under the "exposure law." *Sentencing Range – Nondrug Offenses*, KAN. SENTENCING COMMISSION *available at* http://sentencing.ks.gov/docs/default-source/2015-Forms/2015-nondrug-offenses.pdf?sfvrsn=0. Severity level 7 felonies also carry a possible fine of up to $100,000. KAN. STAT. ANN. § 21-6611(a)(3) (2018).

[2] KAN. STAT. ANN. § 21-5424 (2018).

[3] *See* KAN. STAT. ANN. § 21-5501 (2018) ("Any penetration, however slight, is sufficient to constitute sexual intercourse.").

[4] § 21-5424(c)(2) (2018).

[5] The definition of sodomy in the statute doesn't appear to include oral sex. However, KAN. STAT. ANN. § 21-5501, which is only applicable to the words and phrases in article 55 of chapter 21, defines sodomy to include oral contact of the female or male genitalia.

[6] *See State v. Richardson*, 209 P.3d 696, 696-97 (Kan. 2009).

[7] *Id.* at 702-03.

[8] *Id.* at 703.

[9] *Id.*

partners to HIV.[10] Thus, since the State did not show the defendant engaged in the sex acts with the intent to expose the other persons to HIV, there was insufficient evidence to convict.[11]

However, two subsequent related cases involving the same defendant narrowed the holding in *Richardson I.* In 2009, shortly after the case before the Supreme Court of Kansas, the Court of Appeals of Kansas affirmed the conviction of the same defendant under the intentional exposure statute (*Richardson II*).[12] Addressing similar arguments and facts to those raised in *Richardson I*, the Court in *Richardson II* nevertheless affirmed the conviction because the fact that the defendant knew his HIV status while his sexual partners did not, that he did not use a condom, and that he "falsely represented...that he was free from sexually transmitted diseases," were sufficient to establish that he acted with the specific intent to expose his sexual partners to HIV.[13] Notably, the court chose to focus on the lack of condom usage, but not on the fact the defendant had an undetectable viral load.[14] Courts may thus define "specific intent" broadly and find the element is satisfied by limited evidence, even where there is evidence to the contrary.

In yet another related case, the Court of Appeals of Kansas affirmed the defendant's conviction under the intentional exposure statute in 2012 (*Richardson III*).[15] The defendant's appeal challenged the trial court's decision to use the definition of general intent, "conduct that is purposeful and willful and not accidental. . . [T]he terms 'knowing', 'willful', 'purposeful', and 'on purpose' are included within the term 'intentional'," in response to the jury's request for a definition of "intent" during their deliberations.[16] The court's instruction was in addition to the previous jury instruction as to the elements of the crime, which stated, "that the defendant intended to expose [that individual] to a life threatening communicable disease," the definition for specific intent.[17] The defendant argued the court should have used the definition for specific intent, which "requires a further particular intent that must accompany the prohibited act."[18] The Court of Appeals dismissed the challenge because (1) the trial court's response to the jury's question was legally correct, and (2) the instructions, "when read in total, made it clear that the jury was required to find that Richardson...intended to expose [the individual] to a life-threatening communicable disease."[19] Notably, this definition of specific intent is based on "intent to expose," rather than "intent to transmit." This renders the required element of "specific intent" essentially meaningless in practice, since it could be satisfied by commission of any act, sexual or otherwise, the court deems capable of exposing a person to HIV.

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[10] *Id.* at 704-05.
[11] *Id.*
[12] *State v. Richardson*, 218 P.3d 1197 (Kan. Ct. App. 2009).
[13] *Id.*
[14] *Id.*
[15] *State v. Richardson*, 269 P.3d 886, 2012 Kan. App. Unpubl. Lexis 105 (Kan. Ct. App. 2012).
[16] *Id.* at *19.
[17] *Id.* at *18.
[18] *Id.*
[19] *Id.* at *20.

PLHIV are prohibited from donating blood, blood products, semen, human tissue, organs, or body fluids; and from sharing needles or syringes.

It is a severity level 7, one person felony, punishable by up to 26 months in prison and a fine of up to $100,000, for a person who knows they are infected with a "life threatening communicable disease" to (1) sell or donate blood, blood products (plasma, platelets, etc.), semen, tissue, organs, or other body fluids with the intent to expose the recipient to the disease, or (2) share a hypodermic needle or syringe with another for either the introduction of drugs or any other substance or the withdrawal of body fluids from that person's body with the intent to expose the recipient to disease.[20]

HIV and other sexually transmitted diseases (STDs) are excluded from mandatory quarantine or isolation.

Although health officials are given broad authority to "take such action as in their judgment may be necessary to control, suppress and prevent the spreading," of contagious or infectious diseases,[21] and may issue orders for testing, treatment, isolation, or quarantine of persons afflicted with such diseases, [22] certain sexually transmitted or communicable diseases are excluded from isolation or quarantine authority, including chancroid, chlamydia, gonorrhea, HIV, hepatitis, and syphilis.[23]

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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[20] KAN. STAT. ANN. §§ 21-5424, 21-6611(a)(3) (2018); KAN. SENTENCING COMMISSION, *supra* note 1.

[21] KAN. STAT. ANN. § 65-301 (2018).

[22] KAN. STAT. ANN. §§ 65-128(b); 65-129b (2018). *See, e.g., Noland v. Gardner*, 136 P.2d 233 (Kan. 1943) (upholding authority of state board of health to isolate and quarantine persons with "dangerous, communicable, venereal diseases).

[23] KAN. ADMIN. REGS. § 28-1-2 (2018).

Kansas 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.*

CHAPTER 21. CRIMES AND PUNISHMENTS

KAN. STAT. ANN. § 21-5424 (2018) **

Exposing another to a life threatening communicable disease

(a) It is unlawful for an individual, who knows oneself to be infected with a life threatening communicable disease, to:

> (1) Engage in sexual intercourse or sodomy with another individual with the intent to expose that individual to that life threatening communicable disease;
>
> (2) sell or donate one's own blood, blood products, semen, tissue, organs or other body fluids with the intent to expose the recipient to a life threatening communicable disease; or
>
> (3) share with another individual 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 individual's body with the intent to expose another person to a life threatening communicable disease.

(b) Violation of this section is a severity level 7, person felony.

(c) As used in this section:

> (1) "Sexual intercourse" shall not include penetration by any object other than the male sex organ; and
>
> (2) "sodomy" shall not include the penetration of the anal opening by any object other than the male sex organ.

KAN. STAT. ANN. § 21-6804 (2018) **

Sentencing grid for nondrug crimes; authority and responsibility of sentencing court; presumptive disposition.

(a) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following sentencing guidelines grid shall be applicable to nondrug felony crimes:

https://www.sentencing.ks.gov/docs/default-source/2017-forms/2017-nondrug-grid.pdf?sfvrsn=0

(b) Sentences expressed in the sentencing guidelines grid for non-drug crimes represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to the sentencing court's discretion to enter a departure sentence. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e)

(1) The sentencing court has discretion to sentence at any place within the sentencing range. In the usual case it is recommended that the sentencing judge select the center of the range and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the:

(A) Prison sentence;

(B) maximum potential reduction to such sentence as a result of good time; and

(C) period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the:

(A) Prison sentence; and

(B) duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence as provided in subsection (q).

KAN. STAT. ANN. § 21-6602 (2018) **

Classification of misdemeanors and terms of confinement; possible disposition

(a) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

(3) class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one month. . .

KAN. STAT. ANN. § 21-6611 (2018) **

Fines; crimes committed on or after July 1, 1993.

(a) A person who has been convicted of a felony may, in addition to the sentence authorized by law, be ordered to pay a fine which shall be fixed by the court as follows:

(3) for any felony ranked in severity levels 6 through 10 of the nondrug grid as provided in K.S.A. 2013 Supp. 21-6804, and amendments thereto, or in severity level 4 of the drug grid committed prior to July 1, 2012, or in severity level 5 of the drug grid committed on or after July 1, 2012, as provided in K.S.A. 2013 Supp. 21-6805, and amendments thereto, a sum not exceeding $100,000.

(b) A person who has been convicted of a misdemeanor, in addition to or instead of the imprisonment authorized by law, may be sentenced to pay a fine which shall be fixed by the court as follows:

(3) for a class C misdemeanor, a sum not exceeding $500.

CHAPTER 65. PUBLIC HEALTH

KAN. STAT. ANN. § 65-301 (2018)

Authority of officers; expenses.

Whenever smallpox or other contagious or infectious diseases exist in a city of the second or third class the governing body of such city and the local health officer and the county commissioner in the district in which is located such cities shall take such action as in their judgment may be necessary to control, suppress and prevent the spreading of the same and to pay all the necessary expenses for such action and purposes.

KAN. STAT. ANN. § 65-116A (2018)

Definitions

As used in K.S.A. 65-116a through K.S.A. 2013 Supp. 65-129f, and amendments thereto:

(c) “Infectious and contagious diseases” means those diseases so designated by the secretary of health and environment pursuant to K.S.A. 65-128, and amendments thereto.

KAN. STAT. ANN. § 65-128 (2018)

Rules and regulations of secretary to prevent spread and dissemination of diseases; testing and quarantine; protection of providers and recipients of services

(a) For the protection of the public health and for the control of infectious or contagious diseases, the secretary of health and environment by rules and regulations shall designate such diseases as are infectious or contagious in their nature.

(b) The secretary of health and environment is authorized to issue such orders and adopt rules and regulations as may be medically necessary and reasonable to prevent the spread and dissemination of diseases injurious to the public health, including, but not limited to, providing for the testing for such diseases and the isolation and quarantine of persons afflicted with or exposed to such diseases.

(c) No later than January 1, 2014, the secretary shall develop and adopt rules and regulations providing for the protection of individuals who provide medical or nursing services, clinical or forensic laboratory services, emergency medical services and firefighting, law enforcement and correctional services, or who provide any other service, or individuals who receive any such services or are in any other employment where the individual may encounter occupational exposure to blood and other potentially infectious materials.

KAN. STAT. ANN. § 65-129 (2018) **

Penalties for unlawful acts

Any person violating, refusing or neglecting to obey any of the rules and regulations adopted by the secretary of health and environment for the prevention, suppression and control of infectious or contagious diseases, or who leaves any isolation area of a hospital or other quarantined area without the consent of the local health officer having jurisdiction, or who evades or breaks quarantine or knowingly conceals a case of infectious or contagious disease shall be guilty of a class C misdemeanor.

KAN. STAT. ANN. § 65-129B (2018)

Infections or contagious diseases; authority of local health officer or secretary; evaluation or treatment orders, isolation or quarantine orders; enforcement.

(a) Notwithstanding the provisions of K.S.A. 65-119, 65-122, 65-123, 65-126 and 65-128, and amendments thereto, and any rules or regulations adopted thereunder, in investigating actual or potential exposures to an infectious or contagious disease that is potentially life-threatening, the local health officer or the secretary:

(1)

(A) May issue an order requiring an individual who the local health officer or the secretary has reason to believe has been exposed to an infectious or contagious disease to seek appropriate and necessary evaluation and treatment;

(B) when the local health officer or the secretary determines that it is medically necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to an infectious or contagious disease, may order an individual or group of individuals to go to and remain in places of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public;

(C) if a competent individual of 18 years of age or older or an emancipated minor refuses vaccination, medical examination, treatment or testing under this section, may require the individual to go to and remain in a place of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public; and

(D) if, on behalf of a minor child or ward, a parent or guardian refuses vaccination, medical examination, treatment or testing under this section, may require the minor child or ward to go to and remain in a place of isolation or quarantine and must allow the parent or guardian to accompany the minor child or ward until the local health officer or the secretary determines that the minor child or ward no longer poses a substantial risk of transmitting the disease or condition to the public; and

(2) may order any sheriff, deputy sheriff or other law enforcement officer of the state or any subdivision to assist in the execution or enforcement of any order issued under this section.

Kansas Administrative Regulations

AGENCY 28, DEPARTMENT OF HEALTH AND ENVIRONMENT

KAN. ADMIN. REGS. § 28-1-1 (2018)

Definitions.

(h) "Infectious or contagious diseases" has the meaning specified for "infectious and contagious diseases" in K.S.A. 65-116a, and amendments thereto.

KAN. ADMIN. REGS. § 28-1-6 (2018)

Requirements for isolation and quarantine of specific infectious or contagious diseases.

(a) The requirements for isolation and quarantine shall be those specified in the department's "requirements for isolation and quarantine of infectious or contagious diseases," dated March 15, 2018, which is hereby adopted by reference.

(b) No isolation or quarantine shall be required for the following infectious or contagious diseases:

(6) chancroid;

(7) Chlamydia trachomatis infection;

(11) gonorrhea;

(14) hepatitis B, acute, chronic, and perinatal infections;

(15) hepatitis C, acute and either past or present infections;

(16) hepatitis D;

(17) hepatitis E;

(19) human immunodeficiency virus;

(28) syphilis . . .

Kentucky

Analysis

People living with HIV (PLHIV) engaging in sex work or solicitation may face felony charges.

It is a Class D felony, punishable by one to five years in prison and a $1,000 - $10,000 fine, if a PLHIV (1) knows or has been informed that they have tested positive for HIV, (2) is aware or has been informed that HIV can be transmitted through sexual activities, and (3) commits, offers, or agrees to commit prostitution by engaging in sexual activity "in a manner likely to transmit HIV."[1] Neither the intent to transmit HIV nor actual transmission is required for conviction. Neither disclosing HIV status to sexual partners nor the use of protection are defenses to prosecution. A PLHIV may be charged with both the felony penalty enhancement and the underlying crime of prostitution.[2]

Despite plain language that the sexual activity penalized must be of the type "likely to transmit HIV, Kentucky's prostitution laws, as enforced, may penalize individuals for their HIV status, regardless of whether they engage or plan to engage in activities that expose others to a significant risk, or even any risk at all, of HIV infection. Under Kentucky law, "prostitution" is defined as engaging, agreeing to engage, or offering to engage in "sexual conduct" in return for a fee.[3] "Sexual conduct" is defined as "sexual intercourse or any act of sexual gratification involving the sex organs."[4]

Recent prosecutions brought under this statute include:

- In July 2017 a 23-year-old Elizabethtown PLHIV who allegedly performed a sexual act on another man for money was charged in July 2017 with "prostitution while knowlingly infected with HIV"[5]
- In April 2016 a 28-year-old Louisville PLHIV who allegedly agreed to perform a sexual act on an undercover officer for money was arrested for "prostitution while infected with HIV."[6]

It is also a Class D felony, punishable by one to five years in prison and a $1,000 to $10,000 fine, if a PLHIV (1) knows or has been informed that they have tested positive for HIV, (2) is aware or has been

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[1] KY. REV. STAT. ANN §§ 529.090(3), 532.060(2)(d), 534.030(1) (2023).
[2] KY. REV. STAT. ANN § 529.090(3) (2023).
[3] § 529.020(1) (2023).
[4] § 529.010(11) (2023).
[5] *HIV positive man charged with prostitution*, THE NEWS ENTERPRISE, August 3, 2017, *available at* http://www.thenewsenterprise.com/news/crime_and_courts/hiv-positive-man-charged-with-prostitution/article_735046dc-7646-5b1b-ad86-77b98c15804c.html.
[6] *Woman Infected with HIV arrested again for prostitution*, WAVE3 NEWS, April 22, 2016, *available at* http://www.wave3.com/story/31736205/woman-infected-with-hiv-arrested-again-for-prostitution.

informed that HIV can be transmitted through sexual activities, and (3) procures another to commit prostitution.[7] Procurement laws often punish "pimping" as opposed to solicitation of prostitution, but this provision is presumably a solicitation law targeting PLHIV who seek out or hire sex workers.

Eliminated Felony Charges for PLHIV who attempt to donate organs, skin, or other human tissues.

In 2023, Governor Andy Beshear signed legislation that repealed KRS 214.430, the section of Kentucky state law that made it a Class D felony for a PLHIV who knows their HIV status to make organ, skin, or tissue donations.[8]

Home HIV testing kits, which were previously prohibited, are now permitted for self-testing.

In 2023, KRS 367.175 was repealed, decriminalizing the use and possession of HIV self-test kits Previously, the law prohibited "the sale, delivery, holding or offering for sale of any self-testing kits designed to tell persons their status concerning human immunodeficiency virus or acquired immunodeficiency syndrome or related disorders, and advertising of such kits" and made a violation of this prohibition a Class C felony.[9]

Assaulting a peace officer using bodily fluids is a misdemeanor.

Kentucky's assault in the third degree statute[10] was amended effective July 14, 2018 to include a provision tailored for interactions with peace officers who are discharging official duties. It is a Class A misdemeanor, punishable by up to one year of incarceration,[11] for a person, who knows they have a serious communicable disease,[12] to intentionally cause a peace officer to come into contact with "saliva, vomit, mucus, blood, seminal fluid, urine, or feces." The contact must occur without the consent of the peace officer and competent medical or epidemiological evidence must demonstrate that the contact is likely to cause transmission of the disease.[13] For someone who does not have a communicable disease, assaulting a peace officer with bodily fluids is a Class B misdemeanor, punishable by a maximum of 90 days in jail.[14]

It is nearly impossible for a PLHIV to transmit HIV to a peace officer through contact with bodily fluids. Contact with saliva, vomit, urine or feces has never been shown to transmit HIV.[15] Blood or seminal

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[7] KY. REV. STAT. ANN. §§ 529.090(4), 532.060(2)(d), 534.030(1) (2023).

[8] KY. REV. STAT. ANN. §§ 311.990 (30)(b) (repealed June 29, 2023).

[9] KY. REV. STAT. ANN. §§ 367.175 (3)–(4) (repealed June 29, 2023).

[10] KY. REV. STAT. ANN. § 532.090(1) (2023).

[11] KY. REV. STAT. ANN. § 508.025 (2023).

[12] '"[S]erious communicable disease" means a non-airborne disease that is transmitted from person to person and determined to have significant, long-term consequences on the physical health or life activities of the person infected.' KY. REV. STAT. ANN. § 508.025(2)(c) (2018).

[13] KY. REV. STAT. ANN. § 508.025(2)(b) (2023).

[14] *Id*., § 532.090(2) (2023).

[15] CTRS. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission* (March 16, 2018) *available at* https://www.cdc.gov/hiv/basics/transmission.html. (last visited July 17, 2018)

fluid on intact skin poses no risk of HIV transmission.[16] Seminal fluid in the mouth poses little to no risk of transmission.[17] Moreover, if a PLHIV has an undetectable viral load, there is effectively no transmission risk.[18]

PLHIV have been prosecuted under Kentucky's general criminal laws for non-disclosure and for conduct such as spitting.

Kentucky has used general criminal laws to prosecute PLHIV for failure to disclose HIV status to sexual partners and other forms of perecieved exposure to HIV transmision risk, such as spitting. These prosecutions often disregard whether defendants actually exposed others to a significant risk of HIV transmission or if there was even a scientific possibility that HIV could be transmitted.

Kentucky's "wanton endangerment" law is one example of a general criminal law that has been used to prosecute PLHIV for alleged HIV exposure. In Kentucky, the crime of first-degree wanton endangerment, punishable by one to five years in prison and a $1,000 to $10,000 fine, requires that, "under circumstances manifesting extreme indifference to the value of human life," an individual wantonly engages in "conduct which creates a substantial danger of death or serious physical injury to another person."[19]

In *Hancock v. Commonwealth*, Kentucky's first case determining whether HIV exposure could be prosecuted under the state's wanton endangerment law, a PLHIV was charged for having a two-year sexual relationship with a woman, allegedly without disclosing his HIV status.[20] Although the man testified that his partner knew his HIV status, he later pled guilty to second-degree wanton endangerment.[21] He received a 120-day suspended sentence plus one year of probation.[22]

On appeal, the Court of Appeals of Kentucky rejected the argument that Kentucky's wanton endangerment statute could not apply to HIV exposure, finding the charge valid on its face "in light of the deadly nature of HIV."[23] The court also found that the defendant's contention that his partner knew of his HIV status had no bearing on the issue of whether the charges should have been dismissed.[24] According to the court, this was an issue of fact that the defendant needed to raise before the jury as a defense to prosecution.[25]

Neither the intent to transmit HIV nor actual transmission is required for prosecution for wanton endangerment. Because the defendant in *Hancock* pled guilty, the court never turned to a discussion regarding how the use of condoms or other protection during sexual intercourse or evidence of a defendant's low viral load would factor into a prosecution for wanton endangerment, although those

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[16] *Id.*
[17] *Id.*
[18] CTRS. FOR DISEASE CONTROL & PREVENTION, *HIV Treatment as Prevention* (July 9, 2018), *available at* https://www.cdc.gov/hiv/risk/art/index.html. (last visited July 17, 2018)
[19] KY. REV. STAT. ANN. §§ 508.060(1), 532.060(2)(d), 534.030(1) (2023).
[20] *Hancock v. Commonwealth,* 998 S.W.2d 496, 497 (Ky. Ct. App. 1998).
[21] *Id.*
[22] *Id.*
[23] *Id.* at 498.
[24] *Id.*
[25] *Id.*

factors arguably reduce the risk of transmission to below that of the statutory "substantial danger" standard.

In another case from 2008, a 29-year-old PLHIV was charged with attempted murder when she allegedly bit a store clerk on the chest during a robbery, and then shouted that she has AIDS.[26] She later pled guilty to robbery and wanton endangerment and was sentenced to 12 years' imprisonment.[27] The store clerk tested negative for HIV.[28] Two years of her prison sentence arose from the wanton endangerment charge, based solely on her HIV status, despite the fact the CDC has concluded that there exists only a "negligible" risk that HIV could be transmitted through a bite.[29]

Other prosecutions of PLHIV under general criminal laws include:

- In March 2018, a 28-year-old PLHIV was arrested on charges of wanton endangerment and assault after he allegedly spit at first responders.[30]
- In December 2016, a 29-year-old woman was charged with wanton endangerment for allegedly soliciting for prostitution.[31]
- In Nomember 2016, a 37-year-old PLHIV was charged with eight counts of wanton endangerment in the first degree for allegedly failing to disclose his status to a long-term sexual partner.[32]
- In August 2015, a 27-year old woman was charged with wanton endangerment after she allegedly failed to disclose her HIV status to a sexual partner.[33]
- In February 2013, a 22-year-old PLHIV was charged with attempted murder for throwing urine on a corrections officer.[34]
- In December 2008, a 47-year-old PLHIV was charged with wanton endangerment, among other charges, for allegedly having a sexual encounter with a 15-year-old without disclosing his HIV status or using protection.[35]

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[26] *Bite Robbery Suspect Facing Attempted Murder Charges*, WKYT.COM, Sep. 18, 2007, *available at* http://www.wkyt.com/home/headlines/9841647.html.

[27] *HIV positive Robber Receives 12 Year Prison Sentence*, WKYT.COM, Apr. 8, 2008, *available at* http://www.wkyt.com/home/headlines/17382524.html.

[28] *Id.*

[29] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors*, *Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (December 4, 2015) *available at* http://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html (last visited July 17, 2018).

[30] Chris Chandler, *Man with HIV arrested for spitting on first responder*, WLKY.COM, March 4, 2018, *available at* http://www.wlky.com/article/man-with-hiv-arrested-for-spitting-on-first-responder/19075523.

[31] *Lexington Police say alleged prostitute knowingly has HIV,* WKYT.COM, Dec. 8, 2016, http://www.wkyt.com/content/news/Lexington-police-say-alleged-prostitute-knowlingly-has-HIV-405461655.html.

[32] Brett Milam, *Police: Man with HIV charged after failing to disclose*, CINCINNATI.COM, Nov. 7, 2016, *available at* https://www.cincinnati.com/story/news/2016/11/07/police-man-hiv-charged-after-failing-disclose/93445222/.

[33] Charles Gazaway, *Woman arrested for not disclosing HIV positive status*, KPLCTV.COM, Aug. 17, 2015, *available at* http://www.kplctv.com/story/29804875/woman-arrested-for-not-disclosing-hiv-positive-status.

[34] *HIV positive inmate talks about attempted murder charge after throwing urine*, WAVE3.COM, Dec. 2, 2013, *available at* http://www.wave3.com/story/21080171/exclusive-hiv-positive-man-talks-about-attempted-mu.

[35] *Police: Pastor Charged with Sexual Abuse has HIV*, WLKY.COM, Jan. 5, 2009, *available at* http://www.wlky.com/Police-Pastor-Charged-With-Sexual-Abuse-Has-HIV/9816740.

- In November 2008, a PLHIV who also had Hepatitis C was convicted of two counts of first-degree wanton endangerment for spitting at a police officer and a nurse while in an emergency room.[36]

Another Kentucky case considered HIV status as a factor during sentencing for sexual assault.[37] In *Torrence v. Commonwealth*, a PLHIV appealed his conviction for first-degree rape and sodomy, arguing that it would violate his due process rights to introduce evidence of his HIV status during the sentencing phase of his trial.[38] At trial, the assault complainant had testified that she learned of the defendant's HIV status following the rape, took medication to prevent infection, and suffered emotional damage due to her fears of HIV transmission and belief that her family was treating her differently.[39] The Supreme Court of Kentucky found no error in admitting this evidence during sentencing because it directly related to physical and psychological harm the victim suffered and the impact of a crime on a victim may be validly considered during sentencing.[40] The court also noted that the defendant's HIV status magnified his victim's suffering beyond that of a "typical" rape victim.[41]

Engaging in prostitution with an STD is a misdemeanor

It is a Class A misdemeanor, punishable by up to 12 months in jail and a $500 fine, if a person (1) knows or has been informed that they have tested positive for a sexually transmitted disease[42], (2) is aware or has been informed that the disease can be transmitted through sexual activity, and (3) commits prostitution, defined as "engaging, agreeing to engage, or offering to engage" in "sexual conduct" in return for a fee,[43] which includes a wide range of activities that pose no risk of disease transmission. Neither the intent to transmit an STD nor actual transmission is required for conviction.

The Cabinet for Health and Family Services has broad authority to use restrictive measures in order to control communicable disease.

The Cabinet for Health and Family Services has broad authority to enforce rules and regulations that it "deems efficient in preventing the introduction or spread" of infectious or communicable diseases, including through the use of isolation and quarantine.[44] A local health department has the same power to institute and maintain quarantine or isolation measures to prevent the spread of disease in the state.[45] Infectious or communicable diseases that meet the threshold for use of isolation or quarantine

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[36] *Davis v. Commonwealth*, 2015 Ky. App. Unpub. LEXIS 407 (Ky. Ct. App. June 5, 2015).
[37] *Torrence v. Commonwealth,* 269 S.W.3d 842 (Ky. 2008).
[38] *Id.* at 843.
[39] *Id.* at 845-46.
[40] *Id.* at 846.
[41] *Id.*
[42] KY. REV. STAT. ANN § 529.090(2) (2023). Pursuant to § 214.410(2), this includes syphilis, gonorrhea, chancroid, granuloma inguinale, genital herpes, nongonococcal urethritis, mucopurulent cervicitis, acquired immunodeficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, chlamydia trachomatis infections, and any other sexually transmitted disease designated by the cabinet under the provisions of KRS Chapter 13A.
[43] KY. REV. STAT. ANN § 529.020(1) (2023).
[44] § 214.020 (2023).
[45] 902 KY. ADMIN. REGS. 2:030, § 1(2)(b), 2:050 § 2 (2023). KY. REV. STAT. ANN § 212.370 (2023).

are not specifically defined,[46] suggesting that the law could be expansively interpreted to include conditions such as HIV and other STDs. Guidance distributed to Kentucky judges has stressed that isolation and quarantine are measures that should only be used in response to serious diseases that are easily transmitted from person to person.[47] However, there are no procedural safeguards explicitly outlined for individuals "implicated as a possible reservoir or possible source of infection of any communicable disease."[48]

The Cabinet for Health and Family Services or local health department may mandate treatment for certain STDs.

The Cabinet for Health and Family Services or local health department may investigate a person known or reasonably suspected of having a sexually transmitted disease to confirm whether or not disease is present, including through laboratory testing.[49] Reasonable suspicion of infection may be established if a person is identified as a sexual contact of someone with an STI during an interview.[50] If found to be "infected or incubating disease," a person can be required to undergo treatment to render him or her non-infectious or prevent the onset of disease.[51] Although there is no specific penalty outlined for refusal to comply with mandatory treatment, any health officer is empowered to pursue mandatory injunction proceedings in the appropriate Circuit Court in response to "nuisances that are or may be a menace to the health of the people of the state."[52]

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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[46] Certain diseases are designated as "subject to supervision" of the local health department or Cabinet for Human Resources, including cholera, amoebic dysentery, bacillary dysentery, diphtheria, typhoid, and paratyphoid fever. 902 KY. ADMIN. REGS. 2:040 (2023).

[47] U. LOUISVILLE CTR. PUBLIC HEALTH LAW PARTNERSHIPS, *Public Health Law Judicial Reference Guide For Kentucky Courts* 69 (2006) (the authors are unable to determine whether Kentucky courts continue to rely on this document as current guidance).

[48] 902 KY. ADMIN. REGS. 2:050 § 2 (2023).

[49] 902 KY. ADMIN. REGS. 2:080 (2023).

[50] *Id.*

[51] *Id.*

[52] KY. REV. STAT. ANN § 212.245(6) (2023).

Code of Kentucky

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 L, PENAL CODE

KY. REV. STAT. ANN. § 529.090 (2023) **

Person convicted required to submit to screening for HIV infection; prostitution or procuring prostitution with knowledge of sexually transmitted disease or HIV

(1) Any person convicted of prostitution or procuring another to commit prostitution under the provisions of KRS 529.020 shall be required to undergo screening for human immunodeficiency virus infection under direction of the Cabinet for Health and Family Services and, if infected, shall submit to treatment and counseling as a condition of release from probation, community control, or incarceration. Notwithstanding the provisions of KRS 214.420, the results of any test conducted pursuant to this subsection shall be made available by the Cabinet for Health and Family Services to medical personnel, appropriate state agencies, or courts of appropriate jurisdiction to enforce the provisions of this chapter.

(2) Any person who commits prostitution and who, prior to the commission of the crime, had tested positive for a sexually transmitted disease and knew or had been informed that he had tested positive for a sexually transmitted disease pursuant to KRS 214.410 and that he could possibly communicate such disease to another person through sexual activity is guilty of a Class A misdemeanor. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution.

(3) Any person who commits, offers, or agrees to commit prostitution by engaging in sexual activity in a manner likely to transmit the human immunodeficiency virus and who, prior to the commission of the crime, had tested positive for human immunodeficiency virus and knew or had been informed that he had tested positive for human immunodeficiency virus and that he could possibly communicate the disease to another person through sexual activity is guilty of a Class D felony. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution.

(4) Any person convicted of procuring another to commit prostitution in a manner likely to transmit the human immunodeficiency virus and who, prior to the commission of the crime, had tested positive for human immunodeficiency virus and knew or had been informed that he had tested positive for human immunodeficiency virus and that he could possibly communicate the disease to another person through sexual activity is guilty of a Class D felony.

KY. REV. STAT. ANN. §508.025 (2023) **

Assault in the third degree

(1) A person is guilty of assault in the third degree when the actor:

(c) Intentionally causes a person, whom the actor knows or reasonably should know to be a peace officer discharging official duties, to come into contact with saliva, vomit, mucus, blood, seminal fluid, urine, or feces without the consent of the peace officer.

(2) (c) For violations of subsection (1)(c) of this section, assault in the third degree is a Class B misdemeanor, unless the assault is with saliva, vomit, mucus, blood, seminal fluid, urine, or feces from an adult who knows that he or she has a serious communicable disease and competent medical or epidemiological evidence demonstrates that the specific type of contact caused by the actor is likely to cause transmission of the disease or condition, in which case it is a Class A misdemeanor.

(d) As used in paragraph (b) of this subsection, "serious communicable disease" means a non-airborne disease that is transmitted from person to person and determined to have significant, long-term consequences on the physical health or life activities of the person infected.

KY. REV. STAT. ANN. § 532.060 (2023) **

Sentence of imprisonment for felony; post-incarceration supervision

(2) Unless otherwise provided by law, the authorized maximum terms of imprisonment for felonies are:

(d) For a Class D felony, not less than one (1) year nor more than five (5) years.

KY. REV. STAT. ANN § 532.090 (2023) **

Sentence of imprisonment for misdemeanor

(1) For a Class A misdemeanor, the term shall not exceed twelve (12) months.

KY. REV. STAT. ANN. § 534.030 (2023) **

Fines for felonies

(1) Except as otherwise provided for an offense defined outside this code, a person who has been convicted of any felony shall, in addition to any other punishment imposed upon him, be sentenced to pay a fine in an amount not less than one thousand dollars ($1,000) and not greater than ten thousand dollars ($10,000) or double his gain from commission of the offense, whichever is the greater.

KY. REV. STAT. ANN § 534.040 (2023) **

Fines for misdemeanors and violations

(2) Except as otherwise provided for an offense defined outside this code, a person who has been convicted of any offense other than a felony shall be sentenced, in addition to any other punishment imposed upon him, to pay a fine in an amount not to exceed:

(a) For a Class A misdemeanor, five hundred dollars ($500).

TITLE XVIII, PUBLIC HEALTH

KY. REV. STAT. ANN. § 214.020 (2023)

Cabinet to adopt regulations and take other action to prevent spread of disease

When the Cabinet for Health and Family Services determines that an infectious or contagious disease will invade this state, it shall take necessary action and promulgate administrative regulations under

KRS Chapter 13A to prevent the introduction or spread of such infectious or contagious disease or diseases within this state.

KY. REV. STAT. ANN. § 214.410 (2023)

Definitions

(2) "Sexually transmitted disease" means syphilis, gonorrhea, chancroid, granuloma inguinale, genital herpes, nongonococcal urethritis, mucopurulent cervicitis, acquired immunodeficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, chlamydia trachomatis infections, and any other sexually transmitted disease designated by the cabinet under the provisions of KRS Chapter 13A.

KY. REV. STAT. ANN. § 214.627 (EFFECTIVE JUNE 29, 2023)

Self-test for HIV infection.

Nothing in KRS 214.181, 214.625, or 214.995 shall be construed to prohibit a person from obtaining or performing upon himself or herself a self-test designed to detect human immunodeficiency virus infection.

Kentucky Administrative Regulations

TITLE 902, CABINET FOR HEALTH AND FAMILY SERVICES DEPARTMENT FOR PUBLIC HEALTH

902 KY. ADMIN. REGS. 2:030 (2023)

Inspections and control procedures

(2) Control procedures. Local health departments or the Cabinet for Human Resources shall:

> (b) Establish and maintain quarantine, isolation or other measures as required by law or administrative regulations of the Cabinet for Human Resources relating to communicable disease control.

902 KY. ADMIN. REGS. 2:050 (2023)

Control procedures; application

Section 2: Persons.
Whenever any person has been implicated as a possible reservoir or possible source of infection of any communicable disease, the local health department or the Cabinet for Human Resources shall employ such measures as are necessary to secure adequate isolation, restriction of employment or other control procedures that may be necessary to insure cessation of transmission of infection.

902 KY. ADMIN. REGS. 2:080 (2023)

Sexually transmitted diseases

Section 1. Definitions
(4) “Reasonably suspected of being infected with a sexually transmitted disease” means any person named in a controlled interview with a second person infected with an STD, as a sexual contact of that

second person within the incubation period for the STD, or who has a laboratory test result consistent with an STD infection.

(5) "Sexually transmitted diseases" or "STD" means syphilis, gonorrhea, chancroid, granuloma inguinale, genital herpes, human immunodeficiency virus (HIV) infection, nongonococcal urethritis, mucopurulent cervicitis, chlamydia trachomatis infections including lymphogranuloma venereum, and human papillomavirus (HPV).

(6) “Sexually transmitted diseases for which a treatment exists to render them noninfectious” means syphilis, gonorrhea, chancroid, granuloma inguinale, nongonococcal urethritis, mucopurulent cervicitis and Chlamydia trachomatis infections including lymphogranuloma venereum.

Section 2. Medical Examination and Treatment of Sexually Transmitted Diseases for Which a Treatment Exists to Render them Noninfectious.
(1) Any person infected with, or reasonably suspected of being infected with, a sexually transmitted disease shall undergo such medical examination as is necessary, including such laboratory testing procedures deemed advisable by the examining physician to reasonably determine the existence or nonexistence of the diagnosed or suspected sexually transmitted disease.

(2) If there is the potential that the person is incubating the disease, he shall undergo such treatment or follow-up as may be determined adequate by the examining physician to render the person noninfectious or to prevent the onset of disease.

(3) This section shall apply only to sexually transmitted diseases as defined by Section 1(4) of this administrative regulation.[53]

Section 3. Investigation and Enforcement.
(4) This section shall apply only to sexually transmitted diseases as defined by Section 1(4) of this administrative regulation.[54]

[53] The reference to Section 1(4) of the administrative regulation appears to be a drafting error, as it does not define sexually transmitted diseases. The authors believe it is meant to be Section 1(b)4(6).
[54] The reference to Section 1(4) of the administrative regulation appears to be a drafting error, as it does not define sexually transmitted diseases. The authors believe it is meant to be Section 1(b)4(6).

Louisiana

Analysis

Any number of consensual sexual activities may result in prosecution and imprisonment for people living with HIV (PLHIV).

It is an unlawful act, punishable by up to 10 years in prison (with or without hard labor) and/or a $5,000 fine for a PLHIV who knows their status to intentionally expose another to HIV through sexual contact.[1] Despite the language in the statute, Louisiana courts have found that neither the intent to expose another to HIV[2] nor actual transmission is required.[3] "Sexual contact" is not specfically defined in the statute or elsewhere in Louisiana's Criminal Code.[4] However, the statute's inclusion of exposure via "*any* means or contact"[5] suggests that oral sex or other sexual activities posing no or very low risk of HIV transmission are encompassed within the scope of the law.

Effective August 1, 2018, the intentional exposure statute was amended to include three affirmative defenses. All three are contingent on a PLHIV first having disclosed their HIV status to the individual alleging some kind of exposure:

1. If a defedant can prove, by a preponderance of the evidence, that the exposed person was aware of the defendant's HIV status, knew that the action could result in HIV transmission, and consented to the action with that knowledge;[6]
2. If the "transfer" of bodily fluid, tissue, or organs occurred following advice from a licensed physician that the defendant was non-infectious and the defendant had disclosed their HIV

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[1] LA. REV. STAT. ANN. §§ 14:43.5(A), (E)(1) (2018).

[2] *See, e.g., State v. Roberts*, 844 So. 2d 263, 272 (La. Ct. App. 2003) ("La. R.S. 14:43.5 does not require the State to prove that a defendant acted with the specific intent to expose the victim to [HIV] . . . it requires the State to prove that the defendant intentionally committed an act proscribed by the statute which exposed the victim to [HIV].")

[3] *See, e.g., State v. Gamberella*, 633 So. 2d 595, 602 (La. Ct. App. 1993) ("By use of the word 'expose' rather than the word 'transmit,' the legislature obviously intended that the element of the offense be the risk of infection, rather than actual transmission of the virus."); accord *Roberts*, 844 So. 2d at 272.

[4] In Louisiana's Code of Military Justice, "sexual contact" is defined as "[t]ouching or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person," or "[a]ny touching, or causing another person to touch, either directly or through the clothing, any body part of any person, if done with an intent to arouse or gratify the sexual desire of any person." LA. REV. STAT. ANN. § 29:220(E)(6)(2018). This latter prong of this definition is also consistent with the analysis that appears in *State v. Gamberella*, 633 So. 2d 595, 603 (La. Ct. App. 1993). Note that the definition from the Louisiana Code of Military Justice is merely intended to be illustrative of what is likely a broad conception of "sexual contact" under LA. REV. STAT. ANN. § 14:43.5. It would be problematic for a court to actually apply this definition in a prosecution under LA. REV. STAT. ANN. § 14:43.5 because the Code of Military Justice is intended to prohibit a much broader range of conduct than exposure to disease, as well as inappropriate sexual conduct more generally.

[5] LA. REV. STAT. ANN. §§ 14:43.5(B) (2018) (emphasis added).

[6] LA. REV. STAT. ANN. §§ 14:43.5(F)(1) (2018).

status to the complainant.[7] Notably, "transfer" is not a term that appears or is defined elsewhere in the intentional exposure statute. Presumably, it is intended to encompass activities such as blood or organ donation, but can also be interpreted more generally to include various forms of exposure to bodily fluids;

3. If a PLHIV defendant disclosed their status and took "practical means to prevent transmission as advised by a physician or other healthcare provider" or is themselves a healthcare provider who was following "professionally accepted infection control procedures."[8]

While disclosure of HIV status is a necessary element of all three affirmative defenses, it is often exceeedingly difficult to prove, since most evidence is based on conflicting testimony, with one person's word against another's. In *State v. Gamberella*, a PLHIV was convicted of intentional HIV exposure despite his testimony that he disclosed his HIV status to his girlfriend and wore condoms during sex.[9] The man's girlfriend testified that after she became pregnant by the defendant following a condom failure, they engaged in unprotected sexual intercourse on multiple occasions.[10] She testified that she didn't know his HIV status during the entire relationship.[11] The defendant was convicted and sentenced to ten years in prison at hard labor.[12]

On appeal, the defendant in *Gamberella* argued that the law failed to define such terms as "expose" and "sexual contact," and therefore could prohibit activities posing no risk of HIV transmission, including kissing.[13] The Court of Appeal of Louisiana rejected these arguments, holding that the statute described prohibited conduct with sufficient particularity.[14] The court reasoned that the term "sexual contact" unambiguously refers to "numerous forms of behavior involving use of the sexual organs of one or more of the participants or involving other forms of physical contact for the purpose of satisfying or gratifying the 'sexual desires' of one of the participants."[15] This broad phrase provides limited clarification as to what types of sexual conduct may be prosecuted under the statute. Under the court's definition, acts that don't involve any exchange of bodily fluids or penetration could be prosecuted. The court's findings also fail to provide insight as to whether or not the use of condoms or other forms of protection would be a defense to prosecution.

Cases under this section of the statute include:

- In *State v. Roberts*, a PLHIV received 10 years in prison at hard labor for exposing his rape victim to HIV.[16] Although a dispute existed as to whether bodily fluids were exchanged, an

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[7] LA. REV. STAT. ANN. §§ 14:43.5(F)(2) (2018).
[8] LA. REV. STAT. ANN. §§ 14:43.5(F)(3) (2018).
[9] *Gamberella,* 633 So. 2d at 598-99.
[10] *Id.*
[11] *Id.* at 599.
[12] *Id.* at 598.
[13] *Id.* at 602-03.
[14] *Id.*
[15] *Id.* at 603 (citing Cheney C. Joseph, Jr., *Developments in the Law 1986-1987: A Faculty Symposium*, 48 LA. L. REV. 257, 282 (1987)).
[16] *Roberts, supra* note 2 at 264.

appeals court found the defendant's conviction could be sustained on evidence that he anally and vaginally raped his victim.[17]

- In *State v. Serrano*, a PLHIV was sentenced to one year in prison at hard labor after he engaged in unprotected sex with his girlfriend without disclosing his HIV status.[18]
- In *State v. Turner*, a PLHIV received two concurrent five-year prison sentences after she pled guilty to engaging in "some sort of sexual contact" with two men.[19] A sentencing court equated the woman's activities to "pointing a gun to [the victims'] head[s] and pulling the trigger."[20]
- In 2009, a PLHIV was charged with attempted intentional exposure to AIDS after allegedly failing to disclose his HIV status to an undercover police officer during a prostitution bust.[21]
- In 2010, a PLHIV was charged with intentional exposure to the AIDS virus after engaging in unprotected sex with a man without disclosing her HIV status.[22]
- In 2015 a 23-year-old PLHIV was charged with intentional exposure to the AIDS virus after engaging in a sexual relationship without disclosing his HIV status.[23]
- In December 2017, a 37-year-old PLHIV was charged with intentional exposure after allegedly failing to disclose his status to a sexual partner whom he met on Facebook and had sex with on one occasion.[24]
- In March 2018, a 24-year-old PLHIV was charged with intentional exposure and simple battery after he allegedly concealed his HIV status from a sexual partner.[25]
- In June 2018, a PLHIV was charged with 12 counts of intentional exposure to HIV after he allegedly engaged in sex with a juvenile without disclosing his status.[26]

Non-sexual forms of exposure to bodily fluids also can result in criminal liability for PLHIV.

It is an unlawful act, punishable by up 10 years in prison (with or without hard labor) and/or a $5,000 fine, to expose a person to HIV through "*any* means or contact" without the knowing and lawful consent of the person exposed.[27]

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[17] *Id.* at 270.
[18] 715 So. 2d 602, 602-03 (La. Ct. App. 1998).
[19] 927 So. 2d 438, 439 (La. Ct. App. 2005).
[20] *Id.* at 441.
[21] Matthew Pleasant, *Houma Man Accused of Attempted HIV Exposure*, DAILY COMET, June 21, 2009, *available at* http://www.houmatoday.com/news/20090621/houma-man-accused-of-attempted-hiv-exposure.
[22] Michelle Hunter, *Metairie Woman Booked with Intentionally Exposing Man to AIDS Virus*, TIMES-PICAYUNE, Feb. 10, 2010, *available at* http://www.nola.com/crime/index.ssf/2010/02/metairie_woman_booked_with_int.html.
[23] *BRPD arrests man for intentionally spreading HIV/AIDS virus*, WAFB.COM (BATON ROUGE), June 17, 2015, *available at* http://www.wafb.com/story/29342615/brpd-arrests-man-for-intentionally-spreading-hivaids-virus.
[24] Michelle Hunter, *Harvey man booked with intentional AIDS exposure*, THE TIMES-PICAYUNE, Dec. 19, 2017, *available at* https://www.nola.com/crime/index.ssf/2017/12/harvey_man_booked_with_intenti.html.
[25] Raquel Derganz Baker, *Man accused of beating partner, exposing him to HIV*, WBRZ.COM, March 27, 2018, *available at* http://www.wbrz.com/news/man-arrested-for-beating-exposing-partner-to-hiv.
[26] Sylvia Masters, *New details released on man booked on 12 counts of intentional AIDS exposure*, KLFY.COM, June 12, 2018, *available at* https://www.klfy.com/news/local/new-details-released-on-rayne-man-booked-monday-on-12-counts-intentional-aids-exposure/1234765454.
[27] § 14:43.5(B), (E)(1) (2018) (emphasis added).

If a PLHIV exposes a first responder to HIV through "any means or contact" while knowing that the person is acting in the performance of official duties, they may be punished with up to 11 years in prison (with or without hard labor) and/or a $6,000 fine.[28] "First repsonder" includes police, probation and parole officers, corretional employees, wildlife enforcement agents, emergency medical providers, and firefighters.[29] Neither the intent to transmit HIV nor actual transmission is required.[30]

Under the terms of this statute, "means or contact" is not defined."[31] This statute thus presents the risk that incidental forms of exposure to saliva, urine, sweat, or other bodily substances posing absolutely no risk of HIV infection may result in criminal prosecution.

In *State v. Roberts,* for example, a PLHIV was convicted of intentionally exposing a woman to HIV after he raped and bit her.[32] On appeal, the defendant argued that the state had failed to prove that (1) biting a person could expose that person to HIV, (2) the teeth of a PLHIV could be an "AIDS-contaminated" object, (3) his mouth contained saliva, and (4) his bite broke the victim's skin.[33] The Court of Appeal of Louisiana rejected these arguments because the statute specifically noted biting to be an included offense.[34] The court did not consider that the Center for Disease Control (CDC) has long maintained that there exists only a remote possibility that HIV could be transmitted through a bite and such transmission would have to involve various aggravating factors, such as severe trauma, extensive tissue damage, and the presence of blood.[35] The CDC has also concluded that spitting alone does not transmit HIV.[36] Louisiana's statute and its application ignore these scientific findings, leading to prosecutions for behavior that has at most a remote possibility of transmitting HIV.

Other spitting cases include:

- In 2013, a PLHIV was charged under the criminal exposure statute after spitting on a police officer.[37]
- In 2014, a PLHIV was accused of intentional exposure after he was arrested for driving while intoxicated and allegedly spat on the prisoner next to him in the patrol car.[38] The charge was

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[28] § 14:43.5(C) (2018).

[29] § 14:43.5(D) (2018).

[30] *See, e.g., Roberts*, 844 So. 2d at 272; *Gamberella*, 633 So. 2d at 602.

[31] Prior to the 2018 changes, "means or contact" was defined more narrowly as "spitting, biting, stabbing with an AIDS-contaminated object (e.g., a used needle), or throwing blood or other bodily substances."

[32] *Roberts*, 844 So. 2d at 265-69.

[33] *Id.* at 270-71.

[34] *Id.* at 271.

[35] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors*, *Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (Dec. 4, 2015) *available at* http://www.cdc.gov/hiv/policies/law/risk.html (last visited July 30, 2018).

[36] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?* (July 23, 2018) *available at* http://www.cdc.gov/hiv/basics/transmission.html (last visited July 30, 2018,).

[37] Gerron Jordan, *Lake Charles man accused of intentional AIDS exposure*, KPLC, June, 19, 2013, *available at* http://www.kplctv.com/story/22303105/lake-charles-man-accused-of-intentional-aids-exposure-by-spitting.

[38] Daniel Bethencourt, *Little-known Louisiana law allows HIV-exposure arrests for spitting, but CDC says disease can't spread that way*, THE ADVOCATE, Nov. 10, 2014, *available at* http://www.theadvocate.com/baton_rouge/news/crime_police/article_024e2e9a-66a3-59ae-bfe7-c254efcb9653.html.

later dropped, but there were at least six other such arrests in East Baton Rouge Parish from 2005-2014 for spitting.[39]

- In December 2017, a 40-year-old PLHIV was arrested after he allegedly spit in an elderly woman's face.[40]

Persons convicted under the State "intentional exposure to AIDS virus" law are required to register as sex offenders.[41]

Anyone who violates the "intentional exposure to AIDS virus" statute is considered a sex offender and must register and provide notification as such.[42] Registered sex offenders are not eligible for diminished sentences for good behavior;[43] nor are they eligible for probation, parole, or suspension of sentence, except on condition that they be prohibited from any unsupervised business or volunteer work consisting of a "significant amount of direct contact with potential victims who are minor children."[44] The Code of Louisiana does not define "potential victims."

Attempted murder prosecutions have been used for intentional exposure to HIV.[45]

PLHIV in Louisiana may be prosecuted for HIV exposure under general criminal laws, including attempted murder. In the past, these prosecutions have arisen from the rare and extreme cases where a person attempts to purposefully infect someone else with the virus. In *State v. Caine*,[46] a PLHIV was convicted of attempted second-degree murder after he allegedly stuck a store clerk with a syringe full of clear liquid and said, "I'll give you AIDS."[47] The syringe was never recovered, and it is not known whether the clear liquid contained HIV.[48] However, because of the defendant's HIV status, pulling a needle out of his pocket while having "track marks" on his arm suggesting a history of drug use was sufficient for the Court of Appeal of Louisiana to find it likely that the needle was infected with HIV, and affirmed the defendant's sentence of 50 years in prison at hard labor.[49]

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[39] *Id*.

[40] Bridge Mire, *Gibson man accused of exposing woman to AIDS*, HOUMATODAY.COM, Dec. 19, 2017, *available at* http://www.houmatoday.com/news/20171219/gibson-man-accused-of-exposing-woman-to-aids

[41] The specific sex offender registration requirements are complex and numerous, and registration entails a number of specific restrictions, with criminal penalties for their violation. *See* LA. REV. STAT. ANN. §§ 15:542 – 15:553 (2018). Readers are encouraged to consult the Code of Louisiana for details.

[42] LA. REV. STAT. ANN. §§ 15:536(A), 15:541(24)(a); 15:542(A)(1)(a) (2018).

[43] § 15:537(A) (2018).

[44] § 15:538. (2018).

[45] *See State v. Schmidt*, 771 So. 2d 131 (La. Ct. App. 2000), *writ denied,* 798 So. 2d 105 (La. 2001), *cert. denied*, 535 U.S. 905 (2002) (affirming the conviction of a Louisiana doctor to 50 years in prison at hard labor for injecting his ex-lover with HIV and Hepatitis C. The doctor extracted blood from two patients and transferred it to the woman, who believed she was getting an injection of a vitamin supplement. This case was not based on the doctor's HIV status and as such is not reflective of prosecutions against PLHIV.); *see also State v. Schmidt*, 699 So. 2d 448 (La. Ct. App. 1997), *writ denied,* 706 So. 2d 451 (La. 1997) (denying writ application concerning two pre-trial evidentiary rulings regarding admissibility of DNA evidence); *Schmidt v. Hubert*, No. 05-2168, 2008 WL 4491467 (W.D. La. Oct. 6, 2008) (denying habeas corpus petition challenging conviction).

[46] 652 So. 2d 611 (La. Ct. App. 1995), *writ denied*, 661 So. 2d 1358 (La. 1995).

[47] *Id.* at 613.

[48] *Id.* at 616-17.

[49] *Id.*

HIV status can affect the severity of a sentence upon conviction.

Sentencing courts sometimes see HIV status as a relevant consideration when measuring the impact of a crime on the victim.

In *State v. Richmond*,[50] the Court of Appeal of Louisiana rejected an argument from a PLHIV engaged in sex work that a five-year sentence was excessive for her conviction of a crime against nature by soliciting unnatural oral copulation for compensation.[51] The court noted that a five-year sentence was harsh in light of no admitted evidence of past convictions, but the trial judge, with wide discretion on sentencing, supported the sentence by stating that the woman committed prostitution with knowledge of her HIV status and should be punished for the danger she posed to others "who are not ill right now, who can be protected."[52] The trial court compared the woman's actions to imposing a death sentence for others "because of what [she carries] around inside [her] body."[53] The Louisiana Court of Appeal affirmed the defendant's sentence of five years in prison based in part on the fact she was currently serving two years of probation for a previous conviction for solicitation for oral sex.[54]

The Louisiana Department of Health may assist the State in prosecuting PLHIV.

Although the results of HIV tests are generally kept confidential, medical information may be released upon court order or other discovery device.[55] The person whose medical records are requested is entitled to adequate notice to allow them to prepare a written or personal response, "unless there is a clear and imminent danger to an individual."[56] No other procedural safeguards are explicitly in place, except for the provision that courts must, "weigh the compelling need for disclosure against the privacy interest of the protected individual and against the public interest which may not be served by disclosure which deters future testing or treatment or which may lead to discrimination,"[57] although there is no guidance for implementing that balancing test.

Persons with venereal disease may be subject to isolation or quarantine.[58]

The department of public health has the authority to require people with a venereal disease to submit to treatment for such a time and under such restrictions as seem reasonable and proper to the department.[59] "Venereal diseases" are defined as "syphilis, gonorrhea, chancroid, or any other infectious disease primarily transmitted from one person to another by means of a sexual act."[60] Additionally, the Louisiana Department of Health may quarantine or isolate anyone "suspected of being cases or carriers of a communicable disease, or who have been exposed to a communicable disease,

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[50] 708 So. 2d 1272 (La. Ct. App. 1998).
[51] *Id.* at 1273.
[52] *Id.* at 1275.
[53] *Id.*
[54] *Id.* at 1276.
[55] LA. ADMIN. CODE tit. 48 § 13505(G)(4) (2018).
[56] LA. ADMIN. CODE tit. 48 §§ 509(F), 13505(B) (2018).
[57] *Id*.
[58] LA. REV. STAT. ANN. § 40:1121.5 (2018).
[59] *Id*.
[60] § 40:1121.1 (2018).

and who in the opinion of the state health officer may cause serious threat to public health."[61] There are no procedural safeguards explicitly in place for "suspected carriers."

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.*

[61] LA. ADMIN. CODE tit. 51:II § 117 (2018).

Code of Louisiana

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 14, CRIMINAL LAW

LA. REV. STAT. ANN. § 14:43.5 (2018) **

Intentional exposure to HIV

(A) No person shall intentionally expose another to the human immunodeficiency virus (HIV) through sexual contact without the knowing and lawful consent of the victim, if at the time of the exposure the infected person knew he was HIV positive.

B) No person shall intentionally expose another to HIV through any means or contact without the knowing and lawful consent of the victim, if at the time of the exposure the infected person knew he was HIV positive.

.C) No person shall intentionally expose a first responder to HIV through any means or contact without the knowing and lawful consent of the first responder when the offender knows at the time of the offense that he is HIV positive, and has reasonable grounds to believe the victim is a first responder acting in the performance of his duty.

(D) For purposes of this Section,

> "first responder" includes a commissioned police officer, sheriff, deputy sheriff, marshal, deputy marshal, correctional officer, constable, wildlife enforcement agent, and probation and parole officer, any licensed emergency medical services practitioner as defined by R.S. 40:1131, and any firefighter regularly employed by a fire department of any municipality, parish, or fire protection district of the state or any volunteer firefighter of the state.

(E)

> (1) Whoever commits the crime of intentional exposure to HIV shall be fined not more than five thousand dollars, imprisoned with or without hard labor for not more than ten years, or both.
>
> .2) Whoever commits the crime of intentional exposure to HIV against a first responder shall be fined not more than six thousand dollars, imprisoned with or without hard labor for not more than eleven years, or both.

(F)

> (1) It is an affirmative defense, if proven by a preponderance of the evidence, that the person exposed to HIV knew the infected person was infected with HIV, knew the action could result in infection with HIV, and gave consent to the action with that knowledge.
>
> (2) It is also an affirmative defense that the transfer of bodily fluid, tissue, or organs occurred after advice from a licensed physician that the accused was noninfectious, and the accused disclosed his HIV-positive status to the victim.

(3) It is also an affirmative defense that the HIV-positive person disclosed his HIV-positive status to the victim, and took practical means to prevent transmission as advised by a physician or other healthcare provider or is a healthcare provider who was following professionally accepted infection control procedures.

LA. REV. STAT. ANN. § 14:10 (2018)

Criminal intent

Criminal intent may be specific or general:

(1) Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act.

(2) General Criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act.

LA. REV. STAT. ANN. § 14:11 (2018)

Criminal Intent; how expressed

The definitions of some crimes require a specific criminal intent, while in others no intent is required. Some crimes consist merely of criminal negligence that produces criminal consequences. However, in the absence of qualifying provisions, the terms “intent” and “intentional” have reference to “general criminal intent.”

TITLE 15, CRIMINAL PROCEDURE

LA. REV. STAT. ANN. § 15:536 (2018)

Definitions

(A) For purposes of this Chapter, “sexual offender” means a person who has violated R.S. 14:89 (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S. 14:93.5 (sexual battery of the persons with infirmities), or any provision of Subpart C or Part II, or Subpart A(1) of Part V, of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950.

LA. REV. STAT. ANN. § 15:537 (2018)

Sentencing of sexual offenders; serial sexual offenders

(A) If a person is convicted of or pleads guilty to, or where adjudication has been deferred or withheld for a violation of R.S. 14:78 (incest), R.S. 14:78.1 (aggravated incest), R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile or a person with a physical or mental disability), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:89 (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S. 14:93.5 (sexual battery of persons with infirmities), or any provision of Subpart C of Part II of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, and is sentenced to imprisonment for a stated number of years or months, the person shall not be eligible for diminution of sentence for good behavior.

LA. REV. STAT. ANN. § 15:538 (2018)

Conditions of probation, parole, and suspension or diminution of sentence.

(B) No sexual offender shall be eligible for probation, parole, or suspension of sentence unless, as a condition thereof, the sexual offender is prohibited from engaging in any unsupervised business or volunteer work activity which provides goods, services, instruction, or care to and requires the offender to engage in a significant amount of direct contact with potential victims who are minor children.

LA. REV. STAT. ANN. § 15:541 (2018)

Definitions.

For the purposes of this Chapter, the definitions of terms in this Section shall apply:

(3) "Bureau" means the Louisiana Bureau of Criminal Identification and Information as established in Chapter 6 of this Title.

(24)

> (a) "Sex offense" means deferred adjudication, adjudication withheld, or conviction for the perpetration of or conspiracy to commit human trafficking when prosecuted under the provisions of R.S. 14:46.2(B)(2), R.S. 14:46.3 (trafficking of children for sexual purposes), R.S. 14:89 (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S. 14:89.2(B)(3) (crime against nature by solicitation), R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile or a person with a physical or mental disability), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:81.4 (prohibited sexual conduct between an educator and student), R.S. 14:82.1 (prostitution; persons under eighteen), R.S. 14:82.2(C)(4) and (5) (persons with infirmities), R.S. 14:92(A)(7) (contributing to the delinquency of juveniles), R.S. 14:93.5 (sexual battery of persons with infirmities), R.S. 14:106(A)(5) (obscenity by solicitation of a person under the age of seventeen), R.S. 14:283 (video voyeurism), R.S. 14:41 (rape), R.S. 14:42 (aggravated or first degree rape), R.S. 14:42.1 (forcible or second degree rape), R.S. 14:43 (simple or third degree rape), R.S. 14:43.1 (sexual battery), R.S. 14:43.2 (second degree sexual battery), R.S. 14:43.3 (oral sexual battery), R.S. 14:43.5 (intentional exposure to AIDS virus), or a second or subsequent conviction of R.S. 14:283.1 (voyeurism), committed on or after June 18, 1992. A conviction for any offense provided in this definition includes a conviction for the offense under the laws of another state, or military, territorial, foreign, tribal, or federal law which is equivalent to an offense provided for in this Chapter, unless the tribal court or foreign conviction was not obtained with sufficient safeguards for fundamental fairness and due process for the accused as provided by the federal guidelines adopted pursuant to the Adam Walsh Child Protection and Safety Act of 2006.

TITLE 40, PUBLIC HEALTH AND SAFETY

LA. REV. STAT. ANN. § 40:1121.1 (2018)

Definition

In this Subpart, "venereal disease" means syphilis, gonorrhea, chancroid, or any other infectious disease primarily transmitted from one person to another by means of a sexual act.

LA. REV. STAT. ANN. § 40:1121.2 (2018) **

Infection of others prohibited

It is unlawful for any person to inoculate or infect another person in any manner with a venereal disease or to do any act which will expose another to inoculation or infection with a venereal disease.

LA. REV. STAT. ANN. § 40:1121.4 (2018)

Examination of persons suspected of being infected.

The Department of Health and Hospitals, hereinafter referred to as the "department," through an authorized medical representative appointed for that purpose, may give a physical examination to any person suspected of being infected with a venereal disease. The examination shall be given under conditions thought reasonable by the department. No person shall fail or refuse to submit to this examination.

LA. REV. STAT. ANN. § 40:1121.5 (2018)

Isolation, quarantine, or internment of persons affected.

Any person affected with a venereal disease is subject to isolation, quarantine, or internment, on the order of the department, and shall submit to any treatment for such a time and under such restrictions as seems reasonable and proper to the department.

LA. REV. STAT. ANN. § 40:1121.10 (2018)

Rules and regulations.

The secretary of the Department of Health and Hospitals shall make all necessary rules and regulations for the carrying out of the purposes of this Subpart. These rules and regulations shall be printed in pamphlet or folder form in sufficient numbers for free distribution among physicians, sanitariums, and the general public.

LA. REV. STAT. ANN. § 40:1121.11 (2018) **

Penalty.

Whoever violates any provision of this Subpart or any rule or regulation made hereunder shall, for the first offense, be fined not less than ten dollars nor more than two hundred dollars. For the second offense, he shall be fined not less than twenty-five dollars nor more than four hundred dollars. For each subsequent offense, he shall be fined not less than fifty dollars nor more than five hundred dollars or imprisoned for not less than ten days nor more than six months, or both.

Administrative Code

TITLE 48, PUBLIC HEALTH – GENERAL

LA. ADMIN. CODE TIT. 48 § 509 (2018)

Disclosures without the Patient's Consent

(F) Disclosures Pursuant to Court Orders and Subpoenas. Nothing in theses rules in [sic] intended to impede the disclosure of medical information pursuant to an order of a court of competent jurisdiction, a

subpoena, or other discovery device including, but not limited to, interrogatories, depositions, requests for production, and requests for admissions, where a patient's condition is at issue in or relevant to a judicial proceeding. The superintendent shall take reasonable measures to ascertain whether a patient's condition is at issue or relevant before disclosure is made.

LA. ADMIN. CODE TIT. 48 § 13505 (2018)

Disclosures of HIV-Related Test Results

(B) Disclosure of HIV Test Results without the Subject's Consent. HIV test results may be released to the following entities without authorization from the subject (or the person authorized by law to consent to health care for the subject);

> (6) to a federal, state, parish, or local health officer when the disclosure is mandated by federal or state law;
>
> (8) to any person to whom disclosure is ordered by a court of competent jurisdiction;
>
> (9) to an employee or agent of the Board of Parole of the Department of Public Safety and Corrections (or of its office of parole) to the extent the employee or agent is authorized to access records containing HIV test results;

(G) Court Authorization for Disclosure of Confidential HIV Test Results

> (1) Only a court of competent jurisdiction shall issue and [sic] order for the disclosure of confidential HIV test results.
>
> (2) A court may grant an order for disclosure if:
>
> > (a) there is a compelling need for adjudication;
> >
> > (b) there is clear and imminent danger to the individual;
> >
> > (c) there is clear and imminent danger to the public health;
> >
> > (d) the applicant is lawfully entitled to the disclosure
>
> (3) The court order authorizing disclosure shall direct communications to be sealed and shall direct further proceedings to be conducted in camera so as to protect the subject's confidentiality.
>
> (4) Adequate notice shall be given to those from whom disclosure is requested to allow them to prepare a written or personal response unless there is a clear and imminent danger to an individual. A court must weigh the compelling need for disclosure against the privacy interest of the protected individual and against the public interest which may not be served by disclosure which deters future testing or treatment or which may lead to discrimination.

TITLE 51, PUBLIC HEALTH – SANITARY CODE

LA. ADMIN. CODE TIT. 51:II § 101 (2018)

Definitions

(A) Unless otherwise specifically provided herein, the following words and terms used in this Part and all other Parts which are adopted or may be adopted, are defined for the purposes thereof as follows.

Communicable Disease--an illness due to a specific infectious agent or its toxic products, which arises through transmission of that agent or its products from a reservoir to susceptible host, either directly as from an infected person or animals, or indirectly through the agency of an intermediate plant or animal host, a vector or the inanimate environment.

Contact--any person who has been in such association with an infected person or animal or with a contaminated environment as to have had opportunity to acquire the infection.

Isolation--the separation for the period of communicability of infected persons from other persons, in such places and under such conditions as will prevent the direct or indirect conveyance of the infectious agent from infected persons to persons who are susceptible or who may spread the agent to others.

Quarantine--the limitation of freedom of movement of such well persons or domestic animals as have been exposed to a communicable disease for a period of time equal to the longest usual incubation period of the disease, in such manner as to prevent effective contact with those not so exposed.

LA. ADMIN. CODE TIT. 51:II § 117 (2018)

Disease Control Measures Including Isolation/Quarantine

(A) Individuals suspected of being cases or carriers of a communicable disease, or who have been exposed to a communicable disease, and who in the opinion of the state health officer may cause serious threat to public health, shall either submit to examination by a physician and to the collection of appropriate specimens as may be necessary or desirable in ascertaining the infectious status of the individual, or be placed in isolation or under quarantine as long as his or her status remains undetermined. Specimens collected in compliance with this Section shall be examined either by a state laboratory free of charge or by a laboratory approved by the state health officer at the individual's own expense.

(B) It shall be the duty of the state health officer or his or her duly authorized representative to promptly institute necessary control measures whenever a case of communicable disease occurs.

(C) The state health officer or his or her duly authorized representative is hereby empowered and it is made his or her duty, whenever a case of communicable disease occurs in any household or place, and it is in his or her opinion, necessary or advisable that persons residing therein shall be kept from contact with the public, to declare the house, building, apartment, room, or place where the case occurs, a place of quarantine, and to require that only persons so authorized by the state health officer shall leave or enter said quarantined place during the period of quarantine.

(E) It is a violation of this code for any person to enter or leave any quarantined area in the state of Louisiana, or to enter from any quarantined area without the state of Louisiana except by permission of the state health officer.

(F) No person shall interfere with, conceal, mutilate or tear down any notices or placard placed on any house, building, or premises by the state health officer. Such placards shall be removed only on authority of the state health officer.

(G) Whenever in the judgment of the state health officer, it is necessary to protect the public health against a serious health hazard, the state health officer may take complete charge of any case of communicable disease occurring therein and may carry on such measures to prevent its spread as he or she may believe necessary and as are provided for by this Code.

Maine

Analysis

The Maine Department of Health and Human Services may quarantine, isolate, or mandate treatment for people living with a sexually transmitted infection (STI), including HIV.

The Maine Department of Health and Human Services has broad power to define and control communicable diseases, including STIs.[1] For example, upon a court finding, based on clear and convincing evidence, that a public health threat exists, the Department can commit someone to a facility to "provide appropriate diagnosis, care, treatment, or isolation."[2] However, there is no case law interpreting what may be considered a "public health threat," although there are assurances that "the least restrictive measures shall be utilized to . . . limit the spread of the notifiable disease or condition,"[3] and that the state abide by guidelines found in the American Public Health Association's *Control of Communicable Diseases Manual*.[4]

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.*

[1] ME. REV. STAT. ANN. tit. 22, §§ 801, 802, 804, 807, 1241 (2016); 10-144-258 ME. CODE R. §§ 1(WW), 9(D) (2016). For the purposes of this regulation, STIs include HIV and AIDS, chancroid, chlamydia, gonorrhea, viral hepatitis, and syphilis. 10-144-258 ME. CODE R. §§ 2(I) (2016).

[2] ME. REV. STAT. ANN. tit. 22, § 812(1)(F) (2016).

[3] 10-144-258 ME. CODE R. § 9(D)(2) (2016).

[4] 10-144-258 ME. CODE R. § 9 (2016). APHA's manual and be accessed at https://www.apha.org/ccdm.

Code of Maine

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 22, HEALTH AND WELFARE

ME. REV. STAT. ANN. TIT. 22, § 801 (2016)

Definitions

(1) Commissioner. "Commissioner" means the Commissioner of Health and Human Services.

(2) Communicable Disease. "Communicable disease" means an illness or condition due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host.

(4) Department. "Department" means the Department of Health and Human Services.

> (E) Exposure. "Exposure" means direct contact or interaction with an environmental hazard or toxic agent affecting or being taken into the body.

(5) Infected Person. "Infected person" means a person who is diagnosed as having a communicable disease or who, after appropriate medical evaluation or testing, is determined to harbor an infectious agent.

(7) Notifiable Disease or Condition. "Notifiable disease or condition" means any communicable disease, occupational disease or environmental disease, the occurrence or suspected occurrence of which is required to be reported to the department pursuant to sections 821 or 825 or section 1493.

(8)

> (A) Prescribed Care. "Prescribed care" means isolation, quarantine, vaccination, medical care or treatment ordered by the department or a court pursuant to section 820.

(10) Public Health Threat. "Public health threat" means any condition or behavior that can reasonably be expected to place others at significant risk of exposure to a toxic agent or environmental hazard or infection with a notifiable disease or condition.

> (A) A condition poses a public health threat if an infectious or toxic agent or environmental hazard is present in the environment under circumstances that would place persons at significant risk of an adverse effect on a person's health from exposure to or infection with a notifiable disease or condition.
>
> (B) Behavior by an infected person poses a public health threat if:
>
> > (1) The infected person engages in behavior that has been demonstrated epidemiologically to create a significant risk of transmission of a communicable disease;

(2) The infected person's past behavior indicates a serious and present danger that the infected person will engage in behavior that creates a significant risk of transmission of a communicable disease to another;

(3) The infected person fails or refuses to cooperate with a departmental contact notification program; or

(4) The infected person fails or refuses to comply with any part of either a cease and desist order or a court order issued to the infected person to prevent transmission of a communicable disease to another.

(C) Behavior described in paragraph (B), subparagraphs (1) and (2) may not be considered a public health threat if the infected person demonstrates that any other person placed at significant risk of becoming infected with a communicable disease was informed of the risk and consented to it.

ME. REV. STAT. ANN. TIT. 22, § 802 (2016)

Authority of department

(1) Authority. To carry out this chapter, the department may:

(A) Designate and classify communicable, environmental and occupational diseases;

(D) Establish procedures for the control, detection, prevention and treatment of communicable, environmental and occupational diseases, including public immunization and contact notification programs.

(3) Rules. The department shall adopt rules to carry out its duties as specified in this chapter. The application of rules adopted pursuant to Title 5, section 8052 to implement section 820 must be limited to periods of an extreme public health emergency. Rules adopted pursuant to this subsection, unless otherwise indicated, are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

ME. REV. STAT. ANN. TIT. 22, § 804 (2016) **

Penalties

(1) Rules enforced. All agents of the department, local health officers, sheriffs, state and local law enforcement officers and other officials designated by the department are authorized to enforce the rules of the department made pursuant to section 802 to the extent that enforcement is authorized in those rules.

(2) Refusal to obey rules. Any person who neglects, violates or refuses to obey the rules or who willfully obstructs or hinders the execution of the rules, may be ordered by the department, in writing, to cease and desist. This order shall not be considered an adjudicatory proceeding within the meaning of the Maine Administrative Procedure Act, Title 5, chapter 375. In the case of any person who refuses to obey a cease and desist order issued to enforce the rules adopted pursuant to section 802, the department may bring an action in District Court to obtain an injunction enforcing the cease and desist order or to request a civil fine not to exceed $ 500, or both. Alternatively, the department may seek relief pursuant to section 810 or 812. The District Court shall have jurisdiction to determine the validity of the cease and desist order whenever an action for injunctive relief or civil penalty is brought before it under this subsection.

ME. REV. STAT. ANN. TIT. 22, § 807 (2016)

Control of communicable diseases

The department may establish procedures for agents of the department to use in the detection, contacting, education, counseling and treatment of individuals having or reasonably believed to have a communicable disease. The procedures shall be adopted in accordance with the requirements of this chapter and with the rules adopted under section 802.

For purposes of carrying out this chapter, the department may designate facilities and private homes for the confinement and treatment of infected persons posing a public health threat. The department may designate any such facility in any hospital or other public or private institution, other than a jail or correctional facility. Designated institutions must have necessary clinic, hospital or confinement facilities as may be required by the department. The department may enter into arrangements for the conduct of these facilities with public officials or persons, associations or corporations in charge of or maintaining and operating these institutions.

ME. REV. STAT. ANN. TIT. 22, § 812 (2016)

Public health measures

(1) Court Order. If, based upon clear and convincing evidence, the court finds that a public health threat exists, the court shall issue the requested order for treatment or such other order as may direct the least restrictive measures necessary to effectively protect the public health. These measures include, but are not limited to:

> (F) Commitment to a facility that will provide appropriate diagnosis, care, treatment or isolation of the individual without undue risk to the public health, for a period not to exceed 30 days and under conditions set by the court;

(2) Time Limits. Orders issued pursuant to subsection 1, paragraphs A to E shall not exceed 180 days without further review as provided by section 813, subsection 1. If commitment pursuant to subsection 1, paragraph F, is sought by the department beyond the original 30 days, the department shall file a motion for review pursuant to section 813, subsection 2.

(3) Appeals. Orders issued pursuant to this chapter may be appealed to the Superior Court.

> (A) The order of the District Court shall remain in effect pending appeal, unless stayed by the Superior Court.
>
> (B) The Supreme Judicial Court shall, by rule, provide for expedited appellate review of cases appealed under this chapter.

ME. REV. STAT. ANN. TIT. 22, § 1241 (2016)

Definitions

(1) Department. “Department” means the Department of Health and Human Services, Maine Center for Disease Control and Prevention.

(4) Sexually transmitted disease. “Sexually transmitted disease” means a bacterial, viral, fungal or parasitic disease determined by rule of the department to be sexually transmitted, to be a threat to the

public health and welfare and to be a disease for which a legitimate public interest will be served by providing for its regulation and treatment.

Code of Maine Rules

AGENCY 10, DEPARTMENT OF HEALTH AND HUMAN SERVICES

10-144-258 ME. CODE. R. §§ 1, 7, 9 (2016)

Control of notifiable diseases and conditions

SUMMARY: These rules repeal and replace the Department's existing Rules for the Control of Notifiable Conditions, 10-144 CMR Ch. 258, which govern the reporting of certain diseases, clusters of unusual cases of a disease or outbreaks of a disease, epidemics, and extreme public health emergencies. Amendments were made in order to add new notifiable disease entities to the list of notifiable conditions, and to update existing rules to reflect recent developments in disease investigation and interventions. Pursuant to 22 M.R.S.A. §820 and 37-B M.R.S.A. §742, the Department has adopted a new section in these rules to become operational only in the event of an extreme public health emergency as declared by the Governor.

Section 1. Definitions.
GG. Isolation: The separation, for the period of communicability, of an infectious person or animal from others in places and under conditions to prevent or limit the direct or indirect transmission of the infectious agent to those who are susceptible or who may spread the agent to others.

JJ. Non-Compliant Person: An individual who does not comply with prescribed care.

KK. Notifiable Disease or Condition: Any communicable, occupational or environmental disease, the occurrence or suspected occurrence of which is required to be reported to the Department pursuant to Title 22, Chapter 250, Sections 821-825, or Chapter 259-A, Section 1493.

TT. Public Health Threat: Any condition or behavior that can reasonably be expected to place others at significant risk of exposure to a toxic agent or environmental hazard or infection with a communicable disease or condition.

VV. Quarantine: The limitation, by the Department, of freedom of movement of individuals or contacts who have been exposed to a communicable disease or condition, for a period of time equal to the longest incubation period of the disease or condition to which they have been exposed, for the purpose of preventing exposure of other individuals.

WW. Sexually Transmitted Infection (STI): Diseases that are transmitted primarily by sexual contact and that the Department, by rule, may designate and require to be reported.

Section 7. Exposures that Create a Significant Risk of HIV Transmission.
For purposes of 5 M.R.S.A., Section 19203-C, a significant risk of HIV infection shall be defined as an exposure to any of the following potentially infectious body tissues of body fluids: blood, semen, vaginal fluid, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, or amniotic fluid, which results from:

A. Sexual intercourse, including vaginal, oral or anal contact;

B. Mucous membrane contact (splash to the eye or mouth);

C. Parenteral inoculation (needle stick or cut); or

D. Cutaneous exposure involving large amounts or prolonged contact on nonintact skin.

Section 9. Duties of the Department for Disease Investigation and Intervention.

A. The Department's Division of Infectious Disease shall routinely make current information available to practicing health care providers regarding the distribution of notifiable diseases and conditions in Maine and the prevention and control of notifiable conditions. In addition, the Division shall use all reasonable means to:

Confirm, in a timely manner, any case or suspected case of a notifiable disease or condition;

Ascertain, so far as possible, all sources of infection and exposures to the infection;

Identify exposures to environmental hazards;

Institute control measures for notifiable diseases and conditions consistent with the currently accepted standards as found in the Control of Communicable Diseases Manual 18th Edition, published in 2004, which is the official report of the American Public Health Association, unless specified otherwise by the State Epidemiologist. Copies of the manual may be obtained from the American Public Health Association, 800 I Street NW, Washington, DC 20001-3710;

Determine whether isolation and/or quarantine measures may be necessary.

D. Non-Compliant Persons

1. Background

Nothing in any of these rules shall be construed to deny persons the right to rely solely upon exercise of their moral, philosophical, religious or other personal reasons to prevent or cure disease, if that reliance is based upon sincere religious or conscientious objection to standard treatment and/or public health interventions and if alternative public health measures, even if more restrictive, are available to address the public health threat posed by the infectiousness. If such persons endanger the public through their infectiousness or through their behaviors while infected, the Department may use public health disease control methods, up to and including involuntary confinement, isolation and medical treatment, as necessary to protect the public, as authorized by 22 M.R.S.A., sections 807 et seq. and in these rules.

2. Treatment

Treatment of those persons who have either contracted or been exposed to a notifiable disease or condition or that poses a public health threat, may be imposed on an involuntary basis pursuant to 22 M.R.S.A. §810 and §812 in the event such persons refuse appropriate countermeasures or public health interventions as indicated above in C. 3 or conduct themselves in a manner which constitutes a public health threat. Persons who have either contracted or been exposed to notifiable diseases and conditions who knowingly expose others to the danger thereof, are to be considered as acting in a manner that is a public health threat. These persons are considered non-compliant.

Either the Department, acting through its Commissioner, or his or her designee, the Governor, or a court of competent jurisdiction may subject a non-compliant person to involuntary medical treatment and other public health measures, in accordance with applicable law.

Treatment shall be in accord with the most current treatment recommendations/standards of care for the notifiable disease or condition. In imposing treatment and related public health disease control measures on an individual, the least restrictive measures shall be utilized to assure effective medical treatment of the disease or condition and to limit the spread of the notifiable disease or condition or other infectious disease, which pose a threat to public health. The Department shall adopt step-wise medical treatment and public health disease control strategies as described in this rule whenever practical and as long as doing so does not unreasonably increase the threat to the public health.

Maryland

Analysis

Maryland[1]

People with STIs or other communicable diseases may face misdemeanor penalties for engaging in various activities.

Maryland's health code prohibits a number of activities for any person "who has an infectious disease that endangers public health," such as willfully being in a public place "without taking proper precautions against exposing other individuals to the disease," or transferring to another person "any article that has been exposed to the disease without thoroughly disinfecting the article."[2] Penalty for conviction under these provisions can be up to one year of imprisonment and a $500 fine.[3]

The scope of application for this statute is unclear because the term "infectious disease that endangers public health" is defined neither by the Public Health Code nor any public health regulation. Instead, the Maryland Code of Regulations merely defines "infectious" as "capable of being transmitted in a manner that can cause a disease or abnormal condition in an individual,"[4] and lists reportable diseases and conditions to include HIV/"AIDS," chancroid, chlamydia, hepatitis, and syphilis.[5] However, the second provision, regarding articles exposed to the disease, may be conceivably applied to shared syringes, sex toys, or other shared objects. At the time of publication, the authors have not identified any cases providing clarification of the issue.

An analogous third-party statute using the same term, "infectious disease that endangers public health," may provide some guidance. The statute prohibits "(1) willfully or knowingly taking a person with an infectious disease that endangers public health to the home of another person, (2) carelessly exposing an individual to a person with an infectious disease that endangers public health, or (3) permitting a child with an infectious disease that endangers public health to be in a public place while in charge of the child."[6]

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[1] The enactment of H.B.39 repealed MD. CODE ANN., HEALTH–GEN. § 18-601.1, Maryland's HIV-specific offense. Previously, it was a misdemeanor punishable by up to three years in prison and a $2,500 fine for PLHIV to knowingly transfer or attempt to transfer HIV to another person. Any type of HIV exposure, including consensual sex, blood and tissue donation, breastfeeding, and/or needle sharing, was subject to prosecution.

[2] MD. CODE. ANN., HEALTH–GEN. § 18-601(a).

[3] § 18-601(b).

[4] MD. CODE REGS. 10.06.01.02(B)(14).

[5] MD. CODE REGS. 10.06.01.03(C).

[6] MD. CODE. ANN., HEALTH–GEN. § 18-602(a).

Case law suggests HIV may fall within the scope of "infectious disease that endangers public health." In *Lemon v. Stewart*, plaintiffs allegedly exposed to HIV after caring for a patient living with HIV appealed the dismissal of their complaint against the patient's physician, among others, for failing to disclose his HIV status to them.[7] The Maryland Court of Special Appeals affirmed the dismissal, holding the defendants owed no duty to the people who brought suit.[8] However, there was no inquiry as to whether HIV fell within the "infectious disease that endangers public health" classification.[9] Rather, the court held the defendants owed no duty of HIV status disclosure to anyone besides the patient; the particular parties in the case, rather than HIV itself, were at issue.[10]

Other STIs and communicable diseases might also fit that classification of "infectious disease that endangers public health." Moreover, while the authors have found no reported cases under MD. CODE. ANN., HEALTH-GEN. § 18-601 at the time of publication, there may nevertheless be unreported prosecutions and charges dropped as part of plea bargains, as well as the possibility of future prosecutions.

PLHIV may face criminal prosecution under general criminal statutes.

General criminal laws can be used to prosecute PLHIV. For example, in Maryland, reckless endangerment, which has been used in multiple prosecutions, is defined as recklessly engaging in "conduct that creates a substantial risk of death or serious physical injury to another."[11] Under the reckless endangerment statute, PLHIV can be charged even when there is no risk of HIV transmission or where means to prevent transmission, such as a condom or pre-exposure prophylaxis (PrEP), were used. Moreover, even if a PLHIV disclosed their status to a partner, prosecutors can still argue that their conduct recklessly endangered the partner if the risk of transmission is deemed "substantial."

In 2009, a 29-year-old man living with HIV was charged with 12 counts of reckless endangerment, 12 counts of knowingly attempting to transfer HIV, and one count of theft for, among other things, allegedly having consensual sex with a woman without disclosing his HIV status.[12] He pled guilty to one charge of reckless endangerment and was sentenced to 18 months' imprisonment and two years of supervised probation.[13] He was previously charged under Maryland's HIV exposure law in 2005 after he engaged in consensual unprotected sex with a different woman without disclosing his HIV status.[14] He pled guilty

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[7] *Lemon v. Stewart*, 682 A.2d 1177, 1178–80 (Md. Ct. Spec. App. 1996).

[8] *Id.* at 1183–86.

[9] *Id.* at 1181–82.

[10] *Id.*

[11] MD. CODE ANN., CRIM. LAW § 3-204, MD. CODE ANN., CRIM. LAW § 3-201 (Maryland defines "serious physical injury to another" as an injury that "creates a substantial risk of death," or an injury that causes permanent or long-lasting "disfigurement, loss of the function of any bodily member or organ, or impairment of the function of any bodily member or organ)..

[12] Patricia M. Murret, *Man Sentenced for Exposing Woman He Met Online to HIV*, GAZETTE.NET (Mar. 10, 2010). *See also Maryland Judiciary Case Search and Record Portal*, MD. JUDICIARY, *available at* http://casesearch.courts.state.md.us/casesearch/ (search name "Perrera, Thomas James"; search type "Criminal"; search County "Montgomery"; Case Nos. 113320C, 112743C).

[13] Murret, *supra* note 14.

[14] *Id.*

to reckless endangerment in that case and was sentenced to five years' imprisonment, with all but one year suspended, and three years of probation.[15]

Other notable prosecutions include:

- In March 2015, a PLHIV pled guilty to two counts of reckless endangerment after having unprotected sex with two women.[16] He reportedly had an undetectable viral load.[17]
- In July 2010, a 44-year-old PLHIV was sentenced to five years in prison for a conviction of assault in the second degree after spitting on a police officer.[18] Because the defendant had no teeth and often spat unintentionally, it is not clear whether the man intended to spit on the police officer.[19] Moreover, saliva is not a viable route of HIV transmission.[20]
- In 1999, a 20-year-old PLHIV was charged with assault in the first degree for biting a security guard in the arm during a struggle.[21] Assault in the first degree, a felony carrying a maximum penalty of 25 years' imprisonment, prohibits intentionally causing or attempting to cause serious physical injury to another.[22]

At least one court ruling in Maryland has found that attempted murder cannot be used to prosecute HIV exposure without the specific intent to murder via HIV transmission.

In *Smallwood v. State,* a man living with HIV appealed his convictions of assault with intent to murder and three counts of attempted second-degree murder, amounting to a sentence of 30 years in prison.[23] The convictions stemmed from his raping and robbing three women at gunpoint, for which he had pled guilty to attempted first-degree rape and robbery.[24] He argued that sexually assaulting the women with knowledge of his HIV status was not sufficient to find intent to kill.[25] The prosecution countered that a PLHIV engaging in unprotected sex while knowing their HIV status is equivalent to their firing a loaded firearm at an individual, an act from which a jury could infer the intent to kill.[26]

The Maryland Court of Appeals determined the State did not provide evidence that the defendant intended to kill the victims—only that he intended to rob and rape them.[27] The court reasoned that,

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[15] *Id. See also Maryland Judiciary Case Search and Record Portal*, MD. JUDICIARY, *available at* http://casesearch.courts.state.md.us/casesearch/ (search name "Perrera, Thomas James"; search type "Criminal"; search County "Montgomery"; Case No. 105317C).

[16] Debra Alfarone, *Man with HIV Admits to Knowingly Having Unprotected Sex*, WUSA 9 NEWS (March 10, 2015), *available at* https://www.wusa9.com/article/news/man-with-hiv-admits-to-knowingly-having-unprotected-sex/65-203526761.

[17] *Id*.

[18] Don Aines, *Man with HIV Who Spit on Police Officer Sentenced to Five Years*, HERALD-MAIL (Hagerstown, MD) (July 26, 2010), *available at* https://www.hivjustice.net/cases/us-maryland-man-gets-five-years-for-unintentionally-spitting-on-cop/.

[19] *Id.*

[20] CTR. FOR DISEASE CONTROL & PREVENTION, *How HIV Spreads*, (Nov. 25, 2024), *available at* https://www.cdc.gov/hiv/causes/index.html.

[21] Nancy A. Youssef, HIV Positive Man Bit Security Guard in Fight, Police Say, BALTIMORE SUN (June 20, 1999).

[22] MD. CODE ANN., CRIM. LAW § 3-202(b).

[23] *Smallwood v. State*, 680 A.2d 512 (MD. 1996).

[24] *Id.* at 513–14.

[25] *Id*.

[26] *Id*.

[27] *Id.* at 516.

since death by "AIDS" from a single exposure to HIV was not sufficiently probable to show such intent, the state must provide additional evidence—such as statements suggesting a person wished to spread HIV or actions solely explicable as an attempt to spread HIV, such as splashing blood.[28]

Public Health requirements for people diagnosed with HIV.

Individuals under medical observation for HIV diagnosis must remain under medical supervision until the diagnostic observation is complete, the diagnosis has been reported to a health officer, and the individual has entered medical care.[29] The diagnosing physician must try to identify any past contacts of the patient who may have been exposed to HIV and bring them in for examination and, if needed, preventative treatment.[30] The physician may submit a report to the Department of Health and Mental Hygiene if a patient refuses to notify their past sexual and needle-sharing partners of their positive diagnosis.[31] A person who is notified by a health officer that they may have been exposed to HIV must be medically evaluated within one week to determine whether transmission occurred.[32] Finally, the Department of Health and Mental Hygiene health officer has the authority to "[t]ake such measures as may be deemed necessary for the protection of the public health;" potential actions are not mentioned.[33,34]

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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[28] *Id.* at 516–18.

[29] MD. CODE REGS. 10.06.01.17(A)(2)(b),(d).

[30] MD. CODE REGS. 10.06.01.17(B)(1)(a).

[31] MD. CODE REGS. 10.06.01.17(B)(1)(c).

[32] MD. CODE REGS. 10.06.01.17(B)(3)(a).

[33] MD. CODE REGS. 10.06.01.17(A)(4)(c).

[34] MD. CODE. ANN., HEALTH–GEN. §§ 18-207(a)(4)(iii), (b)(4) ("The [HIV/AIDS case] report and any proceedings, records or files relating to the reports required under this section are not discoverable and are not admissible in evidence in any *civil* action.") (emphasis added, noting the possibility of use of records in criminal actions).

Maryland Code 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.*

CODE OF HEALTH-GENERAL

MD. CODE ANN., HEALTH-GEN. § 18-601**

Exposure of other individuals – By infected individual generally

(a) An individual who has an infectious disease that endangers public health may not willfully:

(1) Be in a public place without taking proper precautions against exposing other individuals to the disease; or

(2) Transfer to another individual any article that has been exposed to the disease without thoroughly disinfecting the article.

(b) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500 or imprisonment not exceeding 1 year or both.

MD. CODE ANN., HEALTH-GEN. § 18-602

(a) A person may not:

(1) Willfully or knowingly take an individual who has an infectious disease that endangers public health to the home of another individual;

(2) Carelessly expose an individual to another who has an infectious disease that endangers public health; or

(3) Permit a child who has an infectious disease that endangers public health to be in a public place while in charge of the child.

(b) A person who violates any provision of this section is subject to a fine not exceeding $100.

MD. CODE ANN., HEALTH-GEN. § 18-207

Human immunodeficiency virus; case report; confidentiality

(a) Definitions. –

(4) “Report” means:

(iii) An HIV/AIDS case report.

(b) Case report. –

(4) The report and any proceedings, records, or files relating to the reports required under this section are not discoverable and are not admissible in evidence in any civil action.

Code of Maryland Regulations

TITLE 10, DEPARTMENT OF HEALTH AND MENTAL HYGIENE

MD. CODE REGS. 10.06.01.02

Definitions

(A) The definitions of terms used in the Control of Communicable Diseases Manual are accepted as official and applicable to the control of diseases within this State under this chapter.

(B) Terms Defined

> (14) “Infectious” means capable of being transmitted in a manner that can cause a disease or abnormal condition in an individual.

MD. CODE REGS. 10.06.01.17

A. Control of a Case.

> (1) For an individual who appears to have or who has syphilis in a stage which is or may become communicable, or HIV, a physician shall instruct the individual in the use of any measure and render any treatment which may be necessary to prevent the spread of the disease.
>
> (2) An individual under medical observation for diagnosis of syphilis or HIV shall remain under medical supervision until the:
>
> > (a) Observation for diagnosis has been completed;
> >
> > (b) Syphilis or HIV, if present, has been reported to a health officer;
> >
> > (c) Individual with syphilis has had the treatment that is necessary for the protection of the public health; and
> >
> > (d) Individual with HIV has entered into HIV medical care.
>
> (3) A physician shall report to a health officer within 1 working day and in writing the name and address of an individual who is:
>
> > (a) Receiving or has received treatment for syphilis; or
> >
> > (b) Under medical observation for diagnosis or treatment of syphilis in an infectious or potentially infectious stage, who fails to return for observation or treatment within 1 week

of the date of a missed appointment, and is not known to the attending physician to be under medical observation or treatment elsewhere for this infection.

(4) A health officer shall:

(a) Investigate an individual reported to the health officer under the provisions of § A(3) of this regulation or Health-General Article, § 18-201.1, Annotated Code of Maryland, who is within the health officer's territorial jurisdiction;

(b) Take such measures as may be deemed necessary for the protection of the public health; and

(c) Forward to the Secretary immediately a report of an individual reported under the provisions of § A(3) of this regulation or Health-General Article, § 18-201.1, Annotated Code of Maryland, who is outside the health officer's territorial jurisdiction for referral to the health officer of the proper jurisdiction.

B. Control of Contacts.

(1) A physician in attendance upon a patient having syphilis or HIV:

(a) Shall endeavor to bring an individual with whom the patient has had potentially infectious contact to examination and, as appropriate, prophylaxis by:

(i) Requesting a health officer to conduct a contact investigation of any case of syphilis or HIV; or

(ii) Interviewing the patient in order to ascertain the names, descriptions, addresses, telephone numbers, and email addresses of those with whom the patient has had potentially infectious contact;

(b) Shall report immediately to a health officer an individual identified as having had potentially infectious contact with a patient having syphilis reported under the provisions of § A(3) of this regulation; and

(c) May report to a health officer an individual identified as having had potentially infectious contact with a patient having HIV reported under Health-General Article, § 18-201.1, Annotated Code of Maryland, if a patient that has been informed of the patient's HIV positive status refuses to notify the patient's sexual and needle-sharing partners.

(2) A health officer shall:

(a) Investigate and notify immediately an individual reported under the provisions of § B(1)(b) of this regulation, who is within the health officer's jurisdiction, of the individual's

exposure and advise the individual to undergo a medical examination to ascertain whether the individual is infected with syphilis or HIV; and

(b) Forward immediately to the Secretary all reports of individuals who are outside the health officer's territorial jurisdiction for referral to the health officer of the proper jurisdiction.

(3) A reported individual shall:

(a) Within 1 week of notification, be examined to ascertain whether the individual has been infected with syphilis or HIV; and

(b) Be treated with a regimen appropriate for the stage of syphilis to which the individual has been exposed.

Massachusetts

Analysis

Sexually transmitted diseases (STDs), including HIV, can be the basis for enhanced criminal sentences.

If a person, "has sexual intercourse or unnatural sexual intercourse with a child under 16 . . . in a manner in which the victim could contract a sexually transmitted disease or infection of which the defendant knew or should have known," they were infected, they may be sentenced to imprisonment for life or any term not less than 15 years.[1] "Sexual intercourse" is defined as the, "traditional common law notion of rape, the penetration of female sex organ by male sex organ, with or without emission,"[2] while "unnatural sexual intercourse" is defined as, "oral and anal intercourse, including fellatio, cunnilingus, and other intrusions of a part of a person's body or other object into the genital or anal opening of another person's body."[3]

Notably, no transmission is explicitly required, and no ejaculation is required in the case of penile-vaginal sexual assault. Thus, prosecutions will likely depend on the courts' interpretation of, "a manner in which the victim could contract a sexually transmitted disease or infection." It is also unclear how the courts may determine whether any particular defendant, "should have known" they had an STD. At the time of publication, the authors have not found any cases illustrating how this statute may be implemented.

There are no explicit criminal statutes regarding HIV, but people living with HIV have been prosecuted under general criminal laws.

In *Commonwealth v. Smith*, a man living with HIV appealed the denial of his motion to withdraw his guilty plea to an indictment charging him with assault with intent to commit murder.[4] The charges stemmed from an incident in which the defendant allegedly bit a corrections officer on the arm and screamed: "I'm HIV positive. I hope I kill you . . . ." and "You're all gonna die . . . . I have AIDS."[5] Another officer testified before the grand jury that a doctor from the department of health told him that

[1] MASS. GEN. LAWS ch. 265, § 22B(f) (2016). There is no case on record in which this statute has been applied to a person living with HIV (PLHIV).
[2] *See Commonwealth v.. Gallant*, 369 N.E.2d 707, 712 (Mass. 1977).
[3] *Id.*
[4] *Commonwealth v. Smith*, 790 N.E.2d 708, 709 (Mass. App. Ct. 2003).
[5] *Id.* at 712.

HIV transmission from a human bite is possible if an attacker's gums are bloody and the bite breaks the skin.[6]

Smith demonstrates that HIV status can be the basis for a serious criminal charge in Massachusetts, regardless of whether the complainant was exposed to any risk of HIV infection. Despite the fact that the CDC has concluded there exists only a "negligible" risk of HIV transmission from a bite,[7] the grand jury indicted the defendant, who later pled guilty.[8] Conviction for assault with intent to commit murder can result in imprisonment of up to ten years.[9]

Other prosecutions under Massachusetts' general criminal laws include:

- In April 2012, a 19-year-old HIV man living with HIV was charged with assault and battery with a dangerous weapon, among other things, for failing to disclose his HIV status to multiple sexual partners.[10] At least one partner later tested positive for HIV.[11]
- In August 2012, a 30-year-old man was arrested for allegedly threatening a 17-year-old girl with a syringe he claimed was filled with HIV-infected blood, then stealing her car and almost running her over.[12] The man was charged with attempted murder, armed carjacking, and assault with a dangerous weapon.[13]

Prisoners with venereal disease may be subject to additional restrictions.

If a prisoner is found to have venereal disease at the conclusion of their confinement and the attending physician of the institution concludes that "his release would be dangerous to public health," the prisoner may be placed under medical treatment in the facility where they have been incarcerated.[14] The prisoner may be released upon a finding by the attending physician that "symptoms have disappeared and [their] release will not endanger the public health." Notice of a prisoner's release is also made to the department of public welfare.

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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[6] *Id.*

[7] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors*, *Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (Dec. 4, 2015) *available at* http://www.cdc.gov/hiv/policies/law/risk.html (last visited August 12, 2016).

[8] *Smith*, 790 N.E.2d at 709.

[9] MASS. GEN. LAWS ANN. ch. 265, § 15 (2016).

[10] Marisa Donelan, *Fitchburg man with HIV allegedly showed false medical records*, SENTINEL & ENTERPRISE, Apr. 13 2012, *available at* http://www.sentinelandenterprise.com/ci_20388210/fitchburg-man-hiv-allegedly-showed-false-medical-records?source=rss_viewed.

[11] *Id.*

[12] *Massachusetts police arrest homeless man accused of threatening teen with HIV syringe*, FOX NEWS, Aug. 16, 2012, *available at* http://www.foxnews.com/us/2012/08/16/massachusetts-police-arrest-homeless-man-accused-threatening-teen-with-hiv/.

[13] *Id.*

[14] MASS. GEN. LAWS ch. 111, § 121 (2016).

Annotated Laws of Massachusetts

Note: *Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

CHAPTER 265, CRIMES AGAINST THE PERSON

MASS. GEN. LAWS CH. 265, § 22B (2016) **

Rape of Child -- Aggravating Factors.

Whoever has sexual intercourse or unnatural sexual intercourse with a child under 16, and compels such child to submit by force and against his will or compels such child to submit by threat of bodily injury and:

(f) the sexual intercourse or unnatural sexual intercourse was committed in a manner in which the victim could contract a sexually transmitted disease or infection of which the defendant knew or should have known he was a carrier, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. The sentence imposed on such person shall not be reduced to less than 15 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 15 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

CHAPTER 111, PUBLIC HEALTH

MASS. GEN. LAWS CH. 111, § 6 (2016)

Diseases Deemed Dangerous to Public Health.

The department shall have the power to define, and shall from time to time define, what diseases shall be deemed to be dangerous to the public health, and shall make such rules and regulations consistent with law for the control and prevention of such diseases as it deems advisable for the protection of the public health. The department shall also have the power to define, and shall from time to time so define, what diseases shall be included within the term venereal diseases in the provisions of the laws relative to public health.

MASS. GEN. LAWS CH. 111, § 119 (2016)

Venereal Diseases -- Records Not Public.

Hospital, dispensary, laboratory and morbidity reports and records pertaining to venereal diseases, as defined under section six, shall not be public records, and the contents thereof shall not be divulged by any person having charge of or access to the same, except upon proper judicial order or to a person whose official duties, in the opinion of the commissioner, entitle him to receive information contained therein. Violations of this section shall for the first offence be punished by a fine of not more than fifty dollars, and for a subsequent offence by a fine of not more than one hundred dollars.

MASS. GEN. LAWS CH. 111, § 121 (2016)

Venereal Diseases and Tuberculosis -- Infected Inmates -- Isolation and Treatment.

An inmate of a public charitable institution or a prisoner in a penal institution who is afflicted with a venereal disease, as defined under section six or pulmonary tuberculosis shall be forthwith placed under medical treatment, and if, in the opinion of the attending physician, it is necessary, he shall be isolated until danger of contagion is passed or the physician determines his isolation unnecessary. If at the expiration of a prisoner's sentence he is afflicted with a venereal disease, as defined under section six or pulmonary tuberculosis in its contagious or infectious stages, or if, in the opinion of the attending physician of the institution or of such physician as the authorities thereof may consult, his release would be dangerous to public health, he shall be placed under medical treatment in the institution where he has been confined. Thereupon the authorities of such institution shall notify the department of public welfare of his condition and said department shall provide for his hospitalization and medical care at an institution until, in the opinion of the attending physician of the institution wherein he is being treated, the symptoms have disappeared and his release will not endanger the public health. Notice of a prisoner's release hereunder to the department of public welfare shall be made to the department of public health. The expense of his support, not exceeding three dollars and fifty cents a week, shall be paid by the town where he resides, after notice of the expiration of his sentence and of his condition to such town, or, if he is a state charge, by the commonwealth after like notice to the department of public welfare.

Michigan

Analysis

People living with HIV (PLHIV) may be prosecuted for the specific intent to transmit disease.[1]

In Michigan, it is a felony punishable by up to four years in prison if a person living with HIV (PLHIV) (1) knows their HIV status, (2) engages in "vaginal or anal intercourse" without disclosing their HIV status, and (4) with the "specific intent" to transmit the disease. Transmission does not have to occur for a PLHIV to face prosecution.[2]

Reckless exposure may result in prosecution.

PLHIV can face prosecution if they know their HIV status and act with reckless disregard. PLHIV act with reckless disregard when they engage in "vaginal or anal intercourse" without disclosing their status and transmission occurs. Under Michigan law this is a felony punishable by up to four years of imprisonment. Specific intent to transmit HIV is not required, but transmission must occur for prosecution under this section of the statute.[3]

A person who does all of the above but who does not transmit the disease is guilty of a misdemeanor punishable by up to one year in prison or a fine of $1,000, or both. Neither the intent to transmit the disease nor transmission is required for prosecution under this section.[4]

The only defense to prosecution is disclosure of HIV status to sexual partners before engaging in sexual penetration.[5] However, the disclosure of HIV status during private, sexual activities may be

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[1] Michigan's HIV criminalization law was revised and became effective March 28, 2019. Before the revision, it was a Class F felony, punishable by up to four years in prison if a PLHIV knew their HIV status and engaged in "sexual penetration" without disclosing their HIV status. MICH. COMP. LAWS ANN. § 333.5210(1) (West 1979), *repealed by* 1988 Mich. Legis. Serv. 490, eff. March 28, 2019. "Sexual penetration" was defined as sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body. MICH. COMP. LAWS ANN. § 333.5210(2) (West 1979), *repealed by* 1988 Mich. Legis. Serv. 490, eff. March 28, 2019. The use of practical means to prevent transmission was not a defense to prosecution without prior disclosure of one's HIV status. The intent to transmit was not required.

[2] MICH. COMP. LAWS ANN. § 333.5210 (1) (eff. March 28, 2019). *But see* MICH. COMP. LAWS ANN. § 777.13k (2016) (categorizing vaginal or anal intercourse without informing the person she or he has HIV with the intent to infect that person with HIV as a Class F, person felony). *See also* §§ 777.21, 777.22 (2016) (outlining offense variables as they apply to different offense categories); §777.31-49a (2016) (providing a point system for each offense variable); § 777.67 (2016) (providing minimum sentences for Class F felonies). SENTENCING GUIDELINES MANUAL (2015), *available at* https://mjieducation.mi.gov/documents/sgm-files/94-sgm/file.

[3] MICH. COMP. LAWS ANN. § 333.5210 (2) (eff. March 28, 2019).

[4] MICH. COMP. LAWS ANN. § 333.5210 (3) (eff. March 28, 2019).

[5] *Id.*

difficult to prove without witnesses or documentation, and evidence often rests on parties' conflicting testimony.

PLHIV can also defend against prosecution by showing they did not recklessly disregard the risk of exposing a sexual partner to a HIV.[6] PLHIV may prove that they did not act with reckless disregard if they have been strictly following a physician's treatment plan and have a medically suppressed viral load.[7] However, there are a number of factors that could prevent PLHIV from following a treatment plan. It may be difficult for PLHIV to follow a treatment plan, for example, if they do not have health insurance, have limited access to medication, or experience adverse side effects from the medication.[8] Additionally, PLHIV must be medically suppressed to assert this affirmative defense. There are a number of factors that may prevent PLHIV from achieving viral suppression, including, but not limited to, viral resistance to medication, genetic factors, or inadequate access to treatment.[9]

For example, in *People v. Flynn*, a former lover of a man living with HIV testified that they had unprotected sex, and that the defendant did not disclose his HIV status.[10] The man testified that he informed the complainant of his HIV status before they engaged in sexual intercourse and that he wore a condom.[11] He further argued that the testimony of a second woman with whom he had sexual intercourse was inadmissible under the Michigan Rules of Evidence.[12] The court of appeals upheld the trial court's ruling that the second woman's testimony was admissible as "it was relevant to show that [the] defendant intentionally failed to disclose his HIV status as part of a scheme, plan, or system of doing an act."[13]

PLHIV have been prosecuted for engaging in sexual intercourse without disclosing their status to partners:

- In August 2012, a 32-year-old man living with HIV was arrested for allegedly lying to his partner about his HIV status.[14]
- In December 2011, a man living with HIV was arrested after telling police that he "had set out to intentionally infect as many people as he could."[15]
- In an unreported case prior to September 2002, a man living with HIV received 48 months to 15 years in prison after he allegedly engaged in unprotected anal and oral sex with a man without informing the man of his HIV status.[16]

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[6] MICH. COMP. LAWS ANN. § 333.5210 (4) (eff. March 28, 2019).

[7] *Id.*

[8] J. Stan Lehman, Meredith Carr, et al. Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States, AIDS BEHAV. 2014;18: 997–1006. 10.1007/s10461-014-0724-0

[9] *Id.*

[10] *People v. Flynn*, No. 199753 LEXIS 533, at *1 (Mich. Ct. App. Sept. 25, 1998).

[11] *Id.* at *3.

[12] *Id.* at *2-4 (explaining defendant's assertion that the testimony of the second woman constituted evidence of bad acts and that such evidence is inadmissible).

[13] *Id.*

[14] *Man with HIV charged with spreading virus*, WOODTV, Aug. 17, 2012, *available at* https://www.youtube.com/watch?v=FMcXoaCRqTw.

[15] M. Alex Johnson, *Michigan Man May Have Intentionally Infected Hundreds with HIV*, NBC NEWS, Dec. 30, 2011, *available at* http://usnews.nbcnews.com/_news/2011/12/30/9833291-michigan-man-may-have-intentionally-infected-hundreds-with-hiv.

[16] *People v. Clayton*, No. 245260, 2004 Mich. App. LEXIS 1091 (Mich. Ct. App. Apr. 27, 2004).

Certain defendants may be subject to mandatory testing for STIs and test results may be admissible in subsequent prosecution.

