

Vermont

Analysis

No criminal statutes explicitly addressing HIV exposure but at least one prosecution has arisen under general criminal laws.

There are no statutes explicitly criminalizing HIV transmission or exposure in Vermont. However, at least one person has been prosecuted for HIV exposure under general criminal laws. In July 2009, a 31-year-old person living with HIV (PLHIV) was charged with aggravated assault for spitting in the face of a police officer.¹

An individual who has sex while knowingly infected with certain STIs can be punished.

If an individual knows they have gonorrhea or syphilis and that the infection is in a communicable stage, it is a crime for them to have “sexual intercourse” with another person. Violation can result in up to two years’ imprisonment, a \$500 fine, or both.² Prosecution does not require intent to transmit disease or disease transmission. The statute also does not address the role of disclosure to a partner—rather, it simply penalizes sex while infected with gonorrhea or syphilis, both of which are treatable conditions. It is not clear whether risk reduction measures such as the use of a condom could operate as an affirmative defense to prosecution under this statute.

The Department of Health and individual physicians retain broad authority to impose quarantine in response to communicable disease, including STIs.

The Vermont commissioner of health has the authority to “quarantine a person diagnosed or suspected of having a disease dangerous to the public health.”³ Diseases that are considered dangerous to the public health are not enumerated in the statute, but Vermont’s administrative code does designate diseases that are reportable so that the Department of Health can protect the health of the public through “control of communicable diseases and other diseases dangerous to the public’s health.”⁴ Several STIs are reportable conditions, including HIV/AIDS, chlamydia trachomatis infection, gonorrhea, and syphilis.⁵

¹ *Vermont: Where post-spit anxiety lasts a year*, HIV JUSTICE NETWORK, August 4, 2009, available at <http://criminalhivtransmission.blogspot.com/search/label/Vermont>.

² VT. STAT. ANN. tit. 18, § 1106 (2016).

³ VT. STAT. ANN. tit. 18, § 1004A (2016).

⁴ CODE. VT. RULES 13-140-007 (2016). A variety of STIs are classified as reportable conditions, including HIV/AIDS, chlamydia trachomatis infection, gonorrhea, and syphilis.

⁵ *Id.*

More importantly, the Department of Health is empowered to “make and enforce such rules and regulations for the quarantining and treatment of cases of venereal disease . . . as may be deemed necessary for the protection of the public.”⁶ Vermont defines venereal disease as “syphilis, gonorrhea, and any other sexually transmitted disease which the department finds to be of significance and amenable to control.”⁷ Individual physicians and public institutions such as hospitals and correctional institutions are required to report cases of venereal disease to the Department of Health.⁸

Individual physicians are also empowered to impose quarantine in response to a person who has a “communicable disease dangerous to the public health.”⁹ Physicians may impose quarantine even if the physician is unable to make a specific diagnosis; they may “quarantine the premises temporarily” which continues until a health officer is available to provide examination.¹⁰ There are no specific procedural protections outlined for someone who is subjected to these quarantine procedures.

Individuals with certain STIs may be required to undergo mandatory examination and treatment and face prosecution upon refusal.

A physician who knows or suspects that a patient has gonorrhea or syphilis is required to report that information to the commissioner of health.¹¹ An individual who has been so identified is required to “submit to regular treatment prescribed by the physician until discharged by the physician.”¹² Should such persons “willfully” refuse to submit to prescribed treatment, they are to be reported to the state’s attorney for immediate prosecution.¹³ Refusal to submit to treatment is punishable by up to three months’ imprisonment, a fine of up to \$100 fine, or both.¹⁴

If an individual is “suspected of being infected with an infectious venereal disease and is likely to infect or be the source of infection of another person,” public health authorities can mandate medical examination of that individual to confirm whether disease is present, including through the use of laboratory testing.¹⁵ All individuals are informed of the right to petition a justice of the state supreme court or a superior judge to block mandatory examination, in which case an examination may not proceed without an order from the judge. Neither the petition nor any resulting order is public record.¹⁶

Unless otherwise specified, a violation of these requirements—complying with mandatory examination and treatment and reporting by individual physicians—is punishable with six months’ imprisonment, a fine of up to \$500, or both.¹⁷

⁶ VT. STAT. ANN. tit. 18, § 1100 (2016).

