

Delaware Statute(s) that Allow for Criminal Prosecution based on HIV Status:**DEL. CODE ANN. tit. 16, § 2801(B)-(C)***Testing of donors; penalties*

(b) All donors of semen for purposes of artificial insemination, or donors of corneas, bones, organs or other human tissue for the purpose of injecting, transfusing or transplanting any of them in the human body, shall be tested for evidence of exposure to human immunodeficiency virus (HIV) and any other identified causative agent of Acquired Immunodeficiency Syndrome (AIDS) at the time of or after the donation, but prior to the semen, corneas, bones, organs or other human tissue being made available for such use. However, when in the opinion of the attending physician the life of a recipient of a bone, organ or other human tissue donation would be jeopardized by delays caused by testing for evidence for exposure to HIV and any other causative agent of AIDS, testing shall not be required prior to the life-saving measures.

(c) No person may intentionally, knowingly, recklessly or negligently use the semen, corneas, bones, organs or other human tissue of a donor unless the requirements of subsection (b) of this section have been met. No person may knowingly, recklessly or intentionally use the semen, corneas, bones, organs or other human tissue of a donor who has tested positive for exposure to HIV or any other identified causative agent of AIDS. Violation of this subsection shall be a class E felony.

DEL. CODE ANN. tit. 11, § 4205*Sentence for felonies*

(a) A sentence of incarceration for a felony shall be a definite sentence.

(b) The term of incarceration which the court may impose for a felony is fixed as follows:

(5) For a class E felony up to 5 years to be served at Level V.

There is no explicit statute criminalizing HIV exposure except for donations

There are no statutes explicitly criminalizing HIV transmission or exposure in Delaware other than in the context of organ, tissue, or semen donations. Under Delaware public health laws, it is a felony to fail to test for HIV or to knowingly, recklessly, or intentionally use the semen, corneas, bones, organs, or other human tissues donations of a person who has tested positive for HIV.¹²³ Violation

¹²³ DEL. CODE ANN. tit. 16, § 2801(C) (2010); DEL CODE ANN. tit. 11, § 4205.

of this statute is punishable by up to five years in prison. Sperm and tissue banks must follow state regulations for the testing and disposal of tissue donations found to be positive for HIV.¹²⁴

Though Delaware does not have other HIV criminal exposure statutes, HIV-positive people have been prosecuted for HIV exposure under general criminal laws, such as reckless endangerment and aggravated assault in other states. At the time of this publication, the authors are not aware of a criminal prosecution of an individual on the basis of a person's HIV status in Delaware.

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.

¹²⁴ See generally *id.* 16, § 2801.