

Pennsylvania

Analysis

People living with HIV (PLHIV) have been convicted under Pennsylvania’s general criminal laws for various types of conduct, including failing to disclose their HIV status to sexual partners.

Although Pennsylvania does not have a specific criminal HIV-exposure law to address non-incarcerated persons and those who are not sex workers, numerous persons have been prosecuted for HIV exposure under general criminal laws, including murder, attempted murder, and reckless endangerment.

In Pennsylvania, PLHIV have been prosecuted for not disclosing their HIV status to sexual partners. In *Commonwealth v. Cordoba*, a PLHIV was charged with reckless endangerment for having unprotected, consensual oral sex without disclosing his HIV status to his partner.¹ The trial court ruled that, because consent is not a defense to reckless endangerment, to prosecute a PLHIV for engaging in consensual sex would lead to absurd results, including prosecution even if the person did disclose their status.²

On appeal the Superior Court of Pennsylvania reversed the trial court’s findings.³ Though there was never any transfer of blood or semen that could result in HIV transmission (the defendant only ejaculated on the face and chest of the complainant),⁴ the court found that the sex was not consensual and amounted to reckless endangerment because the defendant did not disclose his HIV status to the complainant.⁵ Reckless endangerment under Pennsylvania law is defined as “conduct which places or may place another person in danger of death or serious bodily injury.”⁶ Even though most exposure to the blood or semen of a PLHIV will not result in transmission, the court determined that the prosecution

¹ *Com. v. Cordoba*, 67 Pa. D. & C.4th 353, 356, 361 (Pa. Com. Pl. 2004), *overruled by Com. v. Cordoba*, 902 A.2d 1280 (Pa. Super. 2006).

² *Id.* at 358 (finding that “under the Commonwealth’s theory, even if an HIV positive individual informs his or her partner of this status prior to engaging in unprotected sexual activity, the statute would still be violated. A person carrying an infectious disease would commit a crime every time he/she had consensual sex. This is an absurd result, as individuals in this Commonwealth are free to make such intimate decisions outside the glare of state scrutiny. Lastly, allowing an HIV positive individual to be prosecuted under this statute for allegedly having consensual sexual contact with another adult would open the floodgates to jilted lovers and angry spouses to file charges after a relationship has soured.”). On appeal, the Superior Court did not address this issue because it was outside of the scope of the case and was not at issue because the defendant never disclosed his status. *Com. v. Cordoba*, 902 A.2d 1280, 1286 (Pa. Super. 2006).

³ *Cordoba*, 902 A.2d at 1283.

⁴ *Id.*

⁵ *Id.* at 1286.

⁶ *Id.* (citing 18 PA. CONS. STAT. § 2705)

need only establish that the defendant's conduct placed "or may have placed" another in danger of serious bodily injury or death.⁷

To establish a *prima facie* case for reckless endangerment, the court found that there only needs to be a possibility or risk of harm, regardless of the likelihood of that harm actually occurring.⁸ According to the court, the defendant's act of engaging in oral sex without informing his partner of his HIV status constituted a "gross deviation from the standard of conduct that a reasonable person would observe."⁹

Though disclosing one's HIV status is a defense to this type of prosecution, disclosure of HIV status is difficult to prove in court without witnesses or documentation, and juries often consider the testimony of PLHIV less credible than the testimony of persons claiming that they were exposed to HIV without consent.

- In December 2015, a 26-year-old PLHIV pled guilty to nine counts of reckless endangerments after having sex with three persons without disclosing his HIV status.¹⁰ He was sentenced to 33 to 66 months in prison.¹¹
- In January 2014, a 25-year-old PLHIV was charged with aggravated assault, sexual assault, and reckless endangerment for having unprotected sex without disclosing her HIV status.¹²

In addition to reckless endangerment, PLHIV have also been charged with murder and attempted murder for failing to disclose their HIV status to their sexual partners:

- In 1999, a 30-year-old man was charged with third-degree murder, attempted homicide and aggravated assault for having sex with five persons without disclosing his HIV status, though he maintained he had not known his status at the time.¹³ Each of the women later tested positive for HIV.¹⁴ The man died in 2000 before the case could go to trial.¹⁵

In *Commonwealth v. Walker*, a PLHIV was found guilty of communicating terrorist threats when he scratched a parole officer on the hand and said, "I have open cuts on my hands. Life is short. I am taking you with me."¹⁶ The officer knew Walker's HIV status.¹⁷ On appeal, Walker argued that the evidence against him was insufficient to demonstrate that he had the requisite intent to terrorize the

⁷ *Id.* at 1289 (emphasis in original).

⁸ *Id.* at 1288-89.

⁹ *Id.* at 1289.

¹⁰ Daniel Victor, *Man with HIV Gets Prison Time, Again, for Unprotected Sex*, N.Y. TIMES, Dec. 24, 2015, available at http://www.nytimes.com/2015/12/25/us/man-with-hiv-gets-prison-time-again-for-unprotected-sex.html?_r=0.

¹¹ *Id.*

¹² Charles Thompson, *Susquehann Township woman arrested for assault after lying about HIV status, police say*, PENNLIVE, Jan. 4, 2014, available at http://www.pennlive.com/midstate/index.ssf/2014/01/woman_arrested_for_lying_about.html.

