

# Indiana

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## Analysis

### **People living with HIV (PLHIV) or hepatitis B can face felony charges for not disclosing their HIV status to their sexual and needle-sharing partners.**

PLHIV or hepatitis B must disclose their health status to sexual or needle-sharing partners, including past partners, that have engaged or will engage in activities that have been “demonstrated epidemiologically to transmit” HIV or hepatitis B.<sup>1</sup> Knowingly or intentionally violating the disclosure statute amounts to a Level 6 felony, punishable by up to two and one-half years’ imprisonment and an up to \$10,000 fine.<sup>2</sup> Recklessly violating or failing to comply with the duty amounts to a Class B misdemeanor, punishable by up to 180 days’ imprisonment and a fine of up to \$1,000.<sup>3</sup> In either case, each day a violation continues constitutes a separate offense.<sup>4</sup> Thus, someone who becomes aware of a positive or reactive test for HIV or hepatitis B, and who does not disclose that information to past sexual or needle-sharing partners, may be prosecuted for multiple charges—one for each day they do not disclose their health status to each of their previous partners.

Since the statute gives no definition for what acts are “demonstrated epidemiologically to transmit” HIV, it presumably includes any act for which there is a risk of transmission above zero, including theoretical risks. In *Johnson v. State*, the Court of Appeals of Indiana upheld a conviction for the statute based on oral and penile-vaginal sex.<sup>5</sup>

Neither the intent to transmit nor the transmission of HIV is required, and neither condom use, nor viral suppression via antiretroviral therapy (ART), is an affirmative defense.<sup>6</sup> Only disclosure of health status may provide a defense, since failure to warn is a required element of the crime.<sup>7</sup>

Notable cases and prosecutions of persons for not disclosing their health status include:

- In December 2016, a 37-year-old man living with HIV was charged with four counts of the “malicious mischief” statute (explained in the following section), instead of the “duty to disclose” statute, after having sex with various women without disclosing his HIV status.<sup>8</sup>

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<sup>1</sup> IND. CODE. § 16-41-7-1 (2016).

<sup>2</sup> IND. CODE. §§ 35-45-21-3(b), 35-50-2-7(b) (2016).

<sup>3</sup> IND. CODE. §§ 35-45-21-3(a), 35-50-3-3; 16-41-7-5(a) (2016).

<sup>4</sup> IND. CODE. §§ 35-45-21-3(c); 16-41-7-5(b) (2016).

<sup>5</sup> *Johnson v. State*, 785 N.E.2d 1134 (Ind. Ct. App. 2003).

<sup>6</sup> IND. CODE. § 16-41-7-1 (2016).

<sup>7</sup> *Id.*

<sup>8</sup> *Indiana man charged – again – with hiding HIV status from sexual partners*, CBS North Carolina WNCN.com, Dec. 14, 2016, available at <http://wncn.com/2016/12/14/indiana-man-charged-again-with-hiding-hiv-status-from-sexual-partners/>.

- In April 2012, a man was sentenced to seven and a half years' imprisonment after pleading guilty to charges for not disclosing his HIV status to five sexual partners.<sup>9</sup> This followed a three-year sentence that the man had received for similar prior charges.<sup>10</sup>
- In March 2011, a 20-year-old woman living with HIV was charged with two counts of failure to warn after having unprotected sex with a man without disclosing her status.<sup>11</sup>
- In March 2011, a 33-year-old man living with HIV was charged with six counts of child molestation and one count of failure to warn for allegedly molesting an 8-year-old boy.<sup>12</sup>

### **It is a felony for PLHIV to expose others to any bodily fluid, including those known not to transmit HIV.**

Knowingly or intentionally exposing others to bodily fluid or waste is a Class B misdemeanor, punishable by up to 180 days' imprisonment and a fine of up to \$1,000.<sup>13</sup> For the purposes of the statute, bodily fluid includes blood, saliva, sputum, semen, vaginal secretions, human milk, urine, sweat, tears, any other liquid produced by the body, or any aerosol generated from the aforementioned liquids.<sup>14</sup>