A person's medical records may be subject to confidentiality exceptions by court order, and those records are not explicitly barred from use in a prosecution.[17] Moreover, defendants in any prosecution for a range of prostitution- or solicitation-related charges are subject to mandatory testing for sexually transmitted infections (STIs), hepatitis B, hepatitis C, and HIV, and the results of those tests are not explicitly barred from use in a prosecution.[18] Thus, sex workers living with HIV charged with any of these crimes are always potentially at risk for an additional criminal charge of failing to disclose their HIV status. Further, any police officer, fire fighter, correctional officer, or other county employee, court employee, or individual making a lawful arrest who has received training in the transmission of bloodborne diseases, and who has sustained an open wound exposure to the body fluids of an arrestee, correctional facility inmate, parolee, or probationer, may request such person to submit to testing for HIV, hepatitis B, and hepatitis C. [19] Such a request may be enforced by court order.[20]

Michigan's uninformed partner law has survived legal challenges that it is unconstitutionally overbroad and lacks a specific intent requirement.

In *People v. Jensen*, the Court of Appeals of Michigan affirmed the conviction of a mentally-impaired woman living with HIV, and her sentence to three concurrent prison terms of two years and eight months to four years, for having unprotected sex with a man on three occasions.[21] Upon remand from the Supreme Court of Michigan for consideration of the law's constitutionality,[22] the Court of Appeals held that the law was, "neither unconstitutionally overbroad nor violative of defendant's rights to privacy or against compelled speech."[23]

Rejecting the overbreadth challenge, based on a lack of an intent requirement, the Court first noted that very few states with "HIV exposure" criminal laws required a specific intent to harm.[24] Further, the Court held that it was, "likely that the Legislature intended to require some type of intent as a predicate to finding guilt under [the exposure law], but that here, the requisite intent is inherent in the HIV-infected person's socially and morally irresponsible actions."[25] Thus, the Court allowed strict liability without holding explicitly that was the Legislature's intent.[26]

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[17] MICH. COMP. LAWS ANN. §§ 333.5131(3), 333.1111(2) (2016) "This code shall be liberally construed for the protection of the health, safety, and welfare of the people of this state.").

[18] MICH. COMP. LAWS ANN. §§ 333.5129(1), 333.5101, 333.5111, 333.1111(2) (2016).

[19] MICH. COMP. LAWS ANN. §§ 333.5204, 333.5205(3) (2016); *See also* § 333.5205(4) (2016) (listing factual requirements for petition filed to the court).

[20] MICH. COMP. LAWS ANN. § 333.5205(7) (2016).

[21] *People v. Jensen*, 564 N.W.2d 192, 194 (Mich. Ct. App. 1997).

[22] *People v. Jensen*, 575 N.W.2d 552 (Mich. 1998).

[23] *People v. Jensen*, 586 N.W.2d 748 (Mich. Ct. App. 1998).

[24] *Id.* at 752-53.

[25] *Id.* at 754.

[26] *Id.* at 754-55 (noting HIV is not like other hazardous communicable diseases because there is no cure, but failing to account for actual transmissions risk or the actions available to mitigate that risk, the latter of which also calls into question evidence of intent to harm.).

Addressing the rights to privacy or against compelled speech, the Court held those rights are not absolute and must be balanced against, "the state's 'unqualified interest' in preserving human life."[27] Moreover, the Court framed the exposure law as "narrowly defined so as to further [the state's overwhelming need to protect its citizens from an incurable, sexually transmissible disease]," because it, "neither forbids HIV-infected persons from engaging in sexual penetration nor requires general public disclosure of the person's health status."[28]As with the analysis of the overbreadth challenge, the Court failed to account for actual HIV transmission risk.

The Michigan Court of Appeals rejected another constitutional challenge to the state's HIV disclosure laws in *People v. Flynn*, discussed above.[29] The defendant argued that Michigan's uninformed partner law was unconstitutionally overbroad because its definition of "sexual penetration" included activities that could not spread the virus.[30] The court found that the defendant had no basis for challenging the scope of the law because the defendant had engaged in unprotected sexual intercourse, which was "clearly encompassed" by the statute's language.[31] The defendant was sentenced to two concurrent terms of 32 to 48 months in prison.[32]

PLHIV may be subject to bioterrorism laws.

Under Michigan's bioterrorism laws, PLHIV may be prosecuted or receive enhanced sentences because of their HIV status.[33] Prosecutions and enhanced sentences for blood exposure may apply regardless of whether HIV infection was possible under the circumstances.

In *People v. Odom*, the Court of Appeals of Michigan affirmed the conviction, on three counts of assault, and sentence of an inmate living with HIV who allegedly punched and spat on corrections officers during an altercation.[34] Because he was bleeding from the mouth during the assault, and because his saliva containing blood was deemed a "harmful biological substance" under state bioterrorism laws, the spitting incident led to an increased sentence of five to 15 years.[35] Relying on a statement from the Centers for Disease Control ("CDC") that HIV can be transmitted via blood, the Court of Appeals concluded that a PLHIV's blood is a "harmful biological substance."[36]

Because the Court in *Odom* failed to address how state sentencing laws could apply to PLHIV acting in self-defense during an altercation, or who have no knowledge or intention of exposing another to HIV, PLHIV could be prosecuted for unintentional blood exposures that occur when they are attacked by

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[27] *Id.* at 756.

[28] *Id.* at 757-58.

[29] *Flynn*, 199753 LEXIS 533, at *4 (Mich. Ct. App. Sept. 25, 1998).

[30] *Id.* at *3.

[31] *Id.*

[32] *Id.* at *1.

[33] MICH. COMP. LAWS ANN. §§ 750.543b(c); 750.200h(g) (2016) ("Harmful biological substance" means a bacteria, virus, or other microorganism or a toxic substance derived from or produced by an organism that can be used to cause death, injury, or disease in humans, animals, or plants.").

[34] *People v. Odom*, 740 N.W.2d 557, 560 (Mich. Ct. App. 2007) (stating that "HIV-infected blood is a 'harmful biological substance,' as defined by [Mich. Comp. Laws Ann. § 750.200h], because it is a substance produced by a human organism that contains a virus that can spread or cause disease in humans.");

[35] *Id.* at 560-62; *see also* MICH. COMP. LAWS ANN. § 777.31(1)(b) (2016) (imposing 20 additional sentencing points for exposures to harmful biological substances).

[36] *Odom*, 740 N.W.2d at 561-62.

others or are victims of correctional officer misconduct. The defendant in *Odom* denied that he initiated the altercation or that he spit at the officers, and the court did not discuss how he received his injuries.[37]

In 2010, another PLHIV was charged under Michigan's bioterrorism law for allegedly biting his neighbor during an altercation, although there was no evidence that the defendant was bleeding from the mouth at the time of the bite, that he intended to transmit HIV, or that he exposed his neighbor to anything but saliva. [38]

Relying on a statement from the CDC, the court acknowledged that contact with saliva, tears, or sweat has never been shown to result in HIV transmission, and it dismissed the bioterrorism charge as unfounded.[39] However, the court also cited *Odom* and confirmed that blood from a PLHIV is a "harmful biological substance" under state bioterrorism laws.[40] Thus, while *Allen* did nothing to remove the risk that a PLHIV can be arrested and charged under the bioterrorism law, it helped clarify the fallacies of prosecuting PLHIV for spitting and biting.

HIV status or STIs can be considered a factor in sentencing.

Under Michigan state law, a sentencing court may go beyond sentencing guidelines and impose a minimum sentence above what is recommended if there is a substantial and compelling reason to do so.[41] This provision has led to increased sentences where sexual assault victims are exposed to or infected with STIs, such as HPV.[42]

In *People v. Holder*, the Michigan Court of Appeals affirmed the conviction and 80- to 120-month sentence of a PLHIV for sexual penetration of an uninformed partner.[43] The court stated that, because the defendant did not tell his partner about his HIV status, which resulted in transmission of the virus without her knowledge, he risked both the "potential exposure . . . to other people through the innocent transmission by the victim" and infection to his partner's then unborn child.[44] The court found these facts sufficient to uphold a sentence twice the standard range.[45]

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[37] *Id.* at 560-67.

[38] *People v. Allen*, No. 2009-4960, at *6 (Macomb County Ct. Mich. Cir. Ct. June 2, 2010), *available at* http://www.hivlawandpolicy.org/resources/view/517. The CDC has concluded there exists only a "remote" possibility of HIV transmission through a bite, and that spitting alone cannot transmit HIV. CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission Risk*, *Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (Dec. 4, 2015) *available at* http://www.cdc.gov/hiv/policies/law/risk.html (last visited Nov. 25, 2016); *See also* CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?*, (Nov. 10, 2016) *available at* http://www.cdc.gov/hiv/basics/transmission.html (last visited Nov. 25, 2016).

[39] *Allen*, No. 2009-4960 at *5, *7.

[40] *Id.* at *4-5.

[41] MICH. COMP. LAWS ANN. § 769.34(3) (2016).

[42] *See, e.g., People v. Grissom*, No. 251427, 2004 LEXIS 3178, at *2 (Mich. Ct. App. Nov. 18, 2004) (affirming departure from sentencing guidelines because, among other things, "the victim contracted Human Papilloma Virus (HPV), a disease that potentially may cause cervical cancer in the future."); *People v. Castro-Isaquirre*, No. 242134, 2004 LEXIS 891, at *2 (Mich. Ct. App. Apr. 6, 2004) ("The trial court noted the communicable nature of the disease and the consequences of such a disease on a young victim. These circumstances are substantial and compelling and were not considered in scoring the guidelines.").

[43] *People v. Holder*, No. 238501, 2003 Mich. App. LEXIS 2303, at *1 (Mich. Ct. App. 2003).

[44] *Id.* at *10.

[45] *Id.*

Donating blood or blood products is a criminal offense for PLHIV.

The Michigan Public Health Code prohibits PLHIV who know their HIV status from donating or selling blood or blood products.[46] Prosecutions require neither the intent to transmit HIV, nor actual transmission, and disclosure of HIV status before blood sales or donations is not a defense on the face of the statute.[47] PLHIV who violate this law may also be declared a health threat to others.[48]

PLHIV may be required to undergo medical examination, treatment, or be subject to commitment by the Department of Health.

PLHIV may be required, by warning notice, to, "participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person's status as a carrier," if the health department determines they are a health threat to others.[49] To be considered a health threat to others, the person must have "demonstrated an inability or unwillingness to conduct [themselves] in such a manner as to not place others at risk of exposure to a serious communicable disease or infection."[50] This can include "[b]ehavior . . . that has been demonstrated epidemiologically to transmit, or that evidences a careless disregard for transmission of, a serious communicable disease or infection to others; a substantial likelihood that [the person] will transmit a serious communicable disease or infection to others, as evidenced by [the person's] past behavior or statements made . . . that are credible indicators of [their] intention to do so; and affirmative misrepresentation by [the person] about [their status] before engaging in behavior that has been demonstrated epidemiologically to transmit the serious communicable disease or infection."[51] Serious communicable diseases include HIV and STIs,[52] including but not limited to, syphilis, gonorrhea, chancroid, lymphogranuloma venereum, and granuloma inguinale.[53]

If a person does not comply with a warning notice, the court may petition for a court order that the person submit to education, counseling, or medical testing and treatment; cease and desist conduct constituting a health threat to others; live part-time or full-time in a supervised setting; be committed to a facility for up to 6 months; or "any other order considered just by the circuit court."[54] Certain procedural protections are in place, such as the rights to notice, to legal counsel, and to appeal.[55]

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[46] MICH. COMP. LAWS ANN. § 333.11101 (2016).

[47] *Id.*

[48] *Id. See* the following section.

[49] MICH. COMP. LAWS ANN. § 333.5203(1) (2016)

[50] MICH. COMP. LAWS ANN. § 333.5201(1)(b) (2016).

[51] *Id*. Note that behavior "that has been demonstrated epidemiologically to transmit" the communicable disease in question does not require there be a substantially likely risk of transmission; by the face of the statute, all that is required is any risk of transmission above zero.

[52] MICH. COMP. LAWS ANN. § 333.5101(1)(g) (2016); *see also* MICH. ADMIN. CODE r. 325.9031 (2016).

[53] MICH. COMP. LAWS ANN. § 333.5101(1)(h) (2016); *see also* MICH. ADMIN. CODE r. 325.171(2016).

[54] MICH. COMP. LAWS ANN. §§ 333.5205(1), (6), (8) (2016) (Orders for commitment require the circuit court to first consider the recommendation of a commitment review panel appointed by the court. The panel shall consist of three physicians, at least two of which, "shall have training and experience in the diagnosis and treatment of serious communicable diseases and infections."). Any such petition must include the facts giving rise to the health threat, the department's efforts to alleviate the health threat, the relief sought, and a request for a court hearing. MICH. COMP. LAWS ANN. §§ 333.5205(2) (2016).

[55] MICH. COMP. LAWS ANN. §§ 333.5205(5), (9), (12), (13) (2016).

However, persons who violate an order by the court to submit to commitment are guilty of contempt, punishable by a fine of up to $7,500, imprisonment, and probation.[56]

The Department of Health may also, by emergency order issued in an ex parte proceeding, require persons with a communicable disease to submit to "observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention."[57] Orders for detention may last no longer than 72 hours, or, alternatively, five days, if the circuit court finds by a preponderance of the evidence, that the individual would pose a health threat to others if released.[58] Respondents have procedural protections, such as the rights to notice and to counsel, at court hearings to determine duration of detention beyond 72 hours.[59]

Any violation of the public health code for which there is no other explicit penalty is considered a misdemeanor.[60]

The Supreme Court of Michigan has upheld the Department of Health's authority. In *Rock v. Carney*, the Court reversed a directed verdict granted in health authorities' favor after a woman was detained and subjected to treatment for 12 weeks after testing positive for gonorrhea and syphilis.[61] The Court upheld the State's broad authority to, "quarantine persons infected with [gonorrhea and syphilis] . . . and to make such examination as the nature of the disease requires to determine its presence."[62]

However, the Court emphasized, [t]he object of the law is not punishment . . . but the well being of . . . the people. . . [I]f quarantining is found to be justifiable, such quarantine measures may be resorted to only as are reasonably necessary to protect the public health, remembering that the persons so affected are to be treated as patients, and not as criminals."[63] Thus, the Court held the State failed to establish reasonable grounds to believe the woman was infected because the examining doctor did not, before examining her, have "any information with reference to plaintiff, her habits or her conduct, which would give him reasonable grounds to believe that she was infected . . ."[64]

Although the Supreme Court of Michigan decided *Rock* almost a century ago, it is still good law. *Rock* illustrates the extent of the procedural protections available to persons under Department of Health petitions.

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[56] MICH. COMP. LAWS ANN. §§ 333.5205(14), 600.1715(1) (2016).
[57] MICH. COMP. LAWS ANN. §§ 333.5207(1), (3) (2016) (The department must show there is reasonable cause to believe there is a substantial likelihood, "that the individual is a carrier and a health threat to others.").
[58] MICH. COMP. LAWS ANN. § 333.5207(5) (2016) (Detention may subsequently be extended by filing a petition under the "violation of warning notice" procedure set forth in § 333.5205 (2016)).
[59] MICH. COMP. LAWS ANN. § 333.5207(4) (2016).
[60] MICH. COMP. LAWS ANN. § 333.1299 (2016).
[61] *Rock v. Carney*, 185 N.W. 798, 800, 804 (Mich. 1921).
[62] *Id.* at 804.
[63] *Id.* (Citing *In re Dillon*, 186 P. 170 (Cal. Ct. App. 1919)).
[64] *Id.*

Michigan Compiled Laws Service
Michigan Statutes

Note: *Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

CHAPTER 333, HEALTH

MICH. COMP. LAWS ANN. § 333.5210 (2016) **

Sexual penetration as felony; definition.

(1) A person who knows that he or she has or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex, or who knows that he or she is HIV infected, and who engages in sexual penetration with another person without having first informed the other person that he or she has acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex or is HIV infected, is guilty of a felony.

(2) A person who knows that he or she has HIV who, without having first informed the other person that he or she has HIV, engages in vaginal or anal intercourse, and transmits HIV to an uninfected person causing that person to become HIV positive, acts with reckless disregard and is guilty of a felony.

(3) A person who knows that he or she has HIV who, without having first informed the other person that he or she has HIV, engages in vaginal or anal intercourse, and who acts with reckless disregard but does not transmit HIV, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(4) A person who knows that he or she has HIV who is adherent with the treatment plan of an attending physician and has been medically suppressed per accepted medical standards is not acting with reckless disregard.

MICH. COMP. LAWS ANN. § 333.11101 (2016) **

Donation or sale of blood or blood products; knowledge of positive HIV test

An individual shall not donate or sell his or her blood or blood products to a blood bank or storage facility or to an agency or organization that collects blood or blood products for a blood bank or storage facility knowing that he or she has tested positive for the presence of HIV or an antibody to HIV. A blood bank or other health facility to which blood or blood products is donated in violation of this section immediately shall notify the local health department of the violation. The local health facility will immediately proceed under part 52.

MICH. COMP. LAWS ANN. § 333.5101 (2016)

Definitions and principles of construction.

(1) As used in this article:

(b) "Communicable disease" means an illness due to a specific infectious agent or its toxic products that results from transmission of that infectious agent or its products from a reservoir to a susceptible host, directly as from an infected individual or animal, or indirectly through the agency of an intermediate plant or animal host, vector, or the inanimate environment.

(c) "HIV" means human immunodeficiency virus.

(d) "HIV infection" or "HIV infected" means the status of an individual who has tested positive for HIV, as evidenced by either a double positive enzyme-linked immunosorbent assay test, combined with a positive western blot assay test, or a positive result under an HIV test that is considered reliable by the federal Centers for Disease Control and Prevention and is approved by the department.

(g) "Serious communicable disease or infection" means a communicable disease or infection that is designated as serious by the department pursuant to this part. Serious communicable disease or infection includes, but is not limited to, HIV infection, acquired immunodeficiency syndrome, sexually transmitted infection, and tuberculosis.

(h) "Sexually transmitted infection" means syphilis, gonorrhea, chancroid, lymphogranuloma venereum, granuloma inguinale, and other sexually transmitted infections that the department may designate and require to be reported under section 5111.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code.

MICH. COMP. LAWS ANN. § 333.5111 (2016)

List of reportable diseases, infections, and disabilities; rules.

(1) In carrying out its authority under this article, the department shall maintain a list of reportable diseases, infections, and disabilities that designates and classifies communicable, serious communicable, chronic, or noncommunicable diseases, infections, and disabilities. The department shall review and revise the list under this subsection at least annually.

(2) In carrying out its authority under this article, the department may promulgate rules to do any of the following:

(c) Establish procedures for controlling diseases and infections, including, but not limited to, immunization and environmental controls.

(g) Designate communicable diseases or serious communicable diseases or infections for which local health departments are required to furnish care, including, but not limited to, tuberculosis and sexually transmitted infection.

(h) Implement this part and parts 52 and 53, including, but not limited to, rules for discovering, caring for, and reporting an individual having or suspected of having a communicable disease or a serious communicable disease or infection, and establishing approved tests under section 5123 and approved prophylaxes under section 5125.

MICH. COMP. LAWS ANN. § 333.5129 (2016)

Individuals arrested and charged, bound over, or convicted of certain crimes; examination or testing for certain diseases; expedited examination or testing; information and counseling; providing name, address, and telephone number of victim or individual; providing test results to victim or individual; transmitting test results and other medical information; confidentiality; referral of individual for appropriate medical care; financial responsibility; applicability of subsections (2), (3), and (4) to certain individuals; costs; definitions.

(1) An individual arrested and charged with violating section 448, 449, 449a, 450, 452, or 455 of the Michigan penal code, 1931 PA 328, MCL 750.448, 750.449, 750.449a,750.450, 750.452, and 750.455, or a local ordinance prohibiting prostitution or engaging or offering to engage the services of a prostitute may, upon order of the court, be examined or tested to determine whether the individual has sexually transmitted infection, hepatitis B infection, hepatitis C infection, HIV infection, or acquired immunodeficiency syndrome. Examination or test results that indicate the presence of sexually transmitted infection, hepatitis B infection, hepatitis C infection, HIV infection, or acquired immunodeficiency syndrome must be reported to the defendant and, pursuant to sections 5114 and 5114a, to the department and the appropriate local health department for partner notification.

MICH. COMP. LAWS ANN. § 333.5131 (2016)

Serious communicable diseases or infections of HIV infection and acquired immunodeficiency syndrome; confidentiality of reports, records, data, and information; test results; limitations and restrictions on disclosures in response to court order and subpoena; information released to legislative body; applicability of subsection (1); immunity; identification of individual; violation as misdemeanor; penalty.

(1) All reports, records, and data pertaining to testing, care, treatment, reporting, and research, and information pertaining to partner notification under section 5114a, that are associated with the serious communicable diseases or infections of HIV infection and acquired immunodeficiency syndrome are confidential. A person shall release reports, records, data, and information described in this subsection only pursuant to this section.

(3) The disclosure of information pertaining to HIV infection or acquired immunodeficiency syndrome in response to a court order and subpoena is limited to only the following cases and is subject to all of the following restrictions:

> (a) A court that is petitioned for an order to disclose the information shall determine both of the following:
>
> > (i) That other ways of obtaining the information are not available or would not be effective.
> >
> > (ii) That the public interest and need for the disclosure outweigh the potential for injury to the patient.
>
> (b) If a court issues an order for the disclosure of the information, the order shall do all of the following:
>
> > (i) Limit disclosure to those parts of the patient's record that are determined by the court to be essential to fulfill the objective of the order.

(ii) Limit disclosure to those persons whose need for the information is the basis for the order.

(iii) Include such other measures as considered necessary by the court to limit disclosure for the protection of the patient.

(5) Subject to subsection (7), subsection (1) does not apply to the following:

(a) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome, if the information is disclosed to the department, a local health department, or other health care provider for 1 or more of the following purposes:

(i) To protect the health of an individual.

(ii) To prevent further transmission of HIV.

(iii) To diagnose and care for a patient.

(7) A person who discloses information under subsection (5) shall not include in the disclosure information that identifies the individual to whom the information pertains, unless the identifying information is determined by the person making the disclosure to be reasonably necessary to prevent a foreseeable risk of transmission of HIV. This subsection

MICH. COMP. LAWS SERV. § 333.5201 (2016)

Definitions and principles of Construction

(1) As used in this part:

(a) "Carrier" means an individual who serves as a potential source of infection and who harbors or who the department reasonably believes to harbor a specific infectious agent or a serious communicable disease or infection, whether or not there is present discernible disease.

(b) "Health threat to others" means that an individual who is a carrier has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection. Health threat to others includes, but is not limited to, 1 or more of the following:

(i) Behavior by the carrier that has been demonstrated epidemiologically to transmit, or that evidences a careless disregard for transmission of, a serious communicable disease or infection to others.

(ii) A substantial likelihood that the carrier will transmit a serious communicable disease or infection to others, as evidenced by the carrier's past behavior or statements made by the carrier that are credible indicators of the carrier's intention to do so.

(iii) Affirmative misrepresentation by the carrier of his or her status as a carrier before engaging in behavior that has been demonstrated epidemiologically to transmit the serious communicable disease or infection.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code and part 51 contains definitions applicable to this part.

MICH. COMP. LAWS ANN. § 333.5203 (2016)

Warning notice generally.

(1) Upon a determination by a department representative or a local health officer that an individual is a carrier and is a health threat to others, the department representative or local health officer shall issue a warning notice to the individual requiring the individual to cooperate with the department or local health department in efforts to prevent or control transmission of serious communicable diseases or infections. The warning notice may also require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person's status as a carrier.

(3) A warning notice issued under subsection (1) shall include a statement that unless the individual takes the action requested in the warning notice, the department representative or local health officer shall seek an order from the probate court, pursuant to this part. The warning shall also state that, except in cases of emergency, the individual to whom the warning notice is issued has the right to notice and a hearing and other rights provided in this part before the probate court issues an order.

MICH. COMP. LAWS ANN. § 333.5204 (2016)

Request for testing made by officer, employee, or individual making lawful arrest; procedures; rules; definitions

(1) A police officer, a fire fighter, a local correctional officer or other county employee, a court employee, or an individual making a lawful arrest may proceed under this section if he or she has received training in the transmission of bloodborne diseases under the rules governing exposure to bloodborne diseases in the workplace promulgated by the occupational health standards commission or incorporated by reference under the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094.

(2) A police officer, a fire fighter, a local correctional officer or other county employee, a court employee, or an individual making a lawful arrest who has received the training described in subsection (1) and who, while performing his or her official duties or otherwise performing the duties of his or her employment, determines that he or she has sustained a percutaneous, mucous membrane, or open wound exposure to the blood or body fluids of an arrestee, correctional facility inmate, parolee, or probationer may request that the arrestee, correctional facility inmate, parolee, or probationer be tested for HIV infection, HBV infection, HCV infection, or all 3 infections, pursuant to this section.

(12) As used in this section and section 5205:

(a) “Correctional facility” means a municipal or county jail, work camp, lockup, holding center, halfway house, community corrections center, or any other facility maintained by a municipality or county that houses adult prisoners. Correctional facility does not include a facility owned or operated by the department of corrections.

(b) “Employee” means a county employee or a court employee.

(c) “HBV” means hepatitis B virus.

(d) “HBV infected” or “HBV infection” means the status of an individual who is tested as HBsAg-positive.

(e) “HCV” means hepatitis C virus.

(f) "HCV infected" or "HCV infection" means the status of an individual who has tested positive for the presence of HCV antibodies or has tested positive for HBV using an RNA test.

(g) "HIV" means human immunodeficiency virus.

(h) "HIV infected" means that term as defined in section 5101.

(i) "Individual making a lawful arrest" or "arresting individual" means 1 of the following:

(i) A private security police officer authorized to make an arrest without a warrant under section 30 of the private security business and security alarm act, 1968 PA 330, MCL 338.1080, and section 15 of the code of criminal procedure, 1927 PA 175, MCL 764.15

(ii) A merchant, agent of a merchant, employee of a merchant, or independent contractor providing security for a merchant authorized to make an arrest in the merchant's store and in the course of his or her employment as prescribed by section 16(d) of the code of criminal procedure, 1927 PA 175, MCL 764.16. Individual making a lawful arrest or arresting individual does not include a private person authorized to make an arrest under section 16(a) and (b) of the code of criminal procedure, 1927 PA 175, MCL 764.16

(j) "Local correctional officer" means an individual employed by a local governmental unit in a correctional facility as a corrections officer.

(k) "Officer" means a law enforcement officer, motor carrier officer, or property security officer employed by the state, a law enforcement officer employed by a local governmental unit, a fire fighter employed by or volunteering for a local governmental unit, or a local correctional officer.

MICH. COMP. LAWS ANN. § 333.5205 (2016)

Failure or refusal to comply with warning notice; petition; hearing; notice; waiver; orders; recommendation and duties of commitment review panel and circuit court; appeal to circuit court; termination or continuation of commitment; cost of implementing order; right to counsel; appeal to court of appeals; leaving facility or refusal to undergo testing for certain infections as contempt.

(1) If a department representative or a local health officer knows or has reasonable grounds to believe that an individual has failed or refused to comply with a warning notice issued under section 5203, the department or local health department may petition the circuit court for the county of Ingham or for the county served by the local health department for an order as described in subsection (6).

(2) A petition filed under subsection (1) shall state all of the following:

(a) The grounds and underlying facts that demonstrate that the individual is a health threat to others and, unless an emergency order is sought under section 5207, has failed or refused to comply with a warning notice issued under section 5203.

(b) The petitioner's effort to alleviate the health threat to others before the issuance of the warning notice, unless an emergency order is sought under section 5207.

(c) The type of relief sought.

(d) A request for a court hearing on the allegations set forth in the petition.

(3) If a test subject refuses to undergo a test requested by an officer or employee or an arresting individual under section 5204, the officer's or employee's or arresting individual's employer may petition

the circuit court for the county in which the employer is located or the appropriate district court for an order as described in subsection (7).

(4) A petition filed under subsection (3) shall state all of the following:

(a) Substantially the same information contained in the request made to an officer's or employee's or arresting individual's employer under section 5204(2) and (3), except that the petition shall contain the name of the arrestee, correctional facility inmate, parolee, or probationer who is the proposed test subject.

(b) The reasons for the officer's or employee's or arresting individual's determination that the exposure described in the request made under section 5204(2) and (3) could have transmitted HIV, HBV, or HCV, or all or a combination of those viruses, along with the date and place the officer or employee or arresting individual received the training in the transmission of bloodborne diseases required under section 5204(1).

(c) The fact that the arrestee, correctional facility inmate, parolee, or probationer has refused to undergo the test or tests requested under section 5204(2) and (3).(

d) The type of relief sought.

(e) A request for a court hearing on the allegations set forth in the petition.

(5) Upon receipt of a petition filed under subsection (1), the circuit court shall fix a date for hearing that shall be as soon as possible, but not later than 14 days after the date the petition is filed. Notice of the petition and the time and place of the hearing shall be served personally on the individual and on the petitioner not less than 3 days before the date of the hearing. Notice of the hearing shall include notice of the individual's right to appear at the hearing, the right to present and cross-examine witnesses, and the right to counsel as provided in subsection (12). The individual and the petitioner may waive notice of hearing, and upon filing of the waiver in writing, the circuit court may hear the petition immediately. Upon receipt of a petition filed under subsection (3), the circuit court or the district court shall fix a date for hearing that shall be as soon as possible, but not later than 24 hours after the time and date the petition is filed. Notice of the petition and the time and place of the hearing shall be served personally on both the proposed test subject under section 5204 and the petitioner within a time period that is reasonable under the circumstances. Notice of the hearing shall include notice of the proposed test subject's right to appear at the hearing, the right to present and cross-examine witnesses, and the right to counsel as provided in subsection (12). The proposed test subject and the petitioner may waive notice of the hearing, and upon filing of the waiver in writing, the circuit court or the district court may hear the petition filed under subsection (3) immediately.

(6) Upon a finding by the circuit court that the department or local health department has proven the allegations set forth in a petition filed under subsection (1) by clear and convincing evidence, the circuit court may issue 1 or more of the following orders:

(a) An order that the individual participate in a designated education program.

(b) An order that the individual participate in a designated counseling program.

(c) An order that the individual participate in a designated treatment program.

(d) An order that the individual undergo medically accepted tests to verify the individual's status as a carrier or for diagnosis.

(e) An order that the individual notify or appear before designated health officials for verification of status, testing, or other purposes consistent with monitoring.

(f) An order that the individual cease and desist conduct that constitutes a health threat to others.

(g) An order that the individual live part-time or full-time in a supervised setting for the period and under the conditions set by the circuit court.

(h) Subject to subsection (8), an order that the individual be committed to an appropriate facility for the period and under the conditions set by the circuit court. A commitment ordered under this subdivision shall not be for more than 6 months, unless the director of the facility, upon motion, shows good cause for continued commitment.

(i) Any other order considered just by the circuit court.

(7) Upon a finding by the circuit court or the district court that the officer's or employee's or arresting individual's employer has proven the allegations set forth in a petition filed under subsection (3), including, but not limited to, the requesting officer's or employee's or arresting individual's description of his or her exposure to the blood or body fluids of the proposed test subject, the circuit court or the district court may issue an order requiring the proposed test subject to undergo a test for HIV infection, HBV infection, or HCV infection, or all or a combination of the 3 infections.

(8) The circuit court shall not issue an order authorized under subsection (6)(h) unless the court first considers the recommendation of a commitment review panel appointed by the court under this subsection to review the need for commitment of the individual to a health facility. The commitment review panel shall consist of 3 physicians appointed by the court from a list of physicians submitted by the department. Not less than 2 of the physicians shall have training and experience in the diagnosis and treatment of serious communicable diseases and infections. However, upon the motion of the individual who is the subject of the order, the court shall appoint as 1 member of the commitment review panel a physician who is selected by the individual. The commitment review panel shall do all of the following:

(a) Review the record of the proceeding.

(b) Interview the individual, or document the reasons why the individual was not interviewed.

(c) Recommend either commitment or an alternative or alternatives to commitment, and document the reasons for the recommendation.

(9) An individual committed to a facility under subsection (6)(h) may appeal to the circuit court for a commitment review panel recommendation as to whether or not the patient's commitment should be terminated. Upon the filing of a claim of appeal under this subsection, the court shall reconvene the commitment review panel appointed under subsection (5) as soon as practicable, but not more than 14 days after the filing of the claim of appeal. Upon reconvening, the commitment review panel shall do all of the following:

(a) Review the appeal and any other information considered relevant by the commitment review panel.

(b) Interview the individual, or document the reasons why the individual was not interviewed.

(c) Recommend to the court either termination or continuation of the commitment, and document the reasons for the recommendation.

(10) Upon receipt of the recommendation of the commitment review panel under subsection (9), the circuit court may terminate or continue the commitment.

(11) The cost of implementing an order issued under subsection (6) shall be borne by the individual who is the subject of the order, unless the individual is unable to pay all or a part of the cost, as determined by the circuit court. If the court determines that the individual is unable to pay all or a part of the cost of implementing the order, then the state shall pay all of the cost or that part of the cost that the individual is unable to pay, upon the certification of the department. The cost of implementing an order issued under subsection (7) shall be borne by the arrestee, correctional facility inmate, parolee, or probationer who is tested under the order.

(12) An individual who is the subject of a petition filed under this section or an affidavit filed under section 5207 has the right to counsel at all stages of the proceedings. If the individual is unable to pay the cost of counsel, the circuit court shall appoint counsel for the individual.

(13) An order issued by the circuit court under subsection (6) may be appealed to the court of appeals. The court of appeals shall hear the appeal within 30 days after the date the claim of appeal is filed with the court of appeals. However, an order issued by the circuit court under subsection (6) shall not be stayed pending appeal, unless ordered by the court of appeals on motion for good cause. An order issued by the circuit court under subsection (7) may be appealed to the court of appeals. The court of appeals shall hear the appeal within 15 days after the date the claim of appeal is filed with the court of appeals. However, an order issued by the circuit court under subsection (7) shall not be stayed pending appeal, unless ordered by the court of appeals on motion for good cause. An order issued by a district court under subsection (7) may be appealed to the circuit court for the county in which the district court is located. The circuit court shall hear the appeal within 15 days after the date the claim of appeal is filed with the circuit court. However, an order issued by a district court under subsection (7) shall not be stayed pending appeal, unless ordered by the circuit court on motion for good cause.

(14) An individual committed to a facility under this section who leaves the facility before the date designated in the commitment order without the permission of the circuit court or who refuses to undergo a test for HIV infection, HBV infection, HCV infection, or all or a combination of the 3 infections is guilty of contempt.

MICH. COMP. LAWS ANN. § 333.5207 (2016)

Protection of public health in emergency; affidavit; court order; taking individual into custody; transporting individual to emergency care or treatment facility; temporary detention; notice of hearing; continued temporary detention; petition.

(1) To protect the public health in an emergency, upon the filing of an affidavit by a department representative or a local health officer, the circuit court may order the department representative, local health officer, or a peace officer to take an individual whom the court has reasonable cause to believe

is a carrier and is a health threat to others into custody and transport the individual to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention. If the individual is already institutionalized in a facility, the court may order the facility to temporarily detain the individual. An order issued under this subsection may be issued in an ex parte proceeding upon an affidavit of a department representative or a local health officer. The court shall issue an order under this subsection upon a determination that reasonable cause exists to believe that there is a substantial likelihood that the individual is a carrier and a health threat to others. An order under this subsection may be executed on any day and at any time, and shall be served upon the individual who is the subject of the order immediately upon apprehension or detention.

(2) An affidavit filed by a department representative or a local health officer under subsection (1) shall set forth the specific facts upon which the order is sought including, but not limited to, the reasons why an emergency order is sought.

(3) An individual temporarily detained under subsection (1) shall not be detained longer than 72 hours, excluding Saturdays, Sundays, and legal holidays, without a court hearing to determine if the temporary detention should continue.

(4) Notice of a hearing under subsection (3) shall be served upon the individual not less than 24 hours before the hearing is held. The notice shall contain all of the following information:

(a) The time, date, and place of the hearing.

(b) The grounds and underlying facts upon which continued detention is sought.

(c) The individual's right to appear at the hearing.

(d) The individual's right to present and cross-examine witnesses.

(e) The individual's right to counsel, including the right to counsel designated by the circuit court, as described in section 5205(13).

(5) The circuit court may order that the individual continue to be temporarily detained if the court finds, by a preponderance of the evidence, that the individual would pose a health threat to others if released. An order under this subsection to continued temporary detention shall not continue longer than 5 days, unless a petition is filed under section 5205. If a petition is filed under section 5205, the temporary detention shall continue until a hearing on the petition is held under section 5205.

ARTICLE 1, PRELIMINARY PROVISIONS
Part 12, General Provisions

MICH. COMP. LAWS ANN. § 333.1299 (2016) **

Violation as misdemeanor; prosecution.

(1) A person who violates a provision of this code for which a penalty is not otherwise provided is guilty of a misdemeanor.

(2) A prosecuting attorney having jurisdiction and the attorney general knowing of a violation of this code, a rule promulgated under this code, or a local health department regulation the violation of which is punishable by a criminal penalty may prosecute the violator.

Michigan Administrative Code

DEPARTMENT OF HEALTH AND HUMAN SERVICES

MICH. ADMIN. CODE R. 325.9031 (2016)

Definition; "infectious agent."

For purposes of section 2843b of Act No. 368 of the Public Acts of 1978, as amended, being S333.2843b of the Michigan Compiled Laws, "infectious agent" means any of the following diseases or organisms:

(a) Acquired immunodeficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection.

(n) Hepatitis, viral, any type.

(u) Syphilis, primary and secondary.

MICH. ADMIN. CODE R. 325.171 (2016)

Definitions.

(1) As used in these rules:

(k) "Venereal disease" means any of the following:

(i) Syphilis.

(ii) Gonorrhea.

(iii) Chancroid.

(iv) Lymphogranuloma venereum.

(v) Granuloma inguinale.

(2) Unless the context requires otherwise or as further clarified in these rules, terms defined in the code have the same meanings when used in these rules.

Minnesota

Analysis

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

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

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

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

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[1] MINN. STAT. § 609.2241(2)(1) (2016).

[2] *See* § 609.2241(1)(d) (2016).

[3] § 609.2241(1)(a) (2016).

[4] § 609.2241(1)(b) (2016).

[5] § 609.2241(1)(d) (2016).

[6] §§ 609.2241(2)(1), 609.341(12) (2016).

[7] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors*, *Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (Dec. 4, 2015) *available at* http://www.cdc.gov/hiv/policies/law/risk.html (last visited Nov. 20, 2016) (classifying HIV transmission risk for receptive and insertive oral intercourse as "low," while the risk for insertive penile-vaginal intercourse is identified as "4 per 10,000 exposures.").

[8] *Id.* ("HIV transmission through these exposure routes is technically possible but unlikely and not well documented.").

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

the infectious agent is transmitted, and (3) are instructed on how to prevent transmission of the infectious agent.[10]

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

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

Prosecutions under Minnesota's communicable disease statute include:

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

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

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

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

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[10] *See* MINN. STAT. § 609.2241(1)(c) (2016).
[11] § 609.2241(1)(e) (2016).
[12] § 609.2241(3) (2016).
[13] § 609.2241(2)(1) (2016).
[14] §§ 2241(2), 609.17, 609.18, 609.19, 609.221, 609.222, 609.223, 609.2231, 609.224 (2016).
[15] David Chanen, *Minneapolis Man pleads guilty to having unprotected sex when he knew he was HIV-positive*, STAR TRIBUNE, April 17, 2014, *available at* http://www.startribune.com/mpls-man-with-hiv-pleads-guilty-to-knowingly-having-unprotected-sex/255556111/.
[16] *Id.*
[17] *Minnesota Man Receives 90 Days in Jail for Allegedly Exposing Woman to HIV*, POZ, Oct. 28, 2009, *available at* https://www.poz.com/article/duluth-hiv-exposure-17491-1414. Intentionally inflicting or attempting to inflict bodily harm is misdemeanor assault in the fifth degree. MINN. STAT. § 609.224(1)(2) (2016).
[18] MINN. STAT. § 609.2241(2)(2).
[19] *Id.*

In *State v. Rick*, the Supreme Court of Minnesota affirmed that this subsection does not apply to sexual conduct.[20] In 2009, Rick was charged with attempted first-degree assault in violation of MINN. STAT. 609.2241, subdivision 2, for engaging in unprotected consensual sexual activity with a partner on multiple occasions.[21] The State argued that Rick had either violated subdivision 2(1) by engaging in "sexual penetration" without disclosing his status, or that he had violated subdivision 2(2) by transferring sperm to his partner during the relevant sexual conduct.[22]

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

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

Sharing needles or syringes may lead to criminal penalties.

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

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

HIV status results in enhanced prison sentences for sex offenses.

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

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[20] *State v. Rick*, 835 N.W.2d 478, 487 (Minn. 2013).
[21] *Id.* at 481.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.* at 481-82.
[26] *Id.* at 482-485.
[27] *Id.* at 486.
[28] MINN. STAT § 609.2241(2)(3) (2016).
[29] *Id. See cf.* § 609.2241(2)(1) (2016) ("sexual penetration with another person *without having first informed the other person that the person has a communicable disease*.") (emphasis added) (disclosure is explicitly a defense for sexual conduct).
[30] MINN. STAT § 609.2241(3)(1) (2016).

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

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

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

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

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

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[31] MINN. STAT. § 244.10(5a)(a)(3) (2016).

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

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

[34] *Id.* at 100.

[35] *Id.* at 101.

[36] *Perkins v. State*, 559 N.W.2d 678, 683-85 (Minn. 1997).

[37] *Id.*

[38] *Id.* at 684.

[39] *Id.* at 684.

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

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

Note on civil commitment:

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

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[40] MINN. STAT. §§ 144.4172(6), (1), (2), (5) (2016).

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

[42] MINN. STAT. § 144.4175 (2016).

[43] MINN. STAT. §§ 144.4172(10), 144.4173, 144.4180 (2016).

[44] MINN. STAT. §§ 144.4176(1), 144.4178 (2016).

[45] MINN. STAT. §§ 144.4176(2),144.4181 (2016).

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

[47] MINN. STAT. §§ 253B.18, 253D.07 (2016).

[48] *In re Renz*, No. A08-898, 2008 LEXIS 1287 (Minn. Ct. App. 2008).

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

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

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

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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[50] MINN. STAT. § 253B.02(17) (2016).
[51] *Renz*, 2008 WL 4706962, at *2.
[52] *Id.* at *3, 7.
[53] *Id.*
[54] *Id.* at *4 (citing *In re Stilinovich*, 479 N.W.2d 731, 735-36 (Minn. Ct. App. 1992) (finding the use of Minnesota's "psychopathic personality" statute inappropriate for civil commitment where defendant, a PLHIV, failed to show concern for the risk of HIV transmission through sexual intercourse)). *In re Stilinovich* pre-dates Minnesota's communicable disease and "sexually dangerous person" statutes.
[55] *Id.* at *5.

Minnesota Statutes

Note: *Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

CHAPTER 609, CRIMINAL CODE

MINN. STAT. § 609.2241 (2016) **

Knowing transfer of communicable disease

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

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

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

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

(1) advice that the person harbors an infectious agent for a communicable disease;

(2) educational information about behavior which might transmit the infectious agent; and

(3) instruction of practical means of preventing such transmission.

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

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

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

(1) sexual penetration with another person without having first informed the other person that the person has a communicable disease;

(2) transfer of blood, sperm, organs, or tissue, except as deemed necessary for medical research or if disclosed on donor screening forms; or

(3) sharing of nonsterile syringes or needles for the purpose of injecting drugs.

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

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

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

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

CHAPTER 144, HEALTH CODE

MINN. STAT. § 144.4172 (2016)

Definitions

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

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

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

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

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

(1) sexually transmitted;

(2) blood borne; or

(3) transmitted through direct or intimate skin contact.

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

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

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

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

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

(a) repeated behavior by a carrier which has been demonstrated epidemiologically to transmit or which evidences a careless disregard for the transmission of the disease to others;

(b) a substantial likelihood that a carrier will repeatedly transmit a communicable disease to others as is evidenced by a carrier's past behavior, or by statements of a carrier that are credible indicators of a carrier's intention;

(c) affirmative misrepresentation by a carrier of the carrier's status prior to engaging in any behavior which has been demonstrated epidemiologically to transmit the disease; or

(d) the activities referenced in clause (1) if the person whom the carrier places at risk is: (i) a minor, (ii) of diminished capacity by reason of mood altering chemicals, including alcohol, (iii) has been diagnosed as having significantly subaverage intellectual functioning, (iv) has an organic disorder of the brain or a psychiatric disorder of thought, mood, perception, orientation, or memory which substantially impairs judgment, behavior, reasoning, or understanding; (v) adjudicated as an incompetent; or (vi) a vulnerable adult as defined in section 626.5572.

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

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

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

MINN. STAT. § 144.4173 (2016)

Cause of Action

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

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

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

MINN. STAT. § 144.4175 (2016)

Reporting

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

MINN. STAT. § 144.4176 (2016)

Petition; Notice

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

(1) the grounds and underlying facts that demonstrate that the respondent is a health threat to others and, unless an emergency court order is sought under section 144.4182, has engaged in noncompliant behavior;

(2) the petitioner's efforts to alleviate the health threat to others prior to the issuance of a health directive, unless an emergency court order is sought under section 144.4182;

(3) the petitioner's efforts to issue the health directive to the respondent in person, unless an emergency court order is sought under section 144.4182;

(4) the type of relief sought; and

(5) a request for a court hearing on the allegations contained in the petition.

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

(1) the time, date, and place of the hearing;

(2) respondent's right to appear at the hearing;

(3) respondent's right to present and cross-examine witnesses; and

(4) respondent's right to counsel, including the right, if indigent, to representation by counsel designated by the court or county of venue.

MINN. STAT. § 144.4178 (2016)

Criminal Immunity

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

MINN. STAT. § 144.4179 (2016)

Standard of proof; Evidence

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

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

MINN. STAT. § 144.4180 (2016)

Remedies

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

(1) participate in a designated education program;

(2) participate in a designated counseling program;

(3) participate in a designated treatment program;

(4) undergo medically accepted tests to verify carrier status or for diagnosis, or undergo treatment that is consistent with standard medical practice as necessary to make respondent noninfectious;

(5) notify or appear before designated health officials for verification of status, testing, or other purposes consistent with monitoring;

(6) cease and desist the conduct which constitutes a health threat to others;

(7) live part time or full time in a supervised setting for the period and under the conditions set by the court;

(8) subject to the provisions of subdivision 2, be committed to an appropriate institutional facility for the period and under the conditions set by the court, but not longer than six months, until the respondent is made noninfectious, or until the respondent completes a course of treatment prescribed by the court, whichever occurs first, unless the commissioner shows good cause for continued commitment; and

(9) comply with any combination of the remedies in clauses (1) to (8), or other remedies considered just by the court. In no case may a respondent be committed to a correctional facility.

Subd. 2. *Commitment review panel.* –

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

The duties of the commitment review panel shall be to:

(1) review the record of the proceeding;

(2) interview the respondent. If the respondent is not interviewed, the reasons must be documented; and

(3) identify, explore, and list the reasons for rejecting or recommending alternatives to commitment.

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

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

(1) the types of support or therapy groups, if any, respondent is attending and how often respondent attends;

(2) the type of care or treatment respondent is receiving, and what future care or treatment is necessary;

(3) whether respondent has been cured or made noninfectious, or otherwise no longer poses a threat to public health;

(4) whether continued commitment or supervised living is necessary; and

(5) other information the court considers necessary.

MINN. STAT. § 144.4181 (2016)

Appeal

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

Mississippi

Analysis

A broad range of HIV exposures may result in imprisonment.

Knowingly exposing another person to HIV, hepatitis B, or hepatitis C is a felony punishable by up to ten years in prison and/or a $10,000 fine.[1] Neither the intent to transmit HIV nor actual transmission is required for conviction.

It is a defense to prosecution if the complainant (1) was aware of the defendant's HIV status and (2) willingly consented to HIV exposure.[2] However, proving disclosure of HIV status during private sexual encounters is difficult without witnesses or documentation. Whether or not disclosure actually occurred is often open to interpretation and almost always depends on the word of one person against another.

In *McCoy v. State*, the Court of Appeals of Mississippi affirmed the conviction and sentencing of a 41-year-old person living with HIV (PLHIV) for four counts of sexual battery and one count of exposing another to HIV after he met the 15-year-old complainant on a social networking site for gay men and they subsequently had sex.[3] The Court affirmed the exposure conviction even though McCoy testified that he had disclosed his HIV status, and the complainant consented to the sexual activity with condoms.[4] This was weighed against the complainant's testimony, which stated there was no disclosure and condoms were not used, and that of two law enforcement officers, who testified that the defendant admitted to not using condoms.[5] McCoy's HIV status was also an aggravating factor in sentencing for his sexual battery convictions.[6]

McCoy highlights the difficulties involved in proving a defendant disclosed their HIV status since, "where the verdict turns on the credibility of conflicting testimony and the credibility of the witnesses, it is the jury's duty to resolve the conflict."[7] It also illustrates that HIV status may affect sentencing for separate convictions even when there is also a conviction for HIV exposure as a standalone offense.

Other prosecutions under Mississippi's exposure statute include:

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[1] MISS. CODE ANN. § 97-27-14(1), (3) (2016).

[2] *Id.*

[3] *McCoy v. State*, No. 2013-KA-02126-COA LEXIS 228, *2 (Miss. Ct. App. April 19, 2016).

[4] *Id.* at *15.

[5] *Id.* (finding a reasonable jury could have found defendant guilty beyond reasonable doubt).

[6] *Id.* at *9 (Other factors considered include the complainant's age compared to McCoy's; complainant's testimony that he told McCoy his age; and McCoy's admission that he drove in the middle of the night to meet complainant, waited in his car outside complainant's father's house, and drove complainant to a secluded spot where the sexual activity occurred.).

[7] *Id.* at *15.

- In January 2015 a 41-year-old PLHIV was charged with exposing another to HIV after posting an ad on Craigslist and not disclosing his HIV status to the woman who responded and became his sexual partner.[8] The woman tested negative for HIV.[9]
- In February 2014, a 51-year-old PLHIV was charged with exposing another to HIV after spitting in the face of a police officer during an arrest.[10]
- In July 2013, a 29-year-old PLHIV was charged with knowingly exposing a minor to HIV after having sexual relations with a 15-year-old girl.[11] The man had been released from prison three months earlier, where he had served a three-year sentence for similar charges.[12]

Exposing prisoners, prison guards, or prison visitors to bodily fluids is prohibited. [13]

Attempting to cause or knowingly causing a corrections employee, visitor to a correctional facility, or another inmate or offender to come into contact with blood, seminal fluid, urine, feces, or saliva is a misdemeanor punishable by imprisonment for up to one year and/or a fine up to $1,000.[14] However, if the person violating the section knows they have HIV, hepatitis B, or hepatitis C, the same act becomes a felony, punishable by up to ten years in prison and/or a $10,000 fine.[15] Again, neither the intent to transmit, nor actual transmission, is required. Of the enumerated bodily fluids, the Centers for Disease Control (CDC) identifies only blood and seminal fluid as capable of transmitting HIV, hepatitis B, and hepatitis C, and only through sexual or intravenous contact.[16]

Under the terms of this statute, "offenders" include anyone in the custody of the department of corrections and "prisoners" include anyone confined in a city or county jail.[17] "Corrections employees" include any employee of an agency or department responsible for operating a jail, prison, or correctional facility, or anyone working in these facilities.[18]

Furthermore, because merely attempting to expose others to bodily substances is punishable, it is not a defense that these substances did not actually come into contact with another person or that HIV, hepatitis B, or hepatitis C transmission was impossible under the circumstances.

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[8] *Mississippi man charged for knowingly exposing woman to HIV*, WDAM.COM, Jan. 20 2015, *available at* http://www.wdam.com/story/27896131/mississippi-man-charged-for-knowingly-exposing-woman-to-hiv.

[9] *Id*.

[10] *Gulfport man charged with exposing officer to HIV*, WLOX.COM, Feb. 6, 2014, *available at* http://www.wlox.com/story/24656007/gulfport-man-charged-with-exposing-officer-to-hiv.

[11] JB Clark, *Tupelo man charged with exposing HIV again*, DJOURNAL.COM, July 13, 2013, *available at* http://djournal.com/news/tupelo-man-charged-with-exposing-hiv-again/.

[12] *Id.*

[13] MISS. CODE ANN. § 97-27-14(2) (2016).

[14] MISS. CODE ANN. § 97-27-14(2)(a), (2)(c), (4) (2016).

[15] MISS. CODE ANN. § 97-27-14(2)(c), (3) (2016).

[16] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission* (Dec. 21, 2016), *available at* http://www.cdc.gov/hiv/basics/transmission.html (last accessed Dec. 29, 2016); CTR. FOR DISEASE CONTROL & PREVENTION, *Viral Hepatitis – Hepatitis B Information* (Aug. 4, 2016), *available at* http://www.cdc.gov/hepatitis/hbv/hbvfaq.htm#treatment (last accessed Dec. 29, 2016); CTR. FOR DISEASE CONTROL & PREVENTION, *Viral Hepatitis – Hepatitis C Information* (July 21, 2016), *available at* http://www.cdc.gov/hepatitis/hcv/hcvfaq.htm#section2 (last accessed Dec. 29, 2016).

[17] MISS. CODE ANN. § 97-27-14(2)(b)(ii)-(iii) (2016).

[18] MISS. CODE ANN. § 97-27-14(2)(b)(i) (2016).

The State Board of Health (BOH) and State Department of Health (DOH) have broad authority to regulate PLHIV or people with other sexually transmitted infections (STIs).

The BOH has the authority to create regulations defining communicable diseases posing a danger to public health and monitoring or otherwise regulating those suspected of being infected with such diseases, including exceptions to confidentiality laws of the state.[19] Thus, for example, the BOH has "full power to isolate, quarantine, or otherwise confine, intern, and treat such person afflicted with such infectious sexually transmitted disease for such time and under such restrictions as may seem proper."[20] Moreover, anyone violating a BOH regulation is guilty of a misdemeanor and may be punished by fine, imprisonment, or both.[21]

The DOH is authorized to "investigate and control the causes of epidemic, infectious and other disease affecting the public health."[22] Part of this authority includes the power to "establish, maintain and enforce isolation and quarantine," and "to exercise such physical control over property and individuals as the department may find necessary for the protection of the public health."[23] It is a felony, punishable by up to five years in prison and/or a $5,000 fine, for an individual afflicted with a "life-threatening communicable disease" to willfully violate a DOH order issued under this authority.[24] However, there are some procedural safeguards in place for quarantine or isolation, such as the rights to notice of hearing, to legal representation, and to cross-examine witnesses.[25]

This public health law has been used to prosecute at least one PLHIV for failing to disclose his HIV status to sexual partners.[26] In 1992, the Mississippi State Department of Health issued a quarantine order against a PLHIV.[27] The order stated that, due to his HIV status, the man "posed a risk of harm to the public health."[28] The order further required the man to (1) disclose his HIV status to sexual partners and (2) abstain from engaging in activities involving the mixture of his blood with the blood of another (i.e., intravenous drug use).[29] The following year, the man was arrested for violating the quarantine order after having sex without disclosing his HIV status.[30] The man was convicted and sentenced to five years in prison.[31]

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[19] MISS. CODE ANN. § 41-23-1(1), (9) (2016). For a complete list of STIs, see 15-002-001 Miss. Code R. § 1.2.1, Appendix A (2016).

[20] MISS. CODE ANN. § 41-23-27 (2016). "Sexually transmitted disease" is not defined. However, the Code of Mississippi Rules lists viral hepatitis, chancroid, HIV/AIDS, syphilis, chlamydia, and gonorrhea as reportable diseases. MISS. CODE R. § 1.1.2, app. A (2016).

[21] *Id.*

[22] MISS. CODE ANN. § 41-23-5 (2016).

[23] *Id.*; 15-002-001 MISS. CODE R. §§ 1.4.1, 1.6.1 (2016).

[24] MISS. CODE ANN. § 41-23-2 (2016).

[25] 15-002-001 MISS. CODE R. § 1.19.2 (2016).

[26] *Carter v. State*, 803 So. 2d 1191 (Miss. Ct. App. 1999).

[27] *Id.* at 1192-93.

[28] *Id.* at 1193.

[29] *Id.*

[30] *Id.*

[31] *Id.*

The only impetus for the man's quarantine order was the positive test for HIV.[32] Under the terms of the order, using protection during sexual intercourse was not a defense.[33]

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.*

[32] *Id.* at 1192-93; *See* 15-002-001 MISS. CODE R. § 1.17.15(1) (2016).
[33] *Carter*, 803 So. 2d at 1192-93.

Mississippi Code

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 97, CRIMES

MISS. CODE ANN. § 97-27-14 (2016) **

*Contagious diseases; causing exposure to human immunodeficiency virus (**HIV**), hepatitis B or hepatitis C; crime of endangerment by bodily substance; violations and penalties*

(1) It shall be unlawful for any person to knowingly expose another person to human immunodeficiency virus (HIV), hepatitis B or hepatitis C. Prior knowledge and willing consent to the exposure is a defense to a charge brought under this paragraph. A violation of this subsection shall be a felony.

(2)

(a) A person commits the crime of endangerment by bodily substance if the person attempts to cause or knowingly causes a corrections employee, a visitor to a correctional facility or another prisoner or offender to come into contact with blood, seminal fluid, urine, feces or saliva.

(b) As used in this subsection, the following definitions shall apply unless the context clearly requires otherwise:

(i) “Corrections employee” means a person who is an employee or contracted employee of a subcontractor of a department or agency responsible for operating a jail, prison, correctional facility or a person who is assigned to work in a jail, prison or correctional facility.

(ii) “Offender” means a person who is in the custody of the Department of Corrections.

(iii) “Prisoner” means a person confined in a county or city jail.

(c) A violation of this subsection is a misdemeanor unless the person violating this section knows that he is infected with human immunodeficiency virus (HIV), hepatitis B or hepatitis C, in which case it is a felony.

(3) Any person convicted of a felony violation of this section shall be imprisoned for not less than three (3) years nor more than ten (10) years and a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

(4) Any person guilty of a misdemeanor violation of this section shall be punished by imprisonment in the county jail for up to one (1) year and may be fined One Thousand Dollars ($1,000.00), or both.

(5) The provisions of this section shall be in addition to any other provisions of law for which the actions described in this section may be prosecuted.

TITLE 41, PUBLIC HEALTH

MISS. CODE ANN. § 41-23-1 (2016)

Rules and regulations; physicians, health-care facilities, and correctional facilities to report cases of communicable and other dangerous diseases; penalties

(1) The State Board of Health shall adopt rules and regulations (a) defining and classifying communicable diseases and other diseases that are a danger to health based upon the characteristics of the disease; and (b) establishing reporting, monitoring and preventive procedures for those diseases.

(9) Notwithstanding any law of this state to the contrary, the State Board of Health is authorized to establish the rules by which exceptions may be made to the confidentiality provisions of the laws of this state for the notification of third parties of an individual's infection with any Class 1 or Class 2 disease, as designated by the State Board of Health, when exposure is indicated or there exists a threat to the public health and welfare. All notifications authorized by this section shall be within the rules established according to this subsection. All persons who receive notification of the infectious condition of an individual under this subsection and the rules established under this subsection shall hold such information in the strictest of confidence and privilege, shall not reveal the information to others, and shall take only those actions necessary to protect the health of the infected person or other persons where there is a foreseeable, real or probable risk of transmission of the disease.

MISS. CODE ANN. § 41-23-2 (2016) **

Penalties for violating health department orders with respect to life-threatening communicable diseases

Any person who shall knowingly and willfully violate the lawful order of the county, district or state health officer where that person is afflicted with a life-threatening communicable disease or the causative agent thereof shall be guilty of a felony and, upon conviction, shall be punished by a fine not exceeding Five Thousand Dollars ($ 5,000.00) or by imprisonment in the penitentiary for not more than five (5) years, or by both.

MISS. CODE ANN. § 41-23-5 (2016)

Authority of State Department of Health to investigate diseases; authority to temporarily detain individuals for disease control purposes under certain circumstances.

The State Department of Health shall have the authority to investigate and control the causes of epidemic, infectious and other disease affecting the public health, including the authority to establish, maintain and enforce isolation and quarantine, and in pursuance thereof, to exercise such physical control over property and individuals as the department may find necessary for the protection of the public health. The State Department of Health is further authorized and empowered to require the temporary detainment of individuals for disease control purposes based upon violation of any order of the State Health Officer. For the purpose of enforcing such orders of the State Health Officer, persons employed by the department as investigators shall have general arrest powers. All law enforcement officers are authorized and directed to assist in the enforcement of such orders of the State Health Officer.

MISS. CODE ANN. § 41-23-27 (2016) **

Powers of State Board of Health as to persons afflicted with infectious sexually transmitted disease

The State Board of Health shall have full power to isolate, quarantine or otherwise confine, intern, and treat such person afflicted with such infectious sexually transmitted disease for such time and under such restrictions as may seem proper. Said board shall have full power to pass all such rules and regulations as to the isolation, quarantine, confinement, internment and treatment as may be needful.

Any person knowingly violating any rule or regulation promulgated by the state board of health, under the authority of this section, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine or imprisonment or both.

MISS. CODE ANN. § 41-23-29 (2016) **

Inspection and examination of person suspected of being afflicted with infectious sexually transmitted disease

Any person suspected of being afflicted with any such infectious sexually transmitted disease shall be subject to physical examination and inspection by any representative of the state board of health. For failure or refusal to allow such inspection or examination, such person may be punished as for a misdemeanor.

Code of Mississippi Rules

AGENCY 15, DEPARTMENT OF HEALTH

15-002-001 MISS. CODE R. § 1.4.1 (2016)

Duties of Local Health Officer

The director of the local health department, as the local health officer, shall be responsible for the control of communicable diseases and other conditions within his or her jurisdiction considered prejudicial to the public health. It shall be his or her duty to collect and make reports as required to the Mississippi State Department of Health, to provide consultation services to physicians regarding communicable diseases, to advise and consult with all others in matters relating to public health, and to investigate reports of known or suspected communicable diseases or of conditions which might be prejudicial to the public health. It shall be his or her duty to determine in individual cases or groups of cases whether to impose restrictions on the activities of patients or contacts of persons with a communicable disease and to fix the period of isolation for such diseases. For all the diseases listed in Appendix A, Class 1A and Class 1B, the local health officer shall, on first knowledge or suspicion, conduct an investigation into all the circumstances and prescribe such reasonable methods of control as may be calculated to minimize the danger of further dissemination of the disease process. The measures proposed in the most current edition of the Control of Communicable Diseases Manual, published by the American Public Health Association shall be considered as supplementary. In all matters where there is disagreement as to diagnosis, isolation or in any other situation where the responsibility rests with the health officer, the opinion of the health officer shall prevail. In the discharge of his or her duties, the health officer or designee shall not be denied the right of entry to any premises nor shall he or she be denied pertinent patient health information and patient identifiers.

15-002-001 MISS. CODE R. § 1.6.1 (2016)

Suspects or Contacts of Communicable Diseases Required to Submit to Examination

The local health officer is authorized to examine, treat, and/or isolate at his or her discretion or under the direction of the State Health Officer any person who, on credible information, is suspected of suffering from any communicable disease, or who is a contact with a known case of such disease or may be a carrier or have the disease in the incubation or prodromal phase. Said suspect or contact shall be notified in writing to report to a reasonable place at a reasonable time for such examination. Should the suspect or contact refuse to submit to examination satisfactory to the health officer, said suspect or contact shall be prosecuted at law to compel compliance and/or be isolated in a manner prescribed by the health officer until the danger of transmitting the disease in question has passed. In the event that the aforementioned suspect or contact is a minor, the parent or guardian shall be apprised of the facts and requested to deliver said minor for examination. In the event of refusal, the health officer shall maintain action at law to compel compliance of the parent or guardian and/or impose isolation as necessary.

15-002-001 MISS. CODE R. § 1.17.15 (2016)

Sexually Transmitted Diseases – General

(1) Any person known or suspected of having syphilis, gonorrhea, Chlamydia, chancroid, human immunodeficiency virus (HIV) or other sexually transmissible disease (STD) or suspected of having been exposed to syphilis, gonorrhea, Chlamydia, chancroid, HIV or other STD shall submit to examination as provided in Section 105. Any person who, after due notification, fails or refuses to report for examination at the time and place designated by the health officer shall be subject to prosecution and the local health officer or the Mississippi State Department of Health or its representative may make an affidavit of such fact and cause the issuance of a warrant returnable before any court of competent jurisdiction. All records and reports herein required shall be kept in secret files and disclosed only as required before the court (Section 41-23-29, Mississippi Code of 1972 as amended.).

(2) It shall be the duty of the local health officer or his or her representative to conduct effective epidemiological actions including initial and follow up interviews, rapid contact and suspect referral to medical examination, satisfactory determination of the source of patient infection and all subsequent infections, and appropriate administration of prophylactic treatment to all at risk critical period contacts.

15-002-001 MISS. CODE R. § 1.19.2 (2016)

Administrative Rules and Procedures

(1) Assertion of Administrative Appeal Rights. In the case of the Department's enforcement of any of the measures described in these Regulations, if the matter is disputed by the affected party or parties and the Department and the party have been unable to resolve the dispute, the affected party or parties shall petition the Department to appear at an administrative hearing before a hearing officer appointed by the State Health Officer.

(2) Content and Form of Petition. The petition must be in writing and be submitted to the Department within 15 business days of the date upon which the petitioner received notice of the imposition of the enforcement measures. The petitioner must state in the petition the reasons for the appeal, and the petition must describe any facts which may be in dispute and must identify any grievances which are deemed by the petitioner to be genuine and substantial.

(3) Opportunity to Remedy Grievances. If the Department is unable to resolve the disputed facts and remedy the petitioner's grievances within 5 business days of the Department's receipt of the petition, the unresolved matters shall be reviewable by the hearing officer at an administrative hearing conducted in accordance with these Regulations. No unresolved matters shall be reviewable in the event that the Department shall terminate its enforcement action prior to the commencement of the hearing.

(a) General Principles for Administrative Reviews With respect to matters brought before the Department or the State Board of Health for administrative review, whether or not such review is initiated by the Department, a notice of the proceeding shall be prepared by the Department and the petitioner or the affected party or parties shall be afforded an opportunity to appear at such proceeding in accordance with the Regulations set forth in this Part Three. Any party who shall participate in the administrative proceeding shall be entitled to:

(i) Timely scheduling of the hearing if appealed by the petitioner in accordance with Section 201, but in any event no more than 15 business days after the date of the Department's receipt of the petition;

(ii) Representation by legal counsel, chosen in the discretion of such party and at such party's sole cost and expense;

(iii) Submission of testimony and documentary evidence, and presentation of argument and rebuttal with respect to the issues;

(iv) Conduct examination and cross-examination of witnesses to elicit a full and fair disclosure of the facts; and

(v) Demand a timely completion of the proceedings.

(b) Notice of Hearing. Notice of Hearing shall be served upon a petitioner or any other affected party in the same manner as authorized for the service of a Health Officer's Order or in such other manner as may be deemed reasonable and prudent by the hearing officer in order to properly notify the petitioner that a hearing has been scheduled.

(c) Date of Hearing. Unless otherwise provided by law, the notice of hearing must be given at least ten (10) days prior to the hearing date unless this notice period is waived by the affected parties in the interest of expediting the administrative review. Unless otherwise provided by law, proof of receipt of notice shall not be a required condition for the conduct of the hearing.

(d) Assignment of Hearing Officer. Within ten (10) days of the date on which the Department shall give Notice of Hearing, the State Health Officer or his authorized designee shall appoint the hearing officer assigned to hear the matter, and notice of such appointment shall be provided to all parties.

(e) Conduct of Hearings. The hearing officer shall preside at the hearing, and shall rule on all questions of applicable procedure and submission of evidence in accordance with the policies and procedures approved by the hearing officer. The hearing officer may issue an order using particular provisions of the Mississippi Rules of Civil Procedure and related local rules for guidance; however, formal adherence to said Rules shall not be mandated. The hearing officer may waive the application of any of these rules to further administrative convenience,

expedition, and economy if the waiver does not conflict with law, and the waiver does not cause undue prejudice to any party.

(f) Rules of Evidence. The Mississippi Rules of Evidence shall be used as a general guide for the presentation of evidence. However, any evidence which reasonably appears to be relevant and probative to the issues may be allowed in the discretion of the hearing officer, notwithstanding its inadmissibility under said Rules, unless the evidence offered is clearly of a privileged nature.
(g) Authority of Hearing Officer. The hearing officer shall have authority to do all things conformable to law that may be necessary to enable the officer effectively to discharge the duties of office, including, but not limited to, the authority to make final findings of fact and a written recommendation to the Department as to which enforcement actions or other restrictions, if any, should apply to the party or parties.

(h) Discovery. Discovery shall be limited to non-privileged documents. Depositions and requests for admissions may be directed, issued, and taken on order of the Department for good cause shown. These orders or authorizations may be challenged or enforced in the same manner as subpoenas. All requests for discovery must be timely and in writing. All disputes regarding the privileged nature of a document shall be resolved by the designated hearing officer prior to the commencement of the hearing.

(i) Public Access. Unless otherwise provided by law, all hearings are open to the public.

(j) Failure of Party to Appear for Hearing. If a party fails to appear at a hearing, the hearing officer may proceed with the presentation of the evidence of the appearing party, or vacate the hearing and return the matter to the Department for any further action.

(k) Proof

(a) Standard of proof. Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.

(b) Burden of Proof. Unless otherwise provided by law:

(i) The party asserting a claim, right, or entitlement has the burden of proof;

(ii) A party asserting an affirmative defense has the burden of establishing the affirmative defense; and

(iii) The proponent of a motion shall establish the grounds to support the motion

(l) Ex Parte Communications. A party shall not communicate, either directly or indirectly, with the hearing officer about any substantive issue in a pending matter unless:

(m) All parties are present;

(n) It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or

(o) It is by written motion with copies to all parties.

(4) Conflict Issues. All allegations of conflict or bias on the part of the appointed hearing officer must be filed at least three (3) business days prior to the hearing date. The State Health Officer who appointed

the hearing officer shall then consider the assertion of conflict or bias, and shall issue a written opinion prior to the commencement of the hearing.

(5) Hearing Record. A stenographic record of the hearing shall be made by a reporter chosen by the hearing officer. No transcript or other record of the proceeding shall be required to be maintained by the Department unless (i) required by statute or other rule, (ii) ordered by the hearing officer, or (iii) agreed in writing by all of the parties.

(6) Remedies for Non-compliance with Rules. If a respondent shall fail to fully comply with the requirements of the hearing officer's policies and procedures or other rulings, the hearing officer shall be authorized to impose fines in an amount not to exceed $ 500 per occurrence and such other remedies as may be deemed appropriate by the hearing officer for the effective administration of those duties and responsibilities assigned to such officer.

(7) Appeals. Any person adversely affected by a decision of the Department shall have a right to appeal the decision through an appropriate and timely court action against the Department and/or its agents, consistent with applicable laws and jurisdictional requirements. Unless applicable law provides a longer period of time in which to assert any appeal, no appeal of a decision of the Department shall be taken unless it is filed with a court having jurisdiction within thirty (30) days of the date of the Department's decision.

Missouri

Analysis

PLHIV and individuals living with serious infectious or communicable diseases face felony charges for exposing another person to the disease through conduct that carries a substantial risk of transmission.

Despite amendments to Missouri's HIV criminal law in 2021, people living with HIV and other infectious diseases remain at risk for felony prosecution. Missouri law now defines a "serious infectious or communicable disease" as a "non-airborne disease spread from person to **person that is fatal or causes disabling long-term consequences in the absence of lifelong treatment and management.**"[1] This definition encompasses HIV, as well as other communicable illnesses which are potentially fatal or require long-term management such as some forms of viral hepatitis.

An individual diagnosed with HIV or a serious infectious or communicable disease who knowingly exposes another individual to the disease in a manner that poses a substantial risk of transmission is guilty of a class D felony punishable by up to seven years in prison and a fine of up to $10,000 if transmission of the disease does not occur.[2] If transmission of the disease does occur as a result of the conduct in question, the defendant is guilty of a Class C felony punishable by three to ten years in prison and a fine of up to $10,000.[3]

An individual diagnosed with HIV who recklessly exposes another person to the disease through conduct that creates a substantial risk of disease transmission is guilty of a class A misdemeanor. The seriousness and sentence for such a charge is the same regardless of whether transmission of the disease occurs.[4]

The determination of what conduct poses a substantial risk of transmission is based on competent medical testimony or epidemiological evidence.[5] Consequently, evidence of condom use or consistent medical treatment with a low or undetectable viral load could theoretically serve as a defense to prosecution, despite the fact that the use of preventative measures as a defense to prosecution under the previous statutory scheme were repeatedly denied.[6]

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[1] MO. REV. STAT. § 191.677 (2021)
[2] MO. REV. STAT. § 191.677 (2) (2021); MO. REV. STAT. § 558.011 (2018); MO. REV. STAT. § 560.011 (2018)
[3] MO. REV. STAT. § 191.677(3) (2021); MO. REV. STAT. § 558.011 (2018); MO. REV. STAT. § 560.011 (2021)
[4] MO. REV. STAT. § 191.677(2) (2021)
[5] *Id*.
[6] *State v. Wilson*, 256 S.W.3d 58, 64 (Mo. 2008); *State v. Yonts*, 84 S.W.3d 516, 517 (Mo. Ct. App. 2002).

PLHIV also may assert as a defense that the person claiming exposure was aware that the person accused was living with the health condition at issue and therefore effectively consented to the conduct.[7] However, disclosure of HIV status before sexual intercourse is often difficult to prove retroactively.

PLHIV and individuals with serious infectious or communicable disease cannot attempt to donate blood or other bodily tissue unless it is deemed medically appropriate.

Missouri law prohibits individuals diagnosed with an infectious or communicable disease from donating or attempting to donate blood, sperm, organs, and other tissue unless a licensed physician has approved the donation as medically appropriate or necessary for future research.[8]

A violation of this law is considered a Class D felony punishable by up to seven years in prison and a fine of up to $10,000 if transmission does not occur. If as a result of the person's donation another individual is diagnosed with a serious infectious or communicable disease, the associated charge is elevated to a Class C felony, which is punishable by between three and ten years in prison and a fine of $10,000.[9]

Missouri courts can compel infectious disease testing of a person charged with knowingly or recklessly exposing another person to a serious infectious or communicable disease.

The attorney prosecuting a case involving knowing or reckless exposure to a serious or communicable infectious disease can file a motion for the court to require the accused individual to undergo testing for HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, and chlamydia.[10] To secure a court order, the prosecuting attorney must present good cause and give notice to the defendant's defense attorney.[11]

The results of this testing will be shared with the person alleging exposure, the prosecuting attorney, and the defense attorney. Test results, the motion to compel testing and any associated court order will then be sealed in the court file.[12]

Sex workers may receive enhanced sentences for the offense of prostitution if they know they are living with HIV.

The offense of prostitution is generally a class B misdemeanor, punishable by six months' imprisonment and a $1,000 fine.[13] However, if the defendant is a PLHIV and knows their HIV status, the

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[7] MO. REV. STAT. § 191.677(4) (2021).
[8] MO. REV. STAT. § 191.677(2) (2021)
[9] MO. REV. STAT. § 191.677(3) (2021); MO. REV. STAT. § 558.011 (2018); MO. REV. STAT. § 560.011 (2021)
[10] MO. REV. STAT. § 545. 940 (2021)
[11] *Id*.
[12] *Id*.
[13] MO. REV. STAT. §§ 567.020(2), 558.011.1(7), 558.002.1(3) (2018).

offense is a class B felony, punishable by five to 15 years' imprisonment.[14] The use of condoms is expressly not a defense to this sentence enhancement.[15]

The sentence enhancement applies even for conduct posing little or no risk of HIV transmission. The offense of prostitution applies broadly to "sexual conduct,"[16] which includes oral sex; anal or vaginal penetration by a finger or other object; and any touching of the genitals or anus of another person or breasts of a female person, including through clothing.[17] Of these, only oral sex carries even a theoretical risk of HIV transmission. Moreover, the offense of prostitution includes merely offering or agreeing to engage in sexual conduct with another person in return for something of value, meaning no physical contact of any kind is required for the application of the felony enhancement.[18]

There is an additional sentencing differentiation for sex workers living with HIV. For a class B misdemeanor offense, upon successful completion of a court-ordered drug and alcohol treatment program, the court may, at its discretion, allow the defendant to withdraw the guilty plea or reverse the verdict and enter a judgment of not guilty.[19] This option is denied to a defendant convicted of a class B felony (a sex worker who knows their HIV status).[20] However, the court has discretion to take into consideration successful completion of such a program when sentencing.[21]

It is a crime to expose prison guards, prison visitors, and other prisoners, as well as mental health employees, visitors, or other offenders at secure department of mental health facilities to HIV or hepatitis through bodily fluids.

In Missouri, it is a class E felony, punishable by up to four years in prison,[22] for a person in confinement to attempt to cause or knowingly cause a correctional employee, visitor to a correctional facility, or fellow prisoner to come into contact with their blood, semen, urine, feces, or saliva.[23] A violation of this statute becomes a class D felony, punishable by up to seven years in prison if the incarcerated individual has HIV or a serious communicable disease and knowingly exposes a corrections officer, visitor, or prisoner to bodily fluids in a manner that has been scientifically identified as a possible means of transmission of the disease.[24] If the substance is unidentified, it is a class A misdemeanor, punishable by a term of incarceration of up to one year.[25] Areas of confinement covered by this statute include prisons, jails, sex offender treatment centers, and any other correctional facilities.[26]

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[14] MO. REV. STAT. §§ 567.020(2), 558.011.1(2) (2018).
[15] MO. REV. STAT. § 567.020(2) (2018).
[16] MO. REV. STAT. § 567.020(1) (2018).
[17] MO. REV. STAT. § 567.010 (2018).
[18] MO. REV. STAT. § 567.020(1) (2018).
[19] MO. REV. STAT. § 567.020(4) (2018).
[20] *Id*.
[21] *Id*.
[22] MO. REV. STAT. § 558.011.1(5) (2018).
[23] MO. REV. STAT. § 575.155.1 (2021)(stating that a "corrections employee" is a person "who is an employee . . . of a department or agency responsible for operating a jail, prison, correctional facility, or sexual offender treatment center or a person who is assigned to work in [such locations].").
[24] MO. REV. STAT. § 575.155.3 (2021)
[25] *Id*. MO. REV. STAT. § 575.155 (3) (2018).
[26] MO. REV. STAT. § 575.155.1 (2021).

A similar statute exists for those in secure mental health facilities.[27] The offense is a class E felony, unless the offender knows they have a serious communicable disease and the nature of the exposure is a possible mode of transmission,[28] In this case the offense is a class D felony, shifting the sentence from a maximum of four years' imprisonment to a possible seven years' imprisonment.[29]

These "endangerment" statutes impose specific penalties for offenders living with HIV and require neither the intent to transmit HIV nor actual transmission in order for prosecution to proceed. The inclusion of a standard based on scientific understanding of disease transmission would presumably prevent incidents involving certain fluids such as urine and saliva from triggering these enhanced sentences, as these fluids are not a means of disease transmission.[30] However, the statute requires only the possibility of transmission, rather than a significant likelihood of transmission.[31]

Under these statutes, people may also face prosecution if they are injured and bleed during an altercation and a complainant claims they were intentionally exposed to the blood. Facts surrounding such events may be hard to determine, and this statute could impose additional sentences for inmates with communicable diseases who accidentally expose others to their blood due to an injury. This may be especially so if juries consider the testimony of those with stigmatized communicable diseases less credible than testimony from complainants.

Sexually violent predator statutes have been applied to PLHIV based solely on their HIV status.

In the Missouri Court of Appeals case, *In re Coffel*, HIV status was a factor in the three-year civil confinement of a PLHIV as a sexually violent predator.[32] Missouri defines a sexually violent predator as "any person who suffers from a mental abnormality which makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility and who [...] has pled guilty or been found guilty [...] of a sexually violent offense."[33]

On a dare, Coffel, then 18 years old, placed the penises of an 11-year-old and 13-year-old boy briefly in her mouth.[34] The boys later discovered her HIV status and reported the incident to their mother.[35] Coffel pled guilty to sodomy and was sentenced to five years' imprisonment. Although her pre-sentencing report said she was not a sexual predator, her end-of-confinement evaluation determined, due to her lack of remorse or concern about the possibility of infecting others with HIV, she was more likely than

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[27] Mo. Rev. Stat. § 575.157 (2021).
[28] Mo. Rev. Stat. § 575.157.3 (2021).
[29] Mo. Rev. Stat. §§ 575.157(3), 558.011.1 (4), (5) (2021).
[30] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?*, (March 16, 2018) *available at* http://www.cdc.gov/hiv/basics/transmission.html (last visited July 8, 2021).
[31] MO. REV. STAT. § 575.157.3 (2021).
[32] *In re Coffel*, 117 S.W.3d 116, 118 (Mo. Ct. App. 2003).
[33] MO. REV. STAT. § 632.480(5) (2018).
[34] *Id.* at 117-18.
[35] *Id.* at 118.

not to re-offend and should be considered a sexually violent predator.[36] The Missouri Court of Appeals noted that the report was prepared by an individual unqualified to diagnose or testify in the state.[37]

At trial, a multidisciplinary team as well as a psychologist determined that Coffel was not a sexual predator.[38] In particular, the psychologist noted that the end-of-confinement report was based in large part on the erroneous assumption that Coffel's saliva could have transmitted HIV during the acts of sodomy.[39] The trial court, despite this evidence, ordered her to be confined "until such time as her mental abnormality has so changed that she is safe to be at large."[40]

On appeal, the Missouri Court of Appeals found only two out of 10 of the State's witnesses addressed whether Coffel was likely to commit the crime again, and that the expert testimonies did not base their opinions on psychological theories but rather on private, subjective, untested, unsupported analysis.[41] Based on this evidence, the court ordered Coffel's release because the state failed to meet its burden, but only after she had already been civilly committed for three years.[42] Moreover, *Coffel* was reversed because the state presented no evidence to meet its burden. Future cases might still consider a defendant's HIV status as part of the sexually violent predator determination so long as other evidence is presented as well.

Subsequent cases seem to follow *Coffel*'s proposition that, without reliable evidence, a finding that someone is more likely than not to reoffend cannot be made.[43] However, one case from the Supreme Court of Missouri has limited the reversal in *Coffel* to sexually violent predator determinations in which the offender is a woman, seemingly because of the lack of data about recidivism for female sex offenders.[44] Thus, *Coffel* highlights the extent to which a person's HIV status can be erroneously relied upon in determining sexually violent predator status for the purpose of civil confinement.

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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[36] *Id*.
[37] *Id*.
[38] *Id.* at 118-19.
[39] *Id.* at 120.
[40] *Id.* at 127.
[41] *Id.* at 127-29.
[42] *Id.* at 129.
[43] *See, e.g., In re Kapprelian*, 168 S.W.3d 708, 715 (Mo. Ct. App. 2005).
[44] *In re Norton*, 123 S.W. 3d 170, 177 (Mo. 2003).

Missouri Revised 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.*

TITLE 12, PUBLIC HEALTH AND WELFARE

MO. REV. STAT. § 191.677 (Current through 101st General Assembly, 2022 First Extraordinary Session) **

Prohibited acts, criminal penalties

1. For purposes of this section, the term "serious infectious or communicable disease" means a non airborne disease spread from person to person that is fatal or causes disabling long-term consequences in the absence of lifelong treatment and management.

2. It shall be unlawful for any individual knowingly infected with a serious infectious or communicable disease to:

(1) Be or attempt to be a blood, blood products, organ, sperm, or tissue donor except as deemed necessary for medical research or as deemed medically appropriate by a licensed physician;

(2) Knowingly expose another person to such serious infectious or communicable disease through an activity that creates a substantial risk of disease transmission as determined by competent medical or epidemiological evidence; or

(3) Act in a reckless manner by exposing another person to such serious infectious or communicable disease through an activity that creates a substantial risk of disease transmission as determined by competent medical or epidemiological evidence.

3.

(1) Violation of the provisions of subdivision (1) or (2) of subsection 2 of this section is a class D felony unless the victim contracts the serious infectious or communicable disease from the contact, in which case it is a class C felony.

(2) Violation of the provisions of subdivision (3) of subsection 2 of this section is a class A misdemeanor.

4. It is an affirmative defense to a charge under this section if the person exposed to the serious infectious or communicable disease knew that the infected person was infected with the serious infectious or communicable disease at the time of the exposure and consented to the exposure with such knowledge.

5.

(1) For purposes of this subsection, the term "identifying characteristics" includes, but is not limited to, the name or any part of the name, address or any part of the address, city or unincorporated area of residence, age, marital status, place of employment, or racial or ethnic background of the defendant or the person exposed, or the relationship between the defendant and the person exposed.

(2) When alleging a violation of this section, the prosecuting attorney or the grand jury shall substitute a pseudonym for the actual name of the person exposed to a serious infectious or communicable disease. The actual name and other identifying characteristics of the person exposed shall be revealed to the court only in camera unless the person exposed requests otherwise, and the court shall seal the information from further disclosure, except by counsel as part of discovery.

(3) Unless the person exposed requests otherwise, all court decisions, orders, pleadings, and other documents, including motions and papers filed by the parties, shall be worded so as to protect from public disclosure the name and other identifying characteristics of the person exposed.

(4) Unless the person exposed requests otherwise, a court in which a violation of this section is filed shall issue an order that prohibits counsel and their agents, law enforcement personnel, and court staff from making a public disclosure of the name or any other identifying characteristics of the person exposed.

(5) Unless the defendant requests otherwise, a court in which a violation of this section is filed shall issue an order that prohibits counsel and their agents, law enforcement personnel, and court staff, before a finding of guilt, from making a public disclosure of the name or other identifying characteristics of the defendant. In any public disclosure before a finding of guilt, a pseudonym shall be substituted for the actual name of the defendant.

(6) Before sentencing, a defendant shall be assessed for placement in one or more community-based programs that provide counseling, supervision, and education and that offer reasonable opportunity for the defendant to provide redress to the person exposed.

MO. REV. STAT. § 192.320 (Current through 101st General Assembly, 2022 First Extraordinary Session) **

Violation of law or quarantine – penalty

Any person or persons violating any of the provisions of sections 192.010, 192.020 to 192.490, 192.600 to 192.620 or who shall leave any pesthouse, or isolation hospital, or quarantined house or place without the consent of the health officer having jurisdiction, or who evades or breaks quarantine or knowingly conceals a case of contagious, infectious, or communicable disease, or who removes, destroys, obstructs from view, or tears down any quarantine card, cloth or notice posted by the attending physician or by the health officer, or by direction of a proper health officer, shall be deemed guilty of a class A misdemeanor.

TITLE 37, CRIMINAL PROCEDURE

Chapter 545. Proceedings Before Trial (§§ 545.010 — 545.950)

MO. REV. STAT. § 545.940 (Current through 101st General Assembly, 2022 First Extraordinary Session)

Proceedings Before Trial

Defendant may be tested for various sexually transmitted diseases, when

1. Pursuant to a motion filed by the prosecuting attorney or circuit attorney with notice given to the defense attorney and for good cause shown, in any criminal case in which a defendant has been charged by the prosecuting attorney's office or circuit attorney's office with any offense under chapter 566 or section 565.050, assault in the first degree; section 565.052 or 565.060, assault in the second degree; section 565.054 or 565.070, assault in the third degree; section 565.056, assault in the fourth degree; section 565.072, domestic assault in the first degree; section 565.073, domestic assault in the second degree; section 565.074, domestic assault in the third degree; section 565.075, assault while on school property; section 565.076, domestic assault in the fourth degree; section 565.081, 565.082, or 565.083, assault of a law enforcement officer, corrections officer, emergency personnel, highway worker in a construction zone or work zone, utility worker, cable worker, or probation and parole officer in the first, second, or third degree; section 567.020, prostitution; section 568.045, endangering the welfare of a child in the first degree; section 568.050, endangering the welfare of a child in the second degree; section 568.060, abuse of a child; section 575.150,resisting or interfering with an arrest; or subdivision (2) or (3) of subsection 2 of section 191.677, knowingly or recklessly exposing a person to a serious infectious or communicable disease, the court may order that the defendant be conveyed to a state-, city-, or county-operated HIV clinic for testing for HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, and chlamydia. The results of such tests shall be released to the victim and his or her parent or legal guardian if the victim is a minor. The results of such tests shall also be released to the prosecuting attorney or circuit attorney and the defendant's attorney. The state's motion to obtain said testing, the court's order of the same, and the test results shall be sealed in the court file.

2. As used in this section, "HIV" means the human immunodeficiency virus that causes acquired immunodeficiency syndrome.

TITLE 38, CRIMES AND PUNISHMENT; PEACE OFFICERS AND PUBLIC DEFENDERS

MO. REV. STAT. § 567.020 (Current through 101st General Assembly, 2022 First Extraordinary Session) **

Prostitution — Penalty — no certification as an adult, when

1. A person commits the crime of prostitution if he or she engages in or offers or agrees to engage in sexual conduct with another person in return for something of value to be received by any person.

2. The offense of prostitution is a class B misdemeanor unless the person knew prior to performing the act of prostitution that he or she was infected with HIV in which case prostitution is a class B felony. The use of condoms is not a defense to this offense.

3. As used in this section, “HIV” means the human immunodeficiency virus that causes acquired immunodeficiency syndrome.

4. The judge may order a drug and alcohol abuse treatment program for any person found guilty of prostitution, either after trial or upon a plea of guilty, before sentencing. For the class B misdemeanor offense, upon the successful completion of such a program by the defendant, the court may at its discretion allow the defendant to withdraw the plea of guilty or reverse the verdict and enter a judgment of not guilty. For the class B felony offense, the court shall not allow the defendant to withdraw the plea of guilty or reverse the verdict and enter a judgment of not guilty. The judge, however, has discretion to take into consideration successful completion of a drug or alcohol treatment program in determining the defendant's sentence.

5. A person shall not be certified as an adult or adjudicated as a delinquent for the offense of prostitution under this section if the person was under the age of eighteen at the time the offense occurred. In such cases where the person was under the age of eighteen, the person shall be classified as a victim of abuse, as defined under section 210.110, and such abuse shall be reported immediately to the children's division, as required under section 210.115 and to the juvenile officer for appropriate services, treatment, investigation, and other proceedings as provided under chapters 207, 210, and 211. Upon request, the local law enforcement agency and the prosecuting attorney shall assist the children's division and the juvenile officer in conducting the investigation.

MO. REV. STAT. § 575.155 (Current through 101st General Assembly, 2022 First Extraordinary Session) **

Crime of endangering a corrections employee—definitions—penalty

1. An offender or prisoner commits the offense of endangering a corrections employee, a visitor to a correctional center, county or city jail, or another offender or prisoner if he or she attempts to cause or knowingly causes such person to come into contact with blood, seminal fluid, urine, feces, or saliva.

2. For the purposes of this section, the following terms mean:

(1) "Corrections employee", a person who is an employee, or contracted employee of a subcontractor, of a department or agency responsible for operating a jail, prison, correctional facility, or sexual offender treatment center or a person who is assigned to work in a jail, prison, correctional facility, or sexual offender treatment center;

(2) "Offender", a person in the custody of the department of corrections;

(3) "Prisoner", a person confined in a county or city jail.

(4) "Serious infectious or communicable disease", the same meaning given to the term in section 191.677

3. The offense of endangering a corrections employee, a visitor to a correctional center, county or city jail, or another offender or prisoner is a class E felony unless the substance is unidentified in which case it is a class A misdemeanor. If an offender or prisoner is knowingly infected with a serious infectious or communicable disease and exposes another person to such serious infectious or communicable disease by committing the offense of endangering a corrections employee, a visitor to a correctional center, county or city jail, or another offender or prisoner and the nature of the exposure to the bodily fluid has been scientifically shown to be a means of transmission of the serious infectious or communicable disease, it is a class D felony.

MO. REV. STAT. § 575.157 (Current through 101st General Assembly, 2022 First Extraordinary Session) **

Endangering a mental health employee, visitor, or another offender, definitions, penalties

1. An offender commits the offense of endangering a department of mental health employee, a visitor or other person at a secure facility, or another offender if he or she attempts to cause or knowingly causes such individual to come into contact with blood, seminal fluid, urine, feces, or saliva.

2. For purposes of this section, the following terms mean:

(1) “Department of mental health employee”, a person who is an employee of the department of mental health, an employee or contracted employee of a subcontractor of the department of mental health, or an employee or contracted employee of a subcontractor of an entity responsible for confining offenders as authorized by section 632.495;

(2) “Offender”, persons ordered to the department of mental health after a determination by the court that such persons may meet the definition of a sexually violent predator, persons ordered to the department of mental health after a finding of probable cause under section 632.489, and persons committed for control, care, and treatment by the department of mental health under sections 632.480 to 632.513;

(3) “Secure facility”, a facility operated by the department of mental health or an entity responsible for confining offenders as authorized by section 632.495;

(4) “Serious infectious or communicable disease”, the same meaning given to the term in section 191.677.

3. The offense of endangering a department of mental health employee, a visitor or other person at a secure facility, or another offender is a class E felony. If an offender is knowingly infected with a serious infectious or communicable disease and exposes another individual to such serious infectious or communicable disease by committing the offense of endangering a department of mental health employee, a visitor or other person at a mental health facility, or another offender and the nature of the exposure to the bodily fluid has been scientifically shown to be a means of transmission of the serious infectious or communicable disease, the offense is a class D felony.

MO. REV. STAT. § 567.010 (CURRENT THROUGH 101ST GENERAL ASSEMBLY, 2022 FIRST EXTRAORDINARY SESSION)

Chapter definitions

As used in this chapter, the following terms mean:

(1) “Deviate sexual intercourse”, any sexual act involving the genitals of one person and the mouth, hand, tongue, or anus of another person; or any act involving the penetration, however slight, of the penis, the female genitalia, or the anus by a finger, instrument, or object done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim;

(4) "Sexual conduct", sexual intercourse, deviate sexual intercourse, or sexual contact;

(5) "Sexual intercourse", any penetration, however slight, of the female genitalia by the penis;

(6) "Sexual contact", any touching of another person with the genitals or any touching of the genitals or anus of another person or the breast of a female person, or such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person or for the purpose of terrorizing the victim.

MO. REV. STAT. § 558.011 (2018) **

Sentence of imprisonment, terms—conditional release

The authorized terms of imprisonment, including both prison and conditional release terms, are:

(1) For a class A felony, a term of years not less than ten years and not to exceed thirty years, or life imprisonment;

(2) For a class B felony, a term of years not less than five years and not to exceed fifteen years;

(3) For a class C felony, a term of years not less than three years and not to exceed ten years;

(4) For a class D felony, a term of years not to exceed seven years;

(5) For a class E felony, a term of years not to exceed four years;

(6) For a class A misdemeanor, a term not to exceed one year;

(7) For a class B misdemeanor, a term not to exceed six months;

(8) For a class C misdemeanor, a term not to exceed fifteen days.

2. In cases of class D and E felonies, the court shall have discretion to imprison for a special term not to exceed one year in the county jail or other authorized penal institution, and the place of confinement shall be fixed by the court. If the court imposes a sentence of imprisonment for a term longer than one year upon a person convicted of a class D or E felony, it shall commit the person to the custody of the department of corrections.

3.

(1) When a regular sentence of imprisonment for a felony is imposed, the court shall commit the person to the custody of the department of corrections for the term imposed under section 557.036, or until released under procedures established elsewhere by law.

(2) A sentence of imprisonment for a misdemeanor shall be for a definite term and the court shall commit the person to the county jail or other authorized penal institution for the term of his or her sentence or until released under procedure established elsewhere by law..

4.

(1) Except as otherwise provided, a sentence of imprisonment for a term of years for felonies other than dangerous felonies as defined in section 556.061, and other than sentences of imprisonment which involve the individual's fourth or subsequent remand to the department of corrections shall consist of a prison term and a conditional release term. The conditional release term of any term imposed under section 557.036 shall be:

(a) One-third for terms of nine years or less;

(b) Three years for terms between nine and fifteen years;

(c) Five years for terms more than fifteen years; and the prison term shall be the remainder of such term. The prison term may be extended by the parole board pursuant to subsection 5 of this section.

(2) "Conditional release" means the conditional discharge of an offender by the parole board, subject to conditions of release that the parole board deems reasonable to assist the offender to lead a law-abiding life, and subject to the supervision under the division of probation and parole. The conditions of release shall include avoidance by the offender of any other offense, federal or state, and other conditions that the parole board in its discretion deems reasonably necessary to assist the release in avoiding further violation of the law.

5. The date of conditional release from the prison term may be extended up to a maximum of the entire sentence of imprisonment by the parole board. The director of any division of the department of corrections except the division of probation and parole may file with the parole board a petition to extend the conditional release date when an offender fails to follow the rules and regulations of the division or commits an act in violation of such rules. Within ten working days of receipt of the petition to extend the conditional release date, the parole board shall convene a hearing on the petition. The offender shall be present and may call witnesses in his or her behalf and cross-examine witnesses appearing against the offender. The hearing shall be conducted as provided in section 217.670. If the violation occurs in close proximity to the conditional release date, the conditional release may be held for a maximum of fifteen working days to permit necessary time for the division director to file a petition for an extension with the parole board and for the parole board to conduct a hearing, provided some affirmative manifestation of an intent to extend the conditional release has occurred prior to the conditional release date. If at the end of a fifteen-working-day period a parole board decision has not been reached, the offender shall be released conditionally. The decision of the parole board shall be final.

NOW MO. REV. STAT.§ 558.002 (Current through 101st General Assembly, 2022 First Extraordinary Session) **

Fines for felonies

1. Except as otherwise provided for an offense outside this code, a person who has been convicted of an offense may be sentenced to pay a fine which does not exceed:

(1) For a class C, D, or E felony, ten thousand dollars;

(2) For a class A misdemeanor, two thousand dollars;

(3) For a class B misdemeanor, one thousand dollars;

(4) For a class C misdemeanor, seven hundred fifty dollars;

(5) For a class D misdemeanor, five hundred dollars . . .

Montana

Analysis

Exposing another to a sexually transmitted infection (STIs) is punishable via a communicable disease control statute and a general criminal law.

It is a misdemeanor, punishable by up to six months' imprisonment and a $500 fine, for a person with an STI to "knowingly" expose another to that disease.[1] HIV, syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are considered STIs for the purposes of this exposure law.[2] Moreover, STIs are considered by law to be "contagious, infectious, communicable, and dangerous to public health." At the time of publication the authors are not aware of any recorded prosecution of HIV exposure under this statute.[3]

However, there has been at least one prosecution of HIV exposure under general criminal laws in Montana. In November 2012, a 52-year-old HIV man living with HIV was charged with criminal endangerment for allegedly not disclosing his HIV status to a partner with whom he had a three-year sexual relationship.[4] The partner later tested positive for HIV.[5] A person may be charged with criminal endangerment if they create a substantial risk of death or serious bodily injury to another person, and, if convicted, may be imprisoned for no more than ten years and fined no more than $50,000.[6]

All persons confined or imprisoned in Montana are subject to examination for STDs and, if infected, must submit to treatment.[7]

The Department of Public Health and Human Services (the department) may play a role in prosecutions under the state exposure law.

Although confidentiality of medical records is generally protected,[8] health care providers may nevertheless disclose a person's medical information without their consent to federal, state, or local

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[1] MONT. CODE ANN. §§ 50-18-112, 50-18-113, 46-18-212 (2015).

[2] MONT. CODE ANN. § 50-18-101 (2015).

[3] *Id.*

[4] Greg Tuttle, *Joliet man charged with felony for HIV infection*, BILLINGS GAZETTE, Nov. 2, 2012, *available at* http://billingsgazette.com/news/state-and-regional/montana/joliet-man-charged-with-felony-for-hiv-infection/article_ddfd0ad4-b336-5e56-9b94-b9f904a80152.html; Greg Tuttle, *Joliet man denies felony charge for HIV infection*, BILLINGS GAZETTE, Dec. 5, 2012, *available at* http://billingsgazette.com/news/local/crime-and-courts/man-denies-felony-charge-for-hiv infection/article_3d9d1455-a205-5501-b85c-ce31036a7e94.html.

[5] *Id.*

[6] MONT. CODE ANN. § 45-5-207 (2015).

[7] MONT. CODE ANN. § 50-18-108 (2015).

[8] MONT. CODE ANN. § 50-16-525 (2015).

public health or law enforcement authorities;[9] or pursuant to a compulsory process as part of a person's civil commitment proceeding, upon a court's determination that a compelling state interest outweighs the person's privacy interest, or pursuant to an investigative subpoena.[10]

Moreover, the department may require persons to undergo testing for STIs if it "reasonably suspects" they are infected with same.[11] The department may require those persons for whom a test is positive to undergo treatment, or otherwise be subject to quarantine or isolation.[12] Those who do not comply with quarantine measures are subject to a $100 fine.[13] Only the state or local health officer may terminate the quarantine or isolation, and examinations may be made repeatedly "as deemed advisable or desirable."[14]

At the time of publication, no recent cases have been identified to clarify what amounts to "reasonable suspicion" sufficient to mandate testing, treatment, or quarantine or isolation. However, the Supreme Court of Montana explained in *In re Caselli* that, "[t]he detention of persons affected with or suspected of contagious disease in quarantine presents one of the cases where the police power is literally the law of self-defense—a paramount necessity,"[15] and that by requiring a judicial hearing prior to effecting quarantine, "this law of self defense—necessity—would be rendered entirely inoperative."[16] Moreover, regarding federal and state constitutional protections, the Court reasoned it could not, "conclude that the makers of the two Constitutions ever contemplated a situation where a state would be rendered powerless to protect itself by prompt and speedy action from the spread of a contagion which by neglect might reach to and affect any considerable number of people in a community."[17] This case, involving a sex worker who tested positive for gonorrhea, is still good law, and gonorrhea, like other STIs, is still statutorily considered "contagious, infectious, communicable, and dangerous to public health."[18]

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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[9] MONT. CODE ANN. § 50-16-530(2), (3) (2015).

[10] MONT. CODE ANN. § 50-16-535(1)(f), (j), (k) (2015). *See also* § 46-4-301(3) (2015) (explaining that the "compelling state interest" required for issuance of a subpoena merely requires a prosecutor to "state facts and circumstances sufficient to support probable cause to believe that an offense has been committed and the information relative to the commission of that offense is in the possession of the person or institution to whom the subpoena is directed.").

[11] MONT. CODE ANN. § 50-18-107(1)(a) (2015).

[12] MONT. CODE ANN. §§ 50-18-107(1)(b), (c), 50-1-204 (2015).

[13] MONT. CODE ANN. § 50-1-204 (2015).

[14] MONT. CODE ANN. § 50-18-107(2) (2015).

[15] *In re Caselli*, 204 P. 364, 364-65 (Mont. 1922).

[16] *Id*.

[17] *Id.*

[18] MONT. CODE ANN. § 50-18-101 (2015).

Montana Code

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 50. HEALTH AND SAFETY

MONT. CODE. ANN. § 50-18-112 (2015) **

Infected person not to expose another to sexually transmitted disease

A person infected with a sexually transmitted disease may not knowingly expose another person to infection.

MONT. CODE. ANN. § 50-18-113 (2015) **

Violation a misdemeanor

A person who violates provisions of this chapter or rules adopted by the department of public health and human services concerning a sexually transmitted disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor.

MONT. CODE. ANN. § 50-18-101 (2015)

Sexually transmitted diseases defined

Human immunodeficiency virus (HIV), syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are sexually transmitted diseases. Sexually transmitted diseases are contagious, infectious, communicable, and dangerous to public health.

MONT. CODE ANN. § 50-18-109 (2015)

Permissible release of information concerning infected persons.

(1) Information concerning persons infected or reasonably suspected to be infected with a sexually transmitted disease may be released only:

(a) to personnel of the department of public health and human services;

(b) to a physician who has written consent of the person whose record is requested;

(c) to a local health officer; or

(d) by the department of public health and human services or a local health officer or board under the circumstances allowed by Title 50, chapter 16, part 6.

TITLE 46. CRIMINAL PROCEDURE

MONT. CODE ANN. § 46-18-212 (2016) **

When no penalty is specified.

The court, in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided or if the offense is designated a misdemeanor and no penalty is otherwise provided,

may sentence the offender to a term of imprisonment not to exceed 6 months in the county jail or a fine not to exceed $500, or both.

TITLE 50. HEALTH AND SAFETY

MONT. CODE ANN. § 50-16-525 (2015)

Disclosure by health care provider.

(1) Except as authorized in 50-16-529, 50-16-530, and 50-19-402 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

MONT. CODE ANN. § 50-16-530 (2015)

Disclosure without patient's authorization.

A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

> (2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;
>
> (3) to federal, state, or local law enforcement authorities to the extent required by law;
>
> (6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536;

MONT. CODE ANN. § 50-16-535 (2015)

When health care information available by compulsory process.

(1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

> (f) a patient's health care information is to be used in the patient's commitment proceeding;
>
> (j) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or
>
> (k) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or a similar federal law.

MONT. CODE ANN. § 50-18-108 (2015)

Examination and treatment of prisoners.

Any person confined or imprisoned in any state, county, or municipal prison within the state may be examined for a sexually transmitted disease. If infected, the person must be treated by health authorities.

MONT. CODE ANN. § 50-18-107 (2015)

Powers and duties of health officers.

(1) If found necessary or desirable to protect public health, state and local health officers or their authorized deputies or agents shall:

(a) examine or have examined persons reasonably suspected of being infected with a sexually transmitted disease;

(b) require persons infected to report for treatment to a reputable physician and continue treatment, which may be at public expense, until cured;

(c) isolate or quarantine persons who refuse examination or treatment;

(2) No one but the state or local health officer may terminate the isolation or quarantine. Examinations may be made repeatedly as deemed advisable or desirable.

MONT. CODE ANN. § 50-1-204 (2015)

Quarantine and isolation measures.

The department may adopt and enforce quarantine or isolation measures to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than $ 10 or more than $ 100. Receipts from fines, except justice's court fines, must be deposited in the state general fund

TITLE 46. CRIMINAL PROCEDURE

MONT. CODE ANN. § 46-4-301 (2016)

Issuance of subpoena.

(3) In the case of constitutionally protected material, such as but not limited to medical records or information, a subpoena may be issued only when it appears upon the affidavit of the prosecutor that a compelling state interest requires it to be issued. In order to establish a compelling state interest for the issuance of such a subpoena, the prosecutor shall state facts and circumstances sufficient to support probable cause to believe that:

(a) an offense has been committed; and

(b) the information relative to the commission of that offense is in the possession of the person or institution to whom the subpoena is directed.

Nebraska

Analysis

PLHIV face enhanced sentences under the Nebraska statute which criminalizes assault with a bodily fluid against a public safety officer.

In Nebraska, it is a Class I misdemeanor, punishable by imprisonment of not more than one year and a fine of up to $1000[1], to knowingly strike a public safety officer with any bodily fluid.[2] This charge is elevated to a class IIIA felony if the fluids came from a person living with HIV, Hepatitis B, or Hepatitis C and strike the officer's eyes, mouth or skin.[3]

"Public safety officer" is a broadly includes medical personnel, law enforcement, and department of correctional services personnel who are performing their official duties at the time of the incident.[4] "Bodily fluid" is defined as any naturally produced secretion or waste product generated by the human body including saliva, urine, mucus, vomit, seminal fluid, or feces.

The HIV-specific provision of this statute does not require that transmission of disease occur for a conviction.[5] Contact with saliva and urine does not result in the transmission of HIV, Hepatitis B, or Hepatitis C.[6]

While the Nebraska statute requires intent as an element of this offense, and imposes additional requirements before the sentence enhancement provision can take effect, the facts in these scenarios can be difficult to determine conclusively.

Public safety officers are able to file for an order to compel individuals charged with assault with a bodily fluid to undergo STI testing.

Nebraska law allows a public safety officer who is an alleged victim of assault with a bodily fluid to apply for a court order authorizing the collection of any evidence that may assist in determining if the alleged perpetrator of the assault is infected with HIV, Hepatitis B, or Hepatitis C.[7] The alleged victim

[1] NEB. REV. STAT. ANN. § 28-106 (2016).
[2] NEB. REV. STAT. § 28-934 (2016).
[3] NEB. REV. STAT. § 28-934 (3) (2016); NEB. REV. STAT. ANN. § 28-105 (2016).
[4] NEB. REV. STAT. § 28-934 (5b) (2016).; NEB. REV. STAT. § 28-934 (5a) (2016).
[5] NEB. REV. STAT. § 28-934 (3) (2016).
[6] CDC, *Body Fluids That Transmit HIV*, (Jul 12, 2021 10:10AM), https://www.cdc.gov/hiv/basics/hiv-transmission/body-fluids.html.
[7] NEB. REV. STAT. § 28-934 (4) (2016).

only needs to show probable cause by filing an affidavit which (1) states that the assault occurred and (2) identifies a probable source of the bodily fluids used in the assault.[8]

Once granted, such an order authorizes the collection of evidence including fluids, medical records, and scientific testing and analysis.[9] The highly personal nature of the information that can be collected under this order, as well as the relatively low threshold of evidence the public safety officer in question is required to provide, threatens the safety and confidentiality of the defendant.

