

# New Jersey

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## Analysis

### **While New Jersey repealed statutes that explicitly criminalize HIV exposure, people living with HIV (PLHIV) may still be prosecuted under general criminal laws.**

In January 2022, New Jersey became the third state, after Texas and Illinois, to repeal its HIV-specific criminal law.<sup>1</sup> Under the previous statute, it was a third-degree felony for PLHIV to have oral, anal, or vaginal intercourse without first disclosing their health status to their partner.<sup>2</sup> Similarly, it was a fourth-degree felony for those with STIs other than HIV to have sex without the informed consent of their partner.<sup>3</sup>

While the law now eliminates specific reference to HIV and other communicable infections, it still allows for prosecutions to continue under New Jersey's statute that criminalizes endangering another person.<sup>4</sup> The Senate Committee statement that accompanied the bill in fact explicitly stated that prosecutions involving the transmission of infectious or communicable diseases can still proceed under the endangerment statute.<sup>5</sup>

Prior to this repeal, in 2021 the New Jersey Attorney General issued a statement and policy guidance on enforcement of the state's HIV criminal law, directing prosecutors to "rethink" how they enforce laws criminalizing sexually active PLHIV in light of new medical advancements:

"In deciding whether to charge an individual under the now-repealed criminal HIV statutes, prosecutors should consider the following factors:

- Whether the individual forced or coerced their partner to engage in sexual activity;
- Whether the individual engaged in sexual activity *for the purpose* of transmitting HIV to their partner;<sup>6</sup> and/or
- Whether the individual was adhering to a medically appropriate HIV treatment plan at the time of the sexual activity.

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<sup>1</sup> *New Jersey Legislators Vote to Strike State's HIV-Specific Criminal Law, but Retain Felony Prosecutions*, CENTER FOR HIV LAW AND POLICY, January 14, 2022, available at <https://www.hivlawandpolicy.org/news/new-jersey-legislators-vote-strike-state%E2%80%99s-hiv-specific-criminal-law-retain-felony-prosecutions>.

<sup>2</sup> N.J. STAT. ANN. § 2C:34-5(b) (repealed 2022).

<sup>3</sup> N.J. STAT. ANN. § 2C:34-5(a) (repealed 2022).

<sup>4</sup> N.J. STAT. ANN. § 2C:24-7.1 (2016).

<sup>5</sup> STAFF OF S. COMM. ON THE BUDGET AND APPROPRIATIONS, S. Doc. No 3707, at 1 (NJ 2022).

It is virtually impossible to imagine a scenario where it would be appropriate for a prosecutor to charge an individual with N.J.S.A. 2C:34-5(b) when that person’s HIV viral load was undetectable at the time of the sexual activity and no aggravating factors existed. Prosecutors who are considering criminal charges in such circumstances must consult with the Director of the Division of Criminal Justice before proceeding.”<sup>6</sup>

However, in a footnote that is difficult to reconcile with the statement itself, the Attorney General adds, “In cases of purposeful HIV transmission ... other charges—such as aggravated assault or attempted homicide—may be appropriate. Data suggests, however, that such transmissions are very rare.[citation omitted]”

Under the criminal endangerment law, a person may be charged if they engage in conduct that poses a *substantial risk* of transmission.<sup>7</sup> The range of punishment for exposing another person to a communicable disease varies depending on whether the person acted recklessly or knowingly, whether the risk of harm is bodily injury or death, and whether the other party has a developmental disability.<sup>8</sup>

A person who acts recklessly and creates a risk of bodily injury to another person may be charged with a disorderly persons offense, a misdemeanor offense punishable by up to six months in jail and a fine of up to \$1,000.<sup>9</sup> A person who acts knowingly and creates a risk of serious bodily injury to another person may be charged with a crime of the fourth degree, a felony punishable by up to eighteen months imprisonment and up to a \$10,000 fine.<sup>10</sup> A person who acts knowingly and creates a risk of death to another person may be charged with a crime of the third degree, a felony punishable by up to five years imprisonment and up to a \$15,000 fine.<sup>11</sup> A person who acts recklessly and creates a risk of bodily injury to a person with a developmental disability may be charged with a crime of the fourth degree.<sup>12</sup> A person who acts knowingly and creates a risk of serious bodily injury to a person with a developmental disability may be charged with crime of the third degree.<sup>13</sup> A person who acts knowingly and creates a risk of death to a person with a developmental disability may be charged with a crime of the second degree, a felony punishable by between five and ten years imprisonment and a fine of up to \$150,000.<sup>14</sup> Under all of the provisions outlined above, transmission is not required for a conviction.