¹³ Jeff Gelman, *AIDS-Related Death Leads to 3rd-degree Murder Charge*, MORNING CALL (Allentown, PA), Nov. 20, 1999, available at http://articles.mcall.com/1999-11-20/news/3275553_1_aids-virus-martin-third-degree-murder; Debbie Garlicki, *Man who allegedly infected women with AIDS virus dies*, MORNING CALL (Allentown, PA), Dec. 1, 2000, available at http://articles.mcall.com/2000-12-01/news/3330315_1_aids-virus-infected-murder-charge.

¹⁴ Garlicki, *Man who allegedly infected women with AIDS virus dies*, *supra* note 13.

¹⁵ *Id.*

¹⁶ 836 A.2d 999, 1000, 1001 (Pa. Super. Ct. 2003).

¹⁷ *Id.* at 1001.

officer.¹⁸ To be convicted of making terroristic threats, one must communicate a threat to commit violence with the intent to terrorize another or with reckless disregard of the risk of causing such terror.¹⁹ The court affirmed the conviction, finding that the jury could have inferred that Walker's statements intended to cause terror from fear of HIV transmission or that Walker made the statements with reckless disregard of the risk of causing terror.²⁰ The court held that the likelihood of HIV transmission from scratching was immaterial to the case, since the jury could have inferred a threat to kill the officer, rising to a "substantial and unjustifiable risk of causing terror."²¹

Other prosecutions of PLHIV under Pennsylvania's general criminal laws have included convictions for acts that are not known to transmit HIV:

- In October 2016, a 37-year-old man was charged with aggravated assault, simple assault, terroristic threats and reckless endangerment after he deliberately cut himself and bled on the face, chest, and legs of a woman in an amount "sufficient" to transmit HIV" according to the resulting police report.²²
- In March 2015, an 64-year-old PLHIV was charged with aggravated and simple assault after she bit a healthcare worker.²³
- In May 2012, a 19-year-old PLHIV was charged with aggravated assault and assault by a prisoner, among other charges, after he spit in the face of a police officer while in custody.²⁴
- In October 2009, a 34-year-old woman living with HIV and hepatitis C was charged with aggravated assault, assault by a prisoner, reckless endangerment, among other crimes, after she spat in the face of another inmate.²⁵ She was later sentenced to 21 months to ten years imprisonment.²⁶
- In 1999, a 39-year-old PLHIV was convicted of aggravated assault and theft and sentenced up to 20-seven years in prison for allegedly biting a security guard who was attempting to apprehend him for shoplifting.²⁷ The guard tested negative for HIV.²⁸
- In *Commonwealth v. Brown*, a man living with HIV and hepatitis B was convicted of aggravated assault for throwing fecal matter on a guard's face while housed in a state correctional

¹⁸ *Id.*

¹⁹ *Id.* (citing 18 PA. CONN. STAT. § 2706(a)).

²⁰ *Id.* at 1002.

²¹ *Id.*

²² Becky Metrick, *Police: HIV positive man attacked, bled on woman*, USATODAY, October 8, 2016, available at <http://www.usatoday.com/story/news/nation-now/2016/10/08/police-hiv-positive-man-attacked-bled-woman/91816272/>.

²³ Eric Veronikis, *Report: York woman with HIV arrested for biting facility supervisor*, PENNLIVE, March 2, 2015, available at http://www.pennlive.com/midstate/index.ssf/2015/03/report_york_woman_with_hiv_arr.html.

²⁴ *Easton man infected with HIV spits in police officer's face, records say*, LEHIGHVALLEYLIVE.COM, May 21, 2012, available at http://www.lehighvalleylive.com/easton/index.ssf/2012/05/easton_man_infected_with_hiv_s.html.

²⁵ Michael Rudolf, *HIV-Positive Prisoner Sentenced for Spitting at Inmate*, CITIZENVOICE.COM, Oct. 15, 2009, available at <http://citizensvoice.com/news/hiv-positive-prisoner-sentenced-for-spitting-at-inmate-1.335692>; Josh Mrozinski, *Inmate Charged for Assault for Spitting*, WCEXAMINER.COM (Wyoming County, Pa.), Jan. 14, 2009, available at <http://archives.wceaminer.com/index.php/2009/01/14/inmate-charged-with-assault-for-spitting/>.

²⁶ *Commonwealth v. Visnesk*, CP-66-CR-0000104-2009 (Pa.C.P. Wyoming 2009)

²⁷ *Commonwealth v. Perez*, CP-39-CR-0001227-1998 (Pa.C.P. Lehigh 1998); Debbie Garlicki, *City Man with Hiv Virus Gets Prison Time For Biting * Eric Rivera Perez is Sentenced for Assault on Wal-Mart Security Officer*, THE MORNING CALL, Feb. 4, 1999, available at http://articles.mcall.com/1999-02-04/news/3240187_1_infected-human-immunodeficiency-virus-police-officer.

²⁸ Garlicki, *supra* note 27.

institution.²⁹ The court reasoned that, since the defendant had been counseled by a health care provider that he had tested positive for both HIV and Hepatitis B and been informed that HIV could be transmitted through body fluids, the evidence was sufficient to support a finding that defendant “intended to inflict serious bodily injury upon [the] Officer.”³⁰

Many of these examples involve a charge for aggravated assault, a first-degree felony carrying up to a 20-year penalty, which is defined as causing or attempting to cause “serious bodily injury to another ... under circumstances manifesting extreme indifference to the value of human life.”³¹ By contrast, simple assault is a second-degree misdemeanor and typically punished with a maximum of two years incarceration.³² These convictions are based on the stigma and fear surrounding HIV rather than the science of HIV transmission—it is the presence of HIV alone that elevates the assault to “serious” and supposedly indicates the presence of “extreme indifference to the value of human life,” despite the lack of any actual risk of HIV transmission.

