



COMPARATIVE SENTENCING CHART ON HIV CRIMINALIZATION IN THE UNITED STATES

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The following chart compares the sentencing schemes for representative HIV exposure, non-disclosure, and/or transmission laws in the United States with laws punishing drinking and driving, reckless endangerment of others, and vehicular homicide. In comparison with HIV exposure, which often carries minimal risk,ⁱ the danger posed by these crimes is similar if not greater.ⁱⁱ However, as the chart shows, the punishment for HIV exposure can be much more severe than those for the other crimes listed below.

Jurisdiction	HIV Exposure Laws & Prosecutions	Drinking & Driving Laws	Reckless Endangerment Laws	Vehicular Homicide Laws
United States – General Trends	Statutes: Sentences range from 5 to 25 years imprisonment ⁱⁱⁱ ; some states have mandatory sex offender registration ^{iv}	First offense: <1 year imprisonment ^v Subsequent offenses: <3 years ^{vi}	Misdemeanor: ~2 years imprisonment ^{vii} Felony: ~10 years imprisonment ^{viii}	Statutes: range from <1-99 years imprisonment ^{ix}

Jurisdiction	HIV Exposure Laws & Prosecutions	Drinking & Driving Laws	Reckless Endangerment Laws	Vehicular Homicide Laws
California	<p>Statute: 3-8 years imprisonment^x</p> <p>Actual prosecution: 3 years imprisonment^{xi}</p>	<p>First offense: 96 hours-6 months imprisonment; and fine of \$390-\$1,000^{xii}</p> <p>Second offense: 90 days-1 year imprisonment; fine of \$390-\$1,000^{xiii}</p> <p>Third offense: 120 days-1 year imprisonment; and fine of \$390-\$1,000^{xiv}</p> <p>Fourth and subsequent offenses: 180 days-1 year imprisonment; and fine of \$390-\$1,000^{xv}</p>	N/A	<p>Gross vehicular manslaughter while intoxicated: 4-10 years imprisonment^{xvi}</p> <p>Vehicular manslaughter while intoxicated: up to 1 year imprisonment^{xvii}</p>
Georgia	<p>Statute: 5-20 years imprisonment^{xviii}</p> <p>Actual prosecution: 8 years imprisonment plus 2 years probation^{xix}</p>	<p>First offense: 10 days-1 year (mandatory minimum of 24 hours) imprisonment; and fine of \$300-\$1,000^{xx}</p> <p>Second offense: 90 days-12 months (mandatory minimum of 72 hours) imprisonment; and fine of \$600-\$1,000^{xxi}</p> <p>Third and subsequent offenses: 120 days-1 year (mandatory minimum of 15 days) imprisonment; and fine of \$1,000-\$5,000^{xxii}</p>	N/A	<p>Homicide by vehicle in the first degree: 3-15 years imprisonment^{xxiii}</p> <p>Homicide by vehicle in the second degree: Up to 1 year imprisonment; and/or fine of up to \$1,000^{xxiv}</p>

Jurisdiction	HIV Exposure Laws & Prosecutions	Drinking & Driving Laws	Reckless Endangerment Laws	Vehicular Homicide Laws
New Jersey	<p>Statute: 3-5 years imprisonment; and/or fine of up to \$15,000^{xxv}</p> <p>Actual prosecution: 4 years imprisonment^{xxvi}</p>	<p>First offense: 12-48 hours in Intoxicated Driver Resource Center; up to 30 days imprisonment; and a fine of \$250-\$500^{xxvii}</p> <p>Second offense: 48 hours-90 days imprisonment; and a fine of \$500-\$1,000^{xxviii}</p> <p>Third and subsequent offenses: 90-120 days imprisonment; and a fine of \$1,000^{xxix}</p>	<p>Reckless endangerment: 6 months-5 years; and possible fine of \$10,000-\$15,000^{xxx}</p>	<p>Death by auto or vessel: 5-10 years imprisonment; and possible fine of up to \$150,000^{xxxi}</p>
Ohio	<p><i>Prostitution-related offenses:</i></p> <p>Statute: 6 months-3 years imprisonment; and possible fine of up to \$10,000^{xxxi}</p> <p>Actual prosecution: 4 years imprisonment^{xxxiii}</p> <p><i>Felonious assault:</i></p> <p>Statute: 2-8 years imprisonment; and possible fine of up to \$15,000^{xxxiv}</p> <p>Actual prosecution: 16 years imprisonment; and mandatory sex offender registration^{xxxv}</p>	<p>First offense: 3 days-6 months imprisonment; and a fine of \$375-\$1,075^{xxxvi}</p> <p>Second offense: 10 days-6 months imprisonment; and fine of \$525-\$1,625^{xxxvii}</p> <p>Third offense: 30 days-1 year imprisonment; and fine of \$850-\$2,750^{xxxviii}</p> <p>Fourth and fifth offenses: 1-5 years imprisonment; and fine of \$1,350-\$10,500^{xxxix}</p>	N/A	<p>Vehicular manslaughter: 15 days-90 days imprisonment^{xl}</p> <p>Vehicular homicide: 15 days-180 days imprisonment^{xli}</p> <p>Aggravated vehicular homicide: 1-5 years imprisonment^{xlii}</p>