### **PLHIV have been prosecuted under general criminal laws, including attempted murder, in HIV exposure cases.**

In *State v. Smith*, the New Jersey Superior Court Appellate Division affirmed the conviction and 25-year sentence of an inmate living with HIV who was found guilty of attempted murder, aggravated assault,

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<sup>6</sup> Guidance Regarding N.J.S.A. 2C:34-5(b) in Light of Advancements in Treatment for HIV/AIDS, New Jersey Attorney General (2021).

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

<sup>8</sup> *Id.*

<sup>9</sup> N.J. STAT. ANN. §§ 2C: 24-7.1(a)(1); 2C:43-8 (2016).

<sup>10</sup> N.J. STAT. ANN. §§ 2C: 24-7.1(a)(2); 2C:43-6(a)(4); 2C:43-3(b)(2) (2016).

<sup>11</sup> N.J. STAT. ANN. §§ 2C: 24-7.1(a)(3); 2C:43-6(a)(3); 2C:43-3(b)(1) (2016).

<sup>12</sup> N.J. STAT. ANN. §§ 2C: 24-7.1(b)(1); 2C:43-6(a)(4); 2C:43-3(b)(2) (2016).

<sup>13</sup> N.J. STAT. ANN. §§ 2C: 24-7.1(b)(2); 2C:43-6(a)(3); 2C:43-3(b)(1) (2016).

<sup>14</sup> N.J. STAT. ANN. §§ 2C: 24-7.1(b)(3); 2C:43-6(a)(2); 2C:43-3(a)(2) (2016).

and terrorist threats for biting a corrections officer.<sup>15</sup> The court gave sufficient weight to trial evidence—consisting of three anecdotal sources—to affirm that saliva can transmit HIV.<sup>16</sup>

The defendant offered evidence at trial and on appeal that he knew HIV could not be transmitted through biting because various health professionals had counseled him on the matter, and, therefore, his threats were only made to take “advantage of the ignorance and fear of his jailors.”<sup>17</sup> Nonetheless, the court found the jury, “reasonably could have rejected [the] defendant’s claim that he ‘knew’ biting or spitting could not spread HIV, especially in view of the conflict in the record between that claim and his conduct in jail over several months.”<sup>18</sup>

In 1994, a 17-year-old woman was charged as an adult for attempted murder and aggravated assault after she bit a juvenile detention officer.<sup>19</sup> At the time of the indictment, it was not confirmed whether the woman had tested positive for HIV, only that “she believ[ed]” she had HIV.<sup>20</sup>

In *State v. Ainis*, the New Jersey Superior Court Law Division found that a hypodermic needle purportedly infected with HIV is a deadly weapon.<sup>21</sup> Under New Jersey law, a deadly weapon is defined as an object “which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury.”<sup>22</sup>

In *State v. E.W.*, the Superior Court of New Jersey Appellate Division upheld the conviction and sentencing of a PLHIV to six years’ imprisonment for one count of second-degree sexual assault and five years’ imprisonment, to be served concurrently, for one count of third-degree sexual penetration by a diseased person.<sup>23</sup> The defendant, who was adherent to medical treatment, was charged for engaging in consensual sex with his housemate without disclosing his HIV status.<sup>24</sup>

### **People having, or suspected of having, a venereal disease may be subject to mandatory examination, treatment, or quarantine.**

New Jersey public health law defines syphilis, gonorrhea, chancroid, lymphogranuloma venereum and granuloma inguinale as venereal diseases and, “declare[s them] to be infectious and communicable diseases, dangerous to public health.”<sup>25</sup> Any person who “is, or is suspected to be, suffering from or

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<sup>15</sup> *State v. Smith*, 621 A.2d 493, 495 (N.J. Super. Ct. App. Div. 1993).

<sup>16</sup> *Id.* at 498-99.

<sup>17</sup> *Id.* at 504-05.

<sup>18</sup> *Id.* at 514.

<sup>19</sup> Joseph F. Sullivan, *Girl Who Thinks She has AIDS to Stand Trial for Biting of Guard*, N.Y. TIMES, Aug. 31, 1994, available at <http://www.nytimes.com/1994/08/31/nyregion/girl-who-thinks-she-has-aids-to-stand-trial-in-biting-of-guard.html>.

