

Timeline of State Reforms and Repeals of HIV Criminal Laws

States with most significant changes to their HIV laws



The Center for HIV Law and Policy
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2022: NEW JERSEY

- Third state to repeal its felony HIV-specific and STI-specific criminal laws.
- Expanded prohibited behavior from sexual contact to any behavior that could transmit an infectious disease.
- Enforcement now falls under the general criminal endangerment law, which can be used to prosecute incidents of exposing another to an infectious or communicable disease.
- In prosecutions under the endangerment law, the disclosure of personal health information is now prohibited.



2021: NEVADA

- Replaced HIV-specific felony with a misdemeanor offense in the public health code requiring intent to transmit, conduct likely to transmit, and actual transmission of a communicable disease.
- Provided a defense to prosecution if a person takes steps to prevent transmission or if the person exposed knows the defendant has a communicable disease, knows conduct could result in transmission, and consents to the conduct.
- Repealed the category B felony for prostitution after a positive HIV test.
- Repealed provisions that require HIV testing for individuals arrested or entering a correctional facility.
- Bars prosecution of people diagnosed with communicable diseases who donate blood, semen, organs, and other tissue even if transmission to another occurs.
- Bars prosecution of people with communicable diseases who become pregnant and disease exposure or transmission to the fetus occurs.
- States that prosecutions of exposure or transmission incidents cannot be brought under criminal law, and that an individual's HIV status cannot be used to satisfy an element of a different offense.



2021: INDIANA

- Allows blood donations for the purposes of research, donations by a person who is an autologous blood donor for a stem cell transplantation, and donations by a person who discloses that donation needs to be destroyed.
- Limits prosecution to behavior posing a significant risk of transmission of HIV or Hepatitis B.
- Use of condoms and viral suppression now are affirmative defenses.

2022

2021

2022: GEORGIA

- An intent requirement is now included for PLHIV and those engaged in sex work.
- PLHIV will no longer be prosecuted for sharing needles or syringes, asking another to perform or submit to an act of sodomy, or donating blood, blood products, bodily fluids or organs without first disclosing their status.
- No felony punishment for PLHIV or PLHep who place their blood, semen, vaginal secretions, saliva, urine, or feces on an officer/correctional officer.
- Felony-level punishments are retained. However, a person convicted of any of the laws above now faces up to 5 years' imprisonment instead of 10 years' imprisonment.



2021: ILLINOIS

- Second state to entirely repeal its HIV criminal laws, removing any specific mention of HIV from the Illinois Criminal Code.
- Transmission of HIV can be used as an aggravating factor in certain offenses, such as sexual assault.
- Prosecution under general criminal law still possible.



2021: VIRGINIA

- Infected sexual battery law targets only sexual behavior that poses a substantial risk of transmission of an STI.
- Retains felony penalty for infected sexual battery, however both intent to transmit and actual transmission of disease are required for conviction.
- Removes misdemeanor penalty for nondisclosure of HIV, hepatitis B, or syphilis before engaging in sexual intercourse, cunnilingus, fellatio, or anal sex with another person.
- Replaced mandatory HIV and hepatitis C testing of convicted sex workers and injection drug users with optional STI testing and the test results cannot be used for any criminal prosecution.
- Eliminated the felony prohibition on donating organs, blood, tissue, and bodily fluids. PLHIV can donate organs if the recipient consents and the organ transplant complies with the federal HIV Organ Policy Equity Act.



2021: MISSOURI

- Removed most references to HIV and replaced them with "a serious infectious or communicable disease."
- Limits prosecution to activities that create a "substantial risk of transmission."
- Condom use is a defense.
- Allows all parties to keep private their identity and health status in prosecutions.
- Reduced minimum sentences and creates different levels of offenses while keeping felony punishments even without the intent to transmit a disease:
 - knowing exposure is a Class D felony, punishable by up to 7 years in prison; if transmission occurs, offense is a Class C felony punishable by up to 10 years in prison; acting "in a reckless manner by exposing" someone to a disease is a Class A misdemeanor punishable for up to one year.
- Left in place harsh penalty enhancement for sex workers living with HIV.
- Kept felony punishments for needle sharing as well as organ, blood, and tissue donation by PLHIV unless deemed medically appropriate.
- Broadened criminalized diseases from HIV, Hepatitis B, or Hepatitis C to a broader list of diseases involving exposures to corrections or mental health employees.