PLHIV who are incarcerated face increased penalties for exposing others to their bodily fluids, including saliva.

The Pennsylvania HIV exposure statute for incarcerated persons is overly broad and criminalizes conduct that does not pose a risk of HIV transmission. Under the statute, if a person in confinement intentionally or knowingly causes another to “come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material” and “the person knew, had reason to know, or should have known or believed that such fluid or material was infected by a communicable disease, including, but not limited to, HIV,”³³ that person can face an additional sentence of up to ten years in prison.³⁴ If an incarcerated person is already serving a life sentence or is on death row and violates the statute then that person will be prosecuted for second-degree murder.³⁵

It is a felony for PLHIV to engage in or solicit prostitution.

A person is guilty of “prostitution while HIV positive” if they are part of a house of prostitution, engage in sexual activity as a business, or loiter in or within view of any public place for the purpose of being hired to engage in sexual activity.³⁶

²⁹ 605 A.2d 429, 430-31 (Pa. Super. Ct. 1992).

³⁰ *Id.* at 431.

³¹ 18 PA. CONN. STAT. §§1103(1), 2702(a)(1) (2016).

³² 18 PA. CONN. STAT. §§ 2701(b), 1104(2) (2016).

³³ The statute was rewritten in 1998 to include “HIV” after the 1992 conviction of an living with HIV and Hepatitis B for throwing urine and feces at a prison guard. See *Brown*, 605 A.2d at 430-31. The defendant was convicted of aggravated assault, assault by prisoner, simple assault, and recklessly endangering another person and sentenced to ten to 20 years in prison to run consecutively with the sentence he was already serving. *Id.* at 431. Based on the fact that the defendant knew he had both HIV and Hepatitis B and had received counseling regarding the transmission of HIV through bodily fluids, the court found that “there was sufficient evidence for the fact finder to conclude that [the defendant] intended to inflict serious bodily injury” when he threw fecal matter at the guard, and thus “the evidence [was] sufficient to support [the defendant’s] conviction for Aggravated Assault.” *Id.*

³⁴ 18 PA. CONS. STAT. §§ 2703, 1103 (2016).

³⁵ 18 PA. CONS. STAT. § 2704 (2016).

³⁶ 18 PA. CONS. STAT § 5902(a) (2016).

Sexual activity for the purposes of the statute is broadly defined to include “homosexual and other deviate sexual relations.”³⁷ The ambiguous definition of “sexual activity” has led Pennsylvania courts to try and define what types of sexual acts are punishable under the prostitution statute.³⁸ Many of the sexual activities courts have identified as giving rise to criminal liability pose no risk of HIV transmission, including acts that do not involve penetration of the body³⁹ or the transfer of blood or semen, such as manual stimulation of a penis.⁴⁰ This broad definition of “sexual acts” creates the risk of severe penalties for PLHIV engaged in sex work for conduct that cannot transmit HIV.

Neither disclosure of one’s HIV status, the use of condoms or other protection, nor low or undetectable viral load is considered a defense to prosecution. Thus PLHIV are prosecuted and suffer increased penalties due solely to their HIV-status, without consideration of the actual risk their conduct poses to others.

Punishment is also more harsh for PLHIV engaged in sex work. Prostitution is normally punished as a misdemeanor, with sentences ranging from one to five years imprisonment based on a record of prior convictions.⁴¹ However, if a PLHIV engages in sex work they are subject to third-degree felony charges, punishable by up to seven years in prison.⁴²

Examples of prosecutions under this statute include:

- In March 2011, an PLHIV was sentenced to six to 12 months in prison with two years probation for “engaging in prostitution while HIV positive.”⁴³
- In January 2009, a 26-year-old sex worker pled guilty to reckless endangerment and “engaging in prostitution while HIV positive.”⁴⁴ She received three years’ probation.
- In 1996, a PLHIV engaged in sex work was charged with “prostitution while being HIV positive.”⁴⁵ Another PLHIV was convicted of the same offense in 1998, and sentenced to seven years imprisonment.⁴⁶

³⁷ 18 PA. CONS. STAT § 5902(f) (2016).

³⁸ See, e.g., *Commonwealth v. Bleigh*, 586 A.2d 450, 452 (Pa. Super. Ct. 1991) (stating that “[s]ince the term ‘sexual activity’ is neither specifically nor exhaustively defined in the prostitution statute, we must construe the term according to its common and approved usage.”).

³⁹ See, e.g., *Commonwealth v. Lundberg*, 37 Pa. D. & C.3d 4, 5-10. (Pa. Ct. Com. Pl. 1985) (discussing “an alleged solicitation by a female to manipulate the male sexual organs in order to achieve sexual arousal in the male in return for payment.”).

⁴⁰ *Commonwealth v. Cohen*, 371 Pa. Super. 558, (Pa. Super. Ct. 1988). Also available in LEXIS at: 1988 Pa. Super. LEXIS 4146 (Pa. Super. Ct. 1988).

⁴¹ 18 PA. CONS. STAT. §§ 5902(a.1)(4), 1103(3) (2016). Prostitution charges that are non-HIV specific are normally prosecuted as either first-, second-, or third-degree misdemeanors that range in maximum sentence from one to five years imprisonment. 18 PA. CONS. STAT. § 1104 (2016).

⁴² 18 PA. CONS. STAT §§ 5902(a.2), 1103 (2016).