<sup>20</sup> *Id.*

<sup>21</sup> *State v. Ainis*, 721 A.2d 329, 331-34 (N.J. Super. Ct. Law Div. 1998).

<sup>22</sup> *Id.* at 331. N.J. STAT. ANN. § 2C:11-1 (2016).

<sup>23</sup> *State v. E.W.*, 2012 WL 1948654, at \*1 (N.J. Super. Ct. App. Div. May 31, 2012). Appellant had pled guilty but was appealing on procedural issues including “receiving ineffective assistance of trial counsel.”

<sup>24</sup> *Id.*

<sup>25</sup> N.J. STAT. ANN. §§ 26:4-27; 26:4-28 (2016).

infected with a venereal disease,” may be required to undergo a medical examination.<sup>26</sup> Sex workers are, by definition, considered such suspected persons and may, at any time, be subject to a medical examination.<sup>27</sup> Moreover, any person appearing before the Superior Court or any municipal court may be subject to examination for venereal diseases and medical treatment if it is determined that they may have a venereal disease in an infectious stage.<sup>28</sup>

The State Department of Health may mandate quarantine and medical treatment “of a venereal disease which it may deem necessary for the protection of the public health.”<sup>29</sup> Such action may extend to persons reasonably believed to have, and likely to spread, a venereal disease in its infectious stage, or persons who refuse to submit to medical examination or treatment for venereal disease.<sup>30</sup> Notice of quarantine restrictions shall be made in writing to the persons to be quarantined, and a complaint may be filed with the Superior Court or any municipal court for persons who fail to comply with such restrictions.<sup>31</sup>

Persons who violate any public health provision are subject to a fine up to \$100.<sup>32</sup> For a second offense within six months the penalty may include, in addition to a fine, imprisonment for any number of days not exceeding one for each dollar of the penalty.<sup>33</sup>

Finally, the warden of any penal institution may require all inmates to submit to medical examination for venereal disease or else be subject to isolation; inmates with an infectious venereal disease may also be isolated.<sup>34</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, it should not be used as a substitute for legal advice.*

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<sup>26</sup> N.J. STAT. ANN. §§ 26:4-30; 26:4-31 (2016).

<sup>27</sup> N.J. STAT. ANN. § 26:4-32 (2016).

<sup>28</sup> N.J. STAT. ANN. § 26:4-49.7 (2016).

<sup>29</sup> N.J. STAT. ANN. § 26:4-48 (2016). See also N.J. ADMIN CODE § 8:57-1.11 (2016); N.J. ADMIN CODE §§ 8.57-1.5 (2016) (listing chancroid, chlamydia, gonorrhea, hepatitis B, hepatitis C, and syphilis as communicable diseases to be reported within 24 hours of diagnosis), 8:57-1, app. B (2016) (Model Rules for Local Boards of Health outlining model rules for quarantine and isolation procedures, including conditions and principles, appeals process, and rights of individuals and groups subject to isolation and quarantine. However, no local health board is required to adopt the model rules.).

<sup>30</sup> N.J. STAT. ANN. § 26:4-36 (2016). Such persons are also liable for violation of public health provisions according to N.J. STAT. ANN. §§ 26:4-129; 26:4-49 (2016), as explained below.

<sup>31</sup> N.J. STAT. ANN. § 26:4-36 (2016).

<sup>32</sup> N.J. STAT. ANN. § 26:4-129 (2016).

<sup>33</sup> N.J. STAT. ANN. § 26:4-49 (2016).

<sup>34</sup> N.J. STAT. ANN. § 26:4-49.8 (2016). The statute does not specify a time limit for isolation.

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## New Jersey Annotated Statutes

*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 2C: THE NEW JERSEY CODE OF CRIMINAL JUSTICE

#### **N.J. STAT. ANN. § 2C: 24-7.1 (2016)**

*Endangering another person; offense created; degree of crime.*

(1) A person commits a disorderly persons offense if he recklessly engages in conduct which creates a substantial risk of bodily injury to another person.

(2) A person commits a crime of the fourth degree if he knowingly engages in conduct which creates a substantial risk of serious bodily injury to another person.

(3) A person commits a crime of the third degree if he knowingly engages in conduct which creates a substantial risk of death to another person.

(b) (1) A person commits a crime of the fourth degree if he recklessly engages in conduct which creates a substantial risk of bodily injury to a person with a developmental disability.

(2) A person commits a crime of the third degree if he knowingly engages in conduct which creates a substantial risk of serious bodily injury to a person with a developmental disability.

