

Tennessee

Analysis

People living with HIV (PLHIV) may face criminal penalties for engaging in sexual activities without disclosing their HIV status.

In Tennessee, it is against the law for a PLHIV who knows their HIV status to engage in “intimate contact” with another without first disclosing their HIV status.¹ Intimate contact is defined as contact between the body of one person and the bodily fluid of another person in a manner that presents a significant risk of HIV transmission.² Because the statute is silent on condom use, “[i]t is not clear if an individual who engages solely in condom-protected sex could be charged with violating [the law].”³ Actual transmission of HIV is not necessary for prosecution.⁴

Violating this statute is a Class C felony, punishable by three to 15 years’ imprisonment and a fine of up to \$10,000.⁵ It is an affirmative defense to prosecution if it can be demonstrated by a preponderance of the evidence that the person exposed to HIV was aware of the defendant’s status, knew that the activity could result in HIV transmission, and provided “advance consent” to the activity.⁶ Proving disclosure can be challenging because there is rarely documentation or other incontrovertible evidence of disclosure, with the result that the defendant and complainant’s versions of the events are pitted against one another.

In *State v. Smith*, there was a discrepancy between the defendant’s and complainant’s evidence regarding whether or not the defendant had disclosed his HIV status.⁷ The defendant, who was charged with criminal exposure to HIV, among other charges, testified that he disclosed his HIV status and assumed the complainant had used a condom before they engaged in anal sex.⁸ The defendant maintained that he discovered later that the complainant had not used the condom.⁹ The complainant testified otherwise, alleging that though the sex was consensual, the defendant never disclosed his HIV status and the complainant only found out the information from a friend afterwards.¹⁰

¹ TENN. CODE ANN. § 39-13-109(a)(1) (2016).

² § 39-13-109(b)(2).

³ Carol L. Galletly & Zita Lazzarini, *Charges for Criminal Exposure to HIV and Aggravated Prostitution Filed in Nashville, Tennessee Prosecutorial Region 2000-2010*, 17 AIDS & BEHAV. 2624, 2625 (2013).

⁴ TENN. CODE ANN. § 39-13-109(d)(1) (2016).

⁵ TENN. CODE ANN. §§ 39-13-109(e)(1), 40-35-111(b)(3) (2016).

⁶ TENN. CODE ANN § 39-1309(c)(1) (2016).

⁷ 2008 Tenn. Crim. App. LEXIS 159, *2-3 (Tenn. Crim. App. 2008).

⁸ *Id.* at *3-4.

⁹ *Id.* at *4.

¹⁰ *Id.*

Tennessee’s criminal exposure statute requires that there be “exposure” of a person to the bodily fluids of a PLHIV and that said exposure pose a significant risk of transmission. However, the statute does not define the scope of such exposure, and also fails to define “significant risk.”¹¹ In *State v. Bonds*, the Tennessee Court of Appeals concluded that exposure did not require actual contact with or transfer of bodily fluids—rather, the prosecutor need only establish that the “defendant subjected a victim to risk of contact with bodily fluids in a manner that would present a significant risk of HIV transmission.”¹² The defendant in *Bonds* was sentenced to six years for criminal exposure of HIV and an additional 25 years for aggravated rape.¹³ On appeal, the defendant argued he never “exposed” the complainant to HIV within the meaning of the statute because there was no proof that there had been any exchange of bodily fluids during the commission of the crime.¹⁴

The court determined because the defendant knew his HIV status and anally raped the victim, the defendant “made his bodily fluids accessible to the victim, in a manner that presented a significant risk of HIV transmission.”¹⁵ After reviewing previous cases of HIV exposure in Tennessee, the court in *Bonds* found successful prosecutions hinged on the fact that the sex was unprotected, increasing the possible “risk of contact with bodily fluids.”¹⁶ However, the court also noted that such a risk was “substantially more prevalent” in instances of unprotected sex relative to sex where some kind of prophylactic is used.¹⁷ This reasoning suggests that use of a condom could potentially operate as a defense to a claim of HIV exposure.

In 2014, the Supreme Court of Tennessee clarified the meaning of “significant risk” in *State v. Hogg*.¹⁸ The defendant had been convicted of seven counts of criminal exposure to HIV, amongst other crimes, and challenged the sufficiency of the evidence supporting his conviction on appeal.¹⁹ Specifically, he argued that his conduct did not pose a “significant risk” of transmitting HIV, as required by the statute.²⁰ The court rejected the defendant’s argument that substantial risk required “risks so great they are almost certain to materialize if nothing is done.”²¹ Instead, the court held that significant risk requires a possibility of HIV transmission that is “more definite than a faint, speculative risk, as shown by expert medical proof.”²² The court explained that this determination requires a fact-specific inquiry, including an assessment of both the severity of consequences and the likelihood that HIV will be transmitted.²³

Applying this standard, and relying on testimony by an infectious disease physician, the court found that there was insufficient evidence to support the defendant’s conviction for three of the seven counts of criminal exposure to HIV. Analyzing each activity in turn, the court concluded that the defendant licking

¹¹ TENN. CODE ANN. § 39-13-109(b)(2).

¹² *State v. Bonds*, 189 S.W.3d 249, 258 (Tenn. Crim. App. 2005).

¹³ *Id.* at 251.

¹⁴ *Id.* at 257.