⁴³ *Commonwealth v. Garvin*, 50 A.3d 694, 695 (Pa. Super. Ct. 2012)

⁴⁴ Laurie Mason, *HIV positive Prostitute Sentenced*, BUCKS COUNTY COURIER TIMES (Philadelphia, PA), Jan. 16, 2009, at 1.

⁴⁵ David Kinney, *Authorities Crack Down on HIV positive Prostitutes*, THE PHILA. INQUIRER, Aug. 17, 1996, at B03.

⁴⁶ April Adamson, *Obscure Law Used on Reckless Hookers*, PHILA. DAILY NEWS, June 16, 1998, at 8.

A person suspected of having an STI can be required to undergo mandatory examination and may be quarantined if they refuse to cooperate.

The Disease Prevention and Control Law of 1955, many provisions of which are mirrored in Title 28 of Pennsylvania's Administrative Code, grants the Pennsylvania Department of Health and other local health departments broad legal authority to mandate a medical examination for an individual when there are "reasonable grounds to suspect any person of being infected with a venereal disease"⁴⁷ or "an organism causing a sexually transmitted disease."⁴⁸ Sexually transmitted disease is defined broadly as "[a] disease which, except when transmitted perinatally, is transmitted almost exclusively through sexual contact."⁴⁹ The grounds upon which a person may be reasonably suspected of being infected with an STI are not enumerated, but if an individual refuses to submit to medical examination, a health officer may order that person be quarantined "until it is determined that he is not infected with a venereal disease"⁵⁰ or "does not pose a threat to the public health."⁵¹

The health officer may also file a petition in court that is accompanied by a sworn statement from a licensed physician that the person is suspected of being infected with an STI. The criteria to be relied upon by a physician in submitting such a statement are not specified. However, the statement from the physician submitted with the petition is considered prima facie evidence that the individual is suspected of being infected with an STI.⁵² Once the petition is filed, the court holds a hearing, without a jury, to determine whether the person has refused to submit to an examination.

Upon a finding that the person has refused to submit to such examination and that there was no valid reason to do so, the court will issue an order that the person submit to the examination. If a person still refuses to submit to an examination, the court may commit them to an institution suitable for the care of persons infected with the disease in question.⁵³

A person arrested for certain kinds of crimes may be required to undergo mandatory examination for STIs.

Any person taken into custody and charged with any crime involving lewd conduct or a sex offense, or any person to whom the jurisdiction of a juvenile court attaches, may be examined for the presence of STIs.⁵⁴ However, the results of the examination are not available for use during the prosecution of any defendant for the underlying sex offense.⁵⁵ If an individual refuses to submit to an examination or provide a specimen for laboratory tests as requested, judicial action may be pursued by the Department of Health or other local health authority to secure an "appropriate remedy."⁵⁶ Appropriate remedy is not defined, but presumably could include a court-ordered examination or quarantine if the person is

⁴⁷ 35 PA. STAT. ANN. § 521.7 (2016)

⁴⁸ 28 PA. CODE § 27.81 (2016).

⁴⁹ 28 PA. CODE § 27.1 (2016)

⁵⁰ 35 PA. STAT. ANN. § 521.7 (2016)

⁵¹ 28 PA. CODE § 27.82(a) (2016)

⁵² 35 PA. STAT. ANN. § 521.7 (2016); 28 PA. CODE §§ 27.82(b)(1), 27.82(b)(2) (2016).

⁵³ 35 PA. STAT. ANN. § 521.7 (2016); 28 PA. CODE §§ 27.82(c) (2016).

⁵⁴ 35 PA. STAT. ANN. § 521.8(a) (2016); 28 PA. CODE § 27.84(a) (2016).

⁵⁵ *Commonwealth v. Moore*, 526 Pa. 152, 157-59 (Pa. 1991).

⁵⁶ 28 PA. CODE § 27.84(a) (2016).

reasonably suspected to be suffering from an STI.⁵⁷ The Disease Prevention and Control Law also outlines penalties for violation of its provisions, including fines and imprisonment of up to 30 days in the event of default.⁵⁸

A person with an STI may be subject to isolation or quarantine.

If the Pennsylvania Department of Health or other local health authority determines that it “advances public health interests,” a person with an STI who refuses treatment may be isolated “for safekeeping and treatment until the disease has been rendered non-communicable.”^{59, 60} It is not clear how these provisions of the Disease Prevention and Control Law or the Administrative Code would apply to STIs that may not be rendered completely non-communicable, either because they are incurable, such as herpes or HIV, or due to drug-resistance. As drafted, the required threshold of non-communicability for release may permit indefinite isolation under certain circumstances, including situations where an individual never accepts treatment or if it is not possible for him or her to be rendered non-infectious, even with treatment.

The procedure for committing a person to a facility or institution for isolation is somewhat similar to that for seeking a court order to mandate examination for suspected STI, except there is no need for a sworn statement from a physician. The Department of Health or other local health authority files a petition in court seeking to have the person committed. Upon filing of the petition, and within 24 hours of service upon the individual, the court will hold a hearing without a jury to determine if the individual has refused to submit to treatment. Upon a finding that the person has refused to submit to treatment, the court will issue an order.⁶¹ Neither the Disease Prevention and Control Law nor the Administrative Code details any additional procedural protections for individuals who are subject to these kinds of court orders.