(3) A person commits a crime of the second degree if he knowingly engages in conduct which creates a substantial risk of death to a person with a developmental disability.

(c) As used in this act, "developmental disability" has the meaning ascribed to it in section 3 of P.L.1977, c.82 (C.30:6D-3).

(d) Nothing in this act shall preclude an indictment and conviction for any other offense defined by the laws of this State.

#### **N.J. STAT. ANN. § 2C:14-1 (2016)**

*Definitions*

The following definitions apply to this chapter:

(c) "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio, or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction. The depth of insertion shall not be relevant as to the question of commission of the crime;

#### **N.J. STAT. ANN. § 2C:43-8 (2016)**

*Sentence of imprisonment for disorderly persons offenses and petty disorderly persons offenses*

A person who has been convicted of a disorderly persons offense or a petty disorderly persons offense may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall not exceed 6 months in the case of a disorderly persons offense or 30 days in the case of a petty disorderly persons offense.

**N.J. STAT. ANN. § 2C:43-6 (2016) \*\***

*Sentence for imprisonment of a crime: ordinary terms; mandatory terms*

(a) Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:

- (2) In the case of a crime of the second degree, for a specific term of years which shall be fixed by the court and shall be between five years and 10 years;
- (3) In the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between three years and five years;
- (4) In the case of a crime of the fourth degree, for a specific term which shall be fixed by the court and shall not exceed 18 months.

**N.J. STAT. ANN. § 2C:43-3 (2016) \*\***

*Fines and restitution*

A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both, such fine not to exceed:

(a)

- (2) \$150,000.00 when the conviction is of a crime of the second degree

(b)

- (1) \$15,000.00 when the conviction is of a crime of the third degree;
- (2) \$10,000.00 when the conviction is of a crime of the fourth degree;

**N.J. STAT. ANN. § 2C:43-2.3 (2016)**

*Orders for certain serological testing required under certain circumstances*

(a) In addition to any other disposition made pursuant to law, a court shall order a person convicted of, indicted for or formally charged with a criminal offense, a disorderly persons offense or a petty disorderly persons offense, to submit to an approved serological test for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS if:

- (1) in the course of the commission of the offense, including the immediate flight thereafter or during any investigation or arrest related to that offense, a law enforcement officer, the victim or other person suffered a prick from a hypodermic needle, provided there is probable cause to believe that the defendant is an intravenous user of controlled dangerous substances; or

(2) in the course of the commission of the offense, including the immediate flight thereafter or during any investigation or arrest related to that offense, a law enforcement officer, the victim or other person had contact with the defendant which involved or was likely to involve the transmission of bodily fluids.

The court may order a person to submit to an approved serological test for AIDS or infection with the HIV or any other related virus identified as a probable causative agent of AIDS if in the course of the performance of any other law enforcement duties, a law enforcement officer suffers a prick from a hypodermic needle, provided that there is probable cause to believe that the defendant is an intravenous user of controlled dangerous substances, or had contact with the defendant which involved or was likely to involve the transmission of bodily fluids. The court shall issue such an order only upon the request of the law enforcement officer, victim of the offense or other affected person made at the time of indictment, charge or conviction. If a county prosecutor declines to make such an application within 72 hours of being requested to do so by the law enforcement officer, the law enforcement officer may appeal to the Division of Criminal Justice in the Department of Law and Public Safety for that officer to bring the application. The person shall be ordered by the court to submit to such repeat or confirmatory tests as may be medically necessary.

(d) The result of a test ordered pursuant to subsection a. of this section shall be confidential and health care providers and employees of the Department of Corrections, the Office of Victim-Witness Advocacy, a health care facility or counseling service shall not disclose the result of a test performed pursuant to this section except as authorized herein or as otherwise authorized by law or court order. The provisions of this section shall not be deemed to prohibit disclosure of a test result to the person tested.

## **TITLE 26. HEALTH AND VITAL STATISTICS**

### **N.J. STAT. ANN. § 26:4-27 (2016)**

#### *Definitions*

As used in this article:

"Venereal disease" includes syphilis, gonorrhea, chancroid, lymphogranuloma venereum and granuloma inguinale.

### **N.J. STAT. ANN. § 26:4-28 (2016)**

#### *Venereal diseases declared infectious and communicable*

Syphilis, gonorrhea, chancroid, lymphogranuloma venereum and granuloma inguinale are hereby declared to be infectious and communicable diseases, dangerous to the public health.

