

# Texas

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## Analysis

### **No criminal statutes explicitly addressing HIV exposure, but prosecutions have arisen under general criminal laws.**

Despite the fact that Texas does not have a criminal statute addressing HIV exposure or transmission,<sup>1</sup> people living with HIV (PLHIV) have been prosecuted for HIV exposure under general criminal laws, including attempted murder and aggravated assault.<sup>2</sup>

Texas's aggravated assault statute makes it a felony of the second degree to cause serious bodily injury to another or to use or exhibit a deadly weapon in the commission of an assault.<sup>3</sup> A felony of the second degree carries a punishment of two to 20 years in jail and a possible fine of \$10,000.<sup>4</sup> If an aggravated assault is committed against a person the actor knows is a security officer, it is a felony of the first degree punishable by five to 99 years in prison and a possible fine of \$10,000.<sup>5</sup> Texas courts have found that the seminal fluid of a PLHIV may constitute a deadly weapon for the purposes of conviction under the aggravated assault statute,<sup>6</sup> and numerous prosecutions in Texas have led to the incarceration of individuals whose alleged criminal conduct presented no known risk of transmitting HIV.<sup>7</sup> Aggravated sexual assault in which a person engages in various sex acts without someone's

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<sup>1</sup> Prior to 1994, Texas had an HIV transmission statute that made it a third degree felony, punishable by up to ten years in prison and a \$10,000 fine for a PLHIV to intentionally, and without consent, transfer bodily fluids to another. TEX. PENAL CODE ANN. § 22.012 (1987). Texas deleted this statute from its code in 1994, but a handful of cases were charged under the statute prior to its repeal. In 1993, a man living with HIV was charged with exposing a sexual partner to HIV. See TJ Milling, *Woman Claims Lover Hid His HIV*, HOUSTON CHRONICLE, Aug. 17, 1993, at A 13. In 1992, an AIDS activist was charged with exposure to AIDS and HIV for scratching a police officer when he was being dragged from the Houston City Council chambers. The charges were later dropped. *Id.* Another AIDS activist was charged after he bit a man on the hand and fingers. R.A. Dyer, *Ex-AIDS Activist Charged, Biting brings up rarely used law*, HOUSTON CHRONICLE, June 11, 1992, at A31.

<sup>2</sup> See *Lopez v. State*, 288 S.W.3d 148, 154 (Tex. App. 2009) (remanding the case for a new trial due to the trial court's erroneous admission of extraneous acts. However, the aggravating factor in the HIV positive defendant's conviction on two counts of aggravated sexual assault was the deadly weapon of his bodily fluids); *Hofmann v. State*, 2005 Tex. App. LEXIS 5262 (Tex. App. 2005) (affirming an 18-year sentence for a defendant convicted of aggravated sexual assault of a child where the aggravating factor was that, because of his HIV status, his penis and bodily fluids were considered a deadly weapon); *Najera v. State*, 955 S.W.2d 698, 701 (Tex. App. 1997) (affirming the conviction of an defendant for aggravated sexual assault. The aggravating factor was defendant's HIV status and his use of "his penis and bodily fluids as a deadly weapon."); *Weeks v. State*, 834 S.W.2d 559 (Tex. App. 1992) (affirming the conviction for attempted murder of a PLHIV for spitting at a prison guard. The defendant was sentenced to life in prison).

<sup>3</sup> TEX. PENAL CODE ANN. § 22.02(a) (2016).

<sup>4</sup> TEX. PENAL CODE ANN. § 12.33 (2016).

<sup>5</sup> TEX. PENAL CODE ANN. §§ 22.02(b)(2)(D), 12.32 (2016).

<sup>6</sup> See, e.g., *Mathonican v. State*, 194 S.W.3d 59, 67-71 (Tex. App. 2006).

<sup>7</sup> See, e.g., *Degrate v. State*, 2005 Tex. App. LEXIS 547 (Tex. Ct. App. 2005) (affirming the conviction of a defendant living with HIV for aggravated assault of a public servant with a deadly weapon after he bit a Detention Service Officer in the leg. The deadly weapon in question was the defendant's mouth).

consent or with a child while using or exhibiting a deadly weapon is a first-degree felony, punishable by five to 99 years or life in prison and a \$10,000 fine.<sup>8</sup>

In *Mathonican v. State*, the Court of Appeals of Texas found that the seminal fluid of a PLHIV can be considered a deadly weapon in aggravated assault and aggravated sexual assault cases.<sup>9</sup> The defendant in *Mathonican* was sentenced to 97 years' imprisonment for sexually assaulting another individual.<sup>10</sup> The trial court held that the defendant's seminal fluid was a deadly weapon because of his HIV status.<sup>11</sup> The defendant appealed his case, asserting that the deadly weapon finding was erroneous because HIV status should not be considered a deadly weapon.<sup>12</sup>

The court found that seminal fluid may be a deadly weapon "if the man producing it is HIV and engages in unprotected sexual contact."<sup>13</sup> The court reasoned that a deadly weapon is anything that can be used to cause death or serious injury, and that the "seminal fluid from an HIV positive man is capable of causing death or serious bodily injury to another person when the HIV positive man engages in unprotected sexual contact."<sup>14</sup> Even if the defendant did not ejaculate or otherwise expose the complainant to HIV, the court determined that the single fact that the defendant's seminal fluid "as used or as intended to be used" was capable of causing death or serious bodily injury supported the deadly weapon finding, even without proof that it did cause harm or had any probability of causing harm.<sup>15</sup> This reasoning suggests that if a PLHIV engages in any unprotected sexual activity, regardless of the person's viral load or whether the sexual activity poses any possibility of transmission, criminal liability may apply.

More recently, the Texas Court of Criminal Appeals affirmed the aggravated sexual assault conviction of an 18-year-old man living with HIV for having unprotected sexual relations with a child (a 15-year-old male).<sup>16</sup> In *Riley*, Graham placed an ad on Craigslist to find other males with whom to have sex. The defendant responded to the ad and the two met twice. The complainant testified at trial that at the first meeting the defendant performed oral sex on him without using any protection, with only the complainant ejaculating. The complainant testified that at the second meeting "[defendant] performed anal sex on [the complainant] without a condom while he masturbated [the complainant] to ejaculation. [Defendant] withdrew his penis and ejaculated." Graham admitted that the defendant did not force him to participate in these acts.<sup>17</sup>

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<sup>8</sup> TEX. PENAL CODE ANN. §§ 22.021, 12.32 (2016).

<sup>9</sup> *Mathonican*, 194 S.W.3d at 67-71.

<sup>10</sup> *Mathonican*, 194 S.W.3d. at 61.

<sup>11</sup> *Id.* at 67-71.

<sup>12</sup> *Id.* at 67.

<sup>13</sup> *Id.* at 69 (citing *Najera v. State*, 955 S.W.2d 698, 701 (Tex. App. 1997) (finding that, for a man living with HIV, evidence of unprotected sex, even if there was no evidence of ejaculation by defendant, is sufficient for a finding that the penis and bodily fluids are a deadly weapon).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 71.

<sup>16</sup> *Riley v. State*, 2014 Tex. App. LEXIS 2830, \*3-5 (Tex. Crim. App. 2014).

<sup>17</sup> *Id.*

When the defendant's home was searched, authorities found medication used to treat HIV. Medical records and other witnesses confirmed his HIV status.<sup>18</sup> Riley was convicted of two counts of aggravated sexual assault of a child with the use of a deadly weapon, i.e., his bodily fluids, and sentenced to 70 years' imprisonment and a \$5,000 fine.<sup>19</sup> The reasoning in this case follows *Mathonican*: if a man living with HIV anally penetrates a partner without ejaculation and performs oral sex on a partner causing his partner to ejaculate, regardless of his viral load and whether the sexual activity poses any possibility of transmission, he may be convicted of aggravated sexual assault with a deadly weapon.