Of note, the Disease Prevention and Control Law specifies that a county jail is an appropriate facility to isolate or quarantine someone on the basis of infection with venereal disease, but not tuberculosis or other communicable diseases, which are addressed in the additional provisions of the statute.⁶² The Administrative Code confirms that when the Department of Health or other local health authority “orders a person with or suspected of having a sexually transmitted disease” be isolated or quarantined, that it may order the isolation or quarantine to take place in an institution where the person’s movements are “physically restricted,”⁶³ a general category which could include jails or other correctional settings. There is no analogous clarification relating to the types of facilities that may be used to isolate or

⁵⁷ 35 PA. STAT. ANN. § 521.7 (2016); 28 PA. CODE § 27.82 (2016)

⁵⁸ 35 PA. STAT. ANN. § 521.20(a) (2016).

⁵⁹ As part of its public health surveillance activities, Pennsylvania requires that the following STIs be reported to the district office of the Department of Health or the local health department where the case is diagnosed or identified: chancroid, chlamydia trachomatis, gonococcal infections, granuloma inguinale, lymphogranuloma venereum, and syphilis. See 28 PA. CODE § 27.33 (2016). The Department of Health also receives this information, in addition to notifications of HIV and AIDS. See 28 PA. CODE § 27.21a (2016).

⁶⁰ 28 PA. CODE § 27.87(a) (2016); See also 35 PA. STAT. ANN. § 521.11(a.1) (2016) (Note that this statutory provision does not require a finding that the action will advance public health interests).

⁶¹ 35 PA. STAT. ANN. § 521.11(a.2) (2016); 28 PA. CODE § 27.87(b) (2016).

⁶² 35 PA. STAT. ANN. § 521.11(b) (2016).

⁶³ 28 PA. CODE § 27.88(a) (2016).

quarantine someone with tuberculosis or other communicable diseases, which are the other conditions addressed by related provisions of the code.

A person may be forced to pay a fine or face imprisonment for violation of the Disease Prevention and Control Law.

The Disease Prevention and Control Law of 1955 specifies penalties for “any person who violates any of the provisions of [the] act.” Following a summary proceeding before a magistrate, alderman, or justice of the peace in the county where the violation occurred, the person may be sentenced to pay \$25-\$300, along with other costs.⁶⁴ In the event of default, a person may be imprisoned for up to 30 days in jail.⁶⁵ A prosecution may be initiated by the Pennsylvania Department of Health, a local health department, or any person “having knowledge of a violation of any provision of [the] act.”⁶⁶

***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.*

⁶⁴ Costs likely include those incurred when an individual is required to pay for a mandatory examination. For example, 35 PA. STAT. ANN. § 521.7 clarifies that an “examination ordered by the court may be performed by a physician of [the individual’s] own choice at [the individual’s] own expense.” Similarly, 28 PA. CODE § 27.83 directs that “[t]he examination ordered by the court under § 27.82 (relating to refusal to submit to examination) may be performed by a physician chosen by the person at the person’s own expense.”

⁶⁵ 35 PA. STAT. ANN. § 521.20(a) (2016).

⁶⁶ 35 PA. STAT. ANN. § 521.20(b) (2016).

Pennsylvania Consolidated 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 18, CRIMES AND OFFENSES

18 PA. CONS. STAT. ANN. § 2703 (2016) **

Assault by prisoner

(a) *Offense defined.*--A person who is confined in or committed to any local or county detention facility, jail or prison or any State penal or correctional institution or other State penal or correctional facility located in this Commonwealth is guilty of a felony of the second degree if he, while so confined or committed or while undergoing transportation to or from such an institution or facility in or to which he was confined or committed intentionally or knowingly, commits an assault upon another with a deadly weapon or instrument, or by any means or force likely to produce serious bodily injury. A person is guilty of this offense if he intentionally or knowingly causes another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material when, at the time of the offense, the person knew, had reason to know, should have known or believed such fluid or material to have been obtained from an individual, including the person charged under this section, infected by a communicable disease, including, but not limited to, human immunodeficiency virus (HIV) or hepatitis B.

(b) *Consecutive sentences.*--The court shall order that any sentence imposed for a violation of subsection (a), or any sentence imposed for a violation of section 2702(a) (relating to aggravated assault) where the victim is a detention facility or correctional facility employee, be served consecutively with the person's current sentence.

18 PA. CONS. STAT. ANN. § 2704 (2016) **

Assault by life prisoner

Every person who has been sentenced to death or life imprisonment in any penal institution located in this Commonwealth, and whose sentence has not been commuted, who commits an aggravated assault with a deadly weapon or instrument upon another, or by any means of force likely to produce serious bodily injury, is guilty of a crime, the penalty for which shall be the same as the penalty for murder of the second degree. A person is guilty of this offense if he intentionally or knowingly causes another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material when, at the time of the offense, the person knew, had reason to know, should have known or believed such fluid or material to have been obtained from an individual, including the person charged under this section, infected by a communicable disease, including, but not limited to, human immunodeficiency virus (HIV) or hepatitis B.

18 PA. CONS. STAT. ANN. § 5902 (2016) **

Prostitution and related offenses

(a) *Prostitution.*--A person is guilty of prostitution if he or she:

(1) is an inmate of a house of prostitution or otherwise engages in sexual activity as a business;
or

(2) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

(a.1) *Grading of offenses under subsection (a).*--An offense under subsection (a) constitutes a:

(1) Misdemeanor of the third degree when the offense is a first or second offense.

(2) Misdemeanor of the second degree when the offense is a third offense.

(3) Misdemeanor of the first degree when the offense is a fourth or subsequent offense.

(4) Felony of the third degree if the person who committed the offense knew that he or she was human immunodeficiency virus (HIV) positive or manifesting acquired immune deficiency syndrome (AIDS).