Jurisdiction	HIV Exposure Laws & Prosecutions	Drinking & Driving Laws	Reckless Endangerment Laws	Vehicular Homicide Laws
Oklahoma	<p>Statute: Up to 5 years imprisonment^{xliii}</p> <p>Actual prosecution: None on record, but as of the date of this report, a 23-year-old man is accused of engaging in unprotected sexual intercourse with several women without first disclosing his status. He faces 3 felony counts of 2nd degree rape, 2 felony counts of assault & battery with a deadly weapon, and 2 felony counts of knowing intent to transfer HIV. He is currently in prison on a \$2 million bond awaiting trial.^{xliv}</p>	<p><i>Driving while impaired by alcohol or other substances (0.05-0.08 BAC):</i></p> <p>First offense: Up to 6 months imprisonment; and/or fine of \$100-\$500^{xlv}</p> <p><i>Driving while under the influence of alcohol or other substances (0.08+ BAC):</i></p> <p>First offense: 10 days-1 year imprisonment; and fine of up to \$1,000^{xlvi}</p> <p>Second offense: 1 year-5 years imprisonment; and fine of up to \$2,500^{xlvii}</p> <p>Third offense: 1 year-10 years imprisonment; and fine of up to \$5,000^{xlviii}</p> <p>Fourth offense: 1 year-20 years imprisonment; and fine of up to \$5,000^{xlix}</p>	N/A	<p>Negligent homicide: Up to 1 year imprisonment; and/or fine of at least \$1,000ⁱ</p>

Jurisdiction	HIV Exposure Laws & Prosecutions	Drinking & Driving Laws	Reckless Endangerment Laws	Vehicular Homicide Laws
Tennessee	<p>Statute: 3-15 years imprisonment; and possible fine of up to \$10,000; and mandatory sex offender registrationⁱ</p> <p>Actual prosecution: 26 years and six months imprisonment; and mandatory sex offender registrationⁱⁱ</p>	<p>First offense: 48 hours-11 months, 29 days imprisonment; and fine of \$350-\$1,500ⁱⁱⁱ</p> <p>Second offense: 45 days-11 months, 29 days imprisonment; and fine of \$600-\$3,500^{iv}</p> <p>Third offense: 120 days-11 months, 29 days imprisonment; and fine of \$1,100-\$10,000^v</p> <p>Fourth and subsequent offenses: at least 150 days imprisonment; and fine of \$3,000-\$15,000^{vi}</p>	<p>Reckless endangerment: Up to 11 months, 29 days imprisonment; and/or fine of up to \$2,500^{vii}</p> <p>Reckless endangerment with a deadly weapon: 1-6 years imprisonment; and possible fine of up to \$3,000^{viii}</p>	<p>Vehicular homicide: 3-15 years imprisonment; and possible fine up to \$10,000^{ix}</p>

ⁱ The risk of transmission for a single act of unprotected sex between a man and a woman is less than 0.1%. Julie Fox et al., *Quantifying sexual exposure to HIV within an HIV-serodiscordant relationship: development of an algorithm*, 25 AIDS 1065 (2011).