### **N.J. STAT. ANN. § 26:4-30 (2016)**

#### *Examination of suspected person on report from director*

When a local board or health officer receives a report from the director or from any person authorized by the director to make such report, that a person within the jurisdiction of the local board or health officer is, or is suspected to be, suffering from or infected with a venereal disease, the board or health officer may cause a medical examination to be made of the person for the purpose of ascertaining whether or not such person is in fact suffering from or infected with such disease.

**N.J. STAT. ANN. § 26:4-31 (2016)**

*Duty of suspected person to be examined*

Any person requested by the local board or health officer to be examined under the authority of section 26:4-30 of this title shall submit to examination and permit necessary specimens of blood or bodily discharges to be taken for laboratory examination.

**N.J. STAT. ANN. § 26:4-32 (2016)**

*Prostitute; examination; certificate prohibited*

A prostitute or other lewd person shall be considered a suspected person within the meaning of section 26:4-30 of this title and may be required to submit to examination at any time.

No certificate of freedom from venereal disease shall be issued to any prostitute under any circumstances whatever.

**N.J. STAT. ANN. § 26:4-36 (2016)**

*Quarantine; persons who may be quarantined; duration; penalty*

Quarantine for venereal disease has the purpose of preventing transmission of venereal diseases and shall mean and include, restriction of the actions, behavior and movements of a person or confinement to a defined place and area.

A local board or health officer or any physician shall report to the State department, and any licensed health officer or the State Director of Health or the authorized representative of either may quarantine for venereal disease the following persons:

- (a) Any person who has or who is believed upon reasonable grounds to have a venereal disease in its infectious stage, if he is likely to spread the disease to others by reason of his failure or refusal to submit to treatment or by reason of his habits, or for any other reason.
- (b) Any person who refuses or neglects to submit to a medical examination for venereal disease required under authority of any section of this article.
- (c) Any person who refuses or neglects to supply, or to permit to be taken, the specimens required or requested under authority of any section of this article.
- (d) Any person who refuses or neglects to submit to treatment for a venereal disease in an infectious stage.

Such quarantine shall continue until the infected person is free from the disease or until such time as in the judgment of the health officer or his authorized representative who established the quarantine or by the State director or his authorized representative, it shall be safe for such infected person to be released from quarantine.

Any person included in paragraphs b, c or d of this section shall be liable to the penalty provided for in section 26:4-49 in addition to the imposition of the penalty prescribed by section 26:4-129.



**N.J. STAT. ANN. § 26:4-36 (2016)**

*Quarantine, restrictions, proceedings, report*

In establishing quarantine for venereal disease, the licensed health officer or the State Commissioner of Health, or the authorized representative of either shall by notice in writing define the restriction of the actions, behavior and movements of the person or the place and the limits of the area within which the person is to be quarantined. Such person while so quarantined shall observe and obey said notice restricting his actions, behavior and movements or remain within the place and area defined by said health officer, director or representative in said notice. The custodian, if any, of such person shall safely keep and confine said person and said notice shall be sufficient warrant and authorization therefor.

Whenever a licensed health officer or the State Commissioner of Health or the authorized representative of either shall quarantine any person for venereal disease under authority of this article, he may also order the removal of such person to the place and area within which the person is to be quarantined for venereal disease, and the person shall proceed to such place at the time and in the manner specified.

A licensed health officer or the State Commissioner of Health or the authorized representative of either one of them may file a complaint with any municipal court in the county or with the Superior Court against the following persons:

- (a) Any person, who while quarantined for venereal disease fails, refuses or neglects to observe and obey said notice restricting his actions, behavior and movements, or to remain within the place and area defined by said health officer, director or representative or to proceed to a place for quarantine for venereal disease at the time and in the manner specified by said health officer, director or representative.
- (b) Any person who fails refuses or neglects to submit to, observe or obey the conditions of any commitment or to comply with any order made by any court under authority of this article.
- (c) Any of the persons included in section 26:4-36 of this article.

If a warrant issues, it shall be directed to the sheriff or any constable in the county, or any police officer.

The court shall determine the matter without a jury. If the court finds that the person is one of those listed in this section against whom a complaint may be filed, it may commit such person to a State, county, or municipal hospital which will receive the person, or to any other place or institution suitable for and willing to receive the person for detention, examination, care and treatment, whether the hospital, place or institution be located within or without the county, or to the county jail or may make any order for the examination, care or treatment of said person which may be deemed proper under the circumstances.