(b) *Promoting prostitution.*--A person who knowingly promotes prostitution of another commits a misdemeanor or felony as provided in subsection (c) of this section. The following acts shall, without limitation of the foregoing, constitute promoting prostitution:

(1) owning, controlling, managing, supervising or otherwise keeping, alone or in association with others, a house of prostitution or a prostitution business;

(2) procuring an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;

(3) encouraging, inducing, or otherwise intentionally causing another to become or remain a prostitute;

(4) soliciting a person to patronize a prostitute;

(5) procuring a prostitute for a patron;

(6) transporting a person into or within this Commonwealth with intent to promote the engaging in prostitution by that person, or procuring or paying for transportation with that intent;

(7) leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or the promotion of prostitution, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means; or

(8) soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything forbidden by this subsection.

(b.1) *Promoting prostitution of minor.*--A person who knowingly promotes prostitution of a minor commits a felony of the third degree. The following acts shall, without limitation of the foregoing, constitute promoting prostitution of a minor:

(1) owning, controlling, managing, supervising or otherwise keeping, alone or in association with others, a house of prostitution or a prostitution business in which a victim is a minor;

- (2) procuring an inmate who is a minor for a house of prostitution or a place in a house of prostitution where a minor would be an inmate;
- (3) encouraging, inducing, or otherwise intentionally causing a minor to become or remain a prostitute;
- (4) soliciting a minor to patronize a prostitute;
- (5) procuring a prostitute who is a minor for a patron;
- (6) transporting a minor into or within this Commonwealth with intent to promote the engaging in prostitution by that minor, or procuring or paying for transportation with that intent;
- (7) leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution of a minor or the promotion of prostitution of a minor, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities or other legally available means; or
- (8) soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything forbidden by this subsection.

(c) *Grading of offenses under subsection (b).*--

- (1) An offense under subsection (b) constitutes a felony of the third degree if:
 - (i) the offense falls within paragraphs (b)(1), (b)(2) or (b)(3);
 - (ii) the actor compels another to engage in or promote prostitution;
 - (iv) the actor promotes prostitution of his spouse, child, ward or any person for whose care, protection or support he is responsible; or
 - (v) the person knowingly promoted prostitution of another who was HIV positive or infected with the AIDS virus.
- (2) Otherwise the offense is a misdemeanor of the second degree.

(d) *Living off prostitutes.*--A person, other than the prostitute or the prostitute's minor child or other legal dependent incapable of self-support, who is knowingly supported in whole or substantial part by the proceeds of prostitution is promoting prostitution in violation of subsection (b) of this section.

(e) *Patronizing prostitutes.*--A person commits the offense of patronizing prostitutes if that person hires a prostitute or any other person to engage in sexual activity with him or her or if that person enters or remains in a house of prostitution for the purpose of engaging in sexual activity.

(e.1) *Grading of offenses under subsection (e).*--An offense under subsection (e) constitutes a:

- (1) Misdemeanor of the third degree when the offense is a first or second offense.
- (2) Misdemeanor of the second degree when the offense is a third offense.
- (3) Misdemeanor of the first degree when the offense is a fourth or subsequent offense.

(4) Felony of the third degree if the person who committed the offense knew that he or she was human immunodeficiency virus (HIV) positive or manifesting acquired immune deficiency syndrome (AIDS).

(e.2) *Publication of sentencing order.*--A court imposing a sentence for a second or subsequent offense committed under subsection (e) shall publish the sentencing order in a newspaper of general circulation in the judicial district in which the court sits, and the court costs imposed on the person sentenced shall include the cost of publishing the sentencing order.

(f) *Definitions.*--As used in this section the following words and phrases shall have the meanings given to them in this subsection:

“House of prostitution.” Any place where prostitution or promotion of prostitution is regularly carried on by one person under the control, management or supervision of another.

“Inmate.” A person who engages in prostitution in or through the agency of a house of prostitution.

“Minor.” An individual under 18 years of age.

“Public place.” Any place to which the public or any substantial group thereof has access.

“Sexual activity.” Includes homosexual and other deviate sexual relations.

18 PA. CONS. STAT. ANN. § 1103 (2016) **

Sentence of imprisonment for felony

Except as provided in 42 Pa.C.S. § 9714 (relating to sentences for second and subsequent offenses), a person who has been convicted of a felony may be sentenced to imprisonment as follows:

(2) In the case of a felony of the second degree, for a term which shall be fixed by the court at not more than ten years.

(3) In the case of a felony of the third degree, for a term which shall be fixed by the court at not more than seven years.

18 PA. CONS. STAT. ANN. § 1101 (2016) **

Fines

A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

(1) \$50,000, when the conviction is of murder or attempted murder.

(2) \$25,000, when the conviction is of a felony of the first or second degree.

(3) \$15,000, when the conviction is of a felony of the third degree.

(4) \$10,000, when the conviction is of a misdemeanor of the first degree.

(5) \$5,000, when the conviction is of a misdemeanor of the second degree.

(6) \$2,500, when the conviction is of a misdemeanor of the third degree.

(7) \$300, when the conviction is of a summary offense for which no higher fine is established.

Pennsylvania Statutes

TITLE 35, HEALTH AND SAFETY, CHAPTER 3, PREVENTION OF SPREAD OF DISEASES

35 PA. STAT. ANN. § 521.7 (2016)

Examination and diagnosis of persons suspected of being infected with venereal disease, tuberculosis or any other communicable disease, or of being a carrier.

