

Washington

Washington Changed its HIV Criminal Law in 2020

In 2020, Governor Inslee signed Washington Engrossed Substitute House Bill 1551 into law. The law repealed certain HIV exposure laws and amended others.

BEFORE 2020

People living with HIV (PLHIV) could be convicted of first-degree assault, a Class A felony, for exposing another person to HIV. The offense was treated the same as exposing another person to “poison.”

Intent to transmit was not required, and the maximum punishment was life in prison and/or a fine of \$50,000.

There were no limits in the law on what activities could count as “exposing” another person to HIV, leaving it open to apply to activities extremely unlikely to transmit HIV.

There were no defenses in the law for using a method to prevent transmission, disclosing HIV status, or transmission not occurring.

This offense was in the criminal code.

PLHIV convicted of assault for exposing another person to HIV could have to register as sex offenders because the offense would amount to assault with sexual motivation.

The law was in fact enforced against PLHIV up through recent years.

If someone was convicted of “assaulting” multiple partners by exposing them to HIV, they had to serve consecutive (not overlapping) sentences. In one case, this resulted in a 178-year sentence for HIV exposure.

WHAT CHANGED?

Intentional transmission of HIV is a simple misdemeanor with up to 30 days in jail and a \$1,000 fine. If a person misrepresents their HIV status, then it is a gross misdemeanor, with up to 364 days in jail and a \$5,000 fine.

For an intentional transmission conviction, a PLHIV must have anal or vaginal sexual intercourse with an unknowing partner with the intent to transmit.

It is a defense if the PLHIV tried to prevent transmission or if HIV was not in fact transmitted.

The new law is now in the public health code and eliminates sex offender registration except in cases of transmission to a child or “vulnerable adult.”

There is still an HIV-specific first-degree assault offense that applies only to transmission to a child or “vulnerable adult” (an adult who cannot care or consent for themselves). This offense can still require sex offender registration.

If someone is convicted of transmitting HIV to more than one child or vulnerable adult, their sentence for each offense must be served consecutively.

WHO IS STILL AT RISK?

The prosecution must prove intent to transmit, but not actual transmission. Rather, lack of transmission is a defense, meaning that if the prosecutor shows all other elements, including intent to transmit and an unknowing partner, the defendant must show that transmission did not actually occur.

PLHIV convicted of non-HIV-specific sex offenses could face exceptionally long sentences due to HIV status.

Prior to reforms, a judge found that a person’s HIV status justified an exceptional sentence for convictions for patronizing a juvenile prostitute and sexual exploitation of a minor. These reforms would not prevent this.

Although anyone who transmits HIV to a child or vulnerable adult is at risk of prosecution for a serious felony, the conduct required typically is itself a sex offense (statutory rape, e.g.) regardless of HIV status. But an HIV-specific Class A felony is still on the books.

To read the full text of the current law, as well as additional analysis, please visit www.hivlawandpolicy.org/states/washington.