The complaint, commitment, and all other papers relating to the case shall be impounded and shall not be open to public inspection, and hearings shall not be open to the public.

Any person committed under the provisions of this statute shall be held in the place to which committed until discharged by the court which heard the case or by the Superior Court or by order of the Commissioner of the State Department of Health.

The local health officer having jurisdiction shall report to the State department any person quarantined for venereal disease, or upon whom a summons is served or against whom a warrant is issued under authority of this article except where the action is initiated by the State Commissioner of Health or his authorized representative.

**N.J. STAT. ANN. § 26:4-41 (2016)**

*Contents of reports secret; exceptions*

No person shall disclose the name or address or the identity of any person known or suspected to have a venereal disease except to the person's physician or to a health authority, or, in the event of a prosecution under this article or under the criminal law of this State, to a prosecuting officer or to the court; provided, however, that the person's physician or a health authority may disclose the name, address or identity of such person when and only when the physician or health authority shall deem such disclosure necessary in order to protect the health or welfare of the person or of his family or of the public; and provided further, that nothing herein shall be construed as in any way restricting such disclosures to the State Department of Health.

Documents, records or reports which contain or would reveal the name, address or identity of a person known or suspected to have a venereal disease or treated for such a disease shall not be open to inspection except by an authorized representative of the State Department of Health or, in the event of a prosecution under this article or under the criminal laws of this State, by a prosecuting officer or the court; provided, however, that the custodian of any such documents, records or reports may permit inspection of them by a licensed physician or a health official whenever said custodian shall deem such inspection necessary in order to protect the health or welfare of the person or of his family or of the public and the custodian of any hospital record shall permit examination of such record in connection with any claim for compensation or damages for personal injury or death resulting therefrom by any person authorized by any other law to make such examination.

**N.J. STAT. ANN. § 26:4-48 (2016)**

*Rules and regulations; authority of State Director of Health as to quarantine or examination*

The State Department shall make and enforce any rule or regulation for the quarantining and treatment of a venereal disease which it may deem necessary for the protection of the public health.

The State Department of Health shall by rule and regulation define the stages of venereal diseases to be regarded as infectious within the meaning of this article.

The State Director of Health or any person or official authorized by him in writing for that purpose shall have the same power and authority as that conferred by any section or sections of this article upon any local board of health or health officer for the purposes of isolation or quarantine or to require or request examinations or submissions of specimens or treatment, observation or care for venereal diseases.

**N.J. STAT. ANN. § 26:4-49 (2016) \*\***

*Additional penalty for second offense*

In case a defendant shall have been twice convicted, within the space of six months, of the violation of the same provision of this article and due proof of such fact is made, the court may, in addition to the imposition of the penalty prescribed by section 26:4-129 of this Title, cause the defendant to be

imprisoned, with or without hard labor, for any number of days not exceeding one for each dollar of the penalty.

**N.J. STAT. ANN. § 26:4-49.7 (2016)**

*Examination and treatment by order of court*

When it appears to the Superior Court or to any municipal court, from the evidence or otherwise, that any person coming before such court on any charge, may have a venereal disease in an infectious stage, it shall be the duty of such court to order the person to submit to a medical examination for venereal diseases, in a jail or at a hospital or clinic or by such physician as may be selected or appointed for the purpose, and if found to have a venereal disease in an infectious stage to submit to treatment in such jail, hospital or clinic or by such officer or to other treatment permitted under the medical practice act.

**N.J. STAT. ANN. § 26:4-49.8 (2016)**

*Examination and treatment for venereal disease of inmates of institutions*

The warden or other person in charge of any jail, house of correction, or other penal or correctional institution shall require and cause a medical examination for venereal diseases to be made of any person therein confined for a period of seven days or longer and such warden or other person in charge may require such examination to be made of any person therein confined for a shorter period of time. The superintendent or other person in charge of any detention or contagious disease hospital, or any State, county or city charitable institution shall require and cause a medical examination for venereal diseases to be made of all persons admitted as soon as practicable after admission. Any board or agency operating such jail or institution shall provide a physician licensed to practice medicine and suitable facilities, equipment and supplies to examine inmates for venereal disease and to treat any inmate who is known or found to have a venereal disease and who is in need of treatment. The warden, superintendent or other person in charge of such jail or institution may isolate any inmate who refuses to submit to such examination or who refuses to permit the taking of specimens or any inmate with an infectious venereal disease. If a person has a venereal disease or if any person has refused to submit to examination or to allow specimens to be taken, the warden, superintendent or other person in charge shall notify the State department and may also notify the local health officer of the expected date of release of such person and the facts of the case. Such notification shall be made, if possible, at least five days prior to the actual date of release, and shall be made not later than the day following the date of release in any case.