¹⁵ *Id.* at 258-59.

¹⁶ *Id.* at 259.

¹⁷ *Id.*

¹⁸ 448 S.W.3d 877 (Tenn. 2014).

¹⁹ *Id.* at 887.

²⁰ *Id.*

²¹ *Id.* at 887-88 (citing *Brown v. Budz*, 398 F.3d 904, 911 (7th Cir. 2005)).

²² *Id.* at 888-89.

²³ *Id.* at 888.

the complainant's anus, performing oral sex on the complainant, and manually manipulating the complainant's penis all entailed a level of risk that was insufficient for conviction.²⁴ The court affirmed the other four counts finding that the defendant's performing unprotected anal sex on the complainant, digitally penetrating the complainant's anus, and the complainant's performance of oral sex on the defendant all posed more than a faint, speculative risk of HIV transmission.²⁵ With respect to digital penetration, the court reasoned that since it occurred following other sexual activity, a jury could infer that there was pre-ejaculate on the defendant's finger that was capable of transmitting HIV.²⁶

Other prosecutions of HIV exposure involving "intimate contact" in Tennessee appear to be primarily limited to cases where PLHIV did not disclose their HIV status and a condom or other protection was not used during sexual intercourse. Additional prosecutions of criminal exposure to HIV involving intimate contact include:

- In September 2016, a PLHIV was charged with two counts of criminal exposure to HIV, in addition to other charges, for having sex with a minor without disclosing his HIV status.²⁷
- In April 2016, a PLHIV was charged with criminal exposure to HIV after he had unprotected sex without disclosing his HIV status to his sexual partner.²⁸
- In September 2015, a 41-year old PLHIV was charged with criminal exposure to HIV after having sex without disclosing his status to a sexual partner, who subsequently tested positive for HIV.²⁹
- In July 2014, a 34-year old PLHIV was charged with criminal exposure to HIV after a single sexual encounter with a partner to whom he allegedly did not disclose his HIV status.³⁰
- In September 2013, a man was arrested for criminal exposure to HIV after his mistress, with whom he had been having unprotected sex, discovered his HIV status from his wife.³¹
- In October 2010, a PLHIV was charged with four counts of criminal exposure of HIV after allegedly having sex with at least two women.³²
- A 24-year-old PLHIV was sentenced to 14 years' imprisonment for HIV exposure and an additional six years' imprisonment for statutory rape for having unprotected sex with a 14-year-old.³³ The defendant did not disclose his HIV status.³⁴

²⁴ *Id.* at 889-890.

²⁵ *Id.*

²⁶ *Id.* at 889.

²⁷ Mark Green, *Dance coach in Tennessee arrested for statutory rape, criminal exposure to HIV*, FOX13, Sept. 17, 2016, available at <http://fox13now.com/2016/09/17/dance-coach-in-tennessee-arrested-for-statutory-rape-criminal-exposure-to-hiv/>.

²⁸ *Man accused of exposing others to HIV*, LOCALMEMPHIS.COM, April 15, 2016, available at <http://www.localmemphis.com/news/local-news/man-accused-of-exposing-others-to-hiv>.

²⁹ Yolanda Jones, *Man accused of knowingly transmitting HIV to woman*, COMMERCIAL APPEAL, Sept. 10, 2015, available at <http://www.pressreader.com/usa/the-commercial-appeal/20150911/282561606953850>.

³⁰ Nichole Manna, *Man accused of criminal exposure to HIV*, JACKSON SUN, July 2, 2015, available at <http://www.jacksonsun.com/story/news/local/2014/07/03/man-accused-of-criminal-exposure-to-hiv/12120837/>.

³¹ Beth Burger, *Red Bank, Tenn., man accused of exposing woman to HIV*, TIMES FREE PRESS, Sept. 18, 2013, available at <http://www.timesfreepress.com/news/2013/sep/18/red-bank-man-accused-of-exposing-woman-to-hiv/?news>.

³² Claire Galofaro, *"Flipper" Sensabaugh indicted on charges of criminal exposure to HIV*, WWW.HERALDCOURIER.COM, Oct. 29, 2010, available at http://www.heraldcourier.com/news/flipper-sensabaugh-indicted-on-charges-of-criminal-exposure-to-hiv/article_35f0b597-e42e-5e71-8c55-c229709c992c.html.

³³ *State v. Harvey*, 2002 Tenn. Crim. App. LEXIS 478, *1-2 (Tenn. Crim. App. 2002)

³⁴ *Id.* at *5.

- In 2000, a PLHIV pled guilty to 22 counts of criminal exposure to HIV and was sentenced to 26 years and six months' imprisonment.³⁵ The defendant allegedly engaged in unprotected sex with multiple men without disclosing her HIV status.³⁶ Though the defendant claimed that she told her partners about her HIV status, the complainants testified otherwise.³⁷ The men maintained that the defendant purposefully denied her HIV status and they did not use condoms.³⁸ After ten years' imprisonment the defendant was released in 2008 and remains on parole until 2020.³⁹
- In 1999 a 31-year-old PLHIV pled guilty to criminal exposure to HIV and was sentenced to five concurrent four-year sentences.⁴⁰ The defendant engaged in five consensual, unprotected sexual encounters with the same female and did not disclose his status.⁴¹
- In October 1999, a PLHIV pled guilty to nine counts of criminal exposure to HIV and three counts of statutory rape.⁴² He was sentenced to 17 years' imprisonment.⁴³ The defendant did not disclose his HIV status and, when asked by his sexual partners, he denied that he had HIV.⁴⁴ At least one of his partners tested positive for HIV.⁴⁵