⁷ VT. STAT. ANN. tit. 18, § 1091 (2016).

⁸ VT. STAT. ANN. tit. 18, §§ 1092, 1101 (2016).

⁹ VT. STAT. ANN. tit. 18, § 1004 (2016).

¹⁰ *Id.*

¹¹ VT. STAT. ANN. tit. 18, § 1092 (2016).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ VT. STAT. ANN. tit. 18, § 1093 (2016).

¹⁶ *Id.*

¹⁷ VT. STAT. ANN. TIT. 18, § 1096 (2016).

Individuals with certain STIs can be punished for entering into a marriage without certification by a healthcare provider.

An individual who knows or has been notified by a physician that they are infected with gonorrhea or syphilis in a stage that is or may become communicable is prohibited from marrying without certification from a medical practitioner that “he or she is free from such disease in a stage which is or may become communicable to the marital partner.”¹⁸ Entering into a marriage without this certification is punishable by up to two years in prison, a fine of up to \$500, or both.¹⁹ Prosecution does not require any kind of activity that would pose a risk of disease transmission to a marital partner.

Public health authorities may release confidential medical information in support of prosecutions.

Information and reports related to venereal disease are generally considered confidential, but may be released by the Department of Health to facilitate prosecutions for 1) entering into a marriage while infected with syphilis or gonorrhea without the required certification from a physician; or 2) having sexual intercourse while infected with syphilis or gonorrhea in a stage that is communicable to others.²⁰

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

¹⁸ VT. STAT. ANN. TIT. 18, § 1105 (2016).

¹⁹ *Id.*

²⁰ VT. STAT. ANN. TIT. 18, § 1099 (2016) (referring to conduct that is criminalized by VT. STAT. ANN. TIT. 18, § 1105 and §1106 (2016)).

Vermont Statutes Annotated

*Note: Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

TITLE 18, HEALTH, PART 2, PUBLIC HEALTH REGULATIONS

VT. STAT. ANN. TIT. 18, § 1004A (2016)

Quarantine

The commissioner of health shall have the power to quarantine a person diagnosed or suspected of having a disease dangerous to the public health

VT. STAT. ANN. TIT. 18, § 1004 (2016)

Report by physician; quarantine

A physician who knows or suspects that a person whom he or she has been called to attend is sick or has died of a communicable disease dangerous to the public health shall immediately quarantine and report to the health officer the place where such case exists, but if the attending physician, at the time of his or her first visit, is unable to make a specific diagnosis, he or she may quarantine the premises temporarily and until a specific diagnosis is made, and post thereon a card upon which the word "quarantine" should be plainly written or printed. Such quarantine shall continue in force until the health officer examines and quarantines as is provided in this title.

VT. STAT. ANN. TIT. 18, § 1091 (2016)

Venereal disease; definitions

In this subchapter, unless the context requires otherwise: . . .

(2) "Venereal disease" means syphilis, gonorrhea, and any other sexually transmitted disease which the department finds to be of significance and amenable to control.