Other prosecutions for HIV exposure as aggravated sexual assault include:

- In October 2010, a 32-year-old PLHIV was sentenced to three life sentences without parole for aggravated assault of a child and continuous sexual abuse of a child.<sup>20</sup> Multiple aggravating factors were present, since the child involved was under 14 and the defendant used a "deadly weapon," raising the minimum penalty to 25 years.<sup>21</sup> In this case, the defendant's bodily fluids constituted the deadly weapon.<sup>22</sup> The defendant's conviction and sentencing were upheld by the Court of Appeals of Texas.<sup>23</sup>
- In March 2010, a PLHIV was charged with aggravated sexual assault of a child.<sup>24</sup> Prosecutors cited HIV as a deadly weapon, and the man's HIV status was used to "upgrade the sexual assault of a child charge to an aggravated offense, making it a first-degree felony."<sup>25</sup>
- In November 2009, a 26-year-old PLHIV was charged with aggravated sexual assault with a deadly weapon after having unprotected sex with a 16-year-old boy.<sup>26</sup>

In *Henry v. State*, the Texas Court of Criminal Appeals affirmed the conviction and sentencing of a PLHIV to 75 years' imprisonment for aggravated sexual assault of a child, enhanced by two prior felony convictions.<sup>27</sup> There was testimony by a medical provider who asserted that there was a "high risk of HIV transmission during unprotected sex" without further discussing the particular scenario in question.<sup>28</sup>

Despite the scientific evidence on HIV transmission, numerous prosecutions have occurred for activities that pose no risk of transmission to others. In 1992, the Texas Court of Criminal Appeals upheld the

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<sup>18</sup> *Id.* at \*7.

<sup>19</sup> *Id.* at \*1.

<sup>20</sup> Craig Kapitan, *Molester with HIV gets life without parole – times three*, MYSANANTONIO.COM, Oct. 7, 2010, available at [http://www.mysanantonio.com/news/local\\_news/molester\\_with\\_hiv\\_gets\\_life\\_without\\_parole\\_times\\_three\\_104532769.html?c=y&page=1#storytop](http://www.mysanantonio.com/news/local_news/molester_with_hiv_gets_life_without_parole_times_three_104532769.html?c=y&page=1#storytop).

<sup>21</sup> *Id.* TEX. PENAL CODE ANN. § 22.021(f)(2) (2016).

<sup>22</sup> *Id.*

<sup>23</sup> *Delgado v. State*, 2012 WL 2581251, at \*1 (Tex. Crim. App. 2012).

<sup>24</sup> Brian Rogers, *In 1<sup>st</sup> for Harris Co., HIV deemed deadly weapon*, HOUSTON CHRONICLE, Mar. 21, 2010, available at <http://www.chron.com/news/houston-texas/article/In-1st-for-Harris-Co-HIV-deemed-deadly-weapon-1714831.php>.

<sup>25</sup> *Id.*

<sup>26</sup> John Cuoco, *Charges filed after HIV used as deadly weapon*, KXXV.COM, Nov. 3, 2009, available at <http://www.kxxv.com/Global/story.asp?S=11436836>.

<sup>27</sup> *Henry v. State*, 2007 Tex. App. LEXIS 6791 (Tex. Crim. App. 2007).

<sup>28</sup> *Id.* at \*10-11.

attempted murder conviction of a PLHIV for spitting on a prison guard.<sup>29</sup> For a conviction of attempted murder, “[t]he State was required to prove that [Weeks]’ intent, when he spit on the officer, was to cause the officer’s death . . . .”<sup>30</sup> The court noted that Weeks “believed he could kill the [officer] by spitting his HIV infected saliva on him.”<sup>31</sup> Further, the court found that, while the “evidence was highly controverted, there was sufficient evidence in the record, when considered in the light most favorable to the [guilty] verdict, that [Weeks] could have transmitted HIV by spitting.”<sup>32</sup> The court upheld the attempted murder conviction and sentence of life imprisonment.<sup>33</sup>

In 2006 the Court of Appeals of Texas was presented with an opportunity to revisit whether saliva from PLHIV can be considered a “deadly weapon,”<sup>34</sup> in *Campbell v. State*. A man living with HIV, Campbell, was convicted of harassing a public servant<sup>35</sup> when he allegedly became confrontational and spat in a police officer’s eyes and mouth during an arrest.<sup>36</sup> The jury also found that Campbell used a “deadly weapon” in the commission of the offense because of his HIV status.<sup>37</sup> Campbell was later sentenced to 35 years in prison.<sup>38</sup> In both *Weeks* and *Campbell*, the court relied on the testimony of medical experts that there exists a theoretical possibility of HIV transmission through saliva.<sup>39</sup>

These convictions were affirmed even though saliva has never been documented to transmit HIV. The CDC has concluded that there exists only a “negligible” possibility that HIV could be transmitted through a bite.<sup>40</sup> The CDC has also unequivocally stated “HIV isn’t spread through saliva.”<sup>41</sup> Texas appellate courts have set a poor precedent that PLHIV may be prosecuted for conduct that poses no risk of HIV transmission and instead may be convicted for crimes solely on the basis of HIV status.

Other cases in Texas where PLHIV have been prosecuted for conduct that poses no risk of HIV transmission include:

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<sup>29</sup> *Weeks*, 834 S.W.2d at 560-61.

<sup>30</sup> *Id.* at 561.

<sup>31</sup> *Id.* at 562.

<sup>32</sup> *Id.* at 565.

<sup>33</sup> *Id.* at 560 (noting that the jury “assessed punishment at confinement for life” after finding defendant had two prior felony convictions).

<sup>34</sup> See *Campbell v. State*, 2009 Tex. App. LEXIS 5369 (Tex. Crim. App. 2009).

<sup>35</sup> A person commits this offense if, “with the intent to assault, harass, or alarm,” she/he “causes another person the actor knows to be a public servant to contact the . . . saliva . . . of the actor, [or] any other person . . . while the public servant is lawfully discharging an official duty . . . .” The offense is a third-degree felony. TEX. PENAL CODE §§, 22.11(a)(2), 22.11(b) (2016).

<sup>36</sup> *Campbell*, 2009 Tex. App. LEXIS 5369, at \*\*2-3.

<sup>37</sup> *Id.* at \*1, \*8.

<sup>38</sup> *Ex parte Campbell*, 2013 Tex. Crim. App. Unpub. LEXIS 131(Tex. Crim.. App. 2013).

<sup>39</sup> *Campbell*, 2009 Tex. App. LEXIS 5369, at \*\*7-8; *Weeks*, 832 S.W.2d at 562-64.

<sup>40</sup> CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (Dec. 5, 2015), available at <http://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html> (last visited Dec. 4, 2016).

<sup>41</sup> CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?*, (Dec. 21, 2016), available at <http://www.cdc.gov/hiv/basics/transmission.html> (last visited Jan. 10, 2017).

- In May 2013, a 25-year-old man living with HIV was charged with aggravated assault after spitting on two police officers.<sup>42</sup>
- A 26-year-old man living with HIV was charged with aggravated robbery after he bit a security guard during a struggle in May 2008.<sup>43</sup>
- In 2005, the 25-year sentence of a man living with HIV for aggravated assault of a public servant with a dangerous weapon was upheld.<sup>44</sup> A nurse who testified at the trial said that HIV could be transmitted via the saliva in a bite and the court affirmed the conviction based in part on the nurse's testimony.<sup>45</sup>

PLHIV who do not disclose their HIV status to their sexual partners may also be prosecuted for aggravated assault.