Though most of the prosecutions for HIV exposure in Tennessee involve unprotected sexual activity without disclosure of HIV status, there have been multiple cases of arrests and prosecutions for criminal exposure to HIV that presented only a remote risk of HIV transmission:

- In September 2016, a 27-year-old woman was charged with criminal exposure to HIV and assault after she cut herself and touched another woman with her bloodied hand during an altercation.⁴⁶
- In August 2016, a 38-year-old woman was charged with criminal exposure to HIV after she allegedly bit a police officer during a traffic stop.⁴⁷
- In May 2016, a 48-year old woman was charged with three counts of criminal exposure to HIV for deliberately coughing and spitting at store employees following a shoplifting incident.⁴⁸
- In June 2013, a man was arrested for criminal exposure to HIV when he spit on a hospital worker who was trying to restrain him.⁴⁹ He was in the hospital for treatment of seizures.⁵⁰

³⁵ *State v. Wiser*, 2000 Tenn. Crim. App. LEXIS 852, *1-2 (Tenn. Crim. App. 2000);

³⁶ *Id.* at *5-12.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Woman who spread HIV leaves prison*, TIMES GAZETTE, Dec. 31, 2008, available at <http://www.t-g.com/story/1489830.html>.

⁴⁰ *State v. Bennett*, 1999 Tenn. Crim. App. LEXIS 762, *1-2 (Tenn. Crim. App. 1999).

⁴¹ *Id.* at *2-3.

⁴² *State v. Jones*, 2001 Tenn. Crim. App. LEXIS 365, *1-2 (Tenn. Crim. App. 2001).

⁴³ *Id.* at *2.

⁴⁴ *Id.* at *4.

⁴⁵ *Id.*

⁴⁶ Collins Parkers, *Woman charged with scheme to give another woman HIV*, WDEF.COM, Sept. 21, 2016, available at <http://www.wdef.com/2016/10/21/woman-charged-scheme-give-another-woman-hiv/>.

⁴⁷ Stephanie Norton, *Woman charged with criminal exposure to HIV after allegedly biting Memphis police officer*, COMMERCIAL APPEAL, Aug. 4, 2016, available at <http://archive.commercialappeal.com/news/crime/woman-charged-with-criminal-exposure-to-hiv-after-allegedly-biting--memphis-police-officer-3942cf01--389200481.html>.

⁴⁸ Erik Avancier, *Rossville woman charged with criminal exposure to HIV*, WDEF.COM, May 8, 2016, available at <http://www.wdef.com/2016/05/08/rossville-woman-charged-criminal-exposure-hiv/>.

⁴⁹ *Man With HIV Arrested After He Spits On Hospital Worker*, THE CHATTANOOGAN, June 28, 2013, available at <http://www.chattanooga.com/2013/6/28/254206/Man-With-HIV-Arrested-After-He-Spits.aspx>.

⁵⁰ *Id.*

- In November 2010, a man was charged with aggravated assault and criminal exposure of another to HIV for allegedly spitting on a detention officer.⁵¹
- From January 1, 2000 to December 31, 2010, “[e]ven of the 27 arrests for HIV exposure (41%) [in the Nashville prosecutorial region] involved scratching, spitting (some with saliva, some with saliva mixed with blood), biting, or flinging or splattering blood.”⁵²

In 2012, a criminal appeals court reversed a conviction for criminal exposure to HIV and modified the sentence to attempt to expose one to HIV.⁵³ The court found that in order for the State to establish that the defendant’s spitting into the complainant’s face posed a significant risk of HIV transmission, the State must provide expert medical testimony because a layperson does not have the necessary medical knowledge to make this determination.⁵⁴

PLHIV engaging in sex work face enhanced criminal penalties.

It is a Class C felony, punishable by three to 15 years in prison, for PLHIV persons who know their HIV status to engage in acts of prostitution,⁵⁵ defined as engaging in or offering to engage in sexual activity as a business, being an inmate of a house of prostitution, or loitering in a public place for the purpose of being hired to engage in sexual activity.⁵⁶ Actual transmission of HIV is not required for prosecution. A conviction for prostitution is generally a Class B misdemeanor punishable by no more than a six-month sentence and/or a \$500 fine, but a PLHIV faces a 30-times greater penalty for the same offense.⁵⁷ A 2009 article reported that approximately 39 women in Tennessee had been convicted of aggravated prostitution.⁵⁸

Tennessee law does not require any physical contact for a conviction of aggravated prostitution.⁵⁹ Sex workers have been charged with aggravated prostitution for offering or arranging to perform sex acts on undercover police officers.⁶⁰ Even if intimate contact did occur, it is not required that the activity pose significant risk of HIV transmission for conviction. For instance, a PLHIV engaged in sex work was charged with aggravated prostitution in December 2015 for performing oral sex on a client,⁶¹ an activity that the CDC classifies as posing a “low” risk of HIV transmission.⁶² On the face of the statute, it would

⁵¹ *Inmate charged with exposing jailer to HIV*, WKRN.COM, Nov. 8, 2010, available at <http://wkrn.com/2010/11/08/inmate-charged-with-exposing-jailer-to-hiv/>.