However, if the bodily fluid or waste is "infected with" HIV, hepatitis, or tuberculosis, the offense is a Level 6 felony, punishable by up to two and one-half years' imprisonment and a fine of up to \$10,000.<sup>15</sup> If the exposure was additionally toward a public safety official, the offense is a Level 5 felony, punishable by up to six years' imprisonment and a fine of up to \$10,000.<sup>16</sup>

A person who recklessly, knowingly, or intentionally places bodily fluid or fecal waste in a location with the intent that another person will involuntarily touch the bodily fluid or fecal waste may be charged with malicious mischief, a Class B misdemeanor punishable by up to 180 days' imprisonment and a fine of up to \$1,000.<sup>17</sup> If the same act is done with the intent that another person will ingest the body fluid or fecal waste, the offense is a Class A misdemeanor, punishable by up to one year imprisonment and a fine of up to \$5,000.<sup>18</sup>

If either of the "malicious mischief" charges are brought for bodily fluid or fecal waste that the person knew or recklessly failed to know was "infected with infectious hepatitis, HIV, or tuberculosis,"<sup>19</sup> the offense is a Level 6 felony, punishable by up to two and one half years' imprisonment and a fine of up

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<sup>9</sup> *Indiana man sentenced for not disclosing HIV status*, WLKY.COM, Apr. 16, 2012, available at <http://www.wlky.com/news/local-news/indiana-news/Indiana-man-sentenced-for-not-disclosing-HIV-status/10919288#!7xzzN>.

<sup>10</sup> *Id.*

<sup>11</sup> *Woman Accused of Not Telling Partner About HIV*, THE INDYCHANNEL.COM, Mar. 30, 2011, available at <http://www.theindychannel.com/news/woman-accused-of-not-telling-partner-about-hiv>.

<sup>12</sup> *Police: Man With HIV Molests 8-Year-Old-Boy*, THE INDYCHANNEL.COM, Mar. 12, 2011, available at <http://www.theindychannel.com/news/police-man-with-hiv-molests-8-year-old-boy>.

<sup>13</sup> IND. CODE. §§ 35-42-2-1(c), 35-50-3-3 (2016).

<sup>14</sup> IND. CODE. §§ 35-45-16-2(a), 35-31.5-2-28.5, 35-31.5-1-1 (2016).

<sup>15</sup> IND. CODE. §§ 35-42-2-1(f), 35-50-2-7(b) (2016).

<sup>16</sup> IND. CODE. §§ 35-42-2-1(h), 35-50-2-6(b) (2016).

<sup>17</sup> IND. CODE. §§ 35-45-16-2(c), 35-50-3-3 (2016).

<sup>18</sup> IND. CODE. §§ 35-45-16-2(e), 35-50-3-2 (2016).

<sup>19</sup> "Infectious hepatitis" is hepatitis A, B, C, D, E or G. IND. CODE. §§ 35-45-16-2(b); 35-31.5-2-169.5.

to \$10,000.<sup>20</sup> If the exposure results in transmission of infectious hepatitis or tuberculosis, the offense is a Level 5 felony, punishable by up to six years' imprisonment and a fine of up to \$10,000.<sup>21</sup> If the exposure results in transmission of HIV, the offense is a Level 4 felony, punishable by up to 12 years' imprisonment and a fine of up to \$10,000.<sup>22</sup>

Notably, HIV transmission may be impossible under the circumstances.<sup>23</sup> There have been prosecutions under these statutes involving PLHIV exposing others to saliva.<sup>24</sup>

### **It is a felony for PLHIV to donate or sell their semen, blood, or plasma.**

It is a Level 5 felony, punishable by up to six years' imprisonment and a fine of up to \$10,000, for a person to recklessly, knowingly, or intentionally donate, sell, or transfer blood or semen that contains HIV.<sup>25</sup> If the act results in transmission, the offense is either a Level 4 felony, punishable by up to 12 years' imprisonment and a fine of up to \$10,000, or a Level 3 felony, punishable by 20 years' imprisonment and a fine of up to \$10,000.<sup>26</sup>