Because a PLHIV's saliva and other bodily fluids can be considered a deadly weapon in Texas, PLHIV may face aggravated assault charges for failing to disclose their HIV status to sexual partners.

- In August 2013, a 36-year-old PLHIV was convicted of aggravated assault with a deadly weapon causing serious bodily injury after he transmitted HIV to four women.<sup>46</sup> He was sentenced to 120 years in prison.<sup>47</sup>
- In December 2012, a 42-year-old PLHIV pled guilty to aggravated assault causing serious bodily injury for having unprotected sex with the woman he was dating.<sup>48</sup> He was sentenced to 15 years' imprisonment.<sup>49</sup>

In July 2010, a PLHIV pled guilty to aggravated sexual assault and other aggravated assault charges for not disclosing his HIV status to his sexual partners.<sup>50</sup> The court found that the man's penis and seminal fluids constituted a deadly weapon.<sup>51</sup>

In May 2009, a PLHIV was sentenced to five concurrent 45-year sentences and one 25-year sentence for six counts of aggravated sexual assault with a deadly weapon for exposing and infecting multiple women with HIV.<sup>52</sup> Because he allegedly did not disclose his HIV status to his partners and did not use

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<sup>42</sup> Matt Peterson, *Police say HIV positive man refused to be masked, spit on officers trying to book him for public intoxication*, DALLAS MORNING NEWS, May 29, 2013, available at <http://crimeblog.dallasnews.com/2013/05/police-say-hiv-positive-man-refused-to-be-masked-spit-on-officers-trying-to-book-him-for-public-intoxication.html/>.

<sup>43</sup> Emily Tsao, *Man Claiming HIV Accused of Biting Kroger Guard During Scuffle*, DALLAS MORNING NEWS, May 31, available at <http://www.hivjustice.net/case/us-another-dallas-man-accused-of-using-his-hiv-as-a-weapon/>.

<sup>44</sup> *Degrate*, 2005 Tex. App. LEXIS 547, at \*8-9.

<sup>45</sup> *Id.* at \*5-6.

<sup>46</sup> Tyler White, *Midland man receives 120 years for transmitting HIV virus to four women*, MIDLAND REPORTER-TELEGRAM, Aug. 29, 2013, available at [http://www.mrt.com/top\\_stories/article\\_ed04bbfe-1103-11e3-aaeb-0019bb2963f4.html?mode=story](http://www.mrt.com/top_stories/article_ed04bbfe-1103-11e3-aaeb-0019bb2963f4.html?mode=story).

<sup>47</sup> *Id.*

<sup>48</sup> Robert Wilonsky, *Judge sentences Fort Worth man to 15 years in prison for knowingly infecting woman with HIV*, DALLAS MORNING NEWS, Dec. 31, 2012, available at <http://crimeblog.dallasnews.com/2012/12/judge-sentences-fort-worth-man-to-15-years-in-prison-for-knowingly-infecting-woman-with-hiv.html/>.

<sup>49</sup> *Id.*

<sup>50</sup> Jennifer Emily, *HIV carrier who endangered women pleads guilty in midst of trial*, THE DALLAS MORNING NEWS, July 16, 2010, available at <https://www.dallasnews.com/news/news/2010/07/16/hiv-carrier-who-endangered-women-pleads-guilty-in-midst-of-trial>.

<sup>51</sup> *Id.*

<sup>52</sup> Stacy Morrow, *Man Convicted of Spreading HIV Gets 45 Years*, NBC, July 13, 2009, available at <http://www.nbcwashington.com/news/archive/More-Women-Testify-Against-HIV-Man.html>.

condoms during sex, the prosecutors charged him with aggravated assault.<sup>53</sup> The man appealed his conviction, arguing that he has received ineffective assistance of counsel, but the appeals court affirmed his conviction and sentencing.<sup>54</sup>

## **HIV status may be considered in sentencing even if there was no exposure to HIV.**

HIV status can be considered admissible evidence at the punishment stage of a conviction if it is determined that HIV status is relevant to the offense. The consideration of HIV status most often involves cases of aggravated assault and aggravated sexual assault. The Court of Appeals of Texas has found that “whether the accused is infected with AIDS or HIV is a ‘viable concern’ at the punishment stage of an aggravated sexual assault trial” and that testimony and evidence of the defendant’s HIV status should therefore be admitted to consider the “potential long term effect of the injury” to the complainant.<sup>55</sup>

Though the courts have established that information concerning a defendant’s life or character may not be relevant to an issue of ultimate fact in the case, such considerations are appropriate when determining a sentence.<sup>56</sup> In *Martinez v. State*, the defendant was sentenced to life in prison and a \$10,000 fine for aggravated sexual assault of a child under 14.<sup>57</sup> The court, upholding the conviction and the sentence, found that HIV status can be considered relevant victim impact evidence at sentencing.<sup>58</sup> The court stated that victim impact evidence reflects the “defendant’s personal responsibility and moral guilt and thus is relevant to punishment issues.”<sup>59</sup>

Taking into account HIV status in the penalty phase has led to increased sentences for many individuals in Texas, including those who did not expose others to HIV during the commission of the crime.

In *Atkins v. State*, a PLHIV was convicted of attempted sexual performance with a child and was sentenced to life imprisonment.<sup>60</sup> The defendant invited a minor to his apartment where the defendant then sat on the bed, began undressing and fondling himself, and made overt comments referring to sex.<sup>61</sup> The minor left the apartment and called for help before any physical or sexual contact took place.<sup>62</sup> During the trial, the state presented evidence of the defendant’s HIV status even though there

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<sup>53</sup> *Id.*

<sup>54</sup> *Padiou v. State*, 2010 Tex. App. LEXIS 10289, at \*2-4 (Tex. Ct. App. 2010).

<sup>55</sup> *Suarez v. State*, 2004 Tex. App. LEXIS 6743 (Tex. App. 2004) (citing *Hunter v. State*, 799 S.W.2d 356, 360 (Tex. Crim. App. 1990)).

<sup>56</sup> *Sellers v. State*, 1996 Tex. App. LEXIS 1736, at \*9-11 (Tex. Crim App. 1996) (citing *Murphy v. State*, 777 S.W.2d 44, 63 (Tex. Crim. App. 1988)).

<sup>57</sup> *Martinez v. State*, 2004 Tex. App. LEXIS 9400, (Tex. Crim. App. 2004).

<sup>58</sup> *Id.* at \*10-11.

<sup>59</sup> *Id.*

<sup>60</sup> *Atkins v. State*, 2008 Tex. App. LEXIS 5407, at \*1 (Tex. Crim. App. 2008) (noting that the punishment was enhanced by two prior felony convictions).

<sup>61</sup> *Id.* at \*3.

