

Michigan

Michigan Changed its HIV Criminal Law in 2019

In 2019, Governor Snyder signed two bills, House Bills 6020 and 6021, revising sections of the Public Health Code and the sentencing guidelines chapter of the Code of Criminal Procedure. The changes created three tiers for the offense of felony sexual penetration and established effective treatment or viral suppression as defenses to prosecution.

BEFORE 2019

It was a felony punishable by up to four years if a person living with HIV (PLHIV) knew their HIV status and did not disclose it before any “sexual penetration” with a partner.

The statutory definition of “sexual penetration” included oral sex and any penetration “however slight” of any part of the body of a person into the genital or anal opening of another person.

Prosecutors were not required to show that the conduct in question posed any actual risk of HIV transmission; actual transmission was not required for conviction.

WHAT CHANGED?

The law no longer targets sexual activity that is highly unlikely to transmit HIV and now targets only anal and vaginal intercourse.

There are now separate levels of offenses based on the PLHIV’s state of mind and whether HIV transmission occurred.

It is a felony punishable by up to four years imprisonment if a person does not disclose their HIV status, engages in anal or vaginal intercourse, and does so with the “specific intent” to transmit HIV.

It is also a felony punishable by up to four years imprisonment if a person does not disclose their HIV status to a partner and actually transmits HIV. Specific intent to transmit HIV is not required.

It is a misdemeanor if a person acts with “reckless disregard” but no transmission occurs, if the person did not first disclose their HIV status to a partner.

Proof that the PLHIV had continuous viral suppression via compliance with a doctor’s prescribed antiretroviral therapy is a defense to prosecution.

WHO IS STILL AT RISK?

PLHIV who are not able to prove that they have been in regular medical care and have had an undetectable viral load for an extended period can be prosecuted even if they had no intent to do harm and in fact did not transmit HIV to a partner.

Several factors may prevent a PLHIV from following a treatment plan other than access to care, e.g., adverse side effects from medication or viral resistance to medication.

PLHIV have been prosecuted through general criminal laws, even bioterrorism laws, and may receive enhanced sentences for sexual assault regardless of whether transmission occurs.

To read the full text of the current law, as well as additional analysis, please visit www.hivlawandpolicy.org/states/michigan.