There were numerous prosecutions under Indiana's "transfer, sale, or donation" statutes before the 2014 revision, but it is unclear whether future prosecutions will charge the offense as a Level 3 or Level 4 felony.<sup>27</sup>

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<sup>20</sup> IND. CODE. §§ 35-45-16-2(d)(1), (f)(1); 35-50-2-7(b) (2016).

<sup>21</sup> IND. CODE. §§ 35-45-16-2(d)(2), (f)(2); 35-50-2-6(b) (2016).

<sup>22</sup> IND. CODE. §§ 35-45-16-2(d)(3), (f)(3); 35-50-2-5.5 (2016).

<sup>23</sup> CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, How is HIV passed from one person to another?* (Dec. 9, 2016), available at <http://www.cdc.gov/hiv/basics/transmission.html> (last visited Dec. 11, 2016) (stating that "[o]nly certain fluids—blood, semen (*cum*), pre-seminal fluid (*pre-cum*), rectal fluids, vaginal fluids, and breast milk—from an HIV-infected person can transmit HIV.").

<sup>24</sup> See, e.g., *Newman v. State*, 677 N.E.2d 590, 591-92 (Ind. Ct. App. 1997) (affirming defendant's conviction of a Class D felony under the battery by body waste statute, noting evidence the defendant "intentionally swung her head around causing saliva to land on [police] officers" was sufficient to support the conviction). Until the large-scale revision of the criminal code, effective July 1, 2014, Indiana had a "battery by body waste statute," under which it was a Class C felony, punishable by up to eight years imprisonment and up to a \$10,000 fine, for a person to intentionally or knowingly in a rude, insolent, or angry manner place blood, bodily fluid, or waste contaminated with HIV on a law enforcement officer, corrections officer, firefighter, or first responder. IND. CODE §§ 35-50-2-6(a) (2014), 35-42-2-6(e)(1), repealed by P.L.158-2013, SEC.429, eff. July 1, 2014. The offense became a Class A felony if it resulted in transmission. IND. CODE § 35-42-2-6(e)(3)(B). The same statute applied, with less severe penalties, when a person intentionally caused another person, who was not a law enforcement officer or first responder, to come in contact with bodily fluids "infected with HIV." § 35-42-2-6(f). Prosecution only required the bodily fluid make contact with another's skin or clothing. *Thomas v. State*, 749 N.E.2d 1231 (Ind. Ct. App. 2001) (affirming defendant's conviction and finding the statute did not require the fluid, defendant's saliva, pose risk of transmission – only that it landed on the officer – because it was "plausible the legislature intended to penalize the offensive and disgusting nature of such [contact] . . .").

<sup>25</sup> IND. CODE. §§ 16-41-14-17(b); 35-45-21-1(b); 35-50-2-6(b) (2016).

<sup>26</sup> IND. CODE. §§ 16-41-14-17(b); 35-50-2-5.5; 35-45-21-1; 35-50-2-5 (2016). It appears that during the major revision of Indiana's criminal code—which in fact added § 35-45-21-1 as a new statute, effective July 1, 2014—an oversight occurred which resulted in this contradiction. Indeed, before the revision both § 16-41-14-17 and § 35-42-1-7, which was replaced by § 35-45-21-1 and contained almost identical wording, provided the same punishments for both the initial act and for if transmission of HIV resulted (a Class C felony and a Class A felony, respectively). See IND. P.L.158-2013, SEC.429, eff. July 1, 2014, at 1288, 1402-03, available at [http://iga.in.gov/static-documents/8/4/0/7/8407e19c/acts\\_2013.pdf](http://iga.in.gov/static-documents/8/4/0/7/8407e19c/acts_2013.pdf).