<sup>62</sup> *Id.*

was no contact between the defendant and the complainant that could have presented any risk of HIV transmission.<sup>63</sup>

The defendant argued on appeal that his HIV status had no probative value and should not have been considered for his sentencing.<sup>64</sup> The court found that, even though no sexual or physical contact occurred between the defendant and the minor, the defendant's HIV status could be considered as relevant evidence in assessing punishment because the defendant often had unprotected sex with other partners.<sup>65</sup> This behavior, the court held, reflected the defendant's "willingness to expose others to the virus and his reckless disregard for the lives of others" and, as such, was pertinent to his sentencing.<sup>66</sup>

In *Lewis v. State*, a PLHIV was sentenced to consecutive life sentences for aggravated sexual assault and indecency with a child.<sup>67</sup> The man inserted his finger into the child's vagina and masturbated while doing so.<sup>68</sup> In the appeal of his sentence, the defendant argued that his HIV status should not have been considered because at no time did he expose the child to HIV.<sup>69</sup> The defendant also asserted that the state did not produce any medical testimony regarding the defendant's HIV status, the nature of HIV, or how the acts in question could have exposed the minor to a risk of transmission.<sup>70</sup> The court disagreed, finding that that "the jury may consider, as a circumstance of the offense, that appellant's recognized HIV positive status placed the victim of his sexual assault at risk of infection, whether or not the evidence shows any actual transmission of body fluids in a manner likely to infect."<sup>71</sup>

### **Texas public health officials can impose a variety of control measures on a person with an STI, including HIV.**

Texas' Health and Safety Code grants public health authorities broad authority to implement "control measures" in order to address cases of communicable disease.<sup>72</sup> Control measures include, but are not limited to, chemoprophylaxis, detention, disinfection, restriction, isolation, and quarantine.<sup>73</sup> It is a Class B misdemeanor, punishable by up to 180 days in jail and a \$2000 fine, for an individual to conceal his or her infection with or exposure to a communicable disease<sup>74</sup> that is a "threat to public health" during the course of a public health investigation. The Department of State Health Services may order a person to submit to control measures if it has "reasonable cause to believe that an individual is ill with,

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<sup>63</sup> *Id.* at \*22-23.

<sup>64</sup> *Id.* at \*19-20.

<sup>65</sup> *Id.* at \*21-22.

<sup>66</sup> *Id.* at 22.

<sup>67</sup> *Lewis v. State*, 2010 Tex. App. LEXIS 4545, at \*1 (Tex. Crim. App. 2010) (noting that the punishment was enhanced by two prior felony convictions).

<sup>68</sup> *Id.* at \*2-3.

<sup>69</sup> *Id.* at \*9.

<sup>70</sup> *Id.* at \*9-10.

<sup>71</sup> *Id.* at \*11.

<sup>72</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.082(a) (2016).

<sup>73</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.082(b) (2016); *See also* 25 TEX. ADMIN. CODE § 97.8(3) (2016).

<sup>74</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 81.066(a)(1), 81.066(b) (2016); TEX. PENAL CODE ANN. § 12.22 (2016).

has been exposed to, or is the carrier of a communicable disease.”<sup>75</sup> The order must be in writing and delivered personally or by registered mail<sup>76</sup> and remains effective until the person is no longer infected with disease.<sup>77</sup> Violation of a control order issued by public health officials is a Class B misdemeanor.<sup>78</sup>

Should a person refuse to comply with a control measure--whether compelled testing, isolation or forced medical treatment--public health officials may seek a court order for judicial enforcement of the control measure.<sup>79</sup> The application for a court order is filed by a district attorney<sup>80</sup> and must contain a variety of information, including whether the control measures sought are for temporary or extended management, and a statement that “a statement that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health” and that they meet the criteria for court-ordered management.<sup>81</sup> The court must appoint the person an attorney within 24 hours after the filing of the application if the person does not have legal representation.<sup>82</sup> A hearing is held within 14 days after the application is served on the individual.<sup>83</sup>

Along with the application, an affidavit of medical evaluation must be submitted by public health officials. It must state the opinion of the health department that the person 1) is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health and; 2) as result of the communicable disease, the person will, if not examined, observed, or treated, continue to endanger public health.<sup>84</sup> Texas does not define “communicable disease that is a threat to the public health.” However, the designation appears to be least partially contingent on a person’s non-compliance with public health orders, as opposed to the presence of specific enumerated conditions.

The person is entitled to be present at the hearing, which is open to the public and on the record. The state must prove each element of the application criteria by clear and convincing evidence.<sup>85</sup> Hearings for temporary management are before a judge unless a person or their attorney requests a jury,<sup>86</sup> whereas hearings for extended management must be before a jury.<sup>87</sup> An order for temporary management may not exceed 90 days.<sup>88</sup> A person confined to a facility retains the right to receive visitors and communicate by uncensored and sealed mail with legal counsel.<sup>89</sup> A request for rehearing

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<sup>75</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.083(a) (2016). Communicable disease is defined broadly as “an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host.” TEX. HEALTH & SAFETY CODE ANN. § 81.003(1) (2016).

<sup>76</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.083(b) (2016).

<sup>77</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.083(c) (2016).

<sup>78</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 81.087(a), 81.087(b) (2016).

<sup>79</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.083(e)(1) (2016).

<sup>80</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.151 (2016).

<sup>81</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.152(c)(3) (2016).

<sup>82</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.153(a) (2016).

<sup>83</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.154(a) (2016).

<sup>84</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 81.158(a)(7)(A), 81.158(a)(7)(B)(ii) (2016).

<sup>85</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 81.169(d), 81.169(e), 81.169(h) (2016).

<sup>86</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.170 (a) (2016).

<sup>87</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.170(b) (2016).

<sup>88</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.172 (d) (2016).

<sup>89</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 81.204(a)(1), 81.204(a)(3)(2016).

or reexamination may be sought once an order is granted.<sup>90</sup> A court order for control measures may be appealed in the court of appeals in the county in which the order is entered and must be filed within 10 days of the order being signed.<sup>91</sup>

In addition to an order for temporary or extended management, a person may be subject to an Order of Protective Custody or a Temporary Detention Order,<sup>92</sup> each of which has its own set of particular procedural requirements. An Order of Protective Custody is used when a person is judged to “present a substantial risk of serious harm to . . . others”<sup>93</sup> and cannot remain at liberty while application for court enforcement of a control measure(s) is pending.<sup>94</sup> By contrast, an Order for Temporary Detention is used in situations where detention in an inpatient facility is needed to assess the appropriate setting for continued court-ordered care.<sup>95</sup> A person who evades apprehension by a sheriff or other peace officer seeking to enforce a protective custody order or temporary detention order is guilty of a Class A misdemeanor, punishable by up to a year in jail and a \$4,000 fine.<sup>96</sup>

In addition to statutory law governing the management of persons with a communicable disease, the Texas Department of State Health Services’ TB/HIV/STD/Viral Hepatitis Unit has generated a policy titled, “Accelerated HIV Intervention Program, Addressing the Potential for Recalcitrant Transmission of HIV in Texas.”<sup>97</sup> Referrals received by an STD program regarding a client who “has engaged in anal, vaginal, or oral sex or has shared contaminated hypodermic needles and has failed to either inform partner(s) of their HIV status, or take reasonable precautions to prevent transmission” will trigger an assessment.<sup>98</sup> The result of the assessment will determine the type of control measure to be initiated, i.e., accelerated prevention counseling, public health orders, and/or court orders.<sup>99</sup> The policy instructs that a court order “should be considered as a last resort to be used only in the most serious cases.”<sup>100</sup>

Finally, a court may direct individuals convicted of prostitution<sup>101</sup> or certain drug offenses<sup>102</sup> to be subject to control measures or to court-ordered management.<sup>103</sup> The court may order that a presentence report be prepared to determine whether a person convicted of one of these offenses should be subject to restrictive measures.<sup>104</sup>

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<sup>90</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 81.188, 81.189 (2016).

<sup>91</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 81.191(a), 81.191(b) (2016).