ⁱⁱ For example, a person with a .08 BAC is almost 3 times more likely to get into an accident compared to a person with no alcohol in his or her system. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., NATIONAL SURVEY OF DRINKING AND DRIVING ATTITUDES AND BEHAVIORS 5 (2008), available at <http://www.nhtsa.gov/staticfiles/nti/pdf/811342.pdf>.

ⁱⁱⁱ POSITIVE JUSTICE PROJECT, THE CTR. FOR HIV L. & POL'Y, ENDING AND DEFENDING AGAINST HIV CRIMINALIZATION: A MANUAL FOR ADVOCATES (2010), available at <http://www.hivlawandpolicy.org/resources/view/564>.

^{iv} See, e.g., Arkansas, ARK. CODE ANN. § 12-12-903(12)(A)(i)(p); Iowa, IOWA CODE ANN. § 692A.102(1)(c)(22); Ohio, OHIO REV. CODE ANN. § 2950.01(G)(1)(c) (West 2010); Louisiana, LA. REV. STAT. § 541(24) (2005) (modified with minor changes by 2010 La. Sess. Law Serv. Act. 387 (H.B. 825)); South Dakota, S.D. CODIFIED LAWS § 22-24B-2 (West 2010); Tennessee, TENN. CODE ANN. § 40-39-202(28) (2004); Washington, WASH. REV. CODE ANN. § 9.94A.507 (2011).

^v See, e.g., CONN. GEN. STAT. § 14-227a(g) (2011). (first offense: 48 hours-6 months imprisonment; and a fine of \$500-\$1000); 75 PA. CONS. STAT. §§ 3802(a), 3804(a)(1). (first offense: at least 6 months probation; and a fine of \$300). See also NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., A STATE-BY-STATE ANALYSIS OF LAWS DEALING WITH DRIVING UNDER THE INFLUENCE OF DRUGS (2008), available at www.nhtsa.gov/staticfiles/nti/pdf/811236.pdf.

^{vi} See, e.g., CONN. GEN. STAT. § 14-227a(g) (2011). (second offense: 120 days-2 years imprisonment; and a fine of \$1000-\$4000); 75 PA. CONS. STAT. §§ 3802(a), 3804(a)(2) (2011). (second offense: 5 days-6 months imprisonment; and a fine of \$300-\$2,500). See also NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., A STATE-BY-STATE ANALYSIS OF LAWS DEALING WITH DRIVING UNDER THE INFLUENCE OF DRUGS (2008), available at www.nhtsa.gov/staticfiles/nti/pdf/811236.pdf.

^{vii} See, e.g., COLO. REV. STAT. § 18-3-208 (2012) (class 3 misdemeanor: up to 6 months imprisonment; and/or a fine of \$50-\$750); 18 PA. CONS. STAT. § 2705, 106(b) (2011). (class 2 misdemeanor: up to 2 years imprisonment).

