

HIV CRIMINAL LAW REFORM: BEFORE & AFTER



Georgia Changed its HIV Criminal Law in 2022



In 2022, Governor Kemp signed Senate Bill 164 into law. The law eliminated certain HIV-specific provisions of the criminal code and amended others.

BEFORE 2022

- People living with HIV (PLHIV) could be convicted of a felony, with up to 10 years' imprisonment, for failing to disclose their status before 1) having sex with another person; 2) offering or agreeing to have sex in exchange for money; 3) soliciting another to perform or submit to an act of "sodomy" in exchange for money; 4) sharing needles or syringes; or 5) donating blood, bodily fluids, or organs.
- Intent to transmit or transmission of HIV was not necessary for prosecution.
- The law applied to sexual intercourse or any sexual act involving the anus or mouth, even though HIV is rarely, if ever, transmitted through oral sex.
- Disclosure of one's status was the only affirmative defense to prosecution.
- PLHIV or people living with Hepatitis (PLHep) could be convicted of a felony, serving from 5 to 20 years' imprisonment, for placing their blood, semen, vaginal secretions, saliva, urine, or feces upon an officer or correctional officer.

WHAT CHANGED?

- **An intent requirement is now included. PLHIV must know of their status, fail to disclose their status, intentionally seek to transmit HIV, and then engage in sexual behavior that poses a significant risk of transmission.**
- Similarly, PLHIV who engage in sex work must know of their status, fail to disclose their status, intentionally seek to transmit HIV, and then agree or offer to engage in a sexual act that poses a significant risk of transmission.
- **Significant risk of transmission must be based on current scientifically evidenced methods of transmission.**
- Provision about sharing needles or syringes was repealed. PLHIV will no longer be prosecuted for sharing needles or syringes without first disclosing their status.
- PLHIV will no longer be prosecuted for asking another to perform or submit to an act of sodomy without first disclosing their status.
- PLHIV will no longer be prosecuted for donating blood, blood products, body fluids, or organs without first disclosing their status.
- No felony punishment for PLHIV or PLHep who place their blood, semen, vaginal secretions, saliva, urine, or feces upon an officer or correctional officer.
- Felony-level punishments are retained. However, a person convicted of any of the laws above now face up to **5 years' imprisonment instead of 10 years' imprisonment.**

WHO IS STILL AT RISK?

- **Prosecution must prove intent to transmit, but not actual transmission.**
- PLHIV may still potentially be prosecuted under Georgia's general criminal laws, such as aggravated assault, a felony with up to 20 years' imprisonment.
- PLHIV or living with another STI may still be quarantined or isolated by Georgia's Department of Public Health if the department believes doing so will protect public health.