<sup>92</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 81.161, 81.188 (2016).

<sup>93</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.162(f)(2) (2016).

<sup>94</sup> *Id.*

<sup>95</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.188(b)(2) (2016).

<sup>96</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 81.212(a), TEX. PENAL CODE ANN. § 12.21 (2016).

<sup>97</sup> TEX. DEPT. STATE. HEALTH SERV., *Policy 410.003: Accelerated HIV Intervention Program, Addressing the Potential for Recalcitrant Transmission of HIV in Texas* (updated May 20, 2015), available at <http://www.dshs.texas.gov/hivstd/policy/policies/410-003.shtml> (last visited Dec. 16, 2016).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> TEX. PENAL CODE ANN. § 43.02, (2016).

<sup>102</sup> TEX. HEALTH & SAFETY CODE ANN. §§ 481.001 (2016) (the Texas Controlled Substances Act), 485.031-035 (possession, use, sale of abusable volatile chemicals) (2016).

<sup>103</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.093(a) (2016).

<sup>104</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.093(b) (2016).

## **Persons may be required to undergo mandatory STI testing if they expose a public servant to disease or are convicted of certain kinds of crimes.**

Various public officials, including law enforcement officers, firefighters, EMTs, correctional officers, and other emergency responders may request that an individual be tested if the official believes they have been exposed to a reportable disease by that individual.<sup>105</sup> The statute does not specify whether the information could be used in a prosecution, e.g., for harassment of a public servant. Experience in Texas also demonstrates that PLHIV may face attempted murder or aggravated assault charges for spitting on a police or correctional officer.<sup>106</sup>

Texas' Code of Criminal Procedure also outlines procedures for the testing of an individual who causes an emergency response employee or volunteer, peace officer, magistrate, or an employee of a correctional facility to come into contact with their bodily fluids during the commission of a misdemeanor, felony, or the resulting arrest.<sup>107</sup> The statute specifies that the results of the test may not be used in any criminal proceeding arising out of the alleged offense, but it is unclear whether the results could be admissible in a future prosecution.<sup>108</sup>

***Important note:*** While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, it should not be used as a substitute for legal advice.

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<sup>105</sup> TEX. HEALTH & SAFETY CODE ANN. § 81.050(b) (2016)

<sup>106</sup> See, e.g., *Weeks v. State*, 834 S.W.2d 559 (Tex. App. 1992); Peterson, *supra* note 42.

<sup>107</sup> TEX. CODE CRIM. PROC. §18.22(a)(2016).

<sup>108</sup> *Id.*

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## Texas Statutes and Codes

*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.*

### TEXAS HEALTH & SAFETY CODE

#### **TEX. HEALTH & SAFETY CODE ANN. § 81.003 (2016)**

##### *Definitions*

In this chapter:

(1) "Communicable disease" means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.

(11) "Sexually transmitted disease" means an infection, with or without symptoms or clinical manifestations, that may be transmitted from one person to another during, or as a result of, sexual relations between two persons and that may:

(A) produce a disease in, or otherwise impair the health of, either person; or

(B) cause an infection or disease in a fetus in utero or a newborn.

#### **TEX. HEALTH & SAFETY CODE ANN. § 81.041 (2016)**

##### *Reportable Diseases*

(e) Acquired immune deficiency syndrome and human immunodeficiency virus infection are reportable diseases under this chapter for which the executive commissioner shall require reports.

#### **TEX. HEALTH & SAFETY CODE ANN. § 81.046 (2016)**

##### *Confidentiality*

(a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (d), and (f).

(c) Medical or epidemiological information may be released: . . .

(3) to medical personnel treating the individual, appropriate state agencies in this state or another state, a health authority or local health department in this state or another state, or federal, county, or district courts to comply with this chapter and related rules relating to the

control and treatment of communicable diseases and health conditions or under another state or federal law that expressly authorizes the disclosure of this information; . . .

**TEX. HEALTH & SAFETY CODE ANN. § 81.050(2016)**

*Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including HIV Infection.*

(b) A person whose occupation or whose volunteer service is included in one or more of the following categories may request the department or a health authority to order testing of another person who may have exposed the person to a reportable disease:

- (1) a law enforcement officer;
- (2) a fire fighter;
- (3) an emergency medical service employee or paramedic;
- (4) a correctional officer;
- (5) an employee, contractor, or volunteer, other than a correctional officer, who performs a service in a correctional facility as defined by Section 1.07, Penal Code, or a secure correctional facility or secure detention facility as defined by Section 51.02, Family Code;
- (6) an employee of a juvenile probation department; or
- (7) any other emergency response employee or volunteer.

(c) A request under this section may be made only if the person:

- (1) has experienced the exposure in the course of the person's employment or volunteer service;
- (2) believes that the exposure places the person at risk of a reportable disease; and
- (3) presents to the department or health authority a sworn affidavit that delineates the reasons for the request.

**TEX. HEALTH & SAFETY CODE ANN. § 81.066 (2016) \*\***

*Concealing Communicable Disease or Exposure to Communicable Disease; Criminal Penalty*

(a) A person commits an offense if the person knowingly conceals or attempts to conceal from the department, a health authority, or a peace officer, during the course of an investigation under this chapter, the fact that:

- (1) the person has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health; or . . .

(b) An offense under this section is a Class B misdemeanor.

**TEX. HEALTH & SAFETY CODE ANN. § 81.082 (2016)**

*Administration of Control Measures*

(a) A health authority has supervisory authority and control over the administration of communicable disease control measures in the health authority's jurisdiction unless specifically preempted by the department. Control measures imposed by a health authority must be consistent with, and at least as stringent as, the control measure standards in rules adopted by the executive commissioner.

(f) In this section, "control measures" includes:

- (2) detention;
- (3) restriction;
- (6) isolation;
- (7) quarantine;.

**TEX. HEALTH & SAFETY CODE ANN. § 81.083 (2016)**

*Application of Control Measures to Individual*

(b) If the department or a health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease, the department or health authority may order the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state.

(c) An order under this section must be in writing and be delivered personally or by registered or certified mail to the individual or to the individual's parent, legal guardian, or managing conservator if the individual is a minor.

(d) An order under this section is effective until the individual is no longer infected with a communicable disease or, in the case of a suspected disease, expiration of the longest usual incubation period for the disease.

(e) An individual may be subject to court orders under Subchapter G if the individual is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and:

- (1) the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, does not comply with the written orders of the department or a health authority under this section;

**TEX. HEALTH & SAFETY CODE ANN. § 81.087 (2016) \*\***

*Violation of Control Orders; Criminal Penalty*

(a) A person commits an offense if the person knowingly refuses to perform or allow the performance of certain control measures ordered by a health authority or the department under Sections 81.083--81.086.

(b) An offense under this section is a Class B misdemeanor.

**TEX. HEALTH & SAFETY CODE ANN. § 81.093 (2016)**

*Persons Prosecuted for Certain Crimes*

(a) A court may direct a person convicted of an offense under Section 43.02, Penal Code, under Chapter 481 (Texas Controlled Substances Act), or under Sections 485.031 through 485.035 to be subject to the control measures of Section 81.083 and to the court-ordered management provisions of Subchapter G.

(b) The court shall order that a presentence report be prepared under Subchapter F, Chapter 42A, Code of Criminal Procedure, to determine if a person convicted of an offense under Chapter 481 (Texas Controlled Substances Act) or under Sections 485.031 through 485.035 should be subject to Section 81.083 and Subchapter G.