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2020: WASHINGTON

- Reform reduces penalty for HIV exposure from a felony to a misdemeanor.
- Specific intent to transmit and transmission must occur for prosecution. Previously, exposure carried a felony conviction (punishable by up to life in prison) and required neither intent to transmit nor transmission.
- Affords affirmative defenses against prosecution, including disclosure of status and the use of a condom or other “practical means to prevent transmission.”
- Removes the requirement for sex offender registration.
- Misrepresenting HIV status to a sexual partner, intent to transmit, and transmission carry a higher penalty of gross misdemeanor.
- Retains felony penalty for PLHIV convicted of transmitting HIV to a child or vulnerable adult, and registration as a sex offender; amends law allowing health authorities to intervene when a person with sexually transmitted disease threatens public health.



2018: NORTH CAROLINA

- No HIV-specific criminal statute. PLHIV required to comply with public health administrative regulations and “control measures.” Violating these regulations is a misdemeanor (up to 2 years).
- PLHIV must disclose their status and use condoms unless certain exceptions apply: they have been virally suppressed for at least six months, their partner is taking pre-exposure prophylaxis (PrEP), or their partner is also HIV positive.
- Neither intent to transmit nor transmission is required for public health violations.



2017: CALIFORNIA

- Extensive reform reduced penalties for intentional exposure, solicitation, and performing sex work from felonies to misdemeanors.
- It is no longer a felony to donate blood, tissue, semen, or breast milk.
- Prosecution requires specific intent to transmit coupled with conduct likely to transmit and transmission results.
- Provides privacy protections for PLHIV charged under current law.
- Now applies to “infectious or communicable diseases” with “significant public health consequences.”
- Prohibits disclosure of defendant’s identity prior to a conviction.
- Limits use of medical records; records can’t be only source of proof of intent.
- Anyone convicted must be assessed for community placement prior to sentencing.



1994: TEXAS

- The first state to repeal its HIV-specific law; legislative history indicates one representative included it in an omnibus crime bill.
- Repeal did not end prosecutions. PLHIV in Texas prosecuted for HIV exposure since repeal have been charged with attempted murder, aggravated assault.



2020 2018

2017

2016

2014

1994

2018: LOUISIANA

- The intentional exposure statute was amended to include three affirmative defenses to prosecution:
 - if defendant can prove that the exposed person was aware of the defendant’s HIV status, knew that HIV transmission could occur, and consented with that knowledge.
 - if the exposure occurred after a physician told the defendant they are non-infectious. and the defendant disclosed their HIV status to the complainant.
 - if a defendant disclosed their status and took means to prevent transmission or is themselves a healthcare provider who was following infection control procedures.” It is worth noting that since the disclosure of health status is required in order to use any of these affirmative defenses, that disclosure is often exceedingly difficult to prove in court. Most evidence is based on conflicting testimony, with one person’s word against another’s.



2018: MICHIGAN

- Reform removed types of physical contact not likely to transmit HIV.
- Anal or vaginal sex without first disclosing status with a “specific intent” to transmit is a felony (up to 4 years). Transmission is not required for prosecution.
- Reckless exposure: sexual activity prior to disclosure resulting in transmission but without intent to transmit is a felony (up to 4 years).
- Reckless exposure without transmission is a misdemeanor.
- PLHIV who can show that they have been virally suppressed for at least six months and are following their physician’s treatment plan may use that as a defense to prove that they did not act with reckless disregard. Does not apply to acting with intent to transmit provisions of the new law.



2016: COLORADO

- Reduced the maximum authorized sentence enhancement to double the sentence for PLHIV who are charged with an underlying sex offense if transmission occurs.
- Intent to transmit is not required for prosecution.
- Eliminated felony offenses involving sex work and HIV, and mandatory HIV testing for someone accused of engaging in sex work.



2014: IOWA

- Removed sex offender registration requirement, including retroactively.
- Did not affect felony convictions of those already convicted and incarcerated.
- Added defense to prosecution if a person took practical measures to prevent transmission (e.g., prophylactic device, viral suppression).
- Still HIV-specific, but added new felonies for people living with TB, hepatitis, and meningococcal disease.
- Exposure with intent to transmit when transmission occurs is still a felony (up to 25 years). Intentional exposure without transmission is a felony (up to 5 years).
- Exposure with “reckless disregard” if transmission occurs is a felony when transmission occurs (up to 5 years), and a misdemeanor (up to one year) if it does not.