Whenever the secretary or a local qualified medical health officer has reasonable grounds to suspect any person of being infected with a venereal disease, tuberculosis or any other communicable disease, or of being a carrier, he shall require the person to undergo a medical examination and any other approved diagnostic procedure, to determine whether or not he is infected with a venereal disease, tuberculosis or any other communicable disease, or is a carrier. In the event that the person refuses to submit to the examination, the secretary or the local qualified medical health officer may (1) cause the person to be quarantined until it is determined that he is not infected with a venereal disease, tuberculosis or any other communicable disease, or of being a carrier, or (2) file a petition in the court of common pleas of the county in which the person is present, which petition shall have appended thereto a statement, under oath, by a physician duly licensed to practice in the Commonwealth, that such person is suspected of being infected with venereal disease, tuberculosis or any other communicable disease, or that such person is suspected of being a carrier. Upon filing of such petition, the court shall, within twenty-four hours after service of a copy thereof upon the respondent, hold a hearing, without a jury, to ascertain whether the person named in the petition has refused to submit to an examination to determine whether he or she is infected with venereal disease, tuberculosis or any other communicable disease, or that such person is a carrier. Upon a finding that the person has refused to submit to such examination and that there was no valid reason for such person so to do, the court shall forthwith order such person to submit to the examination. The certificate of the physician appended to the petition shall be received in evidence and shall constitute prima facie evidence that the person therein named is suspected of being infected with venereal disease, tuberculosis or any other communicable disease, or that such person is a carrier. The examination ordered by the court may be performed by a physician of his own choice at his own expense. The examination shall include physical and laboratory tests performed in a laboratory approved by the secretary, and shall be conducted in accordance with accepted professional practices, and the results thereof shall be reported to the local health board or health department on forms furnished by the Department of Health. Any person refusing to undergo an examination, as herein provided, may be committed by the court to an institution in this Commonwealth determined by the Secretary of Health to be suitable for the care of such cases.

35 PA. STAT. ANN. § 521.8 (2016)

Venereal disease

(a) Any person taken into custody and charged with any crime involving lewd conduct or a sex offense, or any person to whom the jurisdiction of a juvenile court attaches, may be examined for a venereal disease by a qualified physician appointed by the department or by the local board or department of health or appointed by the court having jurisdiction over the person so charged.

(b) Any person convicted of a crime or pending trial, who is confined in or committed to any State or local penal institution, reformatory or any other house of correction or detention, may be examined for

venereal disease by a qualified physician appointed by the department or by the local board or department of health or by the attending physician of the institution, if any.

(c) Any such persons noted in paragraph (a) or (b) of this section found, upon such examination, to be infected with any venereal disease shall be given appropriate treatment by duly constituted health authorities or their deputies or by the attending physician of the institution, if any.

35 PA. STAT. ANN. § 521.11 (2016)

Persons refusing to submit to treatment for venereal disease, tuberculosis, or any other communicable disease

(a.1) If the secretary or any local health officer finds that any person who is infected with venereal disease, tuberculosis or any other communicable disease in a communicable stage refuses to submit to treatment approved by the department or by a local board or department of health, the secretary or his representative or the local medical health officer may cause the person to be isolated in an appropriate institution designated by the department or by the local board or department of health for safekeeping and treatment until the disease has been rendered non-communicable.

(a.2) The secretary or the local health officer may file a petition in the court of common pleas of the county in which the person is present to commit such person to an appropriate institution designated by the department or by the local board or department of health for safekeeping and treatment until such time as the disease has been rendered non-communicable. Upon filing of such petition, the court shall, within twenty-four hours after service of a copy thereof upon the respondent, hold a hearing, without a jury, to ascertain whether the person named in the petition has refused to submit to treatment. Upon a finding that the person has refused to submit to such treatment, the court shall forthwith order such person to be committed to an appropriate institution or hospital designated by the department or by the local board or department of health.

(a.3) For the purpose of this section, it is understood that treatment approved by the department or by a local board or department of health shall include treatment by a duly accredited practitioner of any well recognized church or religious denomination which relies on prayer or spiritual means alone for healing: Provided, however, that all requirements relating to sanitation, isolation or quarantine are complied with.

(b) Any county jail or other appropriate institution may receive persons who are isolated or quarantined by the department or by a local board or department of health by reason of a venereal disease for the purpose of safekeeping and treatment. The department or the local board or department of health shall reimburse any institution which accepts such persons at the rate of maintenance that prevails in such institution, and shall furnish the necessary medical treatment to the persons committed to such institution.

35 PA. STAT. ANN. § 521.20 (2016)

Penalties, prosecutions and disposition of fines

(a) Any person who violates any of the provisions of this act or any regulation shall, for each offense, upon conviction thereof in a summary proceeding before any magistrate, alderman or justice of the peace in the county wherein the offense was committed, be sentenced to pay a fine of not less than twenty-five dollars (\$25) and not more than three hundred dollars (\$300), together with costs, and in

default of payment of the fine and costs, to be imprisoned in the county jail for a period not to exceed thirty (30) days.

(b) Prosecutions may be instituted by the department, by a local board or department of health or by any person having knowledge of a violation of any provisions of this act or any regulation.

Pennsylvania Administrative Code

TITLE 28, HEALTH AND SAFETY, PART III, PREVENTION OF DISEASES

28 PA. CODE § 27.1 (2016)

Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Sexually transmitted disease -- A disease which, except when transmitted perinatally, is transmitted almost exclusively through sexual contact.