⁵² Galletly & Lazzarini, *supra* note 3, at 2627.

⁵³ *State v. Ingram*, 2012 Tenn. Crim. App. LEXIS 887, *2 (Tenn. Crim. App. 2012).

⁵⁴ *Id.* at *13-14.

⁵⁵ TENN. CODE ANN. §§ 39-13-516, 40-35-111(b)(3) (2016).

⁵⁶ TENN. CODE ANN. § 39-13-512(6) (2016).

⁵⁷ TENN. CODE ANN. §§ 39-13-513(b)(1), (§ 40-35-111(e)(2) (2016).

⁵⁸ J.J. Stambaugh, *HIV-positive Knoxville woman a walking felony*, knoxnews.com, June 30, 2009, available at <http://archive.knoxnews.com/news/local/hiv-positive-knoxville-woman-a-walking-felony-ep-409876648-359335371.html>.

⁵⁹ Galletly & Lazzarini, *supra* note 3, at 2626.

⁶⁰ *Metro Detectives Arrest Prostitute Who Knowingly Has HIV*, Fox17.COM, Dec. 9, 2015, available at <http://fox17.com/news/local/metro-detectives-arrest-prostitute-who-knowingly-has-hiv>; *Woman with HIV arrested for soliciting officer*, WKRN.COM, Oct. 9, 2014, available at <http://wkrn.com/2014/10/09/woman-with-hiv-arrested-for-soliciting-officer/>.

⁶¹ Erik Avancier, *HIV positive prostitute busted again; customers advised to get tested*, WDEF.COM, Dec. 9, 2016, available at <http://www.wdef.com/2015/12/09/hiv-positive-prostitute-busted-again-customers-advised-to-get-tested/>.

⁶² CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission Risk, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act* (Dec. 4, 2015), available at <http://www.cdc.gov/hiv/policies/law/risk.html> (last visited Nov. 28, 2016).

also be irrelevant whether condoms or other protection were used, or if the defendant had a low viral load.

A person who is convicted of criminal HIV exposure or aggravated prostitution is required to register as a sex offender.

Criminal exposure to HIV is classified as a violent sexual offense and persons convicted of this crime are required to register as violent sex offenders for the remainder of their lives.⁶³ A person convicted of aggravated prostitution when the offense occurred prior to 2010 also is classified as a sex offender and must register as an offender for a minimum of 10 years.⁶⁴ Sex offender registration is accompanied by a variety of reporting requirements and restrictions on where an individual may live or work.⁶⁵

A person's HIV status may also be considered as an aggravating factor in sentencing.

A sentencing court may consider defendant's HIV status in sentencing for the crimes of aggravated rape, rape, rape of a child, or statutory rape.⁶⁶ In order to sustain a sentence enhancement under this provision, defendants must have known or should have known their HIV status during the commission of the offense.⁶⁷ In *State v. Banks*, the Tennessee Court of Criminal Appeals vacated a trial court's imposition of consecutive sentencing for a defendant convicted of aggravated kidnapping and aggravated rape because there was no trial court finding that the defendant knew his HIV status during the offense.⁶⁸ The defendant was originally sentenced to two 23-year consecutive sentences, for a total of 46 years' imprisonment.⁶⁹

Donating blood, organs, tissue, semen, or other body fluids by PLHIV is prohibited.

PLHIV must not donate or sell blood, semen, or any other body part meant for transfer to another person.⁷⁰ Actual transmission of HIV is not necessary for a conviction and a violation of this statute could result in up to 15 years imprisonment.⁷¹

PLHIV may be criminally prosecuted for sharing needles.

PLHIV who know their HIV status may be criminally liable for providing another person with any non-sterile equipment used for injecting drugs.⁷² Actual transmission of HIV is not necessary for a conviction.⁷³

⁶³ TENN. CODE ANN. §§ 40-39-202(30), 40-39-202 (31)(N), 40-39-207(g)(1)(B) (2016).

⁶⁴ TENN. CODE ANN. §§ 40-39-202(19), 40-39-202(20)(A)(iii), 40-39-207(a)(1) (2016) (A person required to register as a sex offender because of a conviction for aggravated prostitution may petition a court for earlier termination of registration requirements if she/he is the victim of a human trafficking offense, a sexual offense or a domestic abuse. § 40-39-218 (2016)).

⁶⁵ TENN. CODE ANN. §§ 40-39-203, 40-39-211(a)(2) (2016).

⁶⁶ TENN. CODE ANN. § 40-35-114(21) (2016).

⁶⁷ *Id.*

⁶⁸ 2010 Tenn. Crim. App. LEXIS 314, *6-7, 15-16 (Tenn. Crim. App. 2010).

⁶⁹ *Id.* at *6-7.

⁷⁰ TENN. CODE ANN. § 39-13-109(a)(2) (2016).

⁷¹ TENN. CODE ANN § 40-35-111(b)(3) (2016).

PLHIV may be isolated or quarantined by the Department of Health.