VT. STAT. ANN. TIT. 18, § 1092 (2016) **

Treatments, refusals, penalty

A physician or other person, except persons who merely practice the religious tenets of their church without pretending a knowledge of medicine or surgery, provided however, that sanitary laws, rules, and regulations are complied with, who knows or has reason to believe that a person whom he or she treats or prescribes for, or to whom he or she sells patent or proprietary medicine purporting to cure or alleviate the symptoms of gonorrhea or syphilis, has one of these diseases, shall immediately report the name, nationality, race, marital state, address, age, and sex of such person, and, if obtainable, the date and source of contracting the same, to the commissioner on forms furnished for that purpose. Such persons so reported shall submit to regular treatment prescribed by a physician until discharged by the physician. A person who wilfully refuses to regularly submit to prescribed treatment shall be reported at once to the state's attorney for immediate prosecution. Such wilful refusal shall be punishable by a fine of not more than \$ 100.00 or three months' imprisonment or both

VT. STAT. ANN. TIT. 18, § 1093 (2016)

Examination and report

Whenever the board shall receive information from an authoritative source to the effect that a person is suspected of being infected with an infectious venereal disease and is likely to infect or to be the source of infection of another person, such board shall cause a medical examination to be made of such person, for the purpose of ascertaining whether or not such person is in fact infected with such disease in a communicable stage, and such person shall submit to such examination and permit specimens of blood or bodily discharges to be taken for laboratory examinations as may be necessary to establish the presence or absence of such disease or infection, and such person may be detained until the results of such examinations are known. The required examination shall be made by a physician licensed to practice in this state, or a licensed physician designated by the person to be examined. Such licensed physician making such examination shall report thereon to the board and to the person examined.

VT. STAT. ANN. TIT. 18, § 1094 (2016)

Restraining order

Such suspected person may by petition directed to a justice of the supreme court or a superior judge pray for an order restraining the making of such examination and no examination shall then be made except upon order of such justice or judge and such petition and order shall not be a matter of public record. Before such examination, each suspected person shall be informed of this right and be given an opportunity to avail himself thereof.

VT. STAT. ANN. TIT. 18, § 1096 (2016)

A person who violates a provision of sections 1092-1095 of this title, for which no other penalty is provided, shall be fined not more than \$ 500.00 or imprisoned for not more than six months or both.

VT. STAT. ANN. TIT. 18, § 1099 (2016)

Reports and records confidential

All information and reports in connection with persons who have venereal diseases shall be regarded as absolutely confidential and for the sole use of the Board in the performance of its duties hereunder, and such records shall not be accessible to the public nor shall such records be deemed public records; and the Board shall not disclose the names or addresses of persons so reported or treated except to a prosecuting officer or in court in connection with a prosecution under section 1105 or 1106 of this title. The foregoing shall not constitute a restriction on the Board in the performance of its duties in controlling these communicable diseases.

VT. STAT. ANN. TIT. 18, § 1100 (2016)

Rules and regulations

The board shall make and enforce such rules and regulations for the quarantining and treatment of cases of venereal disease reported to it as may be deemed necessary for the protection of the public.

VT. STAT. ANN. TIT. 18, § 1101 (2016)

Reports by public institutions

The superintendent or other officer in charge of public institutions such as hospitals, dispensaries, clinics, homes, psychiatric hospitals, and charitable and correctional institutions shall report promptly to the Board the name, sex, age, nationality, race, marital state, and address of every patient under observation who has venereal diseases in any form, stating the name, character, stage, and duration of the infection, and, if obtainable, the date and source of contracting the same.

VT. STAT. ANN. TIT. 18, § 1105 (2016)

Marrying when infected with venereal disease

A person, having been told by a physician that he or she was infected with gonorrhea or syphilis in a stage which is or may become communicable to a marital partner, or knowing that he or she is so infected, who marries, without assurance and certification from a legally qualified practitioner of medicine and surgery or osteopathy that he or she is free from such disease in a stage which is or may become communicable to the marital partner shall be imprisoned not less than two years or fined not less than \$ 500.00, or both.

VT. STAT. ANN. TIT. 18, § 1106 (2016) **

Sexual intercourse when infected with venereal disease

A person who has sexual intercourse while knowingly infected with gonorrhea or syphilis in a communicable stage shall be imprisoned not more than two years or fined not more than \$ 500.00, or both.