(c) On the request of a prosecutor who is prosecuting a person under Section 22.012, Penal Code, the court shall release to the prosecutor the presentencing report and a statement as to whether the court directed the person to be subject to control measures and court-ordered management for human immunodeficiency virus infection or acquired immune deficiency syndrome.

**TEX. HEALTH & SAFETY CODE ANN. § 81.151 (2016)**

*Application for Court Order*

(a) At the request of the health authority, a municipal, county, or district attorney shall file a sworn written application for a court order for the management of a person with a communicable disease. At the request of the department, the attorney general shall file a sworn written application for a court order for the management of a person with a communicable disease.

**TEX. HEALTH & SAFETY CODE ANN. § 81.152 (2016)**

*Form of Application*

(a) An application for a court order for the management of a person with a communicable disease must be styled using the person's initials and not the person's full name.

(b) The application must state whether the application is for temporary or extended management of a person with a communicable disease.

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the person's name and address;

(2) the person's county of residence in this state;

(3) a statement that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health and that the person meets the criteria of this chapter for court orders for the management of a person with a communicable disease; and

(4) a statement, to be included only in an application for inpatient treatment, that the person fails or refuses to comply with written orders of the department or health authority under Section 81.083, if applicable.

**TEX. HEALTH & SAFETY CODE ANN. § 81.153 (2016)**

*Appointment of Attorney*

(a) The judge shall appoint an attorney to represent a person not later than the 24th hour after the time an application for a court order for the management of a person with a communicable disease is filed if the person does not have an attorney. The judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the person's primary language.

(b) The person's attorney shall receive all records and papers in the case and is entitled to have access to all hospital and physicians' records.

**TEX. HEALTH & SAFETY CODE ANN. § 81.154 (2016)**

*Setting on Application*

(a) The judge or a magistrate designated under this chapter shall set a date for a hearing to be held within 14 days after the date on which the application is served on the person.

(b) The hearing may not be held within the first three days after the application is filed if the person or the person's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is served on the person.

**TEX. HEALTH & SAFETY CODE ANN. § 81.155 (2016)**

*Notice*

(a) The person and the person's attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

**TEX. HEALTH & SAFETY CODE ANN. § 81.157 (2016)**

*District Court Jurisdiction*

(a) A proceeding under this chapter must be held in a district court of the county in which the person is found, resides, or is receiving court-ordered health services.

**TEX. HEALTH & SAFETY CODE ANN. § 81.158 (2016)**

*Affidavit of Medical Evaluation*

(a) An affidavit of medical evaluation must be dated and signed by the commissioner or the commissioner's designee, or by a health authority with the concurrence of the commissioner or the commissioner's designee. The certificate must include:

(7) the opinion of the health authority or department and the reason for that opinion, including laboratory reports, that:

(A) the examined person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health; and

(B) as a result of that communicable disease the examined person:

(i) is likely to cause serious harm to himself; or

(ii) will, if not examined, observed, or treated, continue to endanger public health.

(b) The department or health authority must specify in the affidavit each criterion listed in Subsection (a)(7)(B) that in the opinion of the department or health authority applies to the person.

(c) If the affidavit is offered in support of an application for extended management, the affidavit must also include the department's or health authority's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the affidavit is offered in support of a motion for a protective custody order, the affidavit must also include the department's or health authority's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior to the extent that the examined person cannot remain at liberty.

(e) The affidavit must include the detailed basis for each of the department's or health authority's opinions under this section.

**TEX. HEALTH & SAFETY CODE ANN. § 81.161 (2016)**

*Motion for Order of Protective Custody*

(a) A motion for an order of protective custody may be filed only in the court in which an application for a court order for the management of a person with a communicable disease is pending.

(b) The motion may be filed by the municipal, county, or district attorney on behalf of the health authority. The motion shall be filed by the attorney general at the request of the department.

(c) The motion must state that:

(1) the department or health authority has reason to believe and does believe that the person meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the conduct of the person who is the subject of the motion; or

(C) the circumstances under which the person is found.

(d) The motion must be accompanied by an affidavit of medical evaluation.

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

**TEX. HEALTH & SAFETY CODE ANN. § 81.162 (2016)**

*Issuance of Order*

(a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health; and

(2) that the person fails or refuses to comply with the written orders of the health authority or the department under Section 81.083, if applicable.

(b) Noncompliance with orders issued under Section 81.083 may be demonstrated by the person's behavior to the extent that the person cannot remain at liberty.

(c) The judge or magistrate may consider only the application and affidavit in making a determination that the person meets the criteria prescribed by Subsection (a). If only the application and certificate are considered the judge or magistrate must determine that the conclusions of the health authority or department are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and affidavit only.

(e) The judge or magistrate may issue a protective custody order for a person who is charged with a criminal offense if the person meets the requirements of this section and the head of the facility designated to detain the person agrees to the detention.

(f) Notwithstanding Section 81.161 or Subsection (c), a judge or magistrate may issue a temporary protective custody order before the filing of an application for a court order for the management of a person with a communicable disease under Section 81.151 if:

(1) the judge or magistrate takes testimony that an application under Section 81.151, together with a motion for protective custody under Section 81.161, will be filed with the court on the next business day; and

(2) the judge or magistrate determines based on evidence taken under Subsection (d) that there is probable cause to believe that the person presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the filing of the application and motion.

(g) A temporary protective custody order issued under Subsection (f) may continue only until 4 p.m. on the first business day after the date the order is issued unless the application for a court order for the management of a person with a communicable disease and a motion for protective custody, as described by Subsection (f)(1), are filed at or before that time. If the application and motion are filed at or before 4 p.m. on the first business day after the date the order is issued, the temporary protective custody order may continue for the period reasonably necessary for the court to rule on the motion for protective custody.

(h) The judge or magistrate may direct a peace officer, including a sheriff or constable, to prevent a person who is the subject of a protective custody order from leaving the facility designated to detain the person if the court finds that a threat to the public health exists because the person may attempt to leave the facility.

**TEX. HEALTH & SAFETY CODE ANN. § 81.163 (2016)**

*Apprehension Under Order*

(a) A protective custody order shall direct a peace officer, including a sheriff or constable, to take the person who is the subject of the order into protective custody and transport the person immediately to an appropriate inpatient health facility that has been designated by the commissioner as a suitable place.

(b) If an appropriate inpatient health facility is not available, the person shall be transported to a facility considered suitable by the health authority.

(c) The person shall be detained in the facility until a hearing is held under Section 81.165.

**TEX. HEALTH & SAFETY CODE ANN. § 81.165 (2016)**

*Probable Cause Hearing*

(a) A hearing must be held to determine if:

(1) there is probable cause to believe that a person under a protective custody order presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the hearing on a court order for the management of a person with a communicable disease; and

(2) the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to public health

(b) The hearing must be held not later than 72 hours after the time that the person was detained under the protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions that threaten the safety of the person or another essential party to the hearing. If the area in which the person is found, or the area where the hearing will be held, is under a public health disaster, the judge or magistrate may postpone the hearing until the period of disaster is ended.

(d) The person and his attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the person presents a substantial risk of serious harm to himself or others. If the health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge, jurors, or the public would jeopardize the health and safety of those persons and the public health, a magistrate or a master may order that a person entitled to a hearing for a protective custody order may not appear in person and may appear only by teleconference or another means the magistrate or master finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

(e) The magistrate or master may consider evidence that may not be admissible or sufficient in a subsequent commitment hearing, including letters, affidavits, and other material.

(f) The state may prove its case on the health authority's or department's affidavit of medical evaluation filed in support of the initial motion.