The Department of Health has the authority to isolate or quarantine a PLHIV if, after attempting other “appropriate measures,” the person continues to pose a “direct threat of significant risk to the health and safety of the public.”⁷⁴ Neither “appropriate measures” nor a “direct threat of significant risk” is defined in the statute. It is not clear what kinds of procedural protections, if any, are extended to a PLHIV who is subject to these restrictive measures. It is a Class E felony, punishable by one to six years’ imprisonment and/or a \$3000 fine, for a person who has been subject to restrictive measures because of HIV status to intentionally escape quarantine or isolation.⁷⁵

Public health officials are empowered to mandate examination, treatment and quarantine/isolation of a person who is known or suspected of having an STI.

A state, county, district or municipal health officer may examine a person who is reasonably suspected of being infected with a communicable STI on the basis of “known clinical or epidemiological evidence.”⁷⁶ However, absent any such evidence, a person’s loitering about or residing in a house of prostitution is sufficient to establish a reasonable suspicion of infection.⁷⁷ Sexually transmitted disease is defined as “any disease that is transmitted primarily through sexual practices and is identified in rules and regulations of the department.”⁷⁸

Upon a finding that a person has an STI of a communicable nature, the health officer may require that person to undergo medical treatment until non-infectious.⁷⁹ The health officer can also elect to isolate or quarantine a person with an STI if they judge it “necessary to protect the public health.”⁸⁰ Case law demonstrates that Tennessee has employed quarantine as a measure to combat “venereal disease.”⁸¹ Only a health officer has the authority to establish or terminate isolation and/or quarantine for a person with an STI—the decision is made on the basis of “available medical and epidemiological information concerning the STD diagnosis, modes of transmission, available treatment, and the necessity of the protection of the public health.”

Should an individual refuse to submit to the initial examination, a health officer may seek an immediate warrant for their arrest from a magistrate or judge, which is issued if there is a showing of reasonable cause on the basis of clinical and epidemiological evidence.⁸² If the court determines after an examination and hearing that the person is infected with an STI, then it may commit the person to an isolation hospital until the person is rendered non-infectious or reaches a stage where infectious

⁷² TENN. CODE ANN § 39-13-109(a)(3) (2016).

⁷³ Galletly & Lazzarini, *supra* note 3, at 2626.

⁷⁴ TENN. CODE ANN § 39-13-108(b) (2016).

⁷⁵ *Id.*

⁷⁶ TENN. CODE ANN § 68-10-104(a)(1)(2016).

⁷⁷ TENN. CODE ANN § 68-10-104(a)(2)(2016).

⁷⁸ TENN. CODE ANN § 68-10-101(4)(2016).

⁷⁹ TENN. CODE ANN § 68-10-104(a)(1)(2016).

⁸⁰ *Id.*

⁸¹ *See, e.g., State ex. rel. Kennedy v. Head*, 182 Tenn. 249, 250-52 (Tenn. 1945).

⁸² TENN. CODE ANN §§ 68-10-110(a), 68-10-110(b) (2016)

relapse will not occur.⁸³ A person may appeal the decision of the court, but the appeal will not stay the commitment to an isolation facility, which occurs immediately.⁸⁴

Exposing another person to an STI may be punished with a misdemeanor.

It is a violation of law punishable by up to 30 days in jail and a \$50 fine for any person infected with an STI to expose another person to infection.⁸⁵ The statute does not require actual transmission and, unlike the law criminalizing HIV exposure, it does not specify the need for “significant risk” of transmission.

Public health officials and others may disclose confidential medical information related to HIV and other STIs under various circumstances.

Records relating to known or suspected cases of STI are generally confidential. However, information may be released to “appropriate state agencies” in order to enforce laws and regulations governing the control and treatment of STIs.⁸⁶ This has been interpreted by the Tennessee Office of the Attorney General to authorize release of records concerning HIV status to a district attorney if they are considering or pursuing prosecution of a PLHIV for intentionally escaping quarantine/isolation or for any other violation of the public health code provisions governing control of STIs.⁸⁷ Otherwise, release is only authorized with a court order obtained during a legal proceeding under the following conditions: the information sought is material, relevant, and reasonably calculated to be admissible as evidence; the probative value of the evidence outweighs the interest in maintaining its confidentiality; the merits of the litigation cannot be fairly resolved absent the disclosure and; the disclosure necessary to avoid substantial injustice to the party seeking it and, either the disclosure will result in no significant harm to the person examined or treated, or it would be substantially unfair not to require the disclosure.⁸⁸

Despite the general requirement for confidentiality, if a person has a reasonable belief that an individual has knowingly exposed someone else to HIV, they may inform the victim of the exposure without incurring any liability.⁸⁹ This provision permits a health care provider, or anyone else, to disclose a person’s HIV status to third parties, which can potentially subject the person to criminal liability and/or restrictive measures such as quarantine or isolation.⁹⁰ What constitutes an appropriate basis for “reasonable belief” is not specified in the statute.

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.*

⁸³ TENN. CODE ANN § 68-10-110(f) (2016).

⁸⁴ TENN. CODE ANN §§ 68-10-110(g), 68-10-110(h) (2016).

⁸⁵ TENN. CODE ANN §§ 40-35-111(e)(3), 68-10-107 (2016).

⁸⁶ TENN. CODE ANN § 68-10-113(3) (2016).