28 PA. CODE § 27.81 (2016)

Examination of persons suspected of being infected

Whenever the Department or a local health authority has reasonable grounds to suspect a person of being infected with an organism causing a sexually transmitted disease, tuberculosis or other communicable disease, or of being a carrier, but lacks confirmatory medical or laboratory evidence, the Department or the local health authority may require the person to undergo a medical examination and any other approved diagnostic procedure to determine whether or not the person is infected or is a carrier. If the local health authority involved is not an LMRO, the local health authority shall consult with and receive approval from the Department prior to requiring any medical examination or other approved diagnostic procedure.

28 PA. CODE § 27.82 (2016)

Refusal to submit to examination

(a) If a person refuses to submit to the examination required in § 27.81 (relating to examination of persons suspected of being infected), the Department or the local health authority may direct the person to be quarantined until it is determined that the person does not pose a threat to the public health by reason of being infected with a disease causing organism or being a carrier.

(b) If the person refuses to abide by an order issued under subsection (a), the Department or local health authority may file a petition in the court of common pleas of the county in which the person is present. The petition shall have a statement attached, given under oath by a physician licensed to practice in this Commonwealth, that the person is suspected of being infected with an organism causing a sexually transmitted disease, tuberculosis or other communicable disease, or that the person is suspected of being a carrier.

(1) Upon the filing of the petition, the court shall, within 24 hours after service of a copy upon the respondent, hold a hearing without a jury to ascertain whether the person named in the petition

has refused to submit to an examination to determine whether the person is infected with the suspected disease causing organism, or that the person is a carrier.

(2) Upon a finding that the person has refused to submit to an examination and that there is no valid reason for the person to do so, the court may forthwith order the person to submit to the examination.

(3) The certificate of the physician attached to the petition shall be received in evidence and shall constitute prima facie evidence that the person named is suspected of being infected with the disease causing organism, or that the person is a carrier.

(c) A person refusing to undergo an examination as required under subsections (a) and (b) may be committed by the court to an institution in this Commonwealth determined by the Department to be suitable for the care of persons infected with the suspected disease causing organism.

28 PA. CODE § 27.83 (2016)

Court ordered examinations

The examination ordered by the court under § 27.82 (relating to refusal to submit to examination) may be performed by a physician chosen by the person at the person's own expense. The examination shall include an appropriate physical examination and laboratory tests performed in a clinical laboratory approved by the Department to conduct the tests, and shall be conducted in accordance with accepted professional practices. The results shall be reported to the local health authority or the Department on case report forms furnished by the Department.

28 PA. CODE § 27.84 (2016)

Examination for a sexually transmitted disease of person detained by police authorities

(a) A person taken into custody and charged with a crime involving lewd conduct or a sex offense, or a person to whom the jurisdiction of a juvenile court attaches may be examined for a sexually transmitted disease by a qualified physician appointed by the Department, by the local health authority or by the court having jurisdiction over the person so charged. If the person refuses to permit an examination or provide a specimen for laboratory tests as requested by the physician designated by the Department, a local health authority or a court, judicial action may be pursued by the Department or local health authority to secure an appropriate remedy.

(b) A person convicted of a crime or pending trial, who is confined in or committed to a State or local penal institution, reformatory or other house of correction or detention, may be examined for a sexually transmitted disease by a qualified physician appointed by the Department or by the local health authority. If the person refuses to permit an examination or provide a specimen for laboratory tests as requested by the physician, judicial action may be pursued by the Department or local health authority to secure an appropriate remedy.

(c) A person described in subsection (a) or (b) found, upon examination, to be infected with a sexually transmitted disease shall be given appropriate treatment by the local health authority, the Department or the attending physician of the institution.

28 PA. CODE § 27.87 (2016)

Refusal to submit to treatment for communicable disease

(a) If the Department or a local health authority finds that a person who is infected with a sexually transmitted disease, tuberculosis or other communicable disease in a communicable stage refuses to submit to treatment approved by the Department or by a local health authority, the Department or the local health authority, if it determines the action advances public health interests, shall order the person to be isolated in an appropriate institution designated by the Department or by the local health authority for safekeeping and treatment until the disease has been rendered noncommunicable.

(i) If the disease is one which may be significantly reduced in its communicability following short-term therapy, but is likely to significantly increase in its communicability if that therapy is not continued, such as tuberculosis, the Department or local health authority may order the person to complete therapy which is designed to prevent the disease from reverting to a communicable stage, including completion of an inpatient treatment regimen. See, also, § 27.161 (relating to special requirements for tuberculosis).

(ii)(b) If a person refuses to comply with an order issued under subsection (a), the Department or local health authority may file a petition in the court of common pleas of the county in which the person is present to commit the person to an appropriate institution designated by the Department or by the local health authority for safekeeping and treatment as specified in subsection (a). Upon the filing of a petition, the court shall, within 24 hours after service of a copy upon the respondent, hold a hearing without a jury to ascertain whether the person named in the petition has refused to submit to treatment. Upon a finding that the person has refused to submit to treatment, the court shall issue an appropriate order.

(c) For the purpose of this section, treatment approved by the Department or by a local health authority may include treatment by an accredited practitioner of a well recognized church or religious denomination which relies on prayer or spiritual means alone for healing, if requirements relating to sanitation, isolation or quarantine are satisfied.

28 PA. CODE § 27.88 (2016)

Isolation and quarantine in appropriate institutions

(a) When the Department or a local health authority orders a person with or suspected of having a sexually transmitted disease to be isolated or quarantined for the purpose of safekeeping and treatment, it may order that the isolation or quarantine take place in an institution where the person's movement is physically restricted.