<sup>27</sup> *Prosecutor: Woman Donated Plasma Tainted with HIV*, THEINDYCHANNEL.COM, Mar. 9, 2010, available at <http://www.theindychannel.com/news/prosecutor-woman-donated-plasma-tainted-with-hiv#> (39-year-old woman living with HIV pled not guilty to the "transfer, sale or donation" statute); Shannon Dininny, *Indiana prosecutor charges five with donating HIV-positive plasma*, NAPAVALLEYREGISTER.COM, July 25, 2003, available at [http://napavalleyregister.com/news/indiana-prosecutor-charges-five-with-donating-hiv-positive-plasma/article\\_a1cee207-09f2-5155-a242-3274b0732dc0.html](http://napavalleyregister.com/news/indiana-prosecutor-charges-five-with-donating-hiv-positive-plasma/article_a1cee207-09f2-5155-a242-3274b0732dc0.html) (five PLHIV were charged under the "transfer, sale or donation" statute for selling their plasma).

## **PLHIV have also been charged under general criminal laws.**

In *State v. Haines*, the Court of Appeals of Indiana reinstated a conviction for three counts of attempted murder for a man living with HIV who scratched, bit, and threw blood at police officers.<sup>28</sup> The defendant had attempted suicide and, when he awoke to law enforcement and emergency responders attempting to provide aid, he began yelling at them not to come any closer or else he would infect them with HIV.<sup>29</sup>

The trial court vacated the conviction of three counts of attempted murder and entered a judgment of conviction for three counts of battery as a Class D felony, with a sentence of two years' imprisonment for each count.<sup>30</sup> Notably, it reasoned, "the State failed in its burden of establishing . . . that spitting, biting or throwing blood at the victims is a method of transmitting AIDS or [AIDS Related Complex]."<sup>31</sup>

The Court of Appeals reinstated the attempted murder convictions, reasoning that it was sufficient for the defendant to know his HIV status and intend to transmit HIV through his actions, even if it was not actually possible to do so.<sup>32</sup>

## **Persons with sexually transmitted diseases (STDs) may face sentence enhancement for child molestation convictions.**

Any person who knowingly or intentionally submits to sexual intercourse or sexual conduct with a person under 14 years of age may be convicted of a Level 3 felony, punishable by a sentence of three to 16 years' imprisonment and a fine up to \$10,000.<sup>33</sup> If, however, the defendant knew they had an STD and the sexual act results in transmission of disease, the offense becomes a Level 1 felony, punishable by a sentence of 20 to 40 years' imprisonment and a fine of up to \$10,000.<sup>34</sup> If, additionally, the defendant is over 21 years of age and the victim is under 12 years of age, the offense may be punishable by a sentence of 20 to 50 years' imprisonment, with the advisory sentence being 30 years, and a fine of up to \$10,000.<sup>35</sup>

## **A person's medical records may be accessed to aid in their prosecution.**

Medical information may be used to prosecute any person "charged with a potentially disease transmitting offense."<sup>36</sup> Upon a petition from a prosecuting attorney, the court of jurisdiction may authorize such use of a person's medical records if it "finds probable cause to believe that the medical information is relevant to the prosecution or defense of a person who has been charged with a potentially disease transmitting offense."<sup>37</sup> That may include any of the aforementioned prosecutions for disease-specific or general criminal offenses.

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<sup>28</sup> *State v. Haines*, 545 N.E.2d 834 (Ind. Ct. App. 1989).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 836-37.

<sup>31</sup> *Id.* at 837.

<sup>32</sup> *Id.* at 838-40 (also giving some weight to medical testimony that HIV transmission could occur "by blood," generally, including blood that, "[gets] into the eyes and mouth as well as onto the skin").

<sup>33</sup> IND. CODE §§ 35-42-4-3(a); 35-50-2-5 (2016) (Notably, there are no age requirements for the defendant.).