⁸⁷ TENN. OFFICE OF THE ATTORNEY GENERAL, OPINION NO. 01-146: RECORDS CONCERNING HIV PATIENTS, Sept. 14, 2001, pp. 4-5, available at <https://www.tn.gov/assets/entities/attorneygeneral/opinions/op01-146.pdf>.

⁸⁸ TENN. CODE ANN § 68-10-113(6) (2016).

⁸⁹ TENN. CODE ANN § 68-10-115 (2016).

⁹⁰ TENN. CODE ANN. §§ 39-13-108, 39-13-109(a) (2016).

Code of Tennessee

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 39, CRIMINAL OFFENSES

TENN. CODE ANN. § 39-13-108 (2016) **

Rules and regulations regarding transmission of HIV-- Quarantine -- Violations

(a) The department of health, acting pursuant to § 68-10-109, shall promulgate rules regarding transmission of human immunodeficiency virus (HIV). The rules shall include specific procedures for quarantine or isolation, as may be necessary, of any person who clearly and convincingly demonstrates willful and knowing disregard for the health and safety of others, and who poses a direct threat of significant risk to the health and safety of the public regarding transmission of HIV.

(b) The department is authorized to quarantine or isolate a person within a secure facility, after exercising other appropriate measures, if the person continues to pose a direct threat of significant risk to the health and safety of the public. Any person so quarantined or isolated within a secure facility, who intentionally escapes from the facility, commits a Class E felony.

TENN. CODE ANN. § 39-13-109 (2016) **

Criminal exposure of another to HIV (human immunodeficiency virus), hepatitis B virus (HBV), or to hepatitis C virus (HCV)

(a) A person commits the offense of criminal exposure of another to human immunodeficiency virus (HIV), to hepatitis B virus (HBV), or to hepatitis C virus (HCV) when, knowing that the person is infected with HIV, with HBV, or with HCV, the person knowingly:

- (1) Engages in intimate contact with another;
- (2) Transfers, donates, or provides blood, tissue, semen, organs, or other potentially infectious body fluids or parts for transfusion, transplantation, insemination, or other administration to another in any manner that presents a significant risk of HIV, HBV or HCV transmission; or
- (3) Dispenses, delivers, exchanges, sells, or in any other way transfers to another any nonsterile intravenous or intramuscular drug paraphernalia.

(b) As used in this section:

- (1) "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome;
- (2) "Intimate contact with another" means the exposure of the body of one person to a bodily fluid of another person in any manner that presents a significant risk of HIV, HBV or HCV transmission; and

(3) "Intravenous or intramuscular drug paraphernalia" means any equipment, product, or material of any kind that is peculiar to and marketed for use in injecting a substance into the human body.

(c)

(1) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the person exposed to HIV knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and gave advance consent to the action with that knowledge.

(2) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the person exposed to HBV knew that the infected person was infected with HBV, knew that the action could result in infection with HBV, and gave advance consent to the action with that knowledge.

(3) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the person exposed to HCV knew that the infected person was infected with HCV, knew that the action could result in infection with HCV, and gave advance consent to the action with that knowledge.

(d)

(1) Nothing in this section shall be construed to require the actual transmission of HIV in order for a person to have committed the offense of criminal exposure of another to HIV.

(2) Nothing in this section shall be construed to require the actual transmission of HBV in order for a person to have committed the offense of criminal exposure to HBV.

(3) Nothing in this section shall be construed to require the actual transmission of HCV in order for a person to have committed the offense of criminal exposure to HCV.

(e)

(1) Criminal exposure of another to HIV is a Class C felony.

(2) Criminal exposure of another to HBV or HCV is a Class A misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000), restitution to the victim or victims, or both a fine and restitution. The clerk shall transmit all money collected from a fine imposed for a violation of this section to the criminal injuries compensation fund created pursuant to § 40-24-107. In addition, a victim of criminal exposure HBV or HCV may maintain an action for the expenses and the actual loss of service resulting from such exposure.

TENN. CODE ANN. § 39-13-516 (2016) **

Aggravated prostitution

(a) A person commits aggravated prostitution when, knowing that such person is infected with HIV, the person engages in sexual activity as a business or is an inmate in a house of prostitution or loiters in a public place for the purpose of being hired to engage in sexual activity.

(b) For the purposes of this section, "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

(c) Nothing in this section shall be construed to require that an infection with HIV has occurred in order for a person to have committed aggravated prostitution.

(d) Aggravated prostitution is a Class C felony.

TITLE 40, CRIMINAL PROCEDURE

TENN. CODE ANN. § 40-35-111 (2016) **

Authorized sentences; prison terms or fines; reports

(a) A sentence for a felony is a determinate sentence.

(b) The authorized terms of imprisonment and fines for felonies are:

(3) Class C felony, not less than three (3) years nor more than fifteen (15) years. In addition, the jury may assess a fine not to exceed ten thousand dollars (\$10,000), unless otherwise provided by statute;

(5) Class E felony, not less than one (1) year nor more than six (6) years. In addition, the jury may assess a fine not to exceed three thousand (\$3,000) dollars, unless otherwise provided by statute.

(e) The authorized terms of imprisonment and fines for misdemeanors are:

(1) Class A misdemeanor, not greater than eleven (11) months, twenty-nine (29) days or a fine not to exceed two thousand five hundred dollars (\$2,500), or both, unless otherwise provided by statute;

(3) Class C misdemeanor, not greater than thirty (30) days or a fine not to exceed fifty dollars (\$50.00), or both, unless otherwise provided by statute.