**N.J. STAT. ANN. § 26:4-129 (2016) \*\***

*Liability to penalties in general*

Except as otherwise specifically provided in this chapter, a person who violates any of the provisions of this chapter, or fails to perform any duty imposed by this chapter at the time and in the manner provided, shall be liable to a penalty of not less than ten nor more than one hundred dollars for each offense.

**N.J. STAT. ANN. § 26:5C-9 (2016)**

*Order of court to disclose record of AIDS, HIV infection*

The record of a person who has or is suspected of having AIDS or HIV infection may be disclosed by an order of a court of competent jurisdiction which is granted pursuant to an application showing good cause therefor. At a good cause hearing the court shall weigh the public interest and need for disclosure against the injury to the person who is the subject of the record, to the physician-patient relationship, and to the services offered by the program. Upon the granting of the order, the court, in determining the extent to which a disclosure of all or any part of a record is necessary, shall impose appropriate safeguards to prevent an unauthorized disclosure.

(b) A court may authorize disclosure of a person's record for the purpose of conducting an investigation of or a prosecution for a crime of which the person is suspected, only if the crime is a first degree crime and there is a reasonable likelihood that the record in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution.

(c) Except as provided in subsections a. and b. of this section, a record shall not be used to initiate or substantiate any criminal or civil charges against the person who is the subject of the record or to conduct any investigation of that person.

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## **New Jersey Administrative Code**

### **TITLE 8. HEALTH**

**N.J. ADMIN. CODE § 8:57-1.11 (2016)**

*Isolation and quarantine for communicable disease*

(a) A health officer or the Department, upon receiving a report of a communicable disease, shall, by written order, establish such isolation or quarantine measures as medically and epidemiologically necessary to prevent or control the spread of the disease.

1. If, in the medical and epidemiologic judgment of the health officer or the Department, it is necessary to hospitalize the ill person in order to provide adequate isolation, a health officer or the Department shall promptly remove, or cause to be removed, that person to a hospital.
2. Such order shall remain in force until terminated by the health officer or the Department.
3. A health officer may use Quarantine and Isolation - Model Rules for Local Boards of Health, available at subchapter Appendix B, as a guide for establishing isolation and quarantine measures.
  - i. Quarantine and Isolation - Model Rules for Local Boards of Health, is written and published by the Communicable Disease Service, New Jersey Department of Health and Senior Services, and is available at subchapter Appendix B, and by written request to the Communicable Disease Service, New Jersey Department of Health and Senior Services, PO Box 369, Trenton, NJ 08625-0369, or online through the Department's web page at <http://www.state.nj.us/health/cd/index.html>;

(b) A health officer or the Department may restrict access of the persons permitted to come in contact with or visit a person who is hospitalized or isolated pursuant to this section where medically or epidemiologically necessary to prevent the spread of the disease.

(c) The Department or health officer may, by written order, isolate or quarantine any person who has been exposed to a communicable disease as medically or epidemiologically necessary to prevent the spread of the disease, providing such period of restriction shall not exceed the period of incubation of the disease.

(d) Any person who is responsible for the care, custody, or control of a person who is ill or infected with a communicable disease shall take all measures necessary to prevent transmission of the disease to other persons.

**N.J. ADMIN. CODE § 8:57-1, APP. B (2016)**

*Quarantine and Isolation – Model Rules for Local Boards of Health*

1.1 Applicability

The provisions of the model rules are applicable in jurisdictions in which the local board of health has adopted the model rules by reference in accordance with New Jersey law, but no local board of health is required to adopt the model rules.

1.2 Definitions

"Isolation" means the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected, based on signs, symptoms or laboratory analysis, with a contagious or possibly contagious disease from non-isolated individuals, to prevent or limit the transmission of the disease to non-isolated individuals.

"Quarantinable disease" means any communicable disease which presents a risk of serious harm to public health and which may require isolation or quarantine to prevent its spread.

"Quarantine" means the physical separation and confinement of an individual or groups of individuals, who are or may have been exposed to a communicable or possibly communicable disease and who do not show signs or symptoms of a communicable disease, from unexposed individuals, to prevent or limit the transmission of the disease to unexposed individuals.