<sup>34</sup> IND. CODE §§ 35-42-4-3(a)(5); 35-50-2-4(B) (2016).

<sup>35</sup> IND. CODE §§ 35-42-4-3(a)(5); 35-50-2-4(c)(1); 35-31.5-2-72(1) (2016).

<sup>36</sup> IND. CODE § 16-41-8-4 (2016).

<sup>37</sup> *Id.*

## **PLHIV and persons with other STDs may be subject to quarantine.**

The local board of health or health officer may take steps to create a “venereal disease prevention and control program,” which may include hospitalization and quarantine, when (1) there is prevalence of disease that is “inimical” to public health, or (2) disease is causing economic interference with any phase of public welfare.<sup>38</sup> Under Indiana criminal law, “dangerous” STDs are defined to include HIV, herpes, gonorrhea, syphilis, chlamydia, and hepatitis.<sup>39</sup> The Administrative Code adds chancroid and granuloma inguinale to this list.<sup>40</sup> Persons living with an STD may not be quarantined without establishment of such a prevention and control program,<sup>41</sup> although it is unclear what constitutes a threshold prevalence level, or what level of economic interference can suffice to trigger its creation.

In the event that the state attempts to quarantine people living with STDs, it must first prove by clear and convincing evidence to a circuit or superior court that, “an individual has been infected or exposed to a dangerous communicable disease or outbreak and the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual’s ability to come into contact with an uninfected individual.”<sup>42</sup> Persons subject to quarantine hearings have the rights to notice and an opportunity to be heard, to cross-examine witnesses, and to legal representation.<sup>43</sup>

**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, should not be used as a substitute for legal advice.*

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<sup>38</sup> IND. CODE § 16-41-15-3 (2016).

<sup>39</sup> IND. CODE § 35-31.5-2-83.3 (2016).

<sup>40</sup> 410 IND. ADMIN. CODE 1-2.5-66 (2016).

<sup>41</sup> See, e.g., IND. CODE § 16-41-9-1.5 (2016) (“The public health authority shall impose the least restrictive conditions of isolation or quarantine that are consistent with the protection of the public.”); 10 IND. ADMIN. CODE 1-2.5-20 (2016) (“Control measures may include . . . quarantine.”). See also 410 IND. ADMIN. CODE 1-2.5-109, 105, 106, 99, 89, 136, 88, 100 (2016) (stating quarantine is not necessary for epidemiological control of HIV, hepatitis B, hepatitis C, gonorrhea, chlamydia, syphilis, chancroid, or granuloma inguinale, respectively).

<sup>42</sup> IND. CODE § 16-41-9-1.5 (2016).

<sup>43</sup> *Id.*

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## Indiana Statutes Annotated

**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 35. CRIMINAL LAW AND PROCEDURE

#### **IND. CODE § 35-42-2-1 (2016)** \*\*

##### *Battery*

(a) As used in this section, “public safety official” means:

- (1) a law enforcement officer, including an alcoholic beverage enforcement officer;
- (2) an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71);
- (3) an employee of the department of correction;
- (4) a probation officer;
- (5) a parole officer;
- (6) a community corrections worker;
- (7) a home detention officer;
- (8) a department of child services employee;
- (9) a firefighter;
- (10) an emergency medical services provider; or
- (11) a judicial officer.

(c) Except as provided in subsections (d) through (k), a person who knowingly or intentionally:

- (2) in a rude, insolent, or angry manner places any bodily fluid or waste on another person; commits battery, a class B misdemeanor.

(f) The offense described in subsection (c)(2) is a Level 6 felony if the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with hepatitis, tuberculosis, or human immunodeficiency virus.

(h) The offense described in subsection (c)(2) is a Level 5 felony if:

- (1) the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with hepatitis, tuberculosis, or human immunodeficiency virus; and
- (2) the person placed the bodily fluid or waste on a public safety official.

