

Iowa Department of Public Health
Discussion of Revisions to Iowa Code 709C – Criminal Transmission of HIV

Summary of current Iowa Code 709C:

- Criminalizes exposing someone to HIV through intimate contact without his or her explicit knowledge and consent. Transmission is not required.
- A conviction is a Class B felony, up to 25 years imprisonment per count.
- Offenders are placed on the sex offender registry for life (Iowa Code 692A – aggravated offense).
- From 1999 to 2011, there were 37 charges filed against 25 individuals. Fifteen of those individuals were convicted on a total of 25 counts.
- Only two or three cases involved transmission; most were exposures only.

Summary of criminal transmission laws nationally:

- 34 states and 2 territories have laws that criminalize exposing a person to and/or transmitting a contagious disease. Thirty states have statutes that specifically mention HIV.
- Iowa ranks second in prosecutions (behind Tennessee) of persons with HIV, despite having a relatively small number of persons living with HIV/AIDS.

Principles for modernizing Iowa's statute from a public health perspective:

- 1. Improve alignment with a constructive public health approach.**
 - a. An updated statute could better *support use of personal and public health measures to control contagious diseases*, such as use of prophylactic devices, testing, following the guidance of medical professionals and public health officials, and adherence to effective treatment regimens.
 - b. The [National HIV/AIDS Strategy](#) calls for state legislatures to reconsider criminalization statutes that may act as *barriers to public health prevention goals* and may *interfere with public health strategies to reduce transmission* of HIV/AIDS.
 - c. Criminal statutes may work against existing public health measures, such as HIV partner services and HIV case management, which require trust of public health officials to keep information about behaviors, partners, and exposures confidential.
- 2. Assure consistency in controls and penalties across comparable contagious diseases.**
 - a. The statute should avoid stigmatizing or singling out a specific disease, such as HIV, especially when there is currently very good evidence that the statutes do not change a person's risk or disclosure behaviors ([Burris, 2007](#)).
 - b. Penalties should reflect the actual risk of causing harm – those behaviors that are unlikely to result in transmission should not be criminalized;
 - c. Felonies should be reserved for intentional and/or documented transmission;
 - d. The statute should reflect the fact that new treatment therapies exist that render HIV less dangerous than was the case in 1998 when the statute was passed ([Nakagawa, 2011](#)).
- 3. Consider costs associated with prosecutions and incarcerations that may impact other state and local governmental bodies.**

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Legislative Options for Modernizing Iowa’s Criminal Transmission Statute: For discussion purposes, the Department sets forth the following range of draft options, each of which (or some combination thereof) would achieve some or all of the public health principles outlined above.

The Department recognizes that other interests and input must also be considered in drafting this bill, including input from the correctional and law enforcement communities. The Department presents these options to assist the parties considering this issue in arriving at the optimal language for the state of Iowa to modernize this outdated statute. Other suitable options may also exist.

Option One. Repeal the existing law in its entirety.

Option Two. Modify the existing law so that it criminalizes only the intentional transmission of a serious contagious disease.

Option Three. Modify the existing law in the manner proposed by [SF 323](#); provide that criminal transmission of HIV is a class B felony only if infection of HIV occurs; and provide that attempted criminal transmission of HIV is an aggravated misdemeanor if no infection occurs.

Option Four. Modify the existing law by requiring a person create a significant risk of disease transmission in order to be convicted; provide that a person does not create a significant risk of transmission if they undertake practical means to prevent transmission of the disease; and provide a tiered approach to the level of felony/misdemeanor depending on whether transmission was intentional and whether infection occurred.