

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 status¹¹ 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

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. Demby*, 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 murder²³ 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

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 18-1.3-401.5⁵⁴ 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:

<u>Class</u>	<u>Minimum Sentence</u>	<u>Maximum Sentence</u>	<u>Parole</u>
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)

(1) 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.