TENN. CODE ANN. § 40-35-114(21) (2016) **

Enhancement factors

If appropriate for the offense and if not already an essential element of the offense, the court shall consider, but is not bound by, the following advisory factors in determining whether to enhance a defendant's sentence:

(21) If the defendant is convicted of the offenses of aggravated rape pursuant to § 39-13-502, rape pursuant to § 39-13-503, rape of a child pursuant to § 39-13-522 or statutory rape pursuant to § 39-13-506, the defendant knew or should have known that, at the time of the offense, the defendant was HIV positive.

TENN. CODE ANN. § 40-39-202 (2016)

Part definitions

As used in this part, unless the context otherwise requires:

(19) "Sexual offender" means a person who has been convicted in this state of committing a sexual offense or has another qualifying conviction;

(20) "Sexual offense" means:

(A) The commission of any act that, on or after November 1, 1989, constitutes the criminal offense of:

(iii) Aggravated prostitution, under § 39-13-516, provided the offense occurred prior to July 1, 2010;

(30) "Violent sexual offender" means a person who has been convicted in this state of committing a violent sexual offense or has another qualifying conviction;

(31) "Violent sexual offense" means the commission of any act that constitutes the criminal offense of:

(N) Criminal exposure to HIV, under § 39-13-109(a)(1)

TENN. CODE ANN. § 40-39-207 (2016)

Request for termination of registration requirements—Tolling of reporting period—Review of decisions to deny termination of reporting requirements

(a)

(1) Except as otherwise provided in subdivision (a)(3), no sooner than ten (10) years after termination of active supervision on probation, parole or any other alternative to incarceration, or no sooner than ten (10) years after discharge from incarceration without supervision, an offender required to register under this part may file a request for termination of registration requirements with TBI headquarters in Nashville.

(g)

(1) An offender required to register under this part shall continue to comply with the registration, verification and tracking requirements for the life of that offender, if that offender:

(B) Has been convicted of a violent sexual offense, as defined in § 40-39-202.

TENN. CODE ANN. § 40-39-218 (2016)

Termination of registration requirements based on status as a victim of human trafficking, sexual offenses or domestic abuse

(a) A person who is mandated to comply with the requirements of this part, based solely upon a conviction for aggravated prostitution, under § 39-13-516, may petition the sentencing court for termination of the registration requirements based on the person's status as a victim of a human trafficking offense, as defined by § 39-13-314, a sexual offense, under title 39, chapter 13, part 5, or domestic abuse, as defined by § 36-3-601.

TITLE 68, HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION

TENN. CODE ANN. § 68-10-101 (2016)

Chapter definitions

As used in this chapter, unless the context otherwise requires:

(4) "Sexually transmitted disease (STD)" means any disease that is transmitted primarily through sexual practices and is identified in rules and regulations of the department; and

(5) "Test" means a test approved by the department to determine possible infection with STDs.

TENN. CODE ANN. § 68-10-102 (2016)

Notice to health officer of name and address of diseased person exposing others to infection

If any attending physician or other person knows or has good reason to suspect that a person having a STD is behaving so as to expose other persons to infection, or is about to so behave, the attending physician or other person shall notify the municipal or county health officer of the name and address of the diseased person and the essential facts in the case.

TENN. CODE ANN. § 68-10-104 (2016)

Officers to examine suspected persons and require treatment – Sources of infections to be investigated

(a)

(1) State, district, county and municipal health officers or their authorized deputies, within their respective jurisdictions, are directed and empowered, when, in their judgment, it is necessary to protect the public health, to make an examination of a person reasonably suspected because of known clinical or epidemiological evidence of being infected with a STD of a communicable nature, and to require such person when found infected to report for treatment to a reputable physician or clinic, and continue treatment until discharged by the physician or clinic as noninfectious, or in a stage of the disease in which an infectious relapse will not occur, or to submit to treatment provided at public expense until discharged as noninfectious, or in a stage of the disease in which an infectious relapse will not occur; and also, when in the judgment of the state, municipal or county health officer, it is necessary to protect the public health, to isolate and quarantine the person infected with a STD; provided, that any person so suspected may have present at the time of examination a physician of the person's own choosing to participate in the examination.

(2) Loitering about or residing in a house of assignation or prostitution or any other place where lewdness is practiced shall be construed as sufficient to suspect a person of being infected with a STD.

(b) It is the duty of all health officers to investigate sources of infection of STDs and to cooperate with the proper officers whose duty it is to enforce laws directed against prostitution, lewdness and assignation and the spread of STDs.

TENN. CODE ANN. § 68-10-106 (2016)

Quarantine of infected persons

(a)

(1) No one but a state, municipal, district or county health officer or such officer's duly authorized representative shall establish and terminate quarantine of persons infected with STDs.

(2) A decision to establish or terminate quarantine shall be based upon the judgment of the state, municipal, district or county health officer or such officer's duly authorized representative, considering available medical and epidemiological information concerning the STD diagnosis, modes of transmission, available treatment, and the necessity of the protection of the public health.

(b) It is the duty of the commissioner to set up the clinical and laboratory criteria necessary for the guidance of health officers in the performance of their duties as outlined in this section.

