

# North Dakota

---

## Analysis

### **HIV status must be disclosed before sexual activity and condoms or other protections must be used.**

People living with HIV (PLHIV) who know their HIV status may not “engage in sexual activity” without disclosing their HIV status to their sex partner(s).<sup>1</sup> Violation of this statute is a Class A felony, punishable by up to 20 years’ imprisonment and a fine of up to \$10,000.<sup>2</sup> “Sexual activity” includes oral, anal, or vaginal sex.<sup>3</sup> It is an affirmative defense if the PLHIV discloses their status *and* uses condoms or other protection during the sexual activity.<sup>4</sup> Neither the intent to transmit nor actual transmission of HIV is necessary for a conviction.

There has been at least one prosecution in North Dakota for exposure to HIV. In *State v. Bethke*, the defendant was charged with several offenses, including one count of transfer of a bodily fluid containing HIV.<sup>5</sup> The published appellate opinion stated that the trial court found him not guilty on this count but contains no other information regarding the charge.<sup>6</sup>

### **PLHIV may face criminal charges for sharing needles.**

People living with HIV (PLHIV) who know their HIV status may not, “permit the reuse of a hypodermic syringe, needle, or similar device without sterilization.”<sup>7</sup> Violation of this statute is a Class A felony, punishable by up to 20 years’ imprisonment and a fine of up to \$10,000.<sup>8</sup> Neither the intent to transmit nor actual transmission of HIV is necessary for a conviction.

### **In some instances, people may be subject to mandatory HIV or other sexually transmitted disease (STD) testing, treatment, and isolation.**

The state health officer may mandate medical examination of any person reasonably suspected of being infected with a sexually transmitted disease, detain that person until the results of the examination are known, and “require any person infected with a sexually transmitted disease to report

---

<sup>1</sup> N.D. CENT. CODE § 12.1-20-17 (2016).

<sup>2</sup> N.D. CENT. CODE §§ 12.1-20-17(2), 12.1-32-01 (2016).

<sup>3</sup> N.D. CENT. CODE § 12.1-20-17(1)(b) (2016).

<sup>4</sup> N.D. CENT. CODE § 12.1-20-17(2) (2016).

<sup>5</sup> *State v. Bethke*, 763 N.W.2d 492, 496 (N.D. 2009).

<sup>6</sup> *Id.* at 495.

<sup>7</sup> N.D. CENT. CODE § 12.1-20-17 (2016).

<sup>8</sup> N.D. CENT. CODE §§ 12.1-20-17(2), 12.1-32-01 (2016).

for treatment.”<sup>9</sup> Similarly, any person convicted of a crime who is imprisoned 15 days or more must submit to STD testing and, if infected, undergo treatment and isolation.<sup>10</sup> Inmates must also submit to HIV testing, the results of which are reported to the Department of Health.<sup>11</sup>

Any person who violates or fails to obey any order from the state health officer, or who, “knowing [they] are infected with a sexually transmitted disease, willfully exposes another person to infection,” is guilty of an infraction, punishable by a fine of up to \$1,000.<sup>12</sup>

### **Sex workers living with HIV may have their medical records released by the state health officer.**

The state health officer must cooperate with law enforcement and other officials by providing, “all relevant information concerning individuals who are infected with the human immunodeficiency virus and who are engaged in prostitution.”<sup>13</sup> Thus, not only can sex workers have their records released to aid in their prosecution under the HIV exposure statute; law enforcement, with the aid of the state health officer, may actively target sex workers known to be living with HIV for arrest and prosecution.<sup>14</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.*

---

<sup>9</sup> N.D. CENT. CODE § 23-07-07 (2016). STDs are not defined, but they include HIV, chlamydia, gonorrhea, hepatitis B, and syphilis. N.D. ADMIN CODE 33-06-04-10 (2016).

<sup>10</sup> N.D. CENT. CODE §§ 23-07-08, 23-07-09 (2016).

<sup>11</sup> N.D. CENT. CODE § 23-07-07.5 (2016).

<sup>12</sup> N.D. CENT. CODE §§ 23-07-21(1), (3); 12.1-32-01(7) (2016).

<sup>13</sup> N.D. CENT. CODE § 23-07-07(4) (2016).

<sup>14</sup> See N.D. CENT. CODE § 23-07-07.5 (2016).

---

## North Dakota Century Code

*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 12.1 CRIMINAL CODE

#### **N.D. CENT. CODE § 12.1-20-17 (2016) \*\***

*Transfer of body fluid that may contain the human immunodeficiency virus--Definitions--Defenses--Penalty*

1. As used in this section, unless the context otherwise requires:
  - a. "Body fluid" means semen, irrespective of the presence of spermatozoa; blood; or vaginal secretion.
  - b. "Transfer" means to engage in sexual activity by genital-genital contact, oral-genital contact, or anal-genital contact, or to permit the reuse of a hypodermic syringe, needle, or similar device without sterilization.
2. A person who, knowing that that person is or has been afflicted with acquired immune deficiency syndrome, afflicted with acquired immune deficiency syndrome related complexes, or infected with the human immunodeficiency virus, willfully transfers any of that person's body fluid to another person is guilty of a class A felony.
3. It is an affirmative defense to a prosecution under this section that if the transfer was by sexual activity, the sexual activity took place between consenting adults after full disclosure of the risk of such activity and with the use of an appropriate prophylactic device.