- ^{viii} See, e.g., N.Y. PENAL LAW §§ 120.25, 70(2)(d) (2011). (1st degree reckless endangerment, class D felony: up to 7 years imprisonment); TENN. CODE ANN. §§ 39-13-101, 40-35-11(b)(5) (class E felony: up to 6 years imprisonment; and possible fine of \$5,000).
- ^{ix} See MADD, PENALTIES FOR DRUNK DRIVING VEHICULAR HOMICIDE (2011), available at http://www.madd.org/laws/law-overview/Vehicular_Homicide_Overview.pdf.
- ^x CAL. HEALTH & SAFETY CODE § 120291 (2011). (engaging in unprotected anal or vaginal intercourse without first disclosing status and with specific intent to transmit HIV is a felony punishable by three, five, or eight years imprisonment).
- ^{xi} Beatriz E. Valenzuela, *Gang member gets 3 years in HIV exposure case*, HIGH DESERT DAILY PRESS, Oct. 22, 2010, <http://www.vvdailypress.com/news/gets-22531-hiv-member.html>. (defendant convicted of intent to expose another person to AIDS through sexual activity after engaging in unprotected sexual intercourse without first disclosing his status).
- ^{xii} CAL. VEH. CODE §§ 23152, 23536(a) (2011).
- ^{xiii} CAL. VEH. CODE §§ 23152, 23540(a) (2011).
- ^{xiv} CAL. VEH. CODE §§ 23152, 23546(a) (2011).
- ^{xv} CAL. VEH. CODE §§ 23152, 23550(a) (2011).
- ^{xvi} CAL. PEN. CODE § 191.5(a), (c)(1) (2011).
- ^{xvii} CAL. PEN. CODE § 191.5(b), (c)(2) (2011).
- ^{xviii} GA. CODE ANN. § 16-5-60(c), (d) (2010). (engaging in anal, oral, or penile-vaginal intercourse, sharing a hypodermic needle or syringe, offering or consenting to sexual intercourse or an act of sodomy for money, or donating blood or other body parts without first disclosing status is a felony punishable by up to 10 years imprisonment; assault using blood, semen, vaginal secretions, saliva, urine, or feces upon a peace or correctional officer with intent to transmit HIV is a felony punishable by 5-20 years imprisonment).
- ^{xix} *Ginn v. State*, 667 S.E.2d 712, 713 (Ga. Ct. App. 2008). (defendant was convicted of reckless conduct after engaging in unprotected sexual intercourse without first disclosing her status, even though two witnesses testified that the "victim" was aware of the defendant's status after it was published on the front page of a local newspaper).
- ^{xx} GA. CODE ANN. § 40-6-391(a), (c)(1)(A)-(B) (2010).
- ^{xxi} GA. CODE ANN. § 40-6-391(a), (c)(2)(A)-(B) (2010).
- ^{xxii} GA. CODE ANN. § 40-6-391(a), (c)(3)(A)-(B) (2010).
- ^{xxiii} GA. CODE ANN. § 40-6-393(a) (2010).
- ^{xxiv} GA. CODE ANN. §§ 40-6-393(b), 17-10-3(a)(1) (2010).
- ^{xxv} N.J. STAT. ANN § 2C: 34-5, :43-6(a)(3), :43-3(b)(1) (2010). (engaging in sexual penetration without first disclosing status is a 3rd degree crime punishable by 3-5 years imprisonment and/or a fine of up to \$15,000).
- ^{xxvi} Jennifer Golson, *N.J. man gets 4 years in prison for not telling two sexual partners he had HIV*, NJ.COM, Oct. 29, 2010, http://www.nj.com/news/index.ssf/2010/10/nj_man_gets_4_years_in_prison.html. (defendant was convicted of the 3rd degree crime of diseased person committing an act of sexual penetration after engaging in sexual relations with two women without first disclosing his status).
- ^{xxvii} N.J. STAT. ANN § 39:4-50(a)(1) (2010).
- ^{xxviii} N.J. STAT. ANN § 39:4-50(a)(2) (2010).
- ^{xxix} N.J. STAT. ANN § 39:4-50(a)(3) (2010).
- ^{xxx} N.J. STAT. ANN § 2C:12-2(a)-(b), :43-6(a)(3)-(4), :43-3(b)(1)-(2) (2010).
- ^{xxxi} N.J. STAT. ANN § 2C:11-5(a)-(b), :43-6(a)(2), :43-3(a)(2) (2010).
- ^{xxxii} OHIO REV. CODE ANN. §§ 2907.25(A)-(C), 2907.24 (A)-(C), 2907.241 (A)-(D), 2929.14(A), 2929.18(A)(3) (2011). (prostitution by an HIV-positive person is a 3rd degree felony punishable by 9 months-3 years imprisonment and possible fine of up to \$10,000; solicitation of prostitution by an HIV-positive person is a 3rd degree felony punishable by 9 months-3 years imprisonment and a possible fine of up to \$10,000; loitering for the purpose of solicitation by an HIV-positive person is a 5th degree felony punishable by 6 months-1 year imprisonment and a possible fine of up to \$2,500; solicitation and prostitution by HIV-negative persons are both 3rd degree misdemeanors).
- ^{xxxiii} *State v. West*, No. 22966, 2009 WL 4268554 (Ohio Ct. App. Nov. 25, 2009). (defendant convicted of two counts of soliciting another to engage in sexual activity for hire after a positive HIV test).
- ^{xxxiv} OHIO REV. CODE ANN. §§ 2903.11 (B)-(E) (2011). (engaging in anal, oral, or vaginal intercourse or the insertion, however slight, of any body part or instrument that carries the bodily fluids of an HIV-positive person into another's vagina or anus without first disclosing status is a 2nd degree felony punishable by 2-8 years imprisonment and a possible fine of up to \$15,000).
- ^{xxxv} *State v. Gonzalez*, 796 N.E.2d 12 (Ohio Ct. App. 2003). (defendant was convicted of two counts of felonious assault after engaging in unprotected sexual intercourse without first disclosing his status).
- ^{xxxvi} OHIO REV. CODE ANN. § 4511.19(A)(1), (G)(1)(a) (2011).
- ^{xxxvii} OHIO REV. CODE ANN. § 4511.19(A)(1), (G)(1)(b) (2011).
- ^{xxxviii} OHIO REV. CODE ANN. § 4511.19(A)(1), (G)(1)(c) (2011).
- ^{xxxix} OHIO REV. CODE ANN. § 4511.19(A)(1), (G)(1)(d) (2011).
- ^{xl} OHIO REV. CODE ANN. §§ 2903.06(A), (D), (E), 2929.24(A)(2) (2011).
- ^{xli} OHIO REV. CODE ANN. §§ 2903.06(A), (C), (E), 2929.24(A)(1) (2011).
- ^{xlii} OHIO REV. CODE ANN. §§ 2903.06(A), (B), (E), 2929.14(A)(3)(a) (2011).
- ^{xliii} OKLA. STAT. TIT. 21, § 1192.1(A)-(B) (2011). (engaging in conduct that carries a reasonable likelihood of transfer of blood and other bodily fluids without first disclosing status or obtaining the other person's consent, and with the intent to infect the other person is a felony punishable by up to 5 years imprisonment).