Nebraska courts can compel individuals convicted of sexual assault to undergo HIV testing.

When an individual is convicted of any offense involving sexual, the subject of the assault may request that the defendant, as part of their sentence, undergo testing for HIV. This request will be granted if the judge finds that the circumstances of the offense represent a possibility of HIV transmission. The results of this test will be shared with the subject of the assault, the person convicted, the court, and the Department of Health and Human Services.[10] If such an order already has been granted, the filing of a notice of appeal will not automatically halt the administration of testing. If the person convicted tests positive for HIV, they will be provided with appropriate counseling and referral to medical care by the Department of Correctional Services.[11]

The State may quarantine and isolate persons to prevent or limit the spread of communicable disease.

The Nebraska Department of Health and Human Services (the department) has broad authority, "to control and suppress sexually transmitted diseases."[12] To that end, the department declares STDs to be, "contagious, infectious, communicable, and dangerous to public health."[13] Moreover, the department may, upon finding there has been wide-spread exposure to a communicable disease that presents a risk of death or serious long-term disabilities to any person, may quarantine or isolate individuals who may pose a risk of further exposure.[14] For purposes of the applicable regulations, "communicable disease" is defined as, "an illness due to an infectious or malignant agent, which is capable of being transmitted directly or indirectly to a person from an infected person or animal though the agency of an intermediate animal, host, or vector, or through the inanimate environment.[15]

Quarantine and isolation must involve the least restrictive practical means, and should last no longer than necessary, to ensure that the restricted individual no longer poses a public health threat.[16] Orders for such measures must specify information such as statement of facts warranting the confinement, the

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[8] *Id.*
[9] *Id.*
[10] NEB. REV. STAT. § 29-2290 (2016).
[11] NEB. REV. STAT. § 29-2290 (5) (2016).
[12] NEB. REV. STAT. ANN. §§ 71-502.02, 71-501(3) (2016).
[13] NEB. REV. STAT. ANN. § 71-502.01 (2016). STIs include bacterial vaginosis, candidiasis, chancroid, chlamydia, genital herpes, gonorrhea, granuloma inguinale, hepatitis B, HIV, HPV, lyphogranuloma venerum, syphilis, and trichomoniasis. 173 NEB. ADMIN. CODE § 1-004.06 (2016).
[14] 173 NEB. ADMIN. CODE §§ 6-003, 6-004 (2016).
[15] 173 NEB. ADMIN. CODE § 6-002 (2016).
[16] 173 NEB. ADMIN. CODE § 6-005 (2016).

place and duration of confinement, and conditions for termination of the order.[17] Persons for whom such orders are entered have the right to timely notice of the order, may request a hearing to determine the reasonableness of the measures ordered, and may appeal the hearing decision to the District Court.[18]

The Supreme Court of Nebraska has upheld the department's broad authority to act to limit the spread of communicable diseases.[19] In the 1919 case *Brown v. Manning*, the Court denied a habeas corpus petition for a sex worker who was found to have a "communicable venereal virus" and subsequently isolated.[20] The petitioner had been arrested for, "being an inmate of an ill-governed house" and was ordered to submit to medical examination.[21] The Court denied the writ because she was only isolated "for such reasonable time and in such reasonable manner as to prevent the danger of said petitioner from communicating such infection to others, and until the danger of the infection should be removed."[22]

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.*

[17] 173 NEB. ADMIN. CODE § 6-006 (2016).
[18] 173 NEB. ADMIN. CODE §§ 6-007, 6-008 (2016).
[19] *See, e.g., Brown v. Manning*, 172 N.W. 522 (Neb. 1919).
[20] *Id.*
[21] *Id.*
[22] *Id.*

Revised Statutes of Nebraska

Note: *Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

CHAPTER 28, CRIMES AND PUNISHMENTS

NEB. REV. STAT. § 28-934 (2016) **

Assault with a bodily fluid against a public safety officer; penalty; order to collect evidence

(1) Any person who knowingly and intentionally strikes any public safety officer with any bodily fluid is guilty of assault with a bodily fluid against a public safety officer.

(2) Except as provided in subsection (3) of this section, assault with a bodily fluid against a public safety officer is a Class I misdemeanor.

(3) Assault with a bodily fluid against a public safety officer is a Class IIIA felony if the person committing the offense strikes with a bodily fluid the eyes, mouth, or skin of a public safety officer and knew the source of the bodily fluid was infected with the human immunodeficiency virus, hepatitis B, or hepatitis C at the time the offense was committed.

(4) Upon a showing of probable cause by affidavit to a judge of this state that an offense as defined in subsection (1) of this section has been committed and that identifies the probable source of the bodily fluid or bodily fluids used to commit the offense, the judge shall grant an order or issue a search warrant authorizing the collection of any evidence, including any bodily fluid or medical records or the performance of any medical or scientific testing or analysis, that may assist with the determination of whether or not the person committing the offense or the person from whom the person committing the offense obtained the bodily fluid or bodily fluids is infected with the human immunodeficiency virus, hepatitis B, or hepatitis C.

(5) As used in this section:

> (a) Bodily fluid means any naturally produced secretion or waste product generated by the human body and shall include, but not be limited to, any quantity of human blood, urine, saliva, mucus, vomitus, seminal fluid, or feces; and
>
> (b) Public safety officer includes any of the following persons who are engaged in the performance of their official duties at the time of the offense: A peace officer; a probation officer; a firefighter; an out-of-hospital emergency care provider as defined in subsection 28-929.01; an employee of a county, city, or village jail; an employee of the Department of Correctional Services; an employee of the … secure youth confinement facility operated by the Department of Correctional Services, if the person committing the offense is committed to such facility; an employee of the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney; or an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act.

NEB. REV. STAT. ANN. § 28-105 (2016) **

Felonies; classification of penalties; sentences; where served; eligibility for probation; post-release supervision; applicability of changes to penalties

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into ten classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class IIIA felony:

> Maximum – three years imprisonment and eighteen months post-release supervision or ten thousand dollars, or both
>
> Minimum – none for imprisonment and nine months post-release supervision if imprisonment is imposed

NEB. REV. STAT. ANN. § 28-106 (2016) **

Misdemeanors; classification of penalties; sentences; where served.

(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I misdemeanor:

> Maximum – not more than one year imprisonment, or one thousand dollars fine, or both
>
> Minimum – none

CHAPTER 29, CRIMINAL PROCEDURE

NEB. REV. STAT. § 29-2290 (2016)

Test, counseling, and reports; when required; Department of Correctional Services; Department of Health and Human Services; duties; cost; appeal; effect.

(1) Notwithstanding any other provision of law, when a person has been convicted of sexual assault pursuant to sections 28-317 to 28-320, sexual assault of a child in the second or third degree pursuant to section 28-320.01, sexual assault of a child in the first degree pursuant to section 28-319.01, or any other offense under Nebraska law when sexual contact or sexual penetration is an element of the offense, the presiding judge shall, at the request of the victim as part of the sentence of the convicted person when the circumstances of the case demonstrate a possibility of transmission of the human immunodeficiency virus, order the convicted person to submit to a human immunodeficiency virus antibody or antigen test. Such test shall be conducted under the jurisdiction of the Department of Correctional Services. The Department of Correctional Services shall make the results of the test available only to the victim, to the parents or guardian of the victim if the victim is a minor or is mentally incompetent, to the convicted person, to the parents or guardian of the convicted person if the convicted person is a minor or mentally incompetent, to the court issuing the order for testing, and to the Department of Health and Human Services.

(2) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Department of Correctional Services shall provide counseling to the convicted person regarding human immunodeficiency virus disease and referral to appropriate health care and support services.

(3) The Department of Correctional Services shall provide to the Department of Health and Human Services the result of any human immunodeficiency virus test conducted pursuant to this section and information regarding the request of the victim. The Department of Health and Human Services shall notify the victim or the parents or guardian of the victim if the victim is a minor or mentally incompetent and shall make available to the victim counseling and testing regarding human immunodeficiency virus disease and referral to appropriate health care and support services.

(4) The cost of testing under this section shall be paid by the convicted person tested unless the court has determined the convicted person to be indigent.

(5) Filing of a notice of appeal shall not automatically stay an order that the convicted person submit to a human immunodeficiency virus test.

(6) For purposes of this section:

(a) Convicted shall include adjudicated under juvenile proceedings;

(b) Convicted person shall include a child adjudicated of an offense described in subsection (1) of this section; and

(c) Sentence shall include a disposition under juvenile proceedings.

(7) The Department of Correctional Services, in consultation with the Department of Health and Human Services, shall adopt and promulgate rules and regulations to carry out this section.

CHAPTER 71, PUBLIC HEALTH AND WELFARE

NEB. REV. STAT. ANN. § 71-501 (2016)

Contagious diseases; local public health department; county board of health; powers and duties.

(3) The local public health department or the county board of health shall make rules and regulations to safeguard the health of the people and prevent nuisances and insanitary conditions and shall enforce and provide penalties for the violation of such rules and regulations for the county or counties under its jurisdiction except for incorporated cities and villages. If the local public health department or the county board of health fails to enact such rules and regulations, it shall enforce the rules and regulations adopted and promulgated by the Department of Health and Human Services.

NEB. REV. STAT. ANN. § 71-502.01 (2016)

Sexually transmitted diseases; enumerated.

Sexually transmitted diseases are declared to be contagious, infectious, communicable, and dangerous to the public health. Sexually transmitted diseases shall include, but not be limited to, syphilis, gonorrhea, chancroid, and such other sexually transmitted diseases as the Department of Health and Human Services may from time to time specify.

NEB. REV. STAT. ANN. § 71-502.02 (2016)

Sexually transmitted diseases; rules and regulations.

The Department of Health and Human Services shall adopt and promulgate such rules and regulations as shall, in its judgment, be necessary to control and suppress sexually transmitted diseases.

Nebraska Administrative Code

TITLE 173. COMMUNICABLE DISEASES (DEPARTMENT OF HEALTH AND HUMAN SERVICES)

173 NEB. ADMIN. CODE § 1-004.06 (2016)

Sexually Transmitted Diseases

For the purpose of implementing NEB. REV. STAT. S 71-502.01, sexually transmitted diseases include, but are not limited to, the following diseases:

(1) Bacterial vaginosis;

(2) Candidiasis;

(3) Chancroid;

(4) Chlamydia trachomatic infection;

(5) Genital herpes infection;

(6) Gonorrhea;

(7) Granuloma inguinale;

(8) Hepatitis B;

(9) Human immunodeficiency virus (HIV) infection;

(10) Human papilloma virus (HPV) infection;

(11) Lymphogranuloma venereum;

(12) Syphilis; and

(13) Trichomoniasis.

173 NEB. ADMIN. CODE § 6-002 (2016)

Definitions

Communicable disease, illness, or poisoning means an illness due to an infectious or malignant agent, which is capable of being transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host, or vector, or through the inanimate environment.

Isolation means the separation of people who have a specific communicable disease, illness, or poisoning from healthy people and the restriction of their movement to stop the spread of that disease, illness, or poison. In circumstances where animals are agents of spread of communicable disease, illness, or poisoning, isolation may apply to such animals.

Quarantine directed to identified individuals or defined populations means the restriction of, or conditions upon, the movement and activities of people who are not yet ill, but who have been or may have been exposed to an agent of communicable disease, illness, or poisoning and are therefore potentially capable of communicating a disease, illness, or poison. The purpose is to prevent or limit the spread of communicable disease, illness, or poison. Quarantine of individuals or defined populations generally involves the separation of the quarantined from the general population. In circumstances where animals are agents of spread of communicable disease, illness, or poisoning, quarantine may apply to such animals.

173 NEB. ADMIN. CODE § 6-003 (2016)

Findings

6-003.01 Director Informed: When the Director receives information that a member or members of the public have been, or may have been exposed to a communicable disease, illness, or poisoning by biological, chemical, radiological, or nuclear agents, the Director will review all information under the following provisions to determine if any Directed Health Measure should be ordered. This information may come from:

1. The United States Department of Health and Human Services Centers for Disease Control and Prevention;

2. A Local Public Health Department;

3. Communicable disease surveillance conducted by the Department;

4. Treating health care providers or health care facilities; or

5. Other public health, security, or law enforcement authorities.

6-003.02 Director's Findings: Before ordering a Directed Health Measure, the Director:

1. Must find both:

    a. That a member or members of the public have been, or may have been exposed; and

    b. That Directed Health Measures exist to effectively prevent, limit, or slow the spread of communicable disease or illness or to prevent, limit, or slow public exposure to or spread of biological, chemical, radiological, or nuclear agents; and

2. Must find one or more of the following:

    a. That the exposure presents a risk of death or serious long-term disabilities to any person;

    b. That the exposure is wide-spread and poses a significant risk of harm to people in the general population; or

c. That there is a particular subset of the population that is more vulnerable to the threat and thus at increased risk; and

3. May make further finding, in assessing the nature of the risk presented:

a. Whether the threat is from a novel or previously eradicated infectious agent or toxin;

b. Whether the threat is or may be a result of intentional attack, accidental release, or natural disaster; or

c. Whether any person(s) or agent(s) posing the risk of communicating the disease are non-compliant with any measures ordered by a health care provider.

6-003.03 Affirmative Findings: If affirmative findings are made pursuant to 173 NAC 6-003.02 and the Director further finds that a delay in the imposition of an effective Directed Health Measure would significantly jeopardize the ability to prevent or limit the transmission of a communicable disease, illness, or poisoning or pose unacceptable risks to any person or persons, the Director may impose any of the Directed Health Measures set out in 173 NAC 6-004

173 NEB. ADMIN. CODE § 6-004 (2016)

Directed Health Measures

6-004.01 Directed Health Measures which may be ordered by the Director are:

6-004.01A Quarantine of:

1. Individuals;

6-004.01B Isolation of Individuals:

1. At home;

2. In a health care facility; or

3. In another designated area

173 NEB. ADMIN. CODE § 6-005 (2016)

Procedures

6-005.02 In determining the nature, scope, and duration of the Directed Health Measure ordered, the Director, based on the information available at the time of the determination, will:

1. Assess the situation and identify the least restrictive practical means of isolating, quarantining, or decontaminating an individual that effectively protects unexposed and susceptible individuals;

2. Select a place of isolation or quarantine that will allow the most freedom of movement and communication with family members and other contacts without allowing disease transmission to others and allow the appropriate level of medical care needed by isolated or quarantined individuals to the extent practicable;

3. For communicable diseases, order that the duration of the Directed Health Measure should be no longer than necessary to ensure that the affected individual or group no longer poses a public health threat;

4. Give consideration to separation of isolated individuals from quarantined individuals. However, if quarantine or isolation is possible in the home(s) of the affected individual(s), individuals may be isolated with quarantined individuals; and

5. Give consideration to providing for termination of the Order under the following circumstances:

a. If laboratory testing or examination is available to rule out a communicable condition, the Order may provide that proof of the negative result will be accepted to terminate a Directed Health Measure; or

b. If treatment is available to remedy a communicable condition, the Order may provide that proof of successful treatment will be accepted to terminate a Directed Health Measure.

173 NEB. ADMIN. CODE § 6-006 (2016)

Issuance of Orders

6-006.01 Upon a finding pursuant to 173 NAC 6-003 and determination pursuant to 173 NAC 6-004, the Director will issue an Order directed to the affected individual, individuals, entity, or entities.

6-006.02 Orders of the Director imposing Directed Health Measures are effective immediately.

6-006.03 Orders will contain the finding and determination and will order the affected person or persons to comply with the terms of the Order, and will also include the following:

6-006.03A Orders of Isolation will contain the following:

1. Name and identifying information of the individual(s) subject to the order;

2. Brief statement of the facts warranting the isolation;

3. Conditions for termination of the order;

4. Duration of isolation period;

5. The place of isolation;

6. Prohibition of contact with others except as approved by the Director or designee;

7. Required conditions to be met for treatment;

8. Required conditions to be met for visitation if allowed;

9. Instructions on the disinfecting or disposal of any personal property of the individual;

10. Required precautions to prevent the spread of the subject disease;

11. The individual's right to an independent medical exam at their own expense;

12. Provisions to ensure and monitor compliance; and

13. Procedure to request a hearing.

6-006.03B Orders of Quarantine will contain the following:

1. Name, identifying information or other description of the individual, group of individuals, premises, or geographic location subject to the order;

2. Brief statement of the facts warranting the quarantine;

3. Conditions for termination of the order;

4. Specified duration of the quarantine;

5. The place or area of quarantine;

6. Prohibition of contact with others except as approved by the Director or designee;

7. Symptoms of the subject disease and a course of treatment;

8. Instructions on the disinfecting or disposal of any personal property;

9. Precautions to prevent the spread of the subject disease;

10. The individual's right to an independent medical exam at their own expense,

11. Provisions to ensure and monitor compliance; and

12. Procedure to request a hearing.

173 NEB. ADMIN. CODE § 6-007 (2016)

Notice of Orders

6-007.01 Orders to Individuals: Orders directed to individuals will be delivered in a manner reasonably calculated to give the individual actual notice of the terms of the Order consistent with the threat of communicable disease, illness, or poisoning. Personal delivery may be attempted, except in cases when personal delivery would present a risk of spread of disease or exposure to agents that cannot be avoided by measures reasonably available. Electronic transmission by e-mail or telefacsimile will be sufficient, provided that any available means of determining and recording receipt of such notice will be made. If electronic transmission is impossible or unavailable under the circumstances, oral communication by telephone or direct transmission of voice will be sufficient, and such communication will be memorialized at the time it is delivered.

173 NEB. ADMIN. CODE § 6-008 (2016)

Hearing Process

6-008.01 Request for Hearing: Any person subject to an Order under 173 NAC 6 may request a contested case hearing to contest the validity of the Order, in accord with the Department's rules of practice and procedure adopted pursuant to the Administrative Procedure Act.

6-008.05 Purpose and Decision: The purpose of the hearing is to determine if the factual bases for the Order exist and the reasonableness of the ordered measures. The Director may affirm, reverse or

modify the Order by a written Findings of Fact, Conclusions of Law and Order to be issued as soon as reasonably possible after the hearing.

6-008.06 Appeal of Hearing Decision: An appeal to the District Court may be taken from the decision of the Director in accord with the Administrative Procedure Act.

Nevada

Analysis

People living with an infectious communicable disease are prohibited from engaging in conduct likely to transmit the disease to another person.

The updated Nevada law prohibits an individual infected with a communicable disease in an infectious state from engaging in behavior that has a high probability of transmitting the disease to another person.[1] In response to an initial violation, a Nevada health authority will issue a warning in writing identifying the behavior that violated the law and the precautions that the individual must take in order to avoid exposing another person to the disease.[2] An individual who, after receiving an appropriate warning from a health authority, commits another violation is guilty of a misdemeanor punishable by up to 6 months in county jail and/or a $1000 fine.[3]

This provision does not require a finding of a culpable mental state or intentionality on the part of the accused, but it does require that the accused (a) was aware of their status and (b) has previously received a written warning from the health authority.

Any person who is aware that they have a communicable disease (including HIV) and engages in behavior that is specifically intended to transmit the disease and has a high probability of transmission is guilty of a misdemeanor punishable by up to 6 months in county jail and/or a $1000 fine **if that behavior results in transmission**.[4]

This provision does not require the person charged to have previously received a warning from the health authority identifying the behavior considered to be in violation. However, it does require that a person diagnosed with a communicable disease engaged in behavior that has a high probability of resulting in transmission; did so with the specific intention to transmit the disease; and that transmission occurred as a result .[5] The determination of whether a behavior represents a “high probability” of transmission is based on current medical or epidemiological evidence.[6]

Proof of a person’s intent to transmit a communicable disease cannot rest solely on a failure to take measures to prevent transmission, such as condom use or adherence to medical treatments that

[1] NEV. REV. STAT. § 441A.180 (1) (2021);
[2] NEV. REV. STAT. § 441A.180 (2) (2021).
[3] NEV. REV. STAT. § 441A.180 (3) (2021); NEV. REV. STAT. ANN. § 193.150 (2016).
[4] NEV. REV. STAT. § 441A.180 (4) (2021); NEV. REV. STAT. ANN. § 193.150 (2016)
[5] *Id.*
[6] NEV. REV. STAT. § 441A.180 (10) (2021).

reduce the risk of transmission.[7] However, The person accused also can assert the use or attempted use of means to prevent the transmission of the communicable disease as a defense to prosecution. [8]

It also is an affirmative defense if the person subject to possible exposure to a communicable disease (1) knew the defendant had a serious communicable disease, (2) knew that the conduct in which they engaged could result in exposure to that disease, and (3) consented to the conduct with that knowledge in mind.[9] Needless to say, it typically is challenging to estabblish the facts of this defense.

A person who has tested positive for a communicable disease is not in violation of the Nevada Statute if they donate or attempt blood, tissue, sperm, or organs which results in exposure to or transmission of the disease to another person.[10]

A person who is infected with a communicable disease is not in violation of the Nevada statute if they become pregnant and expose the unborn child to the disease or transmit the disease.[11]

Prior provisions of Nevada law which prohibited PLHIV from engaging in liscensed or uinliscensed sex work, required individuals arrested for solicitation or prostitution to undergo mandatory HIV testing, and attached harsher penalties to PLHIV who engaged in liscensed or unliscensed sex work after receiving notice of their disease status have been repealed.

A person with an infectious communicable disease is prohibited from engaging in any occupation in which there is a high probability of disease transmission, provided that such prohibition does not violate federal disability nondiscrimination law.

A Nevada health official can issue a written warning to any person with a communicable disease and job where they are likely to transmit that disease to others.[12] The written warning must identify the behavior at issue and any precautions that the individual must take to avoid exposing others to the disease.[13] If an individual continues in the job while exposing others to the disease after a warning can be found guilty of a misdemeanor.[14]

Health authorities, however, are not permitted to take action to prohibit an individual from a particular place of employment or public accomodation if doing so would violate that persons rights under the Americans With Disabilities Act (ADA), 42 USC 12101, or NRS 613.330.[15] The ADA protects people

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[7] NEV. REV. STAT. § 441A.180 (4) (2021); NEV. REV. STAT. § 441A.180 (11) (2021);

[8] NEV. REV. STAT. § 441A.180 (6) (2021).; NEV. REV. STAT. § 441A.180 (11) (2021) "means to prevent transmission" means any method, device, behavior or activity scientifically demonstrated to measurably limit, reduce or eliminate the risk of transmitting a communicable disease.

[9] NEV. REV. STAT. § 441A.180 (5) (2021).

[10] NEV. REV. STAT. § 441A.180 (7) (2021).

[11] *Id.*

[12] NEV. REV. STAT. § 441A.180 (1) (2021).

[13] NEV. REV. STAT. § 441A.180 (2) (2021).

[14] NEV. REV. STAT. § 441A.180 (3) (2021); NEV. REV. STAT. ANN. § 193.150 (2016).

[15] NEV. REV. STAT. § 441A.180 (2) (2021).

with disabilities from discrimination in employment, government services, and public accomodations (e.g., hair salons, movie theaters, prisons and jails, doctor's officices),

Health authorities have broad powers to prevent transmission of communicable and infectious diseases, including HIV and other STIs.

A health authority may require medical examination of a person they, "reasonably suspect [has] a communicable disease in an infectious state."[16] "Communicable disease" is defined as, "a disease which is caused by a specific infectious agent or its toxic products, and which can be transmitted, either directly or indirectly, from a reservoir of infectious agents to a susceptible host organism."[17]

As part of their powers under the public healh code, a health authority may require isolation, quarantine, or treatment of any person if they have determined that it is necessary to prevent the spread of communicable disease.[18] While persons placed in isolation or quarantine will undergo medical examination,[19] they cannot be forced to undergo medical treatment without a court order authorizing it A court order will not be granted unless the court finds that there is clear and convincing evidence that the restricted individual (1) has a communicable disease in an infectious state and (2) because of that disease, the individual is likely to pose a risk to the public health. [20] People threatened with these types of restrictions have the right to notice, the right to legal representation[21] and to be present and testify by telephonic or videoconference.[22] at a hearing before the district court.[23] Health authorities bear the burden of establishing by clear and convincing evidence that the person has been infected with or exposed to a communicable disease and is likely to be an immediate threat to the health of the public.[24]

Compliance with any of these public health measures may be enforced by injunction.[25] Moreover, any violation of public health measures is a misdemeanor, punishable by six months' imprisonment and a

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[16] NEV. REV. STAT. § 441A.160 (2021).

[17] NEV. REV. STAT. § 441A.040 (2016). *See also* NEV. REV. STAT. §§ 441A.063 ("'Infectious disease' means a disease which is caused by pathogenic microorganisms, including, without limitation, bacteria, viruses, parasites or fungi, which spread, either directly or indirectly, from one person to another. The term includes a communicable disease."), 441A.775 (defining STDs as "bacterial, viral, fungal or parasitic disease which may be transmitted through sexual conduct," including, but not limited to AIDS, acute pelvic inflammatory disease, chancroid, chlamydia, genital herpes, human papilloma virus, gonorrhea, granuloma inguinale, hepatitis B, HIV, lymphogranuloma venereum, nongonococcal urethritis, and syphilis) (2016), and *In re Reno*, 64 P.2d 1036 (Nev. 1937) (affirming revocation of medical license of physician who failed to report a sex worker who had contracted a venereal disease to the police authorities).

[18] *Id. See also* NEV. REV. STAT. §§ 441A.600 (2016) (requiring health authorities establish reasonable factual and medical basis to believe the person has been infected with or exposed to a communicable disease and, that because of the risks of that disease, the person is likely to be an immediate threat to the health of the public), 441A.610 (requiring sworn statement from health authority that there is a reasonable degree of certainty that the person is currently capable of transmitting the disease, or is likely to become capable of transmitting the disease in the near future) (2016).

[19] NEV. REV. STAT. § 441A.630 (2016).

[20] NEV. REV. STAT. § 441A.160 (2021).

[21] NEV. REV. STAT. § 441A.600 (2016).

[22] NEV. REV. STAT. § 441A.680 (2016).

[23] NEV. REV. STAT. § 441A.620 (2016).

[24] NEV. REV. STAT. § 441A.700 (2016).

[25] NEV. REV. STAT. § 441A.900 (2016).

$1,000 fine.[26] Any otherwise confidential information, including medical records, may be used in legal actions.[27]

Exposure or attempted exposure of another person to a serious infectious disease cannot be prosecuted under other sections of Nevada statutes.

A person accused of exposure or attempted exposure of a communicable disease cannot be charged with any offense other than those identified in NRS 441A.180 (discussed above).[28] Additionally, the fact that a person is infected with a serious infectious disease cannot be used to satisfy any element of an offense outside of those associated with the offenses discussed above. [29]

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.*

[26] NEV. REV. STAT. §§ 441A.910, 193.150 (2016).
[27] NEV. REV. STAT. § 441A.220 (2016).
[28] NEV. REV. STAT. § 441A.180(9) (2021).
[29] *Id*.

Nevada Revised 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.*

TITLE 15. CRIMES AND PUNISHMENTS

NEV. REV. STAT. ANN. § 193.150 (2016) **

Punishment of misdemeanors.

1. Every person convicted of a misdemeanor shall be punished by imprisonment in the county jail for not more than 6 months, or by a fine of not more than $1,000, or by both fine and imprisonment, unless the statute in force at the time of commission of such misdemeanor prescribed a different penalty.

2. In lieu of all or a part of the punishment which may be imposed pursuant to subsection 1, the convicted person may be sentenced to perform a fixed period of community service pursuant to the conditions prescribed in NRS 176.087.

TITLE 40. PUBLIC HEALTH AND SAFETY

NEV. REV. STAT. ANN. § 441A.040 (2016)

"Communicable disease" defined.

"Communicable disease" means a disease which is caused by a specific infectious agent or its toxic products, and which can be transmitted, either directly or indirectly, from a reservoir of infectious agents to a susceptible host organism.

NEV. REV. STAT. ANN. § 441A.063 (2016)

"Infectious disease" defined.

"Infectious disease" means a disease which is caused by pathogenic microorganisms, including, without limitation, bacteria, viruses, parasites or fungi, which spread, either directly or indirectly, from one person to another. The term includes a communicable disease.

NEV. REV. STAT. ANN. § 441A.160 (2016) **

Investigation: Powers of health authority to conduct investigation of communicable disease; order to require person to submit to examination; order of isolation, quarantine or treatment.

2. A health authority may:

> (a) Enter private property at reasonable hours to investigate any suspected case of a communicable disease to determine the danger posed by the case or suspected case to the public, including, without limitation, whether the communicable disease is in an infectious state.
>
> (b) Order any person whom the health authority has a reasonable factual and medical basis to suspect has a communicable disease that is in an infectious state and poses a risk to the health of the public to submit to any medical examination or test which the health authority determines is necessary to verify the presence of the disease. The order must be in writing and specify the

name of the person to be examined or tested and the time and place of the examination and testing, and may require the person to take other actions that the health authority has determined are necessary to prevent the spread of communicable disease.

(c) Except as otherwise provided in this paragraph, subsection 6 and NRS 441A.210, issue an order requiring the isolation, quarantine or treatment of any person or group of persons if the health authority has a reasonable factual and medical basis to believe that such action is necessary to protect the public health. The order must be in writing and specify the person or group of persons to be isolated or quarantined, the time during which the order is effective and the place of isolation or quarantine. The order may direct the person or group of persons to take other actions that the health authority has determined are necessary to prevent the spread of communicable disease. The health authority shall not order isolation or quarantine if the health authority determines that such action may compromise the health of a person who is isolated or quarantined.

3. Each order issued pursuant to this section must:

(a) Be served upon each person named in the order by delivering a copy to the person; and

(b) State the reason that each of the actions prescribed by the order are necessary and are the least restrictive means available to prevent, suppress or control the communicable disease.

4. The Board and each district board of health shall adopt regulations to establish a process by which a person may appeal to the health authority an order issued pursuant to paragraph (b) of subsection 2. The health authority shall provide a person who receives such an order a document stating the rights of the person, including, without limitation, the right to appeal the order, at the time and in the manner prescribed by regulation of the Board or the district board of health, as applicable.

6. Except as otherwise provided in NRS 441A.310 and 441A.380, a health authority may not issue an order requiring the involuntary treatment of a person without a court order requiring the person to submit to treatment. A court shall not order a person to submit to treatment unless the court finds that there is clear and convincing evidence that:

(a) The person has a communicable disease in an infectious state; and

(b) Because of that disease, the person is likely to pose a risk to the public health.

NEV. REV. STAT. § 441A.180 (2021)

Contagious person to prevent exposure to others; warning by health authority; penalty

1.Except as otherwise provided in this section, a person who has a communicable disease in an infectious state shall not:

(a) conduct himself or herself in any manner that has a high probability of transmitting the disease to another person; or

(b) engage in any occupation in which there is a high probability that the disease will be transmitted to other persons.

2. Except as otherwise provided in this section, a health authority who has reason to believe that a person is in violation of subsection 1 shall issue a warning to that person, in writing, informing the

person of the behavior which constitutes the violation and of the precautions that the person must take to avoid exposing another person to the disease. The warning must be served upon the person by delivering a copy to the person. The health authority shall not warn a person against:

(a) Engaging in an occupation if the employer of the person would be prohibited from preventing the person from engaging in that occupation by the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., or NRS 613.330.

(b) Accessing a place of public accommodation if the place of public accommodation would be prohibited from denying the person access to the place of public accommodation by the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., or NRS 651.050 to 621.120, inclusive.

3. Except as otherwise provided in this section, a person who violates the provisions of subsection 1 after service upon the person of a warning from a health authority in the manner prescribed by subsection 2 is guilty of a misdemeanor.

4. Except as otherwise provided in this section, any person who, after receiving notice that he or she has tested positive for a communicable disease, intentionally conducts himself or herself in a manner that is specifically intended to transmit the disease to another person and has a high probability of transmitting the disease to another person and, as a consequence, transmits the disease to another person is guilty of a misdemeanor. A person shall not be deemed to have acted intentionally solely because the person failed to use or attempt to use means to prevent transmission.

5. It is an affirmative defense to an offense charged pursuant to this section that a person who was subject to exposure to a communicable disease as a result of conduct prohibited by a warning issued pursuant to subsection 2 or conduct described in subsection 4:

(a) Knew the defendant had the communicable disease;

(b) Knew the conduct could result in the transmission of the communicable disease; and

(c) Consented to engage in the conduct with that knowledge.

6. It is an affirmative defense to an offense charged pursuant to this section that the defendant used or attempted to use means to prevent the transmission of the communicable disease.

7. A person who has tested positive for a communicable disease is not in violation of subsection 1 or 4 because the person:

(a) Donates or attempts to donate an organ, blood, sperm or tissue and thereby exposes another person to the communicable disease or transmits the communicable disease; or

(b) Becomes pregnant and exposes the unborn child to the communicable disease or transmits the communicable disease to the unborn child.

8. Before imposing a fine or a sentence of imprisonment upon a person who violates subsection 3 or 4, a court must consider all alternative means to advance the public health.

9. A person must not be charged for any offense other than the offenses set forth in this section if the person is alleged to have exposed another person to a communicable disease or attempted to expose

another person to a communicable disease. The fact that a person has a communicable disease must not be used to satisfy any element of an offense other than the offenses set forth in this section.

10. For the purposes of subsections 1 and 4, the likelihood of transmitting a communicable disease to another person must be determined using current medical or epidemiological evidence. The Board shall adopt regulations prescribing requirements for determining the sufficiency and legitimacy of medical or epidemiological evidence pursuant to this subsection.

11. As used in this section, “means to prevent transmission” means any method, device, behavior or activity scientifically demonstrated to measurably limit, reduce or eliminate the risk of transmitting a communicable disease.

NEV. REV. STAT. § 441A.195 (2021)

1. Except as otherwise provided in NRS 259.047, a law enforcement officer, correctional officer, emergency medical attendant, firefighter, county coroner or medical examiner or any of their employees or volunteers, any other person who is employed by or is a volunteer for an agency of criminal justice or any other public employee or volunteer for a public agency who, in the course of his or her official duties, comes into contact with human blood or bodily fluids, or the employer of such a person or the public agency for which the person volunteers, may petition a court for an order requiring the testing of a person or decedent for exposure to a communicable disease if :

a) The officer, emergency medical attendant, firefighter, county coroner or medical examiner or their employee or volunteer, other person employed by or volunteering for an agency of criminal justice or other public employee or volunteer for a public agency was likely exposed to a communicable disease; and

(b) Testing of the person or decedent is necessary to determine the appropriate treatment for the officer, emergency medical attendant, firefighter, county coroner, medical examiner, employee or volunteer.

NEV. REV. STAT. ANN. § 441A.220 (2021)

Confidentiality of information; permissible disclosure.

All information of a personal nature about any person provided by any other person reporting a case or suspected case of a communicable disease, or by any person who has a communicable disease, or as determined by investigation of the health authority, is confidential medical information and must not be disclosed to any person under any circumstances, including pursuant to any subpoena, search warrant or discovery proceeding, except:

3. In a prosecution for a violation of this chapter.

4. In a proceeding for an injunction brought pursuant to this chapter.

NEV. REV. STAT. ANN. § 441A. 230 (2021)

Except as otherwise provided in this chapter and NRS 439.538, a person shall not make public the name of, or other personal identifying information about, a person who has been diagnosed with or exposed to a communicable disease and investigated by the health authority pursuant to this chapter without the consent of the person.

NEV. REV. STAT. ANN. § 441A.600 (2016)

Petition: Filing; certificate or statement of alleged infection with or exposure to communicable disease.

A proceeding for an involuntary court-ordered isolation or quarantine of any person in this State may be commenced by a health authority filing a petition with the clerk of the district court of the county where the person is to be isolated or quarantined. The petition may be pled in the alternative for both isolation and quarantine, if required by developing or changing facts, and must be accompanied:

1. By a certificate of a health authority or a physician, a physician assistant licensed pursuant to chapter 630 or 633 of NRS or a registered nurse stating that he or she has examined the person alleged to have been infected with or exposed to a communicable disease or has investigated the circumstances of potential infection or exposure regarding the person alleged to have been infected with or exposed to a communicable disease and has concluded that the person has been infected with or exposed to a communicable disease, and that because of the risks of that disease, the person is likely to be an immediate threat to the health of the public; or

2. By a sworn written statement by the health authority that:

> (a) The health authority has, based upon its personal observation of the person alleged to have been infected with or exposed to a communicable disease, or its epidemiological investigation of the circumstances of potential infection or exposure regarding the person alleged to have been infected with or exposed to a communicable disease, a reasonable factual and medical basis to believe that the person has been infected with or exposed to a communicable disease and, that because of the risks of that disease, the person is likely to be an immediate threat to the health of the public; and
>
> (b) The person alleged to have been infected with or exposed to a communicable disease has refused to submit to voluntary isolation or quarantine, examination, testing, or treatment known to control or resolve the transmission of the communicable disease.2003, ch. 384, § 14, p. 2200; 2007, ch. 413, § 99, p. 1859.

NEV. REV. STAT. ANN. § 441A.610 (2016)

Requirements of petition that is filed after emergency isolation or quarantine.

In addition to the requirements of NRS 441A.600, a petition filed pursuant to that section with the clerk of the district court to commence proceedings for involuntary court-ordered isolation or quarantine of a person pursuant to NRS 441A.540 or 441A.550 must include a certified copy of:

1. If an application for an order of emergency isolation or quarantine of the person was made pursuant to NRS 441A.560, the application for the emergency isolation or quarantine of the person made to the petitioning health authority pursuant to NRS 441A.560; and

2. A petition executed by a health authority, including, without limitation, a sworn statement that:

> (a) The health authority or a physician, physician assistant licensed pursuant to chapter 630 or 633 of NRS or registered nurse who submitted a certificate pursuant to NRS 441A.570, if such a certificate was submitted, has examined the person alleged to have been infected with or exposed to a communicable disease;

(b) In the opinion of the health authority, there is a reasonable degree of certainty that the person alleged to have been infected with or exposed to a communicable disease is currently capable of transmitting the disease, or is likely to become capable of transmitting the disease in the near future;

(c) Based on either the health authority's personal observation of the person alleged to have been infected with or exposed to the communicable disease or the health authority's epidemiological investigation of the circumstances of potential infection or exposure regarding the person alleged to have been infected with or exposed to the communicable disease, and on other facts set forth in the petition, the person likely poses an immediate threat to the health of the public; and

(d) In the opinion of the health authority, involuntary isolation or quarantine of the person alleged to have been infected with or exposed to a communicable disease to a public or private medical facility, residence or other safe location is necessary to prevent the person from immediately threatening the health of the public.2003, ch. 384, § 15, p. 2201; 2007, ch. 413, § 100, p. 1859.

NEV. REV. STAT. ANN. § 441A.620 (2016)

Hearing on petition; notice; release of person before hearing.

1. Immediately after receiving any petition filed pursuant to NRS 441A.600 or 441A.610, the clerk of the district court shall transmit the petition to the appropriate district judge, who shall set a time, date and place for its hearing. The date must be within 5 judicial days after the date on which the petition is received by the clerk.

2. The court shall give notice of the petition and of the time, date and place of any proceedings thereon to the subject of the petition, his or her attorney, if known, the petitioner and the administrative office of any public or private medical facility in which the subject of the petition is detained.

3. The provisions of this section do not preclude a health authority from ordering the release from isolation or quarantine of a person before the time set pursuant to this section for the hearing concerning the person, if appropriate.

4. After the filing of a petition pursuant to NRS 441A.600 or 441A.610 and before any court-ordered involuntary isolation or quarantine, a health authority shall file notice with the court of any order of the health authority issued after the petition was filed to release the person from emergency isolation or quarantine, upon which the court may dismiss the petition without prejudice.2003, ch. 384, § 16, p. 2202.

NEV. REV. STAT. ANN. § 441A.630 (2016)

Examination or assessment of person alleged to be infected with or exposed to communicable disease; protective custody pending hearing; written summary of findings and evaluation concerning person alleged to be infected with or exposed to communicable disease.

1. After the filing of a petition to commence proceedings for the involuntary court-ordered isolation or quarantine of a person pursuant to NRS 441A.600 or 441A.610, the court shall promptly cause two or more physicians or physician assistants licensed pursuant to chapter 630 or 633 of NRS, at least one of whom must always be a physician, to either examine the person alleged to have been infected with or

exposed to a communicable disease or assess the likelihood that the person alleged to have been infected with or exposed to a communicable disease has been so infected or exposed.

2. To conduct the examination or assessment of a person who is not being detained at a public or private medical facility, residence or other safe location under emergency isolation or quarantine pursuant to the emergency order of a health authority or court made pursuant to NRS 441A.550 or 441A.560, the court may order a peace officer to take the person into protective custody and transport the person to a public or private medical facility, residence or other safe location where the person may be detained until a hearing is held upon the petition.

3. If the person is being detained at his or her home or other place of residence under an emergency order of a health authority or court pursuant to NRS 441A.550 or 441A.560, the person may be allowed to remain in his or her home or other place of residence pending an ordered assessment, examination or examinations and to return to his or her home or other place of residence upon completion of the assessment, examination or examinations if such remaining or returning would not constitute an immediate threat to others residing in his or her home or place of residence.

4. Each physician and physician assistant licensed pursuant to chapter 630 or 633 of NRS who examines or assesses a person pursuant to subsection 1 shall, not later than 24 hours before the hearing set pursuant to NRS 441A.620, submit to the court in writing a summary of his or her findings and evaluation regarding the person alleged to have been infected with or exposed to a communicable disease.2003, ch. 384, § 17, p. 2202; 2007, ch. 413, § 101, p. 1860.

NEV. REV. STAT. ANN. § 441A.660 (2016)

Right to counsel; compensation of counsel; recess; duties of district attorney.

1. The person alleged to have been infected with or exposed to a communicable disease, or any relative or friend on behalf of the person, is entitled to retain counsel to represent the person in any proceeding before the district court relating to involuntary court-ordered isolation or quarantine, and if the person fails or refuses to obtain counsel, the court shall advise the person and his or her guardian or next of kin, if known, of the right to counsel and shall appoint counsel, who may be the public defender or his or her deputy.

2. Any counsel appointed pursuant to subsection 1 must be awarded compensation by the court for his or her services in an amount determined by the court to be fair and reasonable. Except as otherwise provided in this subsection, the compensation must be charged against the estate of the person for whom the counsel was appointed or, if the person is indigent, against the county in which the application for involuntary court-ordered isolation or quarantine was filed. In any proceeding before the district court relating to involuntary court-ordered isolation or quarantine, if the person for whom counsel was appointed is challenging his or her isolation or quarantine or any condition of such isolation or quarantine and the person succeeds in his or her challenge, the compensation must be charged against the county in which the application for involuntary court-ordered isolation or quarantine was filed.

3. The court shall, at the request of counsel representing the person alleged to have been infected with or exposed to a communicable disease in proceedings before the court relating to involuntary court-ordered isolation or quarantine, grant a recess in the proceedings for the shortest time possible, but for not more than 5 days, to give the counsel an opportunity to prepare his or her case.

4. Each district attorney or his or her deputy shall appear and represent the State in all involuntary court-ordered isolation or quarantine proceedings in his or her county. The district attorney is responsible for the presentation of evidence, if any, in support of the involuntary court-ordered isolation or quarantine of a person to a medical facility, residence or other safe location in proceedings held pursuant to NRS 441A.600 or 441A.610.2003, ch. 384, § 20, p. 2203.

NEV. REV. STAT. ANN. § 441A.680 (2016)

Right of person alleged to be infected with or exposed to communicable disease to be present by telephonic conferencing or videoconferencing and to testify.

1. In proceedings for an involuntary court-ordered isolation or quarantine, the person with respect to whom the proceedings are held has the right:

(a) To be present by live telephonic conferencing or videoconferencing; and

(b) To testify in his or her own behalf, to the extent that the court determines that the person is able to do so without endangering the health of others.

2. A person who is alleged to have been infected with or exposed to a communicable disease does not have the right to be physically present during the proceedings if such person, if present in the courtroom, would likely pose an immediate threat to the health of the judge or the staff or officers of the court.2003, ch. 384, § 22, p. 2204.

NEV. REV. STAT. ANN. § 441A.700 (2016)

Findings and order; expiration and renewal of isolation or quarantine; alternative courses of treatment.

1. If the district court finds, after proceedings for the involuntary court-ordered isolation or quarantine of a person to a public or private medical facility, residence or other safe location:

(a) That there is not clear and convincing evidence that the person with respect to whom the hearing was held has been infected with or exposed to a communicable disease or is likely to be an immediate threat to the health of the public, the court shall enter its finding to that effect and the person must not be involuntarily detained in such a facility, residence or other safe location.

(b) That there is clear and convincing evidence that the person with respect to whom the hearing was held has been infected with or exposed to a communicable disease and, because of that disease, is likely to be an immediate threat to the health of the public, the court may order the involuntary isolation or quarantine of the person and may order the most appropriate course of treatment after considering the rights of the person and the desires of the person concerning treatment and vaccination, including, without limitation, the tenets of the person's religion and the tenets of any group or organization of which the person is a member, the rights set forth in NRS 441A.210, the rights set forth in NRS 441A.520, the right to counsel set forth in NRS 441A.660, and the right of a person to challenge his or her isolation or quarantine or any condition of such isolation or quarantine. The order of the court must be interlocutory and must not become final if, within 14 days after the court orders the involuntary isolation or quarantine, the person is unconditionally released by a health authority from the medical facility, residence or other safe location.

2. An involuntary isolation or quarantine pursuant to paragraph (b) of subsection 1 automatically expires at the end of 30 days if not terminated previously by a health authority. At the end of the court-ordered period of isolation or quarantine, the health authority may petition to renew the detention of the person for additional periods which each must not exceed the shorter of 120 days or either, if the person is isolated, the period of time which the health authority expects the person will be infectious with the communicable disease or, if the person is quarantined, the period of time which the health authority determines is necessary to determine whether the person has been infected with the communicable disease. For each renewal, the petition must set forth to the court specific reasons why further isolation or quarantine is appropriate and that the person likely poses an ongoing immediate threat to the health of the public. If the court finds in considering a petition for renewal that the person is noncompliant with a court-ordered measure to control or resolve the risk of transmitting the communicable disease, it may order the continued isolation and treatment of the person for any period of time the court deems necessary to resolve the immediate and ongoing risk of the person transmitting the disease.

3. Before issuing an order for involuntary isolation or quarantine or a renewal thereof, the court shall explore other alternative courses of isolation, quarantine and treatment within the least restrictive appropriate environment as suggested by the evaluation team who evaluated the person, or other persons professionally qualified in the field of communicable diseases, which the court believes may be in the best interests of the person.2003, ch. 384, § 24, p. 2204.

NEV. REV. STAT. ANN. § 441A.900 (2016)

Injunction: Grounds; responsibility for prosecution; authority of court.

1. A person who refuses to:

(a) Comply with any regulation of the Board relating to the control of a communicable disease;

(b) Comply with any provision of this chapter;

(c) Submit to approved treatment or examination required or authorized by this chapter;

(d) Provide any information required by this chapter; or

(e) Perform any duty imposed by this chapter,

may be enjoined by a court of competent jurisdiction.

2. An action for an injunction pursuant to this section must be prosecuted by the Attorney General, any district attorney or any private legal counsel retained by a local board of health in the name of and upon the complaint of the health authority.

3. The court in which an injunction is sought may make any order reasonably necessary to carry out the purpose or intent of any provision of this chapter or to compel compliance with any regulation of the Board or order of the health authority relating to the control of a communicable disease.1989, ch. 138, § 43, p. 299.

NEV. REV. STAT. ANN. § 441A.910 (2016) **

Criminal penalty for violation of chapter.

Except as otherwise provided, every person who violates any provision of this chapter is guilty of a misdemeanor.

Nevada Administrative Code

CHAPTER 441A. INFECTIOUS DISEASES; TOXIC AGENTS

NEV. ADMIN. CODE § 441A.775 (2016)

"Sexually transmitted disease" defined for purpose of NRS. (NRS 441A.120, 441A.320)

As used in NRS 441A.240 to 441A.330, inclusive, "sexually transmitted disease" means a bacterial, viral, fungal or parasitic disease which may be transmitted through sexual conduct, including, but not limited to:

1. Acquired immune deficiency syndrome (AIDS).

2. Acute pelvic inflammatory disease.

3. Chancroid.

4. *Chlamydia trachomatis* infection of the genital tract.

5. Genital herpes simplex.

6. Genital human papilloma virus infection.

7. Gonorrhea.

8. Granuloma inguinale.

9. Hepatitis B infection.

10. Human immunodeficiency virus infection (HIV).

11. Lymphogranuloma venereum.

12. Nongonococcal urethritis.

13. Syphilis.

New Hampshire

Analysis

No criminal statutes explicitly address HIV exposure, but people living with HIV (PLHIV) faced prosecution under general criminal laws.

Although there are no statutes explicitly criminalizing HIV transmission or exposure in New Hampshire, there has been at least one prosecution for HIV exposure under general criminal laws.

In *State v. CJ,* a Superior Court of New Hampshire denied a PLHIV's motion to dismiss criminal charges of second degree assault with a deadly weapon and reckless conduct with a deadly weapon after he had unprotected sex without disclosing his HIV status.[1] The court held that a reasonable jury could find the defendant's conduct met each of the elements of the crimes, since (1) having sex without disclosing one's HIV status could be considered, "acting in 'gross deviation' from how a law-abiding citizen in the same circumstances would act;"[2] (2) the "serious psychological injury" to the defendant's sexual partner when she learned of his HIV status was sufficient injury, even if no transmission occurred;[3] and (3) "a reasonable juror [could] find that a [PLHIV] who engages in unprotected sex is using his sexual organs as a dangerous weapon. . . [because] HIV is commonly transmitted through unprotected sex [and] constitutes serious bodily injury because it is a serious impairment to one's health that often results in death."[4] Thus the court denied the defendant's motion to dismiss, although it is unclear whether the defendant was convicted at trial.[5]

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[1] *State v. C.J.*, No. 01-S-726, 2002 LEXIS 11 (N.H. Super. Ct. May 23, 2002). Second degree assault with a deadly weapon requires, "(1) a reckless mental state, (2) causing bodily injury, and (3) by using a deadly weapon." *Id.* at *5. N.H. Rev. Stat. Ann. § 631:2(I)(b) (2016). Reckless conduct with a deadly weapon requires, "(1) a reckless mental state, (2) conduct placing another person in danger of serious bodily injury, and (3) use of a deadly weapon." *C.J.*, at *8. N.H. Rev. Stat. Ann. § 631:3 (2016).

[2] *C,J.*, at *6.

[3] *Id.* It is unclear if there was HIV transmission.

[4] *Id.*

[5] *Id* at *5. *C.J.* is still good law, but the court's analysis of the third prong, use of a deadly weapon, is legally questionable and may be vulnerable to challenge based on medical developments, since it is no longer true that HIV "often results in death." *Id.* at *8. Although the court also noted a deadly weapon is not required to be "actually capable of causing death or serious bodily injury," the Supreme Court of New Hampshire case it cited for that assertion is distinguishable. *Id.* at *12. In *State v. Hatt*, the Supreme Court of New Hampshire affirmed the conviction of a man for robbery with a deadly weapon after he robbed a store with an unloaded firearm. The Court held it did not matter that the firearm was unloaded because, "the legislature clearly intended to limit the definition of deadly weapon to those instruments which are *objectively* understood to be capable of causing death or serious bodily injured in the manner in which they are used, intended to be used, or threatened to be used." *State v. Hatt*, 740 A.2d 1037, 1038 (N.H. 1999). In that case, a firearm is objectively understood to be capable of causing death or serious bodily injury in the manner in which it was threatened to be used. However, in the case of PLHIV having sexual relationships, there are no such threats. Moreover, while the general public, misinformed about popular misconceptions regarding the modern routes, risks, and realities of HIV treatment and transmission, may believe HIV "often results in death," it is in fact *objectively understood*, among medical and public health experts, that (1) HIV is not easily transmitted through sexual

PLHIV and persons with other STDs may be subject to mandatory testing, treatment, quarantine, and isolation.

The Department of Health and Human Services, "may request the examination, and order isolation, quarantine, and treatment of any person reasonably suspected of having been exposed to or of exposing another person or persons to a sexually transmitted disease."[6] Isolation and quarantine must be "by the least restrictive means necessary" to limit the spread of disease. [7] Any person who violates, disobeys, refuses, omits or neglects to comply with any order made pursuant to that purpose is guilty of a misdemeanor, though the penalty is unspecified.[8]

In 2008, a 24-year-old man of unknown HIV status was ordered to pay over $500 for an HIV test and write a letter of apology to a police officer after spitting in the officer's eye during an arrest.[9] The extent to which the alleged exposure led to other measures, such as treatment, quarantine, or prosecution, is unclear. However, this example illustrates what may be considered a "reasonable suspicion of exposure," at least as applied to mandated testing or treatment.

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.*

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contact, especially with the use of condoms and/or ART, and (2) HIV is a chronic, manageable disease. *See, e.g.,* CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (Dec. 4, 2015) *available at* https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html (last visited Dec. 18, 2016) (Listing transmission risk for oral intercourse as "low"; for insertive penile-vaginal intercourse as 4 per 10,000 exposures; for receptive penile-vaginal intercourse as 8 per 10,000 exposures; for insertive anal intercourse as 11 per 10,000 exposures; and for receptive anal intercourse as 138 per 10,000 exposures); CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Effectiveness of Prevention Strategies to Reduce the Risk of Acquiring or Transmitting HIV*, (Jan. 7, 2016) *available at* https://www.cdc.gov/hiv/risk/estimates/preventionstrategies.html (last visited Dec. 18, 2016) (ART reduces the risk of transmission by 96%. Condom use reduces the risk of transmission by 63-80%). *See also* U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, *HIV Basics: Overview: About HIV & AIDS: What Are HIV and AIDS?, available at* https://www.hiv.gov/hiv-basics/overview/about-hiv-and-aids/what-are-hiv-and-aids (last visited July 13, 2017) ("Today, someone diagnosed with HIV and treated before the disease is far advanced can live nearly as long as someone who does not have HIV."); U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, *HIV Basics: HIV Testing: Just Diagnosed: What's Next?: Living with HIV*, *available at* https://www.hiv.gov/hiv-basics/hiv-testing/just-diagnosed-whats-next/living-with-hiv (last visited July 13, 2017) ("Taking [ART] to treat HIV slows the progression of HIV and helps protect your immune system [and] can keep you healthy for many years and greatly reduces your chance of transmitting HIV to sex partner(s) if taken the right way, every day.")

[6] N.H. REV. STAT. ANN. § 141-C:18 (2016). *See also* N.H. REV. STAT. ANN. §§ 141-C:6, 141-C:12, 141-C:15, 141-C:8 (2016); N.H. CODE ADMIN. R. ANN. HE-P 301.02, 04-05 (2016).

[7] N.H. REV. STAT. ANN. § 141-C:11 (2016).

[8] N.H. REV. STAT. ANN. § 141-C:21 (2016).

[9] *New Hampshire Man Forced to Pay for Cop's HIV Test After Spitting*, HIV JUSTICE NETWORK, Aug. 18, 2008, *available at* http://www.hivjustice.net/case/us-new-hampshire-man-forced-to-pay-for-cops-hiv-test-after-spitting/.

New Hampshire Revised 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.*

TITLE X. PUBLIC HEALTH

N.H. REV. STAT. ANN. § 141-C:6 (2016)

Rulemaking

The commissioner shall adopt rules, pursuant to RS 541-A, relative to:

(I) Identifying communicable diseases to be reported under RSA 141-C:8

(V) Establishing, maintaining, and lifting the isolation and quarantine of cases, carriers, or suspected cases or carriers of communicable diseases under RSA 141-C:11.

(VIII) Issuing and carrying out orders for the treatment and care and for the restriction and control of diseases under RSA 141-C:15.

N.H. REV. STAT. ANN. § 141-C:18 (2016)

Sexually Transmitted Diseases

I. The commissioner may request the examination, and order isolation, quarantine, and treatment of any person reasonably suspected of having been exposed to or of exposing another person or persons to a sexually transmitted disease. Any order of treatment issued under this paragraph shall be in accordance with RSA 141-C:11, RSA 141-C:12, and RSA 141-C:15.

N.H. REV. STAT. ANN. § 141-C:21 (2016) **

Penalty

Any person who shall violate, disobey, refuse, omit or neglect to comply with any of the provisions of RSA 141-C, or of the rules adopted pursuant to it, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

N.H. REV. STAT. ANN. § 141-C:11 (2016)

Isolation and Quarantine

I. Whenever it is necessary to prevent the introduction or spread of communicable diseases within this state or from another state, or to restrict such diseases if introduced, and when such communicable diseases pose a substantial threat to the health and life of the citizenry, the commissioner shall establish isolation or quarantine for persons who are cases or carriers, or suspected cases or carriers of communicable diseases, and establish quarantine for commodities, conveyances, baggage and cargo that are carriers or suspected carriers of the communicable diseases by written order prepared in accordance with RSA 141-C:12. Such isolation or quarantine shall be by the least restrictive means necessary to protect the citizenry which, in the case of an individual, shall be at a place of his or her choosing unless the commissioner determines such place to be impractical or unlikely to adequately protect the public health. The commissioner shall adopt such rules regarding the establishment,

maintenance and lifting of isolation and quarantine as the commissioner may deem best for protecting the health of the public.

III. The commissioner may, in ordering isolation or quarantine of persons, require that treatment be obtained in accordance with rules adopted under RSA141-C:15.

N.H. REV. STAT. ANN. § 141-C:12 (2016)

Orders

I. The commissioner, in imposing isolation and quarantine under RSA 141-C:11, in requiring treatment under RSA 141-C:15, or in excluding children under RSA 141-C:20-d, shall do so by written order. The order shall include, as appropriate, the following information:

(a) The cause of the quarantine or isolation.

(b) The location of quarantine or isolation.

(c) When appropriate, that decontamination be performed on commodities, conveyances, baggage and cargo.

(d) When treatment is required as part of the order, where such treatment is available and, if applicable, what effect the receipt of treatment may have on the conditions of isolation and quarantine.

(e) The period of duration of isolation or quarantine.

(f) The commissioner's signature.

(g) The reason and length of time for the exclusion of children from schools and child care facilities.

II. Orders issued under this section shall be complied with immediately.

III. When an individual subject to an order for isolation or quarantine refuses to cooperate with such order, the commissioner may issue a complaint, which shall be sworn to before a justice of the peace. Such complaint shall set forth the reasons for the order imposing isolation or quarantine and the place or facility where the individual shall be isolated or quarantined. Upon being presented with such an order, any law enforcement officer shall take such individual into custody and transport the individual to the place or facility where the individual is to be isolated or quarantined.

N.H. REV. STAT. ANN. § 141-C:15 (2016)

Treatment, Care of Sick; Costs.

I. Any person infected with a communicable disease, or reasonably suspected of being infected with a communicable disease, and whose continued presence among the citizenry poses a significant threat to health and life, shall be ordered by the commissioner under RSA 141-C:11,to report to a health care provider or health care facility to undergo such treatment and care as the commissioner may deem necessary to eliminate the threat. The commissioner shall adopt rules, pursuant to RSA 541-A, necessary to issue and carry out such orders for treatment and to restrict and control communicable disease through treatment.

VI. When an individual subject to an order for treatment by the commissioner refuses to undergo such ordered treatment, the commissioner may issue a complaint, which shall be sworn to before a justice of the peace. Such complaint shall set forth the reasons for the order imposing treatment, the nature of the treatment to be provided, and the place or facility where the treatment shall be provided. Upon being presented with such an order, any law enforcement officer shall take such individual into custody and transport the individual to the place or facility where the treatment is to be provided.

N.H. REV. STAT. ANN. § 141-C:8 (2016)

List of Diseases; Report Forms.

The commissioner shall compile a list of reportable communicable diseases necessary to protect the citizenry. The commissioner shall develop and provide a form for the reporting of communicable diseases under this section. The form shall include, at a minimum, the name, age, address, occupation, and place of occupation of the person. Reportable information shall not include psychiatric, psychological, or other mental health records or information.

New Hampshire Code of Administrative Rules

AGENCY He-P. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DIVISION OF PUBLIC HEALTH SERVICES

N.H. CODE ADMIN. R. ANN. HE-P 301.05 (2016)

Restriction and Control Measures for Isolation and Quarantine for Specific Diseases.

(a) For AIDS/HIV infection, and other specific infections that occur in AIDS/HIV infected patients, hospitals and other institutional settings shall observe precautions for patients as addressed in He-P 301.04.

(f) For hepatitis, isolation precautions shall be as follows:

> (2) For persons with hepatitis B or C, precautions shall be instituted in accordance with He-P 301.04.

N.H. CODE ADMIN. R. ANN. HE-P 301.04 (2016)

Methods of Isolation

Hospitals and other health care institutions shall institute appropriate precautions consistent with the Healthcare Infection Control Practices Advisory Committee 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings, June 2007 and the Healthcare Infection Control Practices Advisory Committee, Management of Multi-drug Resistant Organisms in Healthcare Settings, HICPAC Advisory Committee. October 2006.

New Jersey

Analysis

While New Jersey repealed statutes that explicitly criminalize HIV exposure, people living with HIV (PLHIV) may still be prosecuted under general criminal laws.

In January 2022, New Jersey became the third state in the U.S., after Texas and Illinois, to repeal its HIV-specific criminal law.[1]

While the law now eliminates specific reference to HIV and other communicable infections, it still allows for prosecutions to continue under New Jersey's statute that criminalizes endangering another person.[2] The Senate Committee statement that accompanied the bill in fact explicitly stated that prosecutions involving the transmission of infectious or communicable diseases can still proceed under the criminal endangerment statute.[3]

Prior to this repeal, in 2021 the New Jersey Attorney General issued a statement and policy guidance on enforcement of the state's HIV criminal law, directing prosecutors to "rethink" how they enforce laws criminalizing sexually active PLHIV in light of new medical advancements:

> "In deciding whether to charge an individual under the now-repealed criminal HIV statutes, prosecutors should consider the following factors:
>
> - Whether the individual forced or coerced their partner to engage in sexual activity;
> - Whether the individual engaged in sexual activity *for the purpose* of transmitting HIV to their partner; and/or
> - Whether the individual was adhering to a medically appropriate HIV treatment plan at the time of the sexual activity.
>
> It is virtually impossible to imagine a scenario where it would be appropriate for a prosecutor to charge an individual with N.J.S.A. 2C:34-5(b) when that person's HIV viral load was undetectable at the time of the sexual activity and no aggravating factors existed. Prosecutors

[1] *New Jersey Legislators Vote to Strike State's HIV-Specific Criminal Law, but Retain Felony Prosecutions,* CENTER FOR HIV LAW AND POLICY, January 14, 2022, *available at* https://www.hivlawandpolicy.org/news/new-jersey-legislators-vote-strike-states-hiv-specific-criminal-law-retain-felony-prosecutions. Under the previous statute, it was a third-degree felony for PLHIV to have oral, anal, or vaginal intercourse without first disclosing their health status to their partner. N.J. STAT. ANN. § 2C:34-5(b) (repealed 2022). Similarly, it was a fourth-degree felony for those with STIs other than HIV to have sex without the informed consent of their partner. N.J. STAT. ANN. § 2C:34-5(a) (repealed 2022).

[2] N.J. STAT. ANN. § 2C:24-7.1 (2023).

[3] STAFF OF S. COMM. ON THE BUDGET AND APPROPRIATIONS, S. Doc. No 3707, at 1 (NJ 2022).

> who are considering criminal charges in such circumstances must consult with the Director of the Division of Criminal Justice before proceeding."[4]

However, in a footnote that is difficult to reconcile with the statement itself, the Attorney General adds, "In cases of purposeful HIV transmission … other charges—such as aggravated assault or attempted homicide—may be appropriate. Data suggests, however, that such transmissions are very rare. [citation omitted]"

Under the criminal endangerment law, a person may be charged if they engage in conduct that poses a *substantial risk* of transmission.[5] The range of punishment for exposing another person to a communicable disease varies depending on whether the person acted recklessly or knowingly, whether the risk of harm is bodily injury or death, and whether the other party has a developmental disability.[6]

A person who acts recklessly and creates a risk of bodily injury to another person may be charged with a disorderly persons offense, a misdemeanor offense punishable by up to six months in jail and a fine of up to $1,000.[7] A person who acts knowingly and creates a risk of serious bodily injury to another person may be charged with a crime of the fourth degree, a felony punishable by up to eighteen months imprisonment and up to a $10,000 fine.[8] A person who acts knowingly and creates a risk of death to another person may be charged with a crime of the third degree, a felony punishable by up to five years imprisonment and up to a $15,000 fine.[9] A person who acts recklessly and creates a risk of bodily injury to a person with a developmental disability may be charged with a crime of the fourth degree.[10] A person who acts knowingly and creates a risk of serious bodily injury to a person with a developmental disability may be charged with crime of the third degree.[11] A person who acts knowingly and creates a risk of death to a person with a developmental disability may be charged with a crime of the second degree, a felony punishable by between five and ten years imprisonment and a fine of up to $150,000.[12] Under the provisions outlined above, neither the intent to transmit nor actual transmission is required.

PLHIV have been prosecuted under general criminal laws, including attempted murder, in HIV exposure cases.

In *State v. Smith*, the New Jersey Superior Court Appellate Division affirmed the conviction and 25-year sentence of an inmate living with HIV who was found guilty of attempted murder, aggravated assault,

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[4] Guidance Regarding N.J.S.A. 2C:34-5(b) in Light of Advancements in Treatment for HIV/AIDS, New Jersey Attorney General (2021).
[5] *Id*.
[6] *Id*.
[7] N.J. STAT. ANN. §§ 2C: 24-7.1(a)(1); 2C:43-8 (2023).
[8] N.J. STAT. ANN. §§ 2C: 24-7.1(a)(2); 2C:43-6(a)(4); 2C:43-3(b)(2) (2023).
[9] N.J. STAT. ANN. §§ 2C: 24-7.1(a)(3); 2C:43-6(a)(3); 2C:43-3(b)(1) (2023).
[10] N.J. STAT. ANN. §§ 2C: 24-7.1(b)(1); 2C:43-6(a)(4); 2C:43-3(b)(2) (2023).
[11] N.J. STAT. ANN. §§ 2C: 24-7.1(b)(2); 2C:43-6(a)(3); 2C:43-3(b)(1) (2023).
[12] N.J. STAT. ANN. §§ 2C: 24-7.1(b)(3); 2C:43-6(a)(2); 2C:43-3(a)(2) (2023).

and terrorist threats for biting a corrections officer.[13] The court gave sufficient weight to trial evidence—consisting of three anecdotal sources—to affirm that saliva can transmit HIV.[14]

The defendant offered evidence at trial and on appeal that he knew HIV could not be transmitted through biting because various health professionals had counseled him on the matter, and, therefore, his threats were only made to take "advantage of the ignorance and fear of his jailors."[15] Nonetheless, the court found the jury, "reasonably could have rejected [the] defendant's claim that he 'knew' biting or spitting could not spread HIV, especially in view of the conflict in the record between that claim and his conduct in jail over several months."[16]

In 1994, a 17-year-old woman was charged as an adult for attempted murder and aggravated assault after she bit a juvenile detention officer.[17] At the time of the indictment, it was not confirmed whether the woman had tested positive for HIV, only that "she believ[ed]" she had HIV.[18]

In *State v. Ainis*, the New Jersey Superior Court Law Division found that a hypodermic needle purportedly infected with HIV is a deadly weapon.[19] Under New Jersey law, a deadly weapon is defined as an object "which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury."[20]

In *State v. E.W.*, the Superior Court of New Jersey Appellate Division upheld the conviction and sentencing of a PLHIV to six years' imprisonment for one count of second-degree sexual assault and five years' imprisonment, to be served concurrently, for one count of third-degree sexual penetration by a diseased person.[21] The defendant, who was adherent to medical treatment, was charged for engaging in consensual sex with his housemate without disclosing his HIV status.[22]

People having, or suspected of having, a venereal disease may be subject to mandatory examination, treatment, or quarantine.

New Jersey public health law defines syphilis, gonorrhea, chancroid, lymphogranuloma venereum and granuloma inguinale as venereal diseases and, "declare[s them] to be infectious and communicable diseases, dangerous to public health."[23] Any person who "is, or is suspected to be, suffering from or infected with a venereal disease," may be required to undergo a medical examination.[24] Sex workers are, by definition, considered such suspected persons and may, at any time, be subject to a medical

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[13] *State v. Smith*, 621 A.2d 493, 495 (N.J. Super. Ct. App. Div. 1993).
[14] *Id.* at 498-99.
[15] *Id.* at 504-05.
[16] *Id.* at 514.
[17] Joseph F. Sullivan, *Girl Who Thinks She has AIDS to Stand Trial for Biting of Guard*, N.Y. TIMES, Aug. 31, 1994, *available at* http://www.nytimes.com/1994/08/31/nyregion/girl-who-thinks-she-has-aids-to-stand-trial-in-biting-of-guard.html.
[18] *Id*.
[19] *State v. Ainis*, 721 A.2d 329, 331-34 (N.J. Super. Ct. Law Div. 1998).
[20] *Id.* at 331. N.J. Stat. Ann. § 2C:11-1 (2016).
[21] *State v. E.W.*, 2012 WL 1948654, at *1 (N.J. Super. Ct. App. Div. May 31, 2012). Appellant had pled guilty but was appealing on procedural issues including "receiving ineffective assistance of trial counsel."
[22] *Id*.
[23] N.J. STAT. ANN. §§ 26:4-27; 26:4-28 (2023).
[24] N.J. STAT. ANN. §§ 26:4-30; 26:4-31 (2023).

examination.[25] Moreover, any person appearing before the Superior Court or any municipal court may be subject to examination for venereal diseases and medical treatment if it is determined that they may have a venereal disease in an infectious stage.[26]

The State Department of Health may mandate quarantine and medical treatment "of a venereal disease which it may deem necessary for the protection of the public health."[27] Such action may extend to persons reasonably believed to have, and likely to spread, a venereal disease in its infectious stage, or persons who refuse to submit to medical examination or treatment for venereal disease.[28] Notice of quarantine restrictions shall be made in writing to the persons to be quarantined, and a complaint may be filed with the Superior Court or any municipal court for persons who fail to comply with such restrictions.[29]

Persons who violate any public health provision are subject to a fine up to $100.[30] For a second offense within six months the penalty may include, in addition to a fine, imprisonment for any number of days not exceeding one for each dollar of the penalty.[31]

Finally, the warden of any penal institution may require all inmates to submit to medical examination for venereal disease or else be subject to isolation; inmates with an infectious venereal disease may also be isolated.[32]

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.*

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[25] N.J. STAT. ANN. § 26:4-32 (2023).

[26] N.J. STAT. ANN. § 26:4-49.7 (2023).

[27] N.J. STAT. ANN. § 26:4-48 (2023). *See also* N.J. ADMIN CODE § 8:57-1.11 (2016); N.J. ADMIN CODE §§ 8.57-1.5 (2016) (listing chancroid, chlamydia, gonorrhea, hepatitis B, hepatitis C, and syphilis as communicable diseases to be reported within 24 hours of diagnosis), 8:57-1, app. B (2016) (Model Rules for Local Boards of Health outlining model rules for quarantine and isolation procedures, including conditions and principles, appeals process, and rights of individuals and groups subject to isolation and quarantine. However, no local health board is required to adopt the model rules.)

[28] N.J. STAT. ANN. § 26:4-36 (2023). Such persons are also liable for violation of public health provisions according to N.J. STAT. ANN. §§ 26:4-129; 26:4-49 (2016), as explained below.

[29] N.J. STAT. ANN. § 26:4-36 (2023).

[30] N.J. STAT. ANN. § 26:4-129 (2023).

[31] N.J. STAT. ANN. § 26:4-49 (2023).

[32] N.J. STAT. ANN. § 26:4-49.8 (2023). The statue does not specify a time limit for isolation.

New Jersey 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.*

TITLE 2C: THE NEW JERSEY CODE OF CRIMINAL JUSTICE

N.J. STAT. ANN. § 2C: 24-7.1 (2023)

Endangering another person; offense created; degree of crime.

(a)

(1) A person commits a disorderly person's offense if he recklessly engages in conduct which creates a substantial risk of bodily injury to another person.

(2) A person commits a crime of the fourth degree if he knowingly engages in conduct which creates a substantial risk of serious bodily injury to another person.

(3) A person commits a crime of the third degree if he knowingly engages in conduct which creates a substantial risk of death to another person.

(b)

(1) A person commits a crime of the fourth degree if he recklessly engages in conduct which creates a substantial risk of bodily injury to a person with a developmental disability.

(2) A person commits a crime of the third degree if he knowingly engages in conduct which creates a substantial risk of serious bodily injury to a person with a developmental disability.

(3) A person commits a crime of the second degree if he knowingly engages in conduct which creates a substantial risk of death to a person with a developmental disability.

(c) As used in this act, "developmental disability" has the meaning ascribed to it in section 3 of P.L.1977, c.82 (C.30:6D-3).

(d) Nothing in this act shall preclude an indictment and conviction for any other offense defined by the laws of this State.

N.J. STAT. ANN. § 2C:14-1 (2023)

Definitions

The following definitions apply to this chapter:

(c) "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio, or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction. The depth of insertion shall not be relevant as to the question of commission of the crime;

N.J. STAT. ANN. § 2C:43-8 (2023)

Sentence of imprisonment for disorderly persons offenses and petty disorderly persons offenses

A person who has been convicted of a disorderly persons offense or a petty disorderly persons offense may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed 6 months in the case of a disorderly persons offense or 30 days in the case of a petty disorderly persons offense.

N.J. STAT. ANN. § 2C:43-6 (2023) **

Sentence for imprisonment of a crime: ordinary terms; mandatory terms

(a) Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:

> (2) In the case of a crime of the second degree, for a specific term of years which shall be fixed by the court and shall be between five years and 10 years;
>
> (3) In the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between three years and five years;
>
> (4) In the case of a crime of the fourth degree, for a specific term which shall be fixed by the court and shall not exceed 18 months.

N.J. STAT. ANN. § 2C:43-3 (2023) **

Fines and restitution

A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both, such fine not to exceed:

(a)

> (2) $150,000.00 when the conviction is of a crime of the second degree

(b)

> (1) $15,000.00 when the conviction is of a crime of the third degree;
>
> (2) $10,000.00 when the conviction is of a crime of the fourth degree;

N.J. STAT. ANN. § 2C:43-2.3 (2023)

AIDS and HIV infection testing ordered by court under certain circumstances

(a) In addition to any other disposition made pursuant to law, a court shall order a person convicted of, indicted for or formally charged with a criminal offense, a disorderly persons offense or a petty disorderly persons offense, to submit to an approved serological test for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS if:

> (1) in the course of the commission of the offense, including the immediate flight thereafter or during any investigation or arrest related to that offense, a law enforcement officer, the victim or

other person suffered a prick from a hypodermic needle, provided there is probable cause to believe that the defendant is an intravenous user of controlled dangerous substances; or

(2) in the course of the commission of the offense, including the immediate flight thereafter or during any investigation or arrest related to that offense, a law enforcement officer, the victim or other person had contact with the defendant which involved or was likely to involve the transmission of bodily fluids.

The court may order a person to submit to an approved serological test for AIDS or infection with the HIV or any other related virus identified as a probable causative agent of AIDS if in the course of the performance of any other law enforcement duties, a law enforcement officer suffers a prick from a hypodermic needle, provided that there is probable cause to believe that the defendant is an intravenous user of controlled dangerous substances, or had contact with the defendant which involved or was likely to involve the transmission of bodily fluids. The court shall issue such an order only upon the request of the law enforcement officer, victim of the offense or other affected person made at the time of indictment, charge or conviction. If a county prosecutor declines to make such an application within 72 hours of being requested to do so by the law enforcement officer, the law enforcement officer may appeal to the Division of Criminal Justice in the Department of Law and Public Safety for that officer to bring the application. The person shall be ordered by the court to submit to such repeat or confirmatory tests as may be medically necessary.

(d) The result of a test ordered pursuant to subsection a. of this section shall be confidential and health care providers and employees of the Department of Corrections, the Office of Victim-Witness Advocacy, a health care facility or counseling service shall not disclose the result of a test performed pursuant to this section except as authorized herein or as otherwise authorized by law or court order. The provisions of this section shall not be deemed to prohibit disclosure of a test result to the person tested.

TITLE 26. HEALTH AND VITAL STATISTICS

N.J. STAT. ANN. § 26:4-27 (2023)

Definitions

As used in this article:

"Venereal disease" includes syphilis, gonorrhea, chancroid, lymphogranuloma venereum and granuloma inguinale.

N.J. STAT. ANN. § 26:4-28 (2023)

Venereal diseases declared infectious and communicable

Syphilis, gonorrhea, chancroid, lymphogranuloma venereum and granuloma inguinale are hereby declared to be infectious and communicable diseases, dangerous to the public health.

N.J. STAT. ANN. § 26:4-30 (2023)

Examination of suspected person on report from director

When a local board or health officer receives a report from the director or from any person authorized by the director to make such report, that a person within the jurisdiction of the local board or health

officer is, or is suspected to be, a person with a sexually transmitted infection, the board or health officer may cause a medical examination to be made of the person for the purpose of ascertaining whether or not such person is in fact a person with a sexually transmitted infection.

N.J. STAT. ANN. § 26:4-31 (2023)

Duty of suspected person to be examined

Any person requested by the local board or health officer to be examined under the authority of section 26:4-30 of this title shall submit to examination and permit necessary specimens of blood or bodily discharges to be taken for laboratory examination.

N.J. STAT. ANN. § 26:4-32 (2023)

Prostitute; examination; certificate prohibited

A prostitute or other lewd person shall be considered a suspected person within the meaning of section 26:4-30 of this title and may be required to submit to examination at any time.

No certificate of freedom from venereal disease shall be issued to any prostitute under any circumstances whatever.

N.J. STAT. ANN. § 26:4-36 (2023)

Quarantine; persons who may be quarantined; duration; penalty

Quarantine for venereal disease has the purpose of preventing transmission of venereal diseases and shall mean and include restriction of the actions, behavior and movements of a person or confinement to a defined place and area.

A local board or health officer or any physician shall report to the State department, and any licensed health officer or the State Director of Health or the authorized representative of either may quarantine for venereal disease the following persons:

> (a) Any person who has or who is believed upon reasonable grounds to have a venereal disease in its infectious stage, if he is likely to spread the disease to others by reason of his failure or refusal to submit to treatment or by reason of his habits, or for any other reason.
>
> (b) Any person who refuses or neglects to submit to a medical examination for venereal disease required under authority of any section of this article.
>
> (c) Any person who refuses or neglects to supply, or to permit to be taken, the specimens required or requested under authority of any section of this article.
>
> (d) Any person who refuses or neglects to submit to treatment for a venereal disease in an infectious stage.

Such quarantine shall continue until the infected person is free from the disease or until such time as in the judgment of the health officer or his authorized representative who established the quarantine or by the State director or his authorized representative, it shall be safe for such infected person to be released from quarantine.

Any person included in paragraphs b, c or d of this section shall be liable to the penalty provided for in section 26:4-49 in addition to the imposition of the penalty prescribed by section 26:4-129.

N.J. STAT. ANN. § 26:4-37 (2023)

Quarantine, complaint; warrant; commitment

In establishing quarantine for venereal disease, the licensed health officer or the State Commissioner of Health, or the authorized representative of either shall by notice in writing define the restriction of the actions, behavior and movements of the person or the place and the limits of the area within which the person is to be quarantined. Such person while so quarantined shall observe and obey said notice restricting his actions, behavior and movements or remain within the place and area defined by said health officer, director or representative in said notice. The custodian, if any, of such person shall safely keep and confine said person and said notice shall be sufficient warrant and authorization therefore.

Whenever a licensed health officer or the State Commissioner of Health or the authorized representative of either shall quarantine any person for venereal disease under authority of this article, he may also order the removal of such person to the place and area within which the person is to be quarantined for venereal disease, and the person shall proceed to such place at the time and in the manner specified.

A licensed health officer or the State Commissioner of Health or the authorized representative of either one of them may file a complaint with any municipal court in the county or with the Superior Court against the following persons:

(a) Any person, who while quarantined for venereal disease fails, refuses or neglects to observe and obey said notice restricting his actions, behavior and movements, or to remain within the place and area defined by said health officer, director or representative or to proceed to a place for quarantine for venereal disease at the time and in the manner specified by said health officer, director or representative.

(b) Any person who fails refuses or neglects to submit to, observe or obey the conditions of any commitment or to comply with any order made by any court under authority of this article.

(c) Any of the persons included in section 26:4-36 of this article.

If a warrant issues, it shall be directed to the sheriff or any constable in the county, or any police officer.

The court shall determine the matter without a jury. If the court finds that the person is one of those listed in this section against whom a complaint may be filed, it may commit such person to a State, county, or municipal hospital which will receive the person, or to any other place or institution suitable for and willing to receive the person for detention, examination, care and treatment, whether the hospital, place or institution be located within or without the county, or to the county jail or may make any order for the examination, care or treatment of said person which may be deemed proper under the circumstances.

The complaint, commitment, and all other papers relating to the case shall be impounded and shall not be open to public inspection, and hearings shall not be open to the public.

Any person committed under the provisions of this statute shall be held in the place to which committed until discharged by the court which heard the case or by the Superior Court or by order of the Commissioner of the State Department of Health.

The local health officer having jurisdiction shall report to the State department any person quarantined for venereal disease, or upon whom a summons is served or against whom a warrant is issued under authority of this article except where the action is initiated by the State Commissioner of Health or his authorized representative.

N.J. STAT. ANN. § 26:4-41 (2023)

Contents of reports secret; exceptions

No person shall disclose the name or address or the identity of any person known or suspected to have a venereal disease except to the person's physician or to a health authority, or, in the event of a prosecution under this article or under the criminal law of this State, to a prosecuting officer or to the court; provided, however, that the person's physician or a health authority may disclose the name, address or identity of such person when and only when the physician or health authority shall deem such disclosure necessary in order to protect the health or welfare of the person or of his family or of the public; and provided further, that nothing herein shall be construed as in any way restricting such disclosures to the State Department of Health.

Documents, records or reports which contain or would reveal the name, address or identity of a person known or suspected to have a venereal disease or treated for such a disease shall not be open to inspection except by an authorized representative of the State Department of Health or, in the event of a prosecution under this article or under the criminal laws of this State, by a prosecuting officer or the court; provided, however, that the custodian of any such documents, records or reports may permit inspection of them by a licensed physician or a health official whenever said custodian shall deem such inspection necessary in order to protect the health or welfare of the person or of his family or of the public and the custodian of any hospital record shall permit examination of such record in connection with any claim for compensation or damages for personal injury or death resulting therefrom by any person authorized by any other law to make such examination.

N.J. STAT. ANN. § 26:4-48 (2023)

Rules and regulations; authority of State Director of Health as to quarantine or examination

The State Department shall make and enforce any rule or regulation for the quarantining and treatment of a venereal disease which it may deem necessary for the protection of the public health.

The State Department of Health shall by rule and regulation define the stages of venereal diseases to be regarded as infectious within the meaning of this article.

The State Director of Health or any person or official authorized by him in writing for that purpose shall have the same power and authority as that conferred by any section or sections of this article upon any local board of health or health officer for the purposes of isolation or quarantine or to require or request examinations or submissions of specimens or treatment, observation or care for venereal diseases.

N.J. STAT. ANN. § 26:4-49 (2023) **

Additional penalty for second offense

In case a defendant shall have been twice convicted, within the space of six months, of the violation of the same provision of this article and due proof of such fact is made, the court may, in addition to the imposition of the penalty prescribed by section 26:4-129 of this Title, cause the defendant to be imprisoned, with or without hard labor, for any number of days not exceeding one for each dollar of the penalty.

N.J. STAT. ANN. § 26:4-49.7 (2023)

Examination and treatment by order of court

When it appears to the Superior Court or to any municipal court, from the evidence or otherwise, that any person coming before such court on any charge, may have a venereal disease in an infectious stage, it shall be the duty of such court to order the person to submit to a medical examination for venereal diseases, in a jail or at a hospital or clinic or by such physician as may be selected or appointed for the purpose, and if found to have a venereal disease in an infectious stage to submit to treatment in such jail, hospital or clinic or by such officer or to other treatment permitted under the medical practice act.

N.J. STAT. ANN. § 26:4-49.8 (2023)

Examination and treatment for venereal disease of inmates of institutions

The warden or other person in charge of any jail, house of correction, or other penal or correctional institution shall require and cause a medical examination for venereal diseases to be made of any person therein confined for a period of seven days or longer and such warden or other person in charge may require such examination to be made of any person therein confined for a shorter period of time. The superintendent or other person in charge of any detention or contagious disease hospital, or any State, county or city charitable institution shall require and cause a medical examination for venereal diseases to be made of all persons admitted as soon as practicable after admission. Any board or agency operating such jail or institution shall provide a physician licensed to practice medicine and suitable facilities, equipment and supplies to examine inmates for venereal disease and to treat any inmate who is known or found to have a venereal disease and who is in need of treatment. The warden, superintendent or other person in charge of such jail or institution may isolate any inmate who refuses to submit to such examination or who refuses to permit the taking of specimens or any inmate with an infectious venereal disease. If a person has a venereal disease or if any person has refused to submit to examination or to allow specimens to be taken, the warden, superintendent or other person in charge shall notify the State department and may also notify the local health officer of the expected date of release of such person and the facts of the case. Such notification shall be made, if possible, at least five days prior to the actual date of release, and shall be made not later than the day following the date of release in any case.

N.J. STAT. ANN. § 26:4-129 (2023) **

Liability to penalties in general

Except as otherwise specifically provided in this chapter, a person who violates any of the provisions of this chapter, or fails to perform any duty imposed by this chapter at the time and in the manner

provided, shall be liable to a penalty of not less than ten nor more than one hundred dollars for each offense.

N.J. STAT. ANN. § 26:5C-9 (2023)

Disclosure by order of court pursuant to showing of good cause

(a) The record of a person who has or is suspected of having AIDS or HIV infection may be disclosed by an order of a court of competent jurisdiction which is granted pursuant to an application showing good cause therefor. At a good cause hearing the court shall weigh the public interest and need for disclosure against the injury to the person who is the subject of the record, to the physician-patient relationship, and to the services offered by the program. Upon the granting of the order, the court, in determining the extent to which a disclosure of all or any part of a record is necessary, shall impose appropriate safeguards to prevent an unauthorized disclosure.

(b) A court may authorize disclosure of a person's record for the purpose of conducting an investigation of or a prosecution for a crime of which the person is suspected, only if the crime is a first-degree crime and there is a reasonable likelihood that the record in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution.

(c) Except as provided in subsections a. and b. of this section, a record shall not be used to initiate or substantiate any criminal or civil charges against the person who is the subject of the record or to conduct any investigation of that person.

New Jersey Administrative Code

TITLE 8. HEALTH

N.J. ADMIN. CODE § 8:57-1.11 (2023)

Isolation and quarantine for communicable disease

(a) A health officer or the Department, upon receiving a report of a communicable disease, shall, by written order, establish such isolation or quarantine measures as medically and epidemiologically necessary to prevent or control the spread of the disease.

1. If, in the medical and epidemiologic judgment of the health officer or the Department, it is necessary to hospitalize the ill person in order to provide adequate isolation, a health officer or the Department shall promptly remove, or cause to be removed, that person to a hospital.

2. Such order shall remain in force until terminated by the health officer or the Department.

3. A health officer may use Quarantine and Isolation - Model Rules for Local Boards of Health, available at subchapter Appendix B, as a guide for establishing isolation and quarantine measures.

i. Quarantine and Isolation - Model Rules for Local Boards of Health, is written and published by the Communicable Disease Service, New Jersey Department of Health and Senior Services, and is available at subchapter Appendix B, and by written request to the Communicable Disease Service, New Jersey Department of Health and Senior

Services, PO Box 369, Trenton, NJ 08625-0369, or online through the Department's web page at http://www.state.nj.us/health/cd/index.html;

(b) A health officer or the Department may restrict access of the persons permitted to come in contact with or visit a person who is hospitalized or isolated pursuant to this section where medically or epidemiologically necessary to prevent the spread of the disease.

(c) The Department or health officer may, by written order, isolate or quarantine any person who has been exposed to a communicable disease as medically or epidemiologically necessary to prevent the spread of the disease, providing such period of restriction shall not exceed the period of incubation of the disease.

(d) Any person who is responsible for the care, custody, or control of a person who is ill or infected with a communicable disease shall take all measures necessary to prevent transmission of the disease to other persons.

N.J. ADMIN. CODE § 8:57-1, APP. B (2016)

Quarantine and Isolation – Model Rules for Local Boards of Health

1.1 Applicability

The provisions of the model rules are applicable in jurisdictions in which the local board of health has adopted the model rules by reference in accordance with New Jersey law, but no local board of health is required to adopt the model rules.

1.2 Definitions

"Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected, based on signs, symptoms or laboratory analysis, with a contagious or possibly contagious disease from non-isolated individuals, to prevent or limit the transmission of the disease to non-isolated individuals.

"Quarantinable disease" means any communicable disease which presents a risk of serious harm to public health and which may require isolation or quarantine to prevent its spread.

"Quarantine" means the physical separation and confinement of an individual or groups of individuals, who are or may have been exposed to a communicable or possibly communicable disease and who do not show signs or symptoms of a communicable disease, from unexposed individuals, to prevent or limit the transmission of the disease to unexposed individuals.

1.3 General provisions

(b) The board is authorized to impose and enforce quarantine and isolation restrictions, but the board shall rarely impose quarantine and isolation restrictions.

1. If a quarantinable disease occurs in New Jersey, the board may isolate or quarantine individuals with a suspected or active quarantinable disease and their contacts as the particular situation requires.

2. The board shall complete any quarantine or isolation in accordance with this rule and N.J.A.C. 8:57-1.11.

1.4 Conditions and principles

(a) The board shall adhere to all of the following conditions and principles when isolating or quarantining individuals or a group of individuals:

1. The isolation or quarantine shall be by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others and may include, but is not limited to, confinement to private homes, other private premises, or public premises.

2. Isolated individuals shall be confined separately from quarantined individuals.

3. The health status of isolated or quarantined individuals shall be monitored regularly to determine if the individuals require further or continued isolation or quarantine.

4. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable or possibly communicable disease, the individual shall be promptly removed to isolation.

5. Isolated or quarantined individuals shall be immediately released when the board determines that the individuals pose no substantial risk of transmitting a communicable or possibly communicable disease.

6. The board shall address the needs of isolated or quarantined individuals in a systemic and competent fashion including, but not limited to, providing adequate food; clothing; shelter; means of communicating with those in and outside of isolation or quarantine; medication; and competent medical care.

1.5 Isolation and quarantine premises

(b) An individual subject to isolation or quarantine shall obey the rules and orders of the board and shall not go beyond the isolation or quarantine premises without appropriate authorization and only while using appropriate infection control precautions to protect unexposed individuals.

1.6 Isolation and quarantine

(a) The board may:

1. Isolate individuals who are presumably or actually infected with a quarantinable disease;

2. Quarantine individuals who have been exposed to a quarantinable disease;

3. Establish and maintain places of isolation and quarantine; and

4. Adopt emergency rules and issue orders as necessary to establish, maintain, and enforce isolation or quarantine.

1.7 Appeal from order imposing isolation or quarantine

(a) The subject of a board order imposing isolation or quarantine may appeal a written order by submitting a written appeal within ten days of receipt of the written order.

2. Unless stayed by order of the board or court with jurisdiction, the written order for quarantine or isolation shall remain in force and effect until the appeal is finally determined and disposed of upon its merits.

(b) The appeal proceeding shall be conducted in accordance with this rule [or insert specific board rule governing appeal proceedings].

1. The board shall hold the proceeding as soon as is practicable, and in no case later than ten days from the date of receipt of the appeal.

2. The board may hold the hearing by telephonic or other electronic means if necessary to prevent additional exposure to the person with the communicable or possibly communicable disease.

3. In extraordinary circumstances and for good cause shown, the board may continue the proceeding date for up to ten days, giving due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence.

4. At the appeal proceedings, the subject of the appeal shall have the right to introduce evidence on all issues relevant to the order.

5. The board, by majority vote, may modify, withdraw, or order compliance with the order under appeal.

(c) The aggrieved party to the final decision of the board may petition for judicial review of that action by filing an action in the appropriate court with jurisdiction.

1. Petitions for judicial review shall be filed within 30 days after the decision becomes final.

(d) The board acknowledges that in certain circumstances the subject or subjects of a board order may desire immediate judicial review of a board order in lieu of proceeding with the board's appeal process.

1. The board may consent to immediate jurisdiction of a court with jurisdiction when requested by the subject or subjects of a board order and justice so requires.

2. Unless stayed by order of the board or a court with jurisdiction, the written order for quarantine or isolation shall remain in force and effect until the judicial review is finally determined and disposed of upon its merits.

1.8 Rights of individuals and groups of individuals subject to isolation or quarantine

(a) Any individual or group of individuals subject to isolation or quarantine shall have the following rights:

1. The right to be represented by legal counsel;

2. The right to be provided with prior notice of the date, time, and location of any hearing;

3. The right to participate in any hearing, which could be by telephonic or electronic means;

4. The right to respond and present evidence and argument on the individual's own behalf in any hearing;

5. The right to cross-examine witnesses who testify against the individual; and

6. The right to view and copy all records in the possession of the board which relate to the subject of the written order.

1.10 Implementation and enforcement of isolation and quarantine

(c) Any individual who violates a lawful board or Department order for isolation or quarantine, whether written or verbal, shall be subject to a penalty pursuant to N.J.S.A. 26:4-129.

New Mexico

Analysis

There are no statutes explicitly criminalizing HIV or STI transmission or exposure in New Mexico.

However, in some states, people living with HIV (PLHIV) have been prosecuted for HIV exposure under general criminal laws, such as reckless endangerment and aggravated assault.

At the time of this publication, the only criminal prosecution that the authors are aware of is that of a PLHIV charged with battery for licking the cheek and mouth of a police officer over a decade ago.[1] The news article did not make clear whether the battery charge was based on the woman's HIV status.[2]

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.*

[1] *Woman Charged for Licking Officer,* ALBUQUERQUE JOURNAL, Aug. 17 1998, at B8.
[2] *Id.*

New York

Analysis

People living with a venereal disease may be criminally liable for having sex.

Persons who are aware they are living with an "infectious venereal disease" may be guilty of a misdemeanor if they have sex with another person.[1] Neither the intent to transmit nor actual transmission of the venereal disease is necessary for prosecution. The statute provides no indication of whether disclosure of one's health status, consent prior to engaging in sexual activity, or using protection would be a defense under the statute. Persons convicted under this statute may face up to one year in prison and a $1,000 fine.[2]

Although the statute does not define "infectious venereal disease," the public health code defines "communicable disease" as "infectious, contagious or communicable disease" and provides the commissioner of health of New York the authority to promulgate a list of sexually transmitted diseases (STDs).[3]

In 2017, the New York State Department of Health classified HIV as a sexually transmitted infection.[4] Previously, HIV was classified as a "serious infectious disease."[5] The law now requires STD clinics operated by local health departments to provide diagnosis and treatment, including prevention services, to persons diagnosed or at risk for HIV. Further, the amendment allows minor to consent to pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP) without parental consent.

The New York Department of Health (NYSDOH) has gone on record in a public response to state that the NYSDOH construes the law as inapplicable to individuals where (1) the individual does not know their positive status and (2) the individual disclosed their posititve status to their partner prior to engaing

[1] NY PUB. HEALTH LAW § 2307 (2016).

[2] N.Y. PENAL LAW §§ 55.10(2)(b); 55.05(2)(a); 70.15(1); 80.05(1) (2015)

[3] NY PUB. HEALTH LAW §§ 2, 2311, (2016); N.Y. COMP. R. & REGS. 10 § 23.1 (2016) (listed STDs include chlamydia trachomatis infection, gonorrhea, syphilis, non-gonococcal urethritis, non-gonococcal (mucopurulent) cervicitis, trichomoniasis, lymphogranuloma venereum, chancroid, granuloma inguinale, human papilloma virus (HPV), genital herpes simplex, pelvic inflammatory disease (PID) gonococcal/non-gonococcal, yeast (candida) vaginitis, bacterial vaginosis, pediculosis pubis, scabies).

[4] N.Y. COMP. R. & REGS. 10 § 23.1 (2017).

[5] ID..

in sex.[6] The NYSDOH went further and stated that the Department "interprets the law as only applying to individuals who knowingly expose another individual to an acute, bacterial venereal disease such as syphilis or gonorrhea."[7] This definition of disease does not encompass HIV. However, the response from the NYSDOH does not have binding legal authority. However, the Supreme Court has ruled that courts should defer to guidance from public health authorities.[8]

People living with HIV (PLHIV) have been prosecuted under general criminal laws and may be subject to indefinite civil commitment.

In 1997, Nushawn Williams pled guilty to two counts of statutory rape and two counts of reckless endangerment[9] and was sentenced to 12 years imprisonment.[10] The Williams case received extensive media attention after local health and law enforcement officials publicized his HIV status, ostensibly "to try to stop further spread of the virus by his infected sex partners."[11] In 2010, days before Williams' sentence neared completion, the State moved to keep Williams in indefinite civil confinement under the Sex Offender Management Treatment Act of 2007. [12] Known as "article 10," the law is reserved for extreme cases to confine the most dangerous sex offenders who "have mental abnormalities that predispose them to engage in repeated sex offenses."[13]

The Supreme Court of New York, Appellate Division, Fourth department has upheld Williams' civil confinement over multiple challenges, including the use of HIV status as a factor in the determination that he has a mental abnormality that predisposes him to engage in repeated sex offenses.[14] Rather, the Court accepted the State's argument that such a determination was based solely on "diagnoses of antisocial personality disorder, psychopathy, sexual preoccupation, and polsysubstance abuse, together with [his] failure to complete sex offender treatment, his poor prison disciplinary record, his pattern of sexual misconduct, . . . and his stated intention to commit further sex offenses."[15] However, the record is questionable in regard to both the quality of evidence to support such diagnoses and conclusions, and the extent to which HIV was indeed a factor in making a determination of Williams' civil commitment.[16]

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[6] N.Y. STATE DEP'T OF HEALTH, EXPANSION OF MINOR CONSENT FOR HIV Treatment ACCESS AND PREVENTION (2017), https://regs.health.ny.gov/sites/default/files/pdf/recently_adopted_regulations/Expansion%20of%20Minor%20Consent%20for%20HIV%20Treatment%20%20Access%20and%20Prevention.pdf.

[7] *Id*.

[8] *See* Bragdon v. Abbott, 524 U.S. 624, 650 (1998) ("In assessing the reasonableness of petitioner's actions, the views of public health authorities, such as the U.S. Public Health Service, CDC, and the National Institutes of Health, are of special weight and authority.")

[9] The reckless endangerment counts entailed engaging in unprotected sexual intercourse while having knowledge of his HIV status.

[10] Danny Hakim, *Man Who Spread H.I.V. May Be Held*, N.Y. TIMES, Apr. 13, 2010, *available at* http://www.nytimes.com/2010/04/14/nyregion/14nushawn.html?_r=0. *See also State v. Williams*, 31 N.Y.S.3d 362, 364 (N.Y. App. Div. 2016).

[11] *Id.*; Associated Press, *State Can Try to Detain Man Who Spread H.I.V.*, N.Y. TIMES, July 19, 2010, *available at* http://www.nytimes.com/2010/07/20/nyregion/20nushawn.html?ref=nushawnjwilliams.

[12] *Id.*

[13] N.Y. MENTAL HYG. LAW § 10.01 (2015).

[14] *Williams supra* note 10.

[15] *Id.* at 365.

[16] On December 15, 2016, the New York Court of Appeals denied the motion for leave to appeal.

Although PLHIV have previously been convicted of reckless endangerment,[17] in 2015 the New York Court of Appeals affirmed the reduction of a first-degree reckless endangerment prosecution to a second-degree reckless endangerment charge for a man who had anal sex without disclosing his HIV status.[18] Although the defendant's sex partner tested positive for HIV, the Supreme Court reduced the criminal charge to a Class A misdemeanor, which carries a maximum penalty of one year's imprisonment and a fine of up to $1,000,[19] because, based on expert testimony "about advances in medical treatment, neither HIV nor AIDS poses a grave risk of death,"[20] and because there was insufficient evidence to hold that the defendant acted with the requisite "depraved mental state."[21]After the Appellate Division affirmed both grounds for the dismissal, the Court of Appeals affirmed the latter, reasoning that when only one person is endangered, the defendant must exhibit "wanton cruelty, brutality or callousness directed against a particularly vulnerable victim, combined with utter indifference to the life or safety of the helpless target of the perpetrator's inexcusable acts,"[22] and that the defendant's conduct, though "reckless, selfish and reprehensible," did not meet that level of depraved indifference.[23] The court declined to decide whether "HIV infection creates a grave and unjustifiable risk of death in light of the medical advances in treatment."[24] However, the shift in the "depraved indifference" analysis may signal the Court's willingness to more thoroughly examine issues of transmission risk and intent to harm.

The bodily fluids of a PLHIV may not be considered a "deadly weapon."

In *People v. Plunkett*, the Court of Appeals of New York shifted away from previous cases holding that bodily fluids of PLHIV may be considered a deadly weapon.[25] Plunkett, a PLHIV, was convicted of aggravated assault upon a police officer after he bit the officer's hand during an arrest.[26] A conviction for this offense requires that the defendant used a deadly weapon or dangerous instrument.[27] The trial court found that, because the "defendant's saliva was 'infected with the AIDS virus,' . . . [it] was a substance 'readily capable of causing death or other serious physical injury' and, as such, qualified as a dangerous instrument for purposes of the aggravated assault statute."[28] However, on appeal, the court dismissed the indictment of aggravated assault upon a police officer because an individual's body part could not be deemed an "instrument" under the statute, and thus "body parts, even if otherwise corresponding to the terms 'substance,' 'article,' or 'instrument,' categorically could not qualify as

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[17] *See, e.g., People v. Hawkrigg*, 525 N.Y.S.2d 752 (Co. Ct. 1988) (defendant's reckless endangerment conviction affirmed because HIV status sufficient to show conscious disregard of a substantial and unjustifiable risk that their conduct would result in transmission); *see also Williams supra* note 10.

[18] *People v. Williams*, 3 N.Y.S.3d 305 (N.Y. 2015).

[19] N.Y. PENAL LAW §§ 120.20; 70.15(1); 80.05(1) (2015). Reckless endangerment in the first degree is a Class D felony, punishable by up to seven years' imprisonment and a fine of up to $5,000. N.Y. PENAL LAW §§ 120.25; 70.00(2)(d); 80.00(1)(a) (2015).

[20] *Williams*, *supra* note 18 at 307.

[21] *Id.*

[22] *Id*

[23] *Id*.

[24] *Id.* at 308.

[25] *People v. Plunkett*, 971 N.E.2d 363 (N.Y. 2012).

[26] *Id.* at 364.

[27] *Id.*

[28] *Id.* at 365.

'dangerous instruments' within the meaning of Penal Law § 10.00(13)."[29] The Court stated that its opinion did not function to prevent punishment of an individual based on the harm actually inflicted.[30]

Medical records may be used in the prosecution of PLHIV or persons with other STDs.

Medical records must generally be kept confidential, but they may be used to prosecute persons with STDs, under the State's venereal disease exposure statute,[31] or PLHIV under a general criminal law.[32]

In *In re Gribetz*, an attempted assault and reckless endangerment case, the court granted the state's motion to access the defendant's medical records to prove her HIV status, finding that "[w]ithout such proof, the People would be unable to prove the defendant's state of mind (that she acted with depraved indifference to human life) or to prove a grave risk of death to the victim."[33] Thus the court found a "compelling need"[34] to disclose the defendant's confidential HIV information.[35]

Local boards of health may require isolation of persons to limit the spread of communicable diseases.

Local boards of health may, "provide for care and isolation of cases of communicable disease,"[36] including chancroid, chlamydia, gonococcal infection, hepatitis, and syphilis.[37] Persons subject to medical orders have the rights to notice, to legal counsel, to cross-examine witnesses against them, and to produce evidence and witnesses on their behalf.[38]

Violating public health laws may result in criminal and civil penalties.

Violating any of the public health laws discussed above carries a civil penalty up to $2,000, in addition to any other penalties described, for every such violation.[39] The penalty may be increased to $5,000 for subsequent violations within a year, or $10,000 if the violation directly results in serious physical harm to any person.[40]

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[29] *Id.* at 368.

[30] *Id.*

[31] NY PUB. HEALTH LAW § 2306 (2016).

[32] NY PUB. HEALTH LAW § 2785 (2016). Under this statute, HIV-related information may also be used in civil proceedings. A court order is required for access in both contexts.

[33] *Application of Gribetz*, 605 N.Y.S.2d 834, 836 (Co. Ct. 1994). *See also Carmona v. Connolly*, 07 Civ. 11300, at *23 (S.D.N.Y. Jan. 21, 2011) (finding admission into evidence of medical records showing defendant's HIV status does not violate his due process rights under the United States Constitution).

[34] *Gribetz, supra* note 33.

[35] *Id.*

[36] NY PUB. HEALTH LAW § 2100 (2016); N.Y. COMP. R. & REGS. 10 §§ 2.1, 2.27, 2.29 (2016).

[37] N.Y. COMP. R. & REGS. 10 § 2.1 (2016). *In re Smith*, 40 N.E. 497 (N.Y. 1895) (prohibiting quarantine unless a person is infected with a contagious disease or has been exposed to it).

[38] N.Y. PUB. HEALTH LAW § 12-A (2016).

[39] N.Y. PUB. HEALTH LAW § 12; 12-b ("A person who willfully violates or refuses or omits to comply with any lawful order or regulation prescribed by any local board of health or local health officer, is guilty of a misdemeanor. . .") (2016).

[40] *Id.*

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.*

New York Public Health Law

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.*

N.Y. PUB. HEALTH LAW § 2307 (2016) **

Venereal disease; person knowing himself to be infected

Any person who, knowing himself or herself to be infected with an infectious venereal disease, has sexual intercourse with another shall be guilty of a misdemeanor.

N.Y. PUB. HEALTH LAW § 2 (2016)

Definitions

(l) Communicable disease. The term “communicable disease” means infectious, contagious or communicable disease.

(n) Sexually transmissible disease. The term "sexually transmissible disease" shall mean a disease that appears on the list of diseases promulgated by the commissioner pursuant to section twenty-three hundred eleven of this chapter.

N.Y. Pub. Health Law § 12 (2016) **

Violations of health laws or regulations; penalties and injunctions

1. [Expires April 1, 2020]

(a) Except as provided in paragraphs (b) and (c) of this subdivision, any person who violates, disobeys or disregards any term or provision of this chapter or of any lawful notice, order or regulation pursuant thereto for which a civil penalty is not otherwise expressly prescribed by law, shall be liable to the people of the state for a civil penalty of not to exceed two thousand dollars for every such violation.

(b) The penalty provided for in paragraph (a) of this subdivision may be increased to an amount not to exceed five thousand dollars for a subsequent violation if the persons committed the same violation, with respect to the same or any other person or persons, within 12 months of the initial violation for which a penalty was assessed pursuant to paragraph (a) of this subdivision and said violations were a serious threat to the health and safety of an individual or individuals.

(c) The penalty provided for in paragraph (a) of this subdivision may be increased to an amount not to exceed ten thousand dollars if the violation directly results in serious physical harm to any patient or patients.

N.Y. Pub. Health Law § 12-a (2016)

Formal hearings; notice and procedure

1. The commissioner, or any person designated by him for this purpose, may issue subpoenas and administer oaths in connection with any hearing or investigation under or pursuant to this chapter, and it shall be the duty of the commissioner and any persons designated by him for such purpose to issue subpoenas at the request of and upon behalf of the respondent.

2. The commissioner and those designated by him shall not be bound by the laws of evidence in the conduct of hearing proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it.

3. Notice of hearing shall be served at least fifteen days prior to the date of the hearing, provided that, whenever because of danger to the public health it appears prejudicial to the interests of the people of the state to delay action for fifteen days, the commissioner may serve the respondent with an order requiring certain action or the cessation of certain activities immediately or within a specified period of less than fifteen days and the commissioner shall provide an opportunity to be heard within fifteen days after the date the order is served.

4. Service of notice of hearing or order shall be made by personal service or by registered or certified mail. Where service, whether by personal service or by registered or certified mail, is made upon an infant, incompetent, partnership, corporation, governmental subdivision, board or commission, it shall be made upon the person or persons designated to receive personal service by article three of the civil practice law and rules.

5. The attorney-general may prefer charges, attend hearings, present the facts, and take any and all proceedings in connection therewith.

6. At a hearing, the respondent may appear personally, shall have the right of counsel, and may cross-examine witnesses against him and produce evidence and witnesses in his behalf.

7. Following a hearing, the commissioner may make appropriate determinations and issue an order in accordance therewith.

8. The commissioner may adopt, amend and repeal administrative rules and regulations governing the procedures to be followed with respect to hearings, such rules to be consistent with the policy and purpose of this chapter and the effective and fair enforcement of its provisions.

9. The provisions of this section shall be applicable to all hearings held pursuant to this chapter, except where other provisions of this chapter applicable thereto are inconsistent therewith, in which event such other provisions shall apply.