**IND. CODE § 35-42-4-3 (2016) \*\***

*Child molesting*

(a) A person who, with a child under fourteen (14) years of age, knowingly or intentionally performs or submits to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) commits child molesting, a Level 3 felony. However, the offense is a Level 1 felony if:

(5) it results in the transmission of a dangerous sexually transmitted disease and the person knew that the person was infected with the disease.

**IND. CODE § 35-31.5-1-1 (2016)**

*Applicability of article.*

Except as otherwise provided, the definitions in this article apply throughout this title and to all other statutes relating to penal offenses.

**IND. CODE § 35-31.5-2-28.5 (2016)**

*Body fluid*

“Body fluid,” for purposes of IC 35-45-16-2, has the meaning set forth in IC 35-45-16-2(a).

**IND. CODE § 35-45-16-2 (2016) \*\***

*Malicious mischief*

(a) As used in this section, “body fluid” means:

- (1) blood;
- (2) saliva;
- (3) sputum
- (4) semen;
- (5) vaginal secretions;
- (6) human milk;
- (7) urine;
- (8) sweat;
- (9) tears;
- (10) any other liquid produced by the body; or
- (11) any aerosol generated form of liquids listed in this subsection.

(c) a person who recklessly, knowingly, or intentionally places human:

- (1) body fluid; or

(2) fecal waste;

in a location with the intent that another person will involuntarily touch the bodily fluid or fecal waste commits malicious mischief, a class B misdemeanor.

(d) An offense described in subsection (c) is a:

(1) Level 6 felony if the person knew or recklessly failed to know that the body fluid or fecal waste was infected with:

(A) infectious hepatitis;

(B) HIV; or

(C) tuberculosis;

(2) Level 5 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with hepatitis and the offense results in the transmission of infectious hepatitis to the other person; or

(B) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) Level 4 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

(e) A person who recklessly, knowingly, or intentionally places human:

(1) body fluid; or

(2) fecal waste;

in a location with the intent that another person will ingest the body fluid or fecal waste commits malicious mischief with food, a Class A misdemeanor.

(f) An offense described in subsection (e) is:

(1) a Level 6 felony if the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with:

(A) infectious hepatitis;

(B) HIV; or

(C) tuberculosis;

(2) a Level 5 felony if:

- (A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with infectious hepatitis and the offense results in the transmission of infectious hepatitis to the other person; or
  - (B) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and
- (3) a Level 4 felony if:
- (A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with HIV; and
  - (B) the offense results in the transmission of HIV to the other person.

**IND. CODE § 35-45-21-1 (2016) \*\***

*Transferring contaminated body fluids.*

- (b) A person who recklessly, knowingly, or intentionally donates, sells, or transfers blood, or semen for artificial insemination (as defined in IC 16-41-14-2) that contains the human immunodeficiency virus (HIV) commits transferring contaminated body fluids, a Level 5 felony.
- (c) However, the offense under subsection (b) is a Level 3 felony if it results in the transmission of the human immunodeficiency virus (HIV) to any person other than the defendant.

**IND. CODE § 35-45-21-3 (2016) \*\***

*Person recklessly violating or failing to comply with IC 16-41-7*

- (a) A person who recklessly violates or fails to comply with IC 16-41-7 commits a Class B Misdemeanor
- (b) A person who knowingly or intentionally violates or fails to comply with IC 16-41-7-1 Commits a Level 6 Felony.
- (c) Each day a violation described in this section continues constitutes a separate offense.

**IND. CODE § 35-50-2-4 (2016) \*\***

*Class A felony.*

- (b) Except as provided in subsection (c), a person who commits a Level 1 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between twenty (2) and forty (40) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IND. CODE § 35-31.5-2-72 (2016) \*\***

*Credit restricted felon.*

“Credit restricted felon” means a person who has been convicted of at least one (1) of the following offenses:

(1) Child molesting involving sexual intercourse, deviate sexual conduct (IC 35-42-4-3(a), before its amendment on July 1, 2014) for a crime committed before July 1, 2014, or other sexual conduct (as defined in IC 35-31.5-2-221.5) for a crime committed after June 30, 2014, if:

(A) the offense is committed by a person at least twenty-one (21 years of age; and

(B) the victim is less than twelve (12) years of age.