**TEX. HEALTH & SAFETY CODE ANN. § 81.169 (2016)**

*General Provisions Related to Hearing*

(a) Except as provided by Subsection (b), the judge may hold a hearing on an application for a court order for the management of a person with a communicable disease at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the public or the person.

(b) On the request of the person or the person's attorney, the hearing on the application shall be held in the county courthouse.

(c) The health authority shall advise the court on appropriate control measures to prevent the transmission of the communicable disease alleged in the application.

(d) The person is entitled to be present at the hearing. The person or the person's attorney may waive this right.

(e) The hearing must be open to the public unless the person or the person's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(f) The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this chapter.

(g) The court may consider the testimony of a nonphysician health professional in addition to medical testimony.

(h) The hearing is on the record, and the state must prove each element of the application criteria by clear and convincing evidence.

(i) Notwithstanding Subsection (d), if the health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge, jurors, or the public would jeopardize the health and safety of those persons and the public health, a judge may order that a person entitled to a hearing may not appear in person and may appear only by teleconference or another means that the judge finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

**TEX. HEALTH & SAFETY CODE ANN. § 81.170 (2016)**

*Right to Jury*

(a) A hearing for temporary management must be before the court unless the person or the person's attorney requests a jury.

(b) A hearing for extended management must be before a jury unless the person or the person's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under oath, and signed by the person and the person's attorney.

(f) The jury shall determine if the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has refused or failed to follow the orders of the health authority. The jury may not make a finding about the type of services to be provided to the person.

**TEX. HEALTH & SAFETY CODE ANN. § 81.172 (2016)**

*Order for Temporary Management*

(a) The judge or jury may determine that a person requires court-ordered examination, observation, isolation, or treatment only if the judge or jury finds, from clear and convincing evidence, that:

(1) the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed or refused to follow the orders of the health authority or department; and

(2) as a result of the communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger public health.

(b) The judge or jury must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(d) An order for temporary management shall state that examinations, treatment, and surveillance are authorized for a period not longer than 90 days.

**TEX. HEALTH & SAFETY CODE ANN. § 81.174 (2016)**

*Order of Care or Commitment*

(a) The judge shall dismiss the jury, if any, after a hearing in which a person is found:

(1) to be infected with or reasonably suspected of being infected with a communicable disease;

(2) to have failed or refused to follow the orders of a health authority or the department if the application is for inpatient treatment; and

(3) to meet the criteria for orders for the management of a patient with a communicable disease.

(b) The judge may hear additional evidence relating to alternative settings for examination, observation, treatment, or isolation before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the appropriate health care facility filed under this chapter.

(d) The judge may enter an order:

(1) committing the person to a health care facility for inpatient care; or

- (2) requiring the person to participate in other communicable disease management programs.

**TEX. HEALTH & SAFETY CODE ANN. § 81.173 (2016)**

*Order for Extended Management*

(a) The jury, or the judge if the right to a jury is waived, may determine that a proposed patient requires court-ordered examination, observation, isolation, or treatment only if the jury or judge finds, from clear and convincing evidence, that:

- (1) the person is infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed to follow the orders of the health authority or department;

- (2) as a result of that communicable disease the person:

- (A) is likely to cause serious harm to himself; or

- (B) will, if not examined, observed, isolated, or treated, continue to endanger public health; and

- (3) the person's condition is expected to continue for more than 90 days.

(b) The jury or judge must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

**TEX. HEALTH & SAFETY CODE ANN. § 81.188 (2016)**

*Order for Temporary Detention*

(a) At the request of the health authority, a municipal, county, or district attorney, as appropriate, shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183. At the request of the department, the attorney general shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183.

(b) The application must state the applicant's opinion and detail the reason for the applicant's opinion that:

- (1) the person meets the criteria described by this chapter; and

- (2) detention in an inpatient health care facility is necessary to evaluate the appropriate setting for continued court-ordered care.

(c) The court shall decide from the information in the application. The court may issue an order for temporary detention if a modification hearing is set and the court finds that there is probable cause to believe that the opinions stated in the application are valid.

(d) The judge shall appoint an attorney to represent a person who does not have an attorney when the order for temporary detention is signed.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the person and the person's attorney a written notice that contains:

- (1) a statement that the person has been placed under a temporary detention order;
- (2) the grounds for the order; and
- (3) the time and place of the modification hearing.

**TEX. HEALTH & SAFETY CODE ANN. § 81.188 (2016)**

*Motion for Rehearing*

- (a) The court may set aside an order for the management of a person with a communicable disease and grant a motion for rehearing for good cause shown.
- (b) The court may stay the order and release the person from custody before the hearing if the court is satisfied that the person does not meet the criteria for protective custody under this chapter.
- (c) The court may require an appearance bond in an amount set by the court.

**TEX. HEALTH & SAFETY CODE ANN. § 81.189 (2016)**

*Request for Reexamination*

- (a) A person subject to an order for extended management, or any interested person on the person's behalf and with the person's consent, may file a request with a court for a reexamination and a hearing to determine if the person continues to meet the criteria for the court order.
- (b) The request must be filed in the county in which the person is receiving the services.
- (c) The court may, on good cause shown:
  - (1) require that the patient be reexamined;
  - (2) schedule a hearing on the request; and
  - (3) notify the health authority, department, and the head of the facility providing health services to the person.
- (d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended management is entered or after a similar request is filed.
- (e) The head of the facility shall arrange for the person to be reexamined after receiving the court's notice.
- (f) The head of the facility shall immediately discharge the person if the health authority or department determines that the person no longer meets the criteria for court-ordered extended health services.
- (g) If the health authority or department determines that the person continues to meet the criteria for a court order for extended management, the health authority or department shall file an affidavit of medical evaluation with the court within 10 days after the request for reexamination and hearing is filed.

**TEX. HEALTH & SAFETY CODE ANN. § 81.190 (2016)**

*Hearing on Request for Reexamination*

(a) A court that required a patient's reexamination under Section 81.189 may set a date and place for a hearing on the request if, not later than the 10th day after the request is filed:

(1) an affidavit of medical evaluation stating that the patient continues to meet the criteria for extended management has been filed; or

(2) an affidavit has not been filed and the person has not been discharged.

(b) When the hearing is set, the judge shall appoint an attorney to represent the person if the person does not already have an attorney. The judge shall also give notice of the hearing to the person, the person's attorney, the health authority or department, and the facility head.

(c) The judge shall appoint a physician who is not on the staff of the health care facility in which the person is receiving services to examine the person and file an affidavit with the court setting out the person's diagnosis and recommended treatment. The court shall ensure that the person may be examined by a physician of the person's choice and own expense if requested by the person.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for a court order for the management of a person with a communicable disease.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the person continues to meet the criteria for extended management.

(f) The judge shall order the head of the facility to discharge the person if the court fails to find from clear and convincing evidence that the person continues to meet the criteria.

**TEX. HEALTH & SAFETY CODE ANN. § 81.191 (2016)**

*Appeal*

(a) An appeal from an order for the management of a person with a communicable disease, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) The trial judge in whose court the cause is pending may:

(1) stay the order and release the person from custody before the appeal if the judge is satisfied that the person does not meet the criteria for protective custody under this chapter; and

(2) if the person is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

**TEX. HEALTH & SAFETY CODE ANN. § 81.201 (2016)**

*Writ of Habeas Corpus*

This subchapter does not limit a person's right to obtain a writ of habeas corpus.