N.Y. Pub. Health Law § 12-b (2016)

Willful violation of health laws

1. A person who willfully violates or refuses or omits to comply with any lawful order or regulation prescribed by any local board of health or local health officer, is guilty of a misdemeanor; except, however, that where such order or regulation applies to a tenant with respect to his own dwelling unit or to an owner occupied one or two family dwelling, such person is guilty of an offense for the first violation punishable by a fine not to exceed fifty dollars and for a second or subsequent violation is guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars or by imprisonment not to exceed six months or by both such fine and imprisonment.

2. [Expires April 1, 2020] A person who willfully violates any provision of this chapter, or any regulation lawfully made or established by any public officer or board under authority of this chapter, the punishment for violating which is not otherwise prescribed by this chapter or any other law, is punishable by imprisonment not exceeding one year, or by a fine not exceeding ten thousand dollars or by both. Effective on and after April first, two thousand eight the comptroller is hereby authorized and

directed to deposit amounts collected in excess of two thousand dollars per violation to the patient safety center account to be used for purposes of the patient safety center created by title two of article twenty-nine-D of this chapter.

NY Pub. Health Law § 2100 (2016)

Communicable diseases; local boards of health and health officers; powers and duties

1. Every local board of health and every health officer shall guard against the introduction of such communicable diseases as are designated in the sanitary code, by the exercise of proper and vigilant medical inspection and control of all persons and things infected with or exposed to such diseases.

2. Every local board of health and every health officer may:

(a) provide for care and isolation of cases of communicable disease in a hospital or elsewhere when necessary for protection of the public health and,

N.Y. Pub. Health Law § 2306 (2016)

Sexually transmitted diseases; reports and information, confidential

All reports or information secured by a board of health or health officer under the provisions of this article shall be confidential except in so far as is necessary to carry out the purposes of this article. Such report or information may be disclosed by court order in a criminal proceeding in which it is otherwise admissible or in a proceeding pursuant to article ten of the family court act in which it is otherwise admissible, to the prosecution and to the defense, or in a proceeding pursuant to article ten of the family court act in which it is otherwise admissible, to the petitioner, respondent and attorney for the child, provided that the subject of the report or information has waived the confidentiality provided for by this section *except insofar as is necessary to carry out the purposes of this article. Information may be disclosed to third party reimbursers or their agents to the extent necessary to reimburse health care providers for health services; provided that, when necessary, an otherwise appropriate authorization for such disclosure has been secured by the provider*. A person waives the confidentiality provided for by this section if such person voluntarily discloses or consents to disclosure of such report or information or a portion thereof. If such person lacks the capacity to consent to such a waiver, his or her parent, guardian or attorney may so consent. An order directing disclosure pursuant to this section shall specify that no report or information shall be disclosed pursuant to such order which identifies or relates to any person other than the subject of the report or information. *Reports and information may be used in the aggregate in programs approved by the commissioner for the improvement of the quality of medical care provided to persons with sexually transmitted diseases; or with patient identifiers when used within the state or local health department by public health disease programs to assess co-morbidity or completeness of reporting and to direct program needs, in which case patient identifiers shall not be disclosed outside the state or local health department except as otherwise provided for in this section.*

N.Y. PUB. HEALTH LAW § 2311 (2016)

Sexually transmitted disease list

The commissioner shall promulgate a list of sexually transmitted diseases, such as gonorrhea and syphilis, for the purposes of this article. The commissioner, in determining the diseases to be included in such list, shall consider those conditions principally transmitted by sexual conduct, *other section of*

this chapter addressing communicable diseases and the impact of particular diseases on individual morbidity and the health of newborns.

N.Y. PUB. HEALTH LAW § 2785 (2016)

Court authorization for disclosure of confidential HIV related information

1. Notwithstanding any other provision of law, no court shall issue an order for the disclosure of confidential HIV related information, except a court of record of competent jurisdiction in accordance with the provisions of this section.

2. A court may grant an order for disclosure of confidential HIV related information upon an application showing: (a) a compelling need for disclosure of the information for the adjudication of a criminal or civil proceeding; (b) a clear and imminent danger to an individual whose life or health may unknowingly be at significant risk as a result of contact with the individual to whom the information pertains; (c) upon application of a state, county or local health officer, a clear and imminent danger to the public health; or (d) that the applicant is lawfully entitled to the disclosure and the disclosure is consistent with the provisions of this article.

New York Penal Law

N.Y. PENAL LAW § 55.05 (2015)

Classifications of felonies and misdemeanors

2. Misdemeanors. Misdemeanors are classified, for the purposes of sentence, into three categories as follows:

(a) Class A misdemeanors;

(b) Class B misdemeanors; and

(c) Unclassified misdemeanors.

N.Y. PENAL LAW § 55.10 (2015)

Designation of offenses

2. Misdemeanors

(b) Any offense defined outside this chapter which is declared by law to be a misdemeanor without specification of the classification thereof or of the sentence therefor shall be deemed a class A misdemeanor.

N.Y. PENAL LAW § 70.15 (2015) **

Sentences of imprisonment for misdemeanors and violation

1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be

for a period of no less than one year when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a felony or a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime.

N.Y. PENAL LAW § 80.05 (2015) **

Fines for misdemeanors and violation

1. Class A misdemeanor. A sentence to pay a fine for a class A misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding one thousand dollars, provided, however, that a sentence imposed for a violation of section 215.80 of this chapter may include a fine in an amount equivalent to double the value of the property unlawfully disposed of in the commission of the crime.

Compilation of Codes, Rules & Regulations of the State of New York

TITLE 10. DEPARTMENT OF HEALTH

N.Y. COMP. R. & REGS. 10 § 2.1 (2016)

Communicable diseases designated: cases, suspected cases and certain carriers to be reported to the State Department of Health

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commissioner's authority shall remain on the list only if confirmed by the Public Health Council at its next scheduled meeting:

Chancroid

Chlamydia trachomatis infection

Gonococcal infection

Hepatitis (A; B; C)

Syphilis, specify stage

N.Y. COMP. R. & REGS. 10 § 2.27 (2016)

Physician to isolate person with highly communicable disease and give instructions regarding prevention of spread of the disease

It shall be the duty of the attending physician immediately upon discovering a case of highly communicable disease (as defined in section 2.1 of this Part) to cause the patient to be isolated, pending official action by the health officer. Such physician shall also advise other members of the household regarding precautions to be taken to prevent further spread of the disease and shall inform them as to appropriate specific preventive measures. He shall in addition furnish the patient's attendant with such detailed instructions regarding the disinfection and disposal of infective secretions and excretions as may be prescribed by the State Commissioner of Health.

N.Y. COMP. R. & REGS. 10 § 2.29 (2016)

Other highly communicable diseases

Whenever a case of a highly communicable disease (as defined in section 2.1 of this Part) comes to the attention of the city, county or district health officer he shall isolate such patients as in his judgment he deems necessary.

North Carolina

Analysis

PLHIV must disclose their status to sexual partners under many circumstances and are required to take risk reduction measures during sex. Violations of these requirements can result in incarceration.[1]

Although there is no specific HIV-related criminal exposure statute in North Carolina, it is a misdemeanor to violate any administrative regulation concerning public health[2] and individuals are required to comply with "control measures" (e.g., requirements to submit to treatment, limitations on sexual activity, and disclosure to past and current sexual partners) directed at communicable disease.[3]

HIV and a variety of other communicable diseases are subject to a wide array of control measures in the state's Administrative Code.[4] PLHIV are generally prohibited from engaging in condomless sexual intercourse[5] unless certain exceptions apply: 1) the PLHIV is in care, adherent with the treatment plan of their attending physician, and has been virally supppressed[6] for at least six months at the time of intercourse; 2) the PLHIV's sexual partner is also HIV-positive; 3) the PLHIV's sexual partner is taking preexposure prophylaxis (PrEP) as prescribed by an attending physician; or 4) the sexual intercourse occurred as part of a sexual assault in which the PLHIV was the victim.[7]

PLHIV must disclose their status to future sex partners unless they have been virally suppressed for at least six months or they are the victim of a sexual assault.[8] If a PLHIV knows the date they acquired HIV, sexual or needle-sharing partners from that date forward must be notified of the individual's HIV status. [9] Otherwise, all such partners from the year preceding a positive test must be notified.[10] A

[1] The North Carolina Commission for Public Health revised control measures relating to HIV after a process of notice and public comment in 2017. The revised regulations went into effect on January 1, 2018.

[2] N.C. GEN. STAT. § 130A-25(a) (2017).

[3] N.C. GEN. STAT. § 130A-144(f) (2017).

[4] 10A N.C. ADMIN. CODE 41A.0202 (2018). Note that persons with Hepatitis B and Hepatitis C are subject to many of the same types of control measures and potential penalties as persons with HIV, including those related to sexual activities, disclosure, needle-sharing, the sale or donation of blood or other bodily products, and disclosure of sexual or needle-sharing partners to public health officials. *See* 10A N.C. ADMIN. CODE 41A.0203, 41A.0214 (2018)

[5] North Carolina regulations do not define the term "sexual intercourse" and so it is not entirely clear whether the control measures encompass activities like oral sex.

[6] Viral suppression is defined as below 200 copies per milliliter. 10A N.C. ADMIN. CODE 41A.0202(1)(a)(i) (2018).

[7] 10A N.C. ADMIN. CODE 41A.0202(1)(a)(i)-(iv) (2018).

[8] 10A N.C. ADMIN. CODE 41A.0202(1)(e) (2018).

[9] 10A N.C. ADMIN. CODE 41A.0202(1)(f) (2018).

[10] 10A N.C. ADMIN. CODE 41A.0202(1)(g) (2018).

PLHIV has the option of giving information on sexual and needle-sharing contacts to a public health disease intervention specialist who can assist with contacting sexual and needle-sharing partners.[11]

A maximum of two years' imprisonment may occur from violating these and other regulations directed at the control of HIV,[12] and an individual may not be released before the end of their sentence unless a District Court has determined that the release of the person would not "create a danger to the public health."[13]

- In April 2015, a PLHIV was charged with violating the public health HIV control measures after he had unprotected sex with two people and ostensibly did not disclose his status.[14]
- In November 2011, a 27-year-old PLHIV was charged with a public health violation for failing to tell a sexual partner of his HIV status.[15]
- In August 2008, a 23-year-old PLHIV was sentenced to 30 months of probation for having condomless sex with numerous partners.[16] He was later sentenced to six months of house arrest for further acts sex in violation of his probation.[17]

Physicians who treat PLHIV have a variety of duties related to counseling and notification procedures.

Physicians are required to notify the local health director when they have "cause" to suspect that a PLHIV is not following or cannot follow control measures and is "thereby causing a significant risk of transmission."[18] The control measures do not describe the kinds of conduct that would constitute "cause" sufficient to trigger this duty to report for a treating physician.[19] Physicians are also required to provide patients with a copy of control measures relating to HIV, and must advise PLHIV to notify all future sexual partners of their serostatus.[20]

When applicable, an attending physician is expected to obtain the consent of a PLHIV to notify and counsel that person's spouse as a potentially exposed person. Alternatively, an attending physician may provide information on a PLHIV's spouse to the Division of Public Health, which will then attempt to notify and counsel the spouse.[21]

Physicians who treat children living with HIV are required to contact the local health director if their child patient may "pose a significnat risk of transmission" in a school or daycare setting due to "open, oozing

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[11] 10A N.C. ADMIN. CODE 41A.0202(1)(f)-(g) (2018).
[12] N.C. GEN. STAT. §§ 130A144(f), 130A-25(a)-(b) (2017).
[13] N.C. GEN. STAT. § 130A-25(c) (2017).
[14] Anna Bulszewicz, *Man charged with not informing his partners of his positive HIV status*, WCTI12.COM, April 24, 2015, *available at* http://www.wcti12.com/news/man-charged-with-not-informing-partners-of-his-positive-hiv-status/15726238.
[15] *Police: Man didn't tell partner he has HIV*, ABC11, Nov. 4, 2011, *available at* http://abclocal.go.com/wtvd/story?section=news/local&id=8419702.
[16] *Club DJ on house arrest for violating probation*, WRAL.COM, Oct. 21, 2008, *available at* http://www.wral.com/news/news_briefs/story/3781930/.
[17] *Id.*
[18] 10A N.C. ADMIN. CODE 41A.0202(5) (2018).
[19] The control measures also specify that "any other person" can notify the local health director if they have "cause" to suspect a PLHIV is not following control measures and is thereby causing a significant risk of transmission. *Id.*
[20] 10A N.C. ADMIN. CODE 41A.0202(2)(a)-(b) (2018).
[21] 10A N.C. ADMIN. CODE 41A.0202(2)(c) (2018).

wounds" or on the basis of "behavioral abnormalities."[22] Depending on the circumstances, the local health director may further investigate any potential risk posed by the child and recommend alternate educational or child care arrangments.[23]

PLHIV are prohibited from donating blood or blood products, organs, human tissue, semen, ova, or breast milk except under specific circumstances.

Under North Carolina's Administrative Code, PLHIV must not donate or sell blood, plasma, platelets, any other blood products, semen, ova, tissues, organs, or breast milk.[24] However, organ donation is permissible if it occurs as part of a clinical research study that has been approved by an institutional review board under the requirements oultined by 42 USC 274f-5(a) and (b).[25] Sperm and ova donation by PLHIV are authorized if harvest occurs under the supervision of an attending physician and is to be used by the PLHIV's spouse for the purpose of achieving pregnancy.[26]

PLHIV may face criminal penalties for sharing needles.

North Carolina's Administrative Code prohibits PLHIV from sharing needles, syringes, or any other drug paraphernalia that may be contaminated with blood.[27]

PLHIV are also subject to general criminal laws in North Carolina.

PLHIV may also be prosecuted under general criminal laws such as assault or reckless endangerment. In 2005, a man living with HIV appealed his conviction for two counts of failure to comply with public health control measures and two counts of assault with a deadly weapon, among other charges, after he had sex with an underage boy.[28] In a different case, *State v. Monk*, the North Carolina Court of Appeals determined that charges of assault with a deadly weapon and attempted murder, which were based on the defendant's HIV status, were properly joined for trial with charges of first-degree statutory rape and taking indecent liberties with minor, after the defendant allegedly sexually assaulted a minor.[29]

Persons with a sexually transmitted infection (STI) other than HIV are subject to a range of public health control measures and violation may result in incarceration.

North Carolina's Administrative Code contains various control measures to address sexually transmitted infections.[30] These are different than the control measures for HIV, Hepatitis B and

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[22] 10A N.C. ADMIN. CODE 41A.0202(3) (2018).

[23] 10A N.C. ADMIN. CODE 41A.0202(3)(a)-(c) (2018).

[24] 10A N.C. ADMIN. CODE 41A.0202(1)(c) (2018).

[25] These provisions of the U.S. Code refer to criteria, standards, and regulations with respect to organs of PLHIV that are to be promulgated by the HHS Secretary consistent with the requirements of the HOPE Act (Human Immunodeficiency Virus Organ Policy Equity Act). Organ donation by PLHIV in North Carolina is also authorized if the HHS Secretary determines under 42 USC 274f-5(c) that clinical research is not longer warranted as a requirement for transplants and the organ recipient is receiving the transplant consistent with the requirements of 42 USC 274f-5(c).

[26] 10A N.C. ADMIN. CODE 41A.0202(1)(c)(ii) (2018).

[27] 10A N.C. ADMIN. CODE 41A.0202(1)(b) (2018).

[28] *State v. Murphy*, 2005 N.C. App. LEXIS 840, *1 (N.C. Ct. App. 2005). The appellate court reversed the convictions for the control measure violations because they had occurred outside the two-year statute of limitations.) *Id.* at *16-19.

[29] 511 S.E.2d 332, 336-37 (N.C. Ct. App. 1999).

[30] 10A N.C. ADMIN. CODE 41A.0204 (2018).

Hepatitis C. The requirements vary slightly depending on the particular condition. A person infected with, exposed to, or reasonably suspected of being infected with gonorrhea, chlamydia, non-gonoccocal urethritis, and mucopurulent cervicitis must refrain from sexual intercourse until they have been examined, diagnosed, and completed treatment.[31] Persons with these conditions must also notify all sexual partners from 30 days before the onset of symptoms to completion of therapy that the partners must be evaluated by a physician or local health department.[32] A person infected with, exposed to, or reasonably suspected of being infected with syphilis, lymphogranuloma venereum, granuloma inguinale, or chancroid must also refrain from sexual intercourse until they have been examined, diagnosed, and completed treatment.[33] They must also provide the names of their sexual partners to a disease intervention specialist for the purpose of contact tracing; depending on the disease, the window for determining which partners are to be identified is different.[34] As with HIV, "sexual intercourse" is not defined and it is unclear whether activities like oral sex are included in the ambit of prohibited conduct.

All persons with an STI are required to be tested, treated and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service.[35] Pregnant women are required to undergo mandatory HIV and STI testing.[36]

A maximum of two years' imprisonment may occur from violating these and other regulations directed at the control of STIs,[37] and an individual may not be released before the end of their sentence unless a District Court has determined that the release of the person would not "create a danger to the public health."[38]

Public health officials may isolate or quarantine a person with an STI, including HIV.

Individuals with an STI, including HIV, are required to "comply with control measures, including submission to examinations and tests."[39] State and local health directors are empowered to exercise quarantine and isolation authority when "public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists."[40] What constitutes public health endangerment or other reasonable means of correcting the problem are not defined.

An initial order for isolation or quarantine is not to exceed 30 calendar days and any person subject to such a restriction may challenge the measure in the superior court of the county in which the limitation

[31] 10A N.C. ADMIN. CODE 41A.0204(b)(1) (2018).
[32] 10A N.C. ADMIN. CODE 41A.0204(b)(3) (2018).
[33] 10A N.C. ADMIN. CODE 41A.0204(c)(1) (2018).
[34] 10A N.C. ADMIN. CODE 41A.0204(c)(3) (2018).
[35] 10A N.C. ADMIN. CODE 41A.0204(b)(2), 41A.0204(c)(2) (2018).
[36] 10A N.C. ADMIN. CODE 41A.0202(14), 10A N.C. ADMIN. CODE 41A.0204(e), 41A.0204(f) (2018).
[37] N.C. GEN. STAT. § 130A-25(a) (2017).
[38] N.C. GEN. STAT. § 130A-25(b) (2017).
[39] N.C. GEN. STAT. § 130A-144(f) (2017).
[40] N.C. GEN. STAT. § 130A-145(a) (2017).

is imposed.[41] The hearing must occur within 72 hours of the request and the individual is entitled to be represented by counsel.[42] To uphold the order, the court must determine, by a preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others."[43]

If a public health official concludes it is necessary to extend the order beyond 30 calendar days, they must institute an action in the superior court of the county where the restriction is imposed to obtain an extension.[44] The court must make the same finding by a preponderance of the evidence that the restriction is reasonably necessary to limit the spread of communicable disease.[45] The court may then specify a period of time that the limitation shall continue. Prior to the expiration of that period, state health officials may seek an extension, for only for additional increments of 30 days.[46]

When an isolation order is issued on the basis of someone's HIV status, health officials may require compliance with a plan as part of the order which details activities intended to "assist the individual to comply with control measures." [47] These activities include substance abuse counseling and treatment,[48] harm reduction services,[49] mental health counseling and treatment required to prevent transmission,[50] education and counseling sessions about "HIV, HIV transmission, and behavior change required to prevent transmission"[51] and intimate partner violence intervention services.[52]

A person who arrested for a violating a quarantine or isolation order may be denied pretrial release by a judge who determines by clear and convincing evidence that the person "poses a threat to the health and safety of others."[53] As with the other control measures described above, violation of a quarantine or isolation order can result in a penalty of up to two years' imprisonment.[54]

A defendant may be detained solely for the performance of HIV testing.

In a judge finds during a defendant's initial appearance that a person had a non-sexual exposure to a defendant "in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by such defendant," the defendant may be detained for up to 24 hours in order to permit testing by public health officials.[55] Activities that would pose a "significant risk of transmission" are not defined.

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[41] N.C. GEN. STAT. § 130A-145(d) (2017).
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] 10A N.C. ADMIN. CODE 41A.0202(11) (2018).
[48] 10A N.C. ADMIN. CODE 41A.0202(11)(a) (2018).
[49] 10A N.C. ADMIN. CODE 41A.0202(11)(b) (2018).
[50] 10A N.C. ADMIN. CODE 41A.0202(11)(c) (2016).
[51] 10A N.C. ADMIN. CODE 41A.0202(11)(d) (2018).
[52] 10A N.C. ADMIN. CODE 41A.0202(11)(d) (2018).
[53] N.C. GEN. STAT. § 15A-534.5 (2017)
[54] N.C. GEN. STAT. § 130A-25(a) (2017).
[55] N.C. GEN. STAT. § 15A-534.3 (2017).

Medical information may be released to "protect the public health" or in response to a court order.

Medical information regarding a person's HIV status or their infection with another reportable condition[56] is strictly confidential.[57] However, release is permitted when "necessary to protect the public health"[58] and may also occur pursuant to subpoena or court order.[59] The type of legal proceeding in which such medical information is or could be admissible is not specified.

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.*

[56] Reportable conditions that are sexually transmitted include AIDS, chancroid, chlamydia, gonorrhea, granuloma inguinale, hepatitis B, HIV, lymphogranuloma venereum, nongonococcal urethritis, pelvis inflammatory disease, syphilis, and Zika virus. 10A N.C. ADMIN. CODE 41A.0101(2018).

[57] N.C. GEN. STAT. § 130A-143 (2017).

[58] N.C. GEN. STAT. § 130A-143(4) (2017).

[59] N.C. GEN. STAT. § 130A-143(6) (2017).

North Carolina Administrative Code

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 10A, DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A N.C. ADMIN. CODE 41A.0202 (2018).

The following are the control measures for the Human Immunodeficiency Virus (HIV) infection:

1) Persons diagnosed with HIV infection (hereafter "person living with HIV") shall:
   a) refrain from sexual intercourse unless condoms are used except when:
      i) the person living with HIV is in HIV care, is adherent with the treatment plan of the attending physician, and has been virally suppressed for at least 6 months (HIV levels below 200 copies per milliliter) at the time of sexual intercourse;
      ii) the sexual intercourse partner is HIV positive;
      iii) the sexual intercourse partner is taking HIV Pre-Exposure Prophylaxis (PrEP) antiretroviral medication used to prevent HIV infection as directed by an attending physician; or
      iv) the sexual intercourse occurred in the context of a sexual assault in which the person living with HIV was the victim;
   b) not share needles or syringes, or any other drug-related equipment, paraphernalia, or works that may be contaminated with blood through previous use;
   c) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk, except when:
      i) The person living with HIV is donating organs as part of a clinical research study that has been approved by an institutional review board under the criteria, standards, and regulations described in 42 USC 274f-5(a) and (b);or, if the United States Secretary of Health and Human Services determines under USC 274f-5(c) that participation in this clinical research is no longer warranted as a requirement for transplants, and the organ recipient is receiving the transplant under the criteria, standards, and regulations of USC 274f-5(c); or
      ii) Sperm or ova are harvested under the supervision of an attending physician to be used by the person's spouse or partner for the purpose of achieving pregnancy.
   d) have a test for tuberculosis;
   e) notify future sexual intercourse partners of the infection, unless the person living with HIV meets the criteria listed in Sub-item (1)(a)(i) of this Rule. If the person living with HIV is the victim of a sexual assault, there is no requirement to notify the assailant;
   f) if the time of initial infection is known, notify persons who have been sexual intercourse or needle-sharing partners since the date of infection or give the names to a disease intervention specialist employed by the local health department or by the Division of Public Health for contact tracing and notification; and
   g) if the date of initial infection is unknown, notify persons who have been sexual intercourse or needle-sharing partners for the previous 12 months or give names to a disease intervention specialist employed by the local health department or by the Division of Public Health for contact tracing of all sexual and needle-sharing partners for the preceding 12 months.
2) The attending physician shall:

a) give the control measures in Item (1) of this Rule to patients living with HIV in accordance with 10A NCAC 41A .0210;
b) advise persons living with HIV to notify all future sexual partners of infection;
c) If the attending physician knows the identity of the spouse of the person living with HIV and has not, with the consent of the person living with HIV, notified and counseled the spouse, the physician shall list the spouse on a form provided by the Division of Public Health and shall send the form to the Division by secure transmission, required by 45 CFR 164.312(e)(1), or by secure fax at (919) 715-4699. The Division shall undertake to counsel the spouse and the attending physician's responsibility to notify exposed and potentially exposed persons shall be satisfied by fulfilling the requirements of Sub-Items (2)(a) and (c) of this Rule;
d) advise persons living with HIV concerning proper methods for the clean-up of blood and other body fluids;
e) advise persons living with HIV concerning the risk of perinatal transmission and transmission by breastfeeding.

3) The attending physician of a child living with HIV who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities shall notify the local health director. The local health director shall consult with the attending physician and investigate the following circumstances:
a) If the child is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include school personnel, a medical expert, and the child's parents or legal guardians to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint this interdisciplinary committee. Significant risk of transmission shall be determined in accordance with the HIV Risk and Prevention Estimates published by the Centers for Disease Control and Prevention, which are hereby incorporated by reference including subsequent amendments and editions. A copy of this publication can be accessed at no cost online at https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html.
i) If the superintendent or private school director establishes this committee within three days of notification, the local health director shall consult with this committee.
ii) If the superintendent or private school director does not establish this committee within three days of notification, the local health director shall establish this committee.
b) If the child is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:
i) notify the parents or legal guardians;
ii) notify the committee;
iii) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;
iv) determine if an alternative educational setting is necessary to protect the public health;
v) instruct the superintendent or private school director concerning protective measures to be implemented in the alternative educational setting developed by school personnel; and
vi) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be notified of the HIV infection in order to prevent transmission and ensure that these persons are instructed regarding the necessity for protecting confidentiality.

c) If the child is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents or legal guardians that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.

4) When health care workers or other persons have a needlestick or nonsexual non-intact skin or mucous membrane exposure to blood or body fluids that, if the source were HIV positive, would pose a significant risk of HIV transmission, the following shall apply:
   a) When the source person is known:
      i) The attending physician or occupational health care provider responsible for the exposed person, if other than the attending physician of the person whose blood or body fluids is the source of the exposure, shall notify the attending physician of the source that an exposure has occurred. The attending physician of the source person shall discuss the exposure with the source and, unless the source is already known to be living with HIV, shall test the source for HIV infection with or without consent unless it reasonably appears that the test cannot be performed without endangering the safety of the source person or the person administering the test. If the source person cannot be tested, any existing specimen shall be tested. The attending physician of the source person shall notify the attending physician of the exposed person of the infection status of the source.
      ii) The attending physician of the exposed person shall inform the exposed person about the infection status of the source, offer testing for HIV infection as soon as possible after exposure and at reasonable intervals until the interval since last exposure is sufficient to assure detection using current CDC HIV testing guidelines, and, if the source person was HIV positive, give the exposed person the control measures listed in Sub-Items (1)(a) through (c) of this Rule. The CDC HIV testing guidelines are hereby incorporated by reference including subsequent amendments and editions. The CDC HIV testing guidelines can be accessed at no cost online at https://www.cdc.gov/hiv/guidelines/testing.html, with the most current updates found at https://stacks.cdc.gov/view/cdc/23447. The attending physician of the exposed person shall instruct the exposed person regarding the necessity for protecting confidentiality of the source person's HIV status.
   b) When the source person is unknown, the attending physician of the exposed persons shall inform the exposed person of the risk of transmission and offer testing for HIV infection as soon as possible after exposure and at reasonable intervals until the interval since the last exposure is sufficient to assure detection using the current CDC HIV testing guidelines.
   c) A health care facility may release the name of the attending physician of a source person upon request of the attending physician of an exposed person.
5) The attending physician shall notify the local health director when the physician has cause to suspect a patient living with HIV is not following or cannot follow control measures and is thereby causing a significant risk of transmission. Any other person may notify the local health director when the person has cause to suspect a person living with HIV is not following control measures and is thereby causing a significant risk of transmission.
6) When the local health director is notified pursuant to Item (5) of this Rule of a person who is mentally ill or intellectually impaired, the local health director shall confer with the attending mental health physician or Local Management Entity/Managed Care Organization and the physician, if any, who notified the local health director to develop a plan to prevent transmission.
7) The Division of Public Health shall notify the Director of Health Services of the North Carolina Department of Public Safety and the prison facility administrator when any person confined in a state prison is determined to be living with HIV. If the prison facility administrator, in consultation

with the Director of Health Services, determines that a confined person living with HIV is not following or cannot follow prescribed control measures, thereby presenting a significant risk of HIV transmission, the administrator and the Director shall develop and implement jointly a plan to prevent transmission, including making recommendations to the unit housing classification committee.

8) The local health director shall ensure that the health plan for local jails include education of jail staff and prisoners about HIV, how it is transmitted, and how to avoid acquiring or transmitting this infection.
9) Local health departments shall provide counseling and testing for HIV infection at no charge to the patient. Third party payers may be billed for HIV counseling and testing when such services are provided and the patient provides written consent.
10) HIV pre-test counseling is not required. Post-test counseling for persons living with HIV is required, must be individualized, and shall include referrals for medical and psychosocial services and control measures counseling.
11) Notwithstanding Rule .0201(d) of this Section, a local or state health director may require, as a part of an isolation order issued in accordance with G.S. 130A-145, compliance with a plan to assist the individual to comply with control measures. The plan shall be designed to meet the specific needs of the individual including linkage to care and may include referral to one or more of the following available and appropriate services:
    a) substance abuse counseling and treatment;
    b) harm reduction services;
    c) mental health counseling and treatment required to prevent transmission;
    d) education and counseling sessions about HIV, HIV transmission, and behavior change required to prevent transmission; and
    e) intimate partner violence intervention services.
12) The Division of Public Health shall conduct a partner notification program to assist in the notification and counseling of partners of persons living with HIV.
13) Every pregnant woman shall be offered HIV testing by her attending physician at her first prenatal visit and in the third trimester. The attending physician shall test the pregnant woman for HIV infection, unless the pregnant woman refuses to provide informed consent pursuant to G.S. 130A-148(h). If there is no record at labor and delivery of an HIV test result during the current pregnancy for the pregnant woman, the attending physician shall inform the pregnant woman that an HIV test will be performed, explain the reasons for testing, and the woman shall be tested for HIV without consent using a rapid HIV test unless it reasonably appears to the clinician that the test cannot be performed without endangering the safety of the pregnant woman or the person administering the test. If the pregnant woman cannot be tested, an existing specimen, if one exists that was collected within the last 24 hours, shall be tested using a rapid HIV test. The attending physician must provide the woman with the test results as soon as possible.
14) If an infant is delivered by a woman with no record of the result of an HIV test conducted during the pregnancy and if the woman was not tested for HIV during labor and delivery, the fact that the mother has not been tested creates a reasonable suspicion pursuant to G.S. 130A-148(h) that the newborn has HIV infection and the infant shall be tested for HIV. An infant born in the previous 12 hours shall be tested using a rapid HIV test
15) Testing for HIV may be offered as part of routine laboratory testing panels using a general consent that is obtained from the patient for treatment and routine laboratory testing, so long as the patient is notified that they are being tested for HIV and given the opportunity to refuse.

10A N.C. ADMIN. CODE 41A.0204 (2018)

Control measures- sexually transmitted diseases

(a) Local health departments shall provide diagnosis, testing, treatment, follow-up, and preventive services for syphilis, gonorrhea, chlamydia, nongonococcal urethritis, mucopurulent cervicitis, chancroid, lymphogranuloma venereum, and granuloma inguinale. These services shall be provided upon request and at no charge to the patient.

(b) Persons infected with, exposed to, or reasonably suspected of being infected with gonorrhea, chlamydia, non-gonococcal urethritis, and mucopurulent cervicitis shall:

> (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;
>
> (2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines are the required control measures for testing, treatment, and follow-up for gonorrhea, chlamydia, nongonococcal urethritis, and mucopurulent cervicitis, and are incorporated by reference including subsequent amendments and editions. A copy of this publication is on file for public viewing with the and a copy may be obtained free of charge by writing the Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915, and requesting a copy. However, urethral Gram stains may be used for diagnosis of males rather than gonorrhea cultures unless treatment has failed;
>
> (3) Notify all sexual partners from 30 days before the onset of symptoms to completion of therapy that they must be evaluated by a physician or local health department.

(c) Persons infected with, exposed to, or reasonably suspected of being infected with syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid shall:

> (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;
>
> (2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by t h e U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines are the required control measures for testing, treatment, and follow-up for syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid, except that chancroid cultures are not required;
>
> (3) Give names to a disease intervention specialist employed by the local health department or by the Division of Public Health for contact tracing of all sexual partners and others as listed in this Rule:
>
> > (A) for syphilis:. . .
> >
> > (B) for lymphogranuloma venereum: . . .
> >
> > (C) for granuloma inguinale - all partners from three months before the onset of symptoms to completion of therapy and healing of lesions; and

(D) or chancroid - all partners from ten days before the onset of symptoms to completion of therapy and healing of lesions.

(d) All persons evaluated or reasonably suspected of being infected with any sexually transmitted disease shall be tested for syphilis, encouraged to be tested confidentially for HIV, and counseled about how to reduce the risk of acquiring sexually transmitted disease, including the use of condoms.

(e) All pregnant women shall be tested for syphilis, chlamydia and gonorrhea at the first prenatal visit. All pregnant women shall be tested for syphilis between 28 and 30 weeks of gestation and at delivery. Hospitals shall determine the syphilis serologic status of the mother prior to discharge of the newborn so that if necessary the newborn can be evaluated and treated as provided in (c)(2) of this rule. Pregnant women 25 years of age and younger shall be tested for chlamydia and gonorrhea in the third trimester or at delivery if the woman was not tested in the third trimester.

(f) Any woman who delivers a stillborn infant shall be tested for syphilis . . .

General Statutes of North Carolina

CHAPTER 130A, PUBLIC HEALTH

N.C. GEN. STAT. § 130A-143 (2017)

Confidentiality of records

All information and records, whether publicly or privately maintained, that identify a person who has AIDS virus infection or who has or may have a disease or condition required to be reported pursuant to the provisions of this Article shall be strictly confidential. This information shall not be released or made public except under the following circumstances: . . .

(4) Release is necessary to protect the public health and is made as provided by the Commission in its rules regarding control measures for communicable diseases and conditions; . . .

(6) Release is made pursuant to subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the case; . . .

(11) Release is made pursuant to any other provisions of law that specifically authorize or require the release of information or records related to AIDS.

N.C. GEN. STAT. § 130A-144 (2017)

Investigation and control measures

(a) The local health director shall investigate, as required by the Commission, cases of communicable diseases and communicable conditions reported to the local health director pursuant to this Article.

(b) Physicians, persons in charge of medical facilities or laboratories, and other persons shall, upon request and proper identification, permit a local health director or the State Health Director to examine, review, and obtain a copy of medical or other records in their possession or under their control which the State Health Director or a local health director determines pertain to the (i) diagnosis, treatment, or prevention of a communicable disease or communicable condition for a person infected, exposed, or reasonably suspected of being infected or exposed to such a disease or condition, or (ii) the investigation of a known or reasonably suspected outbreak of a communicable disease or communicable condition.

(c) A physician or a person in charge of a medical facility or laboratory who permits examination, review or copying of medical records pursuant to subsection (b) shall be immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with a request made pursuant to subsection (b).

(d) The attending physician shall give control measures prescribed by the Commission to a patient with a communicable disease or communicable condition and to patients reasonably suspected of being infected or exposed to such a disease or condition. The physician shall also give control measures to other individuals as required by rules adopted by the Commission.

(e) The local health director shall ensure that control measures prescribed by the Commission have been given to prevent the spread of all reportable communicable diseases or communicable conditions and any other communicable disease or communicable condition that represents a significant threat to the public health. The local health department shall provide, at no cost to the patient, the examination and treatment for tuberculosis disease and infection and for sexually transmitted diseases designated by the Commission.

(f) All persons shall comply with control measures, including submission to examinations and tests, prescribed by the Commission subject to the limitations of G.S. 130A-148.

(g) The Commission shall adopt rules that prescribe control measures for communicable diseases and conditions subject to the limitations of G.S. 130A-148. Temporary rules prescribing control measures for communicable diseases and conditions shall be adopted pursuant to G.S. 150B-13.

(h) Anyone who assists in an inquiry or investigation conducted by the State Health Director for the purpose of evaluating the risk of transmission of HIV or Hepatitis B from an infected health care worker to patients, or who serves on an expert panel established by the State Health Director for that purpose, shall be immune from civil liability that otherwise might be incurred or imposed for any acts or omissions which result from such assistance or service, provided that the person acts in good faith and the acts or omissions do not amount to gross negligence, willful or wanton misconduct, or intentional wrongdoing. This qualified immunity does not apply to acts or omissions which occur with respect to the operation of a motor vehicle. Nothing in this subsection provides immunity from liability for a violation of G.S. 130A-143.

N.C. GEN. STAT. § 130A-145 (2017)

Quarantine and isolation authority

(a) The State Health Director and a local health director are empowered to exercise quarantine and isolation authority. Quarantine and isolation authority shall be exercised only when and so long as the

public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists.

(d) When quarantine or isolation limits the freedom of movement of a person or animal or of access to a person or animal whose freedom of movement is limited, the period of limited freedom of movement or access shall not exceed 30 calendar days. Any person substantially affected by that limitation may institute in superior court in Wake County or in the county in which the limitation is imposed an action to review that limitation. The official who exercises the quarantine or isolation authority shall give the persons known by the official to be substantially affected by the limitation reasonable notice under the circumstances of the right to institute an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of that request, excluding Saturdays and Sundays. The person substantially affected by that limitation is entitled to be represented by counsel of the person's own choice or if the person is indigent, the person shall be represented by counsel appointed in accordance with Article 36 of Chapter 7A of the General Statutes and the rules adopted by the Office of Indigent Defense Services. The court shall reduce or terminate the limitation unless it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others.

If the State Health Director or the local health director determines that a 30-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the State Health Director or local health director must institute in superior court in the county in which the limitation is imposed an action to obtain an order extending the period of limitation of freedom of movement or access. If the person substantially affected by the limitation has already instituted an action in superior court in Wake County, the State Health Director must institute the action in superior court in Wake County or as a counterclaim in the pending case. Except as provided below for persons with tuberculosis, the court shall continue the limitation for a period not to exceed 30 days if it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a communicable disease or condition to others. The court order shall specify the period of time the limitation is to be continued and shall provide for automatic termination of the order upon written determination by the State Health Director or local health director that the quarantine or isolation is no longer necessary to protect the public health. In addition, where the petitioner can prove by a preponderance of the evidence that quarantine or isolation was not or is no longer needed for protection of the public health, the person quarantined or isolated may move the trial court to reconsider its order extending quarantine or isolation before the time for the order otherwise expires and may seek immediate or expedited termination of the order. Before the expiration of an order issued under this section, the State Health Director or local health director may move to continue the order for additional periods not to exceed 30 days each. If the person whose freedom of movement has been limited has tuberculosis, the court shall continue the limitation for a period not to exceed one calendar year if it determines, by a preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of tuberculosis to others. The court order shall specify the period of time the limitation is to be continued and shall provide for automatic termination of the order upon written determination by the State Health Director or local health director that the quarantine or isolation is no longer necessary to protect the public health. In addition, where the petitioner can prove by a preponderance of the evidence that quarantine or isolation was not or is no longer needed for protection of the public health, the person quarantined or isolated may move the trial court to reconsider its order extending quarantine or isolation before the time for the order otherwise expires and may seek

immediate or expedited termination of the order. Before the expiration of an order limiting the freedom of movement of a person with tuberculosis, the State Health Director or local health director may move to continue the order for additional periods not to exceed one calendar year each.

N.C. GEN. STAT. § 130A-25 (2017) **

Misdemeanor

§ 130A-25. (Effective December 1, 2017) Misdemeanor

> (a) Except as otherwise provided, a person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a misdemeanor.
>
> (b) A person convicted under this section for violation of G.S. 130A-144(f) or G.S. 130A-145 shall not be sentenced under Article 81B of Chapter 15A of the General Statutes but shall instead be sentenced to a term of imprisonment of no more than two years and shall serve any prison sentence in McCain Hospital, Section of Prisons of the Division of Adult Correction and Juvenile Justice, McCain, North Carolina; the North Carolina Correctional Center for Women, Section of Prisons of the Division of Adult Correction and Juvenile Justice, Raleigh, North Carolina; or any other confinement facility designated for this purpose by the Secretary of Public Safety after consultation with the State Health Director. The Secretary of Public Safety shall consult with the State Health Director concerning the medical management of these persons.
>
> (c) Notwithstanding G.S. 148-4.1, G.S. 148-13, or any other contrary provision of law, a person imprisoned for violation of G.S. 130A-144(f)or G.S. 130A-145 shall not be released prior to the completion of the person's term of imprisonment unless and until a determination has been made by the District Court that release of the person would not create a danger to the public health. This determination shall be made only after the medical consultant of the confinement facility and the State Health Director, in consultation with the local health director of the person's county of residence, have made recommendations to the Court . . .

CHAPTER 15A, CRIMINAL PROCEDURE ACT

N.C. GEN. STAT. § 15A-534.3 (2017)

Detention for communicable diseases

If a judicial official conducting an initial appearance or first appearance hearing finds probable cause that an individual had a nonsexual exposure to the defendant in a manner that poses a significant risk of transmission of the AIDS virus or Hepatitis B by such defendant, the judicial official shall order the defendant to be detained for a reasonable period of time, not to exceed 24 hours, for investigation by public health officials and for testing for AIDS virus infection and Hepatitis B infection if required by public health officials pursuant to G.S. 130A-144 and G.S. 130A-148.

N.C. GEN. STAT. § 15A-534.5 (2017)

Detention to protect public health

If a judicial official conducting an initial appearance finds by clear and convincing evidence that a person arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 poses a threat to the health and safety of others, the judicial official shall deny pretrial release and shall order the person to be confined in an area or facility designated by

the judicial official. Such pretrial confinement shall terminate when a judicial official determines that the confined person does not pose a threat to the health and safety of others. These determinations shall be made only after the State Health Director or local health director has made recommendations to the court.

North Dakota

Analysis[1]

People living with HIV or another sexually transmitted disease may be punished for exposing another person.

Any person who, "knowing [they] are infected with a sexually transmitted disease, willfully exposes another person to infection," is guilty of an infraction, punishable by a fine of up to $1,000.[2] Repeat infractions within one year may result in imprisonment for thirty days and a fine of $1,500.[3] "Willfully" refers to any conduct done "intentionally, knowingly, or recklessly."[4] Within the administrative code, HIV, chlamydia, gonorrhea, hepatitis B virus, and syphilis are "sexually transmitted diseases" that warrant contact tracing.[5] The law does not require an intent to harm, transmission, or engagement in behavior that poses a significant risk of transmission.

People may be subject to mandatory HIV or other sexually transmitted disease (STD) testing, treatment, and isolation.

Any person convicted of a crime who is imprisoned 15 days or more must submit to STD testing and, if positive, undergo treatment and isolation.[6] People who are incarcerated must also submit to HIV testing, the results of which are reported to the Department of Health.[7] Any person who fails to obey an order from a state health officer is guilty of an infraction, punishable by a fine of up to $1,000.[8]

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[1] In 2025, North Dakota became the fourth state to fully repeal an HIV-specific criminalization offense with the passage of House Bill 1217, which struck Section 12.1-20-17 from the North Dakota Century Code.

[2] N.D. CENT. CODE §§ 23-07-21(3); 12.1-32-01(7).

[3] N.D. CENT. CODE §§ 12.1-32-01(7); 12.1-32-01(6).

[4] N.D. CENT. CODE §12.1-02-02(1)(e). The law describes these mental states:

a. 'Intentionally' if, when he engages in the conduct, it is his purpose to do so.
b. 'Knowingly' if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.
c. 'Recklessly' if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct, except that, as provided in section 12.1-04-02, awareness of the risk is not required where its absence is due to self-induced intoxication.

N.D. CENT. CODE §12.1-02-02(1).

[5] N.D. ADMIN CODE § 33-06-04-10(1).

[6] N.D. CENT. CODE §§ 23-07-08, 23-07-09. STDs are not defined, but they include HIV, chlamydia, gonorrhea, hepatitis B, and syphilis. N.D. ADMIN CODE 33-06-04-10.

[7] N.D. CENT. CODE § 23-07-07.5.

[8] N.D. CENT. CODE §§ 23-07-21(1); 12.1-32-01(7).

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.*

North Dakota Century Code

TITLE 12.1 CRIMINAL CODE

N.D. CENT. CODE § 12.1-32-01

Classification of offenses — Penalties

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.

7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who, within one year before commission of the infraction of which the person was convicted, has been convicted previously at least twice of the same offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint must specify the offense is a misdemeanor.

TITLE 23. HEALTH AND SAFETY

N.D. CENT. CODE § 23-07-07.5

Testing of inmates and convicted individuals for exposure to the human immunodeficiency virus – Reporting – Liability.

1. The following individuals must be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus:

> a. Every individual convicted of a crime who is imprisoned for fifteen days or more in a grade one or grade two jail, a regional correctional facility, or the state penitentiary;
>
> b. Every individual, whether imprisoned or not, who is convicted of a sexual offense under chapter 12.1-20, except for those convicted of violating sections 12.1-20-12.1 and 12.1-20-13; and
>
> c. Every individual, whether imprisoned or not, who is convicted of an offense involving the use of a controlled substance, as defined in chapter 19-03.1, and the offense involved the use of paraphernalia, including any type of syringe or hypodermic needle, that creates an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus.

2. The results of any positive or reactive test must be reported to the state department of health in the manner prescribed by the department and to the individual tested. Subsection 1 does not require the testing of an individual before sentencing or the testing of an individual held in a jail or correctional facility awaiting transfer to the state penitentiary.

N.D. CENT. CODE § 23-07-08

Persons in prison examined and treated for sexually transmitted diseases.

Every person convicted of a crime who is imprisoned fifteen days or more in a state, county, or city prison must be examined for sexually transmitted disease and, if infected, must be treated therefor by the health officer within whose jurisdiction the person is imprisoned.

N.D. CENT. CODE § 23-07-09

Sexually transmitted diseases – Persons isolated in prison – Exceptions.

The prison authorities of any state, county, or city prison shall make available to the health officers such portion of the prison as may be necessary for a clinic or hospital wherein the following persons may be isolated and treated:

1. Persons who are imprisoned in the prison and who are infected with a sexually transmitted disease.
2. Persons who are suffering with a sexually transmitted disease at the time of the expiration of their term of imprisonment.
3. Persons isolated or quarantined by the health officer when no other suitable place for isolation or quarantine is available.

In lieu of such isolation, any of such persons, in the discretion of the health officer, may be required to report for treatment to a licensed physician. This section may not be construed to interfere with the service of any sentence imposed by a court as punishment for the commission of crime.

N.D. CENT. CODE § 23-07-21

Penalties

Except as otherwise provided in this section, a person is guilty of an infraction:

1. Who violates or fails to obey any provision of this chapter, any lawful rule made by the department of health and human services, or any order issued by any state, district, county, or municipal health officer;
2. Who violates any quarantine law or regulation, or who leaves a quarantined area without being discharged; or
3. Who, knowing that the person is infected with a sexually transmitted disease, willfully exposes another person to infection.

Any person required to make a report under section 23-07-02.1 who releases or makes public confidential information or otherwise breaches the confidentiality requirements of section 23-07-02.2 is guilty of a class C felony.

North Dakota Administrative Code

TITLE 33. STATE DEPARTMENT OF HEALTH

N.D. ADMIN CODE 33-06-04-10

Sexually transmitted diseases.

1. Contact tracing is appropriate for the following sexually transmitted diseases:

    a. Human immunodeficiency virus (HIV) infection;

    b. Acquired immunodeficiency syndrome (AIDS);

    c. Chlamydia;

    d. Gonorrhea;

    e. Hepatitis B virus (HBV); and

    f. Syphilis.

2. Individuals infected with a sexually transmitted disease for which contact tracing is appropriate shall disclose information concerning the source of the infection to their attending physician or public health officer.

3. Information obtained pursuant to this section will be used solely for epidemiological purposes.

Ohio

Analysis

People living with HIV (PLHIV) can be prosecuted for failing to disclose their HIV status to sexual partners.

Ohio's felonious assault statute specifically criminalizes failure to disclose one's HIV status to another person prior to sexual conduct.[1] Under this statute, it is also a felony punishable by up to eight years' imprisonment to engage in sexual conduct with a person who "lacks the mental capacity" to appreciate the individual's HIV status, or to engage in sexual conduct with someone under the age of 18.[2]

"Sexual conduct" includes penile-vaginal sex, anal sex, oral sex, and, without consent, the insertion, however slight, of any part of the body or any instrument that carries the bodily fluids of a PLHIV into another person's vagina or anus.[3]

The only affirmative defense to prosecution is the disclosure of one's HIV status to sexual partners prior to engaging in any of these activities. The disclosure must be made prior to the first initial act of such conduct and using condoms or other forms of protection is not a defense.

Neither the intent to transmit HIV nor HIV transmission is required for prosecution.

Ohio's felonious assault statute has survived multiple constitutional challenges. Most recently, in *State v. Batista*, the Supreme Court of Ohio found the statute violates neither the right to free speech, nor the Equal Protection Clauses of the U.S. and Ohio Constitutions.[4]

The free speech challenge had sought to frame the statute as requiring that PLHIV disclose their HIV status to sexual partners. However, the Court held that, since the statute prohibits people living with HIV from engaging in sexual conduct without first disclosing their HVI status, it regulates conduct (the sexual activity) instead of speech.[5] The regulation of speech was merely incidental to the regulation of conduct. With *Batista*, the Supreme Court of Ohio became the third state supreme court to hold its state's HIV criminal law does not unconstitutionally compel speech.[6]

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[1] OHIO REV. CODE ANN. § 2903.11(B)(1) (2016)
[2] OHIO REV. CODE ANN. §§ 2903.11(B)(2), 2903.11(B)(3), 2929.14(A)(2) (2016).
[3] OHIO REV. CODE ANN. § 2903.11(E)(4) (referring to § 2907.01).
[4] *State v. Batista*, Slip Opinion No. 2017-Ohio-8304 (Oct. 26, 2017).
[5] *Id*. at 6-7.
[6] *Id*. The Court followed the legal reasoning from similar previous decisions of the Missouri Supreme Court in *State v. S.F.*, 483 S.W.3d 385 (Mo. 2016), and the Illinois Supreme Court in *People v. Russell*, 158 Ill. 2d 794 (1994).

The Court in *Batista* also upheld the felonious assault statute against an Equal Protection challenge, which alleged the law unconstitutionally discriminates against PLHIV.[7] The Equal Protection clause requires that all people in similar situations be treated alike.[8] Batista claimed that he was being treated differently as a PLHIV, due to HIV-related stigma and prejudice against PLHIV, than people living with other sexually transmitted infections or contagious diseases. Since PLHIV are not considered a suspect classification,[9] the Court addressed the challenge under rational basis review, the lowest standard of review.[10] The Court held the felonious assault statute is rationally related to the legitimate government interest of, "curbing HIV transmission to sexual partners who may not be aware of the risk." Moreover, the Court stated, "a legislative choice is not subject to courtroom fact-finding and *may be based on rational speculation unsupported by evidence or empirical data*."[11] This deferral to the Ohio General Assembly's policy considerations is within the scope of rational basis review.

The Court in *Batista* did not address the State's argument that fully informed consent to sexual activity is not possible when a PLHIV who knows their HIV status does not disclose that status to a sexual partner prior to the sexual activity. However, Justice Dewine, agreed with this argument in a concurring opinion.[12]

In *State v. Gonzalez*, the felonious assault statute also survived a challenge that it was unconstitutionally vague.[13] The defendant in *Gonzalez* was convicted of two counts of felonious assault for not disclosing his HIV status to his sexual partner.[14] He was sentenced to 16 years imprisonment and was required to register as a sex offender.[15] The complainant later tested positive for HIV.[16] At trial,

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[7] *Batista* at 9.

[8] *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439-440 (1985)(citation omitted).

[9] *Batista* at 7. Depending on the group of people or "classification" of the people affected by the law, the court uses a different test in examining the law. Generally, if a law discriminates on the basis of race, national origin or religion, courts are required to use the most demanding test – "strict scrutiny." Strict scrutiny requires the government prove that it had a very important reason for creating the law, and the law is drafted in the most specific way possible to achieve that goal. If a law discriminates on the basis of sex, gender, or in some instances, sexual orientation, the government must pass "intermediate scrutiny" by showing that it had an important reason for creating the law, and the law is substantially related to that reason. Finally, the easiest test, "rational basis," is applied when the law applies to people based on age, disability, wealth or if a person was convicted of a serious crime. Under rational basis test, the person challenging the law must show that the government has no reasonable purpose for the law, or that there is no link between that alleged interest and how the law tries to make it happen. Rational basis review gives the government the most deference, or "respect." Since the court presumably considered HIV as a type of disability, and it did not consider that the law affected "fundamental rights," those rights that are protected by the constitution, it used rational basis for its analysis of the constitutionality of the law.

[10] *Batista at 7.*

[11] *Id.* at 8 (emphasis added).

[12] *Id*. at 12. This argument was also used to narrow a decision by the United States Court of Appeals for the Armed Forces, which would have otherwise invalidated prosecution of PLHIV for nondisclosure. *See United States v. Gutierrez*, 74 M.J. 61, 68 (C.A.A.F. 2015). In that case, the Court accepted the argument that consent is absent without disclosure of HIV status and found the violation sufficient to convict the defendant of a lesser included offense, assault consummated by battery. *Id.* For more on this argument and its origins in a case from the Supreme Court of Canada, see the section on "Federal Law Including U.S. Military" in *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, The Center for HIV Law and Policy (2017).

[13] *State v. Gonzalez*, 796 N.E.2d. 12, 21 (Ohio Ct. App. 2003).

[14] 796 N.E.2d 12, 17 (Ohio Ct. App. 2003).

[15] *Id.* at 17, 18.

[16] *Id.* at 19.

there were numerous discrepancies in the parties' testimony, including whether or not Gonzalez disclosed his HIV status prior to their having sex.[17] Gonzalez testified that the complainant asked him before they began their sexual relationship whether the rumors about his HIV status were true and he confirmed that he had tested positive for HIV and insisted that they use condoms every time they had sex.[18] The complainant, however, testified that when she confronted Gonzalez he denied his HIV status and that they had only used a condom once.[19] In addition to the testimony of the defendant and complainant, the defendant had an ex-girlfriend testify that he had disclosed his HIV status to her prior to their initiating a sexual relationship and always insisted on using condoms.[20]

On appeal, Gonzalez argued the statute was unconstitutionally vague.[21] He asserted that the statute did not provide enough information on what constitutes "disclosure," whether such disclosure had to be made prior to each sexual contact with the same person, or whether the disclosure needed to be in writing.[22] For a law "[t]o survive a void-for-vagueness challenge, the statute must be written so that a person of common intelligence can determine what conduct is prohibited, and the statute must provide sufficient standards to prevent arbitrary and discriminatory enforcement."[23] The court rejected the defendant's void-for-vagueness challenge because the it found that the word "disclose" did not have an unfamiliar meaning outside the courtroom, and that a person of common intelligence would understand its meaning to be "reveal or make known" through verbal disclosure[24] The court also clarified that although failure to disclose is an essential element of each individual count of felonious assault pursued by the prosecution, once a PLHIV disclosed his or her status to a sexual partner, this would negate that element for any subsequent contact the person had with that partner.[25]

The court also held that though there was a violation of the state's HIV disclosure statute when the prosecution failed to obtain court authorization for admission of Gonzalez's HIV status, this was deemed "harmless error" because of the other evidence of the defendant's HIV status, including the testimony of his sister and ex-girlfriend, as well as the complainant.[26]

As *State v. Gonzalez* demonstrates, it is very difficult to prove that disclosure of HIV status occurred prior to a particular instance of sexual conduct. In many of these cases, there is no proof that a PLHIV disclosed their status and the only evidence available is the testimony of the defendant, complainant, or other witnesses.

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[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.* at 19-20.
[21] *Id.* at 21.
[22] *Id.* at 21-22.
[23] *Id.* at 21 (citing *State v. Williams*, 88 Ohio St. 3d 513 (Ohio 2000)).
[24] *Id.*
[25] *Id.* at 22.
[26] *Id.* at 18.

Below are other examples of prosecutions of PLHIV under Ohio's felonious assault statute:

- In January 2016, a 27-year old man was convicted of one count of felonious assault for having sex without disclosing his HIV status to a sexual partner and was sentenced to five years' imprisonment.[27]
- In November 2015, an 18-year-old woman was charged with felonious assault after having sex without disclosing her HIV status to her sexual partner.[28]
- In August 2015, a 24-year-old was sentenced to seven years' imprisonment after she plead guilty to two counts of felonious assault for having sex with two men without disclosing her HIV status to two men.[29] The prosecutor in the case had recommended a sentence of four to six years.
- In June 2015, a 39-year old man was convicted of one count of felonious assault for not disclosing his HIV status to his girlfriend and sentenced to the maximum 8 years' imprisonment.[30]
- In March 2013, a 48-year-old woman was convicted of two counts of felonious assault and sentenced to eight years in prison for not disclosing her HIV status to two sexual partners.[31]
- In September 2013, a 21-year-old man was charged with felonious assault after not disclosing his HIV status to a sexual partner.[32]
- In May 2012, a 23-year old PLHIV was sentenced to three years in prison for having sex without disclosing his HIV status to his sexual partner.[33]
- In January 2012, a 29-year-old former professional wrestler was sentenced to 32 years in prison for having sex with multiple women without disclosing his HIV status.[34]
- In January 2012, a PLHIV pled guilty to three charges of felonious assault and was sentenced to five years in prison for allegedly infecting three women with HIV.[35]

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[27] Adam Ferrise, *Akron man gets prison for failing to disclose HIV to partner*, CLEVELAND.COM, January 20, 2016, *available at* http://www.cleveland.com/akron/index.ssf/2016/01/akron_man_gets_prison_for_fail.html; *State v. Boatright*, CR2015-03-0731 (Oh.C.P. Summit 2016).

[28] Rose-Ann Aragon, *Woman accused of not telling sexual partner of HIV status*, WCPO, Nov. 12, 2015, *available at* http://www.wcpo.com/news/crime/woman-accused-of-not-telling-sexual-partner-of-hiv-status.

[29] Joe Gorman, *Sweeney gives Youngstown woman 7 years in HIV sex case*, VINDY.COM, Aug. 21, 2015, *available at* http://www.vindy.com/news/2015/aug/21/woman-receives--years-in-hivsflbsex-case/?print%20http://www.vindy.com/news/2015/jul/16/woman-pleads-guilty-to-assault-in-hiv-ca/?print.

[30] *State v. Batista*, B-1402928 (Oh.C.P. Hamilton 2015)

[31] Kara Suyyak, *Woman Convicted of Lying about* HIV, FOX 8 CLEVELAND, March 11, 2013, http://fox8.com/2013/03/11/woman-gets-eight-years-in-hiv-case/.

[32] *Man with HIV Explains Why He Didn't Tell Ex-Girlfriend*, 10TV.COM, Sept. 17, 2013, *available at* http://www.10tv.com/article/man-hiv-explains-why-he-didnt-tell-ex-girlfriend.

[33] John W. Goodwin, Jr., *HIV-Positive Man Sentenced to Three Years for Assault*, VINDY.COM, May 18, 2012, *available at* http://www.vindy.com/news/2012/may/18/hiv-positive-man-sentenced-to-three-year.

[34] *Ohio Wrestler Gets 32 Years in HIV Assault Case*, FOX NEWS, Jan 23, 2012, *available at* http://www.foxnews.com/us/2012/01/23/ohio-wrestler-gets-32-years-in-hiv-assault-case/.

[35] Michael Sangiacomo, *HIV Positive Man Sentenced for Infecting 3 Women*, THE PLAIN DEALER, Jan. 10, 2012, *available at* http://blog.cleveland.com/metro/2012/01/hiv_positive_man_sentenced_for.html.

- In March 2010, a 51-year-old PLHIV pled guilty to felonious assault and was sentenced to five years imprisonment for not disclosing his HIV status to his wife.[36] The man was originally charged with attempted murder in addition to felonious assault.[37]
- In September 2009, a PLHIV's sentence of seven years' imprisonment for not disclosing his HIV status to his alleged rape victim was affirmed.[38] The man had appealed his conviction, arguing there was insufficient evidence that he had knowledge of his HIV status.[39] The court reasoned that, because the defendant had discussed his HIV status with detectives, there was sufficient evidence to show he knew his HIV status, despite the fact that there was no medical record or testimony from a medical professional that the defendant had tested positive for HIV.[40]
- In September 2008, a PLHIV pled guilty to two counts of felonious assault and was sentenced to six years imprisonment for not dislosing his HIV status to a sexual partner.[41]
- In June 2008, a PLHIV was charged with felonious assault for not disclosing his HIV status to his sexual partner.[42]
- In 2006, a PLHIV was convicted of nine counts of felonious assault for exposing his sexual partner, who was under the age of 18 and not his spouse, to HIV. He was sentenced to 40 years imprisonment and required to register as a sex offender.[43]
- In 2004, a PLHIV was sentenced to four years' imprisonment for abduction and six years' imprisonment for felonious assault for not disclosing his HIV status to a sexual partner. The trial court ordered that the sentences be served consecutively.[44] The appellate court found the trial court's determination of consecutive sentencing proper because the defendant could have transmitted HIV to the complainant and because it was unclear how many other people the defendant may have exposed to HIV through unprotected sex.[45]
- In 2003, a PLHIV was sentenced to four years in jail for felonious assault after allegedly having sex without disclosing his HIV status to his sexual partner.[46]

After being released from prison for felonious assault charges, PLHIV may be subject to invasive parole and community control standards. In 2006, a PLHIV was sentenced to two years' imprisonment for

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[36] Gabriel Baird, *Man Who Gave Wife AIDS Gets Five Years in Prison*, THE PLAIN DEALER, Mar. 8 2010, *available at* http://blog.cleveland.com/metro/2010/03/man_who_gave_wife_aids_gets_5.html.

[37] Gabriel Baird, *Woman Hopes Tale Can Warn Others After Her Husband Conceals Illness, Gives Her AIDS*, THE PLAIN DEALER, Feb. 28, 2010, *available at* http://blog.cleveland.com/metro/2010/02/oman_hopes_she_can_warn_others.html.

[38] *State v. Russell*, 2009 Ohio App. LEXIS 4351 (Ohio Ct. App., Sept. 29, 2009).

[39] *Id.* at **11.

[40] *Id.*, at **2, 11-12,

[41] Tracey Read, *Man Gets 6 More Years in HIV Case*, THE NEWS-HERALD, Sept. 6, 2008, *available at* http://www.news-herald.com/general-news/20080906/man-gets-6-more-years-in-hiv-case.

[42] Dana Wilson, *Man Who Hid HIV Status Charged With Assault*, THE COLUMBUS DISPATCH, June 30, 2008, *available at* http://www.dispatch.com/content/stories/local/2008/07/01/ayala_hiv.html.

[43] *State v. Christian*, 2007 Ohio App. LEXIS 6309, **4 (Ohio Ct. App., December 28, 2007) (stating that "felonious assault . . . when committed with a sexual motivation is a sexually oriented offense . . . An offender having sexual conduct with a person under 18 years of age who is not their spouse when the offender knows he is HIV positive is felonious assault that has a sexual motivation," and that "[a]n offender can be designated a sexual predator if the offender is sentenced for a sexually oriented offense . . . ."). *Id.* at **17.

[44] *State v. Geiger*, 2004 Ohio App. LEXIS 6653, **1-2 (Ohio Ct. App. Dec. 22, 2004).

[45] *Id.* at **8.

[46] *State v. Roberts*, 805 N.E.2d 594, 596 (Ohio Ct. App. 2004).

having sex without disclosing his HIV status to his sexual partner.[47] A year later he was released and placed on community control for five years.[48] As a condition of his community control, the defendant was required to"[h]ave no sexual contact with any individual without prior approval of the court as to such said individual."[49] During his community control, the defendant engaged in two sexual relationships, one with a man and one with a woman, both of who were aware of his HIV status, but only one for whom had received court authorization.[50] In the trial regarding whether the defendant had violated his community control sanctions by engaging in a sexual relationship without court approval, the trial court found the defendant guilty and sentenced him to two years' imprisonment, along with a period of post-release control.[51]

On appeal, the defendant argued he did not violate the court's orders because (1) he and the man never had sex; (2) even if they had a sexual relationship the man knew about the defendant's HIV status; and (3) it was an unconstitutional invasion of his right to privacy to require court approval for potential sex partners.[52] The Ohio Court of Appeals expressed "concerns" about the breadth of the community control imposed, but found that the defendant failed to timely appeal the unconstitutional invasion of privacy issue and would therefore not address it.[53] The appeals court also overruled the defendant's other claims, finding that the trial court was correct in monitoring the defendant's activities to "protect the public from the blatant disregard [the defendant] demonstrated when he failed to disclose his condition to the initial victim of his offense."[54]

Persons convicted under the HIV-specific felonious assault law are required to register as sex offenders.

PLHIV prosecuted for failing to disclose their HIV status to someone else prior to sexual conduct under may be classified as a sex offender.[55] Engagement in sexual conduct is an element of the HIV-specific provision of the felonious assault statute. It is considered a sexually oriented offense when a person violates the felonious assault statute "with a sexual motivation,"[56] meaning it was committed to gratify the sexual needs or desires of the offender, including consensual sex.[57] When persons are convicted of or pleads guilty to committing felonious assault with a sexual motivation, they are classified as a Tier III sex offender.[58] The duty to comply with the requirements outlined below continues until the person's death.[59]

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[47] *State v. Eversole*, 912 N.E. 2d 643, 645 (Ohio Ct. App. 2009).
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.* at 646.
[53] *Id*.
[54] *Id.* at 647.
[55] OHIO REV. CODE ANN. § 2950.01(G)(1)(c) (2016).
[56] OHIO REV. CODE ANN. §§ 2950.01(A)(4), 2950.01(G)(1)(c) (2016).
[57] *See, e.g.*, *Gonzales,* 796 N.E.2d 12, at 35.
[58] OHIO REV. CODE ANN. § 2950.01(G)(1)(c) (2016).
[59] OHIO REV. CODE ANN. § 2950.07(B)(1) (2016).

Persons must register personally with the sheriff or sheriff's designee of the county in which they were convicted or pleaded guilty to the HIV felonious assault statute as soon as sentencing occurs and prior to transfer to a correctional facility.[60] Upon release, the individual must register personally with the sheriff or sheriff's designee within three days of arrival in the county where they will reside or be temporarily domiciled for more than three days.[61] The specific registration requirements are complex and numerous.[62] Similarly, the penalties for violation of these requirements—registration, notice of intent to reside, change of address notification, or address verification—are significant and depend upon whether a defendant has previously violated the registration requirements and the classification of the underlying offense, *i.e.*, a misdemeanor or felony, and if a felony, the degree of the felony.[63]

PLHIV may face enhanced criminal penalties for prostitution and solicitation of prostitution.

It is a third-degree felony for a PLHIV to solicit (advertising the illegal sale of sex for hire) or encourage another to solicit prostitution, punishable by nine to 36 months in prison.[64] It is a felony in the fifth degree for a PLHIV to "loiter to engage in solicitation," while in or near a public place, with a prison term of six to 12 months. [65] This includes a range of activities—beckoning to or trying to stop another person, engaging another person in conversation, and approaching or stopping a vehicle—if the intent is to solicit another person to engage in sexual activity for hire. A person can also be charged with loitering to engage in solicitation if they are the driver or passenger in a car and engages in any of the foresaid activities or tries to entice another person to approach or enter the vehicle with the purpose of engaging in sexual activity for hire.[66] This represents a sentence enhancement from the usual charge, a misdemeanor in the third degree, which is punishable by up to 60 days' imprisonment.[67]

Under this statute, it does not matter whether there was any intent to transmit HIV or any remote possibility of actual HIV transmission—no sexual activity is required. Merely discussing the possibility of arranging sexual activity for hire is sufficient for prosecution, as is "beckoning" at someone if the purpose is solicitation. In *State v. McPherson*, the appellant's conviction for solicitation of prostitution while living with HIV and three-year sentence were upheld.[68] McPherson was charged when he approached an undercover officer, who knew McPherson's HIV status and that he had been previously arrested for solicitation.[69] The two engaged in conversation and when McPherson agreed to perform fellatio for $10, he was arrested.[70]

The Ohio Court of Appeals found that, because the defendant initiated the conversation with the undercover officer and was the first person to propose any sexual activity, the evidence was sufficient

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[60] OHIO REV. CODE ANN. § 2950.04(A)(1) (2016).
[61] OHIO REV. CODE ANN. § 2950.04(A)(2)(a) (2016).
[62] *See* OHIO REV. CODE ANN. §§ 2950.04 - 2950.06 (2016).
[63] *See* OHIO REV. CODE ANN. § 2950.99(A) (2016).
[64] OHIO REV. CODE ANN. §§ 2907.24(C)(2), 2929.14(A)(3)(b) (2016).
[65] OHIO REV. CODE ANN §§ 2907.241(B), 2907.241(D)(2), 2929.14(A)(5) (2016).
[66] OHIO REV. CODE ANN § 2907.241(A) (2016).
[67] OHIO REV. CODE ANN §§ 2907.241(D)(1), 2929.24(A)(3) (2016).
[68] 758 N.E.2d 1198, 1199 (Ohio Ct. App. 2001).
[69] *Id.* at 1200.
[70] *Id.*

to convict him of solicitation, though no exchange of money or sexual activity occurred.[71] Moreover, the court concluded that a medical record documenting McPherson's HIV test result and the police department's knowledge of the defendant's status were sufficient to establish that McPherson knew his HIV status.[72] The court reversed the finding that McPherson had to register as a sex offender because solicitation is not considered a sexually oriented offense.[73]

Other examples of prosecutions for solicitation and prostitution after a positive HIV test result include:

- In March 2015, a 26-year old woman was charged with soliciting and loitering to engage in solicitation after a positive HIV test.[74]
- Also in March 2015, a 27-year old woman was arrested and charged with solicitation after a positive HIV test and for possession of drug instruments.[75]
- In May 2014, a 54-year old woman was convicted and sentenced to 18 months in prison for soliciting after a positive HIV test.[76]
- In September 2014, a 69-year-old man plead guilty to soliciting sex from an undercover ranger in a public park after a positive HIV test and was sentenced to an early intervention program.[77] The judge in the case questioned the constitutionality of Ohio's law.[78]
- In December 2013, a 31-year old PLHIV was convicted of a felony for soliciting while knowing her HIV status. She had already been convicted, in 2011, of soliciting and loitering to engage in solicitation after a positive HIV test.[79]
- In November 2009, a PLHIV's conviction for solicitation and loitering to engage in solicitation after a positive HIV test and her four-year sentence were affirmed.[80]
- In 2003, a PLHIV was sentenced to two years' imprisonment after pleading guilty to solicitation with knowledge of her HIV status.[81]

PLHIV face enhanced penalties for exposing others to any bodily fluid.

PLHIV and those with viral hepatitis face third-degree felony charges, punishable by nine to 36 months' imprisonment, for exposing any other person to their urine, feces, semen, blood, or any other bodily

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[71] *Id.* at 1200.

[72] *Id.* at 1200-01 (the trial court noted that the "normal procedure" is for the results of an HIV test to be communicated to the patient, though this communication was not actually part of the record).

[73] *Id.* at 1201-02.

[74] *Grand Jury Indicts HIV-positive Prostitute in Dayton*, WHIO, March 19, 2015, *available at* http://www.whio.com/news/crime--law/grand-jury-indicts-hiv-positive-prostitute-dayton/D81MmkP04lPFctwPOHloVK/.

[75] Jill Drury, *Another HIV prostitute charged in Dayton*, WDTN.COM, March 31, 2015, *available at* http://wdtn.com/2015/03/31/another-hiv-prostitute-charged-in-dayton/.

[76] *Ohio Prostitute Gets 18 Months in Prison*, WASHINGTON TIMES, May 28, 2014, *available at* http://www.washingtontimes.com/news/2014/may/28/ohio-prostitute-with-hiv-gets-18-months-in-prison/.

[77] James McCarty, *West Side Cleveland priest pleads guilty to solicitation; sentenced to early intervention*, CLEVELAND.COM, Sept.5, 2014, *available at* http://www.cleveland.com/court-justice/index.ssf/2014/09/west_side_cleveland_priest_ple.html.

[78] *Id.*

[79] John Futty, *HIV-positive woman convicted a third time of soliciting*, COLUMBUS DISPATCH, December 10, 2013, *available at* http://www.dispatch.com/content/stories/local/2013/12/09/Woman-soliciting-prostitution-HIV-positive.html.

[80] *State v. West*, 2009 Ohio App. LEXIS 5276, **1(Ohio. Ct. App. Nov. 25, 2009).

[81] John Futty, *Prostitute's HIV Status Overlooked in Charges*, THE COLUMBUS DISPATCH, September 13, 2010, *available at* http://www.dispatch.com/live/content/local_news/stories/2010/09/12/prostitutes-hiv-status-overlooked-in-charges.html?sid=101.

substance with the intent to annoy, threaten, alarm, or harass.[82] These offenses are otherwise only punishable for persons confined in detention facilities and for conduct directed at a law enforcement officer, for both of which the offense is a fifth-degree felony, punishable by six to 12 months' imprisonment.[83] Urine, feces, and saliva are not known transmitters of HIV.[84]

In *State v. Thompson*, the defendant, a PLHIV at the Southern Ohio Correctional Facility ("SOCF"), threw feces at a nurse, hitting her in the face, hair, arms, chest, and leg.[85] The defendant was placed in disciplinary control for 15 days and also indicted on two counts of harassment by an inmate.[86] The defendant moved to dismiss on the grounds of double jeopardy, and the trial court overruled the motion.[87] The defendant later pled no contest to one count and was sentenced to an additional nine months imprisonment.[88]

The defendant appealed his conviction, contending that the disciplinary proceedings at the SOCF were criminal in nature, and that his subsequent conviction for harassment by an inmate violated the double jeopardy provisions of the U.S. Constitution because he was punished multiple times for the same conduct.[89] The appellate court sustained the defendant's conviction, finding that the legislature intended that the administrative sanctions imposed upon an inmate by prison authorities be civil in nature and that the subsequent criminal action did not violate the Double Jeopardy Clause.[90] Persons imprisoned and convicted under the harassment by inmate statute may face administrative sanctions within the prison system as well as additional criminal penalties from the courts.

In *State v. Lewis*, a PLHIV was found guilty of nine counts of third-degree felony harassment by an inmate,[91] one count of intimidation of a public servant, and was sentenced to 20 years imprisonment.[92] The appellant denied his HIV status, and, although the state produced medical records stating that the appellant had been diagnosed in 1996, those medical records were not provided to the appellant during the discovery phase of the trial.[93] The appellant argued at trial that he needed to obtain exculpatory lab tests proving he did not have HIV to prepare this defense and asked for a continuance, which was denied.[94] On appeal, the Ohio Court of Appeals found that the trial court abused its discretion by admitting the medical records on the first day of the trial before the defendant had time to prepare a

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[82] OHIO REV. CODE ANN. §§ 2921.38(C), 2929.14(A)(3)(b) (2016).
[83] OHIO REV. CODE ANN. §§ 2921.38(A), 2921.38(B), 2921.38(D), 2929.14(A)(5) (2016).
[84] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission Risk*, *Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act* (December 4, 2015) *available at* http://www.cdc.gov/hiv/policies/law/risk.html (last visited November 20, 2016).
[85] 726 N.E.2d 530, 531 (Ohio Ct. App. 1999).
[86] *Id.*
[87] *Id.*
[88] *Id.*
[89] *Id.* at 532.
[90] *Id.* at 532-35.
[91] The former name of this statute was "Harassment by inmate."
[92] 2008 Ohio App. LEXIS 1214, at **1-2 (Ohio Ct. App. Mar. 21, 2008).
[93] *Id.* at **2.
[94] *Id.* at **7-8.

defense and rebut the prosecution's assertion regarding his HIV status. The conviction was reversed and the case remanded. [95]

Other prosecutions and cases under this statute include:

- In 2010, a 41-year-old PLHIV was charged with harassment with a bodily substance, among other charges, for spitting in the eye of an officer after trying to break into a convenience store.[96]

PLHIV are also prosecuted under the Felonious Assault Statute for spitting.

Ohio's felonious attempt statute has also been used to prosecute PLHIV for using their saliva or other bodily fluid as a "deadly weapon."[97] Under the felonious assault statute, "no person shall knowingly . . .[c]ause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon . . . ."[98] In several cases, Ohio courts have determined that the spit of a PLHIV can constitute a "deadly weapon."

In *State v. Price*, the appellant, a hemophiliac with HIV and Hepatitis C, spit at and bit a police officer, causing abrasions.[99] He was indicted on one count of felonious assault, one count of attempted felonious assault, and one count of assault on a peace officer.[100] He was sentenced to six years imprisonment because the court found that his spit and saliva constituted a deadly weapon.[101]

On appeal, the appellant argued that his spit and saliva should not be considered a deadly weapon.[102] A "deadly weapon" is defined as "any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon."[103] During trial, the defendant's treating physicians testified that though there is only a remote risk of transmitting HIV via saliva, because the defendant was a hemophiliac his saliva would contain HIV virus.[104] The officer also testified that there was "blood in the spit that [defendant] left on [him]."[105] The court also cited the defendant's past infection of a different officer with Hepatitis C. The court reasoned that the appellant was correctly convicted under the felonious assault statute because he knew about his illness and knew that "his saliva was a deadly weapon capable of inflicting harm to another."[106]

In a similar case, a PLHIV appealed his conviction and four-year sentence for felonious assault on a peace officer after he spit at a police officer.[107] At trial there was evidence to suggest that the spit may

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[95] *Id.* at **8-9.

[96] *Loogey Loser: Unruly Akon Man Spits in Officer's Face, Claims He's HIV Positive*, CLEVELAND 19 NEW, Feb. 17, 2010, *available at* http://www.cleveland19.com/story/11991978/loogey-loser-unruly-akron-man-spits-in-officers-face-claims-hes-hiv-positive.

[97] *State v. Bird*, 692 N.E.2d 1013, 1014 (Ohio 1998) (since the defendant pleaded no contest, the court found it unnecessary to decide whether HIV may be transmitted through saliva and whether saliva may be considered a "deadly weapon.") *Id.* at 1016.

[98] OHIO REV. CODE ANN. § 2903.11(A)(2).

[99] 834 N.E. 2d 847, 848 (Ohio Ct. App. 2005).

[100] *Id.*

[101] *Id*. at 848-49.

[102] *Id.* at 848.

[103] OHIO REV. CODE ANN. § 2923.11(A) (2016).

[104] *Price*, 834 N.E.2d at 849.

[105] *Id.* at 850.

[106] *Id.*

[107] *State v. Branch,* 2006 Ohio App. LEXIS 3750, **1 (Ohio Ct. App. July 21, 2006).

have contained blood.[108] A physician testified that there was a small risk of HIV transmission when saliva contains blood, but that saliva alone is not "a significant risk factor in transmitting HIV."[109] On appeal, the defendant argued that he could not be convicted under the statute because saliva mixed with blood coming into the officer's eye posed only a negligible risk of HIV transmission.[110]

In order to convict defendant of attempted felonious assault, the prosecution was required to prove that appellant knowingly "[c]ause[d] or attempt[ed] to cause physical harm to another " or "[c]ause[d] or attempt[ed] to cause physical harm to another . . . by means of a deadly weapon or dangerous ordnance," and the defendant engaged in "conduct that, if successful, would constitute or result in the offense."[111] Interpreting the state's criminal attempt statute, the court determined that even if it was factually or legally impossible under the circumstances for the appellant to transmit HIV to the officer, it was no defense if the act could have been completed had the circumstances been as the appellant believed.[112] The court upheld the conviction, concluding that saliva mixed with blood carries a risk of transmitting disease and that the appellant therefore intended to cause serious physical harm to the officer.[113]

PLHIV are prohibited from donating or selling blood or plasma.

It is a felony, punishable by up to 18 months imprisonment, for PLHIV to donate or sell their blood, plasma, or any other blood product.[114]

A person's HIV status may be disclosed to assist the State in a criminal investigation or prosecution.

Although a person's HIV status is generally confidential, a variety of exceptions apply. Medical information may be disclosed to law enforcement authorities pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor in connection with a criminal investigation or prosecution.[115] However, law enforcement officials may not disclose this information to others without additional court authorization.[116] To illustrate, if a prosecuting attorney subpoenaed HIV test results, they could use that information to determine if there are grounds to pursue a criminal case, but the information must otherwise remain confidential. [117] In order for the State to admit HIV test results into evidence in a trial, it must follow the procedures outlined in a separate exception, which requires any person or agency seeking authority to disclose test results to bring an action in a court of common pleas.[118] The Court may issue an order granting the petitioner authority to disclose results only if it "finds by clear and convincing evidence that the plaintiff has demonstrated a compelling need for

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[108] *Id.* at **2.
[109] *Id.* at **2-3 (quoting the testimony of Dr. Varsha Moudgal).
[110] *Id.* at **6.
[111] OHIO. REV. CODE. ANN. §§ 2903.11(A)(1), 2903.11(A)(2). 2923.02(A) (2016).
[112] *Branch*, 2006 Ohio App. LEXIS 3750, at ** (citing OHIO. REV. CODE. ANN. § 2923.02(B)).
[113] *Id.* at **9.
[114] OHIO REV. CODE ANN. §§ 2927.13, 2929.14(A)(4) (2016).
[115] OHIO REV. CODE ANN. § 3701.243 (B)(1)(h) (2016).
[116] *See Gonzales,* 796 N.E.2d 12, at 25-28.
[117] *Id.* at 27-28.
[118] *Id.* OHIO REV. CODE ANN. § 3701.243 (C)(1)(a) (2016).

disclosure of the information that cannot be accommodated by other means."[119] In its assessment of whether there is a compelling need, the court weighs the privacy interests of the individual and any harm to the public interest that my result from disclosure (e.g., deterrence of others from being tested) against the need for disclosure. [120] Any resulting order issued by the court includes provisions intended to prevent unauthorized disclosure, including specifying those who are to have access to the information, the purposes for which the information is sought, and prohibitions against future disclosure.[121]

A person or government agency that seeks disclosure of an individual's HIV test results in an action in which it is a party, may seek disclosure by filing an in camera motion with the court in which the action is proceeding.[122]

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

It a second degree misdemeanor, punishable by up to 90 days in jail,[123] for a person who has a "dangerous, contagious disease" to fail to take "reasonable measures to prevent exposing himself [or herself] to other persons."[124] Dangerous contagious disease is not defined in the statute, but courts have interpreted it to include venereal disease[125] and HIV[126] in the context of claims brought in tort.

Reports on arrests of sex workers have included reference to charges of "spreading contagion," which is the title of the statute."[127] A 2010 article reported that the misdemeanor "spreading contagion" charge had been filed in 55 cases in the preceding three years, with the overwhelming majority of instances occurring in conjunction with a charge for solicitation and in response to Methicillin-resistant Staphylococcus aureus (MRSA) infection, as opposed to HIV or any particular STI.[128] According to the article, the most common outcome of these cases is a guilty verdict for soliciting and a dismissal of the spreading contagion charge. [129]

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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[119] OHIO REV. CODE ANN. § 3701.243 (C)(1)(b) (2016).
[120] *Id.*
[121] OHIO REV. CODE ANN. § 3701.243 (C)(1)(c) (2016).
[122] OHIO REV. CODE ANN. § 3701.243 (C)(2) (2016).
[123] OHIO REV. CODE ANN. § 2929.24(A)(2) (2016)
[124] OHIO REV. CODE ANN. § 3701.81(A) (2016)
[125] *Mussivand v. David*, 45 Ohio St. 3d 314, 319 (Ohio 1989).
[126] *Burris v. Thorpe*, 166 Fed. Appx. 799 (6th Cir. 2006)
[127] John Futty, *Woman faces multiple counts of soliciting with HIV*, COLUMBUS DISPATCH, July 31, 2010, *available at* http://www.dispatch.com/content/stories/local/2010/07/31/woman-faces-multiple-counts-of-soliciting-with-hiv.html.
[128] John Futty, *Prostitute's HIV status overlooked in charges*, COLUMBUS DISPATCH, September 13, 2010, *available at* http://www.dispatch.com/content/stories/local/2010/09/13/prostitutes-hiv-status-overlooked-in-charges.html.
[129] *Id.*

Code of Ohio

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 29, CRIMES -- PROCEDURE

OHIO REV. CODE ANN. § 2903.11 (2016) **

Felonious assault

(A) No person shall knowingly do either of the following:

(1) Cause serious physical harm to another or to another's unborn;

(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly do any of the following:

(1) Engage in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct;

(2) Engage in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome;

(3) Engage in sexual conduct with a person under 18 years of age who is not the spouse of the offender.

(C) The prosecution of a person under this section does not preclude prosecution of that person under section 2907.02 of the Revised Code.

(D)

(1)

(a) Whoever violates this section is guilty of felonious assault. Except as otherwise provided in this division or division (D)(1)(b) of this section, felonious assault is a felony of the second degree. If the victim of a violation of division (A) of this section is a peace officer or an investigator of the bureau of criminal identification and investigation, felonious assault is a felony of the first degree.

(b) Regardless of whether the felonious assault is a felony of the first or second degree under division (D)(1)(a) of this section, if the offender also is convicted of or pleads guilty to a specification as described in section 2941.1423 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, except as otherwise provided in this division or unless a longer prison term is required under any other provision of law, the court shall sentence the offender to a mandatory

prison term as provided in division (B)(8) of section 2929.14 of the Revised Code. If the victim of the offense is a peace officer or an investigator of the bureau of criminal identification and investigation, and if the victim suffered serious physical harm as a result of the commission of the offense, felonious assault is a felony of the first degree, and the court, pursuant to division (F) of section 2929.13 of the Revised Code, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(E) As used in this section:

(1) “Deadly weapon” and “dangerous ordnance” have the same meanings as in section 2923.11 of the Revised Code.

(4) “Sexual conduct” has the same meaning as in section 2907.01 of the Revised Code, except that, as used in this section, it does not include the insertion of an instrument, apparatus, or other object that is not a part of the body into the vaginal or anal opening of another, unless the offender knew at the time of the insertion that the instrument, apparatus, or other object carried the offender’s bodily fluid.

OHIO REV. CODE ANN. § 2907.01 (2016) **

Definitions
As used in sections 2907.01 to 2907.38 of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) "Sexual activity" means sexual conduct or sexual contact, or both.

(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

OHIO REV. CODE ANN. § 2907.24 (2016) **

Soliciting; solicitation after positive HIV test

(A) No person shall solicit another to engage with such other person in sexual activity for hire.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall engage in conduct in violation of division (A) of this section.

(C)

(1) Whoever violates division (A) of this section is guilty of soliciting, a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of engaging in solicitation after a positive HIV test. If the offender commits the violation prior to July 1, 1996, engaging in solicitation after a positive HIV test is a felony of the second degree. If the offender commits the violation on or after July 1, 1996, engaging in solicitation after a positive HIV test is a felony of the third degree.

(D) If a person is convicted of or pleads guilty to a violation of any provision of this section, an attempt to commit a violation of any provision of this section, or a violation of or an attempt to commit a violation of a municipal ordinance that is substantially equivalent to any provision of this section and if the person, in committing or attempting to commit the violation, was in, was on, or used a motor vehicle, the court, in addition to or independent of all other penalties imposed for the violation, may impose upon the offender a class six suspension of the person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(6) of section 4510.02 of the Revised Code. In lieu of imposing upon the offender the class six suspension, the court instead may require the offender to perform community service for a number of hours determined by the court.

OHIO REV. CODE ANN. § 2907.241 (2016) **

Loitering to engage in solicitation; loitering to engage in solicitation after positive HIV test

(A) No person, with purpose to solicit another to engage in sexual activity for hire and while in or near a public place, shall do any of the following:

(1) Beckon to, stop, or attempt to stop another;

(2) Engage or attempt to engage another in conversation;

(3) Stop or attempt to stop the operator of a vehicle or approach a stationary vehicle;

(4) If the offender is the operator of or a passenger in a vehicle, stop, attempt to stop, beckon to, attempt to beckon to, or entice another to approach or enter the vehicle of which the offender is the operator or in which the offender is the passenger;

(5) Interfere with the free passage of another.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall engage in conduct in violation of division (A) of this section.

(C) As used in this section:

(1) "Vehicle"" has the same meaning as in section 4501.01 of the Revised Code.

(2) "Public place" means any of the following:

(a) A street, road, highway, thoroughfare, bikeway, walkway, sidewalk, bridge, alley, alleyway, plaza, park, driveway, parking lot, or transportation facility;

(b) A doorway or entrance way to a building that fronts on a place described in division (C)(2)(a) of this section;

(c) A place not described in division (C)(2)(a) or (b) of this section that is open to the public.

(D)

(1) Whoever violates division (A) of this section is guilty of loitering to engage in solicitation, a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of loitering to engage in solicitation after a positive HIV test. If the offender commits the violation prior to July 1, 1996, loitering to engage in solicitation after a positive HIV test is a felony of the fourth degree. If the offender commits the violation on or after July 1, 1996, loitering to engage in solicitation after a positive HIV test is a felony of the fifth degree.

OHIO REV. CODE ANN. § 2907.25 (2016) **

Prostitution; prostitution after positive HIV test

(A) No person shall engage in sexual activity for hire.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall engage in sexual activity for hire.

(C)

(1) Whoever violates division (A) of this section is guilty of prostitution, a misdemeanor of the third degree.

(2) Whoever violates division (B) of this section is guilty of engaging in prostitution after a positive HIV test. If the offender commits the violation prior to July 1, 1996, engaging in prostitution after a positive HIV test is a felony of the second degree. If the offender commits the violation on or after July 1, 1996, engaging in prostitution after a positive HIV test is a felony of the third degree.

OHIO REV. CODE ANN. § 2921.38 (2016) **

Harassment with bodily substance

(A) No person who is confined in a detention facility, with intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.

(B) No person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, shall cause or attempt to cause the law enforcement officer to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the law enforcement officer, by expelling the bodily substance upon the law enforcement officer, or in any other manner.

(C) No person, with knowledge that the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis and with

intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.

(D) Whoever violates this section is guilty of harassment with a bodily substance. A violation of division (A) or (B) of this section is a felony of the fifth degree. A violation of division (C) of this section is a felony of the third degree.

(E)

> (1) The court, on request of the prosecutor, or the law enforcement authority responsible for the investigation of the violation, shall cause a person who allegedly has committed a violation of this section to submit to one or more appropriate tests to determine if the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis.
>
> (2) The court shall charge the offender with the costs of the test or tests ordered under division (E)(1) of this section unless the court determines that the accused is unable to pay, in which case the costs shall be charged to the entity that operates the detention facility in which the alleged offense occurred.

(F) This section does not apply to a person who is hospitalized, institutionalized, or confined in a facility operated by the department of mental health or the department of developmental disabilities.

OHIO REV. CODE ANN. § 2927.13 (2016) **

Sale or donation of blood by AIDS carrier

(A) No person, with knowledge that the person is a carrier of a virus that causes acquired immune deficiency syndrome, shall sell or donate the person's blood, plasma, or a product of the person's blood, if the person knows or should know the blood, plasma, or product of the person's blood is being accepted for the purpose of transfusion to another individual.

(B) Whoever violates this section is guilty of selling or donating contaminated blood, a felony of the fourth degree.

OHIO REV. CODE ANN. § 2929.14 (2016) **

Basic Prison terms

(A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (E), (G), (H), or (J) of this section or in division (D)(6) of section 2919.25 of the Revised Code and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a definite prison term that shall be one of the following:

> (1) For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, ten, or eleven years.
>
> (2) For a felony of the second degree, the prison term shall be two, three, four, five, six, seven, or eight years.

(3)(a) For a felony of the third degree that is a violation of section 2903.06, 2903.08, 2907.03, 2907.04, or 2907.05 of the Revised Code or that is a violation of section 2911.02 or 2911.12 of the Revised Code if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of section 2911.01, 2911.02, 2911.11, or 2911.12 of the Revised Code, the prison term shall be twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.
(b) For a felony of the third degree that is not an offense for which division (A)(3)(a) of this section applies, the prison term shall be nine, twelve, eighteen, twenty-four, thirty, or thirty-six months.

(4) For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

OHIO REV. CODE ANN. § 2929.24 (2016) **

Definite jail terms for misdemeanor; eligibility for county jail industry program; reimbursement sanction; costs of confinement

(A) Except as provided in section 2929.22 or 2929.23 of the Revised Code or division (E) or (F) of this section and unless another term is required or authorized pursuant to law, if the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender pursuant to this chapter, the court shall impose a definite jail term that shall be one of the following:

(2) For a misdemeanor of the second degree, not more than ninety days;

OHIO REV. CODE ANN. § 2950.01 (2016)

Definitions

As used in this chapter, unless the context clearly requires otherwise:
(A) "Sexually oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age:

(4) A violation of section 2903.01, 2903.02, or 2903.11 of the Revised Code when the violation was committed with a sexual motivation;

(G) "Tier III sex offender/child-victim offender" means any of the following:

(1) A sex offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of the following sexually oriented offenses:

(c) A violation of section 2903.01, 2903.02, or 2903.11 of the Revised Code when the violation was committed with a sexual motivation.

OHIO REV. CODE ANN. § 2950.04 (2016)

Duty to register and comply with registration requirements

(1)

(a) Immediately after a sentencing hearing is held on or after January 1, 2008, for an offender who is convicted of or pleads guilty to a sexually oriented offense and is sentenced to a prison term, a term of imprisonment, or any other type of confinement and before the offender is transferred to the custody of the department of rehabilitation and correction or to the official in charge of the jail, workhouse, state correctional institution, or other institution where the offender will be confined, the offender shall register personally with the sheriff, or the sheriff's designee, of the county in which the offender was convicted of or pleaded guilty to the sexually oriented offense.

(d) After an offender who has registered pursuant to division (A)(1)(a) of this section is released from a prison term, a term of imprisonment, or any other type of confinement, the offender shall register as provided in division (A)(2) of this section. After a delinquent child who has registered pursuant to division (A)(1)(b) of this section is released from the custody of the department of youth services or from a secure facility that is not operated by (the department, the delinquent child shall register as provided in division (A)(3) of this section.

OHIO REV. CODE ANN. § 2950.07 (2016)

Commencement of duty to register; duration

(B) The duty of an offender who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and the duty of a delinquent child who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or who is an out-of-state juvenile offender registrant to comply with sections 2950.04, 2950.041, 29050.05, and 2950.06 of the Revised Code continues, after the date of commencement, for whichever of the following periods is applicable:

(1) Except as otherwise provided in this division, if the person is an offender who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, if the person is a delinquent child who is a tier III sex offender/child-victim offender relative to the sexually oriented offense or child-victim oriented offense, or if the person is a delinquent child who is a public registry-qualified juvenile offender registrant relative to the sexually oriented offense, the offender's or delinquent child's duty to comply with those sections continues until the offender's or delinquent child's death.

OHIO REV. CODE ANN. § 2950.99 (2016) **

Penalties

(A)

(1)

(a) Except as otherwise provided in division (A)(1)(b) of this section, whoever violates a prohibition in section 2950.04, 2950.041, 2950.05, or 2950.06 of the Revised Code shall be punished as follows . . .

(ii) If the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address notification, or address verification requirement that was violated under the prohibition is a felony of the first, second, third, or fourth degree if committed by an adult or a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition, or, if the most serious sexually oriented offense or child-victim oriented offense that was the basis of the registration, notice of intent to reside, change of address, or address verification requirement that was violated under the prohibition is a comparable category of offense committed in another jurisdiction, the offender is guilty of a felony of the same degree as that offense committed in the other jurisdiction would constitute if committed in this state.

TITLE 31, DOMESTIC RELATIONS – CHILDREN

OHIO REV. CODE ANN. § 3101.06 (2016)

Denial of license

No marriage license shall be granted when either of the applicants is under the influence of an intoxicating liquor or controlled substance or is infected with syphilis in a form that is communicable or likely to become communicable.

TITLE 37, HEALTH – SAFETY – MORALS

OHIO REV. CODE ANN. § 3701.24 (2016)

Report as to contagious or infectious diseases; AIDS and HIV

(A) As used in the section and sections 3701.241 to 3701.249 of the Revised Code:

(1) "AIDS" means the illness designated as acquired immunodeficiency syndrome.

(2) "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS

(3) "AIDS related condition" means symptoms of illness related to HIV infection, including AIDS related complex, that are confirmed by a positive HIV test.

OHIO REV. CODE ANN. § 3701.81 (2016) **

Spreading contagion

(A) No person, knowing or having reasonable cause to believe that he is suffering from a dangerous, contagious disease, shall knowingly fail to take reasonable measures to prevent exposing himself to other persons, except when seeking medical aid.

(B) No person, having charge or care of a person whom he knows or has reasonable cause to believe is suffering from a dangerous, contagious disease, shall recklessly fail to take reasonable measures to protect others from exposure to the contagion, and to inform health authorities of the existence of the contagion.

(C) No person, having charge of a public conveyance or place of public accommodation, amusement, resort, or trade, and knowing or having reasonable cause to believe that persons using such conveyance or place have been or are being exposed to a dangerous, contagious disease, shall negligently fail to take reasonable measures to protect the public from exposure to the contagion, and to inform health authorities of the existence of the contagion.

OHIO REV. CODE ANN. § 3701.99 (2016) **

Penalties

(C) Whoever violates section 3701.352 or 3701.81 of the Revised Code is guilty of a misdemeanor of the second degree.

OHIO REV. CODE ANN. § 3701.243 (2016)

Disclosure of HIV test results or diagnosis

(B)

(1) Except as provided in divisions (B)(2), (C), (D), and (F) of this section, the results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed as having AIDS or an AIDS-related condition may be disclosed only to the following:

(h) To law enforcement authorities pursuant to a search warrant or a subpoena issued by or at the request of a grand jury, a prosecuting attorney, a city director of law or similar chief legal officer of a municipal corporation, or a village solicitor, in connection with a criminal investigation or prosecution.

(C)

(1) Any person or government agency may seek access to or authority to disclose the HIV test records of an individual in accordance with the following provisions:

(a) The person or government agency shall bring an action in a court of common pleas requesting disclosure of or authority to disclose the results of an HIV test of a specific individual, who shall be identified in the complaint by a pseudonym but whose name shall be communicated to the court confidentially, pursuant to a court order restricting the use of the name. The court shall provide the individual with notice and an opportunity to participate in the proceedings if the individual is not named as a party. Proceedings shall be conducted in chambers unless the individual agrees to a hearing in open court.

(b) The court may issue an order granting the plaintiff access to or authority to disclose the test results only if the court finds by clear and convincing evidence that the plaintiff has demonstrated a compelling need for disclosure of the information that cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy right of the individual tested and against any disservice to the public interest that might result from the disclosure, such as discrimination against the individual or the deterrence of others from being tested

(c) If the court issues an order, it shall guard against unauthorized disclosure by specifying the persons who may have access to the information, the purposes for which the information shall be used, and prohibitions against future disclosure.

(2) A person or government agency that considers it necessary to disclose the results of an HIV test of a specific individual in an action in which it is a party may seek authority for the disclosure by filing an in camera motion with the court in which the action is being heard. In hearing the motion, the court shall employ procedures for confidentiality similar to those specified in division (C)(1) of this section. The court shall grant the motion only if it finds by clear and convincing evidence that a compelling need for the disclosure has been demonstrated.

(3) Except for an order issued in a criminal prosecution or an order under division (C)(1) or (2) of this section granting disclosure of the result of an HIV test of a specific individual, a court shall not compel a blood bank, hospital blood center, or blood collection facility to disclose the result of HIV tests performed on the blood of voluntary donors in a way that reveals the identity of any donor.

(F) An individual who knows that the individual has received a positive result on an HIV test or has been diagnosed as having AIDS or an AIDS-related condition shall disclose this information to any other person with whom the individual intends to make common use of a hypodermic needle or engage in sexual conduct as defined in section 2907.01 of the Revised Code. An individual's compliance with this division does not prohibit a prosecution of the individual for a violation of division (B) of section 2903.11 of the Revised Code.

(G) Nothing in this section prohibits the introduction of evidence concerning an HIV test of a specific individual in a criminal proceeding.

Oklahoma

Analysis

People living with HIV (PLHIV) can face felony charges for failing to disclose their HIV status to their sexual partners.

It is punishable by up to five years in prison for a PLHIV to engage in conduct that is "reasonably likely to result in the transfer of the person's own blood, bodily fluids containing visible blood, semen, or vaginal secretions into the bloodstream of another, or through the skin or membranes of another person" with the intent to "infect" that other individual.[1] It is a defense to prosecution if the other party had been informed of the defendant's HIV status and consented to the conduct in question.[2] Transmission of HIV is not required for prosecution.

Although Oklahoma's HIV exposure statute requires intent to transmit disease, prosecutions under this law have resulted in convictions even where there was no clear indication that the defendant acted with intent to transmit HIV, but rather only failed to inform a sexual partner of their HIV status:

- In February 2023, a 35-year-old PLHIV was arrested after a former partner alleged he did not disclose he was receiving medical care for HIV.[3]
- In August 2014, a 36-year-old PLHIV was charged with two counts of knowingly engaging in conduct likely to transmit HIV and two counts of using a computer to violate Oklahoma state statutes after he solicited sexual partners without disclosing his HIV status to numerous respondents.[4]
- In January 2014, a 31-year-old PLHIV was arrested on suspicion of knowingly exposing another to HIV.[5]
- In March 2012, a 23-year-old PLHIV was charged with, among other things, assault and battery with a deadly weapon and knowingly exposing several sexual partners to HIV.[6]

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[1] OKLA. STAT. tit. 21, § 1192.1(A).

[2] OKLA. STAT.§ 1192.1(A)(1).

[3] *Tulsa Police Arrest Man Suspected of Exposing Others To HIV*, NEWSON6 (Feb. 22, 2023), https://www.newson6.com/story/63f8aaff0f06220725789781/tulsa-police-arrest-man-suspected-of-exposing-others-to-hiv.

[4] Dave Detling & Brian Shlonsky, *Oklahoma Man Arrested, Accused of Having Sex Without Disclosing HIV Status*, KOCO.COM (Aug. 1, 2014), *available at* http://www.koco.com/news/oklahoma-man-arrested-accused-of-having-sex-without-disclosing-hiv-status/27257282.

[5] *HIV Suspect Arrested in Muskogee County*, SWTIMES (Jan. 17, 2014), *available at* https://www.swtimes.com/story/news/2014/01/17/hiv-suspect-arrested-in-muskogee/26258967007/.

[6] *Grady County Man Accused of Spreading HIV Held Without Bond*, NEWS9.COM (Mar. 20, 2012), *available at* http://www.news9.com/story/17204303/grady-county-man-accused-of-spreading-hiv-held-without-bond.

- In 2009, a 40-year-old PLHIV was arrested for not disclosing his HIV status to a man with whom he'd had oral sex.[7]
- In December 2009, a 64-year-old PLHIV was arrested after a woman complained to police that he had not disclosed his HIV status prior to their engaging in a sexual relationship.[8]

The common element in all of these cases was the defendant's alleged failure to disclose their HIV status to a sexual partner.

Non-disclosure of HIV status or a complainant's absence of consent to engage in the relevant activity is a required element for prosecution, but whether or not a defendant disclosed their HIV status is often difficult to demonstrate in court. In these matters, relying on party testimony has inherent limitations. For example, a man living with HIV was charged with knowingly exposing his girlfriend to HIV, who alleged that she did not know the man's status over the period of their relationship.[9] It was not until six months after the initial charges were brought that detectives determined, due to the witness testimony, that the woman had in fact been aware of the man's HIV status before initiating their sexual relationship.[10]

In addition, the statute may be used to criminalize intentional conduct that results in exposure likely to transmit HIV:

- In 2024, a man was convicted of intentionally exposing another to "AIDS," as well as rape and lewd molestation charges.[11]

The authors are not aware of any instances in which the use of a condom or a defendant's low viral load have been relied upon as a defense in any of Oklahoma's reported cases, though condoms as a barrier method are significant to whether "transfer" occurred, as required by the statute.

PLHIV have been prosecuted under Oklahoma's criminal HIV exposure law for spitting and biting.

PLHIV have been charged under Oklahoma's intent-to-transfer statute for conduct, such as biting and spitting, that poses a remote or no risk of HIV transmission and may not meet the criteria in the law itself.

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[7] *Oklahoma City Man Arrested on* Suspicion *of 'Transmitting AIDS'*, THE OKLAHOMAN (Aug. 27, 2009), *available at* https://www.oklahoman.com/story/news/crime/2009/08/27/oklahoma-city-man-arrested-on-suspicion-of-transmitting-aids/61366720007.

[8] *Oklahoma City Man Arrested on HIV Complaint*, THE OKLAHOMAN (Dec. 15, 2009), *available at* https://www.oklahoman.com/story/lifestyle/health-fitness/2009/12/15/oklahoma-city-man-arrested-on-hiv-complaint/61314362007/.

[9] *Authorities Drop Charges Against HIV-Positive Man*, TULSA WORLD (Oct. 1, 1992), at C12.

[10] *Id*.

[11] *Dylan Brown, Youth Baseball Coach Charged with Raping Child, Possibly Infecting Her With HIV*, KFOR (Jan 22, 2024), https://kfor.com/news/youth-baseball-coach-charged-with-raping-child-possibly-infecting-her-with-hiv/.

- In June 2015, a 32-year-old PLHIV was charged with knowingly intending to transfer HIV and assault and battery after allegedly spitting on a woman during an argument.[12]
- In May 2010, a man claiming to have HIV was booked on four felony complaints of spreading an "infectious" disease and knowingly intending to "transfer" HIV after jerking his head to throw blood and saliva at emergency medical workers as he was being treated for injuries from a fire.[13]
- In October 2008, a 50-year-old PLHIV was arrested and charged with attempting to "infect" a security guard with HIV by biting him.[14]

The CDC has concluded that it is "extremely rare" that HIV be transmitted through spitting or biting.[15] Although the statute requires conduct reasonably likely to result in "transfer" of "blood, bodily fluids containing visible blood, semen, or vaginal secretions,"[16] these examples suggest that PLHIV are being prosecuted regardless of whether the bodily fluids in question contain "visible blood."

PLHIV engaging in sex work may face enhanced penalties of up to five years in jail.

Upon conviction for prostitution, PLHIV engaged in sex work face up to five years in prison if they know their HIV status.[17] But for HIV status, a conviction for prostitution and related crimes is typically a misdemeanor, punishable by 30 days to one year in jail and up to $2,500 in fines.[18] The law specifically targets PLHIV engaged in sex work regardless of intent to transmit HIV, risk of HIV transmission, or actual transmission. The definition of prostitution under the statute contains various activities that do not pose a risk of transmission, such as "masturbation,"[19] as well as the "making of any appointment or engagement" for anal or vaginal sex, oral sex, or masturbation.[20] On the face of this statute, no actual sexual activity is required to face felony prosecution and factors such as the use of condoms or a defendant's low viral load would not matter.

- In August 2024, a woman was charged with engaging in prostitution with knowledge of her HIV status, as well as assault and battery on a police officer.[21]

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[12] Kimberly Querry-Thompson, *Report: Man Arrested for 'Knowingly Transferring HIV' After Allegedly Spitting on Woman*, KFOR.COM (June 22, 2015), *available at* http://kfor.com/2015/06/22/report-man-arrested-for-knowingly-transferring-hiv-after-allegedly-spitting-on-woman/.

[13] Shannon Muchmore, *Man Who Says He Has HIV Allegedly Spits on Emergency Workers*, NEWSOK (May 23, 2010), *available at* http://newsok.com/man-who-says-he-has-hiv-spits-on-emergergency-workers/article/3463349; *Man Arrested for Trying to Spread HIV*, FOX23 (May 24, 2010), *available at* http://www.fox23.com/news/news/breaking-news/man-arrested-for-trying-to-spread-hiv/ndmZ4/.

[14] Jay Marks, *HIV-Positive Woman Faces Felony for Bite,* NEWSOK (Oct. 8, 2008), *available at* http://newsok.com/hiv-positive-woman-faces-felony-for-bite/article/3308838.

[15] CTR. FOR DISEASE CONTROL & PREVENTION, *How HIV Spreads*, (Nov. 25, 2024), *available at* https://www.cdc.gov/hiv/causes/index.html.

[16] OKLA. STAT. tit. 21, § 1192.1(A).

[17] OKLA. STAT.§ 1031(B).

[18] OKLA. STAT.§ 1031(A).

[19] OKLA. STAT.§ 1030(1)(a).

[20] § 1030(1)(b) (2026).

[21] JAILBIRDS, *Brooklyn Walker - Oklahoma*, (Aug. 5, 2025), https://jailbirds.com/brooklyn-walker-oklahoma-oklahoma-2025-08-05/.

PLHIV have also been convicted under general criminal laws.