TENN. CODE ANN. § 68-10-107 (2016) **

Exposure of others by infected persons

It is a violation of this chapter for any person infected with a STD to expose another person to such infection.

TENN. CODE ANN. § 68-10-109 (2016)

Rules and bylaws for control of sexually transmitted diseases

(a) The department of health is empowered and directed to make such rules and bylaws for the control of STDs, not in conflict with this chapter, including the reporting of STDs and isolating and quarantining of infected persons, as it may from time to time deem advisable.

(b) All rules and bylaws made pursuant to subsection (a) shall be of force and binding upon the state, municipal and county health officers, and all other persons affected by the rules and regulations, and shall have the force and effect of law.

TENN. CODE ANN. § 68-10-110 (2016)

Arrest and temporary commitment for treatment authorized—Hearing—Examination—Appeal.

(a) Whenever in the judgment of the municipal, county or district health officer, there is reasonable clinical or epidemiological evidence to suspect that any person or persons are infected with a STD as defined in this chapter, and the person or persons refuse to be examined as provided in § 68-10-104, the health officer or the health officer's authorized deputy may go before a magistrate or judge of a court of general sessions and swear out a warrant of arrest for the person or persons.

(b) The magistrate or judge is not bound to issue the warrant pursuant to subsection (a), unless and until there is a showing of reasonable cause on the basis of sound clinical and epidemiological evidence.

(c) If reasonable cause is shown for the arrest and examination of the person or persons, the magistrate or judge shall direct that an examination be made of the person or persons to determine whether or not they are infected.

(d) The examination shall be made by the health officer or by a duly licensed and practicing physician of this state, to be selected by the health officer. The accused person or persons may also have a physician of their own choosing present to participate in the examination.

(e) If the physicians are not in accordance as to their diagnosis, then the court shall reach its decision after a hearing.

(f) If, after a full hearing, the court is of the opinion that the person examined is infected with a STD as defined in this chapter, the court may commit the person to an isolation hospital maintained by the state or local government for the purpose of detaining and treating such persons, who shall remain under treatment until the disease, in the opinion of the health officer, is no longer communicable or no longer in a stage in which infectious relapse may occur.

(g) No appeal or certiorari from the decision of the court committing the person to the isolation hospital shall stay the commitment, nor shall any court have power to supersede such order, but the person or persons shall immediately be placed in the isolation hospital, there to remain until released by the health officer as no longer communicable or in a stage of the disease in which infectious relapse may occur, or released by order of the court.

(h) Any person committed under this chapter may appeal from the judgment of the magistrate or court of general sessions as now provided by law for civil cases.

TENN. CODE ANN. § 68-10-111 (2016) **

Violation of chapter—Penalty

Any health officer or any other persons who fail to perform the duties required of them in this chapter, or violate any of the provisions of this chapter, or of any rule or bylaw promulgated under its authority, commit a Class C misdemeanor. Each violation is a separate offense.

TENN. CODE ANN. § 68-10-113 (2016)

Confidentiality of records and information

All records and information held by the department or a local health department relating to known or suspected cases of STDs shall be strictly confidential. This information shall not be released or made public upon subpoena, court order, discovery, search warrant or otherwise, except that release may be made under the following circumstances:

(3) Release is made of medical or epidemiological information to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter and related regulations governing the control and treatment of STDs;

(6)

(A) Release is made during a legal proceeding when ordered by a trial court judge, designated by § 16-2-502, or a juvenile court judge through an order explicitly finding each of the following:

- (i) The information sought is material, relevant, and reasonably calculated to be admissible evidence during the legal proceeding;
- (ii) The probative value of the evidence outweighs the individual's and the public's interest in maintaining its confidentiality;
- (iii) The merits of the litigation cannot be fairly resolved without the disclosure; and
- (iv) The evidence is necessary to avoid substantial injustice to the party seeking it and, either the disclosure will result in no significant harm to the person examined or treated, or it would be substantially unfair as between the requesting party and the person examined or treated not to require the disclosure.

TENN. CODE ANN. § 68-10-114 (2016)

Knowledge of governmental persons regarding records

Except as provided in § 68-10-113, no state or local department officer or employee shall be examined in a civil, criminal, special or other proceeding as to the existence or contents of pertinent records of a person examined or treated for a STD by a state or local health department, or of the existence or contents of such reports received from a private physician or private health facility.

TENN. CODE ANN. § 68-10-115 (2016)

Immunity from liability for informing person of potential HIV infection

A person who has a reasonable belief that a person has knowingly exposed another to HIV may inform the potential victim without incurring any liability. A person making such disclosure is immune from liability for making disclosure of the condition to the potential victim.

Rules and Regulations of Tennessee

RULES OF THE TENNESSEE DEPARTMENT OF HEALTH

TENN. COMP. R. & REGS. R. 1200-14-01-.15 (2016)

General measures for the effective control of reportable diseases

(1) The local health officer or the Commissioner or a designated representative of the Commissioner, upon receiving a report of a reportable disease or of a suspected epidemic of disease or of a suspected case of a disease of public health significance or event, shall:

- (e) Establish appropriate control measures which may include examination, treatment, isolation, quarantine, exclusion, disinfection, immunization, disease surveillance, closure of establishment, education, and other measures considered appropriate by medical experts for the protection of the public's health.