1.3 General provisions

(b) The board is authorized to impose and enforce quarantine and isolation restrictions, but the board shall rarely impose quarantine and isolation restrictions.

1. If a quarantinable disease occurs in New Jersey, the board may isolate or quarantine individuals with a suspected or active quarantinable disease and their contacts as the particular situation requires.

2. The board shall complete any quarantine or isolation in accordance with this rule and N.J.A.C. 8:57-1.11.

1.4 Conditions and principles

(a) The board shall adhere to all of the following conditions and principles when isolating or quarantining individuals or a group of individuals:

1. The isolation or quarantine shall be by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others and may include, but is not limited to, confinement to private homes, other private premises, or public premises.
2. Isolated individuals shall be confined separately from quarantined individuals.
3. The health status of isolated or quarantined individuals shall be monitored regularly to determine if the individuals require further or continued isolation or quarantine.
4. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable or possibly communicable disease, the individual shall be promptly removed to isolation.
5. Isolated or quarantined individuals shall be immediately released when the board determines that the individuals pose no substantial risk of transmitting a communicable or possibly communicable disease.
6. The board shall address the needs of isolated or quarantined individuals in a systemic and competent fashion including, but not limited to, providing adequate food; clothing; shelter; means of communicating with those in and outside of isolation or quarantine; medication; and competent medical care.

#### 1.5 Isolation and quarantine premises

(b) An individual subject to isolation or quarantine shall obey the rules and orders of the board and shall not go beyond the isolation or quarantine premises without appropriate authorization and only while using appropriate infection control precautions to protect unexposed individuals.

#### 1.6 Isolation and quarantine

(a) The board may:

1. Isolate individuals who are presumably or actually infected with a quarantinable disease;
2. Quarantine individuals who have been exposed to a quarantinable disease;
3. Establish and maintain places of isolation and quarantine; and
4. Adopt emergency rules and issue orders as necessary to establish, maintain, and enforce isolation or quarantine.

#### 1.7 Appeal from order imposing isolation or quarantine

(a) The subject of a board order imposing isolation or quarantine may appeal a written order by submitting a written appeal within ten days of receipt of the written order.

2. Unless stayed by order of the board or court with jurisdiction, the written order for quarantine or isolation shall remain in force and effect until the appeal is finally determined and disposed of upon its merits.

(b) The appeal proceeding shall be conducted in accordance with this rule [or insert specific board rule governing appeal proceedings].

1. The board shall hold the proceeding as soon as is practicable, and in no case later than ten days from the date of receipt of the appeal.
2. The board may hold the hearing by telephonic or other electronic means if necessary to prevent additional exposure to the person with the communicable or possibly communicable disease.
3. In extraordinary circumstances and for good cause shown, the board may continue the proceeding date for up to ten days, giving due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence.
4. At the appeal proceedings, the subject of the appeal shall have the right to introduce evidence on all issues relevant to the order.
5. The board, by majority vote, may modify, withdraw, or order compliance with the order under appeal.

(c) The aggrieved party to the final decision of the board may petition for judicial review of that action by filing an action in the appropriate court with jurisdiction.

1. Petitions for judicial review shall be filed within 30 days after the decision becomes final.

(d) The board acknowledges that in certain circumstances the subject or subjects of a board order may desire immediate judicial review of a board order in lieu of proceeding with the board's appeal process.

1. The board may consent to immediate jurisdiction of a court with jurisdiction when requested by the subject or subjects of a board order and justice so requires.
2. Unless stayed by order of the board or a court with jurisdiction, the written order for quarantine or isolation shall remain in force and effect until the judicial review is finally determined and disposed of upon its merits.

#### 1.8 Rights of individuals and groups of individuals subject to isolation or quarantine

(a) Any individual or group of individuals subject to isolation or quarantine shall have the following rights:

1. The right to be represented by legal counsel;
2. The right to be provided with prior notice of the date, time, and location of any hearing;
3. The right to participate in any hearing, which could be by telephonic or electronic means;
4. The right to respond and present evidence and argument on the individual's own behalf in any hearing;
5. The right to cross-examine witnesses who testify against the individual; and

6. The right to view and copy all records in the possession of the board which relate to the subject of the written order.

1.10 Implementation and enforcement of isolation and quarantine

(c) Any individual who violates a lawful board or Department order for isolation or quarantine, whether written or verbal, shall be subject to a penalty pursuant to N.J.S.A. 26:4-129.