Oklahoma's HIV exposure statute has been in place since 1997, but general criminal laws have been used to target PLHIV as well. In 2000, a 41-year-old PLHIV pled guilty to 56 counts of sexual abuse and one count of attempted murder after he engaged in sexual intercourse with two female minors.[22] Each count represented a month that he engaged in sexual conduct with one or both of the minors.[23] The attempted murder charge arose from allegations that he knew his HIV status and repeatedly engaged in unprotected sex with one of the minors, who later became pregnant—both she and her baby had positive HIV test results.[24] The defendant was sentenced to four consecutive life sentences and 53 concurrent life sentences.[25]

PLHIV can be compelled to comply with Partner Counseling and Referral Services (PCRS).

Partner Counseling and Referral Services (PCRS) that persons diagnosed with HIV receive in Oklahoma include the recommendation that they disclose their HIV status "prior to engaging or contemplating the engagement of any sexual activity or other transmission activity."[26] Refusal to voluntarily comply with PCRS, including "engage[ment] in sexual activity without observing PCRS recommendations," will result in a compliance order being issued to a PLHIV.[27]

Persons with a "sexually transmitted infection" can be punished for exposing others or transmitting disease.

Oklahoma has two criminal statutes that penalize exposure or transmission of "infectious" disease.[28] It is a felony, punishable by two to five years' imprisonment, for a person with syphilis or gonorrhea to intentionally or recklessly spread disease to others.[29] Conviction for this crime also bars an inmate from earning credit for good conduct and education activities that can be applied toward the reduction of a sentence.[30] Disclosure does not appear to be a defense on the face of the statute. Persons with "any contagious disease" who willfully expose themselves to others in "any public place or thoroughfare" may be charged with a misdemeanor[31] and be sentenced to one year in jail and a $500 fine.[32] Critical terms such as "expose" are not defined and "any contagious disease" may include a number of conditions that are not casually transmitted. The authors are not aware of any case law that helps clarify the application of these laws.

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[22] Bill Braun, *Tulsa Man Imprisoned for Life on Sex Counts*, TULSA WORLD (May 24, 2000), *available at* http://www.tulsaworld.com/archives/tulsa-man-imprisoned-for-life-on-sex-counts/article_eb71377f-dfa5-5907-91c3-15568704f89e.html.

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] OKLA. ADMIN. CODE § 310:521-5-3(c)(5).

[27] OKLA. ADMIN. CODE § 310:521-5-3(e).

[28] OKLA. STAT. tit. 21, §§ 1192, 1199.

[29] OKLA. STAT. 1192.

[30] OKLA. STAT. tit. 57, § 138(E)(60).

[31] OKLA. STAT. tit. 21, § 1199.

[32] OKLA. STAT. tit. 21, § 1219.

- In April 2023, a man was charged with indecent exposure for exposing himself and claiming he was HIV-positive and had very "contagious" genital warts.[33]

Public health officials may order mandatory examination, treatment, or quarantine of a person with an "STI" and non-compliance may result in prosecution.

Public health officials may issue an order for the examination or treatment of any individual suspected or confirmed to have a communicable disease.[34] It is against the law for a person with an "STI" to refuse to submit to examination and treatment by a health care provider.[35] Public health officials are also explicitly authorized to use quarantine for "protection of other persons from infection by a person infected with an "STI"."[36] This authority is in addition to the broader power of health officials to impose quarantine or isolation in response to "a communicable disease of public health concern"[37] which is not defined by statute. "Sexually transmitted infection" is defined and includes syphilis, gonorrhea, chlamydia, HIV, AIDS, and "any other disease which may be transmitted from any person to any other person through or by means of any form of sexual contact."[38]

The Administrative Code details the criteria that must be met to issue an order for isolation: 1) a person must be reasonably known or suspected to have a communicable disease constituting a biological public health threat; 2) isolation is the necessary means to control the spread of disease.[39] Biological public health threat means an "infectious, communicable disease, the agent of which may be readily transmitted from an infectious person to a susceptible person without their knowledge or consent, and the infectious nature of which is known to cause increasing incidence of infection and disease upon transmission such that there is a threat to the general public health."[40]

Persons subject to an order for isolation or quarantine are entitled to request a hearing in which the Department of Health must demonstrate by a preponderance of the evidence that they have, or are suspected of having, an "infectious" disease constituting a biologic public health threat, or that they have been exposed to such.[41] Persons may appeal the administrative decision resulting from the hearing pursuant to the district court of the county where they reside.[42]

Should a person subject to an order of examination, treatment, isolation or quarantine fail to comply, public health officials may request an emergency order from the district court to enforce the order.[43] If

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[33] Miranda Vondale Foster, *OKC Police Arrest man For Public Indecency After He Tries to Show Man His 'Genital Warts*,' OKC FOX (Apr. 14, 2023), https://okcfox.com/news/local/okc-police-arrest-man-for-public-indecency-after-he-shows-someone-his-genital-warts-hiv-positive-christopher-byrd-northwest-4th-street-harvey-avenue-crime-arrest-oklahoma-city-police-department-okcpd-ocpd-april-3-2023.

[34] OKLA. ADMIN. CODE § 310:521-7-1, 310:521-7-2.

[35] OKLA. STAT. tit. 63, § 1-518.

[36] OKLA. STAT. tit. 63, § 1-530(a).

[37] OKLA. STAT. tit. 63,§ 1-504(B).

[38] OKLA. STAT. tit. 63§ 1-517(a).

[39] OKLA. ADMIN. CODE § 310:521-7-2(a).

[40] OKLA. ADMIN. CODE § 310:521-1-2.

[41] OKLA. ADMIN. CODE § 310:521-7-6(a).

[42] *Id*., OKLA. STAT. tit. 75, § 318(B)(2).

[43] OKLA. ADMIN. CODE § 310:521-7-6(b).

the court grants the order, the person is taken immediately into custody by law enforcement officials for the purpose of examination, treatment or detention until the Department of Health determines that there is "no longer pose a risk of transmission of the infectious agent constituting a biologic public health threat to other individuals."[44] The criteria to be relied upon in this assessment are not enumerated and other than the hearing before the Department of Health and general provisions for challenging an agency's administrative action, there are no procedural safeguards for a person subject to a restrictive order.

The penalty for willful violation of a lawful order issued by public health officials is a misdemeanor, punished by up to 30 days in jail and a $100 fine.[45] Violating any provision of the Public Health Code generally is also a misdemeanor, and punishable by 30 days in jail and a $200 fine.[46] In addition to these penalties, district courts are empowered to grant injunctive relief to prevent violation of, or compel compliance with, any provisions of the Public Health Code or orders issued pursuant to the Code.[47]

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.*

[44] OKLA. ADMIN. CODE §§ 310:521-7-6(b), 310:521-7-9.
[45] OKLA. STAT. tit. 63, § 1-1701(A)(1).
[46] OKLA. STAT. tit. 63, § 1-1701(A)(2).
[47] OKLA. STAT. tit. 63, § 1-1701(B)(1).

Oklahoma Statutes

TITLE 21, CRIMES AND PUNISHMENTS

OKLA. STAT. tit. 21, § 1192.1

Knowingly engaging in conduct reasonably likely to transfer HIV virus

A. It shall be unlawful for any person knowing that he or she has Acquired Immune Deficiency Syndrome (AIDS) or is a carrier of the human immunodeficiency virus (HIV) and with intent to infect another, to engage in conduct reasonably likely to result in the transfer of the person's own blood, bodily fluids containing visible blood, semen, or vaginal secretions into the bloodstream of another, or through the skin or other membranes of another person, except during in utero transmission of blood or bodily fluids, and:

1. The other person did not consent to the transfer of blood, bodily fluids containing blood, semen, or vaginal secretions; or
2. The other person consented to the transfer but at the time of giving consent had not been informed by the person that the person transferring such blood or fluids had AIDS or was a carrier of HIV.

B. Any person convicted of violating the provisions of this section shall be guilty of a Class 5B felony offense, punishable by imprisonment in the custody of the Department of Corrections for not more than five (5) years.

OKLA. STAT. tit. 21, § 1030

Definitions

As used in the Oklahoma Statutes, unless otherwise provided for by law:

1. "Prostitution" means:

   a. the giving or receiving of the body for sexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse or lewdness with any person not his or her spouse, in exchange for money or any other thing of value, or
   b. the making of any appointment or engagement for sexual intercourse, fellatio, cunnilingus, masturbation, anal intercourse or lewdness with any person not his or her spouse, in exchange for money or any other thing of value;

OKLA. STAT. tit. 21, § 1031

Punishment for violations – Fines – Knowingly engaging in prostitution while infected with HIV– Violations within certain distance from school or church

A. Except as provided in subsection B, C, D, or E of this section, any person violating any of the provisions of paragraph 1, 2, 3, or 5 of subsection A of Section 1029 or Section 1030 of this title shall, upon conviction, be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year or by fines as follows: a fine not more than Two Thousand Five Hundred Dollars ($2,500.00) upon the first conviction for violation of any of such provisions, a fine not more than Five Thousand Dollars ($5,000.00) upon the second conviction for

violation of any of such provisions, and a fine not more than Seven Thousand Five Hundred Dollars ($7,500.00) upon the third or subsequent convictions for violation of any of such provisions, or by both such imprisonment and fine. In addition, the court may require a term of community service not less than forty (40) nor more than eighty (80) hours. The court in which any such conviction is had shall notify the county superintendent of public health of such conviction.

B. Any person who engages in an act of prostitution with knowledge that he or she is infected with the human immunodeficiency virus shall, upon conviction, be guilty of a Class D1 felony offense punishable by imprisonment as provided for in subsections B through F of Section 20N of this title.

C. Any person who engages in an act of child sex trafficking as defined in Section 1030 of this title shall, upon conviction, be guilty of a Class B1 felony offense punishable by imprisonment in the custody of the Department of Corrections for not more than ten (10) years and by fines as follows: a fine not more than Five Thousand Dollars ($5,000.00) upon the first conviction, a fine not more than Ten Thousand Dollars ($10,000.00) upon the second conviction, and a fine not more than Fifteen Thousand Dollars ($15,000.00) upon the third or subsequent convictions.

D. Any person violating any of the provisions of Section 1029 or 1030 of this title within one thousand (1,000) feet of a school or church shall, upon conviction, be guilty of a Class D1 felony offense and shall be punished by imprisonment as provided for in subsections B through F of Section 20N of this title, or by fines as follows: a fine not more than Two Thousand Five Hundred Dollars ($2,500.00) upon the first conviction for violation of any of such provisions, a fine not more than Five Thousand Dollars ($5,000.00) upon the second conviction for violation of any of such provisions, and a fine not more than Seven Thousand Five Hundred Dollars ($7,500.00) upon the third or subsequent convictions for violation of any of such provisions, or by both such imprisonment and fine. In addition, the court may require a term of community service not less than forty (40) nor more than eighty (80) hours. The court in which any such conviction is had shall notify the county superintendent of public health of such conviction.

E. Any person violating paragraph 4 of subsection A of Section 1029 of this title shall, upon conviction, be guilty of a Class B4 felony offense and shall be punished in accordance with the provisions of subsection B of Section 1040.57 of this title.

OKLA. STAT. tit. 21, § 1192

Spread of infectious diseases

Any person who shall inoculate himself or any other person or shall suffer himself to be inoculated with smallpox, syphilis or gonorrhea and shall spread or cause to be spread to any other persons with intent to or recklessly be responsible for the spread of or prevalence of such infectious disease, shall be deemed a felon, and, upon conviction thereof, guilty of a Class D1 felony offense and shall be punished by imprisonment as provided for in subsections B through F of Section 20N of this title.

OKLA. STAT. tit. 21, § 1199

Contagious disease, exposing oneself or another with

Every person who willfully exposes himself or another person, being affected with any contagious disease in any public place or thoroughfare, except in his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

OKLA. STAT. tit. 21, § 1219

Penalties

Any person violating the provisions of this act shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned in the county jail for not less than thirty (30) days nor more than (1) year or shall be fined an amount not to exceed Five Hundred Dollars ($500.00) or by both such imprisonment and fine; provided if a person be convicted of such offense a second time, it shall be mandatory that his punishment be jail imprisonment for one (1) year.

TITLE 63, PUBLIC HEALTH AND SAFETY

OKLA. STAT. tit. 63, § 1-504

Quarantine

A. Whenever a local health officer determines or suspects that a person has been exposed to and may be incubating a communicable disease of public health concern, the local health officer may impose a quarantine upon such person and require such person to remain out of public contact and in the place or premises where such person usually stays. Notice thereof shall be given in accordance with the rules and regulations of the State Board of Health. It shall be unlawful for such person, or any other person, to violate the terms or conditions of the quarantine.

B. Whenever a local health officer determines or suspects that a person has a communicable disease of public health concern, the local health officer may impose isolation upon such person and require such person to remain out of public contact and in an adequate treatment facility or in the place or premises where such person usually stays. Notice thereof shall be given in accordance with the rules and regulations of the State Board of Health. It shall be unlawful for such person, or any other person, to violate the terms or conditions of the isolation.

C. District courts shall be authorized to grant injunctive relief, including temporary injunctions and temporary restraining orders, to compel compliance with a quarantine or isolation order issued by a local health officer pursuant to this section.

OKLA. STAT. tit. 63, § 1-517

Definitions

For the purposes of the following sections of this article:

(a) The term "sexually transmitted infection (STI)" means syphilis, gonorrhea, chlamydia, human immunodeficiency virus (HIV)/acquired immune deficiency syndrome (AIDS), and any other disease which may be transmitted from any person to any other person through or by means of any form of sexual contact.

OKLA. STAT. tit. 63, § 1-518 (2014)

Report and Treatment of Disease

It shall be unlawful for any person, being an infected person, to refuse, fail or neglect to report such fact to, and submit to examination and treatment by, a health care provider.

OKLA. STAT. tit. 63, § 1-527

Reports of a sexually transmitted infection

A. Any physician who makes a diagnosis or treats a case of a sexually transmitted infection (STI), and every superintendent or manager of a hospital, dispensary or charitable or penal institution in which there is a case of an STI, shall report such case immediately, in writing or electronically:

1. To the director or designee of the city-county health department, if in Oklahoma County or Tulsa County, who shall, in turn, report such case to the State Commissioner of Health; or
2. Directly to the State Commissioner of Health, if not in Oklahoma County or Tulsa County, in the same manner as other communicable diseases are reported, in forms to be prescribed and furnished by the Commissioner.

B. This act shall remain in effect until such time as the State Department of Health has in place a disease-reporting process that provides for a direct report from a lab or physician's office to the local health department and is capable of connecting a lab or physician's office with local health department systems for timely data delivery and start of the disease investigation process.

OKLA. STAT. tit. 63, § 1-530

Protection Against Spread of Infection

(a) Upon receipt of a report of a case of sexually transmitted infection (STI), the local health officer shall institute measures, which may include quarantine, for protection of other persons from infection by a person infected with an STI.

(b) The State Board of Health shall adopt rules and regulations for the quarantine of persons infected with a sexually transmitted infection (STI), to prevent the spread of sexually transmitted infection (STI).

(c) Boards of county commissioners and governing boards of all incorporated towns and cities may provide suitable places for the detention of persons who may be subject to quarantine and who should be segregated.

OKLA. STAT. tit. 63, § 1-532

All information and reports concerning persons infected with sexually transmitted infections (STIs) shall be inaccessible to the public, except insofar as publicity may attend the performance of duties imposed by the laws of the state.

OKLA. STAT. tit. 63, § 1-1701

Penalties for violation of act – Injunctive relief

A. Unless otherwise provided in the Oklahoma Public Health Code:

1. Any person who willfully fails or refuses to comply with, or violates, a lawful order of the State Board of Health or the State Commissioner of Health, or his duly authorized representative, or of a local health officer, or who violates the terms and conditions of a quarantine or embargo, shall, upon conviction, be guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of not to exceed One Hundred Dollars ($100.00), or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment; . . .

2. Any person who does any act that is made unlawful or a misdemeanor by the provisions of this Code, or who violates any of the other provisions of this Code, or any standard, rule or regulation authorized by this Code, shall, upon conviction, be guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of not more than Two Hundred Dollars ($200.00), or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

B.

1. Notwithstanding the penalties provided for in this section, district courts may also grant injunctive relief to prevent a violation of, or to compel a compliance with, any of the provisions of this Code or any rule or order issued pursuant to this Code.
2. Any action for injunctive relief to redress or restrain a violation by any person of any provision of this Code, any rule or order issued pursuant to this Code, or recovery of any administrative or civil penalty assessed pursuant to Section 1-1701.1A of this title may be filed and prosecuted by:
    a. the district attorney in the appropriate district court of the State of Oklahoma, or
    b. the Department on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma, or as otherwise authorized by law.

Oklahoma Administrative Code

TITLE 310, OKLAHOMA STATE DEPARTMENT OF HEALTH

OKLA. ADMIN. CODE 310:521-1-2

Definitions

The following words and terms, when used in the Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Biologic public health threat" means an infectious, communicable disease, the agent of which may be readily transmitted from an infectious person to a susceptible person without their knowledge or consent, and the infectious nature of which is known to cause increasing incidence of infection and disease upon transmission such that there is a threat to the general public health.

OKLA. ADMIN. CODE 310:521-5-3

Standards of HIV/AIDS prevention and treatment

(c) PCRS[48] shall, at a minimum, include assisting HIV positive persons with informing their partners about potential exposure to HIV, how the risk of exposure can be decreased or minimized, or if already infected, how transmission to others may be prevented or avoided, and to information that will aid the infected person and his partners to gain access to counseling, testing, medical treatment, prevention

[48] PCRS is the abbreviation for Partner Counseling and Referral Services.

and other services. Additionally, PCRS shall include any information that is generally scientifically accepted regarding measures that can be adopted or implemented to prevent the transmission of HIV or AIDS, including:

> (5) Disclosure, prior to engaging or contemplating the engagement of any sexual activity or other transmission activity, to all partners or participants, that the person is HIV-positive.

(e) If a person identified as HIV positive or diagnosed with AIDS refuses to voluntarily engage in PCRS is reported to have engaged in sexual activity without observing PCRS recommendations a compliance order will be issued to the person mandating compliance with PCRS recommendations.

OKLA. ADMIN. CODE 310:521-7-1

Examination

The Commissioner may issue an order for the examination of any individual upon the suspicion or confirmation that said individual has a communicable disease. Such examination may include a clinical examination, a specific diagnostic test or tests, or a specific laboratory test or tests. The purpose of such examination(s) and/or test(s) is to determine the presence of the suspected infectious organism or the presence of indicators of the suspected infectious organism, and to determine the contagious state of the individual to the extent possible.

OKLA. ADMIN. CODE 310:521-7-2

Treatment

The Commissioner may issue an order for the treatment of any individual suspected or confirmed to have a communicable disease. The Commissioner may also order the treatment of any individual or individuals exposed to certain infectious agents. Such treatment plans will be according to procedures developed within the Department.

OKLA. ADMIN. CODE 310:521-7-3

Isolation or quarantine

(a) Isolation. The Commissioner may issue an order for the isolation of any individual or group of individuals upon determination:

> (1) That such individual or individuals who are reasonably known or suspected to have a communicable disease constituting a biologic public health threat and who remain within the transmission period for said disease; and
>
> (2) That isolation is the necessary means to control the spread of the agent and the disease constituting a biologic public health threat.

(b) Quarantine. The Commissioner may issue an order for the quarantine of any individual or group of individuals upon determination:

> (1) That such individual or individuals who are reasonably known or suspected to have been exposed to a communicable disease constituting a biologic public health threat and who remain within the incubation period for said disease; and

(2) That quarantine is the necessary means to contain the communicable disease constituting a biologic public health threat to which an individual or individuals have been or may have been exposed.

OKLA. ADMIN. CODE 310:521-7-6

Administrative hearings and court enforcement

(a) Any person who is subject to an order of the Commissioner for isolation or quarantine and who contests such an order may request an individual proceeding or hearing. In order to uphold a quarantine order the Department must prove by a preponderance of the evidence that the Respondent was, or was suspected of having been, exposed to an infectious disease constituting a biologic public health threat. In order to uphold an isolation order the Department must prove by a preponderance of the evidence that the Respondent has, or is suspected of having, an infectious disease constituting a biologic public health threat. If requested, an individual proceeding pursuant to this subsection shall be convened as quickly as reasonably possible, which may be held telephonically or by other electronic means. A Respondent may request a hearing verbally or in writing. If the request for hearing is verbal, it shall be the duty of the hearing officer to take a statement for the record of the Respondent's reason for contesting the Commissioner's order. If the Commissioner's order is upheld at the conclusion of the hearing, the Respondent may appeal the administrative decision pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

(b) Upon finding that there is probable cause to believe that any individual or individuals who are subject to an order of examination, treatment, isolation, or quarantine has failed to or refuse to comply with such order, the Commissioner may request an emergency order from the district court to enforce the Commissioner's order. If granted, the emergency order shall require the individual or individuals to be taken immediately into custody by law enforcement officials for the purpose of examination or treatment or to be detained for the duration of the order of isolation or quarantine or until the Commissioner determines that the risk of transmission of a biologic public health threat is no longer present.

(c) Subsections a or b of this section may be suspended in the event of a declaration of emergency by the Governor pursuant to Oklahoma law or upon written directive of the Commissioner of Health to employ a constitutionally-sufficient alternative process due to exigent circumstances during such emergency. Such suspension of subsections a and b shall only exist for the duration of the emergency.

OKLA. ADMIN. CODE 310:521-7-9

Release from isolation or quarantine

The Commissioner will determine when an individual or individuals are determined to no longer be at risk of developing disease and becoming infectious or to no longer pose a risk of transmission of the infectious agent constituting a biologic public health threat to other individuals. The individuals under the order of quarantine or isolation shall be so notified by the Commissioner and shall be released from quarantine or isolation immediately upon notification.

Oregon

Analysis

There are no criminal statutes explicitly addressing HIV exposure but prosecutions have arisen under general criminal laws.

There are no statutes explicitly criminalizing HIV transmission or exposure in Oregon. Nonetheless, Oregon has prosecuted people living with HIV (PLHIV) for exposing others to HIV under general criminal laws, including attempted murder, assault, and reckless endangerment. Failing to disclose HIV status to sexual partners may result in prosecution and conviction.

In *State v. Hinkhouse*, a PLHIV appealed his conviction for 10 counts each of attempted murder and attempted assault after having sex with numerous people without disclosing his HIV status.[1] The defendant had refused to use a condom with several sexual partners and denied having HIV, despite being warned by his parole officer not to engage in unprotected sex.[2] According to the testimony of one sexual partner, the defendant said that if he ever acquired HIV, he would spread the virus to others.[3] At least one of the defendant's partners tested positive for HIV, though this fact was irrelevant to prosecution.[4] At trial, the defendant was sentenced to 70 years in prison.[5]

On appeal, the defendant argued he did not intend to kill or harm his sexual partners, only to gratify himself sexually.[6] The Court of Appeals of Oregon disagreed, finding his refusal to wear condoms, failure to disclose his HIV status, and the long pattern of conduct were all sufficient to show that "he acted deliberately to cause his victims serious bodily injury and death."[7] The further reasoned that Hinkhouse's exposing the women to HIV was not merely for his own sexual gratification because, by contrast, he did use condoms and disclose his HIV status with the woman he planned to marry.[8]

Other prosecutions of PLHIV under Oregon's general criminal laws include:

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[1] 912 P.2d 921, 922 (Or. Ct. App. 1996), *adhered to as modified*, 915 P.2d 489 (Or. Ct. App. 1996); *HIV-Positive Man Guilty of Attempted Murder*, THE SEATTLE TIMES, Mar. 16, 1994, *available at* http://community.seattletimes.nwsource.com/archive/?date=19940316&slug=1900486.

[2] *Hinkhouse*, 912 P.2d at 922-23.

[3] *Id.* at 924.

[4] *Id.* at 922.

[5] Josh Meyer, *Non-Unanimous Jury Idea Appeals to Some Reformers*, L.A. TIMES, Sept. 28, 1994, *available at* http://articles.latimes.com/1994-09-28/news/mn-44047_1_unanimous-jury.

[6] *Hinkhouse*, 912 P.2d at 922, 925.

[7] *Id.* at 925.

[8] *Id.*

- In 2013, a 37-year-old PLHIV was charged with sexual abuse, sodomy, unlawful sexual penetration, and recklessly endangering after he allegedly sexually abused a young child.[9] The reckless endangerment charge arose out of his HIV status.[10] He ultimately took a plea deal and was sentenced to 17 years' imprisonment for attempted sexual penetration and sexual abuse of a child.[11]
- In July 2012, a 21-year-old PLHIV was charged with attempted first-degree assault, attempted second-degree assault, and two counts of reckless endangerment for engaging in unprotected sexual relations with a female partner without disclosing his HIV status.[12]
- In June 2009, a 21-year-old PLHIV pled guilty to second-degree attempted assault and third-degree assault after having unprotected sex with a female partner without disclosing his status.[13] He was later sentenced to two years in prison with three years post-prison supervision.[14] He was further ordered to undergo sex offender evaluation.[15]

HIV status may also be a factor in sentencing. In *State v. Guayante*, a man living with HIV appealed his conviction for one count of sexual abuse and two counts each of attempted rape and sodomy of a 13-year-old girl.[16] On appeal, the defendant argued that the trial court acted without statutory authority when it relied on his HIV status as an aggravating factor in imposing a "disproportionately harsh sentence."[17] The Court of Appeals of Oregon disagreed, stating that it was valid to consider as an aggravating factor the defendant's knowledge of his status and willingness to "expose the 13-year old victim to an incurable fatal disease,"[18] in imposing maximum, consecutive sentences for sexual assault.[19] Though an older case, *Guyante* suggests that "exposure" to HIV during the commission of a crime may operate as an aggravating factor in sentencing—intent to transmit disease or actual transmission are not required and "exposure" is not meaningfully is not clearly defined.

It is a crime in Oregon to willfully transmit a communicable disease.

It Class C felony, punishable by up to five years' imprisonment and a $125,000 fine, to "willfully cause the spread of any communicable disease."[20] The statue does not define its terms, but "caus[ing] the spread" suggests that actual transmission of disease is required for prosecution. "Communicable disease" is defined broadly to mean "a disease or condition, the infectious agent of which may be transmitted by any means from one person or from an animal to another person, that may result in

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[9] Lynne Terry, *HIV-positive Portland man, 37, arrested, may have infected young child*, THE OREGONIAN, Apr. 3, 2013, *available at* http://www.oregonlive.com/portland/index.ssf/2013/04/hiv-positive_portland_man_37_f.html.

[10] *Id.*

[11] Helen Jung, *North Portland man with HIV sentenced in sexual abuse of five-year old girl,* October 29, 2013, *available at* http://www.oregonlive.com/portland/index.ssf/2013/10/north_portland_man_with_hiv_se.html.

[12] Scott Graves, *Man with HIV facing charges of assault and endangering*, CURRY COASTAL PILOT, July 25, 2012, *available at* http://www.currypilot.com/News/Local-News/Man-with-HIV-facing-charges-of-assault-and-endangering.

[13] Karen Pate, *Man sentenced after sexual partner contracts HIV*, THE OREGONIAN, July 17, 2009, *available at* http://www.oregonlive.com/washingtoncounty/index.ssf/2009/07/man_sentenced_after_sexual_par.html.

[14] *Id.*

[15] *Id.*

[16] 783 P.2d 1030, 1031 (Or. Ct. App. 1989).

[17] *Id.*

[18] *Id.*

[19] *Id.* at 1032.

[20] OR. REV. STAT. §§ 433.010, 433.990(2), 161.605(3), 161.625(1) (2016).

illness, death or severe disability."[21] It is a broad definition that clearly encompasses HIV, as well as other STIs.

Public health officials may impose mandatory testing, examination or treatment in response to STIs and non-compliance can result in criminal punishment.

Public health officials may require testing or medical examination of "any person who may have, or may have been exposed to, a communicable disease identified by rule of the Oregon Health Authority to be a reportable disease…"[22] Reportable STIs include chancroid, chlamydia, gonoccocal infections, Hepatitis B, and syphilis.[23] A written order from public health officials must accompany mandatory testing or examination.[24] The order must identify the disease at issue and the basis for the belief that a person is infected; state whether laboratory confirmation is possible, and; include a statement that the person may refuse to submit to the testing or examination, in which case officials may seek the imposition of isolation or quarantine.[25] A person with a communicable disease may also be required to undergo a prescribed course of medication or other treatment. Refusal to comply may result in imposition of isolation or quarantine.[26] Health officials are required to "make every effort to obtain voluntary compliance" for any test, examination or treatment[27] and the measure must be the least restrictive alternative to minimize transmission to others.[28]

Violation of this statute is a Class C misdemeanor, punishable by up to 30 days' incarceration and a $1,250 fine.[29]

A person with a communicable disease may be subject to isolation or quarantine.

When a public health official has probable cause to believe a person "requires immediate detention in order to avoid a clear and immediate danger to others," the official may issue an emergency administrative order for isolation or quarantine.[30] The emergency order must describe the efforts made to secure voluntary compliance or why such efforts are not possible, the communicable disease at issue, and the anticipated duration of the order.[31] It must also include information supporting the reasonable beliefs that "a communicable disease . . . could spread to or contaminate others if remedial action is not taken" and that "the person…would pose a serious and imminent risk to the health and safety of others if not detained . . ."[32] Health officials may also petition a circuit court for a written ex

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[21] OR. REV. STAT. § 431A.005 (2016).
[22] OR. REV. STAT. § 433.035(1)(a) (2016).
[23] *See Oregon Disease Reporting: What is Reportable and When*
OREGON HEALTH AUTHORITY,
https://public.health.oregon.gov/DiseasesConditions/CommunicableDisease/ReportingCommunicableDisease/Pages/reportable.aspx (last visited December 16, 2016).
[24] OR. REV. STAT. § 433.035(1)(b)(2016).
[25] OR. REV. STAT. §§ 433.035(1)(b)(A), 433.035(1)(b)(B), 433.035(1)(b)(C) (2016).
[26] OR. REV. STAT. § 433.035(3)(2016).
[27] OR. REV. STAT. § 433.035(4)(2016).
[28] OR. REV. STAT. § 433.035(5)(2016).
[29] OR. REV. STAT. §§ 433.990(3), 161.615(3), 161.635(c) (2016).
[30] OR. REV. STAT. § 433.121(1) (2016).
[31] OR. REV. STAT. §§ 433.121(1)(c)(A), 433.121(1)(c)(B), 433.121(1)(d) (2016).
[32] OR. REV. STAT. §§ 433.121(1)(e), 433.121(1)(f) (2016).

parte order—the petition must include the same information as an emergency administrative order.[33] In either case, the order must be personally served on the restricted individual within 12 hours of its issuance[34] and the detention may last no longer than 72 hours without petitioning the circuit court for an order authorizing quarantine or isolation.[35]

A petition to the circuit court must include similar information to the above detailing the basis and terms of the order.[36] The person subject to the restriction is entitled to legal counsel[37] and a hearing on the petition is scheduled within 72 hours of filing.[38] The court will grant the petition upon a finding, by clear and convincing evidence, that the restriction is "necessary to prevent a serious risk to the health and safety of others."[39] The resulting order for restriction may not exceed 60 days for non-airborne diseases.[40] Failure to obey an order will subject the restricted individual to contempt of court proceedings.[41] A person subject to a restriction is always free to apply to the circuit court for an order to show cause why the person should not be released.[42]

Medical information may be released to support enforcement of public health laws, including prosecution for disease transmission and non-compliance with public health orders.

Information obtained by public health officials in the course of investigating a reportable disease is confidential, but there are several notable exceptions.[43] The information may be released "as required for the administration or enforcement of public health laws or rules" during the examination of a public health official during a judicial or administrative proceeding.[44] Public health laws and rules include felony punishment for willful transmission of communicable disease[45] and so it is possible the information could be disclosed in a criminal proceeding. Medical information may also be released to law enforcement officials to assist with the enforcement of restrictive measures, such as quarantine or isolation.[46] It is unclear how or if the information could be used in a future legal proceeding.

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[33] OR. REV. STAT. §§ 433.121(2)(a), 433.121(2)(b) (2016).

[34] OR. REV. STAT. § 433.121(3) (2016). A variety of information must be included in the notice, including the individual's right to counsel, the right to petition the circuit court for release, sanctions for non-compliance, etc. OR. REV. STAT. § 433.126(1) (2016)

[35] OR. REV. STAT. § 433.121(4) (2016).

[36] OR. REV. STAT. § 433.123(2) (2016).

[37] OR. REV. STAT. § 433.123(4) (2016).

[38] OR. REV. STAT. § 433.123(6) (2016).

[39] OR. REV. STAT. § 433.123(8) (2016).

[40] OR. REV. STAT. § 433.123(8)(a)(2016). The order may be extended if its demonstrated by clear and convincing evidence that continued restriction is necessary to prevent a serious threat to the health and safety of others. OR. REV. STAT. § 433.123(10)(d)(2016).

[41] OR. REV. STAT. § 433.123(13)(2016). Available penalties for a person in contempt of court include confinement and/or fines. OR. REV. STAT. § 33.105 (2016).

[42] OR. REV. STAT. § 433.133(1)(a) (2016)

[43] OR. REV. STAT. § 433.008(1)(a) (2016).

[44] OR. REV. STAT. § 433.008(1)(b) (2016).

[45] OR. REV. STAT. § 433.010 (2016).

[46] OR. REV. STAT. § 433.008(2)(c) (2016).

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.*

Oregon Revised 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.*

TITLE 36, PUBLIC HEALTH AND SAFETY

OR. REV. STAT. § 433.010 (2016) **

Spreading disease prohibited; health certificates to be issued by physicians; rules.

(1) No person shall willfully cause the spread of any communicable disease within this state.

OR. REV. STAT. § 433.990 (2016) **

Penalties

(2) Violation of ORS 433.010 is a Class C felony.

(3) Violation of ORS 433.035 is a Class C misdemeanor.

TITLE 16, CRIMES AND PUNISHMENTS

OR. REV. STAT. § 161.605 (2016) **

Maximum prison terms for felonies

The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:

(3) For a Class C felony, 5 years.

OR. REV. STAT. § 161.615 (2016) **

Prison terms for misdemeanors

Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

(3) For a Class C misdemeanor, 30 days.

OR. REV. STAT. § 161.625 (2016) **

Fines for felonies

(1) A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding:

(d) $125,000 for a Class C felony.

OR. REV. STAT. § 161.635 (2016) **

Fines for misdemeanors

(1) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:

(c) $ 1,250 for a Class C misdemeanor.

TITLE 36, PUBLIC HEALTH AND SAFETY

OR. REV. STAT. § 431A.005 (2016)[47]

Definitions

As used in ORS 431A.005 to 431A.020:

(2) "Communicable disease" means a disease or condition, the infectious agent of which may be transmitted by any means from one person or from an animal to another person, that may result in illness, death or severe disability.

(3) "Condition of public health importance" means a disease, syndrome, symptom, injury or other threat to public health that is identifiable on an individual or community level.

(10) "Reportable disease" means a disease or condition, the reporting of which enables a public health authority to take action to protect or to benefit the public health.

OR. REV. STAT. § 433.008 (2016)

Confidentiality of disclosure; exceptions; privilege

(1)

(a) Except as provided in subsection (2) of this section, information obtained by the Oregon Health Authority or a local public health administrator in the course of an investigation of a reportable disease or disease outbreak is confidential and is exempt from disclosure under ORS 192.410 to 192.505.

(b) Except as required for the administration or enforcement of public health laws or rules, a state or local public health official or employee may not be examined in an administrative or judicial proceeding about the existence or contents of a reportable disease report or other information received by the authority or local public health administrator in the course of an investigation of a reportable disease or disease outbreak.

(2) The authority or a local public health administrator may release information obtained during an investigation of a reportable disease or disease outbreak to:

(c) Law enforcement officials to the extent necessary to carry out the authority granted to the Public Health Director and local public health administrators under ORS 433.121, 433.128, 433.131, 433.138 and 433.142;

[47] Title 36, Chapter 433 of Oregon's public health statutes governs the control of disease. As currently drafted, that Chapter relies on the definition of communicable disease provided in OR. REV. STAT. § 431.260. (2016), which was renumbered, effective July 2015, to be OR. REV. STAT. § 431A.005 (2016).

OR. REV. STAT. § 433.035 (2016)

Testing or examination of persons with certain diseases or conditions; order for medication or treatment

(1)

(a) The Public Health Director or a local public health administrator may require testing or medical examination of any person who may have, or may have been exposed to, a communicable disease identified by rule of the Oregon Health Authority to be a reportable disease, a new or uncommon disease of potential public health significance, or a condition that is the basis of a state of public health emergency declared by the Governor as authorized by ORS 433.441. The Public Health Director or the local public health administrator must issue a written order for testing or medical examination pursuant to this section.

(b) A written order must:

(A) Include findings stating the communicable disease that the Public Health Director or the local public health administrator believes the person has and the reasons for that belief.

(B) State whether medical or laboratory confirmation of the disease is feasible and possible and whether such confirmation would enable control measures to be taken to minimize infection of others with the disease.

(C) Include a statement that the person may refuse to submit to the testing or medical examination and that if the testing or examination is refused, the Public Health Director or the local public health administrator may seek the imposition of a public health measure, including isolation or quarantine pursuant to ORS 433.121 or 433.123.

(2) When a person is directed to submit to a test or examination under this section and the person agrees to do so, the person shall submit to any testing or examination as may be necessary to establish the presence or absence of the communicable disease for which the testing or examination was directed. The examination shall be carried out by the local health officer or a physician licensed by the Oregon Medical Board or the Oregon Board of Naturopathic Medicine. A written report of the results of the test or examination shall be provided to the person ordering the test or examination, and upon request, to the person tested or examined. Laboratory examinations, if any, shall be carried out by the laboratory of the authority whenever the examinations are within the scope of the tests conducted by the laboratory. If treatment is needed, the person or the parent or guardian of the person shall be liable for the costs of treatment based on the examination carried out under this section, if the person liable is able to pay the treatment costs. Cost of any examination performed by a physician in private practice shall be paid from public funds available to the local public health administrator, if any, or from county funds available for general governmental expenses in the county that the local public health administrator serves or in the county where the person tested or examined resides if the local public health administrator serves more than one county or the test or examination was ordered by the Public Health Director or local public health administrator.

(3) If a person has a communicable disease, a new or uncommon disease of potential public health significance, or a condition that is the basis of a state of public health emergency, the Public Health Director or the local public health administrator may issue an order requiring the person to complete an appropriate prescribed course of medication or other treatment for the communicable disease, including directly observed therapy if appropriate, and to follow infection control provisions for the disease. The

order shall also include statements that the person may refuse the medication or other treatment and that the person's failure to comply with the order issued under this subsection may result in the Public Health Director or the local public health administrator seeking the imposition of a public health measure, including isolation or quarantine as authorized by ORS 433.121 and 433.123.

(4) The Public Health Director or the local public health administrator must make every effort to obtain voluntary compliance from a person for any testing, medical examination and treatment required under this section.

(5) Any action taken by the Public Health Director or the local public health administrator under this section to compel testing, medical examination or treatment of a person who has a communicable disease, a new or uncommon disease of potential public health significance, or a condition that is the basis of a state of public health emergency must be the least restrictive alternative available to accomplish the results necessary to minimize the transmission of the disease to others.

OR. REV. STAT. § 433.121 (2016)

Emergency administrative order for isolation or quarantine; contents; ex parte court order

(1) The Public Health Director or a local public health administrator may issue an emergency administrative order causing a person or group of persons to be placed in isolation or quarantine if the Public Health Director or the local public health administrator has probable cause to believe that a person or group of persons requires immediate detention in order to avoid a clear and immediate danger to others and that considerations of safety do not allow initiation of the petition process set out in ORS 433.123. An administrative order issued under this section must:

(a) Identify the person or group of persons subject to isolation or quarantine;

(b) Identify the premises where isolation or quarantine will take place, if known;

(c)

(A) Describe the reasonable efforts made to obtain voluntary compliance with a request for an emergency public health action including requests for testing or medical examination, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, and inspection and closure of facilities; or

(B) Explain why reasonable efforts to obtain voluntary compliance are not possible and why the pursuit of these efforts creates a risk of serious harm to others;

(d) Describe the suspected communicable disease or toxic substance, if known, that is the basis for the issuance of the emergency administrative order and the anticipated duration of isolation or quarantine based on the suspected communicable disease or toxic substance;

(e) Provide information supporting the reasonable belief of the Public Health Director or the local public health administrator that the person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or toxic substance that could spread to or contaminate others if remedial action is not taken;

(f) Provide information supporting the reasonable belief of the Public Health Director or the local public health administrator that the person or group of persons would pose a serious and

imminent risk to the health and safety of others if not detained for purposes of isolation or quarantine;

(g) Describe the medical basis for which isolation or quarantine is justified and explain why isolation or quarantine is the least restrictive means available to prevent a risk to the health and safety of others;

(h) Establish the time and date at which the isolation or quarantine commences; and

(i) Contain a statement of compliance with the conditions of and principles for isolation and quarantine specified in ORS 433.128.

(2)

(a) In lieu of issuing an emergency administrative order under subsection (1) of this section, the Public Health Director or a local public health administrator may petition the circuit court for a written ex parte order.

(b) The petition to the court and the court's order must include the information described in subsection (1) of this section.

(c) The Public Health Director or local public health administrator:

(A) Shall make reasonable efforts to serve the person or group of persons subject to isolation or quarantine with the petition before the petition is filed; and

(B) Is not required to provide prior notice of an ex parte proceeding at which the petition is being considered by the court.

(3) Within 12 hours of the issuance of an order under subsection (1) or (2) of this section, the person or group of persons detained or sought for detention must be personally served with the written notice required by ORS 433.126 and with a copy of any order issued under subsection (1) or (2) of this section. If copies of the notice and order cannot be personally served in a timely manner to a group of persons because the number of persons in the group makes personal service impracticable, the Public Health Director or the local public health administrator shall post the notice and order in a conspicuous place where the notice and order can be viewed by those detained or shall find other means to meaningfully communicate the information in the notice and order to those detained.

(4) A person or group of persons detained pursuant to an order issued under subsection (1) or (2) of this section may not be detained for longer than 72 hours unless a petition is filed under ORS 433.123.

(5) If the detention of a person or group of persons for longer than 72 hours is deemed necessary, immediately following the issuance of an order under subsection (1) or (2) of this section, the Public Health Director or the local public health administrator must petition the circuit court in accordance with ORS 433.123.

(6) A person or group of persons detained under subsection (1) or (2) of this section has the right to be represented by legal counsel in accordance with ORS 433.466.

OR. REV. STAT. § 433.123 (2016)

Petition for court order for isolation or quarantine; contents; hearing on petition; contents of order; duration or isolation of quarantine

(1) The Public Health Director or a local public health administrator may petition the circuit court for an order authorizing:

(a) The isolation or quarantine of a person or group of persons; or

(b) The continued isolation or quarantine of a person or group of persons detained under ORS 433.121.

(2) A petition filed under subsections (1) and (9) of this section must:

(a) Identify the person or group of persons subject to isolation or quarantine;

(b) Identify the premises where isolation or quarantine will take place, if known;

(c)

(A) Describe the reasonable efforts made to obtain voluntary compliance with a request for an emergency public health action, including requests for testing or medical examination, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine and inspection and closure of facilities; or

(B) Explain why reasonable efforts to obtain voluntary compliance are not possible and why the pursuit of these efforts creates a risk of serious harm to others;

(d) Describe the suspected communicable disease or toxic substance, if known, and the anticipated duration of isolation or quarantine based on the suspected communicable disease, infectious agent or toxic substance;

(e) Provide information supporting the reasonable belief of the Public Health Director or the local public health administrator that the person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or toxic substance that could spread to or contaminate others if remedial action is not taken;

(f) Provide information supporting the reasonable belief of the Public Health Director or the local public health administrator that the person or group of persons would pose a serious risk to the health and safety of others if not detained for purposes of isolation or quarantine;

(g) Describe the medical basis for which isolation or quarantine is justified and explain why isolation or quarantine is the least restrictive means available to prevent a serious risk to the health and safety of others;

(h) Establish the time and date on which the isolation or quarantine commences; and

(i) Contain a statement of compliance with the conditions of and principles for isolation and quarantine specified in ORS 433.128.

(3) The person or group of persons detained or sought for detention must be personally served with a copy of the petition filed with the court under subsection (1) of this section and with the written notice

required by ORS 433.126. If copies of the petition and notice cannot be personally served in a timely manner to a group of persons because the number of persons in the group makes personal service impracticable, the Public Health Director or the local public health administrator shall post the petition and notice in a conspicuous place where the petition and notice can be viewed by those detained or find other means to meaningfully communicate the information in the petition and notice to those detained.

(4) A person or group of persons subject to a petition filed under subsection (1) or (9) of this section has the right to be represented by legal counsel in accordance with ORS 433.466.

(5) Upon the filing of a petition under subsection (1) of this section to continue isolation or quarantine for a person or group of persons detained under an emergency administrative or ex parte order issued under ORS 433.121, the court shall issue an order extending the isolation or quarantine order until the court holds a hearing pursuant to subsection (6) of this section.

(6)

(a) The court shall hold a hearing on a petition filed under subsection (1) of this section within 72 hours of the filing of the petition, exclusive of Saturdays, Sundays and legal holidays.

(b) In extraordinary circumstances and for good cause shown, or with consent of the affected persons, the Public Health Director or the local public health administrator may apply to continue the hearing date for up to 10 days. The court may grant a continuance at its discretion, giving due regard to the rights of the affected persons, the protection of the public health, the severity of the public health threat and the availability of necessary witnesses and evidence.

(c) The hearing required under this subsection may be waived by consent of the affected persons.

d) The provisions of ORS 40.230, 40.235 and 40.240 do not apply to a hearing held under this subsection. Any evidence presented at the hearing that would be privileged and not subject to disclosure except as required by this paragraph shall be disclosed only to the court, the parties and their legal counsel or persons authorized by the court and may not be disclosed to the public.

(7) The Public Health Director or local public health administrator may request that a person or group of persons who is the subject of a petition filed under subsection (1) or (9) of this section not personally appear before the court because personal appearance would pose a risk of serious harm to others. If the court grants the director's or local public health administrator's request or if the court determines that personal appearance by the person or group of persons who is the subject of the petition poses a risk of serious harm to others, the court proceeding must be conducted by legal counsel for the person or group of persons or must be held at a location, or by any means, including simultaneous electronic transmission, that allows all parties to fully participate.

(8) The court shall grant the petition if, by clear and convincing evidence, the court finds that isolation or quarantine is necessary to prevent a serious risk to the health and safety of others. In lieu of or in addition to isolation or quarantine, the court may order the imposition of other public health measures appropriate to the public health threat presented. The court order must:

(a) Specify the maximum duration for the isolation or quarantine, which may not exceed 60 days unless there is substantial medical evidence indicating that the condition that is the basis of the public health threat is spread by airborne transmission and cannot be rendered noninfectious within 60 days or may recur after 60 days, in which case the maximum duration of the isolation or quarantine may not exceed a period of 180 days;

(b) Identify the person or group of persons subject to the order by name or shared or similar characteristics or circumstances;

(c) Specify the factual findings warranting imposition of isolation, quarantine or another public health measure;

(d) Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this section; and

(e) Be served on all affected persons or groups in accordance with subsection (3) of this section.

(9) Prior to the expiration of a court order issued under subsection (8) or (10) of this section, the Public Health Director or the local public health administrator may petition the circuit court to continue isolation or quarantine. A petition filed under this subsection must comply with the requirements of subsections (2) to (8) of this section.

(10)

(a) The court shall hold a hearing on a petition filed under subsection (9) of this section within 72 hours of filing, exclusive of Saturdays, Sundays and legal holidays.

(b) In extraordinary circumstances and for good cause shown, or with consent of the affected persons, the Public Health Director or the local public health administrator may apply to continue the hearing date for up to 10 days. The court may grant a continuance at its discretion, giving due regard to the rights of the affected persons, the protection of the public health, the severity of the public health threat and the availability of necessary witnesses and evidence.

(c) The hearing required under this subsection may be waived by consent of the affected parties.

(d) The court may continue the isolation or quarantine order if the court finds there is clear and convincing evidence that continued isolation or quarantine is necessary to prevent a serious threat to the health and safety of others. In lieu of or in addition to continued isolation or quarantine, the court may order the imposition of a public health measure appropriate to the public health threat presented.

(e) An order issued under this subsection must comply with the requirements of subsection (8) of this section.

(11) An order issued under subsection (10) of this section must be for a period not to exceed 60 days and must be served on all affected parties in accordance with subsection (3) of this section.

(12) In no case may a person or group of persons be in quarantine or isolation for longer than 180 days unless, following a hearing, a court finds that extraordinary circumstances exist and that the person or

group of persons subject to isolation or quarantine continues to pose a serious threat to the health and safety of others if detention is not continued.

(13) Failure to obey a court order issued under this section subjects the person in violation of the order to contempt proceedings under ORS 33.015 to 33.155.

OR. REV. STAT. § 433.126 (2016)

Notice to persons subject to order; rules

(1) The Public Health Director or the local public health administrator shall provide the person or group of persons detained or sought for detention under ORS 433.121 or 433.123 with a written notice informing the person or group of persons of:

(a) The right to legal counsel, including how to request and communicate with counsel;

(b) The right to petition the circuit court for release from isolation or quarantine and the procedures for filing a petition;

(c) The conditions of and principles of isolation and quarantine specified in ORS 433.128;

(d) The right to petition the court for a remedy regarding a breach of the conditions of isolation or quarantine imposed on the person or group of persons and the procedures for filing a petition; and

(e) The sanctions that may be imposed for violating an order issued under ORS 433.121 or 433.123.

(2) The Public Health Director or the local public health administrator must ensure, to the extent practicable, that the person or group of persons receives the notice required under this section in a language and in a manner the person or group of persons can understand.

(3) The Public Health Director may adopt rules prescribing the form of notice required by this section.

OR. REV. STAT. § 433.133 (2016)

Court hearing and order for release from isolation or quarantine or for remedy for breach of required conditions of isolation or quarantine

(1)

(a) Any person or group of persons who is isolated or quarantined pursuant to ORS 433.121 or 433.123 may apply to the circuit court for an order to show cause why the individual or group should not be released.

(b) The court shall rule on the application to show cause within 48 hours of the filing of the application.

(c) The court shall grant the application if there is a reasonable basis to support the allegations in the application, and the court shall schedule a hearing on the order requiring the Public Health Director or local public health administrator to appear and to show cause within five working days of the filing of the application.

(d) The issuance of an order to show cause and ordering the director or local public health administrator to appear and show cause does not stay or enjoin an isolation or quarantine order.

(2)

(a) A person or group of persons who is isolated or quarantined may request a hearing in the circuit court for remedies regarding breaches of the conditions of isolation or quarantine required by ORS 433.128.

(b) The court shall hold a hearing if there is a reasonable basis to believe there has been a breach of the conditions of isolation or quarantine required by ORS 433.128.

(c) A request for a hearing does not stay or enjoin an order for isolation or quarantine.

(d) Upon receipt of a request under this subsection alleging extraordinary circumstances justifying the immediate granting of relief, the court shall hold a hearing on the matters alleged as soon as practicable.

(e) If a hearing is not granted under paragraph (d) of this subsection, the court shall hold a hearing on the matters alleged within five days from receipt of the request.

(3) In any proceedings brought for relief under this section, in extraordinary circumstances and for good cause shown, or with consent of the petitioner or petitioners the Public Health Director or local public health administrator may move the court to extend the time for a hearing. The court in its discretion may grant the extension giving due regard to the rights of the affected persons, the protection of the public health, the severity of the emergency and the availability of necessary witnesses and evidence.

(4) If a person or group of persons who is detained cannot personally appear before the court because such an appearance poses a risk of serious harm to others, the court proceeding may be conducted by legal counsel for the person or group of persons and be held at a location, or by any means, including simultaneous electronic transmission, that allows all parties to fully participate.

(5) If the court finds, by clear and convincing evidence, that a person or group of persons no longer poses a serious risk to the health and safety to others, the court may order the release of that person or group of persons from isolation or quarantine.

(6) If the court finds by clear and convincing evidence that a person or group of persons is not being held in accordance with the conditions of isolation or quarantine required by ORS 433.128, the court may order an appropriate remedy to ensure compliance with ORS 433.128.

Pennsylvania

Analysis[1]

People living with HIV (PLHIV) have been convicted under Pennsylvania's general criminal laws for various types of conduct, including failing to disclose their HIV status to sexual partners.

Although Pennsylvania does not have a specific criminal HIV-exposure law to address non-incarcerated persons, numerous persons have been prosecuted for HIV exposure under general criminal laws, including murder, attempted murder, and reckless endangerment.

In Pennsylvania, PLHIV have been prosecuted for not disclosing their HIV status to sexual partners. In *Commonwealth v. Cordoba*, a PLHIV was charged with reckless endangerment for having unprotected, consensual oral sex without disclosing his HIV status to his partner.[2] The trial court ruled that consent is not a defense to reckless endangerment. As a result, applying the statute to consensual sex involving a PLHIV would produce an absurd result because individuals could face prosecution even when they had disclosed their HIV status to their partners.[3]

On appeal, the Superior Court of Pennsylvania reversed the trial court's findings.[4] The appellate court accepted the state's argument that HIV is life-threatening and stated that it is "well known" that HIV can lead to AIDS and that AIDS can lead to death.[5] Because of this, the court said that getting HIV creates a "substantial risk of death," and therefore counts as "serious bodily injury" under Pennsylvania law.[6] Though there was never any transfer of blood or semen that could result in HIV transmission (the

[1] In 2026, Senate Bill 45 was passed and repealed the sex worker enhancement,18 PA. Cons. Stat. §5902(a.1)(4), which previously made it a third degree felony for a person living with HIV to engage in prostitution. Senate Bill 45 also increased the criminalization of "promoters" and "patronizers." *See* Positive Women's Network-USA, Sero Project & Ctr. for HIV L. & Pol'y, *An Open Letter on HIV Decriminalization and Solidarity from PWN, Sero, and CHLP* (2026), available at An Open Letter on HIV Decriminalization and Solidarity, CHLP, PWN, SERO (2026) | The Center for HIV Law and Policy.

[2] *Com. v. Cordoba*, 67 Pa. D. & C.4th 353, 356, 361 (Pa. Com. Pl. 2004), *overruled by Com. v. Cordoba*, 902 A.2d 1280 (Pa. Super. 2006).

[3] *Id.* at 358 (finding that "under the Commonwealth's theory, even if an HIV positive individual informs his or her partner of this status prior to engaging in unprotected sexual activity, the statute would still be violated. A person carrying an infectious disease would commit a crime every time he/she had consensual sex. This is an absurd result, as individuals in this Commonwealth are free to make such intimate decisions outside the glare of state scrutiny. Lastly, allowing an HIV positive individual to be prosecuted under this statute for allegedly having consensual sexual contact with another adult would open the floodgates to jilted lovers and angry spouses to file charges after a relationship has soured."). On appeal, the Superior Court did not address this issue because it was outside of the scope of the case and was not at issue because the defendant never disclosed his status. *Com. v. Cordoba*, 902 A.2d 1280, 1286 (Pa. Super. 2006).

[4] *Cordoba*, 902 A.2d at 1283.

[5] *Id*. at 361.

[6] *Id*.

defendant only ejaculated on the face and chest of the complainant),[7] the court found that the sex was not consensual and amounted to reckless endangerment because the defendant did not disclose his HIV status to the complainant.[8] Reckless endangerment under Pennsylvania law is defined as "conduct which places or may place another person in danger of death or serious bodily injury."[9] Even though most exposure to the blood or semen of a PLHIV will not result in transmission, the court determined that the prosecution need only establish that the defendant's conduct placed "*or may have placed*" another in danger of serious bodily injury or death.[10]

To establish a *prima facie* case for reckless endangerment, the court found that there only needs to be a possibility or risk of harm, regardless of the likelihood of that harm actually occurring.[11] According to the court, the defendant's act of engaging in oral sex without informing his partner of his HIV status constituted a "gross deviation from the standard of conduct that a reasonable person would observe."[12]

Though disclosing one's HIV status is a defense to this type of prosecution, disclosure of HIV status is difficult to prove in court without witnesses or documentation, and juries often consider the testimony of PLHIV less credible than the testimony of persons claiming that they were exposed to HIV without consent.

- In December 2015, a 26-year-old PLHIV pled guilty to nine counts of reckless endangerment after having sex with three persons without disclosing his HIV status.[13] He was sentenced to 33 to 66 months in prison.[14]
- In January 2014, a 25-year-old PLHIV was charged with aggravated assault, sexual assault, and reckless endangerment for having unprotected sex without disclosing her HIV status.[15]

In addition to reckless endangerment, PLHIV have also been charged with murder and attempted murder for failing to disclose their HIV status to their sexual partners:

- In 1999, a 30-year-old man was charged with third-degree murder, attempted homicide and aggravated assault for having sex with five persons without disclosing his HIV status, though he

[7] *Id.*
[8] *Id.* at 1286.
[9] *Id.* (citing 18 PA. CONS. STAT. § 2705)
[10] *Id.* at 1289 (emphasis in original).
[11] *Id.* at 1288-89.
[12] *Id.* at 1289.
[13] Daniel Victor, *Man with HIV Gets Prison Time, Again, for Unprotected Sex*, N.Y. TIMES, Dec. 24, 2015, *available at* http://www.nytimes.com/2015/12/25/us/man-with-hiv-gets-prison-time-again-for-unprotected-sex.html?_r=0.
[14] Id.
[15] Charles Thompson, *Susquehanna Township woman arrested for assault after lying about HIV status, police say*, PENNLIVE, Jan. 4, 2014, *available at* http://www.pennlive.com/midstate/index.ssf/2014/01/woman_arrested_for_lying_about.html.

maintained he had not known his status at the time.[16] Each of the women later tested positive for HIV.[17] The man died in 2000 before the case could go to trial.[18]

In *Commonwealth v. Walker*, a PLHIV was found guilty of communicating terrorist threats when he scratched a parole officer on the hand and said, "I have open cuts on my hands. Life is short. I am taking you with me."[19] The officer knew Walker's positive HIV status.[20] On appeal, Walker argued that the evidence against him was insufficient to demonstrate that he had the requisite intent to terrorize the officer.[21] To be convicted of making terroristic threats in Pennsylvania, one must communicate a threat to commit violence with the intent to terrorize another or with reckless disregard of the risk of causing such terror.[22] The court affirmed the conviction, finding that the jury could have inferred that Walker's statements were intended to cause terror from fear of HIV transmission or that Walker made the statements with reckless disregard of the risk of causing terror.[23] The court held that the likelihood of HIV transmission from scratching was immaterial to the case, since the jury could have inferred a threat to kill the officer, rising to a "substantial and unjustifiable risk of causing terror."[24]

Other prosecutions of PLHIV under Pennsylvania's general criminal laws have included convictions for acts that are not known to transmit HIV:

- In October 2016, a 37-year-old man was charged with aggravated assault, simple assault, terroristic threats and reckless endangerment after he deliberately cut himself and bled on the face, chest, and legs of a woman in an amount "sufficient" to transmit HIV" according to the resulting police report.[25]
- In March 2015, an 64-year-old PLHIV was charged with aggravated and simple assault after she bit a healthcare worker.[26]
- In May 2012, a 19-year-old PLHIV was charged with aggravated assault and assault by a prisoner, among other charges, after he spit in the face of a police officer while in custody.[27]
- In October 2009, a 34-year-old woman living with HIV and Hepatitis C was charged with aggravated assault, assault by a prisoner, reckless endangerment, among other crimes, after

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[16] Jeff Gelman, *AIDS-Related Death Leads to 3rd-degree Murder Charge*, MORNING CALL (Allentown, PA), Nov. 20, 1999, *available at* http://articles.mcall.com/1999-11-20/news/3275553_1_aids-virus-martin-third-degree-murder; Debbie Garlicki, *Man who allegedly infected women with AIDS virus dies*, MORNING CALL (Allentown, PA), Dec. 1, 2000, *available at* http://articles.mcall.com/2000-12-01/news/3330315_1_aids-virus-infected-murder-charge.

[17] Garlicki, *Man who allegedly infected women with AIDS virus dies*, supra note 13.

[18] *Id*.

[19] 836 A.2d 999, 1000, 1001 (Pa. Super. Ct. 2003).

[20] *Id.* at 1001.

[21] *Id*.

[22] *Id.* (citing 18 PA. CONN. STAT. § 2706(a)).

[23] *Id.* at 1002.

[24] *Id*.

[25] Becky Metrick, *Police: HIV positive man attacked, bled on woman*, USATODAY, October 8, 2016, *available at* http://www.usatoday.com/story/news/nation-now/2016/10/08/police-hiv-positive-man-attacked-bled-woman/91816272.

[26] Eric Veronikis, *Report: York woman with HIV arrested for biting facility supervisor*, PENNLIVE, March 2, 2015, *available at* http://www.pennlive.com/midstate/index.ssf/2015/03/report_york_woman_with_hiv_arr.html.

[27] *Easton man infected with HIV spits in police officer's face, records say*, LEHIGHVALLEYLIVE.COM, May 21, 2012, *available at* http://www.lehighvalleylive.com/easton/index.ssf/2012/05/easton_man_infected_with_hiv_s.html.

she spat in the face of another inmate.[28] She was later sentenced to 21 months to ten years' imprisonment.[29]

- In 1999, a 39-year-old PLHIV was convicted of aggravated assault and theft and sentenced to up to 27 years in prison for allegedly biting a security guard who was attempting to apprehend him for shoplifting.[30] The guard tested negative for HIV.[31]
- In *Commonwealth v. Brown*, a man living with HIV and Hepatitis B was convicted of aggravated assault for throwing fecal matter on a guard's face while housed in a state correctional institution.[32]The court reasoned that, since the defendant had been counseled by a health care provider that he had tested positive for both HIV and Hepatitis B and been informed that HIV could be transmitted through body fluids, the evidence was sufficient to support a finding that the defendant "intended to inflict serious bodily injury upon [the] Officer."[33]

Many of these examples involve a charge for aggravated assault, a first-degree felony carrying up to a 20-year penalty, which is defined as causing or attempting to cause "serious bodily injury to another … under circumstances manifesting extreme indifference to the value of human life."[34] By contrast, simple assault is a second-degree misdemeanor and typically punished with a maximum of two years' incarceration.[35] These convictions are based on the stigma and fear surrounding HIV rather than the science of HIV transmission—it is the presence of HIV alone that elevates the assault to "serious" and supposedly indicates the presence of "extreme indifference to the value of human life," despite the lack of any actual risk of HIV transmission.

People living with a communicable disease may face increased penalties for exposing others to their bodily fluids.

Pennsylvania law includes three distinct assault statutes that criminalize conduct involving exposure to bodily fluids, with penalties varying based on whether the alleged conduct involves a law enforcement officer, occurs while a person is incarcerated, or involves a person serving a sentence of death or life imprisonment.[36]

Under Pennsylvania law, a person living with a communicable disease can receive an enhanced sentence for causing or attempting to cause a law enforcement officer to come into contact with a bodily fluid. Typically, it is a third degree felony, punishable by up to seven years' imprisonment when a

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[28] Michael Rudolf, *HIV-Positive Prisoner Sentenced for Spitting at Inmate*, CITIZENSVOICE.COM, Oct. 15, 2009, *available at* http://citizensvoice.com/news/hiv-positive-prisoner-sentenced-for-spitting-at-inmate-1.335692; Josh Mrozinski, *Inmate Charged for Assault for Spitting*, WCEXAMINER.COM (Wyoming County, Pa.), Jan. 14, 2009, *available at* http://archives.wcexaminer.com/index.php/2009/01/14/inmate-charged-with-assault-for-spitting/.

[29] *Commonwealth v. Visnesk*, CP-66-CR-0000104-2009 (Pa.C.P Wyoming 2009).

[30] Commonwealth v. Perez, CP-39-CR-0001227-1998 (Pa.C.P. Lehigh 1998); Debbie Garlicki, City Man with Hiv Virus Gets Prison Time For Biting * Eric Rivera Perez is Sentenced for Assault on Wal-Mart Security Officer, THE MORNING CALL, Feb. 4, 1999, available at http://articles.mcall.com/1999-02-04/news/3240187_1_infected-human-immunodeficiency-virus-police-officer.

[31] Garlicki, *supra* note 27.

[32] 605 A.2d 429, 430-31 (Pa. Super. Ct. 1992).

[33] *Id.* at 431.

[34] 18 PA. CONN. STAT. §§1103(1), 2702(a)(1) (2016).

[35] 18 PA. CONN. STAT. §§ 2701(b), 1104(2) (2016).

[36] In 2022, No. 99, 2022 Pa. Laws 639 was passed. Act 99 amended 18 Pa. Cons. Stat. § 2702 to include exposure of a law enforcement officer to bodily fluids within the offense of assault of a law enforcement officer.

person "intentionally or knowingly causes or attempts to cause a law enforcement officer…" who is performing their duties "to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting, or expelling the fluid or material."[37] However, if the person "knew, had reason to know, [or] should have known or believed the fluid or material" contained a reportable communicable disease under the Disease Prevention and Control Law of 1955, such as HIV and other sexually transmitted diseases, and the disease is communicable to the law enforcement officer by the "method used or attempted to be used to cause the law officer to come into contact with blood, seminal fluid, saliva, urine or feces," then it is a felony of the second degree and punishable by up to 10 years' imprisonment.[38] Theoretically, PLHIV should not be charged under the statute for spitting because saliva is not a known transmission route for HIV.[39]

In Pennsylvania, people living with a communicable disease, including HIV, who are incarcerated face increased penalties for exposing others to their bodily fluids under the Assault by a Prisoner and Assault by a Life Prisoner statutes.[40] If a person in confinement intentionally or knowingly causes another to "come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material" and "the person knew, had reason to know, or should have known or believed that such fluid or material …" contained a reportable communicable disease under the Disease Prevention and Control Law of 1955," such as HIV and other sexually transmitted diseases, and the disease is communicable to the law enforcement officer by the "method used or attempted to be used to cause the law officer to come into contact with blood, seminal fluid, saliva, urine or feces,"[41] that person can face an additional sentence of up to ten years in prison.[42] The additional punishment must be served consecutively, meaning a person must serve their original sentence before time can accrue towards the ten-year sentence.[43] If an incarcerated person is already serving a life sentence or is on death row and is convicted of the offense, it will be considered "an aggravated assault with a deadly weapon or instrument upon another, or as an act that will "produce

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[37] 18 PA. CONS. STAT. § 2702 (a) (2) (2024).

[38] 18 PA. CONS. STAT. § 2702 (3) (i), § 2702 (3)(ii) (2024).

[39] HIV and Its Transmission, Ctrs. for Disease Control & Prevention (1999). Available at: http://www.hivlawandpolicy.org/resources/hiv-and-its-transmission-centersdisease-control-and-prevention-1999; HIV, STIs and Relative Risks in the United States Chart, The Ctr. for HIV Law & Policy (2011). Available at: http://www.hivlawandpolicy.org/resources/chart-hiv-stis-and-relative-risks-united-states-center-hiv-law-and-policy-201.

[40] 18 Pa.C.S.A. § 2703, 18 PA. CONS. STAT. § 2704. In, 2022, No. 99, 2022 Pa. Laws 639 was passed. Act 99 amended 18 Pa. Cons. Stat. § 2703–2704 and removed HIV-specific language and replaced it with "communicable disease." Prior to 2022, these statutes explicitly named HIV and Hepatitis B, allowing prosecutors to seek longer sentences for acts such as spitting, even though HIV cannot be transmitted that way. Act 99 now limits application to situations where the disease can be transmitted by the method used or attempted.

[41] The statute was rewritten in 1998 to include "HIV" after the 1992 conviction of a man living with HIV and Hepatitis B for throwing urine and feces at a prison guard. *See Brown*, 605 A.2d at 430-31. The defendant was convicted of aggravated assault, assault by prisoner, simple assault, and recklessly endangering another person and sentenced to ten to 20 years in prison to run consecutively with the sentence he was already serving. *Id.* at 431. Based on the fact that the defendant knew he had both HIV and Hepatitis B and had received counseling regarding the transmission of HIV through bodily fluids, the court found that "there was sufficient evidence for the fact finder to conclude that [the defendant] intended to inflict serious bodily injury" when he threw fecal matter at the guard, and thus "the evidence [was] sufficient to support [the defendant's] conviction for Aggravated Assault." *Id*.

[42] 18 PA. CONS. STAT. §§ 2703, 1103 (2) (2016).

[43] *Id*.

serious bodily injury," and the penalty is the same level as that of second-degree murder.[44] These penalties apply only if the disease can be transmitted by the method used or attempted.[45]

Examples of prosecutions under this statute include:

- In June 2024, a 68-year-old man was charged with assault on a law enforcement officer for allegedly spitting in a corrections officer's coffee.[46]
- In December 2021, a 35-year-old man was sentenced for two counts of assault by prisoner for spitting on corrections officers while in custody.[47]

A person suspected of having an STI can be required to undergo mandatory examination and may be quarantined if they refuse to cooperate.

The Disease Prevention and Control Law of 1955, many provisions of which are mirrored in Title 28 of Pennsylvania's Administrative Code, grants the Pennsylvania Department of Health and other local health departments broad legal authority to mandate a medical examination for an individual when there are "reasonable grounds to suspect any person of being infected with a venereal disease"[48] or "an organism causing a sexually transmitted disease."[49] Sexually transmitted disease is defined broadly as "[a] disease which, except when transmitted perinatally, is transmitted almost exclusively through sexual contact."[50] The grounds upon which a person may be reasonably suspected of being infected with an STI are not enumerated, but if an individual refuses to submit to medical examination, a health officer may order that person be quarantined "until it is determined that he is not infected with a venereal disease"[51] or "does not pose a threat to the public health."[52]

The health officer may also file a petition in court that is accompanied by a sworn statement from a licensed physician that the person is suspected of being infected with an STI. The criteria to be relied upon by a physician in submitting such a statement are not specified. However, the statement from the physician submitted with the petition is considered prima facie evidence that the individual is suspected of being infected with an STI.[53] Once the petition is filed, the court holds a hearing, without a jury, to determine whether the person has refused to submit to an examination.

Upon a finding that the person has refused to submit to such examination and that there was no valid reason to do so, the court will issue an order that the person submit to the examination. If a person still

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[44] 18 PA. CONS. STAT. § 2704 (2016).
[45] 18 PA. CONS. STAT §§ 2703–2704 (2024).
[46] Inmates Charged After Coffee Cup Tests Positive for Drugs, *AOL News* (June 25, 2024), https://www.aol.com/inmates-charged-coffee-cup-drug-181800921.html
[47] Justin Emanuel Martinez Sentenced for Spitting on Corrections Officers, *Times Leader* (Feb. 9, 2022), https://www.timesleader.com/news/1538893/inmate-sentenced-for-spitting-on-corrections-officers.
[48] 35 PA. STAT. ANN. § 521.7 (2016).
[49] 28 PA. CODE § 27.81 (2016).
[50] 28 PA. CODE § 27.1 (2016).
[51] 35 PA. STAT. ANN. § 521.7 (2016).
[52] 28 PA. CODE § 27.82(a) (2016).
[53] 35 PA. STAT. ANN. § 521.7 (2016); 28 PA. CODE §§ 27.82(b)(1), 27.82(b)(2) (2016).

refuses to submit to an examination, the court may commit them to an institution suitable for the care of persons infected with the disease in question.[54]

A person arrested for certain kinds of crimes may be required to undergo mandatory examination for "venereal disease."

Any person taken into custody and charged with any crime involving lewd conduct or a sex offense, or any person to whom the jurisdiction of a juvenile court attaches, may be examined for the presence of "venereal disease."[55] However, the results of the examination are not available for use during the prosecution of any defendant for the underlying sex offense.[56] If an individual refuses to submit to an examination or provide a specimen for laboratory tests as requested, judicial action may be pursued by the Department of Health or other local health authority to secure an "appropriate remedy."[57] Appropriate remedy is not defined, but presumably could include a court-ordered examination or quarantine if the person is reasonably suspected to be suffering from a "venereal disease".[58]The Disease Prevention and Control Law also outlines penalties for violation of its provisions, including fines and imprisonment of up to 30 days in the event of default.[59]

A person with an STI may be subject to isolation or quarantine.

If the Pennsylvania Department of Health or other local health authority determines that it "advances public health interests," a person with an STI who refuses treatment may be isolated "for safekeeping and treatment until the disease has been rendered non-communicable."[60, 61] It is not clear how these provisions of the Disease Prevention and Control Law or the Administrative Code would apply to STIs that may not be rendered completely non-communicable, either because they are incurable, such as herpes or HIV, or due to drug-resistance. As drafted, the required threshold of non-communicability for release may permit indefinite isolation under certain circumstances, including situations where an individual never accepts treatment or if it is not possible for him or her to be rendered non-infectious, even with treatment.

The procedure for committing a person to a facility or institution for isolation is somewhat similar to that for seeking a court order to mandate examination for suspected STI, except there is no need for a sworn statement from a physician. The Department of Health or other local health authority files a petition in court seeking to have the person committed. Upon filing of the petition, and within 24 hours of service upon the individual, the court will hold a hearing without a jury to determine if the individual

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[54] 35 PA. STAT. ANN. § 521.7 (2016); 28 PA. CODE §§ 27.82(c) (2016).

[55] 35 PA. STAT. ANN. § 521.8(a) (2016); 28 Pa. Code § 27.84(a) (2016).

[56] *Commonwealth v. Moore*, 526 Pa. 152, 157-59 (Pa. 1991).

[57] 28 PA. CODE § 27.84(a) (2016).

[58] 35 PA. STAT. ANN. § 521.7 (2016); 28 Pa. Code § 27.82 (2016).

[59] 35 PA. STAT. ANN. § 521.20(a) (2016).

[60] As part of its public health surveillance activities, Pennsylvania requires that the following STIs be reported to the district office of the Department of Health or the local health department where the case is diagnosed or identified: chancroid, chlamydia trachomatis, gonococcal infections, granuloma inguinale, lymphogranuloma venereum, and syphilis. *See* 28 PA. CODE § 27.33 (2016). The Department of Health also receives this information, in addition to notifications of HIV and AIDS. *See* 28 PA. CODE § 27.21a (2016).

[61] 28 PA. CODE § 27.87(a) (2016); *See also* 35 PA. STAT. ANN. § 521.11(a.1) (2016) (Note that this statutory provision does not require a finding that the action will advance public health interests).

has refused to submit to treatment. Upon a finding that the person has refused to submit to treatment, the court will issue an order.[62] Neither the Disease Prevention and Control Law nor the Administrative Code details any additional procedural protections for individuals who are subject to these kinds of court orders.

Of note, the Disease Prevention and Control Law specifies that a county jail is an appropriate facility to isolate or quarantine someone on the basis of infection with "venereal disease," but not tuberculosis or other communicable diseases, which are addressed in the additional provisions of the statute.[63] The Administrative Code confirms that when the Department of Health or other local health authority "orders a person with or suspected of having a sexually transmitted disease" be isolated or quarantined, that it may order the isolation or quarantine take place in an institution where the person's movements are "physically restricted,"[64] a general category which could include jails or other correctional settings. There is no analogous clarification relating to the types of facilities that may be used to isolate or quarantine someone with tuberculosis or other communicable diseases, which are the other conditions addressed by related provisions of the code.

A person may be forced to pay a fine or face imprisonment for violation of the Disease Prevention and Control Law.

The Disease Prevention and Control Law of 1955 specifies penalties for "any person who violates any of the provisions of [the] act." Following a summary proceeding before a magistrate, alderman, or justice of the peace in the county where the violation occurred, the person may be sentenced to pay $25-$300, along with other costs.[65]In the event of default, a person may be imprisoned for up to 30 days in jail.[66] A prosecution may be initiated by the Pennsylvania Department of Health, a local health department, or any person "having knowledge of a violation of any provision of [the] act."[67]

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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[62] 35 PA. STAT. ANN. § 521.11(a.2) (2016); 28 Pa. Code § 27.87(b) (2016).

[63] 35 PA. STAT. ANN. § 521.11(b) (2016).

[64] 28 PA. CODE § 27.88(a) (2016).

[65] Costs likely include those incurred when an individual is required to pay for a mandatory examination. For example, 35 PA. STAT. ANN. § 521.7 clarifies that an "examination ordered by the court may be performed by a physician of [the individual's] own choice at [the individual's] own expense." Similarly, 28 PA. CODE § 27.83 directs that "[t]he examination ordered by the court under § 27.82 (relating to refusal to submit to examination) may be performed by a physician chosen by the person at the person's own expense."

[66] 35 PA. STAT. ANN. § 521.20(a) (2016).

[67] 35 PA. STAT. ANN. § 521.20(b) (2016).

Pennsylvania Consolidated Statutes

TITLE 18, CRIMES AND OFFENSES

18 PA. CONS. STAT. § 2702

Aggravated assault

(a) ***Offense defined.*** A person is guilty of aggravated assault if he:

(1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life;

(2) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c) or to an employee of an agency, company or other entity engaged in public transportation, while in the performance of duty;

(3) attempts to cause or intentionally or knowingly causes bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c), in the performance of duty;

(4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon;

(5) attempts to cause or intentionally or knowingly causes bodily injury to a teaching staff member, school board member or other employee, including a student employee, of any elementary or secondary publicly-funded educational institution, any elementary or secondary private school licensed by the Department of Education or any elementary or secondary parochial school while acting in the scope of his or her employment or because of his or her employment relationship to the school;

(6) attempts by physical menace to put any of the officers, agents, employees or other persons enumerated in subsection (c), while in the performance of duty, in fear of imminent serious bodily injury;

(7) uses tear or noxious gas as defined in section 2708(b) (relating to use of tear or noxious gas in labor disputes) or uses an electric or electronic incapacitation device against any officer, employee or other person enumerated in subsection (c) while acting in the scope of his employment;

(8) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to a child less than six years of age, by a person 18 years of age or older; or

(9) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to a child less than 13 years of age, by a person 18 years of age or older.

(b) ***Grading.*** Aggravated assault under subsection (a)(1), (2) and (9) is a felony of the first degree. Aggravated assault under subsection (a)(3), (4), (5), (6), (7) and (8) is a felony of the second degree.

18 PA. CONS. STAT. ANN. § 2703

Assault by prisoner

(a) Offense defined. –

(1) Except as provided under section 2704 (relating to assault by life prisoner), a person who is confined in or committed to any local or county detention facility, jail or prison or any State penal or correctional institution or other State penal or correctional facility located in this Commonwealth is guilty of a felony of the second degree if he, while so confined or committed or while undergoing transportation to or from such an institution or facility in or to which he was confined or committed intentionally or knowingly, commits an assault upon any of the following:

(i) Except as provided under subparagraph (ii), another with a deadly weapon or instrument, or by any means or force likely to produce serious bodily injury.

(ii) A detention facility or correctional facility employee with a deadly weapon or instrument, or by any means or force likely to produce bodily injury.

(2) A person is guilty of this offense if:

(i) he intentionally or knowingly causes another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material when, at the time of the offense, the person knew, had reason to know, should have known or believed such fluid or material to have been obtained from an individual, including the person charged under this section, infected by a communicable disease declared reportable by regulation authorized by the act of April 23, 1956 (1955 P.L.1510, No.500), known as the Disease Prevention and Control Law of 1955; and

(ii) the communicable disease referenced in subparagraph (i) is communicable to another by the method used or attempted to be used to cause another to come into contact with the blood, seminal fluid, saliva, urine or feces.

(3) Except as provided under section 2704, a person who is confined in or committed to any local or county detention facility, jail or prison or any State penal or correctional institution or other State penal or correctional facility located in this Commonwealth is guilty of a felony of the first degree if he, while so confined or committed or while undergoing transportation to or from an institution or facility in or to which he was confined or committed, intentionally or knowingly, commits an assault upon a detention facility or correctional facility employee with a deadly weapon or instrument, or by any means or force likely to produce serious bodily injury.

(b) Consecutive sentences. – The court shall order that any sentence imposed for a violation of subsection (a), or any sentence imposed for a violation of section 2702(a) (relating to aggravated assault) where the victim is a detention facility or correctional facility employee, be served consecutively with the person's current sentence.

18 PA. CONS. STAT. ANN. § 2704

Assault by life prisoner

Every person who has been sentenced to death or life imprisonment in any penal institution located in this Commonwealth, and whose sentence has not been commuted, who commits an aggravated assault with a deadly weapon or instrument upon another, or by any means of force likely to produce serious bodily injury, is guilty of a crime, the penalty for which shall be the same as the penalty for murder of the second degree. A person is guilty of this offense if:

(1) he intentionally or knowingly causes another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material when, at the time of the offense, the person knew, had reason to know, should have known or believed such fluid or material to have been obtained from an individual, including the person charged under this section, infected by a communicable disease declared reportable by regulation authorized by the act of April 23, 1956 (1955 P.L.1510, No.500), known as the Disease Prevention and Control Law of 1955; and

(2) the communicable disease referenced in paragraph (1) is communicable to another by the method used or attempted to be used to cause another to come into contact with the blood, seminal fluid, saliva, urine or feces.

18 PA. CONS. STAT. ANN. § 1103

Sentence of imprisonment for felony

Except as provided in 42 Pa.C.S. § 9714 (relating to sentences for second and subsequent offenses), a person who has been convicted of a felony may be sentenced to imprisonment as follows:

(2) In the case of a felony of the second degree, for a term which shall be fixed by the court at not more than ten years.

(3) In the case of a felony of the third degree, for a term which shall be fixed by the court at not more than seven years.

18 PA. CONS. STAT. ANN. § 1101

Fines

A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

(1) $50,000, when the conviction is of murder or attempted murder.

(2) $25,000, when the conviction is of a felony of the first or second degree.

(3) $15,000, when the conviction is of a felony of the third degree.

(4) $10,000, when the conviction is of a misdemeanor of the first degree.

(5) $5,000, when the conviction is of a misdemeanor of the second degree.

(6) $2,500, when the conviction is of a misdemeanor of the third degree.

(7) $300, when the conviction is of a summary offense for which no higher fine is established.

Pennsylvania Statutes

TITLE 35, HEALTH AND SAFETY, CHAPTER 3, PREVENTION OF SPREAD OF DISEASES

35 PA. STAT. ANN. § 521.7

Examination and diagnosis of persons suspected of being infected with venereal disease, tuberculosis or any other communicable disease, or of being a carrier.

Whenever the secretary or a local qualified medical health officer has reasonable grounds to suspect any person of being infected with a venereal disease, tuberculosis or any other communicable disease, or of being a carrier, he shall require the person to undergo a medical examination and any other approved diagnostic procedure, to determine whether or not he is infected with a venereal disease, tuberculosis or any other communicable disease, or is a carrier. In the event that the person refuses to submit to the examination, the secretary or the local qualified medical health officer may (1) cause the person to be quarantined until it is determined that he is not infected with a venereal disease, tuberculosis or any other communicable disease, or of being a carrier, or (2) file a petition in the court of common pleas of the county in which the person is present, which petition shall have appended thereto a statement, under oath, by a physician duly licensed to practice in the Commonwealth, that such person is suspected of being infected with venereal disease, tuberculosis or any other communicable disease, or that such person is suspected of being a carrier. Upon filing of such petition, the court shall, within twenty-four hours after service of a copy thereof upon the respondent, hold a hearing, without a jury, to ascertain whether the person named in the petition has refused to submit to an examination to determine whether he or she is infected with venereal disease, tuberculosis or any other communicable disease, or that such person is a carrier. Upon a finding that the person has refused to submit to such examination and that there was no valid reason for such person so to do, the court shall forthwith order such person to submit to the examination. The certificate of the physician appended to the petition shall be received in evidence and shall constitute prima facie evidence that the person therein named is suspected of being infected with venereal disease, tuberculosis or any other communicable disease, or that such person is a carrier. The examination ordered by the court may be performed by a physician of his own choice at his own expense. The examination shall include physical and laboratory tests performed in a laboratory approved by the secretary, and shall be conducted in accordance with accepted professional practices, and the results thereof shall be reported to the local health board or health department on forms furnished by the Department of Health. Any person refusing to undergo an examination, as herein provided, may be committed by the court to an institution in this Commonwealth determined by the Secretary of Health to be suitable for the care of such cases.

35 PA. STAT. ANN. § 521.8

Venereal disease

(a) Any person taken into custody and charged with any crime involving lewd conduct or a sex offense, or any person to whom the jurisdiction of a juvenile court attaches, may be examined for a venereal disease by a qualified physician appointed by the department or by the local board or department of health or appointed by the court having jurisdiction over the person so charged.

(b) Any person convicted of a crime or pending trial, who is confined in or committed to any State or local penal institution, reformatory or any other house of correction or detention, may be examined for

venereal disease by a qualified physician appointed by the department or by the local board or department of health or by the attending physician of the institution, if any.

(c) Any such persons noted in paragraph (a) or (b) of this section found, upon such examination, to be infected with any venereal disease shall be given appropriate treatment by duly constituted health authorities or their deputies or by the attending physician of the institution, if any.

35 PA. STAT. ANN. § 521.11

Persons refusing to submit to treatment for venereal disease, tuberculosis, or any other communicable disease

(a.1) If the secretary or any local health officer finds that any person who is infected with venereal disease, tuberculosis or any other communicable disease in a communicable stage refuses to submit to treatment approved by the department or by a local board or department of health, the secretary or his representative or the local medical health officer may cause the person to be isolated in an appropriate institution designated by the department or by the local board or department of health for safekeeping and treatment until the disease has been rendered non-communicable.

(a.2) The secretary or the local health officer may file a petition in the court of common pleas of the county in which the person is present to commit such person to an appropriate institution designated by the department or by the local board or department of health for safekeeping and treatment until such time as the disease has been rendered non-communicable. Upon filing of such petition, the court shall, within twenty-four hours after service of a copy thereof upon the respondent, hold a hearing, without a jury, to ascertain whether the person named in the petition has refused to submit to treatment. Upon a finding that the person has refused to submit to such treatment, the court shall forthwith order such person to be committed to an appropriate institution or hospital designated by the department or by the local board or department of health.

(a.3) For the purpose of this section, it is understood that treatment approved by the department or by a local board or department of health shall include treatment by a duly accredited practitioner of any well recognized church or religious denomination which relies on prayer or spiritual means alone for healing: Provided, however, that all requirements relating to sanitation, isolation or quarantine are complied with.

(b) Any county jail or other appropriate institution may receive persons who are isolated or quarantined by the department or by a local board or department of health by reason of a venereal disease for the purpose of safekeeping and treatment. The department or the local board or department of health shall reimburse any institution which accepts such persons at the rate of maintenance that prevails in such institution, and shall furnish the necessary medical treatment to the persons committed to such institution.

35 PA. STAT. ANN. § 521.20

Penalties, prosecutions and disposition of fines

(a) Any person who violates any of the provisions of this act or any regulation shall, for each offense, upon conviction thereof in a summary proceeding before any magistrate, alderman or justice of the peace in the county wherein the offense was committed, be sentenced to pay a fine of not less than twenty-five dollars ($25) and not more than three hundred dollars ($300), together with costs, and in

default of payment of the fine and costs, to be imprisoned in the county jail for a period not to exceed thirty (30) days.

(b) Prosecutions may be instituted by the department, by a local board or department of health or by any person having knowledge of a violation of any provisions of this act or any regulation.

Pennsylvania Administrative Code

TITLE 28, HEALTH AND SAFETY, PART III, PREVENTION OF DISEASES

28 PA. CODE § 27.1

Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Sexually transmitted disease – A disease which, except when transmitted perinatally, is transmitted almost exclusively through sexual contact.

28 PA. CODE § 27.81

Examination of persons suspected of being infected

Whenever the Department or a local health authority has reasonable grounds to suspect a person of being infected with an organism causing a sexually transmitted disease, tuberculosis or other communicable disease, or of being a carrier, but lacks confirmatory medical or laboratory evidence, the Department or the local health authority may require the person to undergo a medical examination and any other approved diagnostic procedure to determine whether or not the person is infected or is a carrier. If the local health authority involved is not an LMRO, the local health authority shall consult with and receive approval from the Department prior to requiring any medical examination or other approved diagnostic procedure.

28 PA. CODE § 27.82

Refusal to submit to examination

(a) If a person refuses to submit to the examination required in § 27.81 (relating to examination of persons suspected of being infected), the Department or the local health authority may direct the person to be quarantined until it is determined that the person does not pose a threat to the public health by reason of being infected with a disease causing organism or being a carrier.

(b) If the person refuses to abide by an order issued under subsection (a), the Department or local health authority may file a petition in the court of common pleas of the county in which the person is present. The petition shall have a statement attached, given under oath by a physician licensed to practice in this Commonwealth, that the person is suspected of being infected with an organism causing a sexually transmitted disease, tuberculosis or other communicable disease, or that the person is suspected of being a carrier.

(1) Upon the filing of the petition, the court shall, within 24 hours after service of a copy upon the respondent, hold a hearing without a jury to ascertain whether the person named in the petition

has refused to submit to an examination to determine whether the person is infected with the suspected disease causing organism, or that the person is a carrier.

(2) Upon a finding that the person has refused to submit to an examination and that there is no valid reason for the person to do so, the court may forthwith order the person to submit to the examination.

(3) The certificate of the physician attached to the petition shall be received in evidence and shall constitute prima facie evidence that the person named is suspected of being infected with the disease causing organism, or that the person is a carrier.

(c) A person refusing to undergo an examination as required under subsections (a) and (b) may be committed by the court to an institution in this Commonwealth determined by the Department to be suitable for the care of persons infected with the suspected disease causing organism.

28 PA. CODE § 27.83

Court ordered examinations

The examination ordered by the court under § 27.82 (relating to refusal to submit to examination) may be performed by a physician chosen by the person at the person's own expense. The examination shall include an appropriate physical examination and laboratory tests performed in a clinical laboratory approved by the Department to conduct the tests, and shall be conducted in accordance with accepted professional practices. The results shall be reported to the local health authority or the Department on case report forms furnished by the Department.

28 PA. CODE § 27.84

Examination for a sexually transmitted disease of person detained by police authorities

(a) A person taken into custody and charged with a crime involving lewd conduct or a sex offense, or a person to whom the jurisdiction of a juvenile court attaches may be examined for a sexually transmitted disease by a qualified physician appointed by the Department, by the local health authority or by the court having jurisdiction over the person so charged. If the person refuses to permit an examination or provide a specimen for laboratory tests as requested by the physician designated by the Department, a local health authority or a court, judicial action may be pursued by the Department or local health authority to secure an appropriate remedy.

(b) A person convicted of a crime or pending trial, who is confined in or committed to a State or local penal institution, reformatory or other house of correction or detention, may be examined for a sexually transmitted disease by a qualified physician appointed by the Department or by the local health authority. If the person refuses to permit an examination or provide a specimen for laboratory tests as requested by the physician, judicial action may be pursued by the Department or local health authority to secure an appropriate remedy.

(c) A person described in subsection (a) or (b) found, upon examination, to be infected with a sexually transmitted disease shall be given appropriate treatment by the local health authority, the Department or the attending physician of the institution.

28 PA. CODE § 27.87

Refusal to submit to treatment for communicable disease

(a) If the Department or a local health authority finds that a person who is infected with a sexually transmitted disease, tuberculosis or other communicable disease in a communicable stage refuses to submit to treatment approved by the Department or by a local health authority, the Department or the local health authority, if it determines the action advances public health interests, shall order the person to be isolated in an appropriate institution designated by the Department or by the local health authority for safekeeping and treatment until the disease has been rendered noncommunicable.

(i) If the disease is one which may be significantly reduced in its communicability following short-term therapy, but is likely to significantly increase in its communicability if that therapy is not continued, such as tuberculosis, the Department or local health authority may order the person to complete therapy which is designed to prevent the disease from reverting to a communicable stage, including completion of an inpatient treatment regimen. See, also, § 27.161 (relating to special requirements for tuberculosis).

(ii)(b) If a person refuses to comply with an order issued under subsection (a), the Department or local health authority may file a petition in the court of common pleas of the county in which the person is present to commit the person to an appropriate institution designated by the Department or by the local health authority for safekeeping and treatment as specified in subsection (a). Upon the filing of a petition, the court shall, within 24 hours after service of a copy upon the respondent, hold a hearing without a jury to ascertain whether the person named in the petition has refused to submit to treatment. Upon a finding that the person has refused to submit to treatment, the court shall issue an appropriate order.

(c) For the purpose of this section, treatment approved by the Department or by a local health authority may include treatment by an accredited practitioner of a well recognized church or religious denomination which relies on prayer or spiritual means alone for healing, if requirements relating to sanitation, isolation or quarantine are satisfied.

28 PA. CODE § 27.88

Isolation and quarantine in appropriate institutions

(a) When the Department or a local health authority orders a person with or suspected of having a sexually transmitted disease to be isolated or quarantined for the purpose of safekeeping and treatment, it may order that the isolation or quarantine take place in an institution where the person's movement is physically restricted.

Rhode Island

Analysis

There are no criminal statutes explicitly addressing HIV exposure.

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

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

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

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

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[1] R.I. GEN. LAWS § 23-11-1 (2016).

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

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

[4] *Id.*

[5] R.I. GEN. LAWS § 23-11-12 (2016).

[6] R.I. GEN. LAWS § 23-11-11 (2016).

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

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

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

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

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

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

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

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

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[8] R.I. GEN. LAWS §§ 11-34.1-11, 11-34.1-12, 11-34.1-17 (2016).
[9] R.I. GEN. LAWS §§ 11-34.1-11, 11-34.1-12(a) (2016); CRIR 14-040-006(2.9)(c) (2016).
[10] R.I. GEN. LAWS § 11-34.1-11 (2016)
[11] *Id.*
[12] R.I. GEN. LAWS § 11-37-17(a) (2016); CRIR 14-040-006(2.9)(d) (2016).
[13] R.I. GEN. LAWS § 11-37-17(b) (2016).
[14] CRIR 14-040-006(2.9)(b) (2016).
[15] R.I. GEN. LAWS § 23-11-3 (2016).
[16] *Id.*
[17] R.I. GEN. LAWS § 23-11-16 (2016).

review by the state supreme court.[18] Violating a compliance order is punishable by 90 days in jail and/or $300 fine.[19] More generally, violating the laws administered by the Department of Health or of any of the rules or regulations that it adopts can be punished with imprisonment for 30 days and/or a fine of $100.[20]

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

[18] R.I. GEN. LAWS §§ 23-1-20, 23-1-21, 23-1-22, 23-1-23, 23-1-24 (2016).
[19] R.I. GEN. LAWS § 23-1-25 (2016).
[20] *Id.*

General Laws of Rhode Island

Note: *Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

TITLE 11, CRIMINAL OFFENSES

R.I. GEN. LAWS § 11-34.1-11 (2016)

Examination and treatment for venereal disease

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

R.I. GEN. LAWS § 11-34.1-12 (2016)

Human Immunodeficiency Virus (HIV)

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

R.I. GEN. LAWS § 11-37-17 (2016)

Human Immunodeficiency Virus (HIV) -- Mandatory testing

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

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

TITLE 23, HEALTH AND SAFETY

R.I. GEN. LAWS § 23-1-20 (2016)

Compliance order

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

R.I. GEN. LAWS § 23-1-21 (2016)

Immediate compliance order

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

R.I. GEN. LAWS § 23-1-22 (2016)

Hearing

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

R.I. GEN. LAWS § 23-1-23 (2016)

Enforcement of compliance orders

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

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

R.I. GEN. LAWS § 23-1-24 (2016)

Review by supreme court

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

R.I. GEN. LAWS § 23-1-25 (2016) **

Penalties

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

R.I. GEN. LAWS § 23-8-4 (2016)

Quarantine

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

R.I. GEN. LAWS § 23-8-4.1 (2016)

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

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

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

R.I. GEN. LAWS § 23-11-1 (2016) **

Diseases declared contagious – Exposure of another to infection

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

R.I. GEN. LAWS § 23-11-3 (2016)

Compulsory treatment of infected persons

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

R.I. GEN. LAWS § 23-11-6 (2016)

Reports by physicians

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

R.I. GEN. LAWS § 23-11-7 (2016)

Penalty for failure to report

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

R.I. GEN. LAWS § 23-11-10 (2016)

Investigation of suspected cases and sources

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

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

R.I. GEN. LAWS § 23-11-11 (2016)

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

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

R.I. GEN. LAWS § 23-11-12 (2016) **

Refusal to submit to examination

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

R.I. GEN. LAWS § 23-11-16 (2016) **

Violations – Penalties

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

Code of Rhode Island Rules

AGENCY 14, DEPARTMENT OF HEALTH

CRIR 14-040-006

HIV Counseling, Testing, Reporting, and Confidentiality

2.9 Mandatory HIV Counseling and Testing

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

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

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

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

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

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 charges 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]

[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 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]
- 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]

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[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.

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 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.

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[17] S.C. CODE ANN. § 44-29-145 (2016).

[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 in 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.

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[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.*

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[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).

Code of South Carolina

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, paraite 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.

South Dakota

Analysis

Engaging in sexual intercourse without disclosing HIV status can result in imprisonment.

It is a Class 3 felony, punishable by up to 15 years' imprisonment and a $30,000 fine, if a person living with HIV (PLHIV) knows their HIV status and "intentionally exposes another to infection by engaging in sexual intercourse or other intimate physical contact with another person."[1] Persons convicted under the exposure statute must also register as sex offenders.[2]

Although the statute requires intent to expose another person to HIV, neither the intent to transmit HIV[3] nor actual transmission is required.[4] The prosecutions described below also suggest that failing to disclose one's status, without more, suffice for a finding of "intent" to expose. "Sexual intercourse" is not defined, and "intimate physical contact" is defined as "bodily contact which exposes a person to the body fluid of the infected person in any manner that presents a significant risk of HIV *transmission*."[5] At the time of publication, the authors are unaware of any case law to help determine how the courts may interpret conduct posing a "significant risk of HIV transmission."

It is an affirmative defense if the person exposed to HIV (1) was aware of the defendant's HIV status, (2) knew that the sexual contact could result in HIV infection, and (3) consented to HIV exposure with knowledge of these risks.[6] However, a sexual partner's consent to HIV exposure may be difficult to prove, as whether or not disclosure occurred is often open to interpretation and usually depends on the words of one person against another.

In 2002 a PLHIV served four months in jail and was required to perform 200 hours of community service after pleading guilty to intentional exposure to HIV for having unprotected sex with several

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[1] S.D. CODIFIED LAWS §§ 22-18-31(1), 22-6-1(6) (2018).

[2] S.D. CODIFIED LAWS §§ 22-24B-1(20)(defining intentional HIV exposure as a sex crime), 22-24B-2 (requiring sex offender registration for any person convicted of a sex crime) (2018).

[3] *See* S.D. CODIFIED LAWS § 22-1-2(1)(b) (2018) ("'[I]ntentionally' . . . import[s] a specific design to cause a certain result or, if the material part of a charge is the violation of a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, a specific design to engage in conduct of that nature."). The statute indicates that intent to engage in sexual intercourse or other physical contact while living with HIV fulfills the intent requirement.

[4] S.D. CODIFIED LAWS § 22-18-34 (2018).

[5] S.D. CODIFIED LAWS § 22-18-32(2) (2018) (emphasis added). Elsewhere in the criminal code, "sexual penetration" is defined as, "an act . . . of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body." S.D. CODIFIED LAWS § 22-22-2 (2018). Thus, since "sexual intercourse" is considered distinct from all of those acts, it presumably only refers to penile-vaginal penetration and non-penetrative anilingus.

[6] S.D. CODIFIED LAWS § 22-18-33 (2018).

classmates without disclosing his HIV status.[7] He later received four years in prison for failing to return to jail on schedule.[8]

Other cases further illustrate prosecutions under the HIV exposure law:

- In February 2014, a 19-year-old PLHIV pled guilty to intentional exposure to HIV after having unprotected sex without disclosing his HIV status and was sentenced to eight years' imprisonment.[9]
- In November 2006, a 33-year-old PLHIV received a suspended prison sentence in a plea deal after being charged with five counts of intentional exposure to HIV.[10]
- In May 2002, two PLHIV were charged with multiple counts under the exposure statute.[11] One of the men pled guilty to one count and received a sentence of 18 months' probation while the other received a 45-day suspended jail sentence with five years' probation.[12]

Consecutive, as opposed to concurrent, sentencing is allowed at the discretion of a sentencing court in South Dakota.[13] Thus, if a PLHIV is found guilty of exposing multiple partners to the virus, they may receive a sentence of 15 years *per* offense.

It is a felony for PLHIV to provide blood, tissue, semen, organs, body parts, or body fluids for use by another.

It is a Class 3 felony, punishable by up to 15 years' imprisonment and a $30,000 fine for a PLHIV who knows their HIV status to, "intentionally [expose] another to infection by transferring, donating, or providing blood, tissue, semen, organs, or other potentially infectious bodily fluids or parts for transfusion, transplantation, insemination, or other administration to another in any manner that presents a significant risk of HIV transmission."[14] Neither the intent to transmit HIV nor actual transmission is required.[15] It is an affirmative defense if the individual exposed to HIV (1) was aware of

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[7] Jo Napolitano, *South Dakota: Jail Term for H.I.V. Exposure,* N.Y. TIMES, Aug. 30, 2002, at A-15, *available at* http://www.nytimes.com/2002/08/30/us/national-briefing-plains-south-dakota-jail-term-for-hiv-exposure.html; John W. Fountain, *After Arrest, Campus Queues for H.I.V. Tests*, N.Y. TIMES, May 1, 2002, at A-16, *available at* http://www.nytimes.com/2002/05/01/us/after-arrest-campus-queues-for-hiv-tests.html. *See also* Leslie E. Wolf, *Crime and Punishment: Is There a Role for Criminal Law in HIV Prevention Policy?*, 25 WHITTIER L. REV. 821, 863-65 (2004) (citing John-John Williams,
2 S. Dakotans Sentenced for Spreading HIV, ARGUS LEADER (Sioux Falls, SD), Mar. 26, 2003, at 1B).

[8] Wolf, *supra* note 7, at 864.

[9] Associated Press, *Ex-SDSU Student Sentenced to 8 years in HIV Exposure Case,* RAPID CITY JOURNAL, Feb. 26, 2014, *available at* http://rapidcityjournal.com/news/local/ex-sdsu-student-sentenced-to-years-in-hiv-exposure-case/article_155f6534-ea75-526f-9315-7716acd7133b.html.

[10] *Woman with HIV Sentenced*, RAPID CITY J. (Rapid City, SD), Nov. 4, 2004, *available at* http://www.rapidcityjournal.com/news/local/article_59a9d4d6-bfc3-511b-98b9-106b8fb035b8.html.

[11] *Men charged with spreading HIV*, CNN.COM/LAWCENTER, May 2, 2002, *available at* http://edition.cnn.com/2002/LAW/05/02/hiv.arrests/.

[12] Advocate.com editors*, South Dakota man receives probation for HIV exposure*, April 15, 2003, *available at* https://www.advocate.com/health/health-news/2003/04/15/south-dakota-man-receives-probation-hiv-exposure-8344.

[13] S.D. CODIFIED LAWS § 22-6-6.1 (2018).

[14] S.D. CODIFIED LAWS §§ 22-18-31(2), 22-6-1(6) (2018).

[15] S.D. CODIFIED LAWS § 22-18-34 (2018).

the defendant's HIV status, (2) knew that HIV infection could result from the exposure in question, and (3) consented to exposure with knowledge of these risks.[16]

Sharing non-sterile needles or syringes by PLHIV can result in imprisonment.

It is a Class 3 felony, punishable by up to 15 years' imprisonment and a $30,000 fine, for a PLHIV who knows their HIV status to, "intentionally [expose] another person to infection by dispensing, delivering, exchanging, selling, or in any other way transferring to another person any nonsterile intravenous or intramuscular drug paraphernalia that has been contaminated by himself or herself."[17] South Dakota defines "intravenous or intramuscular drug paraphernalia" as "any equipment, product, or material of any kind which is peculiar to and marketed for use in injecting a substance into the human body."[18]

Neither the intent to transmit HIV nor actual transmission is required.[19] It is an affirmative defense if the individual exposed to HIV (1) was aware of the defendant's HIV status, (2) knew that HIV infection could result from sharing drug paraphernalia, and (3) consented to exposure with knowledge of these risks.[20] However, a noted above, an individual's consent to HIV exposure may be difficult to prove without documentation. Sterilizing the items before transfer may also help avoid prosecution, but it may be similarly difficult to prove that a needle or syringe was sterile at the time of transfer to another without witnesses or documentation.

Exposing another person to blood or semen can result in imprisonment for PLHIV.

It is a Class 3 felony, punishable by up to 15 years' imprisonment and a $30,000 fine, for a PLHIV who knows their HIV status to, "intentionally [expose] another person to infection by throwing, smearing, or otherwise causing blood or semen, to come in contact with another for the purpose of exposing that person to HIV infection."[21] Neither the intent to transmit HIV nor actual transmission is required.[22]

Persons living with venereal diseases may be subject to a number of criminal or civil penalties.

It is a Class 1 misdemeanor, punishable by imprisonment of one year and a fine of $1,000 for anyone living with "syphylis, gonorrhea or chancroid" to "[expose] another person to infection."[23]

People living with chancroid, gonorrhea, hepatitis, HIV, and syphilis, [24] may also be subject to mandatory testing, treatment, isolation, and quarantine.[25] The department may use restrictive public health measures only if other measures, including efforts to obtain the voluntary cooperation of the

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[16] S.D. CODIFIED LAWS § 22-18-33 (2018).
[17] S.D. CODIFIED LAWS §§ 22-18-31(3), 22-6-1(6) (2018).
[18] S.D. CODIFIED LAWS § 22-18-32(3) (2018).
[19] S.D. CODIFIED LAWS § 22-18-34 (2018).
[20] S.D. CODIFIED LAWS § 22-18-33 (2018).
[21] S.D. CODIFIED LAWS §§ 22-18-31(4), 22-6-1(6) (2018).
[22] S.D. CODIFIED LAWS § 22-18-34 (2018).
[23] S.D. CODIFIED LAWS §§ 34-23-1, 22-6-2(1) (2018).
[24] S.D. CODIFIED LAWS § 34-23-13 (2018); S.D. ADMIN. R. 44:20:01:02, 44:20:01:04 (2018).
[25] S.D. CODIFIED LAWS §§ 34-23-4, 34-23-13 (2018).

person who may be subject to restriction, have failed.[26] However, it is unclear what other procedural protections may be in place for such cases.

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.*

[26] S.D. ADMIN. R. 44:20:03:04 (2018).

South Dakota Codified Laws

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 22. CRIMES

S.D. CODIFIED LAWS § 22-18-31 (2018) **

Criminal exposure to HIV – Penalty.

Any person who, knowing himself or herself to be infected with HIV, intentionally exposes another person to infection by:

(1) Engaging in sexual intercourse or other intimate physical contact with another person;

(2) Transferring, donating, or providing blood, tissue, semen, organs, or other potentially infectious body fluids or parts for transfusion, transplantation, insemination, or other administration to another in any manner that presents a significant risk of HIV transmission; or

(3) Dispensing, delivering, exchanging, selling, or in any other way transferring to another person any nonsterile intravenous or intramuscular drug paraphernalia that has been contaminated by himself or herself; or

(4) Throwing, smearing, or otherwise causing blood or semen, to come in contact with another for the purpose of exposing that person to HIV infection; is guilty of criminal exposure to HIV.

Criminal exposure to HIV is a Class 3 felony.

S.D. CODIFIED LAWS § 22-18-32 (2018)

Criminal exposure to HIV – Definitions.

(2) "Intimate physical contact" means bodily contact which exposes a person to the body fluid of the infected person in any manner that presents a significant risk of HIV transmission.

(3) "Intravenous or intramuscular drug paraphernalia" means any equipment, product, or material of any kind which is peculiar to and marketed for use in injecting a substance into the human body.

S.D. CODIFIED LAWS § 22-18-33 (2018)

Criminal exposure to HIV – Defense.

It is an affirmative defense to prosecution if it is proven by a preponderance of the evidence that the person exposed to HIV knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and gave advance consent to the action with that knowledge.

S.D. CODIFIED LAWS § 22-18-34 (2018)

Criminal exposure to HIV – Actual transmission not required.

Nothing in §§ 22-18-31 TO 22-18-34, inclusive, may be construed to require the actual transmission of HIV in order for a person to have committed the offense of criminal exposure to HIV.

S.D. CODIFIED LAWS § 22-24B-1 (2018)

"Sex crime" defined

For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of the following crimes regardless of the date of the commission of the offense or the date of the conviction:

(20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31.

S.D. CODIFIED LAWS § 22-24B-2 (2018) **

Registration of convicted sex offenders--Violation as felony--Discharge

Any person who has been convicted for commission of a sex crime, as defined in § 22-24B-1, shall register as a sex offender. The term, convicted, includes a verdict or plea of guilty, a plea of nolo contendere, and a suspended imposition of sentence which has not been discharged pursuant to § 23A-27-14 prior to July 1, 1995.

Any juvenile fourteen years or older shall register as a sex offender if that juvenile has been adjudicated of rape as defined in subdivision 22-24B-1(1), or of an out-of-state or federal offense that is comparable to the elements of these crimes of rape or any crime committed in another state if the state also requires a juvenile adjudicated of that crime to register as a sex offender in that state. The term, adjudicated, includes a court's finding of delinquency, an admission, and a suspended adjudication of delinquency which has not been discharged pursuant to § 26-8C-4 prior to July 1, 2009.