**IND. CODE § 35-50-2-5 (2016) \*\***

*Class B or Level 3 felony*

(a) A person who commits a Class B felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) A person who commits a Level 3 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between three (3) and sixteen (16) years, with the advisory sentence being ten (9) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IND. CODE § 35-50-2-5.5 (2016) \*\***

*Level 4 felony*

A person who commits a Level 4 felony shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being six (6) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IND. CODE § 35-50-2-6 (2016) \*\***

*Level 5 or Class C felony*

(a) A person who commits a Class C felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) A person who commits a Level 5 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IND. CODE § 35-50-2-7 (2016) \*\***

*Class D felony – Conversion to Class A misdemeanor.*

(a) A person who commits a Class D felony (for a crime committed before July 1, 2014) shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 ½) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) A person who commits a Level 6 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

**IND. CODE § 35-50-3-2 (2016) \*\***

*Class A misdemeanor*

A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars (\$5,000).

**IND. CODE § 35-50-3-3 (2016) \*\***

*Class B misdemeanor*

A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days; in addition, he may be fined not more than one thousand dollars (\$1,000).

**IND. CODE § 35-31.5-2-83.3 (2016)**

*Dangerous sexually transmitted disease.*

“Dangerous sexually transmitted disease means:

- (1) HIV;
- (2) herpes;
- (3) gonorrhea;
- (4) syphilis;
- (5) chlamydia; or
- (6) hepatitis

**TITLE 16. HEALTH**

**IND. CODE § 16-41-1-2 (2016)**

*Rules*

The state department may adopt rules under IC 4-22-2 to implement this article.

**IND. CODE § 16-41-7-1 (2016) \*\***

*Definitions – Carriers of dangerous communicable disease have duty to warn persons at risk.*

(a) This section applies to the following dangerous communicable diseases:

- (1) Acquired immune deficiency syndrome (AIDS).
- (2) Human immunodeficiency virus (HIV).
- (3) Hepatitis B.

(b) As used in this section, “high risk activity” means sexual or needle sharing contact that has been demonstrated epidemiologically to transmit a dangerous communicable disease described in

subsection (a).

(c) As used in this section, “person at risk” means:

(1) past and present sexual or needle sharing partners who may have engaged in high risk activity; or

(2) sexual or needle sharing partners before engaging in high risk activity; with the carrier of a dangerous communicable disease described in subsection (a).

(d) Carriers who know of their status as a carrier of a dangerous communicable disease described in subsection (a) have a duty to warn or cause to be warned by a third party a person at risk of the following:

(1) The carrier’s disease status.

(2) The need to seek health care such as counseling and testing.

**IND. CODE § 16-41-7-5 (2016) \*\***

*Reckless violation – Failure to comply – Penalty.*

(a) Except as provided in IC 35-45-21-3, a person who recklessly violates or fails to comply with this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.

**IND. CODE § 16-41-8-4 (2016)**

*Release of medical information that may be relevant to prosecution or defense of person charged with potentially disease transmitting offense.*

(a) This section applies to the release of medical information that may be relevant to the prosecution or defense of a person who has been charged with a potentially disease transmitting offense.

(b) A:

(1) prosecuting attorney may seek to obtain access to a defendant's medical information if the defendant has been charged with a potentially disease transmitting offense;

(f) The court shall examine the person's medical information in camera. If, after examining the medical information in camera and considering the evidence presented at the hearing, the court finds probable cause to believe that the medical information is relevant to the prosecution or defense of a person who has been charged with a potentially disease transmitting offense, the court may order the release of a person's medical information to the petitioner.