**TEX. HEALTH & SAFETY CODE ANN. § 81.204 (2016)**

*Rights Subject to Limitation Head of Facility*

(a) A person in an inpatient health care facility has the right to:

- (1) receive visitors;
- (2) communicate with a person outside the facility; and
- (3) communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to facility rules. The head of the facility may restrict a right to the extent the head of the facility determines that the restriction is necessary to the public health or the person's welfare but may not restrict the right to communicate with legal counsel if an attorney-client relationship has been established.

**TEX. HEALTH & SAFETY CODE ANN. § 81.212 (2016) \*\***

*Evading or Resisting Apprehension or Transport; Criminal Penalty*

(a) A person who is subject to a protective custody order or temporary detention order issued by a court under this subchapter commits an offense if the person resists or evades apprehension by a sheriff, constable, or other peace officer enforcing the order or resists or evades transport to an appropriate inpatient health care facility or other suitable facility under the order.

(c) An offense under this section is a Class A misdemeanor.

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## Texas Penal Code

**TEX. PENAL CODE ANN. § 12.21 (2016) \*\***

*Class A Misdemeanor*

An individual adjudged guilty of a Class A misdemeanor shall be punished by:

- (1) a fine not to exceed \$ 4,000;
- (2) confinement in jail for a term not to exceed one year; or
- (3) both such fine and confinement.

**TEX. PENAL CODE ANN. § 12.22 (2016) \*\***

*Class B Misdemeanor*

An individual adjudged guilty of a Class B misdemeanor shall be punished by:

- (1) a fine not to exceed \$2,000;
- (2) confinement in jail for a term not to exceed 180 days; or
- (3) both such fine and confinement.

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## **Texas Code of Criminal Procedure**

**TEX. CODE CRIM. PROC. ART. §18.22 (2016)**

*Testing certain Defendants or Confined Persons for Communicable Diseases*

(a) A person who is arrested for a misdemeanor or felony and who during the commission of that offense or the arrest, during a judicial proceeding or initial period of confinement following the arrest, or during the person's confinement after a conviction or adjudication resulting from the arrest causes the person's bodily fluids to come into contact with a peace officer, a magistrate, or an employee of a correctional facility where the person is confined shall, at the direction of the court having jurisdiction over the arrested person, undergo a medical procedure or test designed to show or help show whether the person has a communicable disease. The court may direct the person to undergo the procedure or test on its own motion or on the request of the peace officer, magistrate, or correctional facility employee. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test. Notwithstanding any other law, the person performing the procedure or test shall make the test results available to the local health authority, and the local health authority shall notify the peace officer, magistrate, or correctional facility employee, as appropriate, of the test result. The state may not use the fact that a medical procedure or test was performed on a person under this article, or use the results of the procedure or test, in any criminal proceeding arising out of the alleged offense.

(b) A person who is arrested for a misdemeanor or felony and who during the commission of that offense or an arrest following the commission of that offense causes an emergency response employee or volunteer, as defined by Section 81.003, Health and Safety Code, to come into contact with the person's bodily fluids shall, at the direction of the court having jurisdiction over the arrested person, undergo a medical procedure or test designed to show or help show whether the person has a communicable disease. The court may direct the person to undergo the procedure or test on its own motion or on the request of the emergency response employee or volunteer. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test. Notwithstanding any other law, the person performing the procedure or test shall make the test results available to the local health authority and the designated infection control officer of the entity that employs or uses the services of the affected emergency response employee or volunteer, and the local health authority or the designated infection control officer of the affected employee or volunteer shall notify the emergency response employee or volunteer of the test result. The state may not use the fact that a medical procedure or test was performed on a person under this article, or use the results of the procedure or test, in any criminal proceeding arising out of the alleged offense.

**TEX. CODE CRIM. PROC. ART. 46A.01 (2016)**

*Testing; Segregation; Disclosure*

(a) In this article "AIDS" and "HIV" have the meanings assigned those terms by Section 81.101, Health and Safety Code.

(b) A county or municipality may test an inmate confined in the county or municipal jail or in a contract facility authorized by Article 5115d, Revised Statutes, or Article 5115e, Revised Statutes, to determine the proper medical treatment of the inmate or the proper social management of the inmate or other inmates in the jail or facility.

(c) If the county or municipality determines that an inmate has a positive test result for AIDS or HIV, the county or municipality may segregate the inmate from other inmates in the jail or facility

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## **Texas Administrative Code**

### **TITLE 25, HEALTH SERVICES**

#### *25 Tex. Admin. Code § 97.3 (2016)*

##### *What Condition to Report and What Isolates to Report or Submit*

(2) Notifiable conditions or isolates.

(3) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(A) AIDS, chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with Subchapter F of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV));

#### **25 TEX. ADMIN. CODE § 97.8 (2016)**

##### *General Control Measures for Notifiable Conditions*

Except for diseases for which equivalent measures of investigation and control are specifically provided in other sections in this chapter, the Commissioner of Health (commissioner), a health authority, or a duly authorized representative of the commissioner or a health authority may proceed as follows.

(3) Control techniques, including disinfection, environmental sanitation, immunization, chemoprophylaxis, isolation, preventive therapy, quarantine, education, prevention, and other accepted measures shall be instituted as necessary to reduce morbidity and mortality. In establishing quarantine or isolation, the health authority shall designate and define the limits of the areas in which the persons are quarantined or isolated.

**25 TEX. ADMIN. CODE § 97.131 (2016)**

*Definitions*

(7) Sexually transmitted disease (STD)--An infection, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during or as a result of sexual relations, and that produces or might produce a disease in, or otherwise impair, the health of either person, or might cause an infection or disease in a fetus in utero or a newborn. Acquired Immune Deficiency Syndrome (AIDS), chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection, and syphilis are sexually transmitted diseases reportable under these rules, and each are as defined by CDC (see [http://www.cdc.gov/ncphi/diss/nndss/casedef/case\\_definitions.htm](http://www.cdc.gov/ncphi/diss/nndss/casedef/case_definitions.htm)).

**25 TEX. ADMIN. CODE § 97.133 (2016)**

*Reporting Information for Sexually Transmitted Diseases*

(c) All persons required to report under § 97.132 of this title, must report the following (each report must either use the department's form specified in this subsection, or a substitute form which captures all the data elements of the specified department form):

(1) All adult or adolescent (13 years of age or older) HIV infections and AIDS (stage 3 of HIV infection) diagnoses for individuals 13 years of age or older (see the most current version of the department's Texas HIV/AIDS Adult/Adolescent case report form (available as specified in § 97.134 of this title).

(2) All pediatric (less than 13 years of age) HIV infections and AIDS (stage 3 of HIV infection) diagnoses (see the most current version of the department's Texas HIV/AIDS pediatric case report form (available as specified in § 97.134 of this title)).

(3) All HIV-positive pregnant women. (see the most current version of the department's Texas HIV/AIDS Adult/Adolescent case report form (available as specified in § 97.134 of this title)).

(4) All HIV-exposed infants (see the most current version of the department's Texas HIV/AIDS Pediatric case report form (available as specified in § 97.134 of this title)).

(5) All chancroid, Chlamydia trachomatis, Neisseria gonorrhea, and syphilis infections (see the most current version of the department's Confidential Report of Sexually Transmitted Diseases form (STD-27) (available as specified in § 97.134 of this title)).

(6) All congenital syphilis infections (see the most current version of the CDC's Congenital Syphilis Case Investigation and Report form (available as specified in § 97.134 of this title)).

(7) All positive or reactive results from point of care testing for STDs (see the most current version of the department's Confidential Report of Sexually Transmitted Diseases form (STD-27) (available as specified in § 97.134 of this title)).