The sex offender shall register within three business days of coming into any county to reside, temporarily domicile, attend school, attend postsecondary education classes, or work. Registration shall be with the chief of police of the municipality in which the sex offender resides, temporarily domiciles, attends school, attends postsecondary education classes, or works, or, if no chief of police exists, then with the sheriff of the county. If the sex offender is not otherwise registered in the state, the sex offender shall register within three business days of coming into any county when the sex offender applies for or receives a South Dakota driver license, registers a motor vehicle, establishes a postal address, or registers to vote. A violation of this section is a Class 6 felony. Any person whose sentence is discharged under § 23A-27-14 after July 1, 1995, shall forward a certified copy of such formal discharge by certified mail to the Division of Criminal Investigation and to local law enforcement where the person is then registered under this section. Upon receipt of such notice, the person shall be removed from the sex offender registry open to public inspection and shall be relieved of further registration requirements under this section. Any juvenile whose suspended adjudication is discharged under § 26-8C-4 after July 1, 2009, shall forward a certified copy of the formal discharge by certified mail to the Division of Criminal Investigation and to local law enforcement where the juvenile is then registered under this section. Upon receipt of the notice, the juvenile shall be removed from the sex offender registry open to public inspection and shall be relieved of further registration requirements under this section.

S.D. CODIFIED LAWS § 22-6-1 (2018) **

Felonies – Classification – Penalties.

Except as otherwise provided by law, felonies are divided into the following nine classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

(6) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed;

S.D. CODIFIED LAWS § 22-6-2 (2018) **

Misdemeanors – Classification – Penalties.

Misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

(1) Class 1 misdemeanor: one year imprisonment in a county jail or two thousand dollars fine, or both;

(2) Class 2 misdemeanor: thirty days imprisonment in a county jail or five hundred dollars fine, or both.

TITLE 34. PUBLIC HEALTH AND SAFETY

S.D. CODIFIED LAWS § 34-23-1 (2018)

Designation of venereal disease – Person infected exposing another person to infection – Penalty.

Syphilis, gonorrhea, and chancroid are designated to be venereal diseases and are contagious, infectious, communicable, and dangerous to the public health. Any person infected with a venereal disease under this section who intentionally exposes another person to infection of that venereal disease is guilty of a Class 1 misdemeanor.

S.D. CODIFIED LAWS § 34-23-4 (2018)

Requirement to report for and continue treatment until cure – Isolation and quarantine.

State, county, and municipal health officers or their authorized deputies within their respective jurisdiction are hereby directed and empowered to require persons infected with venereal disease to report for treatment to a reputable physician and continue treatment until cured or to submit to treatment provided at public expense until cured, and also, when in their judgment it is necessary to protect the public health, to isolate or quarantine persons infected with venereal disease.

S.D. CODIFIED LAWS § 34-23-5 (2018)

Person convicted of being a prostitute or inmate of a disorderly house.

Any person convicted of being a prostitute or inmate of a disorderly house who may be found to be infected with venereal disease in a stage which, in the opinion of the health officer, is or is apt to become communicable, shall be quarantined or isolated so long as such person is so infected.

S.D. CODIFIED LAWS § 34-23-6 (2018)

Persons imprisoned or confined in state, county, or city prison.

All persons who shall be imprisoned or confined in any state, county, or city prison in the state shall be examined for and, if infected, treated for venereal diseases by the health authorities or their deputies.

S.D. CODIFIED LAWS § 34-23-13 (2018)

Rules and regulations.

The state department of health is hereby empowered and directed to make, in compliance with chapter 1-26, such rules and regulations as shall in its judgment be necessary for the carrying out of the provisions of this chapter, including rules and regulations provided for the control and treatment of persons isolated or quarantined under the provisions of this chapter and such other rules and regulations not in conflict with the provisions of this chapter concerning the control of venereal diseases and concerning the care, treatment, and quarantine of persons infected therewith, as it may from time to time deem advisable.

All such rules and regulations so made shall be of force and binding upon all county and municipal health officers and other persons affected by this chapter.

S.D. CODIFIED LAWS § 34-23-14 (2018) **

Violations of chapter provision, rules and regulations made pursuant to authority therein – Penalty.

Any person who violates any of the provisions of this chapter or any lawful rule or regulation made by the Department of Health pursuant to the authority therein granted, or who shall fail or refuse to obey any lawful order issued by any state, county, or municipal health officer pursuant to the authority granted in this chapter, shall be guilty of a Class 1 misdemeanor.

South Dakota Administrative Code

TITLE 44. HEALTH AND PUBLIC SAFETY

S.D. ADMIN. R. 44:20:01:02 (2018)

Category II reportable diseases and conditions

The department declares the communicable diseases and related conditions listed in §§ 44:20:01:03 and 44:20:01:04 to be dangerous to public health.

S.D. ADMIN. R. 44:20:01:04 (2018)

Category II reportable diseases and conditions

Category II reportable diseases and conditions include:

(5) Chancroid;

(17) Gonorrhea;

(21) Hepatitis, acute, viral types including A, B, C;

(23) Hepatitis B and C, chronic;

(24) Human immunodeficiency virus (HIV) infection;

(43) Syphilis

S.D. ADMIN. R. 44:20:03:03 (2018)

Health threat to others defined

For purposes of this article, a "health threat to others" or a "threat to the public health" exists if a case or carrier demonstrates an inability or unwillingness to refrain from conduct that places others at risk of exposure to a reportable disease, condition, or infectious agent. It may include one or more of the following:

(1) Behavior by a case or carrier that has been demonstrated epidemiologically to transmit a disease, condition, or infectious agent to others or that evidences a careless disregard for the transmission of the disease, condition, or infectious agent to others;

(2) A substantial likelihood that a case or carrier will transmit a disease, condition, or infectious agent to others as evidenced by a case's or carrier's past behavior or by statements of a case or carrier that are credible indicators of a case's or carrier's intention; or

(3) Affirmative misrepresentation by a person of the person's status as a case or carrier prior to engaging in a behavior that has been demonstrated epidemiologically to transmit the disease, condition, or infectious agent.

S.D. ADMIN. R. 44:20:03:04 (2018)

Application of public health measures to persons

The department may instruct a case or carrier of a reportable disease or condition regarding public health measures for preventing the spread of the disease or condition and of the necessity for treatment until cured, non-infectious, or free from the infection. If the department knows or has reason to believe, because of medical or epidemiological information, that a person has a reportable disease or condition and is a health threat to others, it may issue a public health notice directing the person to take one or more of the following actions:

> (1) To be examined or tested to determine whether the person has the disease in an infectious stage;
>
> (2) To report to a physician, health care worker, or authorized department representative for counseling on the disease and for information on how to avoid infecting others;
>
> (3) To receive treatment until cured or non-infectious and to follow measures for preventing reinfection;
>
> (4) To cease from specified conduct which endangers the health of others; or
>
> (5) To cooperate with the department in implementation of recommended public health measures.

The department may use restrictive public health measures only if other measures to protect the public health have failed, including efforts to obtain the voluntary cooperation of the person who may be the subject of such measures. The department shall apply public health measures as necessary to achieve the desired purpose of protecting the public health, using the least intrusive measures first.

S.D. ADMIN. R. 44:20:03:06 (2018)

Imminent health threat to others – Petition to circuit court

If the department has determined by medical or epidemiological information that a person has a reportable disease or condition and is an imminent health threat to others, the department may petition the circuit court for a temporary restraining order pursuant to SDCL chapter 15-6 to enforce public health measures.

Tennessee

People living with HIV (PLHIV), Hepatitis B virus (HBV), or Hepatitis C virus (HCV), may face criminal penalties for engaging in sexual activities without disclosing their positive status.

In Tennessee, it is against the law for a PLHIV, HBV, or HCV who knows their positive status to engage in "intimate contact" with another without first disclosing their status.[1] Intimate contact is defined as contact between the body of one person and the bodily fluid of another person in a manner that presents a "significant risk" of transmission.[2] Because the statute is silent on condom use, "[i]t is not clear if an individual who engages solely in condom-protected sex could be charged with violating [the law]."[3] Actual transmission of HIV, HBV, or HCV is not necessary for prosecution.[4] For a PLHIV, violating this statute is a Class C felony, punishable by three to 15 years' imprisonment and a fine of up to $10,000.[5] For a person living with HBV or HCV, violating this statute is a Class A misdemeanor, punishable by a fine of not more than $1,000.[6] It is an affirmative defense to prosecution if it can be demonstrated by a preponderance of the evidence that the person "exposed" to HIV, HBV, or HCV was aware of the defendant's status, knew that the activity could result in transmission, and provided "advance consent" to the activity.[7] However, proving that "advance[d] consent" occurred can be challenging because there is rarely documentation or other incontrovertible evidence of disclosure, and often the defendant and complainant's versions of the events are pitted against one another.

In *State v. Smith*, there was a discrepancy between the defendant's and complainant's evidence regarding whether or not the defendant had disclosed his HIV status.[8] The defendant, who was charged with criminal exposure to HIV, among other charges, testified that he disclosed his HIV status and assumed the complainant had used a condom before they engaged in anal sex.[9] The defendant maintained that he discovered later that the complainant had not used the condom.[10] The complainant testified otherwise, alleging that though the sex was consensual, the defendant never disclosed his HIV status, and the complainant only found out the information from a friend afterwards.[11]

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[1] TENN. CODE ANN. § 39-13-109(a)(1).
[2] TENN. CODE ANN. § 39-13-109(b)(2).
[3] Carol L. Galletly & Zita Lazzarini, Charges for Criminal Exposure to HIV and Aggravated Prostitution Filed in Nashville, Tennessee Prosecutorial Region 2000–2010, 17 AIDS & BEHAV. 2624, 2625 (2013).
[4] TENN. CODE ANN. § 39-13-109(d)(1).
[5] TENN. CODE ANN. §§ 39-13-109(e)(1), 40-35-111(b)(3).
[6] TENN. CODE ANN. §§ 39-13-10 (e)(2).
[7] TENN. CODE ANN. § 39-1309(c)(1).
[8] 2008 Tenn. Crim. App. LEXIS 159, at *2–*3 (Tenn. Crim. App. 2008).
[9] *Id.* at *3–4.
[10] *Id.* at *4.
[11] *Id.*

Tennessee's criminal exposure statute requires that there be "exposure" of a person to the bodily fluids of a PLHIV and that said exposure poses a "significant risk" of transmission. However, the statute does not define the scope of such exposure and also fails to define "significant risk."[12] In *State v. Bonds*, the Tennessee Court of Appeals concluded that exposure did not require actual contact with or transfer of bodily fluids—rather, the prosecutor need only establish that the "defendant subjected a victim to risk of contact with bodily fluids in a manner that would present a significant risk of HIV transmission."[13] The defendant in Bonds was sentenced to six years for criminal exposure of HIV and an additional 25 years for aggravated rape.[14] On appeal, the defendant argued he never "exposed" the complainant to HIV within the meaning of the statute because there was no proof that there had been any exchange of bodily fluids during the commission of the crime.[15]

The court determined that because the defendant knew his HIV status and anally raped the complainant, the defendant "made his bodily fluids accessible to the complainant, in a manner that presented a significant risk of HIV transmission."[16] After reviewing previous cases of HIV exposure in Tennessee, the court in *Bonds* found successful prosecutions hinged on the fact that the sex was unprotected, increasing the possible "risk of contact with bodily fluids."[17] However, the court also noted that such a risk was "substantially more prevalent" in instances of unprotected sex relative to sex where some kind of prophylactic is used.[18] This reasoning suggests that use of a condom could potentially operate as a defense to a claim of HIV exposure.

In 2014, the Supreme Court of Tennessee clarified the meaning of "significant risk" in *State v. Hogg*.[19] The defendant had been convicted of seven counts of criminal exposure to HIV, amongst other crimes, and challenged the sufficiency of the evidence supporting his conviction on appeal.[20] Specifically, he argued that his conduct did not pose a "significant risk" of transmitting HIV, as required by the statute.[21] The court rejected the defendant's argument that "significant risk" required "risks so great they are almost certain to materialize if nothing is done."[22] Instead, the court held that "significant risk" requires a possibility of HIV transmission that is "more definite than a faint, speculative risk, as shown by expert medical proof."[23] The court explained that this determination requires a fact-specific inquiry, including an assessment of both the severity of consequences and the likelihood that HIV will be transmitted.[24]

Applying this standard, and relying on testimony by an infectious disease physician, the court found that there was insufficient evidence to support the defendant's conviction for three of the seven counts of criminal exposure to HIV. Analyzing each activity in turn, the court concluded that the defendant licking

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[12] TENN. CODE ANN. § 39-13-109(b)(2).
[13] 189 S.W.3d 249, 258 (Tenn. Crim. App. 2005).
[14] *Id.* at 251.
[15] *Id.* at 257.
[16] *Id.* at 258–59.
[17] *Id.* at 259.
[18] *Id*.
[19] 448 S.W.3d 877 (Tenn. 2014).
[20] *Id*. at 887.
[21] *Id*.
[22] *Id.* at 887–88 (citing *Brown v. Budz*, 398 F.3d 904, 911 (7th Cir. 2005)).
[23] *Id.* at 888–89.
[24] *Id.* at 888.

the complainant's anus, performing oral sex on the complainant, and manually manipulating the complainant's penis all entailed a level of risk that was insufficient for conviction.[25] The court affirmed the other four counts, finding that the defendant's performing unprotected anal sex on the complainant, digitally penetrating the complainant's anus, and the complainant's performance of oral sex on the defendant all posed more than a faint, speculative risk of HIV transmission.[26] With respect to digital penetration, the court reasoned that since it occurred following other sexual activity, a jury could infer that there was pre-ejaculate on the defendant's finger that was capable of transmitting HIV.[27]

Other prosecutions of HIV exposure involving "intimate contact" in Tennessee appear to be primarily limited to cases where PLHIV did not disclose their HIV status and a condom or other protection was not used during sexual intercourse. Additional prosecutions of criminal exposure to HIV involving intimate contact include:

- In October 2025, a man was charged with multiple crimes against a child, including criminal exposure to HIV.[28]
- In July 2021, a man was charged with and eventually convicted for criminal exposure to HIV, after his wife tested positive for HIV.[29]
- In September 2016, a PLHIV was charged with two counts of criminal exposure to HIV, in addition to other charges, for having sex with a minor without disclosing his HIV status.[30]
- In April 2016, a PLHIV was charged with criminal exposure to HIV after he had unprotected sex without disclosing his HIV status to his sexual partner.[31]
- In September 2015, a 41-year-old PLHIV was charged with criminal exposure to HIV after having sex without disclosing his status to a sexual partner, who subsequently tested positive for HIV.[32]
- In July 2014, a 34-year-old PLHIV was charged with criminal exposure to HIV after a single sexual encounter with a partner to whom he allegedly did not disclose his HIV status.[33]

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[25] *Id.* at 889-890.

[26] Id.

[27] *Id.* at 889.

[28] Courtney Anderson, Memphis Man Wanted for Multiple Sex Crimes Against Children Arrested, (Oct. 31, 2025), https://www.localmemphis.com/article/news/crime/memphis-child-sex-crimes-suspect-arrested/522-cfe5dc44-95f8-4981-9588-40ec5941a481.

[29] Calli Starnes, *Man Charged With Infecting Woman With HIV, Again*, LOCAL3NEWS (Dec. 2, 2021), https://docs.google.com/document/d/1mAdWkqrfQxcfypvBtQqWzHbUsZsmrPQlDxnEFx_k8t8/edit?tab=t.0.

[30] Rebecca Green, *Dance Coach in Tennessee Arrested for Statutory Rape, Criminal Exposure to HIV*, FOX13 (Sept. 18, 2016), *available at* http://fox13now.com/2016/09/17/dance-coach-in-tennessee-arrested-for-statutory-rape-criminal-exposure-to-hiv/.

[31] *Man Accused of Exposing Others to HIV*, LOCALMEMPHIS.COM (Apr. 15, 2016), *available at* https://www.localmemphis.com/article/news/local/man-accused-of-exposing-others-to-hiv/522-435b462f-8971-4781-b901-5dfebd832dd6.

[32] Yolanda Jones, *Man Charged With HIV Exposure*, COMMERCIAL APPEAL (Sep. 11, 2015), *available at* http://www.pressreader.com/usa/the-commercial-appeal/20150911/282561606953850.

[33] Nichole Manna, *Man Accused of Criminal Exposure to HIV*, JACKSON SUN (July 2, 2015), *available at* http://www.jacksonsun.com/story/news/local/2014/07/03/man-accused-of-criminal-exposure-to-hiv/12120837/.

- In September 2013, a man was arrested for criminal exposure to HIV after his mistress, with whom he had been having unprotected sex, discovered his HIV status from his wife.[34]
- In March 2011, a man was charged with criminal exposure to HIV, as well as statutory rape, for failing to disclose his status to a 14-year-old.[35]
- In October 2010, a PLHIV was charged with four counts of criminal exposure of HIV after allegedly having sex with at least two women.[36]
- In 2002, a 24-year-old PLHIV was sentenced to 14 years' imprisonment for HIV exposure and an additional six years' imprisonment for statutory rape for having unprotected sex with a 14-year-old.[37] The defendant did not disclose his HIV status.[38]
- In 2000, a PLHIV pled guilty to 22 counts of criminal exposure to HIV and was sentenced to 26 years and six months' imprisonment.[39] The defendant allegedly engaged in unprotected sex with multiple men without disclosing her HIV status.[40] Though the defendant claimed that she told her partners about her HIV status, the complainants testified otherwise.[41] The men maintained that the defendant purposefully denied her HIV status and they did not use condoms.[42] After ten years' imprisonment, the defendant was released in 2008 and remained on parole until 2020.[43]
- In 1999, a 31-year-old PLHIV pled guilty to criminal exposure to HIV and was sentenced to five concurrent four-year sentences.[44] The defendant engaged in five consensual, unprotected sexual encounters with the same female and did not disclose his status.[45]
- In October 1999, a PLHIV pled guilty to nine counts of criminal exposure to HIV and three counts of statutory rape.[46] He was sentenced to 17 years' imprisonment.[47] The defendant did not disclose his HIV status and, when asked by his sexual partners, he denied that he had HIV.[48] At least one of his partners tested positive for HIV.[49]

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[34] Beth Burger, *Red Bank, Tenn.,* M*an* A*ccused of* E*xposing* W*oman to HIV*, TIMES FREE PRESS (Sep. 18, 2013), *available at* http://www.timesfreepress.com/news/2013/sep/18/red-bank-man-accused-of-exposing-woman-to-hiv/?news.

[35] Jason Miles, *Man Charged With Exposing 14-Year-Old Boy to HIV*, ACTIONNEWS5 (Jan. 13, 2017), https://www.actionnews5.com/story/14176472/man-charged-with-exposing-14-year-old-boy-to-hiv/.

[36] Claire Galofaro, *"Flipper" Sensabaugh Indicted on Charges of Criminal Exposure to HIV*, HERALDCOURIER.COM (Oct. 29, 2010), *available at* http://www.heraldcourier.com/news/flipper-sensabaugh-indicted-on-charges-of-criminal-exposure-tohiv/article_35f0b597-e42e-5e71-8c55-c229709c992c.html.

[37] *State v. Harvey*, 2002 Tenn. Crim. App. LEXIS 478, at *1–*2 (Tenn. Crim. App. 2002).

[38] *Id*. at *5.

[39] *State v. Wiser*, 2000 Tenn. Crim. App. LEXIS 852, at *1–*2 (Tenn. Crim. App. 2000).

[40] *Id.* at *5–*12.

[41] *Id*.

[42] *Id*.

[43] *Woman Who Spread HIV Leaves Prison*, TIMES GAZETTE, (Dec. 31, 2008).

[44] *State v. Bennett*, 1999 Tenn. Crim. App. LEXIS 762, at *1–*2 (Tenn. Crim. App. 1999).

[45] *Id.* at *2–*3.

[46] *State v. Jones*, 2001 Tenn. Crim. App. LEXIS 365, at *1–*2 (Tenn. Crim. App. 2001).

[47] *Id*. at *2.

[48] *Id.* at *4.

[49] *Id*.

Though most of the prosecutions for HIV exposure in Tennessee involve unprotected sexual activity without disclosure of HIV status, there have been multiple cases of arrests and prosecutions for criminal exposure to HIV that presented only a remote risk of HIV transmission:

- In June 2024, during an arrest, a PLHIV with a laceration on his arm allegedly spat and threw blood at police officers.[50]
- In October 2022, a man was arrested and, while in the back seat of a police vehicle, allegedly spat and yelled that he had "AIDS."[51]
- In September 2016, a 27-year-old woman was charged with criminal exposure to HIV and assault after she cut herself and touched another woman with her bloodied hand during an altercation.[52]
- In August 2016, a 38-year-old woman was charged with criminal exposure to HIV after she allegedly bit a police officer during a traffic stop.[53]
- In May 2016, a 48-year-old woman was charged with three counts of criminal exposure to HIV for deliberately coughing and spitting at store employees following a shoplifting incident.[54]
- In June 2013, a man was arrested for criminal exposure to HIV when he spit on a hospital worker who was trying to restrain him.[55] He was in the hospital for treatment of seizures.[56]
- In November 2010, a man was charged with aggravated assault and criminal exposure of another to HIV for allegedly spitting on a detention officer.[57]
- From January 1, 2000, to December 31, 2010, "[e]leven of the 27 arrests for HIV exposure (41%) [in the Nashville prosecutorial region] involved scratching, spitting (some with saliva, some with saliva mixed with blood), biting, or flinging or splattering blood."[58]

In 2012, a criminal appeals court reversed a conviction for criminal exposure to HIV and modified the sentence to attempt to expose one to HIV.[59] The court found that in order for the State to establish that the defendant's spitting into the complainant's face posed a significant risk of HIV transmission, the State must provide expert medical testimony because a layperson does not have the necessary medical knowledge to make this determination.[60]

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[50] Shay Patterson, *Man Arrested for Exposing Three Deputies to HIV By Spitting, Throwing Blood*, LOCAL3NEWS (June 17, 2024), https://www.local3news.com/local-news/man-arrested-for-exposing-three-deputies-to-hiv-by-spitting-throwing-blood/article_bebbadc2-2374-11ef-9b87-cf8aeec4acd0.html.

[51] Lydian Coombs,*Tenn. Man Claiming to Have AIDS Bites Officer's Thumb, Breaking It*, HAWAII NEWS NOW (Oct. 4, 2022), https://www.hawaiinewsnow.com/2022/10/05/affidavit-tenn-man-claiming-have-aids-bites-officers-thumb-breaking-it/.

[52] Collins Parkers, *Woman Charged with Scheme to Give Another Woman HIV*, WDEF.COM (Sep. 21, 2016), *available at* http://www.wdef.com/2016/10/21/woman-charged-scheme-give-another-woman-hiv/.

[53] Stephanie Norton, *Woman Charged With Criminal Exposure to HIV After Allegedly Biting Memphis Police Officer*, COMMERCIAL APPEAL (Aug. 4, 2016), *available at* http://archive.commercialappeal.com/news/crime/woman-charged-with-criminal-exposureto-hiv-after-allegedly-biting--memphis-police-officer-3942cf01--389200481.html.

[54] *Rossville Woman Charged With Criminal Exposure to HIV*, WDEF.COM (May 8, 2016), *available at* http://www.wdef.com/2016/05/08/rossville-woman-charged-criminal-exposure-hiv/.

[55] Man With HIV Arrested After He Spits On Hospital Worker, The Chattanoogan (June 28, 2013), available at http://www.chattanoogan.com/2013/6/28/254206/Man-With-HIV-Arrested-After-He-Spits.aspx.

[56] *Id*.

[57] Inmate Charged with Exposing Jailer to HIV, WKRN.COM (Nov. 8, 2010).

[58] Galletly & Lazzarini, *supra* note 3, at 2627.

[59] *State v. Ingram*, 2012 Tenn. Crim. App. LEXIS 887, at *2 (Tenn. Crim. App. 2012).

[60] *Id*. at *13–*14.

PLHIV engaging in sex work face enhanced criminal penalties.

It is a Class C felony, punishable by three to 15 years in prison, for persons who know their HIV status to engage in acts of prostitution,[61] defined as engaging in or offering to engage in sexual activity as a business, being an inmate of a house of prostitution, or loitering in a public place for the purpose of being hired to engage in sexual activity.[62] Actual transmission of HIV is not required for prosecution. A conviction for prostitution is generally a Class B misdemeanor punishable by no more than a six-month sentence and/or a $500 fine, but a PLHIV faces a 30-times greater penalty for the same offense.[63]

Tennessee law does not require any physical contact for a conviction of aggravated prostitution.[64] Sex workers have been charged with aggravated prostitution for offering or arranging to perform sex acts on undercover police officers.[65] Even if intimate contact did occur, it is not required that the activity pose significant risk of HIV transmission for conviction. For instance, a PLHIV engaged in sex work was charged with aggravated prostitution in December 2015 for performing oral sex on a client,[66] an activity that the CDC classifies as posing a "low" risk of HIV transmission.[67] On the face of the statute, it would also be irrelevant whether condoms or other protection were used, or if the defendant had a low viral load.

On December 1, 2023, the U.S. Department of Justice (DOJ) announced that the enforcement of Tennessee's aggravated prostitution law violates the Americans with Disabilities Act (ADA) by discriminating against people living with HIV, a protected disability.[68] The DOJ found that the aggravated prostitution law impermissibly treats actions by PLHIV as felonies instead of misdemeanors, solely based on the person's HIV status.[69]

Although legislation removed aggravated prostitution as a "violent sex offense" in 2024, it did not repeal the underlying aggravated prostitution crime.[70] Thus, PLHIV engaging in sex work remain threatened by the law.

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[61] TENN. CODE ANN. §§ 39-13-516, 40-35-111(b)(3).

[62] TENN. CODE ANN. § 39-13-512(6).

[63] TENN. CODE ANN. §§ 39-13-513(b)(1), 40-35-111(e)(2).

[64] Galletly & Lazzarini, *supra* note 3, at 2626.

[65] *Metro Detectives Arrest Prostitute Who Knowingly Has HIV*, FOX17.COM (Dec. 9, 2015), *available at* http://fox17.com/news/local/metro-detectives-arrest-prostitute-who-knowingly-has-hiv; *Woman with HIV Arrested For Soliciting Officer*, WKRN.COM (Oct. 9, 2014).

[66] Erik Avanier, *HIV Positive Prostitute Busted Again; Customers Advised to Get Tested*, WDEF.COM (Dec. 9, 2016), *available at* http://www.wdef.com/2015/12/09/hiv-positive-prostitute-busted-again-customers-advised-to-get-tested/.

[67] CTR. FOR DISEASE CONTROL & PREVENTION, *How HIV Spreads*, (Nov. 25, 2024), *available at* https://www.cdc.gov/hiv/causes/index.html.

[68] U.S. DEP'T OF JUSTICE, The United States' Findings and Conclusions Based on its Investigation of the State of Tennessee and the Shelby County District Attorney General's Office under Title II of the Americans with Disabilities Act, DJ No. 204-70-85 (Dec. 1, 2023), available at https://www.justice.gov/d9/2023-12/2023.11.30_tn_hiv_lof_final.pdf.

[69] CHLP Calls on Justice Department to Investigate HIV Criminal Laws in Ohio and Tennessee, Ctr. for HIV L. & Pol'y (Jan. 25, 2022), https://www.hivlawandpolicy.org/news/chlp-calls-justice-department-investigate-hiv-criminal-laws-ohio-and-tennessee.

[70] TENN. CODE ANN. § 40-39-202(31)(X) (2024) [repealed].

A person who is convicted of aggravated prostitution is no longer required to register as a sex offender.[71]

Prior to July 1, 2024, a person convicted of aggravated prostitution was classified as a "violent sex offender" and required to register on the sex offender registry (SOR) for the remainder of their life.[72] Sex offender registration was accompanied by a variety of reporting requirements and restrictions on where an individual may live or work.[73] In its December 2023 letter, the DOJ also found that the aggravated prostitution law discriminates against PLHIV by subjecting them to lifetime sex offender registration solely based on their HIV status.[74]

As of July 1, 2024, people convicted of aggravated prostitution are no longer required to register on the SOR.[75] People previously convicted can petition to be removed from the registry.[76] However, expungement relief is restricted to people who can prove their conviction "resulted from [their] status as a victim of human trafficking," so many people may not be able to have their records expunged.[77]

A person's HIV status may also be considered as an aggravating factor in sentencing.

A sentencing court may consider a defendant's HIV status in sentencing for the crimes of aggravated rape, rape, rape of a child, or statutory rape.[78] In order to sustain a sentence enhancement under this provision, defendants must have known or should have known their HIV status during the commission of the offense.[79]

Additionally, aggravated rape includes any rape committed while the person is living with HIV.[80] In *State v. Banks*, the Tennessee Court of Criminal Appeals vacated a trial court's decision to impose consecutive sentencing for a defendant convicted of aggravated kidnapping and aggravated rape because there was no trial court finding that the defendant knew his HIV status during the offense.[81] The defendant was originally sentenced to two 23-year consecutive sentences, for a total of 46 years' imprisonment.[82]

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[71] In 2023, TENN. CODE ANN. 40-39-202 was amended by deleting subsection (31)(N) in its entirety. The law removes criminal exposure to HIV from the list of violent sexual offenses when previously a conviction required an individual to register as a sex offender for life.

[72] TENN. CODE ANN. §§ 40-39-202(31)(X) [repealed]; 40-39-202(30); 40-39-207(g)(2)(b).

[73] TENN. CODE ANN. §§ 40-39-203, 40-39-211(a)(2).

[74] U.S. Dep't of Justice, *supra* note 63.

[75] S.B. 0181, 113th Tenn. Gen. Assembly (2024) (repealing the provision classifying aggravated prostitution as a "violent sex offense").

[76] Id. (allowing people convicted to "file a request for termination of registration requirements"); Tenn. Code Ann. § 40-39-207(a)(4) (2024).

[77] TENN. CODE ANN. §§ 40-32-105(b)(6)(C)(ii); 40-32-105(b)(7).

[78] TENN. CODE ANN. § 40-35-114(21).

[79] *Id*.

[80] Tenn. Code Ann. § 39-13-502(a)(4).

[81] 2010 Tenn. Crim. App. LEXIS 314, *6–*7, *15–*16 (Tenn. Crim. App. 2010).

[82] Id. at *6–*7.

People living with HIV, HBV, or HCV are prohibited from donating blood, organs, tissue, semen, or other body fluids.

PLHIV, HBV, or HCV must not donate or sell blood, semen, or any other body part meant for transfer to another person.[83] Actual transmission of HIV, HBV, or HCV is not necessary for a conviction. For a PLHIV, a violation of this statute could result in up to 15 years' imprisonment.[84] A person living with HBV or HCV who violates this statute is guilty of a Class A misdemeanor punishable by a fine of not more than $1,000.[85]

PLHIV, HBC, or HCV may be criminally prosecuted for sharing needles.

PLHIV, HBV, or HCV who know their positive status may be criminally liable for providing another person with any non-sterile equipment used for injecting drugs.[86] Actual transmission is not necessary for a conviction.[87]

PLHIV may be isolated or quarantined by the Department of Health.

The Department of Health has the authority to isolate or quarantine a PLHIV if, after attempting other "appropriate measures," the person continues to pose a "direct threat of significant risk to the health and safety of the public."[88] Neither "appropriate measures" nor a "direct threat of significant risk" is defined in the statute. It is not clear what kinds of procedural protections, if any, are extended to a PLHIV who is subject to these restrictive measures. It is a Class E felony, punishable by one to six years' imprisonment and/or a $3000 fine, for a person who has been subject to restrictive measures because of HIV status to intentionally escape quarantine or isolation.[89]

Public health officials are empowered to mandate examination, treatment and quarantine/isolation of a person who is known or suspected of having a "sexually transmitted disease (STD)."

A state, county, district or municipal health officer may examine a person who is reasonably suspected of being "infected" with a communicable "STD" on the basis of "known clinical or epidemiological evidence."[90] However, absent any such evidence, a person's loitering about or residing in a house of prostitution is sufficient to establish a reasonable suspicion of "infection."[91] Sexually transmitted disease is defined as "any disease that is transmitted primarily through sexual practices and is identified in rules and regulations of the department.[92] Upon a finding that a person has an "STD" of a communicable nature, the health officer may require that person to undergo medical treatment until "noninfectious."[93]

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[83] TENN. CODE ANN. § 39-13-109(a)(2).
[84] TENN. CODE ANN.§ 40-35-111(b)(3).
[85] TENN. CODE ANN. §§ 39-13-10 (e)(2).
[86] TENN. CODE ANN.§ 39-13-109(a)(3).
[87] Galletly & Lazzarini, *supra* note 3, at 2626.
[88] TENN. CODE ANN. § 39-13-108(b).
[89] *Id*.
[90] TENN. CODE ANN. § 68-10-104(a)(1).
[91] TENN. CODE ANN.§ 68-10-104(a)(2).
[92] TENN. CODE ANN.§ 68-10-101(4).
[93] TENN. CODE ANN.§ 68-10-104(a)(1).

The health officer can also elect to isolate or quarantine a person with an STD if they judge it "necessary to protect the public health."[94] Case law demonstrates that Tennessee has employed quarantine as a measure to combat "venereal disease."[95] Only a health officer has the authority to establish or terminate isolation and/or quarantine for a person with an "STD"—the decision is made on the basis of "available medical and epidemiological information concerning the STD diagnosis, modes of transmission, available treatment, and the necessity of the protection of the public health."

Should an individual refuse to submit to the initial examination, a health officer may seek an immediate warrant for their arrest from a magistrate or judge, which is issued if there is a showing of reasonable cause on the basis of clinical and epidemiological evidence.[96] If the court determines after an examination and hearing that the person has an "STD," then it may commit the person to an isolation hospital until the person is rendered "noninfectious" or reaches a stage where "infectious" relapse will not occur.[97] A person may appeal the decision of the court, but the appeal will not stay the commitment to an isolation facility, which occurs immediately.[98]

Exposing another person to an "STD" may be punished with a misdemeanor.

It is a violation of law punishable by up to 30 days in jail and a $50 fine for any person living with an "STD" to expose another person to "infection."[99] The statute does not require actual transmission, and, unlike the law criminalizing HIV exposure, it does not specify the need for "significant risk" of transmission.

Public health officials and others may disclose confidential medical information related to HIV and other "STDs" under various circumstances.

Records relating to known or suspected cases of "STDs" are generally confidential. However, information may be released to "appropriate state agencies" in order to enforce laws and regulations governing the control and treatment of "STDs."[100] This has been interpreted by the Tennessee Office of the Attorney General to authorize release of records concerning HIV status to a district attorney if they are considering or pursuing prosecution of a PLHIV for intentionally escaping quarantine/isolation or for any other violation of the public health code provisions governing control of "STDs."[101] Otherwise, release is only authorized with a court order obtained during a legal proceeding under the following conditions: the information sought is material, relevant, and reasonably calculated to be admissible as evidence; the probative value of the evidence outweighs the interest in maintaining its confidentiality; the merits of the litigation cannot be fairly resolved absent the disclosure and; the disclosure is necessary to avoid substantial injustice to the party seeking it and, either the disclosure will result in no

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[94] *Id*.

[95] *See*, *e.g.*, State ex. rel. Kennedy v. Head, 182 Tenn. 249, 250–52 (Tenn. 1945).

[96] TENN. CODE ANN. §§ 68-10-110(a), 68-10-110(b).

[97] TENN. CODE ANN. § 68-10-110(f).

[98] TENN. CODE ANN. §§ 68-10-110(g), 68-10-110(h).

[99] TENN. CODE ANN.§§ 40-35-111(e)(3), 68-10-107.

[100] TENN. CODE ANN.§ 68-10-113(3).

[101] TENN. OFFICE OF THE ATTORNEY GENERAL, *Opinion No. 01-146: Records Concerning HIV Patients* 4–5 (Sep. 14, 2001), available at https://www.tn.gov/content/dam/tn/attorneygeneral/documents/ops/2001/op01-146.pdf.

significant harm to the person examined or treated, or it would be substantially unfair not to require the disclosure.[102]

Despite the general requirement for confidentiality, if a person has a reasonable belief that an individual has "knowingly exposed" someone else to HIV, they may inform the person exposed without incurring any liability.[103] This provision permits a health care provider, or anyone else, to disclose a person's HIV status to third parties, which can potentially subject the person to criminal liability and/or restrictive measures such as quarantine or isolation.[104] What constitutes an appropriate basis for "reasonable belief" is not specified in the statute.

Criminal exposure to HIV was removed from the list of offenses requiring sex offender registration.

In 2023, § 40-39-202 was amended by deleting subdivision (31)(N) in its entirety. The repeal removed criminal exposure to HIV from the list of violent sexual offenses, thereby eliminating the requirement for sex offender registration and continued registration. Prior to the change in the law, persons convicted of this crime were required to register as violent sex offenders for the remainder of their lives.

Under the new law, § 40-39-207(a) was amended to add a subdivision outlining the process for individuals previously convicted of criminal exposure to HIV to request that their name be removed from the sex offender registry. Anyone convicted of criminal exposure to HIV prior to July 1, 2023, may also file a request to terminate registration requirements with the Tennessee Bureau of Investigation (TBI). Those registered as sex offenders for a conviction of criminal exposure to HIV who wish to have their names removed can do so through a fingerprint-based state and federal criminal history check process. The process determines whether additional convictions exist for sexual offenses or violent sexual offenses. If the requirements of the amendment are satisfied, TBI will remove the individual from the registry and notify them that they are no longer required to comply with the registration requirements.

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 in your specific situation and, as such, it should not be used as a substitute for legal advice.*

[102] TENN. CODE ANN. § 68-10-113(6).
[103] TENN. CODE ANN.§ 68-10-115.
[104] TENN. CODE ANN.§§ 39-13-108, 39-13-109(a).

Code of Tennessee

TITLE 39, CRIMINAL OFFENSES

TENN. CODE ANN. § 39-13-108

HIV (human immunodeficiency virus); willful transmission; quarantine

a) The department of health, acting pursuant to § 68-10-109, shall promulgate rules regarding transmission of human immunodeficiency virus (HIV). The rules shall include specific procedures for quarantine or isolation, as may be necessary, of any person who clearly and convincingly demonstrates willful and knowing disregard for the health and safety of others, and who poses a direct threat of significant risk to the health and safety of the public regarding transmission of HIV.

(b) The department is authorized to quarantine or isolate a person within a secure facility, after exercising other appropriate measures, if the person continues to pose a direct threat of significant risk to the health and safety of the public. Any person so quarantined or isolated within a secure facility, who intentionally escapes from the facility, commits a Class E felony.

TENN. CODE ANN. § 39-13-109

Criminal exposure to HIV, HBV, HCV — Defenses — Penalty

(a) A person commits the offense of criminal exposure of another to human immunodeficiency virus (HIV), to hepatitis B virus (HBV), or to hepatitis C virus (HCV) when, knowing that the person is infected with HIV, with HBV, or with HCV, the person knowingly:

(1) Engages in intimate contact with another;

(2) Transfers, donates, or provides blood, tissue, semen, organs, or other potentially infectious body fluids or parts for transfusion, transplantation, insemination, or other administration to another in any manner that presents a significant risk of HIV, HBV or HCV transmission; or

(3) Dispenses, delivers, exchanges, sells, or in any other way transfers to another any nonsterile intravenous or intramuscular drug paraphernalia.

(b) As used in this section:

(1) “HIV” means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome;

(2) “Intimate contact with another” means the exposure of the body of one person to a bodily fluid of another person in any manner that presents a significant risk of HIV, HBV or HCV transmission; and

(3) “Intravenous or intramuscular drug paraphernalia” means any equipment, product, or material of any kind that is peculiar to and marketed for use in injecting a substance into the human body.

(c)

(1) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the person exposed to HIV knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and gave advance consent to the action with that knowledge.

(2) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the person exposed to HBV knew that the infected person was infected with HBV, knew that the action could result in infection with HBV, and gave advance consent to the action with that knowledge.

(3) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the person exposed to HCV knew that the infected person was infected with HCV, knew that the action could result in infection with HCV, and gave advance consent to the action with that knowledge.

(d)

(1) Nothing in this section shall be construed to require the actual transmission of HIV in order for a person to have committed the offense of criminal exposure of another to HIV.

(2) Nothing in this section shall be construed to require the actual transmission of HBV in order for a person to have committed the offense of criminal exposure to HBV.

(3) Nothing in this section shall be construed to require the actual transmission of HCV in order for a person to have committed the offense of criminal exposure to HCV.

(e)

(1) Criminal exposure of another to HIV is a Class C felony.

(2) Criminal exposure of another to HBV or HCV is a Class A misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000), restitution to the victim or victims, or both a fine and restitution. The clerk shall transmit all money collected from a fine imposed for a violation of this section to the criminal injuries compensation fund created pursuant to § 40-24-107. In addition, a victim of criminal exposure HBV or HCV may maintain an action for the expenses and the actual loss of service resulting from such exposure.

TENN. CODE ANN. § 39-13-112

HIV testing of assault arrestees

(a)

(1) If a person is initially arrested for a violation of § 39-13-102, and if the victim of the assault suffered actual contact with the blood or other body fluid of the arrestee, then the arrestee shall undergo human immunodeficiency virus (HIV) testing immediately, upon the request of the victim. A licensed medical laboratory shall perform the test at the expense of the arrestee. The arrestee shall obtain a confirmatory test when necessary. The arrestee shall be referred to appropriate counseling.

(2) For purposes of this section, “victim of the assault” is limited to a law enforcement officer; firefighter; correctional officer; youth services officer; probation and parole officer; an employee of the department of correction or the department of children's services; provided, that the officer or employee was performing an official duty; or an emergency medical or rescue worker, emergency medical technician, or paramedic, whether compensated or acting as a volunteer; provided, that such technician or worker was performing an official duty.

(b)

(1) The licensed medical laboratory shall report the results of the HIV test required under this section immediately to the victim of the assault. (2) The result of the HIV test required under this section is not a public record and shall be available only to:

(A) The victim of the assault;

(B) The parent or guardian of a minor or incapacitated victim;

(C) The attending physician of the person tested and of the victim;

(D) The department of health;

(E) The department of correction;

(F) The person tested; and

(G) The district attorney general prosecuting the case.

(c) If the arrestee's test indicates that the arrestee is infected with HIV, then the arrestee shall be responsible for the victim's medical bills, laboratory bills and other expenses related to the victim's exposure to HIV, upon a finding that the exposure was from the arrestee.

TENN. CODE ANN. § 39-13-502

Aggravated rape

(a) Aggravated rape is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(4) The defendant knows that the defendant is infected with HIV. As used in this subdivision (a)(4), "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

TENN. CODE ANN. § 39-13-516

Aggravated prostitution

(a) A person commits aggravated prostitution when, knowing that such person is infected with HIV, the person engages in sexual activity as a business or is an inmate in a house of prostitution or loiters in a public place for the purpose of being hired to engage in sexual activity.

(b) For the purposes of this section, “HIV” means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

(c) Nothing in this section shall be construed to require that an infection with HIV has occurred in order for a person to have committed aggravated prostitution.

(d) Aggravated prostitution is a Class C felony.

TENN. CODE ANN. § 39-13-521

HIV testing of persons convicted of sexual offenses-release of test results

(a) When a person is initially arrested for allegedly violating § 39-13-502 (aggravated rape), § 39-13-503 (rape), § 39-13-506 (mitigated statutory rape; statutory rape; aggravated statutory rape), § 39-13-522 (rape of a child), § 39-13-531 (aggravated rape of a child) or § 39-13-532 (statutory rape by an authority figure) that person shall undergo human immunodeficiency virus (HIV) testing immediately. A licensed medical laboratory shall perform the test at the expense of the arrestee. The arrestee shall obtain a confirmatory test when necessary. The arrestee shall be referred to appropriate counseling.

(b)

(1) The licensed medical laboratory shall report the results of the HIV test required under this section immediately to the victim.

(2) The result of any HIV test required under this section is not a public record and shall be available only to:

(A) The victim;

(B) The parent or guardian of a minor or incapacitated victim;

(C) The attending physician of the person tested and of the victim;

(D) The department of health;

(E) The department of correction;

(F) The person tested; and

(G) The district attorney general prosecuting the case.

(c) If the arrestee is convicted, the court shall review the HIV test results prior to sentencing.

(d)

(1) For purposes of this section, “HIV” means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.
(2) For purposes of this section, “HIV test” means a test of an individual for the presence of human immunodeficiency virus, or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV. The department of health shall promulgate rules designating the proper test method to be used for this purpose.
(3) Nothing in this section shall be construed to require the actual transmission of HIV in order for the court to consider it as a mandatory enhancement factor.

(e) Upon the conviction of the defendant for a violation of § 39-13-513, § 39-13-514 or § 39-13-515, the court shall order the convicted person to submit to an HIV test. The test shall be performed by a

licensed medical laboratory at the expense of the defendant. The defendant shall obtain a confirmatory test when necessary. The defendant shall be referred to appropriate counseling. The defendant shall return a certified copy of the results of all tests to the court. The court shall examine results in camera and seal the record. For the sole purpose of determining whether there is probable cause to prosecute a person for aggravated prostitution under § 39-13-516, the district attorney general may view the record, notwithstanding subdivision (b)(2). The district attorney general shall be required to file a written, signed request with the court stating the reason the court should grant permission for the district attorney general to view the record. If the test results indicate the defendant is infected with HIV, then the district attorney general may use the results of the test in a prosecution for aggravated prostitution.

TITLE 40, CRIMINAL PROCEDURE

TENN. CODE ANN. § 40-32-105

Expunction of person's public records involving offenses related to status as victim of human trafficking.

(a) Notwithstanding § 40-32-101, a person may file a petition for expunction of that person's public records involving offenses related to the person's status as a victim of human trafficking.

(b) In order to be eligible for expunction pursuant to this section, the petitioner must meet the following requirements:

(1) At the time of the filing of the petition for expunction at least one (1) year has elapsed since the completion of the sentence imposed for the petitioner's most recent criminal offense;

(2) The petitioner has fulfilled the following requirements of the sentence imposed by any court in which the individual was convicted of an offense:

(A) Completion of any term of imprisonment or probation;

(B) Meeting all conditions of supervised or unsupervised release; and

(C) If so required by the conditions of any of the sentences imposed, remaining free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one (1) year;

(3) The petitioner has not been convicted of any criminal offense during the one (1) year prior to filing the petition and is not subject to any pending criminal charges;

(4) The petitioner has not had public records previously expunged pursuant to this section;

(5) The convictions to be expunged:

(A) Did not have as an element the use, attempted use, or threatened use of physical force against the person of another;

(B) Did not involve the use or possession of a deadly weapon; and

(C) Are:

(i) Individually eligible for expunction under § 40-32-101(g); or

(ii) For the offense of aggravated prostitution, under § 39-13-516; and

(6) Each of the convictions to be expunged resulted from the petitioner's status as a victim of human trafficking, under § 39-13-314. The petitioner may provide evidence of this requirement by testimony or affidavit. This subdivision (b)(7) does not require a conviction for an offense of which the petitioner was the victim. Any offense to be expunged must have occurred on or after the date on which the petitioner became a victim of human trafficking, as determined by the court.

TENN. CODE ANN. § 40-35-111

Authorized sentences; prison terms or fines; reports

(a) A sentence for a felony is a determinate sentence.

(b) The authorized terms of imprisonment and fines for felonies are:

(3) Class C felony, not less than three (3) years nor more than fifteen (15) years. In addition, the jury may assess a fine not to exceed ten thousand dollars ($10,000), unless otherwise provided by statute;

(5) Class E felony, not less than one (1) year nor more than six (6) years. In addition, the jury may assess a fine not to exceed three thousand dollars ($3,000), unless otherwise provided by statute.

(e) The authorized terms of imprisonment and fines for misdemeanors are:

(1) Class A misdemeanor, not greater than eleven (11) months, twenty-nine (29) days or a fine not to exceed two thousand five hundred dollars ($2,500), or both, unless otherwise provided by statute;

(3) Class C misdemeanor, not greater than thirty (30) days or a fine not to exceed fifty dollars ($50.00), or both, unless otherwise provided by statute.

TENN. CODE ANN. § 40-35-114

Enhancement factors

If appropriate for the offense and if not already an essential element of the offense, the court shall consider, but is not bound by, the following advisory factors in determining whether to enhance a defendant's sentence:

(21) If the defendant is convicted of the offenses of aggravated rape pursuant to § 39-13-502, rape pursuant to § 39-13-503, rape of a child pursuant to § 39-13-522 or statutory rape pursuant to § 39-13-506, the defendant knew or should have known that, at the time of the offense, the defendant was HIV positive;

TENN. CODE ANN. § 40-39-207

Request for termination of registration requirements—Tolling of reporting period—Review of decisions to deny termination of reporting requirements

(a)

(1) Except as otherwise provided in subdivision (a)(3), unless a plea was taken in conjunction with § 40-35-313, no sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration, or no sooner than ten (10) years after discharge from incarceration without supervision, an offender required to register under this part may file a request for termination of registration requirements with TBI headquarters in Nashville. If the person is required to register under this part due to a plea taken in conjunction with § 40-35-313, an offender required to register under this part may file a request for termination of registration upon successful completion of a term of judicial diversion pursuant to § 40-35-313 and upon receiving an order from a court of competent jurisdiction signifying the successful completion of the term of judicial diversion and the dismissal of charges pursuant to § 40-35-313.

(2) Notwithstanding subdivision (a)(1), if a court of competent jurisdiction orders that an offender's records be expunged pursuant to § 40-32-108, and the offense being expunged is an offense eligible for expunction under § 40-32-107, the TBI shall immediately remove the offender from the SOR and the offender's records shall be removed as provided in § 40-39-209.

(3) Notwithstanding subdivision (a)(1), no sooner than three (3) years after termination of active supervision on probation, parole, or any other alternative to incarceration, or no sooner than three (3) years after discharge from incarceration without supervision, an offender required to register under this part due to conviction under § 39-16-408 may file a request for termination of registration requirements with TBI headquarters in Nashville.

(4) Notwithstanding subdivision (a)(1), an offender who is required to register pursuant to this part because the offender was convicted of the offense of aggravated prostitution under § 39-13-516 and the offense was committed prior to July 1, 2024, may file a request for termination of registration requirements with TBI headquarters in Nashville.

(5) Notwithstanding subdivision (a)(1), an offender who is required to register pursuant to this part because the offender was convicted of the offense of criminal exposure of another to human immunodeficiency virus (HIV) under § 39-13-109(a)(1) and the offense was committed prior to July 1, 2023, may file a request for termination of registration requirements with TBI headquarters in Nashville.

(b) Upon receipt of the request for termination, the TBI shall review documentation provided by the offender and contained in the offender's file and the SOR, to determine whether the offender has complied with this part. In addition, the TBI shall conduct fingerprint-based state and federal criminal history checks, to determine whether the offender has been convicted of any additional sexual offenses, as defined in § 40-39-202, or violent sexual offenses, as defined in § 40-39-202.

(c) The TBI shall remove an offender's name from the SOR and notify the offender that the offender is no longer required to comply with this part if it is determined that:

(1) The offender has successfully completed a term of judicial diversion, pursuant to § 40-35-313, for an offense under § 39-13-505 or § 39-13-506(a) or (b), for which the person is required to register under this part;

(2) The offender previously entered a term of judicial diversion, pursuant to § 40-35-313, prior to May 24, 2019, for the offense for which the person is required to register under this part and subsequently successfully completes the term of judicial diversion; or

(3) The offender has not been convicted of any additional sexual offense or violent sexual offense during the ten-year period and the offender has substantially complied with this part and former part 1 of this chapter [repealed].

(d) If it is determined that the offender has been convicted of any additional sexual offenses or violent sexual offenses during the ten-year period or has not substantially complied with this part and former part 1 of this chapter [repealed], the TBI shall not remove the offender's name from the SOR and shall notify the offender that the offender has not been relieved of this part.

(e) If an offender is denied a termination request based on substantial noncompliance, the offender may petition again for termination no sooner than five (5) years after the previous denial.

(f) Immediately upon the failure of a sexual offender to register or otherwise substantially comply with the requirements established by this part, the running of the offender's ten-year reporting period shall be tolled, notwithstanding the absence or presence of any warrant or indictment alleging a violation of this part.

(g)

(1) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if the county is in Tennessee, for review of the decision. The review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons the request was denied.

(2) An offender required to register under this part shall continue to comply with the registration, verification and tracking requirements for the life of that offender, if that offender:

(B) Has been convicted of a violent sexual offense, as defined in § 40-39-202;

TITLE 41, CORRECTIONAL INSTITUTIONS AND INMATES

TENN. CODE ANN. § 41-21-107

Inmate information

(a) It is the duty of the warden of the Tennessee state penitentiary upon the reception of any inmate to:

(5)

(A) Have the inmate undergo HIV testing, with or without the inmate's consent, through a licensed medical laboratory, unless the inmate has been tested pursuant to § 39-13-521 before reception. Unless previously tested, the inmate shall undergo HIV testing and shall also undergo a confirmatory test and be referred to appropriate counseling when necessary;

(B) The result of any HIV test ordered under this subdivision (a)(5) is not a public record and shall be available only to:

(i) The person tested;

(ii) The attending physician of the person tested;

(iii) The department of health; and

(iv) The department of correction;

(C) For purposes of this section, “HIV test” means a test of an individual for the presence of human immunodeficiency virus (HIV), or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV. The department of correction shall promulgate rules providing for the testing of inmates for HIV, and those rules shall be consistent with the rules and procedures of the department of health;

(D) This subdivision (a)(5) only applies to inmates less than twenty-one (21) years of age.

TITLE 68, HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION

TENN. CODE ANN. § 68-10-101

Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(4) "Sexually transmitted disease (STD)" means any disease that is transmitted primarily through sexual practices and is identified in rules and regulations of the department; and

(5) "Test" means a test approved by the department to determine possible infection with STDs.

TENN. CODE ANN. § 68-10-102

Notice to health officer of name and address of diseased person exposing others to infection.

If any attending physician or other person knows or has good reason to suspect that a person having a STD is behaving so as to expose other persons to infection, or is about to so behave, the attending physician or other person shall notify the municipal or county health officer of the name and address of the diseased person and the essential facts in the case.

TENN. CODE ANN. § 68-10-104

Officers to examine suspected persons and require treatment – Sources of infections to be investigated.

(a)

(1) State, district, county and municipal health officers or their authorized deputies, within their respective jurisdictions, are directed and empowered, when, in their judgment, it is necessary to protect the public health, to make an examination of a person reasonably suspected because of known clinical or epidemiological evidence of being infected with a STD of a communicable

nature, and to require such person when found infected to report for treatment to a reputable physician or clinic, and continue treatment until discharged by the physician or clinic as noninfectious, or in a stage of the disease in which an infectious relapse will not occur, or to submit to treatment provided at public expense until discharged as noninfectious, or in a stage of the disease in which an infectious relapse will not occur; and also, when in the judgment of the state, municipal or county health officer, it is necessary to protect the public health, to isolate and quarantine the person infected with a STD; provided, that any person so suspected may have present at the time of examination a physician of the person's own choosing to participate in the examination.

(2) Loitering about or residing in a house of assignation or prostitution or any other place where lewdness is practiced shall be construed as sufficient to suspect a person of being infected with a STD.

(b) It is the duty of all health officers to investigate sources of infection of STDs and to cooperate with the proper officers whose duty it is to enforce laws directed against prostitution, lewdness and assignation and the spread of STDs.

(c) The following healthcare officers and providers licensed in this state may examine, diagnose, and treat minors infected with STDs without the knowledge or consent of the parents of the minors, and shall incur no civil or criminal liability in connection with the examination, diagnosis, or treatment, except for negligence:

(1) Any state, district, county, or municipal health officer; or

(2) Any physician, nurse practitioner with a certificate of fitness and an appropriate supervising physician, nurse midwife who is an advanced practice registered nurse under § 63-7-126 and who has an appropriate supervising physician, or physician assistant with an appropriate supervising physician.

TENN. CODE ANN. § 68-10-106

Quarantine of infected persons.

(a)

(1) No one but a state, municipal, district or county health officer or such officer's duly authorized representative shall establish and terminate quarantine of persons infected with STDs.

(2) A decision to establish or terminate quarantine shall be based upon the judgment of the state, municipal, district or county health officer or such officer's duly authorized representative, considering available medical and epidemiological information concerning the STD diagnosis, modes of transmission, available treatment, and the necessity of the protection of the public health.

(b) It is the duty of the commissioner to set up the clinical and laboratory criteria necessary for the guidance of health officers in the performance of their duties as outlined in this section.

TENN. CODE ANN. § 68-10-107

Exposure of others by infected persons.

It is a violation of this chapter for any person infected with a STD to expose another person to such infection.

TENN. CODE ANN. § 68-10-109

Rules and bylaws for control of sexually transmitted diseases.

(a) The department of health is empowered and directed to make such rules and bylaws for the control of STDs, not in conflict with this chapter, including the reporting of STDs and isolating and quarantining of infected persons, as it may from time to time deem advisable.

(b) All rules and bylaws made pursuant to subsection (a) shall be of force and binding upon the state, municipal and county health officers, and all other persons affected by the rules and regulations, and shall have the force and effect of law.

TENN. CODE ANN. § 68-10-110

Arrest and temporary commitment for treatment authorized—Hearing—Examination—Appeal.

(a) Whenever in the judgment of the municipal, county or district health officer, there is reasonable clinical or epidemiological evidence to suspect that any person or persons are infected with a STD as defined in this chapter, and the person or persons refuse to be examined as provided in § 68-10-104, the health officer or the health officer's authorized deputy may go before a magistrate or judge of a court of general sessions and swear out a warrant of arrest for the person or persons.

(b) The magistrate or judge is not bound to issue the warrant pursuant to subsection (a), unless and until there is a showing of reasonable cause on the basis of sound clinical and epidemiological evidence.

(c) If reasonable cause is shown for the arrest and examination of the person or persons, the magistrate or judge shall direct that an examination be made of the person or persons to determine whether or not they are infected.

(d) The examination shall be made by the health officer or by a duly licensed and practicing physician of this state, to be selected by the health officer. The accused person or persons may also have a physician of their own choosing present to participate in the examination.

(e) If the physicians are not in accordance as to their diagnosis, then the court shall reach its decision after a hearing.

(f) If, after a full hearing, the court is of the opinion that the person examined is infected with a STD as defined in this chapter, the court may commit the person to an isolation hospital maintained by the state or local government for the purpose of detaining and treating such persons, who shall remain under treatment until the disease, in the opinion of the health officer, is no longer communicable or no longer in a stage in which infectious relapse may occur.

(g) No appeal or certiorari from the decision of the court committing the person to the isolation hospital shall stay the commitment, nor shall any court have power to supersede such order, but the person or persons shall immediately be placed in the isolation hospital, there to remain until released by the

health officer as no longer communicable or in a stage of the disease in which infectious relapse may occur, or released by order of the court.

(h) Any person committed under this chapter may appeal from the judgment of the magistrate or court of general sessions as now provided by law for civil cases.

TENN. CODE ANN. § 68-10-111 (2024

Violation of chapter—Penalty

Any health officer or any other persons who fail to perform the duties required of them in this chapter, or violate any of the provisions of this chapter, or of any rule or bylaw promulgated under its authority, commit a Class C misdemeanor. Each violation is a separate offense.

TENN. CODE ANN. § 68-10-113

Confidentiality of records and information

All records and information held by the department or a local health department relating to known or suspected cases of STDs shall be strictly confidential. This information shall not be released or made public upon subpoena, court order, discovery, search warrant or otherwise, except that release may be made under the following circumstances:

(3) Release is made of medical or epidemiological information to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter and related regulations governing the control and treatment of STDs;

(5) In a case involving a minor not more than thirteen (13) years of age, only the name, age, address and STD treated shall be reported to appropriate agents as required by § 37-1-403. No other information shall be released. If the information to be disclosed is required in a court proceeding involving child abuse, the information shall be disclosed in camera; or

(6)

(A) Release is made during a legal proceeding when ordered by a trial court judge, designated by § 16-2-502, or a juvenile court judge through an order explicitly finding each of the following:

(i) The information sought is material, relevant, and reasonably calculated to be admissible evidence during the legal proceeding;

(ii) The probative value of the evidence outweighs the individual's and the public's interest in maintaining its confidentiality;

(iii) The merits of the litigation cannot be fairly resolved without the disclosure; and

(iv) The evidence is necessary to avoid substantial injustice to the party seeking it and, either the disclosure will result in no significant harm to the person examined or treated, or it would be substantially unfair as between the requesting party and the person examined or treated not to require the disclosure.

TENN. CODE ANN. § 68-10-114

Knowledge of governmental persons regarding records.

Except as provided in § 68-10-113, no state or local department officer or employee shall be examined in a civil, criminal, special or other proceeding as to the existence or contents of pertinent records of a person examined or treated for a STD by a state or local health department, or of the existence or contents of such reports received from a private physician or private health facility.

TENN. CODE ANN. § 68-10-115

Immunity from liability for informing person of potential HIV infection.

A person who has a reasonable belief that a person has knowingly exposed another to HIV may inform the potential victim without incurring any liability. A person making such disclosure is immune from liability for making disclosure of the condition to the potential victim.

Rules and Regulations of Tennessee

RULES OF THE TENNESSEE DEPARTMENT OF HEALTH

Bureau of Health Services Administration Division of Communicable and Environmental Disease Services AIDS Program Division

TENN. COMP. R. & REGS. R. 1200-14-01-.01

Definition of Terms

(a) Carrier - A person who harbors, or who is reasonably believed by the Commissioner, health officer, or designee to harbor a specific pathogenic organism and who is potentially capable of spreading the organism to others, whether or not there are presently discernible signs and symptoms of the disease.

(d) Commissioner - Means the Commissioner of the Tennessee Department of Health or a designated representative.

(e) Communicable Disease - An illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a well person from an infected person or animal, or through the agency of an intermediate animal host, vector, or inanimate environment.

(j) Disinfestation - Any physical or chemical-process by which undesired animal forms, especially arthropods or rodents, present upon the person, the clothing, or in the environment of an individual or on domestic animals, may be destroyed upon the person, his clothing, upon the animal or in the environment of the person.

(k) Epidemic (or Disease Outbreak) - The occurrence in a community or region of one or more cases of illness that is in excess of normal expectancy.

(s) Isolation - The separation for the period of communicability of infected persons, or persons reasonably suspected to be infected, from other persons, in such places and under such conditions as will prevent the direct or indirect conveyance of the infectious agent from infected persons to other persons who are susceptible or who may spread the agent to others.

(w) Quarantine - Limitation of freedom of movement or isolation of a person, or preventing or restricting access to premises upon which the person, cause or source of a disease may be found, for a period of time as may be necessary to confirm or establish a diagnosis, to determine the cause or source of a disease, and/or to prevent the spread of a disease. These limitations may be accomplished by placing a person in a health care facility or a supervised living situation, by restricting a person to the person's home, or by establishing some other situation appropriate under the particular circumstances.

TENN. COMP. R. & REGS. R. 1200-14-01-.15

General measures for the effective control of reportable diseases

(1) The local health officer or the Commissioner or a designated representative of the Commissioner, upon receiving a report of a reportable disease or of a suspected epidemic of disease or of a suspected case of a disease of public health significance or event, shall:

> (e) Establish appropriate control measures which may include examination, treatment, isolation, quarantine, exclusion, disinfection, immunization, disease surveillance, closure of establishment, education, and other measures considered appropriate by medical experts for the protection of the public's health.

Texas

Analysis

No criminal statutes explicitly addressing HIV exposure, but prosecutions have arisen under general criminal laws.

Despite the fact that Texas does not have a criminal statute addressing HIV exposure or transmission,[1] people living with HIV (PLHIV) have been prosecuted for HIV exposure under general criminal laws, including attempted murder and aggravated assault.[2]

Texas's aggravated assault statute makes it a felony of the second degree to cause serious bodily injury to another or to use or exhibit a deadly weapon in the commission of an assault.[3] A felony of the second degree carries a punishment of two to 20 years in jail and a possible fine of $10,000.[4] If an aggravated assault is committed against a person the actor knows is a security officer, it is a felony of the first degree punishable by five to 99 years in prison and a possible fine of $10,000.[5] Texas courts have found that the seminal fluid of a PLHIV may constitute a deadly weapon for the purposes of conviction under the aggravated assault statute,[6] and numerous prosecutions in Texas have led to the incarceration of individuals whose alleged criminal conduct presented no known risk of transmitting HIV.[7] Aggravated sexual assault in which a person engages in various sex acts without someone's

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[1] Prior to 1994, Texas had an HIV transmission statute that made it a third degree felony, punishable by up to ten years in prison and a $10,000 fine for a PLHIV to intentionally, and without consent, transfer bodily fluids to another. TEX. PENAL. CODE. ANN. § 22.012 (1987). Texas deleted this statute from its code in 1994, but a handful of cases were charged under the statute prior to its repeal. In 1993, a man living with HIV was charged with exposing a sexual partner to HIV. *See* TJ Milling, *Woman Claims Lover Hid His HIV*, HOUSTON CHRONICLE, Aug. 17, 1993, at A 13. In 1992, an AIDS activist was charged with exposure to AIDS and HIV for scratching a police officer when he was being dragged from the Houston City Council chambers. The charges were later dropped. *Id.* Another AIDS activist was charged after he bit a man on the hand and fingers. R.A. Dyer, *Ex-AIDS Activist Charged, Biting brings up rarely used law*, HOUSTON CHRONICLE, June 11, 1992, at A31.

[2] *See Lopez v. State*, 288 S.W.3d 148, 154 (Tex. App. 2009) (remanding the case for a new trial due to the trial court's erroneous admission of extraneous acts. However, the aggravating factor in the HIV positive defendant's conviction on two counts of aggravated sexual assault was the deadly weapon of his bodily fluids); *Hofmann v. State*, 2005 Tex. App. LEXIS 5262 (Tex. App. 2005) (affirming an 18-year sentence for a defendant convicted of aggravated sexual assault of a child where the aggravating factor was that, because of his HIV status, his penis and bodily fluids were considered a deadly weapon); *Najera v. State*, 955 S.W.2d 698, 701 (Tex. App. 1997) (affirming the conviction of an defendant for aggravated sexual assault. The aggravating factor was defendant's HIV status and his use of "his penis and bodily fluids as a deadly weapon."); *Weeks v. State*, 834 S.W.2d 559 (Tex. App. 1992) (affirming the conviction for attempted murder of a PLHIV for spitting at a prison guard. The defendant was sentenced to life in prison).

[3] TEX. PENAL CODE ANN. § 22.02(a) (2016).

[4] TEX. PENAL CODE ANN § 12.33 (2016).

[5] TEX. PENAL CODE ANN. §§ 22.02(b)(2)(D), 12.32 (2016).

[6] *See, e.g.*, *Mathonican v. State*, 194 S.W.3d 59, 67-71 (Tex. App. 2006).

[7] *See, e.g.*, *Degrate v. State*, 2005 Tex. App. LEXIS 547 (Tex. Ct. App. 2005) (affirming the conviction of a defendant living with HIV for aggravated assault of a public servant with a deadly weapon after he bit a Detention Service Officer in the leg. The deadly weapon in question was the defendant's mouth).

consent or with a child while using or exhibiting a deadly weapon is a first-degree felony, punishable by five to 99 years or life in prison and a $10,000 fine.[8]

In *Mathonican v. State*, the Court of Appeals of Texas found that the seminal fluid of a PLHIV can be considered a deadly weapon in aggravated assault and aggravated sexual assault cases.[9] The defendant in *Mathonican* was sentenced to 97 years' imprisonment for sexually assaulting another individual.[10] The trial court held that the defendant's seminal fluid was a deadly weapon because of his HIV status.[11] The defendant appealed his case, asserting that the deadly weapon finding was erroneous because HIV status should not be considered a deadly weapon.[12]

The court found that seminal fluid may be a deadly weapon "if the man producing it is HIV and engages in unprotected sexual contact."[13] The court reasoned that a deadly weapon is anything that can be used to cause death or serious injury, and that the "seminal fluid from an HIV positive man is capable of causing death or serious bodily injury to another person when the HIV positive man engages in unprotected sexual contact."[14] Even if the defendant did not ejaculate or otherwise expose the complainant to HIV, the court determined that the single fact that the defendant's seminal fluid "as used or as intended to be used" was capable of causing death or serious bodily injury supported the deadly weapon finding, even without proof that it did cause harm or had any probability of causing harm.[15] This reasoning suggests that if a PLHIV engages in any unprotected sexual activity, regardless of the person's viral load or whether the sexual activity poses any possibility of transmission, criminal liability may apply.

More recently, the Texas Court of Criminal Appeals affirmed the aggravated sexual assault conviction of an 18-year-old man living with HIV for having unprotected sexual relations with a child (a 15-year-old male).[16] In *Riley*, Graham placed an ad on Craigslist to find other males with whom to have sex. The defendant responded to the ad and the two met twice. The complainant testified at trial that at the first meeting the defendant performed oral sex on him without using any protection, with only the complainant ejaculating. The complainant testified that at the second meeting "[defendant] performed anal sex on [the complainant] without a condom while he masturbated [the complainant] to ejaculation. [Defendant] withdrew his penis and ejaculated." Graham admitted that the defendant did not force him to participate in these acts.[17]

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[8] TEX. PENAL CODE ANN. §§ 22.021, 12.32 (2016).
[9] *Mathonican*, 194 S.W.3d at 67-71.
[10] *Mathonican*, 194 S.W.3d. at 61.
[11] *Id*. at 67-71.
[12] *Id.* at 67.
[13] *Id.* at 69 (citing *Najera v. State*, 955 S.W.2d 698, 701 (Tex. App. 1997) (finding that, for a man living with HIV, evidence of unprotected sex, even if there was no evidence of ejaculation by defendant, is sufficient for a finding that the penis and bodily fluids are a deadly weapon).
[14] *Id.*
[15] *Id*. at 71.
[16] *Riley v. State*, 2014 Tex. App. LEXIS 2830, *3-5 (Tex. Crim. App. 2014).
[17] *Id.*

When the defendant's home was searched, authorities found medication used to treat HIV. Medical records and other witnesses confirmed his HIV status.[18]Riley was convicted of two counts of aggravated sexual assault of a child with the use of a deadly weapon, i.e., his bodily fluids, and sentenced to 70 years' imprisonment and a $5,000 fine.[19]The reasoning in this case follows *Mathonican*:if a man living with HIV anally penetrates a partner without ejaculation and performs oral sex on a partner causing his partner to ejaculate, regardless of his viral load and whether the sexual activity poses any possibility of transmission, he may be convicted of aggravated sexual assault with a deadly weapon.

Other prosecutions for HIV exposure as aggravated sexual assault include:

- In October 2010, a 32-year-old PLHIV was sentenced to three life sentences without parole for aggravated assault of a child and continuous sexual abuse of a child.[20] Multiple aggravating factors were present, since the child involved was under 14 and the defendant used a "deadly weapon," raising the minimum penalty to 25 years.[21] In this case, the defendant's bodily fluids constituted the deadly weapon.[22] The defendant's conviction and sentencing were upheld by the Court of Appeals of Texas.[23]
- In March 2010, a PLHIV was charged with aggravated sexual assault of a child.[24] Prosecutors cited HIV as a deadly weapon, and the man's HIV status was used to "upgrade the sexual assault of a child charge to an aggravated offense, making it a first-degree felony."[25]
- In November 2009, a 26-year-old PLHIV was charged with aggravated sexual assault with a deadly weapon after having unprotected sex with a 16-year-old boy.[26]

In *Henry v. State*, the Texas Court of Criminal Appeals affirmed the conviction and sentencing of a PLHIV to 75 years' imprisonment for aggravated sexual assault of a child, enhanced by two prior felony convictions.[27] There was testimony by a medical provider who asserted that there was a "high risk of HIV transmission during unprotected sex" without further discussing the particular scenario in question.[28]

Despite the scientific evidence on HIV transmission, numerous prosecutions have occurred for activities that pose no risk of transmission to others. In 1992, the Texas Court of Criminal Appeals upheld the

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[18] *Id.* at *7.
[19] *Id.* at *1.
[20] Craig Kapitan, *Molester with HIV gets life without parole – times three*, MYSANANTONIO.COM, Oct. 7, 2010, *available at* http://www.mysanantonio.com/news/local_news/molester_with_hiv_gets_life_without_parole__times_three_104532769.html?c=y&page=1#storytop.
[21] *Id.* TEX. PENAL CODE ANN. § 22.021(f)(2) (2016).
[22] *Id.*
[23] *Delgado v. State*, 2012 WL 2581251, at *1 (Tex. Crim. App. 2012).
[24] Brian Rogers, *In 1st for Harris Co., HIV deemed deadly weapon*, HOUSTON CHRONICLE, Mar. 21, 2010, *available at* http://www.chron.com/news/houston-texas/article/In-1st-for-Harris-Co-HIV-deemed-deadly-weapon-1714831.php.
[25] *Id.*
[26] John Cuoco, *Charges filed after HIV used as deadly weapon*, KXXV.COM, Nov. 3, 2009, *available at* http://www.kxxv.com/Global/story.asp?S=11436836.
[27] *Henry v. State,* 2007 Tex. App. LEXIS 6791 (Tex. Crim. App. 2007).
[28] *Id.* at *10-11.

attempted murder conviction of a PLHIV for spitting on a prison guard.[29] For a conviction of attempted murder, "[t]he State was required to prove that [Weeks'] intent, when he spit on the officer, was to cause the officer's death . . . ."[30] The court noted that Weeks "believed he could kill the [officer] by spitting his HIV infected saliva on him."[31] Further, the court found that, while the "evidence was highly controverted, there was sufficient evidence in the record, when considered in the light most favorable to the [guilty] verdict, that [Weeks] could have transmitted HIV by spitting."[32] The court upheld the attempted murder conviction and sentence of life imprisonment.[33]

In 2006 the Court of Appeals of Texas was presented with an opportunity to revisit whether saliva from PLHIV can be considered a "deadly weapon,"[34] in *Campbell v. State*. A man living with HIV, Campbell, was convicted of harassing a public servant[35] when he allegedly became confrontational and spat in a police officer's eyes and mouth during an arrest.[36] The jury also found that Campbell used a "deadly weapon" in the commission of the offense because of his HIV status.[37] Campbell was later sentenced to 35 years in prison.[38] In both *Weeks* and *Campbell* , the court relied on the testimony of medical experts that there exists a theoretical possibility of HIV transmission through saliva.[39]

These convictions were affirmed even though saliva has never been documented to transmit HIV. The CDC has concluded that there exists only a "negligible" possibility that HIV could be transmitted through a bite.[40] The CDC has also unequivocally stated "HIV isn't spread through saliva."[41] Texas appellate courts have set a poor precedent that PLHIV may be prosecuted for conduct that poses no risk of HIV transmission and instead may be convicted for crimes solely on the basis of HIV status.

Other cases in Texas where PLHIV have been prosecuted for conduct that poses no risk of HIV transmission include:

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[29] *Weeks*, 834 S.W.2d at 560-61.

[30] *Id.* at 561.

[31] *Id.* at 562.

[32] *Id.* at 565.

[33] *Id.* at 560 (noting that the jury "assessed punishment at confinement for life" after finding defendant had two prior felony convictions).

[34] *See Campbell v. State*, 2009 Tex. App. LEXIS 5369 (Tex. Crim. App. 2009).

[35] A person commits this offense if, "with the intent to assault, harass, or alarm," she/he "causes another person the actor knows to be a public servant to contact the . . . saliva . . . of the actor, [or] any other person . . .while the public servant is lawfully discharging an official duty . . ." The offense is a third-degree felony. TEX. PENAL CODE §§, 22.11(a)(2), 22.11(b) (2016).

[36] Campbell, 2009 Tex. App. LEXIS 5369, at **2-3.

[37] *Id.* at *1, *8.

[38] *Ex parte Campbell,* 2013 Tex. Crim. App. Unpub. LEXIS 131(Tex. Crim.. App. 2013).

[39] *Campbell*, 2009 Tex. App. LEXIS 5369**,** at **7-8; *Weeks*, 832 S.W.2d at 562-64.

[40] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors*, *Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (Dec. 5, 2015), *available at* http://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html (last visited Dec. 4, 2016).

[41] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?*, (Dec. 21, 2016), *available at* http://www.cdc.gov/hiv/basics/transmission.html (last visited Jan. 10, 2017).

- In May 2013, a 25-year-old man living with HIV was charged with aggravated assault after spitting on two police officers.[42]
- A 26-year-old man living with HIV was charged with aggravated robbery after he bit a security guard during a struggle in May 2008.[43]
- In 2005, the 25-year sentence of a man living with HIV for aggravated assault of a public servant with a dangerous weapon was upheld.[44] A nurse who testified at the trial said that HIV could be transmitted via the saliva in a bite and the court affirmed the conviction based in part on the nurse's testimony.[45]

PLHIV who do not disclose their HIV status to their sexual partners may also be prosecuted for aggravated assault.

Because a PLHIV's saliva and other bodily fluids can be considered a deadly weapon in Texas, PLHIV may face aggravated assault charges for failing to disclose their HIV status to sexual partners.

- In August 2013, a 36-year-old PLHIV was convicted of aggravated assault with a deadly weapon causing serious bodily injury after he transmitted HIV to four women.[46] He was sentenced to 120 years in prison.[47]
- In December 2012, a 42-year-old PLHIV pled guilty to aggravated assault causing serious bodily injury for having unprotected sex with the woman he was dating.[48] He was sentenced to 15 years' imprisonment.[49]

In July 2010, a PLHIV pled guilty to aggravated sexual assault and other aggravated assault charges for not disclosing his HIV status to his sexual partners.[50] The court found that the man's penis and seminal fluids constituted a deadly weapon.[51]

In May 2009, a PLHIV was sentenced to five concurrent 45-year sentences and one 25-year sentence for six counts of aggravated sexual assault with a deadly weapon for exposing and infecting multiple

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[42] Matt Peterson, *Police say HIV positive man refused to be masked, spit on officers trying to book him for public intoxication*, DALLAS MORNING NEWS, May 29, 2013, *available at* http://crimeblog.dallasnews.com/2013/05/police-say-hiv-positive-man-refused-to-be-masked-spit-on-officers-trying-to-book-him-for-public-intoxication.html/.

[43] Emily Tsao, *Man Claiming HIV Accused of Biting Kroger Guard During Scuffle*, DALLAS MORNING NEWS, May 31, available at http://www.hivjustice.net/case/us-another-dallas-man-accused-of-using-his-hiv-as-a-weapon/.

[44] *Degrate*, 2005 Tex. App. LEXIS 547, at *8-9.

[45] *Id.* at *5-6.

[46] Tyler White, *Midland man receives 120 years for transmitting HIV virus to four women*, MIDLAND REPORTER-TELEGRAM, Aug. 29, 2013, *available at* http://www.mrt.com/top_stories/article_ed04bbfe-1103-11e3-aaeb-0019bb2963f4.html?mode=story.

[47] *Id.*

[48] Robert Wilonsky, *Judge sentences Fort Worth man to 15 years in prison for knowingly infecting woman with HIV*, DALLAS MORNING NEWS, Dec. 31, 2012, *available at* http://crimeblog.dallasnews.com/2012/12/judge-sentences-fort-worth-man-to-15-years-in-prison-for-knowingly-infecting-woman-with-hiv.html/.

[49] *Id.*

[50] Jennifer Emily, *HIV carrier who endangered women pleads guilty in midst of trial*, THE DALLAS MORNING NEWS, July 16, 2010, *available at* https://www.dallasnews.com/news/news/2010/07/16/hiv-carrier-who-endangered-women-pleads-guilty-in-midst-of-trial.

[51] *Id.*

women with HIV.[52] Because he allegedly did not disclose his HIV status to his partners and did not use condoms during sex, the prosecutors charged him with aggravated assault.[53]The man appealed his conviction, arguing that he has received ineffective assistance of counsel, but the appeals court affirmed his conviction and sentencing.[54]

HIV status may be considered in sentencing even if there was no exposure to HIV.

HIV status can be considered admissible evidence at the punishment stage of a conviction if it is determined that HIV status is relevant to the offense. The consideration of HIV status most often involves cases of aggravated assault and aggravated sexual assault. The Court of Appeals of Texas has found that "whether the accused is infected with AIDS or HIV is a 'viable concern' at the punishment stage of an aggravated sexual assault trial" and that testimony and evidence of the defendant's HIV status should therefore be admitted to consider the "potential long term effect of the injury" to the complainant.[55]

Though the courts have established that information concerning a defendant's life or character may not be relevant to an issue of ultimate fact in the case, such considerations are appropriate when determining a sentence.[56] In *Martinez v. State*, the defendant was sentenced to life in prison and a $10,000 fine for aggravated sexual assault of a child under 14.[57] The court, upholding the conviction and the sentence, found that HIV status can be considered relevant victim impact evidence at sentencing.[58]The court stated that victim impact evidence reflects the "defendant's personal responsibility and moral guilt and thus is relevant to punishment issues."[59]

Taking into account HIV status in the penalty phase has lead to increased sentences for many individuals in Texas, including those who did not expose others to HIV during the commission of the crime.

In *Atkins v. State,* a PLHIV was convicted of attempted sexual performance with a child and was sentenced to life imprisonment.[60] The defendant invited a minor to his apartment where the defendant then sat on the bed, began undressing and fondling himself, and made overt comments referring to sex.[61] The minor left the apartment and called for help before any physical or sexual contact took

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[52] Stacy Morrow, *Man Convicted of Spreading HIV Gets 45 Years*, NBC, July 13, 2009, *available at* http://www.nbcwashington.com/news/archive/More-Women-Testify-Against-HIV-Man.html.

[53] *Id.*

[54] *Padieu v. State*, 2010 Tex. App. LEXIS 10289, at *2-4 (Tex. Ct. App. 2010).

[55] *Suarez v. State*, 2004 Tex. App. LEXIS 6743 (Tex. App. 2004) (citing *Hunter v. State*, 799 S.W.2d 356, 360 (Tex. Crim. App. 1990).

[56] *Sellers v. State*, 1996 Tex. App. LEXIS 1736, at *9-11 (Tex. Crim App. 1996) (citing *Murphy v. State*, 777 S.W.2d 44, 63 (Tex. Crim. App. 1988)).

[57] *Martinez v. State,* 2004 Tex. App. LEXIS 9400, (Tex. Crim. App. 2004).

[58] *Id.* at *10-11.

[59] *Id.*

[60] *Atkins v. State,* 2008 Tex. App. LEXIS 5407, at *1 (Tex. Crim. App. 2008*) (*noting that the punishment was enhanced by two prior felony convictions).

[61] *Id.* at *3.

place.[62] During the trial, the state presented evidence of the defendant's HIV status even though there was no contact between the defendant and the complainant that could have presented any risk of HIV transmission.[63]

The defendant argued on appeal that his HIV status had no probative value and should not have been considered for his sentencing.[64] The court found that, even though no sexual or physical contact occurred between the defendant and the minor, the defendant's HIV status could be considered as relevant evidence in assessing punishment because the defendant often had unprotected sex with other partners.[65] This behavior, the court held, reflected the defendant's "willingness to expose others to the virus and his reckless disregard for the lives of others" and, as such, was pertinent to his sentencing.[66]

In *Lewis v. State*, a PLHIV was sentenced to consecutive life sentences for aggravated sexual assault and indecency with a child.[67] The man inserted his finger into the child's vagina and masturbated while doing so.[68] In the appeal of his sentence, the defendant argued that his HIV status should not have been considered because at no time did he expose the child to HIV.[69] The defendant also asserted that the state did not produce any medical testimony regarding the defendant's HIV status, the nature of HIV, or how the acts in question could have exposed the minor to a risk of transmission.[70] The court disagreed, finding that that "the jury may consider, as a circumstance of the offense, that appellant's recognized HIV positive status placed the victim of his sexual assault at risk of infection, whether or not the evidence shows any actual transmission of body fluids in a manner likely to infect."[71]

Texas public health officials can impose a variety of control measures on a person with an STI, including HIV.

Texas' Health and Safety Code grants public health authorities broad authority to implement "control measures" in order to address cases of communicable disease.[72] Control measures include, but are not limited to, chemoprophylaxis, detention, disinfection, restriction, isolation, and quarantine.[73] It is a Class B misdemeanor, punishable by up to 180 days in jail and a $2000 fine, for an individual to conceal his or her infection with or exposure to a communicable disease[74] that is a "threat to public health" during the course of a public health investigation. The Department of State Health Services may order a person to submit to control measures if it has "reasonable cause to believe that an individual is ill with,

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[62] *Id.*
[63] *Id.* at *22-23.
[64] *Id.* at *19-20.
[65] *Id.* at *21-22.
[66] *Id.* at 22.
[67] *Lewis v. State,* 2010 Tex. App. LEXIS 4545, at *1 (Tex. Crim. App. 2010) (noting that the punishment was enhanced by two prior felony convictions).
[68] *Id.* at *2-3.
[69] *Id.* at *9.
[70] *Id.* at *9-10.
[71] *Id.* at *11.
[72] TEX. HEALTH & SAFETY CODE ANN. § 81.082(a) (2016).
[73] TEX. HEALTH & SAFETY CODE ANN. § 81.082(b) (2016); *See also* 25 TEX. ADMIN. CODE § 97.8(3) (2016).
[74] TEX. HEALTH & SAFETY CODE ANN. §§ 81.066(a)(1), 81.066(b) (2016); TEX. PENAL CODE ANN. § 12.22 (2016).

has been exposed to, or is the carrier of a communicable disease."[75] The order must be in writing and delivered personally or by registered mail[76]and remains effective until the person is no longer infected with disease.[77] Violation of a control order issued by public health officials is a Class B misdemeanor.[78]

Should a person refuse to comply with a control measure--whether compelled testing, isolation or forced medical treatment--public health officials may seek a court order for judicial enforcement of the control measure.[79] The application for a court order is filed by a district attorney[80] and must contain a variety of information, including whether the control measures sought are for temporary or extended management,and a statement that "a statement that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health" and that they meet the criteria for court-ordered management.[81] The court must appoint the person an attorney within 24 hours after the filing of the application if the person does not have legal representation.[82]A hearing is held within 14 days after the application is served on the individual.[83]

Along with the application, an affidavit of medical evaluation must be submitted by public health officials. It must state the opinion of the health department that the person 1) is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health and; 2) as result of the communicable disease, the person will, if not examined, observed, or treated, continue to endanger public health.[84] Texas does not define "communicable disease that is a threat to the public health." However, the designation appears to be least partially contingent on a person's non-compliance with public health orders, as opposed to the presence of specific enumerated conditions.

The person is entitled to be present at the hearing, which is open to the public and on the record. The state must prove each element of the application criteria by clear and convincing evidence. [85] Hearings for temporary management are before a judge unless a person or their attorney requests a jury,[86] whereas hearings for extended management must be before a jury.[87] An order for temporary management may not exceed 90 days.[88] A person confined to a facility retains the right to receive visitors and communicate by uncensored and sealed mail with legal counsel.[89] A request for rehearing

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[75] TEX. HEALTH & SAFETY CODE ANN. § 81.083(a) (2016). Communicable disease is defined broadly as "an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host." TEX. HEALTH & SAFETY CODE ANN. § 81.003(1) (2016).
[76] TEX. HEALTH & SAFETY CODE ANN. § 81.083(b) (2016).
[77] TEX. HEALTH & SAFETY CODE ANN. § 81.083(c) (2016).
[78] TEX. HEALTH & SAFETY CODE ANN. §§ 81.087(a), 81.087(b) (2016).
[79] TEX. HEALTH & SAFETY CODE ANN. § 81.083(e)(1) (2016).
[80] TEX. HEALTH & SAFETY CODE ANN. § 81.151 (2016).
[81] TEX. HEALTH & SAFETY CODE ANN. § 81.152(c)(3) (2016).
[82] TEX. HEALTH & SAFETY CODE ANN. § 81.153(a) (2016).
[83] TEX. HEALTH & SAFETY CODE ANN. § 81.154(a) (2016).
[84] TEX. HEALTH & SAFETY CODE ANN. §§ 81.158(a)(7)(A), 81.158(a)(7)(B)(ii) (2016).
[85] TEX. HEALTH & SAFETY CODE ANN. §§ 81.169(d), 81.169(e), 81.169(h) (2016).
[86] TEX. HEALTH & SAFETY CODE ANN. § 81.170 (a) (2016).
[87] TEX. HEALTH & SAFETY CODE ANN. § 81.170(b) (2016).
[88] TEX. HEALTH & SAFETY CODE ANN. § 81.172 (d) (2016).
[89] TEX. HEALTH & SAFETY CODE ANN. §§ 81.204(a)(1), 81.204(a)(3)(2016).

or reexamination may be sought once an order is granted.[90] A court order for control measures may be appealed in the court of appeals in the county in which the order is entered and must be filed within 10 days of the order being signed.[91]

In addition to an order for temporary or extended management, a person may be subject to an Order of Protective Custody or a Temporary Detention Order,[92] each of which has its own set of particular procedural requirements. An Order of Protective Custody is used when a person is judged to "present a substantial risk of serious harm to . . . others"[93] and cannot remain at liberty while application for court enforcement of a control measure(s) is pending.[94] By contrast, an Order for Temporary Detention is used in situations where detention in an inpatient facility is needed to assess the appropriate setting for continued court-ordered care.[95] A person who evades apprehension by a sheriff or other peace officer seeking to enforce a protective custody order or temporary detention order is guilty of a Class A misdemeanor, punishable by up to a year in jail and a $4,000 fine.[96]

In addition to statutory law governing the management of persons with a communicable disease, the Texas Department of State Health Services' TB/HIV/STD/Viral Hepatitis Unit has generated a policy titled, "Accelerated HIV Intervention Program, Addressing the Potential for Recalcitrant Transmission of HIV in Texas."[97] Referrals received by an STD program regarding a client who "has engaged in anal, vaginal, or oral sex or has shared contaminated hypodermic needles and has failed to either inform partner(s) of their HIV status, or take reasonable precautions to prevent transmission" will trigger an assessment.[98] The result of the assessment will determine the type of control measure to be initiated, i.e., accelerated prevention counseling, public health orders, and/or court orders.[99] The policy instructs that a court order "should be considered as a last resort to be used only in the most serious cases."[100]

Finally, a court may direct individuals convicted of prostitution[101] or certain drug offenses[102] to be subject to control measures or to court-ordered management.[103] The court may order that a presentence report be prepared to determine whether a person convicted of one of these offenses should be subject to restrictive measures.[104]

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[90] TEX. HEALTH & SAFETY CODE ANN. §§ 81.188, 81.189 (2016).
[91] TEX. HEALTH & SAFETY CODE ANN. §§ 81.191(a), 81.191(b) 2016).
[92] TEX. HEALTH & SAFETY CODE ANN. §§ 81.161, 81.188 (2016).
[93] TEX. HEALTH & SAFETY CODE ANN. § 81.162(f)(2) (2016).
[94] *Id.*
[95] TEX. HEALTH & SAFETY CODE ANN. § 81.188(b)(2) (2016).
[96] TEX. HEALTH & SAFETY CODE ANN. §§ 81.212(a), TEX. PENAL CODE ANN. § 12.21 (2016).
[97] TEX. DEPT. STATE. HEALTH SERV., *Policy 410.003: Accelerated HIV Intervention Program, Addressing the Potential for Recalcitrant Transmission of HIV in Texas* (updated May 20, 2015), *available at* http://www.dshs.texas.gov/hivstd/policy/policies/410-003.shtm (last visited Dec. 16, 2016).
[98] *Id.*
[99] *Id.*
[100] *Id.*
[101] TEX. PENAL CODE ANN. § 43.02, (2016).
[102] TEX. HEALTH & SAFETY CODE ANN. §§ 481.001 (2016) (the Texas Controlled Substances Act), 485.031-035 (possession, use, sale of abusable volatile chemicals) (2016).
[103] TEX. HEALTH & SAFETY CODE ANN. § 81.093(a) (2016).
[104] TEX. HEALTH & SAFETY CODE ANN. § 81.093(b) (2016).

Persons may be required to undergo mandatory STI testing if they expose a public servant to disease or are convicted of certain kinds of crimes.

Various public officials, including law enforcement officers, firefighters, EMTs, correctional officers, and other emergency responders may request that an individual be tested if the official believes they have been exposed to a reportable disease by that individual.[105] The statute does not specify whether the information could be used in a prosecution, e.g., for harassment of a public servant. Experience in Texas also demonstrates that PLHIV may face attempted murder or aggravated assault charges for spitting on a police or correctional officer.[106]

Texas' Code of Criminal Procedure also outlines procedures for the testing of an individual who causes an emergency response employee or volunteer, peace officer, magistrate, or an employee of a correctional facility to come into contact with their bodily fluids during the commission of a misdemeanor, felony, or the resulting arrest.[107] The statute specifies that the results of the test may not be used in any criminal proceeding arising out of the alleged offense, but it is unclear whether the results could be admissible in a future prosecution.[108]

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.*

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[105] TEX. HEALTH & SAFETY CODE ANN. § 81.050(b) (2016)
[106] *See, e.g.*, *Weeks v. State*, 834 S.W.2d 559 (Tex. App. 1992); Peterson, *supra* note 42.
[107] TEX. CODE CRIM. PROC. §18.22(a)(2016).
[108] *Id.*

Texas Statutes and Codes

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.*

TEXAS HEALTH & SAFETY CODE

TEX. HEALTH & SAFETY CODE ANN. § 81.003 (2016)

Definitions

In this chapter:

(1) "Communicable disease" means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.

(11) "Sexually transmitted disease" means an infection, with or without symptoms or clinical manifestations, that may be transmitted from one person to another during, or as a result of, sexual relations between two persons and that may:

> (A) produce a disease in, or otherwise impair the health of, either person; or
>
> (B) cause an infection or disease in a fetus in utero or a newborn.

TEX. HEALTH & SAFETY CODE ANN. § 81.041 (2016)

Reportable Diseases

(e) Acquired immune deficiency syndrome and human immunodeficiency virus infection are reportable diseases under this chapter for which the executive commissioner shall require reports.

TEX. HEALTH & SAFETY CODE ANN. § 81.046 (2016)

Confidentiality

(a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

(c) Medical or epidemiological information may be released: . . .

> (3) to medical personnel treating the individual, appropriate state agencies in this state or another state, a health authority or local health department in this state or another state, or federal, county, or district courts to comply with this chapter and related rules relating to the

control and treatment of communicable diseases and health conditions or under another state or federal law that expressly authorizes the disclosure of this information; . . .

TEX. HEALTH & SAFETY CODE ANN. § 81.050(2016)

Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including HIV Infection.

(b) A person whose occupation or whose volunteer service is included in one or more of the following categories may request the department or a health authority to order testing of another person who may have exposed the person to a reportable disease:

(1) a law enforcement officer;

(2) a fire fighter;

(3) an emergency medical service employee or paramedic;

(4) a correctional officer;

(5) an employee, contractor, or volunteer, other than a correctional officer, who performs a service in a correctional facility as defined by Section 1.07, Penal Code, or a secure correctional facility or secure detention facility as defined by Section 51.02, Family Code;

(6) an employee of a juvenile probation department; or

(7) any other emergency response employee or volunteer.

(c) A request under this section may be made only if the person:

(1) has experienced the exposure in the course of the person's employment or volunteer service;

(2) believes that the exposure places the person at risk of a reportable disease; and

(3) presents to the department or health authority a sworn affidavit that delineates the reasons for the request.

TEX. HEALTH & SAFETY CODE ANN. § 81.066 (2016) **

Concealing Communicable Disease or Exposure to Communicable Disease; Criminal Penalty

(a) A person commits an offense if the person knowingly conceals or attempts to conceal from the department, a health authority, or a peace officer, during the course of an investigation under this chapter, the fact that:

(1) the person has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health; or . . .

(b) An offense under this section is a Class B misdemeanor.

TEX. HEALTH & SAFETY CODE ANN. § 81.082 (2016)

Administration of Control Measures

(a) A health authority has supervisory authority and control over the administration of communicable disease control measures in the health authority's jurisdiction unless specifically preempted by the department. Control measures imposed by a health authority must be consistent with, and at least as stringent as, the control measure standards in rules adopted by the executive commissioner.

(f) In this section, "control measures" includes:

(2) detention;

(3) restriction;

(6) isolation;

(7) quarantine;.

TEX. HEALTH & SAFETY CODE ANN. § 81.083 (2016)

Application of Control Measures to Individual

(b) If the department or a health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease, the department or health authority may order the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state.

(c) An order under this section must be in writing and be delivered personally or by registered or certified mail to the individual or to the individual's parent, legal guardian, or managing conservator if the individual is a minor.

(d) An order under this section is effective until the individual is no longer infected with a communicable disease or, in the case of a suspected disease, expiration of the longest usual incubation period for the disease.

(e) An individual may be subject to court orders under Subchapter G if the individual is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and:

(1) the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, does not comply with the written orders of the department or a health authority under this section;

TEX. HEALTH & SAFETY CODE ANN. § 81.087 (2016) **

Violation of Control Orders; Criminal Penalty

(a) A person commits an offense if the person knowingly refuses to perform or allow the performance of certain control measures ordered by a health authority or the department under Sections 81.083--81.086.

(b) An offense under this section is a Class B misdemeanor.

TEX. HEALTH & SAFETY CODE ANN. § 81.093 (2016)

Persons Prosecuted for Certain Crimes

(a) A court may direct a person convicted of an offense under Section 43.02, Penal Code, under Chapter 481 (Texas Controlled Substances Act), or under Sections 485.031 through 485.035 to be subject to the control measures of Section 81.083 and to the court-ordered management provisions of Subchapter G.

(b) The court shall order that a presentence report be prepared under Subchapter F, Chapter 42A, Code of Criminal Procedure, to determine if a person convicted of an offense under Chapter 481 (Texas Controlled Substances Act) or under Sections 485.031 through 485.035 should be subject to Section 81.083 and Subchapter G.

(c) On the request of a prosecutor who is prosecuting a person under Section 22.012, Penal Code, the court shall release to the prosecutor the presentencing report and a statement as to whether the court directed the person to be subject to control measures and court-ordered management for human immunodeficiency virus infection or acquired immune deficiency syndrome.

TEX. HEALTH & SAFETY CODE ANN. § 81.151 (2016)

Application for Court Order

(a) At the request of the health authority, a municipal, county, or district attorney shall file a sworn written application for a court order for the management of a person with a communicable disease. At the request of the department, the attorney general shall file a sworn written application for a court order for the management of a person with a communicable disease.

TEX. HEALTH & SAFETY CODE ANN. § 81.152 (2016)

Form of Application

(a) An application for a court order for the management of a person with a communicable disease must be styled using the person's initials and not the person's full name.

(b) The application must state whether the application is for temporary or extended management of a person with a communicable disease.

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the person's name and address;

(2) the person's county of residence in this state;

(3) a statement that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health and that the person meets the criteria of this chapter for court orders for the management of a person with a communicable disease; and

(4) a statement, to be included only in an application for inpatient treatment, that the person fails or refuses to comply with written orders of the department or health authority under Section 81.083, if applicable.

TEX. HEALTH & SAFETY CODE ANN. § 81.153 (2016)

Appointment of Attorney

(a) The judge shall appoint an attorney to represent a person not later than the 24th hour after the time an application for a court order for the management of a person with a communicable disease is filed if the person does not have an attorney. The judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the person's primary language.

(b) The person's attorney shall receive all records and papers in the case and is entitled to have access to all hospital and physicians' records.

TEX. HEALTH & SAFETY CODE ANN. § 81.154 (2016)

Setting on Application

(a) The judge or a magistrate designated under this chapter shall set a date for a hearing to be held within 14 days after the date on which the application is served on the person.

(b) The hearing may not be held within the first three days after the application is filed if the person or the person's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is served on the person.

TEX. HEALTH & SAFETY CODE ANN. § 81.155 (2016)

Notice

(a) The person and the person's attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

TEX. HEALTH & SAFETY CODE ANN. § 81.157 (2016)

District Court Jurisdiction

(a) A proceeding under this chapter must be held in a district court of the county in which the person is found, resides, or is receiving court-ordered health services.

TEX. HEALTH & SAFETY CODE ANN. § 81.158 (2016)

Affidavit of Medical Evaluation

(a) An affidavit of medical evaluation must be dated and signed by the commissioner or the commissioner's designee, or by a health authority with the concurrence of the commissioner or the commissioner's designee. The certificate must include:

(7) the opinion of the health authority or department and the reason for that opinion, including laboratory reports, that:

(A) the examined person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health; and

(B) as a result of that communicable disease the examined person:

(i) is likely to cause serious harm to himself; or

(ii) will, if not examined, observed, or treated, continue to endanger public health.

(b) The department or health authority must specify in the affidavit each criterion listed in Subsection (a)(7)(B) that in the opinion of the department or health authority applies to the person.

(c) If the affidavit is offered in support of an application for extended management, the affidavit must also include the department's or health authority's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the affidavit is offered in support of a motion for a protective custody order, the affidavit must also include the department's or health authority's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior to the extent that the examined person cannot remain at liberty.

(e) The affidavit must include the detailed basis for each of the department's or health authority's opinions under this section.

TEX. HEALTH & SAFETY CODE ANN. § 81.161 (2016)

Motion for Order of Protective Custody

(a) A motion for an order of protective custody may be filed only in the court in which an application for a court order for the management of a person with a communicable disease is pending.

(b) The motion may be filed by the municipal, county, or district attorney on behalf of the health authority. The motion shall be filed by the attorney general at the request of the department.

(c) The motion must state that:

(1) the department or health authority has reason to believe and does believe that the person meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the conduct of the person who is the subject of the motion; or

(C) the circumstances under which the person is found.

(d) The motion must be accompanied by an affidavit of medical evaluation.

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

TEX. HEALTH & SAFETY CODE ANN. § 81.162 (2016)

Issuance of Order

(a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

> (1) that the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health; and
>
> (2) that the person fails or refuses to comply with the written orders of the health authority or the department under Section 81.083, if applicable.

(b) Noncompliance with orders issued under Section 81.083 may be demonstrated by the person's behavior to the extent that the person cannot remain at liberty.

(c) The judge or magistrate may consider only the application and affidavit in making a determination that the person meets the criteria prescribed by Subsection (a). If only the application and certificate are considered the judge or magistrate must determine that the conclusions of the health authority or department are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and affidavit only.

(e) The judge or magistrate may issue a protective custody order for a person who is charged with a criminal offense if the person meets the requirements of this section and the head of the facility designated to detain the person agrees to the detention.

(f) Notwithstanding Section 81.161 or Subsection (c), a judge or magistrate may issue a temporary protective custody order before the filing of an application for a court order for the management of a person with a communicable disease under Section 81.151 if:

> (1) the judge or magistrate takes testimony that an application under Section 81.151, together with a motion for protective custody under Section 81.161, will be filed with the court on the next business day; and
>
> (2) the judge or magistrate determines based on evidence taken under Subsection (d) that there is probable cause to believe that the person presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the filing of the application and motion.

(g) A temporary protective custody order issued under Subsection (f) may continue only until 4 p.m. on the first business day after the date the order is issued unless the application for a court order for the management of a person with a communicable disease and a motion for protective custody, as described by Subsection (f)(1), are filed at or before that time. If the application and motion are filed at or before 4 p.m. on the first business day after the date the order is issued, the temporary protective custody order may continue for the period reasonably necessary for the court to rule on the motion for protective custody.

(h) The judge or magistrate may direct a peace officer, including a sheriff or constable, to prevent a person who is the subject of a protective custody order from leaving the facility designated to detain the person if the court finds that a threat to the public health exists because the person may attempt to leave the facility.

TEX. HEALTH & SAFETY CODE ANN. § 81.163 (2016)

Apprehension Under Order

(a) A protective custody order shall direct a peace officer, including a sheriff or constable, to take the person who is the subject of the order into protective custody and transport the person immediately to an appropriate inpatient health facility that has been designated by the commissioner as a suitable place.

(b) If an appropriate inpatient health facility is not available, the person shall be transported to a facility considered suitable by the health authority.

(c) The person shall be detained in the facility until a hearing is held under Section 81.165.

TEX. HEALTH & SAFETY CODE ANN. § 81.165 (2016)

Probable Cause Hearing

(a) A hearing must be held to determine if:

> (1) there is probable cause to believe that a person under a protective custody order presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the hearing on a court order for the management of a person with a communicable disease; and
>
> (2) the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to public health

(b) The hearing must be held not later than 72 hours after the time that the person was detained under the protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions that threaten the safety of the person or another essential party to the hearing. If the area in which the person is found, or the area where the hearing will be held, is under a public health disaster, the judge or magistrate may postpone the hearing until the period of disaster is ended.

(d) The person and his attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the person presents a substantial risk of serious harm to himself or others. If the health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge, jurors, or the public would jeopardize the health and safety of those persons and the public health, a magistrate or a master may order that a person entitled to a hearing for a protective custody order may not appear in person and may appear only by teleconference or another means the magistrate or master finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

(e) The magistrate or master may consider evidence that may not be admissible or sufficient in a subsequent commitment hearing, including letters, affidavits, and other material.

(f) The state may prove its case on the health authority's or department's affidavit of medical evaluation filed in support of the initial motion.

TEX. HEALTH & SAFETY CODE ANN. § 81.169 (2016)

General Provisions Related to Hearing

(a) Except as provided by Subsection (b), the judge may hold a hearing on an application for a court order for the management of a person with a communicable disease at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the public or the person.

(b) On the request of the person or the person's attorney, the hearing on the application shall be held in the county courthouse.

(c) The health authority shall advise the court on appropriate control measures to prevent the transmission of the communicable disease alleged in the application.

(d) The person is entitled to be present at the hearing. The person or the person's attorney may waive this right.

(e) The hearing must be open to the public unless the person or the person's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(f) The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this chapter.

(g) The court may consider the testimony of a nonphysician health professional in addition to medical testimony.

(h) The hearing is on the record, and the state must prove each element of the application criteria by clear and convincing evidence.

(i) Notwithstanding Subsection (d), if the health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge, jurors, or the public would jeopardize the health and safety of those persons and the public health, a judge may order that a person entitled to a hearing may not appear in person and may appear only by teleconference or another means that the judge finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

TEX. HEALTH & SAFETY CODE ANN. § 81.170 (2016)

Right to Jury

(a) A hearing for temporary management must be before the court unless the person or the person's attorney requests a jury.

(b) A hearing for extended management must be before a jury unless the person or the person's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under oath, and signed by the person and the person's attorney.

(f) The jury shall determine if the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has refused or failed to follow the orders of the health authority. The jury may not make a finding about the type of services to be provided to the person.

TEX. HEALTH & SAFETY CODE ANN. § 81.172 (2016)

Order for Temporary Management

(a) The judge or jury may determine that a person requires court-ordered examination, observation, isolation, or treatment only if the judge or jury finds, from clear and convincing evidence, that:

> (1) the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed or refused to follow the orders of the health authority or department; and
>
> (2) as a result of the communicable disease the person:
>
> (A) is likely to cause serious harm to himself; or
>
> (B) will, if not examined, observed, isolated, or treated, continue to endanger public health.

(b) The judge or jury must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(d) An order for temporary management shall state that examinations, treatment, and surveillance are authorized for a period not longer than 90 days.

TEX. HEALTH & SAFETY CODE ANN. § 81.174 (2016)

Order of Care or Commitment

(a) The judge shall dismiss the jury, if any, after a hearing in which a person is found:

> (1) to be infected with or reasonably suspected of being infected with a communicable disease;
>
> (2) to have failed or refused to follow the orders of a health authority or the department if the application is for inpatient treatment; and
>
> (3) to meet the criteria for orders for the management of a patient with a communicable disease.

(b) The judge may hear additional evidence relating to alternative settings for examination, observation, treatment, or isolation before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the appropriate health care facility filed under this chapter.

(d) The judge may enter an order:

> (1) committing the person to a health care facility for inpatient care; or

(2) requiring the person to participate in other communicable disease management programs.

TEX. HEALTH & SAFETY CODE ANN. § 81.173 (2016)

Order for Extended Management

(a) The jury, or the judge if the right to a jury is waived, may determine that a proposed patient requires court-ordered examination, observation, isolation, or treatment only if the jury or judge finds, from clear and convincing evidence, that:

(1) the person is infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed to follow the orders of the health authority or department;

(2) as a result of that communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger public health; and

(3) the person's condition is expected to continue for more than 90 days.

(b) The jury or judge must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

TEX. HEALTH & SAFETY CODE ANN. § 81.188 (2016)

Order for Temporary Detention

(a) At the request of the health authority, a municipal, county, or district attorney, as appropriate, shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183. At the request of the department, the attorney general shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183.

(b) The application must state the applicant's opinion and detail the reason for the applicant's opinion that:

(1) the person meets the criteria described by this chapter; and

(2) detention in an inpatient health care facility is necessary to evaluate the appropriate setting for continued court-ordered care.

(c) The court shall decide from the information in the application. The court may issue an order for temporary detention if a modification hearing is set and the court finds that there is probable cause to believe that the opinions stated in the application are valid.

(d) The judge shall appoint an attorney to represent a person who does not have an attorney when the order for temporary detention is signed.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the person and the person's attorney a written notice that contains:

(1) a statement that the person has been placed under a temporary detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing.