**IND. CODE § 16-41-9-1.5 (2016)**

*Procedures to obtain court order imposing isolation or quarantine – Procedures for emergency and immediate orders – Petitions for renewal of orders – Violation of order is Class A misdemeanor – State department to establish rules to implement chapter.*

(a) If a public health authority has reason to believe that:

(1) an individual:

(A) has been infected with; or

(B) has been exposed to;

a dangerous communicable disease or outbreak; and

(2) the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual's ability to come into contact with an uninfected individual;

the public health authority may petition a circuit or superior court for an order imposing isolation or quarantine on the individual. A petition for isolation or quarantine filed under this subsection must be verified and include a brief description of the facts supporting the public health authority's belief that isolation or quarantine should be imposed on an individual, including a description of any efforts the public health authority made to obtain the individual's voluntary compliance with isolation or quarantine before filing the petition.

(b) Except as provided in subsections (e) and (k), an individual described in subsection (a) is entitled to notice and an opportunity to be heard, in person or by counsel, before a court issues an order imposing isolation or quarantine. A court may restrict an individual's right to appear in person if the court finds that the individual's personal appearance is likely to expose an uninfected person to a dangerous communicable disease or outbreak.

(c) If an individual is restricted from appearing in person under subsection (b), the court shall hold the hearing in a manner that allows all parties to fully and safely participate in the proceedings under the circumstances.

(d) If the public health authority proves by clear and convincing evidence that:

(1) an individual has been infected or exposed to a dangerous communicable disease or outbreak; and

(2) the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual's ability to come into contact with an uninfected individual;

the court may issue an order imposing isolation or quarantine on the individual. The court shall establish the conditions of isolation or quarantine, including the duration of isolation or quarantine. The court shall impose the least restrictive conditions of isolation or quarantine that are consistent with the protection of the public.

(l) The public health authority may seek to renew an order of isolation or quarantine or an immediate order of isolation or quarantine issued under this section by doing the following:

(3) By informing the individual who is the subject of the emergency order of isolation or quarantine or the immediate order of isolation or quarantine that the individual has the right to:

(A) appear, unless the court finds that the individual's personal appearance may expose an uninfected person to a dangerous communicable disease or outbreak;

(B) cross-examine witnesses; and

(C) counsel, including court appointed counsel in accordance with subsection (c).

**IND. CODE § 16-41-14-17 (2016) \*\***

*Sale or transfer of semen containing HIV antibodies unlawful except for research purposes – Penalty.*

(a) This section does not apply to a person who transfers for research purposes semen that contains antibodies for the human immunodeficiency virus (HIV).

(b) A person who, for the purpose of artificial insemination, recklessly, knowingly, or intentionally donates, sells, or transfers semen that contains antibodies for the human immunodeficiency virus (HIV) commits transferring contaminated semen, a Level 5 felony. The offense is a Level 4 felony if the offense results in the transmission of the virus to another person.

**IND. CODE § 16-41-15-3 (2016)**

*Venereal disease prevention and control program.*

The local board of health or health officer may request from the appropriate body an appropriation for a venereal disease prevention and control program, which may include hospitalization and quarantine, when the local board of health or health officer determines that either of the following conditions exist:

- (1) There is a prevalency of venereal disease inimical to the public health, safety, and welfare of the citizens.
- (2) Venereal disease is causing economic interference with any phase of public welfare in the local health board's or health officer's jurisdiction.

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## Indiana Administrative Code

### TITLE 410: INDIANA STATE DEPARTMENT OF HEALTH

**410 IND. ADMIN. CODE 1-2.5-66 (2016)**

*"Sexually transmitted disease" defined*

"Sexually transmitted disease" means local or systemic communicable diseases due to infectious agents, generally transmitted person-to-person by sexual intercourse or genital mucosal contact, including, but not limited to, the following:

- (1) HIV.
- (2) HBV.
- (3) HCV.
- (4) Gonorrhea.
- (5) Chlamydia.

(6) Syphilis.

(7) Chancroid.

(8) Granuloma inguinale.