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- ^{xliv} On Demand Court Records, <http://www1.odcr.com/detail.php?Case=026-CF%20%201200123&County=026-> (last visited Apr. 18, 2012).
- ^{xlv} OKLA. STAT. TIT. 47, § 761(A) (2012).
- ^{xlvi} OKLA. STAT. TIT. 47, § 11-902v1(A)-(C)(1) (2011).
- ^{xlvii} OKLA. STAT. TIT. 47, § 11-902v1(A)-(C)(2) (2011).
- ^{xlviii} OKLA. STAT. TIT. 47, § 11-902v1(A)-(C)(3) (2011).
- ^{xliv} OKLA. STAT. TIT. 47, § 11-902v1(A)-(C)(4) (2011).
- ⁱ OKLA. STAT. TIT. 47, § 11-903(A)-(B) (2011).
- ⁱⁱ TENN. CODE ANN. §§ 39-13-109, 40-35-111(b)(3), 40-39-201 to -202 (2012). (engaging in intimate contact – here, any contact that exposes one body to a bodily fluid of another in any manner that presents significant risk of HIV transmission – without first disclosing status is a class C misdemeanor punishable by 3-15 years in prison and possible fine of up to \$10,000).
- ⁱⁱⁱ *State v. Wiser*, No. M1999-02500-CCA-R3-CD, 2000 WL 1612363 at *2 (Tenn. Crim. App. Oct. 30, 2000). (defendant was convicted of 22 counts of criminal exposure of another to HIV after engaging in unprotected sexual relations with several men without first disclosing her status).
- ⁱⁱⁱⁱ TENN. CODE ANN. § 55-10-401 to -403(a)(1)(A)(i), (s)(1) (2012).
- ^{lv} TENN. CODE ANN. § 55-10-401 to -403 (a)(1)(A)(iv) (2012).
- ^{lv} TENN. CODE ANN. § 55-10-401 to -403 (a)(1)(A)(v) (2012).
- ^{lv} TENN. CODE ANN. § 55-10-401 to -403 (a)(1)(A)(vi) (2010).
- ^{lvii} TENN. CODE ANN. §§ 40-35-111(e)(1) (2010).
- ^{lviii} TENN. CODE ANN. § 40-35-111(b)(5) (2010).
- ^{lix} TENN. CODE ANN. §§ 39-13-213(a)(1), 40-35-111(b)(3) (2010).