TEX. HEALTH & SAFETY CODE ANN. § 81.188 (2016)

Motion for Rehearing

(a) The court may set aside an order for the management of a person with a communicable disease and grant a motion for rehearing for good cause shown.

(b) The court may stay the order and release the person from custody before the hearing if the court is satisfied that the person does not meet the criteria for protective custody under this chapter.

(c) The court may require an appearance bond in an amount set by the court.

TEX. HEALTH & SAFETY CODE ANN. § 81.189 (2016)

Request for Reexamination

(a) A person subject to an order for extended management, or any interested person on the person's behalf and with the person's consent, may file a request with a court for a reexamination and a hearing to determine if the person continues to meet the criteria for the court order.

(b) The request must be filed in the county in which the person is receiving the services.

(c) The court may, on good cause shown:

(1) require that the patient be reexamined;

(2) schedule a hearing on the request; and

(3) notify the health authority, department, and the head of the facility providing health services to the person.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended management is entered or after a similar request is filed.

(e) The head of the facility shall arrange for the person to be reexamined after receiving the court's notice.

(f) The head of the facility shall immediately discharge the person if the health authority or department determines that the person no longer meets the criteria for court-ordered extended health services.

(g) If the health authority or department determines that the person continues to meet the criteria for a court order for extended management, the health authority or department shall file an affidavit of medical evaluation with the court within 10 days after the request for reexamination and hearing is filed.

TEX. HEALTH & SAFETY CODE ANN. § 81.190 (2016)

Hearing on Request for Reexamintion

(a) A court that required a patient's reexamination under Section 81.189 may set a date and place for a hearing on the request if, not later than the 10th day after the request is filed:

(1) an affidavit of medical evaluation stating that the patient continues to meet the criteria for extended management has been filed; or

(2) an affidavit has not been filed and the person has not been discharged.

(b) When the hearing is set, the judge shall appoint an attorney to represent the person if the person does not already have an attorney. The judge shall also give notice of the hearing to the person, the person's attorney, the health authority or department, and the facility head.

(c) The judge shall appoint a physician who is not on the staff of the health care facility in which the person is receiving services to examine the person and file an affidavit with the court setting out the person's diagnosis and recommended treatment. The court shall ensure that the person may be examined by a physician of the person's choice and own expense if requested by the person.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for a court order for the management of a person with a communicable disease.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the person continues to meet the criteria for extended management.

(f) The judge shall order the head of the facility to discharge the person if the court fails to find from clear and convincing evidence that the person continues to meet the criteria.

TEX. HEALTH & SAFETY CODE ANN. § 81.191 (2016)

Appeal

(a) An appeal from an order for the management of a person with a communicable disease, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) The trial judge in whose court the cause is pending may:

(1) stay the order and release the person from custody before the appeal if the judge is satisfied that the person does not meet the criteria for protective custody under this chapter; and

(2) if the person is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

TEX. HEALTH & SAFETY CODE ANN. § 81.201 (2016)

Writ of Habeas Corpus

This subchapter does not limit a person's right to obtain a writ of habeas corpus.

TEX. HEALTH & SAFETY CODE ANN. § 81.204 (2016)

Rights Subject to Limitation Head of Facility

(a) A person in an inpatient health care facility has the right to:

(1) receive visitors;

(2) communicate with a person outside the facility; and

(3) communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to facility rules. The head of the facility may restrict a right to the extent the head of the facility determines that the restriction is necessary to the public health or the person's welfare but may not restrict the right to communicate with legal counsel if an attorney-client relationship has been established.

TEX. HEALTH & SAFETY CODE ANN. § 81.212 (2016) **

Evading or Resisting Apprehension or Transport; Criminal Penalty

(a) A person who is subject to a protective custody order or temporary detention order issued by a court under this subchapter commits an offense if the person resists or evades apprehension by a sheriff, constable, or other peace officer enforcing the order or resists or evades transport to an appropriate inpatient health care facility or other suitable facility under the order.

(c) An offense under this section is a Class A misdemeanor.

Texas Penal Code

TEX. PENAL CODE ANN. § 12.21 (2016) **

Class A Misdemeanor

An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(1) a fine not to exceed $ 4,000;

(2) confinement in jail for a term not to exceed one year; or

(3) both such fine and confinement.

TEX. PENAL CODE ANN. § 12.22 (2016) **

Class B Misdemeanor

An individual adjudged guilty of a Class B misdemeanor shall be punished by:

(1) a fine not to exceed $2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both such fine and confinement.

Texas Code of Criminal Procedure

TEX. CODE CRIM. PROC. ART. §18.22 (2016)

Testing certain Defendants or Confined Persons for Communicable Diseases

(a) A person who is arrested for a misdemeanor or felony and who during the commission of that offense or the arrest, during a judicial proceeding or initial period of confinement following the arrest, or during the person's confinement after a conviction or adjudication resulting from the arrest causes the person's bodily fluids to come into contact with a peace officer, a magistrate, or an employee of a correctional facility where the person is confined shall, at the direction of the court having jurisdiction over the arrested person, undergo a medical procedure or test designed to show or help show whether the person has a communicable disease. The court may direct the person to undergo the procedure or test on its own motion or on the request of the peace officer, magistrate, or correctional facility employee. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test. Notwithstanding any other law, the person performing the procedure or test shall make the test results available to the local health authority, and the local health authority shall notify the peace officer, magistrate, or correctional facility employee, as appropriate, of the test result. The state may not use the fact that a medical procedure or test was performed on a person under this article, or use the results of the procedure or test, in any criminal proceeding arising out of the alleged offense.

(b) A person who is arrested for a misdemeanor or felony and who during the commission of that offense or an arrest following the commission of that offense causes an emergency response employee or volunteer, as defined by Section 81.003, Health and Safety Code, to come into contact with the person’s bodily fluids shall, at the direction of the court having jurisdiction over the arrested person, undergo a medical procedure or test designed to show or help show whether the person has a communicable disease. The court may direct the person to undergo the procedure or test on its own motion or on the request of the emergency response employee or volunteer. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test. Notwithstanding any other law, the person performing the procedure or test shall make the test results available to the local health authority and the designated infection control officer of the entity that employs or uses the services of the affected emergency response employee or volunteer, and the local health authority or the designated infection control officer of the affected employee or volunteer shall notify the emergency response employee or volunteer of the test result. The state may not use the fact that a medical procedure or test was performed on a person under this article, or use the results of the procedure or test, in any criminal proceeding arising out of the alleged offense.

TEX. CODE CRIM. PROC. ART. 46A.01 (2016)

Testing; Segregation; Disclosure

(a) In this article "AIDS" and "HIV" have the meanings assigned those terms by Section 81.101, Health and Safety Code.

(b) A county or municipality may test an inmate confined in the county or municipal jail or in a contract facility authorized by Article 5115d, Revised Statutes, or Article 5115e, Revised Statutes, to determine the proper medical treatment of the inmate or the proper social management of the inmate or other inmates in the jail or facility.

(c) If the county or municipality determines that an inmate has a positive test result for AIDS or HIV, the county or municipality may segregate the inmate from other inmates in the jail or facility

Texas Administrative Code

TITLE 25, HEALTH SERVICES

25 Tex. Admin. Code § 97.3 (2016)

What Condition to Report and What Isolates to Report or Submit

(2) Notifiable conditions or isolates.

(3)Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

> (A) AIDS, chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with Subchapter F of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV));

25 TEX. ADMIN. CODE § 97.8 (2016)

General Control Measures for Notifiable Conditions

Except for diseases for which equivalent measures of investigation and control are specifically provided in other sections in this chapter, the Commissioner of Health (commissioner), a health authority, or a duly authorized representative of the commissioner or a health authority may proceed as follows.

(3) Control techniques, including disinfection, environmental sanitation, immunization, chemoprophylaxis, isolation, preventive therapy, quarantine, education, prevention, and other accepted measures shall be instituted as necessary to reduce morbidity and mortality. In establishing quarantine or isolation, the health authority shall designate and define the limits of the areas in which the persons are quarantined or isolated.

25 TEX. ADMIN. CODE § 97.131 (2016)

Definitions

(7) Sexually transmitted disease (STD)--An infection, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during or as a result of sexual relations, and that produces or might produce a disease in, or otherwise impair, the health of either person, or might cause an infection or disease in a fetus in utero or a newborn. Acquired Immune Deficiency Syndrome (AIDS), chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection, and syphilis are sexually transmitted diseases reportable under these rules, and each are as defined by CDC (see http://www.cdc.gov/ncphi/disss/nndss/casedef/case_definitions.htm).

25 TEX. ADMIN. CODE § 97.133 (2016)

Reporting Information for Sexually Transmitted Diseases

(c) All persons required to report under § 97.132 of this title, must report the following (each report must either use the department's form specified in this subsection, or a substitute form which captures all the data elements of the specified department form):

(1) All adult or adolescent (13 years of age or older) HIV infections and AIDS (stage 3 of HIV infection) diagnoses for individuals 13 years of age or older (see the most current version of the department's Texas HIV/AIDS Adult/Adolescent case report form (available as specified in § 97.134 of this title.

(2) All pediatric (less than 13 years of age) HIV infections and AIDS (stage 3 of HIV infection) diagnoses (see the most current version of the department's Texas HIV/AIDS pediatric case report form (available as specified in § 97.134 of this title)).

(3) All HIV-positive pregnant women. (see the most current version of the department's Texas HIV/AIDS Adult/Adolescent case report form (available as specified in § 97.134 of this title)).
(4) All HIV-exposed infants (see the most current version of the department's Texas HIV/AIDS Pediatric case report form (available as specified in § 97.134 of this title)).

(5) All chancroid, Chlamydia trachomatis, Neisseria gonorrhea, and syphilis infections (see the most current version of the department's Confidential Report of Sexually Transmitted Diseases form (STD-27) (available as specified in § 97.134 of this title)).

(6) All congenital syphilis infections (see the most current version of the CDC's Congenital Syphilis Case Investigation and Report form (available as specified in § 97.134 of this title)).

(7) All positive or reactive results from point of care testing for STDs (see the most current version of the department's Confidential Report of Sexually Transmitted Diseases form (STD-27) (available as specified in § 97.134 of this title)).

Utah

Analysis

People living with HIV (PLHIV) convicted of sex work and solicitation offenses, may receive increased sentences.

Utah is one of many states with a "sentence enhancement" statute that may increase penalties for PLHIV participating in the sex trade, regardless of whether they expose others to a significant risk of HIV infection.[1] In Utah, if an individual pleads guilty or no contest to, or is convicted of any of the following offenses, they are also required to undergo mandatory HIV testing:[2]

- Prostitution[3]
- Patronizing a prostitute[4]
- Sexual solicitation[5]

A PLHIV convicted of one of these offenses is guilty of a third-degree felony, punishable by up to five years in prison and a $5,000 fine, if at the time of the offense the defendant had knowledge of their HIV status or if the PLHIV defendant has a prior conviction for prostitution, patronizing a prostitute, or solicitation, regardless of knowledge of status.[6] Violation of Utah's prostitution laws is otherwise a Class B misdemeanor punishable by at most six months in prison and a $1,000 fine (or one year and a $2,500 fine for repeat offenses).[7] PLHIV, on the basis of their status alone, may face a prison sentence over four years longer than that of HIV negative persons.

In September 2010, a PLHIV engaged in sex work was sentenced to five years' imprisonment after pleading guilty to one count of third-degree felony sexual solicitation.[8] The woman had tested positive

[1] UTAH. CODE. ANN. § 76-10-1309 (2018).
[2] UTAH. CODE. ANN. § 76-10-1311 (2018).
[3] UTAH. CODE. ANN. §§ 76-10-1311(1), 76-10-1302 (2018).
[4] UTAH. CODE. ANN. §§ 76-10-1311(1), 76-10-1303 (2018).
[5] UTAH. CODE. ANN. §§ 76-10-1311(1), 76-10-1313 (2018).
[6] UTAH. CODE. ANN. §§ 76-3-203(3), 76-3-301(1)(b), 76-10-1309(1), 76-10-1309(2), 76-10-1312 (outlining test result notification standard) (2018).
[7] UTAH. CODE. ANN. §§ 76-3-204, 76-3-301(1)(d), 76-3-301(1)(c), 76-10-1302(2)(a), 76-10-1302(2)(b), 76-10-1303(2), 76-10-1303(3), 76-10-1313(3)(a), 76-10-1313(3)(b) (2018).
[8] Stephen Hunt, *HIV-positive prostitute sent to prison*, SALT LAKE TRIB., Sept. 17, 2010, *available at* http://archive.sltrib.com/article.php?id=50306321&itype=CMSID.

for HIV in 2007 after her fourth prostitution conviction.[9] She had also been imprisoned in 2008 and 2009 for prostitution.[10]

In June 2013, a PLHIV was charged with second-degree felony aggravated exploitation of prostitution and sexual solicitation for offering to pay a teenage boy for sex.[11] The sexual solicitation charge was elevated to a third-degree felony due to the man's HIV status.[12]

This "penalty enhancement" law increases penalties for PLHIV regardless of whether transmission was even possible under the circumstances. In Utah, a person is guilty of prostitution when 1) they engage in any sexual activity with another person for a fee; 2) they are an inmate of a house of prostitution; or 3) they loiter in or within view of any public place for the purpose of being hired to engage in sexual activity.[13] "Sexual activity" is defined as "acts of masturbation, sexual intercourse, or any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant."[14] Under this broad definition, felony-level prison sentences may be imposed in circumstances where HIV could not have been transmitted.

The use of condoms or other protection is not a defense, despite the fact that they can significantly reduce the risk of HIV transmission. Disclosure of HIV status is not a defense on the face of the statute nor is a defendant's viral load taken into consideration, even though an undetectable viral load means there is effectively no risk of transmission.[15]

Further, sexual activity itself is not required for prosecution. For PLHIV, "loitering" in a public place for the purpose of being hired for prostitution also results in enhanced penalties,[16] as does offering or agreeing to commit any sexual activity for a fee,[17] offering to pay another person a fee for the purpose of engaging in sexual activity,[18] or entering a house of prostitution for the purpose of having sex for a fee.[19] Thus, acts posing no risk of HIV transmission may result in enhanced penalties. Moreover, there is no consideration given to whether the act, if completed, would carry a risk of HIV exposure or transmission.

Finally, merely being an "inmate of a house of prostitution" also triggers enhanced sentencing.[20] Presumably, this means that PLHIV engaged in sex work in a commercial sex establishment may face

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[9] *Id.*
[10] *Id.*
[11] Erin Alberty, *Price police say HIV-positive man solicited sex from teen*, SALT LAKE. TRIB., June 7, 2013, *available at* http://archive.sltrib.com/story.php?ref=/sltrib/news/56428611-78/mead-barnes-police-sex.html.csp.
[12] *Id.*
[13] UTAH. CODE. ANN. § 76-10-1302(1) (2018).
[14] UTAH. CODE. ANN. § 76-10-1301(5) (2018).
[15] CTR. FOR DISEASE CONTROL AND PREVENTION, *Dear Colleague Letter*, September 27, 2017, *available at* https://www.cdc.gov/hiv/library/dcl/dcl/092717.html.
[16] UTAH. CODE. ANN. § 76-10-1302(1)(c) (2018).
[17] UTAH. CODE. ANN. § 76-10-1313(1)(a) (2018).
[18] UTAH. CODE. ANN. § 76-10-1303(1)(a) (2018).
[19] UTAH. CODE. ANN. § 76-10-1303(1)(b) (2018).
[20] UTAH. CODE. ANN. § 76-10-1302(1)(b) (2018).

up to five years in prison,[21] regardless of whether they engaged in sexual activities posing any risk of HIV transmission.

HIV status may be considered during sentencing.

Transmission of HIV may be a factor in sentencing decisions. In *State v. Scott*, a man with chlamydia pleaded guilty to three counts of sodomy on a child for sexually abusing a six-year-old girl.[22] He was subsequently sentenced to three 10 years to life prison terms.[23] On appeal, the defendant argued that the trial court should not have considered his victim's infection with chlamydia as an "aggravating factor" when deciding whether to impose concurrent sentences or consecutive sentences, because there was no evidence that defendant was the source of the victim's infection.[24] The Utah Court of Appeals disagreed, as evidence suggested that the defendant had chlamydia, and the transmission of a sexually transmitted infection (STI) to the victim was a valid aggravating factor.[25] The reasoning in *Scott* suggests that the transmission of HIV could also function as an aggravating factor in a court's assessment of whether a defendant's sentences should run consecutively or concurrently.

Assaulting a police or correctional officer with bodily fluids can result in increased prison sentences.

Utah has an HIV exposure statute specifically addressing situations where inmates living with HIV throw or otherwise expose others to their bodily fluids.[26] In Utah, it is a Class A misdemeanor, punishable by one year in prison and a $2,500 fine, if any prisoner or detained person throws or otherwise propels any substance or object at a police or correctional officer.[27] However, it is a third-degree felony, punishable by up to five years in prison and a $5,000 fine,[28] if the object or substance comes into contact with an officer's face, eyes, mouth, or an open wound on the officer's body[29] and is (1) an infectious agent or material that carries an infectious agent[30] or; (2) the saliva of a person who knows they are infected with HIV, hepatitis B, or hepatitis C.[31] Since any material carrying a virus meets the statutory definition of material carrying an infectious agent, bodily fluids other than saliva of an inmate living with HIV might be interpreted to fall within this subsection of the statute, such as blood, semen or other bodily fluids that may contain trace amounts of blood. Neither the intent to transmit HIV nor actual transmission is required for prosecution. The CDC has concluded that there exists only a

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[21] UTAH. CODE. ANN. §§ 76-10-1301(2), 76-10-1301(3) (2018).
[22] *State v. Scott,* 180 P.3d 774, 775-76 (Utah Ct. App. 2008).
[23] *Id.* at 776.
[24] *Id.* at 777-78.
[25] *Id.*
[26] UTAH. CODE. ANN. § 76-5-102.6 (2018).
[27] UTAH. CODE. ANN. §§ 76-3-204(1), 76-3-301(c), 76-5-102.6(1) (2018).
[28] UTAH. CODE. ANN. § 76-5-102.6(2) (2018).
[29] UTAH. CODE. ANN. § 76-5-102.6(2)(b) (2018).
[30] UTAH. CODE. ANN. § 76-5-102.6(2)(a)(ii) (2018). "Infectious agent" is defined as "an organism such as a virus, rickettsia, bacteria, fungus, protozoan or helminth that is capable of producing infection or infectious disease." UTAH. CODE. ANN. § 26-6-2(12) (2018).
[31] UTAH. CODE. ANN. 76-5-102.6(2)(a)(iv) (2018).

"negligible" risk that HIV could be transmitted through the throwing of bodily fluids.[32] With regard to saliva specifically, the CDC has concluded that spitting alone has never been shown to transmit HIV.[33] Utah's statute ignores these scientific findings, leading to potential prosecutions for behavior that has at most a remote possibility of transmitting HIV.

PLHIV or viral hepatitis may receive increased sentences for sexual offenses.

A person who knows that they have HIV, hepatitis B, or hepatitis C and commits a sexual offense[34] is subject to a penalty enhancement of one classification higher than the root offense for which the person was convicted.[35] An underlying sex offense that is a first degree felony does not receive the enhancement.[36] Neither the intent to transmit disease, nor disease transmission, is required for the sentence enhancement. The enhancement is also applied regardless of the actual transmission risk posed by the conduct at issue, meaning factors such as antiretroviral medication or condom use are irrelevant.

A person with an STI, including HIV, may be prosecuted for the "introduction" of disease.

It is a Class A misdemeanor, punishable by up to one year of imprisonment and a $2,500 fine, to "willfully or knowingly introduce any communicable or infectious disease into any county, municipality, or community."[37] A range of STIs--including HIV, syphilis, gonorrhea, lymphogranuloma inguinale, and chancroid—are specifically identified by statute as both communicable and infectious, thereby falling squarely within the scope of prohibited conduct.[38] The statute does not define "introduce" but the language suggests that actual transmission of disease may be necessary. Intent to transmit disease is not required, as Utah defines the mental state of "knowingly" as acting with awareness that one's conduct is reasonably certain to cause a particular result.[39] It is also unclear what role, if any, disclosure of a person's infection with an STI or a person's engaging in risk reduction measures such as use of a condom would play.

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[32] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission Risk, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act* (Dec. 4, 2015), *available at* http://www.cdc.gov/hiv/policies/law/risk.html (last visited July 11, 2018).

[33] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?* (Mar. 16, 2018), *available at* t http://www.cdc.gov/hiv/basics/transmission.html (last visited July 11, 2018).

[34] Chapter 4, Part 5 of Utah's Criminal Code enumerates a wide range of sex offenses that may be subject to this enhancement, including: unlawful sexual activity with a minor, sexual abuse of a minor, unlawful sexual activity with a 16-17 year old, unlawful adolescent sexual activity, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy on a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual assault, custodial sexual relations, and custodial sexual misconduct with youth receiving state services. *See* UTAH. CODE. ANN. §§ 76-5-401, 76-5-401.1, 76-5-401.2, 76-5-401.3, 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, 76-5-405, 76-5-412, 76-5-413 (2018).

[35] UTAH. CODE. ANN. § 76-3-203.12(1)-(2)(a) (2018)

[36] UTAH. CODE. ANN. § 76-3-203.12(2)(b)(2018)

[37] UTAH. CODE. ANN. §§ 26-6-5, 76-3-204(1), 76-3-301(c) (2018).

[38] UTAH. CODE. ANN. §§ 26-6-3.5(3), 26-6-16 (2018).

[39] UTAH. CODE. ANN. § 76-2-103(2) (2018).

Persons with an STI may be subject to mandatory examination and treatment.

Local health officers are empowered to examine a person known or suspected of having certain STIs, including syphilis, gonorrhea, lymphogranuloma inguinale, and chancroid, and may require the individual to report for treatment until cured.[40] Should an individual who is known or suspected to be infected with a communicable disease that poses a threat to the public health fail to "take action as required by the department or the local health department to prevent spread of disease," health officials may issue an order of restriction that mandates examination, treatment, isolation or quarantine.[41] Refusal to consent to these measures results in health officials ordering involuntary examination, treatment, isolation or quarantine and filing a petition for judicial review to order compliance.[42]

Persons with an STI may be subject to involuntary examination, treatment, isolation, or quarantine.

Utah specifically identifies several STIs as "communicable and dangerous to the public health"[43] and designates HIV as "communicable and infectious." Chapter 6b of Utah's Health Code contains extensive procedural requirements required for orders of restriction due to communicable disease. The initial order of restriction must be for the shortest reasonable period to protect public health,[44] use the least intrusive method of restriction,[45] contain notice of an individual's rights,[46] and be in writing,[47] barring specific, narrow exceptions for a verbal order.[48]The order must include the medical or scientific information on which the restriction is based, what actions must occur for termination of the restriction, a statement advising of the right of judicial review of the order, and other essential information, including the rights of the individual under restriction.[49] An individual subject to restriction has the right to legal counsel in any judicial review proceedings, the right of notice and participation in any hearing concerning the order of restriction, the right to cross examine witnesses and present evidence and arguments on the individual's own behalf, and the right to review and copy all records in possession of the department that issued the restriction which relate to the order of restriction.[50]

If an individual refuses to consent to an order of restriction, the department of health must file a petition for judicial review in district court within five business days after issuing the order of restriction.[51] The court will issue a short-term order for an examination period upon a finding that there is a reasonable basis to believe involuntary measures are necessary and that the individual has refused to comply.[52] Within ten days of issuing this order, the court will set another hearing at which the individual under

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[40] UTAH. CODE. ANN. § 26-6-17 (2018).
[41] UTAH. CODE. ANN. § 26-6-4(1)(a) (2018).
[42] UTAH. CODE. ANN. § 26-6-4(2) (2018).
[43] UTAH CODE ANN. § 26-6-16 (2018).
[44] UTAH. CODE. ANN. § 26-6b-3(2)(b)(i) (2018).
[45] UTAH. CODE. ANN. § 26-6b-3(2)(b)(ii) (2018).
[46] UTAH. CODE. ANN. § 26-6b-3(2)(b)(iv) (2018).
[47] UTAH. CODE. ANN. § 26-6b-3(2)(b)(iii) (2018).
[48] UTAH. CODE. ANN. § 26-6b-3(2)(c) (2018).
[49] UTAH CODE ANN. §§ 26-6b-3.3(1)(g), 26-6b-3.3(1)(e), 26-6b-3.3(1)(h), 26-6b-3.3(1)(i) (2018).
[50] UTAH CODE ANN. § 26-6b-3.3(2) (2018).
[51] UTAH CODE ANN. § 26-6b-3.2(1)(b)(i) (2018).
[52] UTAH CODE ANN. §§ 26-6b-3(a), 26-6b-3(b) (2018).

restriction is present in person or remotely and has had the opportunity to be represented by counsel.[53] The court may extend its initial order for up to 90 days if it has reason to believe an individual is infected with"a communicable or possibly communicable disease" or a condition that poses a threat to public health that has not been diagnosed despite the exercise of "reasonable diligence."[54]

The district court may order the individual to submit to the order of restriction, but only if it makes a series of specific findings on the basis of clear and convincing evidence: 1) the individual is infected with a communicable disease; 2) there is no appropriate an less restrictive alternative; 3) the petitioning health department can provide adequate treatment; and 4) it is in the public interest to order the involuntary measures after weighing a variety of additional factors.[55] This order may not exceed six months without the benefit of another hearing before the district court.[56] Two weeks prior to the expiration of an order, the petitioning health department must notify the court and also reassess the basis on which the order was issued.[57] During the review hearing occurring prior to the expiration of the order, the district court may elect to issue an order for indefinite restriction if it determines by clear and convincing evidence that the required conditions authorizing its preceding order will continue for an indeterminate period.[58]

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 in your specific situation and, as such, it should not be used as a substitute for legal advice.*

[53] UTAH CODE ANN. §§ 26-6b-6(1), 26-6b-3(b) (2018).
[54] UTAH CODE ANN. § 26-6b-6(3)(b) (2018).
[55] UTAH CODE ANN. § 26-6b-6(6) (2018).
[56] UTAH CODE ANN. § 26-6b-6(8)(a) (2018).
[57] UTAH CODE ANN. § 26-6b-7(1) (2018).
[58] UTAH CODE ANN. § 26-6b-6(8)(b) (2018).

Code of Utah

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 76, UTAH CRIMINAL CODE

UTAH CODE ANN. § 76-10-1309 (2018) **

Enhanced penalties--HIV positive offender

A person who is convicted of prostitution under Section 76-10-1302, patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 is guilty of a third degree felony if at the time of the offense the person is an HIV positive individual, and the person:

(1) has actual knowledge of the fact; or

(2) has previously been convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313.

UTAH CODE ANN. § 76-5-102.6 (2018) **

Propelling substance or object at a correctional or peace officer--Penalties

(1) Any prisoner or person detained pursuant to Section 77-7-15 who throws or otherwise propels any substance or object at a peace officer, a correctional officer, or an employee or volunteer, including a health care provider, is guilty of a class A misdemeanor, except as provided under Subsection (2).

(2) A violation of Subsection (1) is a third-degree felony if:

(a) The object or substance is:

(ii) an infectious agent as defined in Section 26-6-2 or a material that carries an infectious agent;

(iv) the prisoner's or detained person's saliva, and the prisoner or detained person knows he or she is infected with HIV, hepatitis B, or hepatitis C; and

(b) The object or substance comes into contact with any portion of the officer's or health care provider's face, including the eyes or mouth, or comes into contact with any open wound on the officer's or health care provider's body.

(3) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law than under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

UTAH CODE ANN. § 76-3-203 (2018) **

Felony conviction--Indeterminate term of imprisonment

A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:

(1) In the case of a felony of the first degree, unless the statute provides otherwise, for a term of not less than five years and which may be for life.

(2) In the case of a felony of the second degree, unless the statute provides otherwise, for a term of not less than one year nor more than 15 years.

(3) In the case of a felony of the third degree, unless the statute provides otherwise, for a term not to exceed five years.

UTAH CODE ANN. § 76-3-203.12 (2018) **

Enhanced penalty for sexual offenses committed by a person with Human Immunodeficiency Virus, Acquired Immunodeficiency Virus, hepatitis B, or hepatitis C

1) A person convicted of a sexual offense described in Chapter 5, Part 4, Sexual Offenses, is subject to an enhanced penalty if at the time of the sexual offense the person was infected with Human Immunodeficiency Virus, Acquired Immunodeficiency Virus, hepatitis B, or hepatitis C and the person knew of the infection.

(2)

(a) Except as provided in Subsection (2)(b), the enhancement of a penalty described in Subsection (1) shall be an enhancement of one classification higher than the root offense for which the person was convicted.
(b) A felony of the first degree is not enhanced under this section.

UTAH CODE ANN. § 76-3-204 (2018) **

Misdemeanor conviction—Term of imprisonment

A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:

(1) In the case of a class A misdemeanor, for a term not exceeding one year;

UTAH CODE ANN. § 76-3-301 (2018) **

Fines of persons

(1) A person convicted of an offense may be sentenced to pay a fine, not exceeding:

(a) $10,000 for a felony conviction of the first degree or second degree;

(b) $5,000 for a felony conviction of the third degree;

(c) $2,500 for a class A misdemeanor conviction;

TITLE 26, UTAH HEALTH CODE

UTAH CODE ANN. § 26-6-5 (2018) **

Willful introduction of communicable disease a misdemeanor

Any person who willfully or knowingly introduces any communicable or infectious disease into any county, municipality, or community is guilty of a class A misdemeanor, except as provided in Section 76-10-1309.

UTAH CODE ANN. § 26-6-2 (2018)

Definitions

(3) "Communicable disease" means illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host, either directly, as from an infected individual or animal, or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment.

(13) "Infectious disease" means a disease of man or animals resulting from an infection.

(17) "Sexually transmitted disease" means those diseases transmitted through sexual intercourse or any other sexual contact.

UTAH CODE ANN. § 26-6-16 (2018)

Venereal disease declared to be dangerous to public health

Syphilis, gonorrhea, lymphogranuloma inguinale (venereum) and chancroid are hereby declared to be contagious, infectious, communicable and dangerous to the public health

UTAH CODE ANN. § 26-6-4 (2018)

Involuntary examination, treatment, isolation, and quarantine

(1) The following individuals or groups of individuals are subject to examination, treatment, quarantine, or isolation under a department order of restriction:

> (a) an individual who is infected or suspected to be infected with a communicable disease that poses a threat to the public health and who does not take action as required by the department or the local health department to prevent spread of the disease;

(2) If an individual refuses to take action as required by the department or the local health department to prevent the spread of a communicable disease, infectious agent, or contamination, the department or the local health department may order involuntary examination, treatment, quarantine, or isolation of the individual and may petition the district court to order involuntary examination, treatment, quarantine, or isolation in accordance with Title 26, Chapter 6b, Communicable Diseases -- Treatment, Isolation, and Quarantine Procedures.

UTAH CODE ANN. § 26-6-17 (2018)

Venereal disease—Examination by authorities—Treatment of infected persons

State, county, and municipal health officers within their respective jurisdictions may make examinations of persons reasonably suspected of being infected with venereal disease. Persons infected with venereal disease shall be required to report for treatment to either a reputable physician and continue treatment until cured or to submit to treatment provided at public expense until cured.

UTAH CODE ANN. § 26-6b-3 (2018)

Order of restriction

(1) The department having jurisdiction over the location where an individual or a group of individuals who are subject to restriction are found may:

(a) issue a written order of restriction for the individual or group of individuals pursuant to Section 26-1-30 or Subsection 26A-1-114(1)(b) upon compliance with the requirements of this chapter; and

(b) issue a verbal order of restriction for an individual or group of individuals pursuant to Subsection (2)(c).

(2)

(b) An order of restriction issued by a department shall:

(i) in the opinion of the public health official, be for the shortest reasonable period of time necessary to protect the public health;

(ii) use the least intrusive method of restriction that, in the opinion of the department, is reasonable based on the totality of circumstances known to the health department issuing the order of restriction.

(iii) be in writing unless the provisions of Subsection (2)(c) apply; and

(iv) contain notice of an individual's rights as required in Section 26-6b-3.3.

(c)

(i) A department may issue a verbal order of restriction, without prior notice to the individual or group of individuals if the delay in imposing a written order of restriction would significantly jeopardize the department's ability to prevent or limit:

(A) the transmission of a communicable or possibly communicable disease that poses a threat to public health.

(D) the exposure or transmission of a condition that poses a threat to public health.

(ii) A verbal order of restriction issued under the provisions of Subsection (2)(c)(i):

(A) is valid for 24 hours from the time the order of restriction was issued;

(D) may only be continued beyond the initial 24 hours if a written order of restriction is issued pursuant to the provisions of Section 26-6b-3.3.

UTAH CODE ANN. § 26-6b-3.2 (2018)

Involuntary order of restriction—Notice—Effect of order during judicial review.

(1) If the department cannot obtain consent to the order of restriction from an individual, or if an individual withdraws consent to an order under Subsection 26-6b-3.1(1)(b)(iv)(B), the department shall:

(a) give the individual or group of individuals subject to the order of restriction a written notice of:

(i) the order of restriction and any supporting documentation; and

(ii) the individual's right to a judicial review of the order of restriction; and

(b) file a petition for a judicial review of the order of restriction under Section 26-6b-4 in district court within:

(i) five business days after issuing the written notice of the order of restriction; or

(ii) if consent has been withdrawn under Subsection 26-6b-3.1(1)(b)(iv)(B), within five business days after receiving notice of the individual's withdrawal of consent.

(2)

(a) An order of restriction remains in effect during any judicial proceedings to review the order of restriction if the department files a petition for judicial review of the order of restriction with the district within the period of time required by this section.

(b) Law enforcement officers with jurisdiction in the area where the individual who is subject to the order of restriction can be located shall assist the department with enforcing the order of restriction.

UTAH CODE ANN. § 26-6b-3.3 (2018)

Contents of notice of order of restriction – Rights of individuals

(1) A written order of restriction issued by a department shall include the following information:

(a) the identity of the individual or a description of the group of individuals subject to the order of restriction;

(b) the identity or location of any premises that may be subject to restriction;

(c) the date and time for which the restriction begins and the expected duration of the restriction;

(d) the suspected communicable disease, infectious, chemical or biological agent, or other condition that poses a threat to public health;

(e) the requirements for termination of the order of restriction, such as necessary laboratory reports, the expiration of an incubation period, or the completion of treatment for the communicable disease;

(f) any conditions on the restriction, such as limitation of visitors or requirements for medical monitoring;

(g) the medical or scientific information upon which the restriction is based;

(h) a statement advising of the right to a judicial review of the order of restriction by the district court; and

(i) pursuant to Subsection (2), the rights of each individual subject to restriction.

(2) An individual subject to restriction has the following rights:

(a) the right to be represented by legal counsel in any judicial review of the order of restriction in accordance with Subsection 26-6b-4(3);

(b) the right to be provided with prior notice of the date, time, and location of any hearing concerning the order of restriction;

(c) the right to participate in any hearing, in a manner established by the court based on precautions necessary to prevent additional exposure to communicable or possibly communicable diseases or to protect the public health;

(d) the right to respond and present evidence and arguments on the individual's own behalf in any hearing;

(e) the right to cross examine witnesses; and

(f) the right to review and copy all records in the possession of the department that issued the order of restriction which relate to the subject of the written order of restriction.

(4)

(a) In addition to the rights of an individual described in Subsections (1) and (2), an individual subject to an order of restriction may not be terminated from employment if the reason for termination is based solely on the fact that the individual is or was subject to an order of restriction.

(b) The department issuing the order of restriction shall give the individual subject to the order of restriction notice of the individual's employment rights under Subsection (4)(a).

(c) An employer in the state, including an employer who is the state or a political subdivision of the state, may not violate the provisions of Subsection (4)(a).

UTAH CODE ANN. § 26-6b-5 (2018)

Petition for judicial review of order of restriction – Court-ordered examination period

(1)(a) A department may petition for a judicial review of the department's order of restriction for an individual or group of individuals who are subject to restriction by filing a written petition with the district court of the county in which the individual or group of individuals reside or are located.

(3) The court shall issue an order of restriction requiring the individual or group of individuals to submit to involuntary restriction to protect the public health if the district court finds:

(a) there is a reasonable basis to believe that the individual's or group of individuals' condition requires involuntary examination, quarantine, treatment, or isolation pending examination and hearing; or

(b) the individual or group of individuals have refused to submit to examination by a health professional as directed by the department or to voluntarily submit to examination, treatment, quarantine, or isolation.

(5) At least 24 hours prior to the hearing required by Section 26-6b-6, the department which is the petitioner, shall report to the court, in writing, the opinion of qualified health care providers:

(a) regarding whether the individual or group of individuals are infected by or contaminated with:

(i) a communicable or possible communicable disease that poses a threat to public health;

(ii) an infectious agent or possibly infectious agent that poses a threat to public health;

(iii) a chemical or biological agent that poses a threat to public health; or

(iv) a condition that poses a threat to public health;

(b) that despite the exercise of reasonable diligence, the diagnostic studies have not been completed;

(c) whether the individual or group of individuals have agreed to voluntarily comply with necessary examination, treatment, quarantine, or isolation; and

(d) whether the petitioner believes the individual or group of individuals will comply without court proceedings.

UTAH CODE ANN. § 26-6b-6 (2018)

Court determination for an order of restriction after examination period

(1) The district court shall set a hearing regarding the involuntary order of restriction of an individual or group of individuals, to be held within 10 business days of the issuance of its order of restriction issued pursuant to Section 26-6b-5, unless the petitioner informs the district court prior to this hearing that the individual or group of individuals:

(a) are not subject to restriction; or

(b) have stipulated to the issuance of an order of restriction.

(3)

(b) The court may, after a hearing at which the individual or group of individuals are present in person or by telephonic or other electronic means and have had the opportunity to be represented by counsel, extend its order of restriction for a reasonable period, not to exceed 90 days, if the court has reason to believe the individual or group of individuals are infected by or contaminated with:

(i) a communicable or possibly communicable disease that poses a threat to public health;

(ii) an infectious agent or possibly infectious agent that poses a threat to public health;

(iii) a condition that poses a threat to public health, but, despite the exercise of reasonably diligence the diagnostic studies have not been completed.

(6)

(a) The district court shall order the individual and each individual in a group of individuals to submit to the order of restriction if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that:

(i) the individual or group of individuals are infected with a communicable disease or infectious agent, are contaminated with a chemical or biological agent, or are in a condition that poses a threat to public health;

(ii) there is no appropriate and less restrictive alternative to a court order of examination, quarantine, isolation, and treatment, or any of them;

(iii) the petitioner can provide the individual or group of individuals with treatment that is adequate and appropriate to the individual's or group of individuals' conditions and needs; and

(iv) it is in the public interest to order the individual or group of individuals to submit to involuntary examination, quarantine, isolation, and treatment, or any of them after weighing the following factors:

(A) the personal or religious beliefs, if any, of the individual that are opposed to medical examination or treatment;

(B) the ability of the department to control the public health threat with treatment alternatives that are requested by the individual;

(C) the economic impact for the department if the individual is permitted to use an alternative to the treatment recommended by the department; and

(D) other relevant factors as determined by the court

(8)

(a) The order of restriction may not exceed six months without benefit of a district court review hearing.

(b) The district court review hearing shall be held prior to the expiration of the order of restriction issued under Subsection (7). At the review hearing the court may issue an order of restriction for up to an indeterminate period, if the district court enters a written finding in the record determining by clear and convincing evidence that the required conditions in Subsection (6) will continue for an indeterminate period.

UTAH CODE ANN. § 26-6b-7 (2018)

Periodic review of individuals under court order

(1) At least two weeks prior to the expiration of the designated period of any court order still in effect, the petitioner shall inform the court that issued the order that the order is about to expire. The petitioner shall immediately reexamine the reasons upon which the court's order was based. If the petitioner determines that the conditions justifying that order no longer exist, it shall discharge the individual from involuntary quarantine, isolation, or treatment and report its action to the court for a termination of the order. Otherwise, the court shall schedule a hearing prior to the expiration of its order and proceed under Sections 26-6b-4 through 26-6b-6.

(2) The petitioner responsible for the care of an individual under a court order of involuntary quarantine, isolation, or treatment for an indeterminate period shall at six-month intervals reexamine the reasons upon which the order of indeterminate duration was based. If the petitioner determines that the

conditions justifying that the court's order no longer exist, the petitioner shall discharge the individual from involuntary quarantine, isolation, or treatment and immediately report its action to the court for a termination of the order. If the petitioner determines that the conditions justifying the involuntary quarantine, isolation, or treatment continue to exist, the petitioner shall send a written report of those findings to the court. The petitioner shall notify the individual and his counsel of record in writing that the involuntary quarantine, isolation, or treatment will be continued, the reasons for that decision, and that the individual has the right to a review hearing by making a request to the court. Upon receiving the request for a review, the court shall immediately set a hearing date and proceed under Sections 26-6b-4 through 26-6b-6.

Vermont

Analysis

No criminal statutes explicitly addressing HIV exposure but at least one prosecution has arisen under general criminal laws.

There are no statutes explicitly criminalizing HIV transmission or exposure in Vermont. However, at least one person has been prosecuted for HIV exposure under general criminal laws. In July 2009, a 31-year-old person living with HIV (PLHIV) was charged with aggravated assault for spitting in the face of a police officer.[1]

An individual who has sex while knowingly infected with certain STIs can be punished.

If an individual knows they have gonorrhea or syphilis and that the infection is in a communicable stage, it is a crime for them to have "sexual intercourse" with another person. Violation can result in up to two years' imprisonment, a $500 fine, or both.[2] Prosecution does not require intent to transmit disease or disease transmission. The statute also does not address the role of disclosure to a partner—rather, it simply penalizes sex while infected with gonorrhea or syphilis, both of which are treatable conditions. It is not clear whether risk reduction measures such as the use of a condom could operate as an affirmative defense to prosecution under this statute.

The Department of Health and individual physicians retain broad authority to impose quarantine in response to communicable disease, including STIs.

The Vermont commissioner of health has the authority to "quarantine a person diagnosed or suspected of having a disease dangerous to the public health."[3] Diseases that are considered dangerous to the public health are not enumerated in the statute, but Vermont's administrative code does designate diseases that are reportable so that the Department of Health can protect the health of the public through "control of communicable diseases and other diseases dangerous to the public's health."[4]

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[1] *Vermont: Where post-spit anxiety lasts a year*, HIV JUSTICE NETWORK, August 4, 2009, *available at* http://criminalhivtransmission.blogspot.com/search/label/Vermont.

[2] VT. STAT. ANN. tit. 18, § 1106 (2016).

[3] VT. STAT. ANN. tit. 18, § 1004A (2016).

[4] CODE. VT. RULES 13-140-007 (2016). A variety of STIs are classified as reportable conditions, including HIV/AIDS, chlamydia trachomatis infection, gonorrhea, and syphilis.

Several STIs are reportable conditions, including HIV/AIDS, chlamydia trachomatis infection, gonorrhea, and syphilis.[5]

More importantly, the Department of Health is empowered to "make and enforce such rules and regulations for the quarantining and treatment of cases of venereal disease . . . as may be deemed necessary for the protection of the public."[6] Vermont defines venereal disease as "syphilis, gonorrhea, and any other sexually transmitted disease which the department finds to be of significance and amenable to control." [7] Individual physicians and public institutions such as hospitals and correctional institutions are required to report cases of venereal disease to the Department of Health. [8]

Individual physicians are also empowered to impose quarantine in response to a person who has a "communicable disease dangerous to the public health."[9] Physicians may impose quarantine even if the physician is unable to make a specific diagnosis; they may "quarantine the premises temporarily" which continues until a health officer is available to provide examination.[10] There are no specific procedural protections outlined for someone who is subjected to these quarantine procedures.

Individuals with certain STIs may be required to undergo mandatory examination and treatment and face prosecution upon refusal.

A physician who knows or suspects that a patient has gonorrhea or syphilis is required to report that information to the commissioner of health.[11] An individual who has been so identified is required to "submit to regular treatment prescribed by the physician until discharged by the physician."[12] Should such persons "willfully" refuse to submit to prescribed treatment, they are to be reported to the state's attorney for immediate prosecution.[13] Refusal to submit to treatment is punishable by up to three months' imprisonment, a fine of up to $100 fine, or both. [14]

If an individual is "suspected of being infected with an infectious venereal disease and is likely to infect or be the source of infection of another person," public health authorities can mandate medical examination of that individual to confirm whether disease is present, including through the use of laboratory testing.[15] All individuals are informed of the right to petition a justice of the state supreme court or a superior judge to block mandatory examination, in which case an examination may not proceed without an order from the judge. Neither the petition nor any resulting order is public record.[16]

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[5] *Id.*
[6] VT. STAT. ANN. tit. 18, § 1100 (2016).
[7] VT. STAT. ANN. tit. 18, § 1091 (2016).
[8] VT. STAT. ANN. tit. 18, §§ 1092, 1101 (2016).
[9] VT. STAT. ANN. tit. 18, § 1004 (2016).
[10] *Id.*
[11] VT. STAT. ANN. tit. 18, § 1092 (2016).
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] VT. STAT. ANN. tit. 18, § 1093 (2016).
[16] *Id.*

Unless otherwise specified, a violation of these requirements—complying with mandatory examination and treatment and reporting by individual physicians—is punishable with six months' imprisonment, a fine of up to $500, or both.[17]

Individuals with certain STIs can be punished for entering into a marriage without certification by a healthcare provider.

An individual who knows or has been notified by a physician that they are infected with gonorrhea or syphilis in a stage that is or may become communicable is prohibited from marrying without certification from a medical practitioner that "he or she is free from such disease in a stage which is or may become communicable to the marital partner."[18] Entering into a marriage without this certification is punishable by up to two years in prison, a fine of up to $500, or both. [19] Prosecution does not require any kind of activity that would pose a risk of disease transmission to a marital partner.

Public health authorities may release confidential medical information in support of prosecutions.

Information and reports related to venereal disease are generally considered confidential, but may be released by the Department of Health to facilitate prosecutions for 1) entering into a marriage while infected with syphilis or gonorrhea without the required certification from a physician; or 2) having sexual intercourse while infected with syphilis or gonorrhea in a stage that is communicable to others.[20]

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

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[17] VT. STAT. ANN. TIT. 18, § 1096 (2016).

[18] VT. STAT. ANN. TIT. 18, § 1105 (2016).

[19] *Id.*

[20] VT. STAT. ANN. TIT. 18, § 1099 (2016) (referring to conduct that is criminalized by VT. STAT. ANN. TIT. 18, § 1105 and §1106 (2016)).

Vermont 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 18, HEALTH, PART 2, PUBLIC HEALTH REGULATIONS

VT. STAT. ANN. TIT. 18, § 1004A (2016)

Quarantine

The commissioner of health shall have the power to quarantine a person diagnosed or suspected of having a disease dangerous to the public health

VT. STAT. ANN. TIT. 18, § 1004 (2016)

Report by physician; quarantine

A physician who knows or suspects that a person whom he or she has been called to attend is sick or has died of a communicable disease dangerous to the public health shall immediately quarantine and report to the health officer the place where such case exists, but if the attending physician, at the time of his or her first visit, is unable to make a specific diagnosis, he or she may quarantine the premises temporarily and until a specific diagnosis is made, and post thereon a card upon which the word "quarantine" should be plainly written or printed. Such quarantine shall continue in force until the health officer examines and quarantines as is provided in this title.

VT. STAT. ANN. TIT. 18, § 1091 (2016)

Venereal disease; definitions

In this subchapter, unless the context requires otherwise: . . .

(2) "Venereal disease" means syphilis, gonorrhea, and any other sexually transmitted disease which the department finds to be of significance and amenable to control.

VT. STAT. ANN. TIT. 18, § 1092 (2016) **

Treatments, refusals, penalty

A physician or other person, except persons who merely practice the religious tenets of their church without pretending a knowledge of medicine or surgery, provided however, that sanitary laws, rules, and regulations are complied with, who knows or has reason to believe that a person whom he or she treats or prescribes for, or to whom he or she sells patent or proprietory medicine purporting to cure or alleviate the symptoms of gonorrhea or syphilis, has one of these diseases, shall immediately report the name, nationality, race, marital state, address, age, and sex of such person, and, if obtainable, the date and source of contracting the same, to the commissioner on forms furnished for that purpose. Such persons so reported shall submit to regular treatment prescribed by a physician until discharged by the physician. A person who wilfully refuses to regularly submit to prescribed treatment shall be reported at once to the state's attorney for immediate prosecution. Such wilful refusal shall be punishable by a fine of not more than $ 100.00 or three months' imprisonment or both

VT. STAT. ANN. TIT. 18, § 1093 (2016)

Examination and report

Whenever the board shall receive information from an authoritative source to the effect that a person is suspected of being infected with an infectious venereal disease and is likely to infect or to be the source of infection of another person, such board shall cause a medical examination to be made of such person, for the purpose of ascertaining whether or not such person is in fact infected with such disease in a communicable stage, and such person shall submit to such examination and permit specimens of blood or bodily discharges to be taken for laboratory examinations as may be necessary to establish the presence or absence of such disease or infection, and such person may be detained until the results of such examinations are known. The required examination shall be made by a physician licensed to practice in this state, or a licensed physician designated by the person to be examined. Such licensed physician making such examination shall report thereon to the board and to the person examined.

VT. STAT. ANN. TIT. 18, § 1094 (2016)

Restraining order

Such suspected person may by petition directed to a justice of the supreme court or a superior judge pray for an order restraining the making of such examination and no examination shall then be made except upon order of such justice or judge and such petition and order shall not be a matter of public record. Before such examination, each suspected person shall be informed of this right and be given an opportunity to avail himself thereof.

VT. STAT. ANN. TIT. 18, § 1096 (2016)

A person who violates a provision of sections 1092-1095 of this title, for which no other penalty is provided, shall be fined not more than $ 500.00 or imprisoned for not more than six months or both.

VT. STAT. ANN. TIT. 18, § 1099 (2016)

Reports and records confidential

All information and reports in connection with persons who have venereal diseases shall be regarded as absolutely confidential and for the sole use of the Board in the performance of its duties hereunder, and such records shall not be accessible to the public nor shall such records be deemed public records; and the Board shall not disclose the names or addresses of persons so reported or treated except to a prosecuting officer or in court in connection with a prosecution under section 1105 or 1106 of this title. The foregoing shall not constitute a restriction on the Board in the performance of its duties in controlling these communicable diseases.

VT. STAT. ANN. TIT. 18, § 1100 (2016)

Rules and regulations

The board shall make and enforce such rules and regulations for the quarantining and treatment of cases of venereal disease reported to it as may be deemed necessary for the protection of the public.

VT. STAT. ANN. TIT. 18, § 1101 (2016)

Reports by public institutions

The superintendent or other officer in charge of public institutions such as hospitals, dispensaries, clinics, homes, psychiatric hospitals, and charitable and correctional institutions shall report promptly to the Board the name, sex, age, nationality, race, marital state, and address of every patient under observation who has venereal diseases in any form, stating the name, character, stage, and duration of the infection, and, if obtainable, the date and source of contracting the same.

VT. STAT. ANN. TIT. 18, § 1105 (2016)

Marrying when infected with venereal disease

A person, having been told by a physician that he or she was infected with gonorrhea or syphilis in a stage which is or may become communicable to a marital partner, or knowing that he or she is so infected, who marries, without assurance and certification from a legally qualified practitioner of medicine and surgery or osteopathy that he or she is free from such disease in a stage which is or may become communicable to the marital partner shall be imprisoned not less than two years or fined not less than $ 500.00, or both.

VT. STAT. ANN. TIT. 18, § 1106 (2016) **

Sexual intercourse when infected with venereal disease

A person who has sexual intercourse while knowingly infected with gonorrhea or syphilis in a communicable stage shall be imprisoned not more than two years or fined not more than $ 500.00, or both.

Virginia

Analysis

Virginia criminalizes a broad range of sexual activities where a person living with HIV (PLHIV) acts with the "intent" to transmit disease.

Virginia criminalizes any person diagnosed with a sexually transmitted infection who engages in any sexual behavior that poses a substantial risk of transmission to another person with the intent to transmit and transmission occurs...[1] "Sexually transmitted infections" include chlamydia, gonorrhea, syphilis, human immunodeficiency virus, hepatitis B and C, and other sexually transmittable disease required to be reported by the Board of Health pursuant to §32.1-35.[2]PLHIV and those living with a sexually transmitted disease who know their positive status and engage in these activities with the intent to transmit to another person are guilty of a Class 6 felony, punishable by up to five years of prison or a fine of up to $2,500 with up to a year in jail.[3] Hypothetically, an individual could disclose their HIV status to a partner but still be prosecuted under the felony provision if there was evidence to suggest that the individual intended to transmit HIV and transmission occurred. However, depending on circumstances, disclosure also could be referenced as relevant to intent to harm.

Before the 2021 amendments to its law, Virginia's criminal HIV exposure law allowed for both felony and misdemeanor provisions that penalized conduct, such as oral sex that involve a negligible risk of HIV transmission. The Centers for Disease Control classifies both receptive and insertive oral sex as posing a "low" risk of transmission.[4] Moreover, the prior law did not provide for consideration of a defendant's use of a condom or a defendant's low viral load, both of which can significantly reduce the already low risk of HIV transmission. The updated statute now incorporates a *mens rea* requirement, that is, proof of actual intent to do harm to another person.

Examples of prosecutions of PLHIV prior to 2021:

- In December 2015, a 28-year-old HIV man living with HIV was convicted of infected sexual battery for having sex with a woman without disclosing his HIV status. [5]He was sentenced to

[1] VA. CODE ANN. § 18.2-67.4:1 (2016).

[2] VA. CODE ANN. § 18.2-61.1 (2021).

[3] VA. CODE ANN. §§ 18.2-67.4:1(A), 18.2-10(f) (2016).

[4] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission Risk, Estimated Per-Act Probability of Acquiring HIV from an Infected Source*, *by Exposure Act* (Dec. 4, 2015), *available at* http://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html (last visited Nov. 30, 2016).

[5] Vernon Freeman, Jr., *Judge dismisses charges against HIV positive man who didn't tell partners,* WTVR.COM, January 12, 2016, *available at* http://wtvr.com/2016/01/12/judge-dismisses-charges-against-hiv-positive-man-who-didnt-tell-partners/.

one year in prison.[6]The conviction was ultimately dismissed, however, due to a one-year statute of limitations for misdemeanors.[7]

- In July 2012, a 56-year-old PLHIV was charged with infected sexual battery for failing to disclose his HIV status prior to engaging in unprotected sexual intercourse with his then-fiancée.[8]
- In December 2011, a 52-year-old PLHIV pled guilty to carnal knowledge of a minor and engaging in sexual intercourse without disclosing his HIV status prior to having sex with a 14-year-old girl.[9] The second charge was reduced from a felony to a misdemeanor because there was no evidence the defendant intended to transmit HIV to the girl.[10] The man was sentenced to seven years in prison for the two charges.[11]
- In October 2010, an PLHIV was charged with felony infected sexual battery for allegedly trying to infect two women with HIV.[12]
- In June 2010, a 45-year-old PLHIV pled guilty to misdemeanor prostitution before standing trial for an additional infected sexual battery charge.[13] She was convicted of the lesser misdemeanor offense after the judge found that she did not intend to transmit HIV when she agreed to have sex with two undercover police officers.[14]

Donations of organ, tissue, and blood are no longer criminalized as a means of transmission.

As of the 2021 legislative session, the Virginia legislature repealed the crime of donating or selling blood, body fluids, organs, and tissues by persons living with HIV. Organ donation and organ acquisition shall not be prohibited provided that (i) the recipient of such organ is informed that such organ is infected with HIV and, following such notice, consents to the receipt of such organ and (ii) acquisition and transplantation of such organ is in compliance with the provisions of the HIV Organ Policy Equity Act, 42 U.S.C. § 274f-5.[15]

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[6] *Id*.

[7] *Id*.

[8] Catie Beck, *Man charged with not telling sexual partner about STD*, WTVR.COM, July 30, 2012, *available at* http://wtvr.com/2012/07/30/man-charged-with-not-telling-sexual-partner-about-std/.

[9] Mark Bowes, *HIV-infected man given 7 years for sex with teen*, TIMES DISPATCH, Jan. 29, 2013, *available at* http://www.timesdispatch.com/news/hiv-infected-man-given-years-for-sex-with-teen/article_5628bc75-51c7-582b-bc8d-91874b443585.html?mode=jqm.

[10] *Id*.

[11] *Id*.

[12] *Man Accused of Infecting Women with HIV*, WTVR.COMCLIP SYNDICATE, Oct. 15, 2010, *available at* http://www.clipsyndicate.com/video/play/1757927/man_accused_of_infecting_women_with_hiv.

[13] Jen McCaffery, *Va. Beach woman guilty of not disclosing HIV*, PILOTONLINE.COM, June 10, 2010, *available at* http://hamptonroads.com/2010/06/va-beach-woman-guilty-not-disclosing-hiv.

[14] *Id*.

[15] VA. CODE ANN. § 32.1-291.16 (2021).

PLHIV can be prosecuted under general criminal laws for HIV exposure.

Virginia also has prosecuted PLHIV for malicious or unlawful wounding, which is the shooting, stabbing, cutting or wounding of a person with the intent to "maim, disfigure, disable, or kill" that person.[16] If the person does so with malice, it is a Class 3 felony—otherwise, it is a Class 6 Felony.[17]

In April 2016, a 49-year-old HIV woman living with HIV was convicted of unlawful wounding after she bit her sister, whom prosecutors argued she was trying to infect with HIV.[18] In a 1997 case, the defendant was convicted of malicious wounding after allegedly biting a store employee and breaking his skin following a shoplifting incident. [19] In affirming his conviction, the appellate court found that the defendant's biting of the employee supported the inference that the defendant "intended to infect [him] with AIDS, a deadly disease" which satisfied the requisite statutory element of malicious intent.[20]

PLHIV can be subjected to mandatory treatment or to isolation.

The State Health Commissioner retains authority to mandate quarantine, isolation or treatment if such measures are determined necessary to "control the spread of any disease of public health importance."[21] The Commissioner also has specifically enumerated authority to impose isolation for a "communicable disease of public health significance" [22] which is explicitly defined as including HIV.[23]

If the Commissioner receives at least two reports or other medical evidence that a person with a communicable disease of public health significance is engaging in at-risk behavior, they may initiate an investigation.[24] At-risk behavior means a person has been informed that they are infected with a communicable disease of public health significance, is engaged in activities they know may transmit disease to others, and is not taking "appropriate precautions to protect the health of other persons.[25] Upon a finding that a person is engaged in at-risk behavior, the Commissioner may order the person to report to the local health department to receive counseling on "the etiology, effects and prevention of the specific disease of public health significance."[26]

If a person persists in at-risk behavior in spite of counseling, the Commissioner may petition the general district court of the county or city where the person lives to order that the person appear before the court to determine "whether isolation is necessary to protect the public health."[27] If it is not possible to conveniently bring the person before the court, a temporary detention order may be issued—

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[16] VA. CODE ANN. § 18.2-51 (2016).
[17] *Id.*
[18] Jonathan Edwards, *Woman with HIV convicted of biting sister during fight*, PILOTONLINE.COM, April 13, 2016, *available at* http://pilotonline.com/news/local/crime/woman-with-hiv-convicted-of-biting-sister-during-fight/article_fec896f4-aa0d-5c12-8b05-e07b8df24cec.html.
[19] *Hall v. Commonwealth*, 1997 Va. App. Lexis 782, (Va. Ct. App. 1997) (not for publication).
[20] *Id.* at *2, *6.
[21] VA. CODE ANN. § 32.1-43 (2016).
[22] VA. CODE ANN. § 32.1-48.04 (2016).
[23] VA. CODE ANN. § 32.1-48.01 (2016).
[24] VA. CODE ANN. § 32.1-48.02 (A) (2016).
[25] VA. CODE ANN. § 32.1-48.01 (2016).
[26] VA. CODE ANN. § 32.1-48.02(B) (2016).
[27] VA. CODE ANN. § 32.1-48.03(A) (2016).

confinement may not occur in a jail and must not exceed 48 hours prior to a hearing.[28] Any person ordered to appear before the court must also be informed of their right to counsel and will be appointed counsel by the court if necessary.[29]

The court will issue an isolation order if it makes the following findings: 1) the person is infected with a communicable disease of public health significance; 2) the person is engaging in at-risk behavior; 3) the person has demonstrated an intentional disregard for the health of the public by engaging in behavior which has placed others at risk for infection and; 4) there is no other reasonable alternative means of reducing the risk to public health.[30] An isolation order may not exceed 120 days and may include additional requirements, such as participation in counseling.[31] A person subject to an isolation order has a right to appeal the order to the circuit court in which they reside. The appeal must be filed within 30 days of the order's issuance and is heard by the circuit court de novo.[32] An order continuing the isolation is only granted if the above conditions are met.[33] As in the initial isolation hearing, the person under restriction has a right to counsel and will be appointed counsel by the court if necessary.[34]

PLHIV and other sexually transmitted infections are subject to mandatory testing when charged with certain crimes.

After arrest or indictment, if the complaining witness requests**,** the attorney for the Commonwealth is required to request that the defendant submit to diagnostic testing for sexually transmitted infections. The attorney for the Commonwealth can also request such testing after consulting the complaining witness. In order to require a defendant to submit to mandatory testing, the defendant must be charged with (1) any crime involving sexual assault; (2) any offense against children as prohibited by §§ 18.2-361, 18.2-366, 18.2-370, and 18.2-370.1; or (3) any assault and battery. where the complaining witness was exposed to bodily fluids. If the defendant refuses to submit to testing or the competency of the person to consent to testing is at issue, the court must determine whether there is probable cause that the individual has committed a crime where transmission of a sexually transmitted infection was possible.[35]

Findings from any testing conducted cannot be used as evidence in any proceeding, civil or criminal. Any use of test results in a proceeding would constitute reversible error in any criminal case in which the results were used.

Any person who is subject to a testing order may appeal to a circuit court within 10 days of receiving notice of the order and any hearing conducted, the record shall be sealed. The order of the circuit court shall be final and unappealable.

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[28] VA. CODE ANN. § 32.1-48.03(B) (2016).
[29] VA. CODE ANN. § 32.1-48.03(C) (2016).
[30] VA. CODE ANN. § 32.1-48.04(B) (2016).
[31] VA. CODE ANN. § 32.1-48.04(C) (2016).
[32] VA. CODE ANN. § 32.1-48.04(D) (2016).
[33] *Id*.
[34] *Id*.
[35] VA. CODE ANN. § 18.2-61.1(B) (2023).

A person who violates an order of the Health Commissioner may be punished.

Anyone who willfully violates, refuses, fails or neglects to comply with an order of the Health Commissioner is guilty of a Class 1 misdemeanor unless otherwise specified, punishable by up to a year in jail and/or a fine of up to $2,500.[36] A person refusing to comply with such an order may be compelled to obey through a proceeding in a court that may issue an injunction, mandamus, or other appropriate remedy.[37] Refusing to obey an injunction, mandamus or other remedy issued by a court can subject a defendant to a civil penalty of up to $25,000.

A person with an STI may be compelled to undergo mandatory examination or treatment.

A local health officer may direct a person infected with venereal disease—defined as syphilis, gonorrhea, chancroid, granuloma inguinale, lymphogranuloma venereum and any other sexually transmittable disease determined by the Board to be dangerous to the public health[38]—to undergo examination, testing, or treatment.[39] Should a person infected with one of these conditions refuse to submit to examination, testing, treatment, or to continue treatment until cured, the health officer may petition an appropriate circuit court for an order compelling compliance.[40] Willful failure to obey such an order is punishable as for contempt of court.[41]

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.*

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[36] VA. CODE ANN. §§ 32.1-27(A), 18.2-11(a) (2016).
[37] VA. CODE ANN. §§ 32.1-27(B) (2016).
[38] VA. CODE ANN. § 32.1-55 (2016).
[39] VA. CODE ANN. § 32.1-57(A) (2016).
[40] VA. CODE ANN. § 32.1-57(B) (2016)
[41] *Id*.

Code of Virginia

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 18.2, CRIMES AND OFFENSES GENERALLY

VA. CODE ANN. § 18.2-67.4:1 (2021) **

Infected sexual battery; penalty

A. Any person who, is diagnosed with a sexually transmitted infection and engages in sexual behavior that poses a substantial risk of transmission to another person with the intent to transmit the infection to that person and transmits such infection to that person is guilty of a Class 6 felony.

B. Nothing in this section shall prevent the prosecution of any other crime against persons under Chapter 4 (§ 18.2-30 et seq.)

VA. CODE ANN. § 18.2-10 (2016) **

Punishment for conviction of felony; penalty

The authorized punishments for conviction of a felony are:

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than $2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

> For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of incarceration of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of probation pursuant to Section 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.
>
> For a felony offense prohibiting proximity to children as described in subsection A of Section 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in that section in addition to any other penalty provided by law.

VA. CODE ANN. § 18.2-11 (2016) **

Punishment for conviction of misdemeanor

The authorized punishments for conviction of a misdemeanor are:

(a) For Class 1 misdemeanor, confinement in jail for not more than twelve months and a fine of not more than $2,500, either or both.

VA. CODE ANN. §18.2-346.1 (2016)

Testing of convicted prostitutes and injection drugs users for sexually transmitted infection.

A. As soon as practicable following conviction of any person for violation of § 18.2-346 or 18.2-361, any violation of Article 1 (§ 18.2-247 et seq.) or 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 involving the possession, sale, or use of a controlled substance in a form amenable to intravenous use; or the possession, sale, or use of hypodermic syringes, needles, or other objects designed or intended for use in parenterally injecting controlled substances into the human body, such person shall be provided the option to submit to testing for infection a sexually transmitted infection. The convicted person shall receive counseling from personnel of the Department of Health concerning (i) the meaning of the test, (ii) acquired immunodeficiency syndrome and hepatitis C, and (iii) sexually transmitted infections.

B. Any tests performed pursuant to this section shall be consistent with current Centers for Disease Control and Prevention recommendations. The results of such test for a sexually transmitted infection shall be confidential as provided in § 32.1-36.1 and shall be disclosed to the person who is the subject of the test and to the Department of Health as required by § 32.1-36. The Department shall conduct surveillance and investigation in accordance with the requirements of § 32.1-39.

C. Upon receiving a report of a positive test for hepatitis C, the State Health Commissioner may share protected health information relating to such positive test with relevant sheriffs' offices, the state police, local police departments, adult or youth correctional facilities, salaried or volunteer firefighters, paramedics or emergency medical technicians, officers of the court, and regional or local jails (i) to the extent necessary to advise exposed individuals of the risk of infection and to enable exposed individuals to seek appropriate testing and treatment and (ii) as may be needed to prevent and control disease and is deemed necessary to prevent serious harm and serious threats to the health and safety of individuals and the public.

The disclosed protected health information shall be held confidential; no person to whom such information is disclosed shall redisclose or otherwise reveal the protected health information without first obtaining the specific authorization from the individual who was the subject of the test for such redisclosure.

Such protected health information shall only be used to protect the health and safety of individuals and the public in conformance with the regulations concerning patient privacy promulgated by the federal Department of Health and Human Services, as such regulations may be amended.

D. The results of the tests shall not be admissible in any criminal proceeding. The cost of the tests shall be paid by the Commonwealth and taxed as part of the cost of such criminal proceedings.

TITLE 32.1, HEALTH

VA. CODE ANN. § 32.1-289.2 (2016) **

Sale or purchase of parts prohibited; penalty

A. With the exception of hair, ova, blood, and other self-replicating body fluids, it shall be unlawful for any person to sell, to offer to sell, to buy, to offer to buy, or to procure through purchase any natural body part for any reason including, but not limited to, medical and scientific uses such as transplantation, implantation, infusion, or injection. Any person engaging in any of these prohibited activities shall be guilty of a Class 4 felony.

B. Nothing in this section shall prohibit the reimbursement of reasonable expenses associated with the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

C**.** This section shall not be construed to prohibit the donation of any organs, tissues, or any natural body part, knowing that the donor is, or was, infected with a sexually transmitted infection, for use in medical or scientific research.

D. Notwithstanding the provisions of subsection A, this section shall not prohibit the donation or acquisition of organs for transplantation, provided that (i) the recipient of such organ is informed that such organ is infected with human immunodeficiency virus and, following such notice, consents to the receipt of such organ and (ii) acquisition and transplantation of such organ is in compliance with the provisions of the federal HIV Organ Policy Equity Act, 42 U.S.C. § 274f-5.

TITLE 32.1, HEALTH

VA. CODE ANN. § 32.1-27 (2016) **

Penalties, injunctions, civil penalties and charges for violations

A. Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner or any provision of this title shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

B. Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or Commissioner or any provision of this title may be compelled in a proceeding instituted in an appropriate court by the Board or Commissioner to obey such regulation, order or provision of this title and to comply therewith by injunction, mandamus, or other appropriate remedy or, pursuant to § 32.1-27.1, imposition of a civil penalty or appointment of a receiver.

C. Without limiting the remedies which may be obtained in subsection B of this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection B shall be subject, in the discretion of the court, to a civil penalty not to exceed $ 25,000 for each violation, which shall be paid to the general fund, except that civil penalties for environmental pollution shall be paid into the state treasury and credited to the Water Supply Assistance Grant Fund created pursuant to § 32.1-171.2. Each day of violation shall constitute a separate offense.

D. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or Commissioner or any provision of this title, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in § 32.1-27.1 and subsection C of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under § 32.1-27.1 and subsection C of this section. When civil charges are based upon environmental pollution, the civil charges shall be paid into the state treasury and credited to the Water Supply Assistance Grant Fund created pursuant to § 32.1-171.2.

VA. CODE ANN. § 32.1-41 (2016)

Anonymity of patients and practitioners to be preserved in use of medical records

The Commissioner or his designee shall preserve the anonymity of each patient and practitioner of the healing arts whose records are examined pursuant to § 32.1-40 except that the Commissioner, in his sole discretion, may divulge the identity of such patients and practitioners if pertinent to an investigation, research or study. Any person to whom such identities are divulged shall preserve their anonymity.

VA. CODE ANN. § 32.1-43 (2016)

Authority of State Health Commissioner to require quarantine, etc.

The State Health Commissioner shall have the authority to require quarantine, isolation, immunization, decontamination, or treatment of any individual or group of individuals when he determines any such measure to be necessary to control the spread of any disease of public health importance and the authority to issue orders of isolation pursuant to Article 3.01 (§ 32.1-48.01 et seq.) of this chapter and orders of quarantine and orders of isolation under exceptional circumstances involving any communicable disease of public health threat pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of this chapter.

VA. CODE ANN. § 32.1-48.01 (2016)

Definitions

As used in this article, unless the context requires a different meaning:

"Appropriate precautions" means those specific measures which have been demonstrated by current scientific evidence to assist in preventing transmission of a communicable disease of public health significance. Appropriate precautions will vary according to the disease.

"At-risk behavior" means engaging in acts which a person, who has been informed that he is infected with a communicable disease of public health significance, knows may infect other persons without taking appropriate precautions to protect the health of the other persons.

"Communicable disease of public health significance" means an illness of public health significance, as determined by the State Health Commissioner, caused by a specific or suspected infectious agent that may be transmitted directly or indirectly from one individual to another.

"Communicable disease of public health significance" shall include, but may not be limited to, infections caused by human immunodeficiency viruses, blood-borne pathogens, and tubercle bacillus. The State Health Commissioner may determine that diseases caused by other pathogens constitute communicable diseases of public health significance. Further, "a communicable disease of public health significance" shall become a "communicable disease of public health threat" upon the finding of the State Health Commissioner of exceptional circumstances pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of this chapter.

VA. CODE ANN. § 32.1-48.02 (2016)

Investigations of verified reports or medical evidence; counseling; outpatient and emergency treatment orders; custody upon emergency order; application of article.

A. Upon receiving at least two verified reports or upon receiving medical evidence that any person who is reputed to know that he is infected with a communicable disease of public health significance is engaging in at-risk behavior, the Commissioner or his designee may conduct an investigation through an examination of the records of the Department and other medical records to determine the disease status of the individual and that there is cause to believe he is engaging in at-risk behavior.

B. If the investigation indicates that the person has a communicable disease of public health significance caused by a non-airborne microorganism and that there is cause to believe he is engaging in at-risk behavior, the Commissioner or his designee may issue an order for such person to report to the local or district health department in the jurisdiction in which he resides to receive counseling on the etiology, effects and prevention of the specific disease of public health significance. The person conducting the counseling shall prepare and submit a report to the Commissioner or his designee on the counseling session or sessions in which he shall document that the person so counseled has been informed about the acts that constitute at-risk behavior, appropriate precautions, and the need to use appropriate precautions. The counselor shall also report any statements indicating the intentions or understanding of the person so counseled.

VA. CODE ANN. § 32.1-48.03 (2016)

Petition or hearing; temporary detention

A. Upon receiving a verified report or upon receiving medical evidence that any person who has been counseled pursuant to § 32.1-48.02 has continued to engage in at-risk behavior, the Commissioner or his designee may petition the general district court of the county or city in which such person resides to order the person to appear before the court to determine whether isolation is necessary to protect the public health from the risk of infection with a communicable disease of public health significance.

B. If such person cannot be conveniently brought before the court, the court may issue an order of temporary detention. The officer executing the order of temporary detention shall order such person to remain confined in his home or another's residence or in some convenient and willing institution or other willing place for a period not to exceed 48 hours prior to a hearing. An electronic device may be used to enforce such detention in the person's home or another's residence. The institution or other place of temporary detention shall not include a jail or other place of confinement for persons charged with criminal offenses.

> If the specified 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, such person may be detained until the next day which is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

C. Any person ordered to appear before the court pursuant to this section shall be informed of his right to be represented by counsel. The court shall provide the person with reasonable opportunity to employ counsel at his own expense, if so requested. If the person is not represented by counsel, the court shall appoint an attorney-at-law to represent him. Counsel so appointed shall be paid a fee of $ 75 and his necessary expenses.

VA. CODE ANN. § 32.1-48.04 (2016)

Isolation hearing; conditions; order for isolation; right to appeal

A. The isolation hearing shall be held within 48 hours of the execution of any temporary detention order issued or, if the 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the isolation hearing shall be the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

> Prior to the hearing, the court shall fully inform the person who is infected with the communicable disease of public health significance of the basis for his detention, if any, the basis upon which he may be isolated, and the right of appeal of its decision.

B. An order for isolation in the person's home or another's residence or an institution or other place, including a jail when no other reasonable alternative is available, may be issued upon a finding by the court that the following conditions are met:

> 1. The person is infected with a communicable disease of public health significance.
>
> 2. The person is engaging in at-risk behavior.
>
> 3. The person has demonstrated an intentional disregard for the health of the public by engaging in behavior which has placed others at risk for infection with the communicable disease of public health significance.
>
> 4. There is no other reasonable alternative means of reducing the risk to public health.

C. Any order for isolation in the person's home or another's residence or an institution or other place shall be valid for no more than 120 days, or for a shorter period of time if the Commissioner or his designee, or the court upon petition, determines that the person no longer poses a substantial threat to the health of others. Orders for isolation in the person's home or another's residence may be enforced through the use of electronic devices. Orders for isolation may include additional requirements such as participation in counseling or education programs. The court may, upon finding that the person no longer poses a substantial threat to the health of others, issue an order solely for participation in counseling or educational programs.

D. Isolation orders shall not be renewed without affording the person all rights conferred in this article.

> Any person under an isolation order pursuant to this section shall have the right to appeal such order to the circuit court in the jurisdiction in which he resides. Such appeal shall be filed within 30 days from the date of the order. Notwithstanding the provisions of § 19.2-241 relating to the time within which the court shall set criminal cases for trial, any appeal of an isolation order shall be given priority over all other pending matters before the court, except those matters under appeal pursuant to § 37.2-821, and shall be heard as soon possible by the court. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court.
>
> The appeal shall be heard de novo. An order continuing the isolation shall only be entered if the conditions set forth in subsection B are met at the time the appeal is heard.

If the person under an isolation order is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. Counsel so appointed shall be paid a fee of $ 150 and his necessary expenses. The order of the court from which the appeal is taken shall be defended by the attorney for the Commonwealth.

VA. CODE ANN. § 32.1-55 (2016)

Definition

As used in this article, "venereal disease" includes syphilis, gonorrhea, chancroid, granuloma inguinale, lymphogranuloma venereum and any other sexually transmittable disease determined by the Board to be dangerous to the public health.

VA. CODE ANN. § 32.1-57 (2016)

Examination, testing and treatment; failure to comply with order of examination

A. A local health director may require any person suspected of being infected with any venereal disease to submit to examination, testing and treatment if necessary.

B. If any such person refuses to submit to an examination, testing or treatment or to continue treatment until found to be cured by proper test, the local health director may apply to the appropriate circuit court for an order compelling such examination, testing or treatment. Any person willfully failing to comply with such order shall be punishable as for contempt of court

C. If a person infected with venereal disease is required by the local health director to receive treatment therefor and such person receives such treatment from the local health department, no fee shall be charged.

VA. CODE ANN. §32.1-58 (2016)

Persons convicted of certain crimes to be examined, tested, and treated

Each person convicted of a violation of § 18.2-346 or § 18.2-361 shall be examined and tested for venereal disease and treated if necessary.

Washington

Analysis[1]

A person may face felony prosecution if they intentionally transmit HIV to a child or a vulnerable adult.

Following major amendments to its HIV criminal laws, Washington's criminal assault statute applies only to persons who transmit HIV to a child or a vulnerable adult[2] with the intent to cause harm.[3] This offense is a Class A felony, with a maximum punishment of life imprisonment and a fine of $50,000.[4] Vulnerable adults include those 60 years old or older who have "the functional, mental or physical inability" to care for themselves or adults of any age who: have been found incapacitated under Washington law, are living with a developmental disability, are currently admitted to a long-term care facility, or are receiving home health care.[5] A "child" is any minor under the age of 18.[6]

This assault offense, while HIV-specific, largely overlaps with conduct that would also be criminal if committed by an individual not living with HIV. Insofar as the offense targets sexual transmission, the conduct would often constitute an existing sex offense under Washington law, as it would entail sex with a partner unable to consent.[7] The assault offense is not specifically limited to sexual transmission, however; under its terms, it could be applied to transmission by any means.

Prior to 2020 reforms, to "administer" or "expose" any person to poison, HIV, or "any other destructive or noxious substance" amounted to first-degree assault.[8] After the reforms, this provision of the assault

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[1] Washington's HIV criminalization statutes were revised effective June 11, 2020 following the passage of 2020's Engrossed Substitute House Bill (ESHB) 1551. Subsequent to the passage of the bill, the Washington Board of Health adopted amendments to Washington Administrative Code (WAC) chapter 246-101 (Notifiable Conditions) in March 2021 and amendments to chapter 246-100 (Communicable and Certain Other Diseases) in February 2022 to make them consistent with ESHB 1551.

[2] WASH. REV. CODE § 9A.36.011(1)(b) (2023).

[3] WASH. REV. CODE § 9A.36.011(1) (2020).

[4] WASH. REV. CODE § 9A.20.021(1)(a) (2016).

[5] WASH. REV. CODE § 9A.44.010 (16) (2007) (definition of "frail elder or vulnerable adult"). *See also* WASH. REV. CODE § 74.34.020 (22)(a–g) (2020) (definition of "vulnerable adult" for purposes of protection orders).

[6] WASH. REV. CODE § 9.32.010(2) (2023)

[7] *See, e.g.*, WASH. REV. CODE § 9A.44.050 (1)(b–c) (2023) (defining rape in the second degree to include sexual intercourse with someone "incapable of consent by reason of being physically helpless or mentally incapacitated" or someone with a developmental disability under certain circumstances); WASH. REV. CODE § 9A.44.073(1) (1988) (defining rape of a child in the first degree as sexual intercourse with a child under 12); WASH. REV. CODE § 9A.44.076(1) (1988) (defining rape of a child in the second degree as sexual intercourse with a child aged 12 or 13); WASH. REV. CODE § 9A.44.079(1) (1988) (defining rape of a child in the third degree as sexual intercourse with a child aged 14 or 15); WASH. REV. CODE § 9A.44.093(1) (2009) (defining sexual misconduct with a minor in the first degree as sexual intercourse with a child aged 16 or 17 under certain circumstances).

[8] WASH. REV. CODE § 9A.36.011(1)(b) (repealed 2020).

statute no longer includes HIV,[9] while the prohibition on transmitting HIV to a child or vulnerable adult was added in a new subsection.[10] The new offense is a significantly narrower one, as the prior offense did not require actual transmission, and applied to exposing any person regardless of intent.[11] Prosecutors must now prove "intent to inflict great bodily harm,"[12] in addition to actual transmission.[13] In past Washington state cases, courts inferred intent to harm when accused persons knew their status, failed to disclose it, and failed to take adequate precautions to prevent exposure.[14] It is not known whether the same interpretation will apply to the new offense's intent requirement, as the authors are not aware of any prosecutions for transmitting HIV to a child or vulnerable adult.

There are no statutory defenses to the HIV-specific assault provision for those who do take precautions to prevent transmission or disclose their status. The use of a condom should logically negate intent to inflict serious bodily harm, but case law regarding the prior offense was inconclusive on this question.[15] The issue is less likely to arise under the new law, since the use of a condom would make the now-required transmission unlikely. Regarding disclosure, it is doubtful that courts would consider disclosure of status a defense when the alleged victim is a minor or a vulnerable adult. If a person cannot consent to sex, they likely cannot consent to assuming risk following disclosure. Under the prior, broader criminal statute, Washington courts left open the possibility that knowing consent, shown via disclosure, could be a defense.[16]

If a person is convicted of intentionally transmitting HIV to a child or vulnerable adult via sexual exposure, they also could be required to register as a sex offender under a law that classifies first-degree assault as a sex offense where there is "a finding of sexual motivation."[17]

A person may face misdemeanor prosecution if they transmit HIV to any person via sex.

When Washington reformed its HIV-related criminal laws in 2020, the state moved its general HIV-specific exposure law from the criminal code to the public health code. The new public health provision penalizes only intentional sexual transmission. Under this provision, it is a misdemeanor for a person living with HIV to have sexual intercourse if: they are aware of their status, they have been counseled by a health care provider or public health professional on the risk of transmitting HIV to others, a partner does not know the person is living with HIV, and the person intends to transmit HIV to the

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[9] WASH. REV. CODE § 9A.36.011(1)(c) (2023).

[10] WASH. REV. CODE § 9A.36.011(1)(b) (2023).

[11] WASH. REV. CODE § 9A.36.011(1)(b) (repealed 2020).

[12] WASH. REV. CODE § 9A.36.011(1) (2023).

[13] WASH. REV. CODE § 9A.36.011(1)(b) (2023).

[14] *See State v. Stark,* 832 P.2d 109, 114–15 (Wash. Ct. App. 1992) (intent to harm inferred even on counts involving sexual intercourse with "coitus interruptus"); *State v. Whitfield*, 134 P.3d 1203, 1213–14 (Wash. Ct. App. 2006) (court also found defendant misrepresented status to partners and was aware of routes of transmission).

[15] *See Stark,* 832 P.2d at 115; *Whitfield*, 134 P.3d at 1214; *State v. Ferguson*, 1999 Wash App. LEXIS 1905, *20–21 (Wash Ct. App. 1999) (unprotected sex acts in all three cases affirming convictions).

[16] *Ferguson*, 1999 Wash App. LEXIS 1905, at *20–21 (guilt determined by *failure* to disclose all relevant facts).

[17] WASH. REV. CODE § 9.94A.507(1)(a)(ii) (2023). Registered sex offenders who have committed a Class A, Class B, or Class C felony are required to register for life, fifteen years and ten years, respectively. WASH. REV. CODE § 9A.44.130 (2023).

partner.[18] Importantly, it is an affirmative defense if transmission did not occur, or if the person took or attempted to take measures to prevent transmission, such as by using a condom.[19]

Generally, this offense is a simple misdemeanor[20] with a maximum penalty of 90 days in jail and/or a $1000 fine.[21] It is a gross misdemeanor to intentionally transmit HIV if a person knowingly misrepresents their status to a partner.[22] If the prosecution shows misrepresentation, the offense is punishable by up to 364 days in jail and/or a $5000 fine.[23] The same defenses—that transmission did not occur or that practical means to prevent transmission were utilized— are available to a person charged with the gross misdemeanor offense.

Previously, a person convicted of first-degree assault for exposing any person to HIV could be subject to sex offender registration.[24] This is not a requirement for someone convicted of a simple or gross misdemeanor for transmission of HIV under the public health code.[25]

Upon conviction of multiple offenses, sentences for each offense can be imposed consecutively, resulting in lengthy incarceration.

In Washington, Class A felonies such as first-degree assault, which includes intentionally transmitting HIV to a child or vulnerable adult, are punished with a maximum penalty of life in prison and a $50,000 fine.[26] Prison sentences for "serious violent offenses," which include first-degree assault, must run consecutively, meaning that sentences for every offense must be served one after the other, rather than at the same time (or "concurrently").[27]

In *Whitfield*, a case prosecuted under Washington's former HIV-specific assault law, the trial court interpreted multiple incidents of sexual activity with one partner as a single offense, but activity with each of 17 partners resulted in convictions for 17 Class A felony counts and 17 consecutive sentences, totaling 178 years.[28] The Court of Appeals rejected the defendant's argument that this amounted to cruel and unusual punishment.[29] This same requirement for consecutive sentencing now applies to those convicted of first-degree assault for intentional transmission of HIV to a child or vulnerable adult.

HIV status may be a factor in sentencing for non-HIV-specific offenses.

In *Matter of Farmer*, the Washington Supreme Court upheld a 90-month sentence for a person convicted of sexual exploitation of a minor and patronizing a juvenile prostitute.[30] This lengthy sentence

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[18] WASH. REV. CODE § 70.24.027(1) (2023).
[19] WASH. REV. CODE § 70.24.027(2) (2023).
[20] WASH. REV. CODE § 70.24.027(3)(a) (2023).
[21] WASH. REV. CODE § 9A.20.021(3) (2023).
[22] WASH. REV. CODE § 70.24.027(3)(b) (2023).
[23] WASH. REV. CODE § 9A.20.021(2) (2023).
[24] WASH. REV. CODE § 9.94A.507(1)(a)(ii) (2023).
[25] WASH. REV. CODE § 70.24.027(3)(c) (2023).
[26] WASH. REV. CODE § 9A.20.021(1)(a) (2023).
[27] WASH. REV. CODE §§ 9.94A.589(1)(b) (2023).
[28] *Whitfield*, 134 P.3d at 1209.
[29] *Id*. at 1216–17.
[30] 835 P.2d 219, 220–21 (Wash. 1992) (per curiam).

was due to the trial court's findings that the defendant knew or believed he had HIV at the time of the crime in question, that he knew or should have known he might have transmitted the virus to the two minors concerned, and that this constituted "deliberate, cruel, and malicious conduct" that justified an exceptional sentence.[31] Washington's 2020 reforms do not prevent this outcome, which was based on determinations left to the discretion of the sentencing judge (rather than a specific basis for an enhancement provided by statutory law).

Persons with an STI, including HIV, can be subject to mandatory examination, testing, counseling or medical treatment.

Public health officials may investigate those they reasonably believe (1) have an STI and (2) are engaging in behavior that endangers the public health.[32] If an investigation determines that a person's behavior is indeed endangering public health, officials must document efforts to remedy the situation, including efforts to obtain the person's voluntary cooperation. If these efforts "fail to protect the public health," officials may order the person with an STI to submit to a medical examination, testing, or treatment.[33] Alternatively, officials may issue an order requiring the person to cease and desist specific conduct that "endangers the public health."[34]

Conduct that "endangers public health" is defined in Washington's administrative code. It includes anal, oral, or vaginal intercourse involving a person with any STI, including HIV or hepatitis B, without a latex or plastic condom resulting in introduction of semen or vaginal fluids to mucous membranes or an interruption of the epidermis.[35] It also includes the sharing of injection equipment or the donation or sale of blood, blood products, body tissues, or semen by a person living with HIV or hepatitis B.[36] However, the administrative code notes that the above actions are not considered behavior that "endangers public health if "practical means to prevent transmission were taken."[37]

State and local health officers may issue written orders to cease and desist specified behaviors under RCW 70.24.024 but are required to list specified behaviors which must be reasonably related to the purpose or the restriction or restrictions and may not exceed 12 months.[38] Any order issued, whether for examination or to cease and desist engaging in particular conduct, must state the reasons for the order and what the person is ordered to refrain from doing.[39] A person who chooses to contest an order is entitled to file an appeal and have a judicial hearing on the order's enforceability in a superior court, which must be held within 72 hours of the person receiving notice of the order.[40] The person has a right to appear at the hearing or to have an attorney appear on their behalf, at public expense if necessary.[41] At the hearing, public health officials must prove by clear and convincing evidence that the required

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[31] *Id.* at 220.
[32] WASH. REV. CODE § 70.24.024(2)(a)(i) (2023).
[33] WASH. REV. CODE § 70.24.024(4)(a)(i) (2023).
[34] WASH. REV. CODE § 70.24.024(4)(a)(ii) (2023).
[35] WASH. ADMIN. CODE § 246-100-203 (2)(a) (2023).
[36] WASH. ADMIN. CODE § 246-100-203 (2)(b) (2023).
[37] WASH. ADMIN. CODE § 246-100-203 (2)(c) (2023).
[38] WASH. ADMIN. CODE § 246-100-203 (6) (2023).
[39] WASH. REV. CODE § 70.24.024 (5)(a) 2023).
[40] *Id.*
[41] WASH. REV. CODE § 70.24.024 (5)(c) 2023).

grounds for the order exist and that the terms imposed are the least restrictive necessary to protect public health.[42]

A person who violates a lawful order issued by a public health official may be charged with a gross misdemeanor and punished with confinement until they comply with the order or the order is terminated, but for no longer than 364 days.[43] A court may alternatively impose probation, with the condition that the person complies with the order, for a maximum period determined by the length of the order.[44] The court is required to revoke probation and reinstate confinement if the person violates the terms of the order during probation.[45]

In September 2014, public health officials sought a court order requiring a PLHIV to submit to treatment and counseling sessions.[46] The man had already been served with two cease and desist orders and had not complied.[47] King County public health officials had reportedly last sought such a court order against a PLHIV in 1993.[48]

PLHIV may be subject to detention.

A public health official may bring an action in superior court to detain an individual if the official: has exhausted the measures described above, such as through a cease and desist order; enlisted court enforcement of orders, if appropriate;[49] and still "knows or has reason to believe, because of medical information," that a person has an STI and "continues to engage in behaviors that present an imminent danger to the public health."[50] The public health official must request the prosecuting attorney file the action in the superior court.[51]

Behaviors that present an imminent danger to public health are defined as the following, when performed by a person with a laboratory-confirmed HIV infection who has received HIV post-test counseling and who did not inform the persons with whom the activities occurred of their HIV status: 1) anal or vaginal intercourse without a latex condom; 2) shared use of blood-contaminated injection equipment; or 3) donating or selling HIV-infected blood, blood products, or semen.[52]

A person subject to a detention order may be taken into custody for up to 72 hours.[53] A detention order must be in writing and state why the detention is lawful and the terms of the order, including the evidence relied upon to establish proof of infection and dangerous behavior.[54] If the person refuses to

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[42] *Id.*
[43] WASH. REV. CODE § 70.24.025 (2023).
[44] *Id.*
[45] *Id.*
[46] Levi Pulkkinen, *Seattle-area HIV-positive man who won't stop infecting others could face jail,* SEATTLE PI , Sept. 9, 2014, *available at* http://www.seattlepi.com/default/article/Seattle-area-HIV-positive-man-who-won-t-stop-5745044.php. *See also Stark,* 832 P.2d at 110 (cease and desist order issued before criminal prosecution).
[47] *Id.*
[48] *Id.*
[49] WASH. ADMIN. CODE §§ 246-100-203 (5)(d) (2023).
[50] WASH. REV. CODE § 70.24.034 (1) (2023).
[51] *Id.*
[52] WASH. ADMIN. CODE § 246-100-203 (2)(a) (2023).
[53] WASH. REV. CODE § 70.24.034 (2) (2023).
[54] *Id.*

comply or contests the order, they are entitled to a closed and confidential hearing within 48 hours of receiving the order.[55] They have a right to appear at the hearing or have an attorney appear on their behalf, at public expense if necessary.[56] If the order includes detention for a period of 14 days or more, the person is entitled to a trial by jury upon request.[57]

Public health officials must prove by clear and convincing evidence that the grounds for the issuance of the order exist.[58] Any order for detention issued by the superior court must impose terms and conditions no more restrictive than necessary to protect the public health.[59] A person who violates a lawful order issued by a public health official may be charged with a gross misdemeanor[60] and punished with up to 364 days in jail and/or a $5000 fine.[61]

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.*

[55] WASH. REV. CODE §§ 70.24.034 (2)–(3), (5) (2023).
[56] WASH. REV. CODE § 70.24.034 (3) (2023).
[57] *Id.*
[58] WASH. REV. CODE § 70.24.034 (4) (2023).
[59] WASH. REV. CODE § 70.24.034 (6) (2023).
[60] WASH. REV. CODE § 70.24.080 (2023).
[61] WASH. REV. CODE § 9A.20.021 (2023).

Washington Revised Code

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 9A, WASHINGTON CRIMINAL CODE

WASH. REV. CODE § 9A.36.011 (2023) **

Assault in the first degree

(1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm:

(a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death;

(b) Transmits HIV to a child or vulnerable adult; or

(c) Administers, exposes, or transmits to or causes to be taken by another, poison or any other destructive or noxious substance;

or

(d) Assaults another and inflicts great bodily harm.

(2) Assault in the first degree is a class A felony.

WASH. REV. CODE § 9A.20.021 (2023) **

Maximum sentences for crimes committed July 1, 1984 and after

(1) Felony. Unless a different maximum sentence for a classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine.

(2) Gross misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

WASH. REV. CODE § 9A.44.010 (2023)

Definitions

(4) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" also includes a person who has been placed under a guardianship under RCW **11.130.265** or a conservatorship under RCW **11.130.360**, a person over eighteen years of age who has a developmental disability under chapter **71A.10** RCW, a person admitted to a long-term care facility that is licensed or required to be licensed under chapter **18.20**, 18.51, 72.36, or **70.128** RCW, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed under chapter **70.127** RCW.

TITLE 9, CRIMES AND PUNISHMENTS

WASH. REV. CODE § 9.94A.507 (2023)

Sentencing of sex offenders

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a); or

(b) Has a prior conviction for an offense listed in *RCW 9.94A.030(31)(b), and is convicted of any sex offense other than failure to register.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3)

(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term.

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(6)

(a) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.95.420 through 9.95.435.

(b) An offender released by the board under RCW 9.95.420 is subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

WASH. REV. CODE § 9.94A.550 (2023) **

Fines

Unless otherwise provided by a statute of this state, on all sentences under this chapter the court may impose fines according to the following ranges: Class A felonies $0-50,000.

WASH. REV. CODE § 9.94A.589 (2023) **

Consecutive or Concurrent Sentences

(1)

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under this subsection (1)(b) shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection. Even if the court orders the confinement terms to run consecutively to each other, the terms of community custody shall run concurrently to each other, unless the court expressly orders the community custody terms to run consecutively to each other.

TITLE 70, PUBLIC HEALTH AND SAFETY

WASH. REV. CODE § 70.24.027 (2023) **

Intentional Transmission of HIV–Penalties

(1) It is unlawful for a person who knows that he or she has HIV to have sexual intercourse if:

(a) The person has been counseled by a health care provider or public health professional regarding the risk of transmitting HIV to others;

(b) The partner or partners exposed to HIV through sexual intercourse did not know that the person had HIV; and

(c) The person intended to transmit HIV to the partner.

(2) It is a defense to prosecution under this section if:

(a) HIV was not transmitted to the partner; or

(b) The person took or attempted to take practical means to prevent transmission of HIV.

(3)

(a) except as provided in (b) of this subsection, violation of this section is a misdemeanor punishable as provided in RCW 9A.20.021.

(b) Violation of this section is a gross misdemeanor punishable as provided in RCW 9A.20.021 if the person knowingly misrepresented his or her infection status to the partner.

(c) Violation of this section does not require registration under RCW 9A.44.130, unless the partner is a child or vulnerable adult victim.

(4) For purposes of this section, the following terms have the following meanings:

(a) “Practical means to prevent transmission” means good faith employment of an activity, behavior, method, or device that is scientifically demonstrated to measurably reduce the risk of transmitting a sexually transmitted disease, including but not limited to: The use of a condom, barrier protection, or other prophylactic device; or good faith participation in a treatment regimen prescribed by a health care provider or public health professional.

(b) “Sexual intercourse” has its ordinary meanings and occurs upon any penetration, however slight, of the vagina or anus of one person by the sexual organs of another whether such persons are of the same or another sex.

WASH. REV. CODE § 70.05.120 (2023) **

Violations–Remedies–Penalties

(4) Any person violating any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or administrative officer or state board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, is guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment.

WASH. REV. CODE § 70.24.017 (2023)

Definitions

(13) "Sexually transmitted disease" means a bacterial, viral, fungal, or parasitic infection, determined by the board by rule to be sexually transmitted, to be a threat to the public health and welfare, and to be an

infection for which a legitimate public interest will be served by providing for regulation and treatment. The board shall designate chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, trachomitis, genital human papilloma virus infection, syphilis, and human immunodeficiency virus (HIV) infection as sexually transmitted diseases, and shall consider the recommendations and classifications of the centers for disease control and other nationally recognized medical authorities in designating other diseases as sexually transmitted.

WASH. REV. CODE § 70.24.024 (2020)

Orders for examination and counseling–Investigation–Issuance of health order–Notice and hearing–Exception

(1) Subject to the provisions of this chapter, the state and local health officers or their authorized representatives may examine and counsel persons reasonably believed to be infected with or to have been exposed to a sexually transmitted disease.

(2)

(a) The state or a local health officer may conduct an investigation when:

(i) He or she knows or has reason to believe that a person in his or her jurisdiction has a sexually transmitted disease and is engaging in specified behavior that endangers the public health; and

(ii) The basis for the health officer's investigation is the officer's direct medical knowledge or reliable testimony of another who is in a position to have direct knowledge of the person's behavior.

(b) In conducting the investigation, the health officer shall evaluate the allegations, as well as the reliability and credibility of any person or persons who provided information related to the specified behavior that endangers the public health.

(3) If the state or local health officer determines upon conclusion of the investigation that the allegations are true and that the person continues to engage in behavior that endangers the public health, the health officer shall document measures taken to protect the public health, including reasonable efforts to obtain the person's voluntary cooperation.

(4)

(a) If the measures taken under subsection (3) of this section fail to protect the public health, the state or local health officer may issue a health order requiring the person to:

(i) submit to a medical examination or testing, receive counseling, or receive medical treatment, or any combination of these. If ordering a person to receive medical treatment, the health officer must provide the person with at least one additional appropriate option to choose from in the health order; or

(ii) Immediately cease and desist from specified behavior that endangers the public health by imposing such restrictions upon the person as are necessary to prevent the specified behavior that endangers the health

(b) Any restriction shall be in writing, setting forth the name of the person to be restricted, the initial period of time during which the health order shall remain effective, the terms of the restrictions, and such other conditions as may be necessary to protect the public health. Restrictions shall be imposed in the least-restrictive manner necessary to protect the public health. The period of time during which the health order is effective must be reasonably related to the purpose of the restriction or restrictions contained in the order, up to a maximum period of twelve months.

(5)

(a) Upon the issuance of a health order pursuant to subsection (4) of this section, the state or local health officer shall give written notice promptly, personally, and confidentially to the person who is the subject of the order stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order. The written notice must inform the person who is the subject of the order that, if he or she contests the order, he or she may file an appeal and appear at a judicial hearing on the enforceability of the order, to be held in superior court. The hearing shall be held within seventy-two hours of receipt of the notice, unless the person subject to the order agrees to comply.

(b) The health officer may apply to the superior court for a court order requiring the person to comply with the health order if the person fails to comply with the health order within the time period specified.

(c) At a hearing held pursuant to (a) or (b) of this subsection (5), the person subject to the health order may have an attorney appear on his or her behalf at public expense, if necessary. The burden of proof shall be on the health officer to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed therein are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the health order.

(d) If the superior court dismisses the health order, the fact that the order was issued shall be expunged from the records of the department or local department of health.

WASH. REV. CODE § 70.24.025 (2023) **

Violations of health order–Penalties

A person who violates or fails to comply with a health order issued under RCW 70.24.024 is guilty of a gross misdemeanor punishable by confinement until the order has been complied with or terminated, up to a maximum period of three hundred sixty-four days. In lieu of confinement, the court may place the defendant on probation upon condition that the defendant comply with the health order, up to the length of the health order. If the defendant is placed on probation and subsequently violates or fails to comply with the health order, the court shall revoke the probation and reinstate the original sentence of confinement.

WASH. REV. CODE § 70.24.034 (2023)

Detention–Grounds–Order–Hearing

(1) When the procedures of RCW 70.24.024 have been exhausted and the state or local public health officer, within his or her respective jurisdiction, knows or has reason to believe, because of medical information, that a person has a sexually transmitted disease and that the person continues to engage in behaviors that present an imminent danger to the public health as defined by the board by rule based upon generally accepted standards of medical and public health science, the public health officer may bring an action in superior court to detain the person in a facility designated by the board for a period of time necessary to accomplish a program of counseling and education, excluding any coercive techniques or procedures, designed to get the person to adopt nondangerous behavior. In no case may the period exceed ninety days under each order. The board shall establish, by rule, standards for counseling and education under this subsection. The public health officer shall request the prosecuting attorney to file such action in superior court. During that period, reasonable efforts will be made in a noncoercive manner to get the person to adopt nondangerous behavior.

(2) If an action is filed as outlined in subsection (1) of this section, the superior court, upon the petition of the prosecuting attorney, shall issue other appropriate court orders including, but not limited to, an order to take the person into custody immediately, for a period not to exceed seventy-two hours, and place him or her in a facility designated or approved by the board. The person who is the subject of the order shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order, and notifying the person that if he or she refuses to comply with the order he or she may appear at a hearing to review the order and that he or she may have an attorney appear on his or her behalf in the hearing at public expense, if necessary. If the person contests testing or treatment, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to subsection (3) of this section.

(3) The hearing shall be conducted no later than forty-eight hours after the receipt of the order. The person who is subject to the order has a right to be present at the hearing and may have an attorney appear on his or her behalf in the hearing, at public expense if necessary. If the order being contested includes detention for a period of fourteen days or longer, the person shall also have the right to a trial by jury upon request. Upon conclusion of the hearing or trial by jury, the court shall issue appropriate orders.

The court may continue the hearing upon the request of the person who is subject to the order for good cause shown for no more than five additional judicial days. If a trial by jury is requested, the court, upon motion, may continue the hearing for no more than ten additional judicial days. During the pendency of the continuance, the court may order that the person contesting the order remain in detention or may place terms and conditions upon the person which the court deems appropriate to protect public health.

(4) The burden of proof shall be on the state or local public health officer to show by clear and convincing evidence that grounds exist for the issuance of any court order pursuant to subsection (2) or (3) of this section. If the superior court dismisses the order, the fact that the order was issued shall be expunged from the records of the state or local department of health.

(5) Any hearing conducted by the superior court pursuant to subsection (2) or (3) of this section shall be closed and confidential unless a public hearing is requested by the person who is the subject of the

order, in which case the hearing will be conducted in open court. Unless in open hearing, any transcripts or records relating thereto shall also be confidential and may be sealed by order of the court.

(6) Any order entered by the superior court pursuant to subsection (1) or (2) of this section shall impose terms and conditions no more restrictive than necessary to protect the public health.

WASH. REV. CODE § 70.24.080 (2023) **

Penalty

Except as provided in RCW 70.24.025 and 70.024.027, any person who violates any of the provisions of this chapter or any rule adopted by the board under this chapter, or who fails or refuses to obey any lawful order issued by any state, county or municipal health officer under this chapter shall be deemed guilty of a gross misdemeanor punishable as provided under RCW 9A.20.021.

Washington Administrative Code

TITLE 246, HEALTH, DEPARTMENT OF COMMUNICABLE DISEASES

WASH. ADMIN. CODE § 246-100-011 (2023)

Definitions

(26) "Sexually transmitted infection (STI)" or "sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic infection or condition which is usually transmitted through sexual contact and considered to be a threat to public health and welfare, and to be an infection for which a legitimate public interest will be served by providing for regulation and treatments, including:

(a) Chancroid;

(b) Chlamydia trachomatis infection;

(c) Genital herpes simplex;

(d) Genital human papilloma virus infection;

(e) Gonorrhea;

(f) Granuloma inguinale;

(g) Hepatitis B infection;

(h) Human immunodeficiency virus infection (HIV);

(i) Lymphogranuloma venereum; and

(j) Syphilis.

WASH. ADMIN. CODE §246-100-203 (2023)

Sexually transmitted infections–Health officer orders

(1) When a state or local health officer within their jurisdiction, concludes an investigation and determines that a person has an STI, their behavior occurred during an infectious period and was sufficient to transmit infection, and continues to engage in specified behavior that endangers the public health despite reasonable efforts to obtain the person's voluntary cooperation, the state or local health officer may, in accordance with RCW **70.24.024**, issue orders requiring a person to do one or more of the following:

(a) Submit to medical examination or testing;

(b) Receive counseling;

(c) Receive medical treatment; or

(d) Cease and desist specific behavior endangering the public health.

(2) For the purposes of RCW **70.24.024** and this section, "behavior that endangers the public health" means:

(a) For all sexually transmitted infections, anal, oral, or vaginal intercourse without a latex or plastic condom resulting in introduction of semen or vaginal fluids to mucous membranes or an interruption of the epidermis.

(b) For HIV and Hepatitis B, the following behaviors that result in the introduction of blood, semen or vaginal fluids to mucous membranes:

(i) Anal, oral, or vaginal intercourse without a latex or plastic condom;

(ii) Sharing of injection equipment;

(iii) Knowingly donating or selling blood, blood products, body tissues, or semen; or

(iv) Any combination of these.

(c) This section does not apply when practical means to prevent transmission were taken.

(3) State and local health officers and their authorized representatives may issue written orders for medical examination, testing, counseling, or cessation of behavior that endangers public health under RCW **70.24.024**, only after:

(a) All other efforts to protect public health have failed, including reasonable efforts to obtain the voluntary cooperation of the person to be affected by the order; and

(b) They have sufficient evidence to "reasonably believe" the person to be affected by the order:

(i) Has a sexually transmitted infection; and

(ii) Is knowingly engaging in a pattern of "behavior that endangers the public health"; and

(c) They have investigated and reasonably confirmed the occurrence of this pattern of behaviors by:

(i) Interviewing sources to assess their credibility and accuracy; and

(ii) Interviewing the person to be affected by the order; and

(d) They have incorporated all information required in RCW 70.24.024 in a written order.

(4) State and local health officers and their authorized representatives may issue written orders for treatment under RCW 70.24.024 only after laboratory test results or direct observation of clinical signs or assessment of clinical data by a health care provider confirm the person has, or is likely to have, a sexually transmitted infection.

(5) State and local health officers and their authorized representatives may issue written orders to cease and desist specified behaviors under RCW 70.24.024 only after:

(a) They have determined the person to be affected by the order is engaging in "behavior that endangers the public health"; and

(b) Laboratory test results, or direct observation of clinical signs or assessment of clinical data by a health care provider, confirm the person has, or is likely to have, a sexually transmitted infection; and

(c) They have exhausted procedures described in subsection (1) of this section; and

(d) They have enlisted, if appropriate, court enforcement of the orders described in (c) and (d) of this subsection.

(6) Written orders to cease and desist specified behaviors must be reasonably related to the purpose or the restriction or restrictions for a period of time not to exceed 12 months provided all requirements of RCW 70.24.024 regarding notification, confidentiality, right to a judicial hearing, and right to counsel are met.

WASH. ADMIN. CODE §246-100-2031 (2023)

Sexually transmitted infections—Orders and standards for detainment.

(1) When the requirements in RCW 70.24.024 have been exhausted, and the state or local public health officer, within their respective jurisdiction, knows or has reason to believe, because of medical information, that a person has a sexually transmitted disease and that the person continues to engage in behaviors that present an imminent danger to the public health, a state or local health officer within their jurisdiction may, in accordance with RCW 70.24.034, bring an action in superior court to detain a person, who continues to engage in behaviors that present an imminent danger to the public health, in a designated facility.

(2) For the purposes of detention in accordance with RCW 70.24.034 and this section, "behaviors that present an imminent danger to public health" or "BPID" means the following activities, under conditions specified below, performed by a person with a laboratory-confirmed infectious HIV infection:

(a) Anal or vaginal intercourse without a latex or plastic condom; or

(b) Shared use of injection equipment that contains blood;

(c) Donating or selling blood, blood products, or semen; and

(d) Activities described in (a) and (b) of this subsection constitute BPID only if the person with a laboratory-confirmed HIV infection is infectious and did not inform the persons with whom the activities occurred of their infectious status.