#### **N.D. CENT. CODE § 12.1-32-01 (2016) \*\***

*Classification of offenses--Penalties*

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

## **TITLE 23. HEALTH AND SAFETY**

### **N.D. CENT. CODE § 23-07-07 (2016)**

*Sexually transmitted diseases – Additional powers and duties of health officers.*

The state health officer, and each district, county, and city health officer within the officer's jurisdiction, when necessary for the protection of public health, shall:

1. Make examination of any person reasonably suspected of being infected with a sexually transmitted disease and detain that person until the results of the examination are known.
2. Require any person infected with a sexually transmitted disease to report for treatment to a reputable physician and to continue such treatment until cured or, if incurable, continue indefinitely such treatment as recommended by the physician.
4. Cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution, including providing proper officials with all relevant information available concerning individuals who are infected with the human immunodeficiency virus and who are engaged in prostitution.

### **N.D. CENT. CODE § 23-07-07.5 (2016)**

*Testing of inmates and convicted individuals for exposure to the human immunodeficiency virus – Reporting – Liability.*

1. The following individuals must be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus:
  - a. Every individual convicted of a crime who is imprisoned for fifteen days or more in a grade one or grade two jail, a regional correctional facility, or the state penitentiary;
  - b. Every individual, whether imprisoned or not, who is convicted of a sexual offense under chapter 12.1-20, except for those convicted of violating sections 12.1-20-12.1 and 12.1-20-13; and
  - c. Every individual, whether imprisoned or not, who is convicted of an offense involving the use of a controlled substance, as defined in chapter 19-03.1, and the offense involved the use of paraphernalia, including any type of syringe or hypodermic needle, that creates an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus.

2. The results of any positive or reactive test must be reported to the state department of health in the manner prescribed by the department and to the individual tested. Subsection 1 does not require the testing of an individual before sentencing or the testing of an individual held in a jail or correctional facility awaiting transfer to the state penitentiary.

### **N.D. CENT. CODE § 23-07-08 (2016)**

*Persons in prison examined and treated for sexually transmitted diseases.*

Every person convicted of a crime who is imprisoned fifteen days or more in a state, county, or city prison must be examined for sexually transmitted disease and, if infected, must be treated therefor by the health officer within whose jurisdiction the person is imprisoned.

**N.D. CENT. CODE § 23-07-09 (2016)**

*Sexually transmitted diseases – Persons isolated in prison – Exceptions.*

The prison authorities of any state, county, or city prison shall make available to the health officers such portion of the prison as may be necessary for a clinic or hospital wherein the following persons may be isolated and treated:

1. Persons who are imprisoned in the prison and who are infected with a sexually transmitted disease.
2. Persons who are suffering with a sexually transmitted disease at the time of the expiration of their term of imprisonment.
3. Persons isolated or quarantined by the health officer when no other suitable place for isolation or quarantine is available.

In lieu of such isolation, any of such persons, in the discretion of the health officer, may be required to report for treatment to a licensed physician. This section may not be construed to interfere with the service of any sentence imposed by a court as punishment for the commission of crime.

**N.D. CENT. CODE § 23-07-21 (2016) \*\***

*Penalties*

Except as otherwise provided in this section, a person is guilty of an infraction:

1. Who violates or fails to obey any provision of this chapter, any lawful rule made by the state department of health, or any order issued by any state, district, county, or municipal health officer;
2. Who violates any quarantine law or regulation, or who leaves a quarantined area without being discharged; or
3. Who, knowing that the person is infected with a sexually transmitted disease, willfully exposes another person to infection.

Any person required to make a report under section 23-07-02.1 who releases or makes public confidential information or otherwise breaches the confidentiality requirements of section 23-07-02.2 is guilty of a class C felony.

---

## **North Dakota Administrative Code**

### **TITLE 33. STATE DEPARTMENT OF HEALTH**

**N.D. ADMIN CODE 33-06-04-10 (2016)**

*Sexually transmitted diseases.*

1. Contact tracing is appropriate for the following sexually transmitted diseases:
  - a. Human immunodeficiency virus (HIV) infection;
  - b. Acquired immunodeficiency syndrome (AIDS);

- c. Chlamydia;
  - d. Gonorrhea;
  - e. Hepatitis B virus (HBV); and
  - f. Syphilis.
3. Information obtained pursuant to this section will be used solely for epidemiological purposes.