



Illinois

Illinois Changed its HIV Criminal Law in 2012

In 2012, Governor Quinn signed Senate Bill 3673, which revised sections of the AIDS Confidentiality Act and Illinois Criminal Code concerning criminal transmission of HIV.

BEFORE 2012

It was a Class 2 felony, punishable by 3 to 7 years in prison and/or \$25,000, for a person living with HIV (PLHIV) to expose another person to bodily fluids in a way that could transmit HIV.

PLHIV faced prosecution for actions that posed little or no transmission risk, including oral sex, spitting, or biting.

Attempting to prevent transmission, e.g., using a condom, was not a defense.

It was a defense if the other person knew their partner was living with HIV, knew the activity in question could transmit HIV, and consented to the activity.

The sharing of “non-sterile” syringes and the donation of blood, tissue, semen, organs, or other “potentially infectious” bodily fluids were Class 2 felonies, punishable by 3 to 7 years’ imprisonment and/or \$25,000.

Transmission of HIV could be an aggravating factor in prosecutions for sexual assault.

WHAT CHANGED?

The new law applies only to anal or vaginal intercourse.

Condomless sex without disclosure of HIV status and a “specific intent to commit the offense” are now required for prosecution.

Prosecutors can subpoena medical records to prove knowledge of status after a judge reviews those records.

WHO IS STILL AT RISK?

Someone may receive a felony conviction along with up to seven years’ imprisonment in cases where no transmission occurred.

Prosecutors must prove there was sex without a condom. However, **the new law doesn’t provide defenses for other ways of reducing or preventing transmission.**

There is a defense if the other person knew their partner was living with HIV, knew they engaged in an activity that risked transmission, and consented to the activity, but it can be difficult for a PLHIV to prove all of these elements of the defense in court, even where there was disclosure.

While the new law makes “specific intent” a requirement for prosecutors to pursue charges, courts continue to infer intent from having sex while living with HIV.

Despite a rigorous screening process, organ, blood, and tissue donation is criminalized. The law also criminalizes life-saving donations for PLHIV permitted by the HIV Organ Policy Equity (HOPE) Act.

Transmission of HIV can serve as an aggravating factor in prosecutions for sexual assault, meaning PLHIV can receive an increased sentence solely based on their HIV status.

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