(3) A local health officer may notify the state health officer if they determine:

(a) The criteria for BPID are met by a person; and

(b) The local health officer obtained a superior court order requiring the person to comply with a cease and desist order and the person failed to comply.

(4) A state or local health officer may request the prosecuting attorney to file an action in superior court to detain a person specified in this subsection. The requesting state or local health officer or authorized representative shall:

(a) Notify the department prior to recommending the detainment setting where an individualized counseling and education plan may be carried out consistent with subsections (5), (6), and (7) of this section;

(b) Make a recommendation to the court for placement of the person consistent with subsections (5), (6), and (7) of this section; and

(c) Provide to the court an individualized plan for education and counseling consistent with subsection (6) of this section.

(5) Requirements for detainment of persons demonstrating BPID include:

(a) Sufficient number of staff, caregivers, or family members, or any combination of these to:

(i) Provide round-the-clock supervision, safety of detainee, and security;

(ii) Limit and restrict activities to prevent BPID;

(iii) Make available any medical, psychological, or nursing care when needed;

(iv) Provide access to education and counseling; and

(v) Immediately notify the state or local health officer of unauthorized absence or elopement.

(b) Sufficient equipment and facilities to provide:

(i) Meals and nourishment to meet nutritional and religious or cultural needs;

(ii) A sanitary toilet and lavatory;

(iii) A bathing facility;

(iv) Bed and clean bedding appropriate to size of detainee;

(v) A safe detention setting appropriate to chronological and developmental age of detainee; and

(vi) A private sleeping room.

(c) Sufficient access to services and programs directed toward cessation of BPID and providing:

(i) Psychological and psychiatric evaluation and counseling; and

(ii) Implementation of court-ordered plan for individualized counseling and education consistent with subsection (6) of this section.

(d) If required, provide access to facilities equipped to provide isolation or restraint, or both, in accordance with their applicable rules;

(e) Maintain a safe, secure environment free from harassment, physical danger, and sexual exploitation.

(5) Standards for an individualized counseling and education plan for a detainee include:

(a) Alignment with the detainee's personal and environmental characteristics, culture, social group, developmental age, and language;

(b) Identification of habitual and addictive behavior and relapse pattern;

(c) Identification of unique risk factors and possible cross-addiction leading to BPID;

(d) Identification of obstacles to behavior change and determination of specific objectives for desired behavior;

(e) Provision of information about acquisition and transmission of HIV;

(f) Teaching and training of individual coping skills to prevent relapse to BPID;

(g) Specific counseling for substance use disorder, if required;

(h) Identification of and assistance with access to community resources, including social services and self-help groups appropriate to provide ongoing support and maintenance of behavior change; and

(i) Designation of a person primarily responsible for counseling or education, or both, who:

(i) Has a postgraduate degree in social work, psychology, counseling, psychosocial nursing, or other allied profession; and

(ii) Completed at least one year of clinical experience after postgraduate education with a primary focus on individualized behavior change; and

(iii) Is a certified counselor under chapter **18.19** RCW;

(j) Designation and provision of a qualified counselor under chapter 246-811 WAC when the detainee is assessed to have substance use disorder.

(7) The following settings are appropriate for detainment provided a setting meets requirements in subsection (5)(a) through (e) of this section:

(a) Homes, care facilities, or treatment institutions operated or contracted by the department;

(b) Private homes, as recommended by the state or local health officer;

(c) Assisted living facilities licensed under chapter 18.20 RCW;

(d) Nursing homes licensed under chapter 18.51 RCW;

(e) Facilities licensed under chapter 71.12 RCW that provide behavioral health services, including:

(i) Psychiatric hospitals, under chapter 246-322 WAC;

(ii) Chemical dependency hospitals licensed under chapter 246-324 WAC;

(iii) Residential treatment facilities under chapter 246-337 WAC;

(f) A hospital licensed under chapter 70.41 RCW.

West Virginia

Analysis

West Virginia has a communicable disease statute that criminalizes exposure to STIs.

West Virginia's Public Health Code imposes penalties of up to $100 and 30 days in jail for knowingly exposing or infecting another person with venereal disease.[1] "Venereal disease" is not defined, but West Virginia's Sexually Transmitted Disease Program monitors HIV, chlamydia, genital herpes, hepatitis B, HPV, gonorrhea, and syphilis.[2]

W. VA. CODE ANN § 16-4-20 does not define exposure and it is not clear if disclosure of status or risk reduction measures such as the use of a condom would be relevant to prosecution. At the time of publication, the authors are not aware of a criminal prosecution of an individual on the basis of HIV or STI status in West Virginia.

West Virginia imposes mandatory HIV testing of defendants charged or convicted of sex-related offenses.

Depending on the circumstances, a court, on its own or at the request of a prosecuting attorney, may order mandatory HIV testing of a defendant and juvenile respondents charged or convicted of a sex-related offense as specified in W. Va. Code § 16-3C-2(f)(2).[3] While generally it appears that such results are confidential[4] and are utilized for the provision of counseling and contact notification, the results are provided to the prosecuting attorney, and there is no explicit limitation on their use.

Public health officials can mandate treatment for an STI and impose punitive measures for failure to comply.

Public health officials are directed to take measures that protect the public health from known or reasonably suspected cases of STI.[5]The grounds for identifying someone as a suspect case are expansive: a conviction of any charge arising out of sexual behavior, failure to report for treatment, or being identified as a sexual contact of a reported case, all constitute prima facie grounds for suspecting

[1] W. VA. CODE ANN §§ 16-4-20, 16-4-26 (2016).
[2] *Division of STD, HIV, and Hepatitis*, DEPT. OF HEALTH & HUMAN RESOURCES, *available at* http://www.dhhr.wv.gov/oeps/std-hiv-hep/Pages/default.aspx.
[3] W. VA. CSR § 64-64-4.3a-b (2016)
[4] W. VA. CODE ANN. § 16-3C-3 (2016)
[5] W. VA. CODE ANN. § 16-4-2(a)(3) (2016).

that someone is infected with disease.[6] Once a person is confirmed to have an STI, they are required to submit to treatment.If the person fails to report for treatment more than 10 days after the return date requested by a health care provider, they may be charged with a misdemeanor.[7] The failure of a person to report for treatment also authorizes a local health officer to "take any steps necessary in the matter to protect the public health, including obtaining the arrest, detention and quarantine of the patient."[8]

Public health officials have broad authority to impose isolation, quarantine or other restrictive measures on individuals known or suspected to have an STI.

If a public health officer concludes that an individual known or suspected to have an STI is conducting themselves or is about to conduct themselves in a way that will infect or expose others to infection, the health officer may issue a warrant to local law enforcement for that individual's arrest.[9] The individual may be held in jail until a hearing before the health officer, who is empowered to call witnesses in order to ascertain the facts of the case.[10] The statute does not outline any procedural safeguards for a person subject to arrest on this basis.

An individual with an STI may be held until it is shown they are already under the treatment of a physician or an examination demonstrates that they are no longer infectious.[11] Detention during this period may occur in the individual's home or in a jail[12] and any person who refuses to comply is guilty of a misdemeanor.[13] If a person has been rendered non-infectious during the course of detention, but is not cured, they must sign an agreement containing a variety of stipulations related to treatment, reporting, and refraining from any contact that could potentially expose others to disease, in order to be released.[14] Any failure to conform to these requirements is punished as a misdemeanor.[15]

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.*

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[6] W. VA. CODE ANN. § 16-4-4 (2016).
[7] W. VA. CODE ANN. § 16-4-9(c) (2016).
[8] W. VA. CODE ANN. §§ 16-4-9(d), 16-4-12 (2016).
[9] W. VA. CODE ANN. §§ 16-4-14, 16-4-15(a) (2016).
[10] W. VA. CODE ANN. § 16-4-16 (2016).
[11] *Id.*
[12] *Id.*
[13] W. VA. CODE ANN. § 16-4-21 (2016).
[14] W. VA. CODE ANN. § 16-4-17 (2016).
[15] *Id.*

Code of West Virginia

Note: *Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

CHAPTER 16, PUBLIC HEALTH

W. VA. CODE ANN. § 16-4-20 (2016) **

Communication of disease; certificate

It shall be unlawful for any person suffering with an infectious venereal disease to perform any act which exposes another person to infection with said disease, or knowingly to infect or expose another person to infection with such disease; and no physician, health officer or other person shall give any certificate showing a person to be free from a venereal disease, but such certificate shall simply state the results of tests and examinations that may have been made, and what tests were made to arrive at the results stated.

W. VA. CODE ANN. § 16-4-26 (2016) **

Offenses generally; penalties; jurisdiction of justices; complaints.

Any person violating any provision of this article, where no other punishment is provided, shall be punished by a fine of not less than ten nor more than one hundred dollars, and may in addition thereto, at the discretion of the judge or justice trying the case, be imprisoned in jail for a period of not to exceed thirty days.

W. VA. CODE ANN. § 16-3C-2 (2016)

HIV-related testing; methods for obtaining consent; billing patient health care providers

(h) Mandated testing:

> (5) When the Commissioner of the Bureau of Public Health knows or has reason to believe, because of medical or epidemiological information, that a person, including, but not limited to, a person such as an IV drug abuser, or a person who may have a sexually transmitted disease, or a person who has sexually molested, abused or assaulted another, has HIV infection and is or may be a danger to the public health, he or she may issue an order to:
>
> > (i) Require a person to be examined and tested to determine whether the person has HIV infection;
> >
> > (ii) Require a person with HIV infection to report to a qualified physician or health worker for counseling; and
> >
> > (iii) Direct a person with HIV infection to cease and desist from specified conduct which endangers the health of others.
>
> (6) If any person violates a cease and desist order issued pursuant to this section and, by virtue of that violation, the person presents a danger to the health of others, the commissioner shall apply to the circuit court of Kanawha County to enforce the cease and desist order by imposing

any restrictions upon the person that are necessary to prevent the specific conduct that endangers the health of others.

W. VA. CODE ANN. § 16-4-1 (2016)

Diseases designated as sexually transmitted

Sexually transmitted diseases, as designated by the secretary of the department of health and human resources in rules proposed for legislative approval in accordance with the provisions of article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code, are hereby declared to be infectious, contagious, communicable and dangerous to the public health. If a conflict exists between a provision of this article and a provision of article three-c [§§ 16-3C-1 et seq.] of this chapter, the provision of article three-c prevails.

W. VA. CODE ANN. § 16-4-2 (2016)

Investigations by local health officers

(a) All municipal and county health officers shall:

(1) Use every available means to ascertain the existence of, and to investigate all cases of sexually transmitted disease coming within their respective jurisdictions and, when it is necessary, have all cases treated, if they are not already under treatment;

(2) To ascertain the sources and transmission of the infection; and

(3) To institute measures for the protection of other persons from infection by the infected person, or from persons reasonably suspected of being so infected, and for the protection of the public health at all times.

W. VA. CODE ANN. § 16-4-4 (2016)

Evidence of infection

The following are prima facie grounds and reasons for suspecting that a person is infected with a sexually transmitted disease:

(a) Being a person who has been convicted in any court, or before a police judge, or before a magistrate, upon any charge growing out of sexual behavior;

(b) Being a person reported by a physician as infected with a sexually transmitted disease, where the person is afterwards reported as having failed to return for treatment; and

(c) Being a person designated in a sexually transmitted disease report as having a sexual exposure to the infected person reported.

W. VA. CODE ANN. § 16-4-6 (2016)

Reports by physicians

(a) Every practicing physician or other person who makes a diagnosis in or treats a case of sexually transmitted disease and every superintendent or manager of a hospital, dispensary or charitable or penal institution in which there is a case of sexually transmitted disease shall make two reports of the case, as follows:

(1) One report shall be made to the local municipal health officer, if the party for whom the diagnosis was made or case treated lives within any municipality having a health officer, and if the municipality has no health officer, or if the party lives outside of a municipality, then to the health officer of the county in which the person lives;

(2) The second report shall be made to the director of health of the state.

W. VA. CODE ANN. § 16-4-7 (2016)

False report of information

Any physician or other person required to make reports of a venereal disease hereunder, or who is required to report the failure of any patient to return for further treatment, who fails or refuses to make any such reports, or who knowingly reports a person under a false or fictitious name or address, or who makes any other statements on any report which he has reason to believe are untrue, shall be guilty of a misdemeanor, and shall be punished as hereinafter provided; and each report that should have been made, and each name that should have been given, and each address that should have been given, or has been wrongfully reported or given, shall be a separate offense; and a second conviction of a physician for failure to comply with any provision of this section shall be sufficient ground and reason for the director of health, upon the recommendation of the medical licensing board [West Virginia Board of Medicine], to revoke the license of such physician. Any person suffering with a venereal disease, whose name is required to be reported hereunder, who gives to the physician or person required to make reports herein required a false or fictitious name or address, or who shall fail or refuse to answer any proper question required to be reported hereunder, or who makes any false statement in answer to any such question, shall be guilty of a misdemeanor, and shall be punished as hereinafter provided.

W. VA. CODE ANN. § 16-4-9 (2016)

Treatment

(a) Every physician or other person who examines or treats a person having a sexually transmitted disease shall instruct the person in measures for preventing the spread of the disease, and to inform him or her of the necessity of taking treatment until cured.

(b) Any person who has been examined and found infected, or is being treated for a sexually transmitted disease as provided by this section, shall follow the directions given by the treating physician or other person and take precautions as are necessary and are recommended. Any person starting to take treatment shall continue the treatment until discharged by the physician or other person treating him or her.

(c) Any infected person who fails to return for further treatment within ten days after the last date set by the physician or other person for the patient to return for further treatment, without lawful excuse therefor, is guilty of a misdemeanor and shall be punished as provided in section twenty-six [§ 16-4-26] of this article.

(d) After the expiration of the ten days provided in subsection (c) of this section, the physician or other person to whom the patient should have returned for treatment shall, unless he or she has knowledge of good reasons why the patient failed to return, make a report of the facts in the case to the local health officer having proper jurisdiction. The local health officer shall at once make an investigation to ascertain why the patient failed to return, and shall take any steps necessary in the matter to protect the public health, including obtaining the arrest, detention and quarantine of the patient.

W. VA. CODE ANN. § 16-4-11 (2016)

Precautions as to exposure to disease

Whenever any attending physician or other person knows or has good reasons to believe that any person having a sexually transmitted disease is conducting himself or herself, or is about to conduct himself or herself, in a manner as to expose other persons to infection, the physician or other person shall at once notify the local health officer having jurisdiction of the facts in the case, giving the name and address of the person. The local health officer, upon receipt of the notice, shall at once cause an investigation to be made to ascertain what should be done in the premises, and may do whatever is necessary to protect the public health.

W. VA. CODE ANN. § 16-4-12 (2016)

Persons not under treatment

Where a venereal disease report shows the person is suffering with such disease in an infectious stage, and is not under treatment, the local health officer shall at once investigate and ascertain whether such person so reported is conducting himself so as to expose others to infection, and shall take such action as is necessary to protect the public health, and may arrest, detain and quarantine such person if necessary.

W. VA. CODE ANN. § 16-4-14 (2016)

Issuance of warrant or order as to custody

Upon receipt of a written report or of any other reliable information by the local health officer that any person infected with a venereal disease in an infectious stage is conducting himself, or herself, or is about to conduct himself or herself, so as to infect others, or expose others to infection; or that a person infected with a venereal disease under treatment; or that any person is a prostitute, or person associating with prostitutes, and is reasonably suspected of being infected, or of conducting himself or herself so as to infect others; or that a person has been convicted in any court or municipality, or before a justice of the peace [magistrate], of an offense growing out of sex immorality; or that a person is being held by any court, municipality, or justice of the peace, pending an examination for a venereal disease; or that a certain person has been reported in a venereal disease report as the source of a venereal disease; or when any other facts are brought to the attention of the local health officer having proper jurisdiction, showing that any person is reasonably suspected of being infected with a venereal disease, or is about to conduct himself or herself so as to infect others, said health officer shall at once issue his warrant or order, if the party be not already in custody, and shall proceed as hereinafter provided

W. VA. CODE ANN. § 16-4-15 (2016)

Form and execution of warrant

(a) Any warrant or order issued pursuant to the provisions of section fourteen [§ 16-4-14] of this article shall be directed to the chief of police if within a municipality, or to the county sheriff if not in a municipality or to any other officer qualified to execute process, directing the officer to apprehend the person mentioned, and to bring him or her before the health officer at a time and place set out in the warrant or order, there to be further dealt with as provided by law. The officer to whom the warrant is directed shall execute the warrant in the same manner as other papers of like character or kind.

(b) Pending a hearing in the matter the officer may for safekeeping, lodge the person apprehended under warrant, in jail or in any other place of detention that has been provided for such persons. The health officer may at his or her discretion and by indorsement (sic) on the warrant at the time of its issuance, direct any other disposition to be made of the person arrested, before trial. The officer executing the warrant shall be guided by the warrant, but may not be held responsible if the person arrested escapes.

W. VA. CODE ANN. § 16-4-16 (2016)

Hearing on warrant; detention

When a party is brought in for a hearing upon arrest under the warrant provided in the preceding section [§ 16-4-15], the health officer shall at once proceed to ascertain the facts in the case, and to this end he may summon witnesses, and administer oaths to such witnesses touching their testimony, and may commit for contempt for failure to answer proper questions, and may, if proper, discharge the party from further custody; but if from the testimony it appears that the party so apprehended is properly classifiable under any subdivision of section four [§ 16-4-4] of this article, touching persons reasonably suspected of being infected with a venereal disease, then such party shall not be released from custody until proof has been made showing the party is already under treatment from a reputable physician, or other person, or until an examination has been made to ascertain whether in fact said party is so infected, and results of all tests and examinations are known, and shall make all orders touching the care, custody, and examination of the party as are reasonably necessary in the premises, and if it is found that said party is infected, then he may make any other orders that may be necessary touching the treatment of such party, and if said party is suffering with one or more venereal diseases in an infectious stage, said party shall not be released from custody until the diseases are past such infectious stage, and said party may be detained or quarantined in any place or institution provided for the purpose, or in the patient's own home if the health officer thinks best; and if no other place is available for such purposes, then such party shall be detained in the city or county jail, as the case may be. And it shall be the duty of every city and every county in the State to take this contingency in hand when they are making up their estimates for taxation and levy purposes and to provide therefor.

W. VA. CODE ANN. § 16-4-17 (2016)

Release from detention

If as a result of the tests and examination provided to be made in the preceding section [§ 16-4-16], it is shown that the party so examined is suffering with a venereal disease, not in an infectious state, said party may be released from further detention upon signing the agreement herein required to be provided, and which agreement shall be signed by the persons who have become noninfectious under treatment and detention, but who have not been cured. All persons signing the agreement mentioned above shall observe its provisions; and any failure to do so shall be deemed a misdemeanor, and shall be punished as hereinafter provided.

W. VA. CODE ANN. § 16-4-21 (2016)

Quarantine

In establishing quarantine for a venereal disease under the provisions of this article, the health officer establishing said quarantine may confine any person infected, or reasonably suspected of having such venereal disease, or any other person liable to spread such disease, to the house or premises in which such infected person lives, or he may require any such person to be quarantined in any other place,

hospital or institution in his jurisdiction that may have been provided. If no such place has been provided, then such person shall be confined in the county or city jail under a quarantine order, and such jails shall always be available for such purposes. But if such person is to be quarantined in his home, then said health officer shall designate the area, room or rooms, that such person is to occupy while so confined, and no one except the attending physician or his immediate attendants shall enter or leave such room or rooms so designated without permission of said health officer, and no one except the local health officer shall terminate said quarantine, and this shall not be done until the diseased person has become noninfectious as determined by thorough clinical tests, or permission has been given by the West Virginia state director of health. If, to make any quarantine effective as provided herein, it becomes necessary, the local health officer may summon a sufficient guard for the enforcement of his orders in the premises. And every person who fails or refuses to obey or comply with any order made by said health officer hereunder, or under any other section concerning quarantine, and every person summoned as a guard who shall, without a lawful excuse therefor, fail or refuse to obey the orders and directions of the health officer in enforcement of said quarantine, shall be guilty of a misdemeanor, and shall be punished as hereinafter provided.

W. VA. CODE ANN. § 16-4-27 (2016)

Additional power and authority of local health officers.

The local health officer, in exercising any of the powers or authority vested in him by sections nine, ten, eleven, twelve, sixteen and twenty-one [§§ 16-4-9 to 16-4-12, 16-4-16 and 16-4-21] of this article with respect to any patient, minor or other person suffering or believed by him to be suffering from any venereal disease or diseases, may forthwith cause any such patient, minor or other person to be delivered into the custody of the state Department of Health for detention and treatment as provided in this article.

W. VA. CODE ANN. § 16-4-29 (2016)

Detention and treatment

There shall be accepted and received into the custody of the state Department of Health at such place or places provided for in the next preceding section [§ 16-4-28], persons found upon investigation and examination to be suffering from venereal diseases as defined in section one [§ 16-4-1] of this article, for the purpose of detention and necessary medical attention and treatment thereat or therein, until found to be and pronounced cured of the venereal disease or diseases from which they are suffering.

W. VA. CODE ANN. § 16-4-30 (2016)

Continuous jurisdiction

The state Department of Health is vested with and given continuous jurisdiction, authority and control over all persons received at and to be detained in or on the place or places provided for in the preceding sections, for all the purposes of this article, and until such persons are found upon proper examination to be and pronounced entirely free from and cured of any venereal disease or symptoms of such disease existing.

West Virginia Code of State Rules

TITLE 64, LEGISLATIVE RULE, WEST VIRGINIA STATE BOARD OF HEALTH

W. VA. CSR § 64-64-4 (2016)

Testing
4.2. Consent Not Required.

4.2.a.Consent for testing is not required and the provisions of W. Va. Code §16-3C-2(b) and Subsection 4.1. of this rule does not apply for the performance of an HIV test:

4.3.Mandated HIV Testing.

4.3.a.The testing of a person charged with or convicted of a sex-related offense as specified in W. Va. Code §16-3C-2(f) does not require consent of that person and is under the direction of the magistrate or circuit court as specified in this subsection. Counseling may be offered.

4.3.b.The magistrate or circuit court having jurisdiction of the initial stages of the criminal prosecution or juvenile delinquency proceeding shall order that an HIV-related test be performed on any person charged with a sexual offense. The testing shall occur as follows:

4.3.b.1.A court shall order a defendant or juvenile charged with an offense set forth in W. Va. Code §16-3C-2(f)(2), to undergo a test for HIV not later than 48 hours after the date on which the initial appearance is made.

4.3.b.1.A.The court shall require the defendant or juvenile respondent to submit to the testing not later than forty-eight hours after the issuance of the order described in paragraph 4.3.b.1 of this subsection, unless good cause for delay is shown upon a request for a hearing: Provided, That no such delay shall cause the HIV-related testing to be administered later than forty-eight hours after the filing of any indictment or information regarding an adult defendant or the filing of a petition regarding a juvenile respondent.

4.3.b.1.B.The prosecuting attorney may, upon the request of the victim or the victim's parent or legal guardian, and with notice to the defendant or juvenile respondent, apply to the court for an order directing that an appropriate human immunodeficiency virus (HIV) test or other STD test, be performed on a defendant charged with or a juvenile subject to a petition involving the offenses of prostitution, sexual abuse, sexual assault or incest.

4.3.b.2.As soon as practical, test results shall be provided to the magistrate court clerk in the county where the defendant or juvenile respondent is charged. If the criminal matter or juvenile delinquency proceeding is then pending before the circuit court, the magistrate clerk shall immediately forward the test results to the circuit clerk.The clerk shall also promptly provide a copy of the test results to:1) the prosecuting attorney, who shall inform the victim, or parent or legal guardian of the victim; and 2) counsel for the defendant or juvenile respondent.

> 4.3.b.3.The court may, at any time during which the charge or juvenile petition is pending, order that the defendant or juvenile submit to one or more appropriate tests to determine if he or she is infected with any sexually transmitted disease.
> 4.3.b.4.The court may also order follow-up tests for HIV as may be medically necessary or appropriate. The results of any such follow-up tests shall be provided as soon as possible in accordance with paragraph 4.3.b.3. of this subdivision. . .

4.3.c.The Commissioner shall request access to all convicted sex offenders who test HIV positive for the purposes of contact notification consultation under the direction of the Commissioner.Contact notification information obtained from the convicted sex offender is protected information and shall be used by the Commissioner solely for referring individuals with a potential HIV exposure to HIV counseling and testing sources.

4.3.d.A person convicted or a juvenile adjudicated of the offenses described in this subsection may be required to undergo HIV-related testing and counseling immediately upon conviction or adjudication:Provided, That if the person convicted or adjudicated has been tested in accordance with the provisions of subdivision 4.3.b.of this subsection, that person need not be retested.

4.3.e.The HIV-related test result obtained from the convicted or adjudicated person is to be transmitted to the court and to the victim or the parent or legal guardian of the victim and after the convicted or adjudicated person is sentenced or disposition ordered for the adjudicated juvenile, the result of the HIV test shall be made part of the court record. If the convicted or adjudicated person is placed in the custody of the Division of Corrections or Regional Jail and Correctional Facility Authority, or if the adjudicated juvenile is placed in the custody of the Division of Juvenile Services or other out-of-home placement, the court shall transmit a copy of the convicted or adjudicated person's HIV-related test results to the appropriate custodial agency. The HIV-related test results shall be closed and confidential and disclosed by the court and the bureau only in accordance with the provisions of this subsection and section three of this article.

Wisconsin

Analysis

Living with HIV or a "sexually transmitted disease" (STD) may lead to heightened penalties for certain sex offenses.

While Wisconsin has no statute explicitly criminalizing HIV transmission or exposure, the law provides that living with HIV or an "STD"[1] serves as an "aggravating factor" for sentencing of serious sex offenses, which may lead to additional prison time.[2] These serious sex offenses include: 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 positive HIV status to serve as an aggravating factor in sentencing, the following conditions must be met: 1) the individual must have been living with HIV or an "STD"; 2) the individual must have known of their positive HIV or "STD" status; and 3) the crime must have "significantly exposed" the victim to HIV or an "STD".[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, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

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[1] Including syphilis, gonorrhea, hepatitis B, hepatitis C, or chlamydia. WIS. STAT. § 973.017(4)(a)(3) (2016).
[2] WIS. STAT. § 973.017(4).
[3] WIS. STAT. §§ 940.225(1), 940.225(2), 973.017(4)(a)(2).
[4] WIS. STAT. §§ 948.02(1), 948.02(2), 973.017(4)(a)(2).
[5] WIS. STAT. §§ 948.025, 973.017(4)(a)(2).
[6] WIS. STAT. §§ 948.085, 973.017(4)(a)(2).
[7] WIS. STAT. § 973.017(b).
[8] WIS. STAT. § 973.017(a)(1m)(4).
[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.

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 transmission is required for a defendant's positive HIV or "STD" status to serve as an aggravating factor. 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 acquiring 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 acquiring 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 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 of 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 a half years' imprisonment with seven and a half years' extended supervision. A condition of his release was that he has to disclose his HIV status to every prospective sexual partner.[21]

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[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*.

People may be subject to mandatory HIV or "STD" testing when charged with certain crimes.

The local prosecutor must force people accused of certain sexual offenses[22] to undergo HIV or "STD" testing if there is probable cause to believe there has been a "significant exposure" and the victim or their parent or guardian requests the testing.[23] The definition of "significant exposure" closely aligns with the definition of "significantly exposed" in the aggravating factor law, but also allows for administrative rulemaking.[24] Any person accused of certain crimes involving assaulting law enforcement or correctional officers with bodily fluids[25] may be forced to undergo testing for "communicable diseases." Similarly, the prosecutor must apply for an order to force testing if the conduct had the "potential for transmitting a communicable disease," the conduct involved "blood, semen, vomit, saliva, urine or feces or other bodily substance," and the victim requests testing.[26]

The prosecutor may request an order to compel testing following the defendant's initial appearance.[27] The court must provide the defendant at least 72 hours to prepare for the hearing, at which the defendant may have counsel and cross-examine witnesses.[28] Although the court may require that the results of testing not become part of the defendant's medical record, they may also require disclosure to the victim, the victim's parent or guardian, or the victim's medical provider.

A person living with a communicable disease who willfully violates the recommendations of a local health officer may be punished.

Healthcare providers are required to report to the local health officers if one of their patients has a communicable disease.[29] 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."[30] 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

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[22] These offenses include sexual assault, sexual assault of a child, repeated sexual assault of a child, sexual exploitation of a child, incest with a child, sexual assault of a child in substitute care, and sexual assault of a child by a school worker or volunteer. WIS. STAT. § 968.38(2).

[23] *Id.* If the person is found guilty or not guilty by reason of mental disease or defect, the local prosecutor must request an order to compel testing at the request of the victim, regardless of the risk of transmission. WIS. STAT. § 968.38(2)(a).

[24] WIS. STAT. § 968.38(1)(d); WIS. STAT. § 252.15(1)(em). A "significant exposure" involves "contact that carries a potential for a transmission" by involving transmission into a body orifice or onto a mucous membrane, exchange through a penetrating wound, or exchange into an eye, wound, or broken down skin. While the definition may also be expanded through rulemaking by the Wisconsin Department of Health Services, the Department has not issued a rule regarding "significant exposure."

[25] These crimes include "throwing or discharging bodily fluids" at law enforcement, a prosecutor, or emergency medical workers or assaulting a correctional officer, visitor, or other inmate by "throwing or expelling" bodily fluids. WIS. STAT. § 968.38(2m).

[26] *Id*.

[27] WIS. STAT. § 968.38(3).

[28] WIS. STAT. § 968.38(4).

[29] WIS. STAT. § 252.05.

[30] WIS. STAT. § 252.19 (2016).

submit to examination or treatment.[31] A person who violates these requirements may be punished with 30 days' imprisonment, a $500 fine, or both.[32]

A person living with an "STD" 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.[33] The officer may petition a court, which will summon the person to appear between 48 and 96 hours after service.[34] Should the person fail to appear or refuse commitment without reasonable cause, the court may cite the person for contempt.[35] The court may issue a warrant for the person's arrest if it finds that the summons will be ineffectual.[36] The commitment hearing occurs summarily, and a person remains committed until the disease is no longer communicable or other provisions for treatment are made that satisfy the health department.[37] These available restrictions are in addition to general powers of isolation and quarantine in response to communicable diseases.[38]

Procedures for committing a person due to infection with a contagious disease[39] 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 a contagious disease that poses a threat to others, the officer may direct the person to undergo examination and treatment,[40] to appear before the health officer,[41] to cease and desist in conduct or employment that poses a threat to others,[42] or to be confined in a facility until non-infectious.[43] Upon failure of a person to comply with any such directive, the officer may petition a court of record to order that person to comply.[44] However, the petitioning health officer must meet the following requirements: 1) the petition is supported by clear and convincing evidence;[45] 2) the person has been provided the directive in writing, including the evidence supporting the health officer's allegations, and afforded the

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[31] WIS. ADMIN. CODE DHS § 145.06(2).
[32] WIS. STAT. § 252.25.
[33] WIS. STAT. § 252.11(2).
[34] WIS. STAT. § 252.11(5).
[35] *Id*.
[36] *Id*.
[37] *Id*.
[38] WIS. STAT. § 252.06(3).
[39] 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.
[40] WIS. ADMIN. CODE DHS § 145.06(4)(b)-(c).
[41] WIS. ADMIN. CODE DHS § 145.06(4)(d).
[42] WIS. ADMIN. CODE DHS § 145.06(4)(e).
[43] WIS. ADMIN. CODE DHS § 145.06(4)(g).
[44] WIS. ADMIN. CODE DHS § 145.06(5).
[45] WIS. ADMIN. CODE DHS § 145.06(5)(a).

opportunity to seek counsel;[46] 3) the remedy sought is the least restrictive alternative that will serve to protect the public's health.[47]

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*

[46] WIS. ADMIN. CODE DHS § 145.06(5)(b).
[47] WIS. ADMIN. CODE DHS § 145.06(5)(c).

Wisconsin Annotated Statutes

CRIMINAL PROCEDURE, CHAPTER 973: SENTENCING

WIS. STAT. §973.017

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.

CRIMINAL PROCEDURE, CHAPTER 968: SENTENCING

(1) In this section:

(a) “Health care professional” means a physician or a registered nurse or licensed practical nurse who is licensed under ch. 441.

(b) “HIV” means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(bc) “HIV test” has the meaning given in s. 252.01 (2m).

(bm) “Physician” has the meaning given in s. 448.01 (5).

(c) “Sexually transmitted disease” has the meaning given in s. 252.11 (1).

(d) “Significant exposure” has the meaning given in s. 252.15 (1) (em).

(2) In a criminal action under s. 940.225, 948.02, 948.025, 948.05, 948.06, 948.085, or 948.095, if all of the following apply, the district attorney shall apply to the circuit court for his or her county to order the defendant to submit to an HIV test and to a test or a series of tests to detect the presence of a sexually transmitted disease, each of which tests shall be administered by a health care professional, and to disclose the results of the test or tests as specified in sub. (4) (a) to (c):

(a) The district attorney has probable cause to believe that the alleged victim or victim has had contact with body fluid of the defendant that constitutes a significant exposure. If the defendant is convicted or found not guilty by reason of mental disease or defect, this paragraph does not apply.

(b) The alleged victim or victim who is not a minor or the parent or guardian of the alleged victim or victim who is a minor requests the district attorney to so apply for an order.

(2m) In a criminal action under s. 941.375 (2) or 946.43 (2m), the district attorney shall apply to the circuit court for his or her county for an order requiring the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of communicable diseases and to disclose the results of the test or tests as specified in sub. (5) (a) to (c), if all of the following apply:

(a) The district attorney has probable cause to believe that the act or alleged act of the defendant that constitutes a violation of s. 941.375 (2) or 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the defendant’s blood, semen, vomit, saliva, urine or feces or other bodily substance of the defendant.

(b) The alleged victim or victim who is not a minor or the parent or guardian of the alleged victim or victim who is a minor requests the district attorney to apply for an order.

(3) The district attorney may apply under sub. (2) or (2m) for an order at any of the following times, and, within those times, shall do so as soon as possible so as to enable the court to provide timely notice:

(a) At or after the initial appearance and prior to the preliminary examination.

(b) If the defendant waives the preliminary examination, at any time after the court binds the defendant over for trial and before a verdict is rendered.

(c) At any time after the defendant is convicted or is found not guilty by reason of mental disease or defect.

(d) If the court has determined that the defendant is not competent to proceed under s. 971.14 (4) and suspended the criminal proceedings, at any time after the determination that the defendant is not competent to proceed.

(4) The court shall set a time for a hearing on the matter under sub. (2) during the preliminary examination, if sub. (3) (a) applies; after the defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; after conviction or a finding of not guilty by reason of mental disease or defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that the defendant is not competent, if sub. (3) (d) applies. The court shall give the district attorney and the defendant notice of the hearing at least 72 hours prior to the hearing. The defendant may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the victim or alleged victim has had contact with body fluid of the defendant that constitutes a significant exposure, the court shall order the defendant to submit to an HIV test and to a test or a series of tests to detect the presence of a sexually transmitted disease. The tests shall be performed by a health care professional. The court shall require the health care professional who performs the test to disclose the test results to the defendant, to refrain from making the test results part of the defendant's permanent medical record, and to disclose the results of the test to any of the following:

(a) The alleged victim or victim, if the alleged victim or victim is not a minor.

(b) The parent or guardian of the alleged victim or victim, if the alleged victim or victim is a minor.

(c) The health care professional who provides care to the alleged victim or victim, upon request by the alleged victim or victim or, if the alleged victim or victim is a minor, by the parent or guardian of the alleged victim or victim.

(5) The court shall set a time for a hearing on the matter under sub. (2m) during the preliminary examination, if sub. (3) (a) applies; after the defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; after conviction or a finding of not guilty by reason of mental disease or defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that the defendant is not competent, if sub. (3) (d) applies. The court shall give the district attorney and the defendant notice of the hearing at least 72 hours prior to the hearing. The defendant may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the act or alleged act of the defendant that constitutes a violation of s. 941.375 (2) or 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved

the defendant's blood, semen, vomit, saliva, urine or feces or other bodily substance of the defendant, the court shall order the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of any communicable disease that was potentially transmitted by the act or alleged act of the defendant. The court shall require the health care professional who performs the test to disclose the test results to the defendant. The court shall require the health care professional who performs the test to refrain from making the test results part of the defendant's permanent medical record and to disclose the results of the test to any of the following:

(a) The alleged victim or victim, if the alleged victim or victim is not a minor.

(b) The parent or guardian of the alleged victim or victim, if the alleged victim or victim is a minor.

(c) The health care professional who provides care to the alleged victim or victim, upon request by the alleged victim or victim or, if the alleged victim or victim is a minor, by the parent or guardian of the alleged victim or victim.

HEALTH, CHAPTER 252: COMMUNICABLE DISEASE

WIS. STAT. § 252.05

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

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

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 physicians, physician assistants, or advanced practice nurse prescribers 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

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**

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

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

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

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.

Wyoming

Analysis

There are no criminal statutes explicitly addressing HIV exposure.

There are no statutes explicitly criminalizing HIV transmission or exposure in Wyoming. However, in some states, people living with HIV (PLHIV) have been prosecuted for HIV exposure under general criminal laws, such as reckless endangerment and aggravated assault. At the time of this publication, the authors are not aware of a criminal prosecution of an individual on the basis of that person's HIV status in Wyoming.

A person accused of a crime involving the "exchange of bodily fluids" is required to submit to testing for the presence of STIs, including HIV, and the results of the test are admissible in certain criminal prosecutions.

Defendants accused of a crime involving the "exchange of bodily fluids" must submit to a test for a sexually transmitted disease, either by consent or court order, and the results of the test, while generally confidential, are admissible in a criminal prosecution for the "criminal infliction of or exposure to a sexually transmitted disease."[1] The statute does not define "exchange of bodily fluids," and as of this writing, the authors are unaware of any specific criminal provision under Wyoming law that targets the infliction of or exposure to an STI.

A person with an STI, including HIV, can be isolated and may be required to undergo mandatory examination and treatment.

A health officer who receives a report of an individual who is known or suspected to have an STI may isolate that individual "in accordance with existing standards of medical practice."[2] The officer may also mandate that the individual be medically examined or receive treatment.[3]Sexually transmitted diseases are defined by statute as "included within the list of reportable diseases of the department of health are contagious, infectious, communicable and dangerous to public health."[4] Currently reportable diseases include HIV, chlamydia, gonorrhea, syphilis, and viral hepatitis.[5]

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[1] WYO. STAT. ANN. § 7-1-109(f)(iv) (2016).
[2] WYO. STAT. ANN. § 35-4-133(a)(i) (2016).
[3] WYO. STAT. ANN. §§ 35-4-133(a)(ii), 35-4-133(a)(iii) (2016).
[4] WYO. STAT. ANN. § 35-4-130(a) (2016).
[5] WYO. DEPT. HEALTH REPORTABLE DISEASES & CONDITIONS, January 2016, *available at* https://health.wyo.gov/wp-content/uploads/2016/04/ReportableList2016-.pdf.

Anyone who is confined in a correctional facility, including state penal institutions and county or city jails, is required to undergo testing for STIs.[6]A positive test can result in the individual being isolated and required to submit to treatment.[7]

Any person who refuses to comply with an order issued under these provisions—including mandatory examination, treatment, or isolation for an STI—may be charged with a misdemeanor, punishable by up to six months' imprisonment and a $750 fine.[8]

Wyoming law also provides general authority to impose quarantine in response to "an infectious or contagious disease, which is a menace to the public health."[9] STIs are defined by statute as "contagious, infectious, communicable and dangerous to public health," suggesting that quarantine could be authorized as a general control measure.[10]Persons subject to quarantine may appeal to a district court for their release. The court may hold a hearing to assess whether quarantine is reasonably necessary to protect the public health.[11] The State bears the burden of demonstrating the need for the restriction, but the court will defer to the judgment of a health officer in the face of bona fide scientific or medical uncertainty.[12]

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.*

[6] WYO. STAT. ANN. § 35-4-134(a) (2016).
[7] WYO. STAT. ANN. § 35-4-134(b)(i) (2016).
[8] WYO. STAT. ANN. § 35-4-130(c) (2016).
[9] WYO. STAT. ANN. § 35-4-103 (2016).
[10] WYO. STAT. ANN. § 35-4-130(a) (2016).
[11] WYO. STAT. ANN. § 35-4-112(a) (2016).
[12] *Id.*

Wyoming 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.*

TITLE SEVEN, CRIMINAL PROCEDURE

WYO. STAT. ANN. § 7-1-109 (2016)

Examination for sexually transmitted diseases required in certain cases; health officers to notify crime victims; results confidential.

(a) Upon the consent of a person accused of any crime wherein it is alleged that there has been an exchange of bodily fluids, that person shall be examined as soon as practicable, but not later than forty-eight (48) hours after the date on which the information or indictment is presented, for sexually transmitted diseases included within the list of reportable diseases developed by rule and regulation of the department of health pursuant to W.S. 35-4-130(b).

(b) For cases in which a person is accused of any crime wherein it is alleged that there has been an exchange of bodily fluids and the accused person is unwilling or unable to give consent as provided in subsection (a) of this section, or when, for any reason it is impractical to seek consent under subsection (a) of this section, the court may by warrant, upon a sufficient showing of probable cause by affidavit, at any time of day or night, order the medical examination of the accused person for sexually transmitted diseases included within the list of reportable diseases developed by rule and regulation of the department of health pursuant to W.S. 35-4-130(b). Testing for sexually transmitted diseases done under this subsection shall be conducted as soon as practicable, but no later than forty-eight (48) hours after the date on which the information or indictment is presented.

(c) Any person convicted of a sex offense shall, at the request of the victim, be examined as soon as practicable, but not later than forty-eight (48) hours after the conviction for sexually transmitted diseases included in the list specified in subsection (a) of this section. The victim shall make the request to the district attorney responsible for prosecuting the offense. If the offender is unwilling or unable to consent to the examination the district attorney shall petition the court for an order requiring the offender to submit to the examination.

(d) Any examination performed under this section shall be performed by a licensed physician or other health care provider. The examination shall be in accordance with procedures prescribed by the department of health under W.S. 35-4-130 through 35-4-134and the examination results shall be reported to the appropriate health officer. Upon receipt of the examination results, the health officer shall notify the victim, the alleged victim or if a minor, the parents or guardian of the victim or the alleged victim. Additional testing under this section shall be performed as medically appropriate and shall be made available in accordance with the provisions of this section.

(e) Costs of any medical examination undertaken pursuant to this section shall be funded through the department of health. If the court finds that the offender is able to reimburse the department, the offender shall reimburse the department for the costs of any medical examination under this section.

(f) All results which are or can be derived from the examination ordered pursuant to this section are confidential, are not admissible as evidence and shall not be disclosed except:

(i) As provided by this section;

(ii) As provided by W.S. 35-4-132(d);

(iii) In a civil action for the negligent or intentional infliction of or exposure to a sexually transmitted disease;

(iv) In a criminal prosecution for the criminal infliction of or exposure to a sexually transmitted disease; or

(v) As otherwise provided by law.

(g) As used in this section:

(i) "Convicted" includes pleas of guilty, nolo contendere and verdicts of guilty upon which a judgment of conviction may be rendered, and includes juvenile adjudications of delinquency if the adjudication is based upon an act which would constitute a sex offense. "Convicted" shall also include dispositions pursuant to W.S. 7-13-301;

(ii) "Sex offense" means sexual assault under W.S. 6-2-302 through 6-2-304, attempted sexual assault, conspiracy to commit sexual assault, incest under W.S. 6-4-402 or sexual abuse of a minor under W.S. 6-2-314 through 6-2-317.

TITLE 35, HEALTH AND SAFETY

WYO. STAT. ANN. § 35-1-223 (2016)

Cooperation to prevent spread of contagious diseases; report of epidemics or diseases required from local health officials

The department of health shall give all information that may be reasonably requested concerning any threatened danger to the public health, and the local health officers and all the state, county, city and town officers in the state shall give the like information to the state health officer, and the department and said state, county, city and town officers, insofar as legal and practicable, shall cooperate to prevent the spread of diseases, and for the protection of life and the promotion of health within the sphere of their respective duties. When in any county, an epidemic or contagious or infectious disease including venereal diseases, is known to exist, it shall be the duty of the county health officer of such county to immediately notify the state health officer of the existence of the same, with such facts as to its cause and continuance as may then be known.

WYO. STAT. ANN. § 35-4-103 (2016) **

Investigation of diseases; quarantine; regulation of travel; employment of police officers to enforce quarantine; report of county health officer; supplies and expenses.

The department of health shall, immediately after the receipt of information that there is any smallpox, cholera, scarlet fever, diphtheria or other infectious or contagious disease, which is a menace to the public health, in any portion of this state, order the county health officer to immediately investigate the case and report to the state health officer the results of the investigation. The state health officer shall, subject to W.S. 35-4-112 and if in his judgment the occasion requires, direct the county health officer to declare the infected place to be in quarantine. The county health officer shall place any restrictions upon ingress and egress at this location as in his judgment or in the judgment of the state health officer

are necessary to prevent the spread of the disease from the infected locality. The county health officer shall upon declaring any city, town or other place to be in quarantine, control the population of the city, town or other place as in his judgment best protects the people and at the same time prevents the spread of the disease. If necessary for the protection of the public health and subject to W.S. 35-4-112, the state health officer shall establish and maintain a state quarantine and shall enforce practical regulations regarding railroads or other lines of travel into and out of the state of Wyoming as necessary for the protection of the public health. The expenses incurred in maintaining the state quarantine shall be paid out of the funds of the state treasury appropriated for this purpose and in the manner in which other expenses of the department are audited and paid. The county health officer or the department may employ a sufficient number of police officers who shall be under the control of the county health officer, to enforce and carry out any quarantine regulations the department may prescribe. The regulations shall be made public in the most practicable manner in the several counties, cities, towns or other places where the quarantine is established. If the quarantine is established by the county health officer, he shall immediately report his actions to the state health officer. The county health officer shall furnish all supplies and other resources necessary for maintaining the quarantine. Upon certificate of the county health officer approved by the director of the state department of health, the county commissioners of any county where a quarantine has been established shall issue warrants to the proper parties for the payment of all expenses, together with the expense of employing sufficient police force, to maintain and enforce the quarantine. For purposes of this act, "state health officer" means as defined in W.S. 9-2-103(e).

WYO. STAT. ANN. § 35-4-112 (2016)

Right of appeal of quarantine

(a) Any person who has been quarantined pursuant to this act [this article] may appeal to the district court at any time for release from the quarantine. The court may hold a hearing on the appeal after notice is provided to the state health officer at least seventy-two (72) hours prior to the hearing. After the hearing, if the court finds that the quarantine is not reasonably necessary to protect the public health, it shall order the person released from quarantine. The burden of proof for the need for the quarantine shall be on the state health officer, except that in the case of bona fide scientific or medical uncertainty the court shall give deference to the professional judgment of the state health officer unless the person quarantined proves by a preponderance of the evidence that the quarantine is not reasonably necessary to protect the public health.

WYO. STAT. ANN. § 35-4-130 (2016)

Declared contagious and dangerous to health; list of reportable diseases established by the department of health; violation of W.S. 35-4-130 through 35-4-134; penalty.

(a) Sexually transmitted diseases as included within the list of reportable diseases of the department of health are contagious, infectious, communicable and dangerous to public health.

(b) The department of health shall by rule and regulation develop a list of reportable sexually transmitted diseases including all venereal diseases and acquired immune deficiency syndrome. The list shall be available to all physicians, health officers, hospitals and other health care providers and facilities within the state.

(c) Any person violating W.S. 35-4-130 through 35-4-134 or failing or refusing to comply with any order lawfully issued under W.S. 35-4-130 through 35-4-134 is guilty of a misdemeanor punishable by a fine

of not more than seven hundred fifty dollars ($ 750.00), imprisonment for not more than six (6) months, or both.

WYO. STAT. ANN. § 35-4-133 (2016)

Examination and treatment of infected persons; treatment at public expense; notification of exposed individuals; suppression of prostitution

(a) Upon receipt of a report or notice of a case or a reasonably suspected case of sexually transmitted disease infection, a health officer within his respective jurisdiction:

(i) May isolate the individual in accordance with existing standards of medical practice;

(ii) If examination has not been performed, may provide for the examination of the infected individual or the individual reasonably suspected of suffering from a sexually transmitted disease and shall report the examination results to the individual;

(iii) May require the infected individual to seek adequate treatment or, subject to subsection (d) of this section, may require the individual to submit to treatment at public expense;

WYO. STAT. ANN. § 35-4-134 (2016)

Examination and treatment of prisoners

(a) Any individual confined or imprisoned in any state penal institution, county or city jail or any community correctional facility shall be examined for sexually transmitted diseases by the appropriate health officer or his qualified designee.

(b) To suppress the spread of sexually transmitted disease among the confined population, the health officer or his qualified designee may:

(i) Isolate prisoners infected with a treatable illness within the facility and require them to report for treatment by a licensed physician;

Federal Law including U.S. Military

Analysis

Donation or sale of blood, semen, tissues, organs, or other bodily fluids is prohibited for people living with HIV (PLHIV).

Federal law explicitly addresses HIV transmission as a criminal offense in only one area: donation or sale of blood or other potentially infectious fluids or human tissues.[1] Federal law provides that for conviction, the person must receive "actual notice" of a positive HIV test result, although there is no requirement that the person be informed that HIV can be transmitted by blood, other body fluids, or human tissue.[2] There is an exception for donations or sales that are necessary for medical research or testing.[3]

Neither intent to transmit nor actual transmission of HIV is required for conviction.[4]

Because of widespread use of testing to screen for HIV in donated blood (and widespread testing of donors of semen or other human body fluids or tissue), there is very little likelihood that blood containing the virus will be donated or sold.

Although Congress enacted this law in 1994, there are no reported prosecutions. Many states have similar statutes, and prosecutions of individuals have been reported under those laws.

Enhanced federal sentences for defendants with HIV.

Unlike many states, Congress has not enacted a law imposing enhanced sentences for defendants in criminal cases involving conduct posing a risk of HIV transmission. The U.S. Sentencing Commission considered issuing a guideline for enhanced sentences in cases of intentional exposure to HIV through sexual contact, and declined to do so given the rarity of such cases in the federal courts.[5] Instead, the

[1] 18 U.S.C. § 1122(a) (2016).
[2] *Id.*
[3] *Id.*
[4] 18 U.S.C. § 1122(b) (2016).
[5] U.S. SENTENCING COMM'N, REPORT TO CONGRESS: ADEQUACY OF PENALTIES FOR THE INTENTIONAL EXPOSURE OF OTHERS THROUGH SEXUAL ACTIVITY TO THE HUMAN IMMUNODEFICIENCY VIRUS 4 (1995) (concluding that HIV transmission issues are rare in federal sentences, based on a review of 235 criminal cases sentenced in fiscal year 1993 in which HIV was mentioned in only four cases, and in only one of those cases, which was not a sexual offense case, was intentional transmission of HIV an issue).

Commission concluded that the federal guidelines' "general departure" provision,[6] which allows for an upward departure from the guideline range for aggravating circumstances, is the appropriate way to handle cases involving HIV. As a result of U.S. Supreme Court decisions in the last 20 years,[7] the federal sentencing guidelines are now largely advisory, and federal judges can determine sentences based on concerns other than those set forth in the guidelines.

Very few federal cases have involved upward departure sentences for sex offenses committed by defendants living with HIV. For example, in *United States v. Blas*, the Court of Appeals for the Eleventh Circuit affirmed an "extreme conduct" upward sentence departure based on the defendant's numerous sexual acts with a 15-year-old girl.[8] The defendant had not disclosed his HIV status, although the record indicated that the defendant used a condom at least some of the time.[9] The court found that as a result of the sexual contact, the complainant feared that she was infected with HIV, suffered psychological trauma, and repeatedly sought HIV testing.[10] In another federal case, *United States v. Burnett*, the court's use of the defendant's HIV status to impose an upward departure was much more problematic.[11] In that case, there was no risk of HIV transmission presented by the underlying offense, public lewdness when soliciting an undercover federal officer for sex, and the court's opinion fails to determine the risk of HIV transmission involved in the sexual activity that was solicited from the undercover agent.[12]

In at least one case, a federal judge has imposed a sentence far beyond the federal sentencing guidelines, based solely on HIV status. In 2009, a federal judge in Maine determined a pregnant woman's sentence based solely on her HIV status.[13] The woman was charged with possession and use of false immigration documents, a crime for which the federal sentencing guidelines recommend 0-6 months incarceration.[14] The woman had been incarcerated for almost 4 months at the time of her sentencing, and both the defense and prosecution recommended that the judge enter a sentence of "time served."[15] However, the judge sentenced her to a total of 7.9 months because, he argued, the interests of the "unborn child" necessitated that the woman remain in prison past her due date so that he could ensure she received treatment to prevent HIV transmission to the child she was carrying.[16]

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[6] 18 U.S.C. Appx. § 5K2.0 (2016).

[7] *See, e.g., United States v. Booker*, 543 U.S. 220 (2005); *Blakely v. Washington*, 542 U.S. 296 (2004); *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

[8] *United States v. Blas* 360 F.3d 1268, 1273 (11th Cir. 2004).

[9] *Id.* at 1271.

[10] *Id.* at 1271-72.

[11] 545 F. Supp. 2d 1207 (N.D. Ala. 2008).

[12] *Id.*

[13] *See* Brief for National Advocates for Pregnant Women, Center for HIV Law and Policy, Verrill Dana, LLP on behalf of Medical, Public Health and HIV Experts and Advocates as Amici Curiae Supporting Respondents, United States v. "Mrs. T", (No. 09-19-B-W), *available at* http://www.hivlawandpolicy.org/resources/view/412.

[14] *Id.* at 1.

[15] *Id.*

[16] *Id.* at 1-2.

Prosecution of federal inmates living with HIV for risk of HIV transmission to correctional officers.

Although there are many convictions of PLHIV, increased penalties for posing an alleged risk of HIV transmission, and matters in state courts for altercations (often involving biting or spitting) with law enforcement personnel, very few such federal cases have been reported. The reported cases tend to involve substantial prison sentences for conduct posing limited risk of HIV transmission. In one such case, *United States v. Sturgis*, the Court of Appeals for the Fourth Circuit concluded the defendant's teeth were used as a deadly weapon when he bit two corrections officers because the "substantial possibility that HIV, which causes AIDS, can be transmitted via a human bite," meant that the "attack may not only have inflicted serious injury on the officers but endangered their lives as well.[17]

Similarly, in *United States v. Studnicka* the U.S. District Court for the Eastern District of Texas sentenced a federal inmate who had pled guilty to forcibly assaulting a correctional officer while a prisoner in federal prison to a ten-year prison term.[18] That sentence represents an enhancement that was, in part, based on the defendant's HIV status.[19] The correctional officer's injury was considered to be "between the level of serious bodily injury and permanent or life-threatening bodily injury," because, "[i]n order to combat the serious possibility of infection with HIV, [he] was given a number of shots and daily cocktails of medications for a period of six months, which made him extremely ill."[20] However, according to the Centers for Disease Control and Prevention, the risk of HIV transmission through a bite is negligible.[21]

Prosecution of HIV-Related offenses in the U.S. Military

Members of the U.S. Armed Forces have been prosecuted and convicted for offenses involving sexual transmission or risk of transmission of HIV. Although applicants with HIV are barred from enlisting in the armed forces, military service members are tested for HIV, and those who test positive are retained in the service as long as they are able to meet fitness for duty standards.

All prosecutions of service members for HIV-related offenses are pursuant to the Uniform Code of Military Justice, which does not include any provision explicitly addressing HIV transmission or exposure. Instead, service members with HIV have been prosecuted under general criminal assault provisions, similar to the criminal assault prosecutions of civilians with HIV under state law. Military

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[17] *United States v. Sturgis*, 48 F.3d 784, 788-89 (4th Cir. 1995) (affirming sentence of 14 years based on the underlying offense, as well as a finding that the inmate committed perjury at trial concerning his knowledge of his HIV status).

[18] *United States v. Studnicka*, 450 F. Supp. 2d 680 (E.D. Tex. 2006).

[19] *Id.* at 681. *See also* 18 U.S.C. Appx. §§ 2A2.2(b)(3) (2016) ("If the victim sustained bodily injury, increase the offense level according to the seriousness of the injury).

[20] *Studnicka* at 682 (internal quotations omitted). *See also* 18 U.S.C. Appx. § 1B1.1, Application Notes (1)(l), (j) ("'Serious bodily injury' means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. . .") ("'Permanent or life-threatening bodily injury' means injury involving a substantial risk of death; loss or substantial impairment of the function of a bodily member, organ, or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent. . .").

[21] CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors*, *Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (Dec. 4, 2015) *available at* http://www.cdc.gov/hiv/policies/law/risk.html (last visited Nov. 29, 2016) (explaining HIV transmission risk for biting is "technically possible but unlikely and not well documented," while listing HIV transmission risk for receptive and insertive oral intercourse as "low," and the transmission risk for insertive penile-vaginal intercourse as "4 per 10,000 exposures.").

service members have also been prosecuted under provisions unique to the military: (1) failing to follow safe-sex orders and (2) conduct prejudicial to good order, and related provisions. These scenarios are explained in more detail below. All military cases appear to involve sexual contact, and thus there is an absence of reported biting, spitting, or similar assault cases of the sort prosecuted in civilian state courts.

Military service members living with HIV may be convicted of assault consummated by battery for engaging in various sex acts.

In *United States v. Gutierrez*, the United States Court of Appeals for the Armed Forces expressly overruled decades of precedent by reversing the aggravated assault conviction of a service member living with HIV that was based on his having unprotected oral sex and protected and unprotected vaginal sex.[22] According to Article 128 of the Uniform Code of Military Justice (UCMJ), aggravated assault consists of an assault undertaken "with a dangerous weapon or other means likely to produce death or grievous bodily harm," or an assault in which the actor intentionally inflicts grievous bodily harm.[23] The service member had been sentenced, upon conviction of that charge, to eight years' confinement, a dishonorable discharge, forfeiture of all pay and allowances, and reduction to the lowest enlisted grade.[24]

However, the Court in *Gutierrez* held the evidence presented was legally insufficient to find the essential elements of aggravated assault, reasoning that, with a maximum risk of 1 in 500, "HIV transmission is not the likely consequence of unprotected vaginal sex."[25] In making such a determination, the Court adopted the standard for "likely to produce death or grievous bodily harm" used in other aggravated assault prosecutions by assessing if grievous bodily harm was the likely consequence of the service member's sexual activity.[26] In doing so, it expressly overruled its prior standard, from *United States v. Joseph*, in which the Court laid out a unique analysis for aggravated assault prosecutions based on HIV exposure, stating, "the question is not the statistical probability of

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[22] *United States v. Gutierrez*, 74 M.J. 61, 64, 68 (C.A.A.F. 2015).

[23] 10 U.S.C. § 928(b) (2016). Military courts had held there is no requirement that the defendant act with the specific intent to infect a sexual partner, but, rather, only a general intent to engage in unprotected sex – "with its substantial possibility of introduction of the virus" – is required for conviction. *See United States v. Schoolfield*, 40 M.J. 132, 135 (C.M.A. 1994) (holding that a service member living with HIV who had unprotected sex with five women without disclosing his HIV status, but without evidence that he intended to infect anyone with HIV, was guilty of aggravated assault), *cert. denied*, *Schoolfield v. United States*, 513 U.S. 1178 (1995). Article 128 had also included attempted as well as completed assaults, thus subjecting a service member living with HIV to conviction for an attempt to have unprotected, consensual anal intercourse, which was abandoned before achieving penetration. *United States v. Johnson*, 30 M.J. 53, 57 (C.M.A. 1990) (affirming conviction and sentence of confinement for six years, total forfeitures, reduction in rank, and dishonorable discharge) (*cert. denied*, *Johnson v. United States*, 498 U.S. 919 (1990)). Moreover, even in cases in which a service member had disclosed their HIV status to the sexual partner(s), and the partner(s) gave informed consent to the sexual contact, the service member could be convicted of aggravated assault. *See United States v. Bygrave*, 46 M.J. 491, 495-97 (C.A.A.F. 1997) (affirming conviction on ground that informed consent to sexual intercourse with service member living with HIV was not a defense). However, the Court in *Gutierrez* rejected such this approach. *Gutierrez* at 67-68 ("An attempt requires 'specific intent to commit [the] offense.' Thus, an attempted aggravated assault charge may lie when an accused knew he was infected with HIV and, using a syringe of his blood or intentionally using his body as a weapon, specifically intended to inflict grievous bodily harm as demonstrated by the evidence at trial.") (internal citations omitted).

[24] *Gutierrez*, 74 M.J. at 62.

[25] *Id.* at 66-67. The Court also accepted testimony characterizing the HIV transmission risk as "almost zero" via unprotected oral sex and "only remotely possible" via protected vaginal sex. *Id.*

[26] *Id*. at 66.

HIV invading the victim's body, but rather the likelihood of the virus causing death or serious bodily harm *if* it invades the victim's body."[27]

The Court in *Gutierrez* nevertheless affirmed the lesser included offense of assault consummated by battery,[28] reasoning that the service member's "conduct included an offensive touching to which his sexual partners did not provide meaningful informed consent."[29] The Court's holding rested on a 1998 decision from the Supreme Court of Canada which reasoned, "[w]ithout disclosure of HIV status there cannot be a true consent."[30]

In *United States v. Pinkela*, upon remand from the Court of Appeals for the Armed Forces, the Army Court of Criminal Appeals attempted to distinguish *Pinkela* from *Gutierrez* because (1) the service member in *Pinkela* had a "pretty significant" viral load, (2) he did not use a condom, (3) the relevant conduct was anal sex, and (4) the service member's sex partner's anus was bleeding prior to the sexual activity.[31] The court thus reinstated the service member's conviction of, among other crimes, aggravated assault and reckless endangerment.[32] The Court of Appeals for the Armed Forces, again applying the *Gutierrez* standard, reversed these convictions once more.[33] As with *Gutierrez*, however, the Court in *Pinkela* affirmed the lesser included offense of assault consummated by battery.[34]

Lower military courts have held similarly following the *Gutierrez* standard. In *United States v. Atchak*, the Air Force Court of Criminal Appeals set aside a service member's guilty plea to aggravated assault, based on unprotected oral and anal sex, because the risk of HIV transmission did not meet the *Gutierrez* standard for assault by means likely to produce death or grievous bodily harm.[35] The court also set aside the conviction for the lesser included offense of assault consummated by battery, "because the issue of consent as a defense to that offense was not adequately explored . . . during the plea inquiry."[36] In *United States v. Sosa*, the United States Army Court of Criminal Appeals held that a

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[27] *United States v. Joseph*, 37 M.J. 392, 397 (C.M.A. 1993). Cases before *Gutierrez* laid the groundwork for the express overruling of *Joseph.* In *United States v. Dacus*, a service member had pled not guilty to two counts of attempted murder and guilty to the lesser included offense of aggravated assault after having sex without disclosing his HIV status to his partners. *United States v. Dacus*, 66 M.J. 235, 236 (C.A.A.F. 2008). Although the Court of Appeals for the Armed Forces affirmed the aggravated assault conviction, a concurring opinion questioned the adequacy of the legal standard at issue, noting that it "does not state that because the magnitude of the harm from AIDS is great, the risk of harm does not matter." *Id.* at 240. In *United States v. Upham*, the United States Coast Guard Court of Criminal appeals reversed the aggravated assault conviction of a service member living with HIV who had unprotected vaginal sex because the military judge had provided instruction, based on the *Joseph* standard, that "removed from the court's purview the issue of whether [the service member] employed a means likely to produce death or grievous bodily harm." *United States v. Upham*, 64 M.J. 547, 550 (C. G. Ct. Crim. App. 2006), *aff'd* 66 M.J. 83 (C.A.A.F. 2008). The court noted medical testimony that, "risk of contracting HIV was very low," given the service member's low viral load, but nevertheless affirmed the conviction of the lesser included offense of assault consummated by battery. *Id* at 548.

[28] 10 U.S.C. § 928(a) (2016) ("Any person subject to this chapter who attempts or offers with unlawful force to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.").

[29] *Gutierrez,* 74 M.J at 68.

[30] *Id. R. Cuerrier*, [1998] 2 S.C.R. 371, 372 (Can.).

[31] *United States v. Pinkela*, 2015 CCA LEXIS 254 (A. Ct. Crim. App. June 11, 2015).

[32] *Id.* 10 U.S.C. § 934 (2016).

[33] *United States v. Pinkela*, 75 M.J. 108 (C.A.A.F. 2015).

[34] *Pinkela*, 75 M.J. at 108 (2015).

[35] *United States v. Atchak*, 2015 CCA LEXIS 328 (A.F. Ct. Crim. App. Aug. 10, 2015), *aff'd* 75 M.J. 193 (C.A.A.F. 2016).

[36] *Id. But see United States v. Young*, 2016 CCA LEXIS 201 (A.F. Ct. Crim. App. March 24, 2016) (affirming conviction of assault consummated by battery based on defendant's guilty plea because he "admitted that the contact constituted an

service member could not be convicted of aggravated assault for having sex without disclosing his HIV status because the HIV transmission risk did not meet the *Gutierrez* standard.[37] Moreover, the court held that evidence of the service member's sexual partner subsequently acquiring HIV was inadmissible because, since the government did not prove the service member caused the HIV infection through his sexual conduct, its probative value was, "*at most*, marginal," coupled with "substantial risk to [the service member's] right to a fair trial."[38]

Military service members with HIV have been convicted of disobeying a "safe-sex order" in cases in which HIV status is not disclosed or in which condoms are not used.

Upon testing positive, military service members living with HIV are counseled regarding the risk of HIV transmission and are routinely issued orders to (1) disclose their HIV status to sexual partners, (2) avoid sexual activities posing a significant risk of HIV transmission, and (3) use condoms or other protection to reduce the risk of transmission.[39] Violations of safe-sex orders are prosecuted under Articles 90 or 92 of the UCMJ.[40] Obtaining the consent of a sexual partner, after disclosure of HIV status, to sexual intercourse without a condom or other protection would be irrelevant to whether a safe-sex order was violated. Military service members with HIV have been convicted for failing to follow safe-sex orders for engaging in (1) unprotected sex without disclosing their HIV status, [41] (2) protected sex without disclosing HIV status,[42] and (3) sexual relations with their spouses.[43] A charge for failure to obey a lawful order can be combined with the general criminal charges discussed above.[44]

Some safe-sex orders, though overly broad in prohibiting service members from engaging in behaviors that pose no risk of HIV transmission, have nevertheless been upheld as lawful orders. In *United States v. Womack*, the service member was issued an order requiring him to take affirmative steps "during any sexual activity to protect your sexual partner from coming in contact with your blood, semen, urine,

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offensive touching because of his failure to disclose his HIV status," and "the mere possibility of a conflict between the plea and an appellant's statements or other evidence is not sufficient to set aside a guilty plea.").

[37] *United States v. Sosa*, 2016 CCA LEXIS 635 (A. Ct. Crim. App. Oct. 28, 2016).

[38] *Id.* at *14-15.

[39] *See, e.g., Atchak*, 2015 CCA LEXIS 328 (A.F. Ct. Crim. App. Aug. 10, 2015), *aff'd* 75 M.J. 193 (C.A.A.F. 2016).

[40] 10 U.S.C. §§ 890(2), 890 (2016).

[41] *United States v. Stevens*, No. NMCCA 201300116, 2013 CCA LEXIS 913 (N-M. Ct. Crim. App. Oct. 31, 2013) (affirming conviction based on service member's guilty plea to violating a lawful order), *review denied*, 73 M.J. 258 (C.A.A.F. 2014); *United States v. Dumford*, 30 M.J. 137 (C.M.A.) (affirming conviction for disobeying an order not to engage in sexual activity without informing sexual partners of HIV status), *cert. denied*, 498 U.S. 854 (1990); *United States v. Barrows*, 48 M.J. 783, 787-88 (A. Ct. Crim. App. 1998) (affirming conviction for disobeying a lawful order by having unprotected sex without disclosing HIV status); *United States v. Sargeant*, 29 M.J. 812, 814–17 (A.C.M.R. 1989) (affirming conviction on charges of willful disobedience of a lawful order for having unprotected sex without disclosing HIV status).

[42] *United States v. Negron*, 28 M.J. 775, 776–79 (A.C.M.R.) (upholding conviction for violation of safe-sex order by service member who used condom during heterosexual intercourse but did not disclose his HIV status), *aff'd*, 29 M.J. 324 (C.M.A. 1989).

[43] *United States v. Pritchard*, 45 M.J. 126 (C.A.A.F. 1996), *cert. denied,* 520 U.S. 1253 (1997). Prosecutions involving spousal sexual contact, or others involving regulation of service members' consensual sexual contact, particularly with civilians, could violate constitutional privacy rights, *see Lawrence v. Texas*, 539 U.S. 558 (2003), although no military case has directly addressed this issue.

[44] *See, e.g., Gutierrez, supra* note 22 (service member was convicted of, in addition to assault consummated by a battery, failure to obey a lawful order, among other charges).

feces, or saliva."[45] The service member was accused of having oral-genital contact with another man, and his subsequent conviction for willful disobedience of the order was affirmed because his saliva came in contact with his partner during sexual activity.[46]

The court affirmed the safe sex orders over challenges that they (1) failed to relate to any valid military purpose and (2) interfered with the service member's constitutionally protected privacy.[47] If either challenge were successful, the orders likely could not stand.[48] However, the court dispensed of the first challenge by stating, without addressing HIV transmission risk,[49] "[t]he military, and society at large have a compelling interest in having those who defend the nation remain healthy and capable of performing their duty."[50] Addressing the service member's privacy, the court first noted, "that forcible sodomy is not constitutionally protected conduct,"[51] and then asserted, "because of the unique mission and need for internal discipline. . . the armed forces may constitutionally prohibit or regulate conduct which might be permissible elsewhere."[52]

Although *Womack* is still good law, the court's reasoning might no longer stand up to these challenges, in light of recent legal developments. *Womack* is part of the line of cases that used the *Joseph* standard to frame aggravated assault prosecutions by stating, "the question is not the statistical probability of HIV invading the victim's body, but rather the likelihood of the virus causing death or serious bodily harm *if* it invades the victim's body."[53] Indeed, *Womack* builds this very reasoning into its valid military purpose argument.[54] With the *Joseph* standard explicitly overruled, a renewed challenge to the valid military purpose of broad safe-sex orders might force the court to consider the nexus between prohibited conduct and the HIV transmission risk posed by that conduct. The constitutional right to privacy challenge also presents a new legal context. Although the court in *Womack* framed the matter as one where no constitutional right exists as a threshold issue, the legal support for such a view has since been expressly overruled.[55] However, the distinction in First Amendment analyses between civilian and military provisions may nevertheless still stand.

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[45] *United States v. Womack*, 29 M.J. 88, 89 (C.M.A. 1989). The order also required disclosure of HIV status to all health care professionals.

[46] *Id.* at 90-91.

[47] *Womack* at 90-91.

[48] *Id.* at 90 ("In considering the validity of this military order, we note . . . it may not be overly broad in scope or impose an unjust limitation on personal rights.") (internal citations omitted).

[49] At trial, two military doctors testified that, "it was possible but not very likely that one could transmit the virus through his saliva incident to an act of fellatio." *United States v. Womack*, 27 M.J. 630, 634 (A.F.C.M.R. 1988).

[50] *Womack, supra* note 45 at 90.

[51] *Id.* at 91 (citing *Bowers v. Hardwick*, 478 U.S. 186 (1986)).

[52] *Id*. (citing *Parker v. Levy*, 417 U.S. 773 (1974) and *United States v. Hoard*, 12 M.J. 563 (A.C.M.R. 1981)).

[53] *Joseph, supra* note 27.

[54] *Womack, supra* note 45 at 90-91 ("We have recently held that a servicemember who engages in sexual intercourse without protection, knowing that his seminal fluid contains a deadly virus capable of sexual transmission, can be convicted of committing an 'inherently dangerous act' likely to cause death or great bodily ham and that such conduct can be prejudicial to the good order and discipline of the armed forces . . .").

[55] *See Lawrence v. Texas*, 539 U.S. 558, 578 (2003)("*Bowers* was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. *Bowers v. Hardwick* should be and now is overruled."). Notwithstanding the forcible nature of the sex acts involved in *Womack* (the service member allegedly performed fellatio on another person while he was asleep), *Bowers* stood for the broad proposition that sodomy is not constitutionally protected. Thus, as to the constitutional right threshold, *Womack* could at least be narrowed to apply only to "safe-sex orders" where there is no consent.

Military service members with HIV have been convicted of "conduct prejudicial to good order" for engaging in sexual activities posing a risk of HIV transmission.

Military service members with HIV have been convicted under the "general article," Article 134 of the UCMJ.[56] This catch-all provision criminalizes all conduct "to the prejudice of good order and discipline in the armed forces" and "all conduct of a nature to bring discredit upon the armed forces."[57] Despite the absence of any reference in this provision to behaviors posing a risk of HIV transmission, or any reference to what behaviors involve a sufficient risk to constitute a violation, the Court of Military Appeals upheld its application to service members living with HIV on the basis that the safe-sex counseling they have received provides sufficient notice regarding conduct prohibited by Article 134.[58] Disclosure of HIV status and consent of the service member's sexual partner is not a defense to an Article 134 prosecution.[59]

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.*

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[56] 10 U.S.C. § 934 (2016).

[57] *Id.*

[58] *United States v. Woods*, 28 M.J. 318, 319-20 (C.M.A. 1989). *See also United States v. Pinkela*, 2016 CCA LEXIS 8 (A. Ct. Crim. App. Jan. 7, 2016).

[59] *United States v. Morris*, 30 M.J. 1221 (A.C.M.R. 1990) (affirming Article 134 conviction and sentence of bad-conduct discharge, forfeiture of $400 pay per month for three months, and restriction to the limits of his base for service member who disclosed HIV status and used condoms approximately 25 percent of the time with female sex partner).

Title

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.*

18 U.S.C. § 1122 (2016) **

Protection against the human immunodeficiency virus

(a) In general.--Whoever, after testing positive for the Human Immunodeficiency Virus (HIV) and receiving actual notice of that fact, knowingly donates or sells, or knowingly attempts to donate or sell, blood, semen, tissues, organs, or other bodily fluids for use by another, except as determined necessary for medical research or testing or in accordance with all applicable guidelines and regulations made by the Secretary of Health and Human Services under section 377E of the Public Health Service Act, shall be fined or imprisoned in accordance with subsection (c).

(b) Transmission not required.--Transmission of the Human Immunodeficiency Virus does not have to occur for a person to be convicted of a violation of this section.

(c) Penalty.--Any person convicted of violating the provisions of subsection (a) shall be subject to a fine under this title of not less than $ 10,000, imprisoned for not less than 1 year nor more than 10 years, or both.

American Samoa

Analysis

No explicit statute.

There are no statutes explicitly criminalizing HIV transmission or exposure in American Samoa. However, in other jurisdictions people living with HIV (PLHIV) have been prosecuted for HIV exposure under general criminal laws, such as reckless endangerment and aggravated assault. At the time of this publication, the authors are not aware of a criminal prosecution of an individual on the basis of that person's HIV status in American Samoa.

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Guam

Analysis

People living with HIV (PLHIV) who engage in sex work may face imprisonment for up to 20 years.

Guam is one of many jurisdictions with a "penalty enhancement" provision specifically targeting PLHIV who perform sex work.[1] Such provisions frequently authorize increased prison sentences for PLHIV, regardless of whether they expose others to a significant risk of HIV transmission.

In Guam, engaging in, offering to engage in, or agreeing to engage in any sexual conduct in return for a fee is a misdemeanor punishable by up to one-year imprisonment and up to a $1,000 fine.[2] However, if a PLHIV individual convicted of prostitution is aware of their HIV status, prostitution is a first-degree felony punishable by five to 20 years imprisonment and up to a $10,000 fine.[3] Thus, PLHIV convicted of prostitution may receive prison sentences up to 20 times higher than those of other sex workers.

This prostitution law is intended to punish both sex workers living with HIV and PLHIV who seek out the services of a sex worker.[4]

Neither the intent to transmit HIV nor actual transmission is required for a prosecution. The use of condoms or other prophylaxis during sexual intercourse is not a defense, and neither is the disclosure of HIV status to sexual partners. This statute thus fails to provide sex workers living with HIV with any incentive to use condoms, because the increased sentence applies whether they do so or not.

Guam's prostitution law is a penalty enhancement statute that may severely increase the prison sentences of PLHIV, regardless of whether they expose others to any actual risk of HIV transmission. Guam's definition of "sexual contact" includes sexual activities that do not present any risk of HIV transmission, including:

- The intentional touching of the victim's or actor's intimate parts;

[1] *See generally* GUAM CODE ANN. tit. 9, § 28.10 (2015).

[2] GUAM CODE ANN. tit. 9, §§ 28.10(b)(1), 80.34(a) (2014), 80.50(c) (2015).

[3] §§ 28.10(b)(3), 80.30(a), 80.50(a) (2015).

[4] § 28.10(a) (stating "[i[t is the intent of this section that guilt attach to *both the payor and the recipient of the fee* or pecuniary benefit that is the consideration for the act of prostitution, except that a police officer engaged in the performance of his or her official duties in the performance of an investigation of offenses committed under this chapter shall not be charged under this section." (emphasis added)).

- The intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification."[5]

Under this definition, even contact between the hands of a sex worker and the clothes covering the penis of a PLHIV could result in penalty enhancement. Exchanging money for sexual penetration or any sexual conduct triggers elevated sentencing for any PLHIV, regardless of whether the act, if completed, would have posed any risk of HIV exposure or transmission (i.e., a "hand job").[6] Applying penalty enhancement provisions to this broad definition of prostitution may lead to felony-level penalties for PLHIV engaging in sexual contact that cannot transmit HIV.

PLHIV and persons living with other sexually transmitted infections (STIs) may be subject to mandatory testing, treatment, quarantine, and isolation.

During a state of public health emergency, the public health authority may, in order to avoid the spread of communicable diseases, require people to undergo medical examinations and treatment, or else have them subject to quarantine or isolation.[7] Guam defined "communicable diseases" to include chancroid, gonorrhea, granuloma inguinale, HIV, hepatitis B, and syphilis.[8]

Quarantine and isolation during a public health emergency may be without notice, so long as the public health authority provides a written directive stating the identity of the person(s) subject to the directive; the premises, date, and time for quarantine or isolation; and the suspected contagious disease.[9] Such quarantine and isolation may last ten days.[10]

If there is no emergency, the public health authority must submit a written petition to the Superior Court of Guam before quarantine or isolation may be authorized.[11] In such cases, persons subject to the petition have rights to notice and hearing, and the order may not exceed 30 days without motion for continuance.[12]

In either emergency or non-emergency cases, individuals subject to quarantine or isolation orders may apply to the Superior Court of Guam for relief, and they have the right to legal counsel.[13] In all cases, isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a

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[5] § 28.10(c) (citing GUAM CODE ANN. tit. 9, § 25.10(a)(8) (2015)).

[6] *Id.*

[7] GUAM CODE ANN. tit. 10, §§ 19602, 19603 (2015). Public health emergencies are defined as an "occurrence or imminent threat of an illness or health condition that (1) is believed to be caused by . . . bioterrorism, the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin, a natural disaster relative to an act of God caused by a typhoon, earthquake, tsunami, flood or intra-terrestrial collision, a chemical attack or accidental release, or a nuclear attack or accident; and (2) poses a high probability of . . . a large number of deaths in the affected population, a large number of serious or long-term disabilities in the affected population; or widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population." GUAM CODE ANN. tit. 10, § 19104(m) (2015).

[8] GUAM CODE ANN. tit. 10, § 3301(A) (2015).

[9] GUAM CODE ANN. tit. 10, § 19605(A) (2015).

[10] *Id.*

[11] GUAM CODE ANN. tit. 10, § 19605(B) (2015).

[12] *Id.*

[13] GUAM CODE ANN. tit. 10, § 19605(C), (E) (2015).

communicable disease, and the health status of isolated and quarantined persons must be monitored regularly to determine if they require isolation or quarantine.[14]

Those who fail to obey any public health provision may be found guilty of a misdemeanor, punishable by up to one year's imprisonment and a fine of up to $1,000.[15]

Note: Under Guam's public health laws, it is unlawful for any person with a "communicable disease" to "willfully expose himself" in any public place, street or highway.[16] Although Guam defines both HIV and AIDS as communicable diseases,[17] this exposure statute was intended to address contagious disease outbreaks, and is seemingly inapplicable to HIV exposure or transmission.

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[14] GUAM CODE ANN. tit. 10, § 19604(B) (2015).
[15] GUAM CODE ANN. tit. 10, § 3301; TIT. 9; §§ 80.34(A), 80.50(C) (2015).
[16] GUAM CODE ANN. tit. 10, § 3320 (2015).
[17] § 3301(a).

Guam Code 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 9. CRIMES AND CORRECTIONS

GUAM CODE ANN. TIT. 9, § 28.10 (2015) **

Prostitution Defined; Punishment Established; Definitions

(a) A person who engages in, or agrees to engage in, or offers to engage in, sexual penetration or sexual contact or in any sexual conduct or act with another person in return for a fee or in consideration of a pecuniary benefit commits the crime of prostitution. It is the intent of this section that guilt attach to both the payor and the recipient of the fee or pecuniary benefit that is the consideration for the act of prostitution, except that a police officer engaged in the performance of his or her official duties in the performance of an investigation of offenses committed under this chapter shall not be charged under this section.

(b)

(1) A person convicted of prostitution shall be guilty of a misdemeanor; or

(2) A person convicted of a third offense of prostitution within three (3) years of the first two (2) offenses shall be guilty of a felony of the third degree; or

(3) A person convicted of prostitution who is determined to have known that he or she was infected with either HIV or AIDS at the time of the commission of the act shall be guilty of a felony of the first degree.

(c) As used in this section, the terms sexual penetration and sexual contact have the meanings provided by § 25.10 of this title.

GUAM CODE ANN. TIT. 9, § 25.10 (2015)

Definitions

(a) As used in this Chapter:

(8) Sexual Contact includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification;

(9) Sexual Penetration means sexual intercourse, cunnilingus, fellatio, anal intercourse or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required

GUAM CODE ANN. TIT. 9, § 80.30 (2015) **

Duration of Imprisonment

Except as otherwise provided by law, a person who has been convicted of a felony may be sentenced to imprisonment as follows:

(a) In the case of a felony of the first degree, the court shall impose a sentence of not less than five (5) years and not more than twenty (20) years.

GUAM CODE ANN. TIT. 9, § 80.34 (2015) **

Misdemeanor & Petty Misdemeanor Sentences.

Except as otherwise provided by § 80.36, a person who has been convicted of a misdemeanor or a petty misdemeanor may be sentenced to imprisonment, as follows:

(a) in the case of a misdemeanor, the court shall set a maximum term not to exceed one (1) year.

GUAM CODE ANN. TIT. 9, § 80.50 (2015) **

Fines & Restitution as Sentence Allowed: Limited

A person who has been convicted of an offense may be sentenced to pay a fine or to make restitution not exceeding:

(a) Ten Thousand Dollars ($10,000.00), when the conviction is of a felony of the first or second degree;

(c) One Thousand Dollars ($1,000.00), when the conviction is of a misdemeanor.

TITLE 10. HEALTH AND SAFETY

GUAM CODE ANN. TIT. 10, § 3301 (2015)

Definitions

As used in this article:

(a) Communicable Diseases includes any of the following diseases or conditions which are dangerous to public health

(1) Acquired Immune Deficiency Syndome (AIDS);

(5) Chancroid;

(20) Gonorrhea;

(22) Granuloma inguinale;

(24) HIV-seropositive condition;

(25) Hepatitis B

(59) Syphilis:

(70) Any other disease deemed by the Director to be dangerous to the public health may be added by regulation.

GUAM CODE ANN. TIT. 10, § 19602 (2015)

Medical Examination and Testing.

During a state of public health emergency, the public health authority may perform physical examinations and/or tests as necessary for the diagnosis or treatment of individuals.

(c) The public health authority may isolate or quarantine, pursuant to § 19604, any person whose refusal of medical examination or testing results in uncertainty regarding whether that person has been exposed to or is infected with a contagious or possibly contagious disease, or otherwise poses a danger to public health.

GUAM CODE ANN. TIT. 10, § 19603 (2015)

Vaccination and Treatment.

During a state of public health emergency, the public health authority may exercise the following emergency powers over persons as necessary to address the public health emergency.

(b) Treatment. To treat persons exposed to or infected with diseases.

(3) To prevent the spread of contagious or possibly contagious disease the public health authority may isolate or quarantine, pursuant to § 19604, persons who are unable or unwilling for reasons of health, religion or conscience to undergo treatment pursuant to this Section.

GUAM CODE ANN. TIT. 10, § 19604 (2015) **

Isolation and Quarantine.

(b) Conditions and Principles. The public health authority shall adhere to the following conditions and principles when isolating or quarantining individuals or groups of individuals:

(1) Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others, and may include, but are not limited to, confinement to private homes or other private and public premises.

(2) Isolated individuals must be confined separately from quarantined individuals.

(3) The health status of isolated and quarantined individuals must be monitored regularly to determine if they require isolation or quarantine.

(4) If a quarantined individual subsequently becomes infected, or is reasonably believed to have become infected with a contagious or possibly contagious disease, that person must promptly be removed to isolation.

(5) Isolated and quarantined individuals must be immediately released when they pose no substantial risk of transmitting a contagious or possibly contagious disease to others.

(6) The needs of persons isolated and quarantined shall be addressed in a systematic and competent fashion, including, but not limited to, providing adequate food, clothing, shelter,

means of communication with those in isolation or quarantine and outside these settings, medication and competent medical care.

(7) Premises used for isolation and quarantine shall be maintained in a safe and hygienic manner, and be designed to minimize the likelihood of further transmission of infection or other harms to persons isolated and quarantined.

(c) Cooperation. Persons subject to isolation or quarantine shall obey the public health authority's rules and orders; and shall not go beyond the isolation or quarantine premises. Failure to obey these provisions shall constitute a misdemeanor.

GUAM CODE ANN. TIT. 10, § 19605 (2015)

Procedures for Isolation and Quarantine.

During a public health emergency, the isolation and quarantine of an individual or groups of individuals shall be undertaken in accordance with the following procedures.

(a) Temporary Isolation and Quarantine Without Notice.

(1) Authorization. The public health authority may temporarily isolate or quarantine an individual, or groups of individuals, through a written directive if delay in imposing the isolation or quarantine would significantly jeopardize the public health authority's ability to prevent or limit the transmission of a contagious or possibly contagious disease to others.

(2) Content of Directive. The written directive shall specify the following:

(i) the identity of the individual(s) or groups of individuals subject to isolation or quarantine;

(ii) the premises subject to isolation or quarantine;

(iii) the date and time at which isolation or quarantine commences;

(iv) the suspected contagious disease if known; and

(v) a copy of Article 6 and relevant definitions of this Chapter.

(3) Copies. A copy of the written directive shall be given to the individual to be isolated or quarantined or, if the order applies to a group of individuals and it is impractical to provide individual copies, it may be posted in a conspicuous place in the isolation or quarantine premises.

(4) Petition for Continued Isolation or Quarantine. Within ten (10) days after issuing the written directive, the public health authority shall file a petition pursuant to § 19605(b) for a court order authorizing the continued isolation or quarantine of the isolated or quarantined individual or groups of individuals.

(b) Isolation or Quarantine With Notice.

(1) Authorization. The public health authority may make a written petition to the Superior Court of Guam for an order authorizing the isolation or quarantine of an individual or groups of individuals.

(2) Content of Petition. A petition under Subsection (b)(1) shall specify the following:

(i) the identity of the individual(s) or groups of individuals subject to isolation or quarantine;

(ii) the premises subject to isolation or quarantine;

(iii) the date and time at which isolation or quarantine commences;

(iv) the suspected contagious disease if known;

(v) a statement of compliance with the conditions and principles for isolation and quarantine of ' 19604(b); and

(vi) a statement of the basis upon which isolation or quarantine is justified in compliance with this Article. The petition shall be accompanied by the sworn affidavit of the public health authority attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.

(3) Notice. Notice to the individuals or groups of individuals identified in the petition shall be accomplished within twenty-four (24) hours in accordance with the rules of civil procedure.

(4) Hearing. A hearing must be held on any petition filed pursuant to this Subsection within five (5) days of filing of the petition. In extraordinary circumstances and for good cause shown, the public health authority may apply to continue the hearing date on a petition filed pursuant to this Section for up to ten (10) days, which continuance the court may grant in its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the emergency and the availability of necessary witnesses and evidence.

(5) Order. The court shall grant the petition if, by a preponderance of the evidence, isolation or quarantine is shown to be reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease to others.

(i) An order authorizing isolation or quarantine may do so for a period not to exceed thirty (30) days.

(ii) The order shall:

(aa) identify the isolated or quarantined individuals, or groups of individuals, by name or shared or similar characteristics or circumstances;

(bb) specify factual findings warranting isolation or quarantine pursuant to this Chapter;

(cc) include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this Chapter; and

(dd) served on affected individuals or groups of individuals in accordance with the rules of civil procedure.

(6) Continuances. Prior to the expiration of an order issued pursuant to § 19605(b)(5), the public health authority may move to continue isolation or quarantine for additional periods not to

exceed thirty (30) days each. The court shall consider the motion in accordance with standards set forth in § 19605(b)(5).

(c) Relief from Isolation and Quarantine.

(1) Releases. An individual or group of individuals isolated or quarantined pursuant to this Chapter may apply to the Superior Court of Guam for an order to show cause why the individual or group of individuals should be released. The Court shall rule upon the application to show cause within forty-eight (48) hours of its filing. If the court grants the application, the Court shall schedule a hearing on the order to show cause within twenty-four (24) hours from issuance of the order to show cause. The issuance of an order to show cause shall not stay or enjoin an isolation or quarantine order.

(2) Remedies for Breach of Conditions. An individual or groups of individuals isolated or quarantined pursuant to this Chapter may request a hearing in the Superior Court of Guam for remedies regarding breaches to the conditions of isolation or quarantine. A request for a hearing shall not stay or enjoin an isolation or quarantine order.

(i) Upon receipt of a request under this Subsection alleging extraordinary circumstances justifying the immediate granting of relief, the Court shall fix a date for hearing on the matters alleged not more than twenty-four (24) hours from receipt of the request.

(ii) Otherwise, upon receipt of a request under this Subsection, the Court shall fix a date for hearing on the matters alleged within five (5) days from receipt of the request.

(3) Extensions. In any proceedings brought for relief under this Subsection, in extraordinary circumstances and for good cause shown the public health authority may move the Court to extend the time for a hearing, which extension the Court in its discretion may grant giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the emergency and the availability of necessary witnesses and evidence.(d) Proceedings. A record of the proceedings pursuant to this Section shall be made and retained. In the event that, given a state of public health emergency, parties cannot personally appear before the Court, proceedings may be conducted by their authorized representatives and be held via any means that allows all parties to fully participate.

(e) Court to Appoint Counsel and Consolidate Claims.

(1) Appointment. The Court shall appoint counsel at the expense of the government of Guam to represent individuals or groups of individuals who are, or who are about to be isolated or quarantined pursuant to the provisions of this Chapter, and who are not otherwise represented by counsel. Appointments shall be made in accordance with the procedures to be specified in the Public Health Emergency Plan and shall last throughout the duration of the isolation or quarantine of the individual or groups of individuals. The public health authority must provide adequate means of communication between such individuals or groups and their counsel.

Northern Mariana Islands

Analysis

No criminal statutes explicitly addressing HIV exposure.

There are no statutes explicitly criminalizing HIV transmission or exposure in the Northern Mariana Islands. However, in other jurisdictions people living with HIV (PLHIV) have been prosecuted for HIV exposure under general criminal laws, such as reckless endangerment and aggravated assault. At the time of this publication, the authors are not aware of a criminal prosecution of an individual on the basis of that person's HIV status in the Northern Mariana Islands.

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.*

Puerto Rico

Analysis

No criminal statutes explicitly addressing HIV exposure.

There are no criminal statutes explicitly criminalizing HIV exposure in Puerto Rico. However, in other jurisdictions people living with HIV (PLHIV) have been prosecuted for HIV exposure under general criminal laws, such as reckless endangerment and aggravated assault. At the time of publication, the authors are not aware of a criminal prosecution of an individual on the basis of that person's HIV status in Puerto Rico.

Health officials may mandate testing and treatment for sexually transmitted diseases and infections (STDs/STIs).

STDs are defined to include diseases transmitted both by sexual contact and by needle exchange, and include syphilis, gonorrhea, inguinal granuloma, venereal lymphogranuloma, chancroid, nonspecific urethritis, vaginitis trichomoniasis, crab-lice, genital herpes simplex Type I, genital herpes, hepatitis Type B, hepatitis Type C, scabies (mange), genital warts, Chlamydia Trachomatis, bacterial vaginosis, Acquired Immune Deficiency Syndrome (AIDS), anal warts, vaginitis trichomoniasis, scabies, and HIV.[1]

A physician, "who has reasonable grounds to believe that a person who suffers from or has been infected with any sexually transmitted disease that could infect . . . any other person, must require that said person submit to a medical examination."[2] Anyone convicted of rape, conjugal sexual assault, incest, sodomy, or lewd or indecent acts involving fellatio, cunnilingus, or anilingus may be subject to HIV testing.[3] All persons found to have an STD must submit to medical treatment within ten days.[4] Any person who violates these provisions may face up to six months' imprisonment and a fine of up to $1,500.[5]

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.*

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[1] P.R. LAWS ANN. tit. 24, §§ 571, 582 (2016). 900 P.R. REG. 5649, art. III (2016). 900 P.R. REG. 5544, art. II (2016).

[2] P.R. LAWS ANN. tit. 24, §§ 576, 582 (2016). 900 P.R. REG. 5649, art. IX (2016). 900 P.R. REG. 5544, art. IV (10) (2016)

[3] *Id.*

[4] P.R. LAWS ANN. tit. 24, §§ 576, 582 (2016). 900 P.R. REG. 5649, art. IX. (2016). 900 P.R. REG. 5544, art. IV (11) (2016).

[5] P.R. LAWS ANN. tit. 24, § 583 (2016). Persons may also be subject to an administrative fine of up to $5,000. P.R. LAWS ANN. tit. 24, § 582 (2016); 900 P.R. REG. 5544, art. VII. (2016).

Laws of Puerto Rico 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 24. HEALTH AND SANITATION

P.R. LAWS ANN. TIT. 24, § 571 (2016)

Definitions

For the purposes of this chapter, the following terms will have the definition hereinafter expressed:

(a) Sexually-Transmitted Disease (STD). Are those, according to scientific research, transmitted by sexual contact or needle exchange. These include: syphilis, gonorrhea, inguinal granuloma, venereal lymphogranuloma, chancroid, nonspecific urethritis, vaginitis trichomoniasis, crab-lice, genital herpes simplex Type I, genital herpes simplex Type II, hepatitis Type B, hepatitis Type C, scabies (mange), genital warts, Chlamydia Trachomatis, bacterial vaginosis, Acquired Immune Deficiency Syndrome (AIDS) and any other that the Secretary may include in the future as sexually transmitted disease or infection.

(i) Sexually-transmitted infections. An infection that, according to scientific research, is transmitted by sexual contact or needle exchange. These include: the Acquired Immune Deficiency Syndrome (AIDS) Infection.

P.R. LAWS ANN. TIT. 24, § 576 (2016)

Investigation and examination of suspected sufferers

Health physicians shall employ all means available to determine the existence[sic]. Medical health officials shall employ all means available to determine the existence of sexually transmitted diseases, as well as the source of said diseases.

The health physician who has reasonable grounds to believe that a person who suffers from or has been infected with any sexually transmitted disease that could infect or be the source of infection for any other person, must require that said person submit to a medical examination and have a sample of his/her blood or other bodily secretions taken so as to conduct the laboratory tests needed to establish the presence or absence of said disease or infection.

Provided, That the required examination shall be conducted by a health physician or, at the option of the person to be examined, by a licensed physician who, in the opinion of the health epidemiology technician, is qualified to perform this work and who has his/her approval. The licensed physician who conducts said examination shall render a report thereon to the health epidemiology technician of the Department of Health, but shall not issue a certificate of immunity. Provided, further, That the health epidemiology technician may request the court to order the person suffering a sexually transmitted disease to attend any of the clinics of the Program to receive treatment. The Department of Health shall provide medical assistance to any medically indigent person suffering from any sexually transmitted disease.

In every case of rape, conjugal sexual assault, incest, sodomy or lewd or indecent acts when committed by contact between the mouth and the penis, the mouth and the vagina or the mouth and

the anus, the judge may order that the convict be subjected to the tests to detect the HIV virus, transmitter of the Acquired Immune Deficiency Syndrome (AIDS). Likewise, the judge may order that said tests be performed on minors who incur offenses equal to the abovementioned crimes.

P.R. LAWS ANN. TIT. 24, § 582 (2016)

Regulations

The Secretary shall have the authority to promulgate those rules or regulations that may be necessary for the implementation of this chapter. Any regulations adopted by virtue of this chapter, that are not of an internal nature, must be approved in accordance with the provisions of Act No. 112 of June 30, 1957.

P.R. LAWS ANN. TIT. 24, § 583 (2016) **

Penalties

Any person that violates the provisions of this chapter shall incur a misdemeanor and, upon conviction, will be sanctioned with a penalty of imprisonment that shall not exceed six (6) months, or a fine that shall not exceed one thousand five hundred dollars ($1,500), or both penalties, at the discretion of the court.

Administrative Rules of Puerto Rico

DEPARTMENT OF HEALTH

900 P.R. REG. 5649 (2016)

Article III. Sexually Transmitted Diseases
As per this Rule, the following are to be considered sexually transmitted diseases:

(1) Syphilis

(2) Gonorrhea

(3) Genital Herpes Simplex I and II

(4) Hepatitis B

(5) Chancroid

(6) Granuloma Inguinale

(7) Lymphogranuloma Venereum

(8) Anal Warts

(9) Autoimmune Deficiency Syndrome (AIDS)

(10) Chlamydia Trachomatis

(11) Vaginitis Trichomoniasis

(12) Bacterial Vaginosis

(13) Crabs

(14) Scabies

(15) Acquired Immunodeficiency Virus Infection [sic] (likely HIV)

(16) Any other disease that may be determined to be sexually transmitted.

Article IX. Duties of Epidemiological Technicians
Epidemiological technicians shall investigate all persons, including minors and those who may be mentally impaired or mentally incapacitated, who are infected with or are suspected of being infected with a sexually transmitted disease. . .

All such persons are required to submit to a medical exam or medical treatment with their primary physician or at a Sexually Transmitted Diseases Control Program clinic within ten days of notification from an epidemiological technician.

900 P.R. REG. 5544 (2016)

Article II. Definitions.
As per this Rule, the following terms will have the meanings provided below:

(1) Sexually transmitted disease: means syphilis, gonorrhea, gonorrhea inguinale, lymphogranuloma venereum, chancroid, non-specific urethritis, vaginitis, trichomoniasis, vaginal moniliasis, crabs, herpes simplex II, hepatitis B, hepatitis C, scabies, chlamydia, genital warts, and human immunodeficiency virus (HIV).

Article IV. Investigation and Examination of Suspected Persons and Sexual Contacts.
(10) Epidemiological technicians may investigate all persons, including minors and those who may be mentally impaired or mentally incapacitated, who are infected with or are suspected of being infected with a sexually transmitted disease. . .

(11) All persons under investigation by the epidemiological technician who suffer from any sexually transmitted disease is required to submit to a medical exam or to medical treatment within ten days of notification from an epidemiological technician.

Article VII. Fines.
Any violation of the provisions of this Rule shall be punished by administrative fine up to $5,000 per violation, as provided in the Uniform Law of Administrative Procedure.

U.S. Virgin Islands

Analysis

Engaging in unprotected sexual intercourse with the specific intent to transmit HIV is prohibited.

In the U.S. Virgin Islands, people living with HIV (PLHIV) may be prosecuted for engaging in unprotected sexual intercourse, but only under very specific circumstances. It is an offense punishable by up to ten years imprisonment and up to a $10,000 fine if a PLHIV (1) knows their HIV status, (2) has not disclosed their HIV status to a sexual partner, and (3) engages in unprotected sexual activity with the specific intent to infect their partner with HIV.[1] However, evidence that a PLHIV knew of their HIV status and engaged in unprotected sex is not sufficient by itself to prove the specific intent to infect.[2] While it is not clear what evidence would be sufficient to prove intent to infect, presumably testimony regarding statements from a PLHIV that they wished to spread HIV could suffice.

Actual transmission of HIV is not required for conviction.[3]

This HIV exposure law is explicitly limited to situations where PLHIV expose others to activities known to transmit HIV and there is proof of actual intent to transmit HIV.

If a condom is used during sexual intercourse, then there is no violation of the statute.[4] In addition, the law's definition of "sexual activity" includes only: "Insertive vaginal or anal intercourse on the part of an infected male; receptive consensual vaginal intercourse on the part of an infected woman with a male; or receptive consensual anal intercourse on the part of an infected man or woman with a male."[5]

Under the terms of this HIV exposure law, it is a complete defense to prosecution if HIV status is disclosed to sexual partners before engaging in consensual sexual activity.[6] However, PLHIV should be aware that disclosure of HIV status may be difficult to prove without witnesses or some form of incontrovertible evidence.

At the time of publication, the authors are not aware of any criminal prosecutions of PLHIV on the basis of their HIV status in the U.S. Virgin Islands.

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[1] V.I. CODE ANN. tit. 14, § 888(a) (2015).
[2] § 888(c).
[3] § 888(d).
[4] § 888(a), (e)(2).
[5] § 888(e)(1).
[6] § 888(a).

Sharing needles or syringes with the specific intent to infect another person with HIV is prohibited.

In the U.S. Virgin Islands it is an offense punishable by up to ten years imprisonment and up to a $10,000 fine if a PLHIV (1) knows their HIV status, (2) has not disclosed their HIV status, and (3) shares a hypodermic needle or syringe with the specific intent to infect another with HIV.[7]

Transmission of HIV is not required for prosecution.[8]

It is a complete defense to prosecution if HIV status is disclosed to needle/syringe-sharing partners.[9] However, PLHIV should be aware that disclosure of HIV status may be difficult to prove without witnesses or documentation.

This needle-sharing law is a rare example of a statute explicitly limiting prosecution to the unusual situation where a PLHIV intentionally attempts to infect others. To be convicted of HIV exposure through sharing a needle under this statute, the state must prove that the defendant had the specific intent to infect by sharing the needle or syringe.[10] Evidence that a PLHIV knew of their HIV status and shared a contaminated needle is not sufficient by itself to fulfill this specific intent requirement.[11]

Donating or selling blood, semen, human tissues, organs, or bodily fluids with the specific intent to infect another person is prohibited for PLHIV.

The U.S. Virgin Islands' HIV exposure law also prohibits PLHIV from donating or selling blood, organs, and other human tissues or bodily fluids.[12] Specifically, it is an offense punishable by up to ten years imprisonment and up to a $10,000 fine if a PLHIV (1) knows their HIV status, (2) has not disclosed their HIV status, and (3) donates, sells, or attempts to donate or sell blood, semen, tissues, organs, or bodily fluids for the use of another, except as necessary for medical research or testing.[13]

Transmission of HIV is not required for prosecution.[14]

It is a complete defense to prosecution if HIV status is disclosed before donation of blood, tissues, and bodily fluids.[15]

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[7] *Id*.
[8] § 888(d).
[9] § 888(a).
[10] § 888(c).
[11] *Id.*
[12] § 888(b).
[13] *Id.*
[14] § 888(d).
[15] § 888(a).

The Commissioner of Health (the "commissioner") may mandate testing, treatment, and hospitalization of persons with sexually transmitted infections (STIs) or those suspected of having an STI.

The U.S. Virgin Islands holds STIs to be infectious, communicable, and dangerous to the public health and welfare.[16] The commissioner may mandate medical examination for all persons, "suspected of being infected with" an STI.[17] In particular, any woman convicted of prostitution shall be required to undergo such examination.[18]

Any person with an STI may be placed in a hospital at the discretion of the commissioner, or else pay a fine of up to $100 and be subject to 180 days' imprisonment.[19] Any person who leaves the hospital before discharge shall be imprisoned up to 30 days.[20] Anyone with an STI who cohabits with another person while having knowledge of their STI diagnosis may be imprisoned up to 180 days and fined up to $100.[21] Anyone who otherwise violates a public health provision is similarly subject to up to 180 days' imprisonment and a $100 fine.[22]

***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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[16] V.I. CODE ANN. tit. 19, § 31 (2016) (Enumerated STIs are syphilis, gonorrhea, chancroid, granuloma inguinale and lymphopathia venereum.).
[17] V.I. CODE ANN. tit. 19, § 34 (2016).
[18] V.I. CODE ANN. tit. 19, § 38 (2016).
[19] V.I. CODE ANN. tit. 19, § 33(c) (2016).
[20] V.I. CODE ANN. tit. 19, § 39 (2016).
[21] V.I. CODE ANN. tit. 19, § 40 (2016).
[22] V.I. CODE ANN. tit. 19, § 41 (2016).

Virgin Islands Code 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 14. CRIMES

V.I. CODE ANN. TIT. 14, § 888 (2016) **

Exposure by another of HIV

(a) Any person who exposes another to the human immunodeficiency virus (HIV) by engaging in unprotected sexual activity or by sharing hypodermic needles/syringes when the infected person knows at the time of the unprotected sex/sharing of needles that he is infected with HIV, has not disclosed his HIV positive status, and acts with the specific intent to infect the other person with HIV, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) Any person who exposes another to the human immunodeficiency virus by donating, selling, or attempting to donate or sell blood, semen, tissues, organs, or other bodily fluids for the use of another, except as determined necessary for medical research or testing, and when the infected person knows at the time that he is infected with HIV, has not disclosed his HIV positive status, and acts with the specific intent to infect another person with HIV, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(c) Evidence that the person had knowledge of his HIV positive status, without additional evidence, shall not be sufficient to prove specific intent.

(d) Transmission of the Human Immunodeficiency Virus does not have to occur for a person to be convicted of a violation of this section.

(e) As used in this section, the following definitions shall apply:

> (1) “Sexual activity” means insertive vaginal or anal intercourse on the part of an infected male, receptive consensual vaginal intercourse on the part of an infected woman with a male partner, or receptive consensual anal intercourse on the part of an infected man or woman with a male partner.
>
> (2) “Unprotected sexual activity” means sexual activity without the use of a condom.

TITLE 19. HEALTH

V.I. CODE ANN. TIT. 19, § 31 (2016)

Enumeration of venereal diseases; duties of Commissioner of Health

Venereal diseases are held to be infectious, communicable and dangerous to the public health and welfare. The control of venereal diseases in the Virgin Islands shall be vested in the Commissioner of Health. The Commissioner shall exercise every effort to cure and prevent the spread of such diseases. Syphilis, gonorrhea, chancroid, granuloma inguinale and lymphopathia venereum are declared venereal diseases.

V.I. CODE ANN. TIT. 19, § 33 (2016) **

Treatment of infected persons; hospitalization; penalties for refusal

(a) Persons who suffer from venereal disease are entitled, without regard to whether they can afford to pay for their medical treatment, to demand that they be taken under treatment at public expense, and likewise are under obligation to submit themselves to such treatment, unless they can show that they have put themselves under proper private medical care. Venereal patients under private medical care shall nevertheless be subject to the supervision of the Commissioner of Health.

(b) Where, after discharge from active treatment, there is special ground for fearing a return of the disease in a contagious form, the physician, who has treated the sick person can give him or her an injunction to appear before him at a specified time for examination or to produce a certificate from an authorized physician that no such relapse has taken place.

(c) Any person suffering from venereal disease may be placed in a hospital, in the discretion of the Commissioner of Health. Whoever refuses to submit to such hospitalization shall be fined not more than $ 100 or imprisoned not more than 180 days, or both.

V.I. CODE ANN. TIT. 19, § 34 (2016)

Examination of suspected persons

Persons suspected by the health administration of being infected with venereal disease shall be examined by a physician, under the direction of the Commissioner of Health. If any such person is found to be suffering from a venereal disease, he shall submit to treatment as provided under section 33 of this title.

V.I. CODE ANN. TIT. 19, § 38 (2016)

Examination and treatment of prostitutes

Whenever a woman is convicted of prostitution she shall be examined by a physician and if found to be suffering from venereal disease shall be placed under medical treatment in accordance with section 33 of this title.

V.I. CODE ANN. TIT. 19, § 39 (2016) **

Discharge of patients; penalty for leaving before discharge

Persons who are placed in a hospital to be treated for venereal disease shall not leave the hospital before they have been discharged by their physician. Whoever violates this section shall be imprisoned not more than 30 days.

V.I. CODE ANN. TIT. 19, § 40 (2016) **

Penalty for cohabiting while infected

Whoever cohabits with another, knowing herself or himself to be afflicted with venereal disease, shall be fined not more than $100 or imprisoned not more than 180 days, or both.

V.I. CODE ANN. TIT. 19, § 41 (2016) **

Penalties for violations generally

Unless otherwise provided, whoever violates any provisions of this chapter shall be fined not more than $100 or imprisoned not more than 180 days, or both.

CHLP
Making Positive Justice Possible

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