

## PART III

### HIV Modernization Laws

#### A. Texas

In 1994, Texas became the first state to repeal its HIV criminalization laws. Before that Texas had an HIV transmission statute that made it a third-degree felony for People living with HIV (PLHIV) to intentionally, and without consent, transfer bodily fluids to another. *See* TEX. PENAL. CODE. ANN. § 22.012 (1987). Even though Texas repealed its HIV criminal law, the state did not stop prosecuting PLHIV. Prosecutions have arisen under general criminal laws, including attempted murder and aggravated assault<sup>23</sup>. Texas courts have found that the seminal fluid of a PLHIV may constitute a deadly weapon for the purposes of conviction under the aggravated assault statute<sup>24</sup>. Under Texas's law, it is a second-degree felony to cause serious bodily injury to another or to use or exhibit a deadly weapon in the commission of an assault. *See* TEX. PENAL CODE ANN. § 22.02(a).

#### B. California

The 2017 Modernization of California's HIV Criminal Exposure Laws repealed some criminal liability of a person living with HIV. Under the law People living with HIV and other communicable conditions may be prosecuted for specific intent to transmit disease, punishable by imprisonment in a county jail for not more than six months. *See* Cal Health & Saf Code § 120290(a)(g). If a person takes practical means to prevent transmission, he or she will have a defense. *Id* "Practical means to prevent transmission" means a method, device, behavior, or activity demonstrated scientifically to measurably limit or reduce the risk of transmission of an infectious or communicable disease, including, but not limited to, the use of a condom, barrier protection or prophylactic device, or good faith compliance with a medical treatment regimen for the infectious or communicable disease prescribed by a health officer or physician. Becoming pregnant while infected with an infectious or communicable disease, continuing a pregnancy while infected with an infectious or communicable disease, or declining treatment for an infectious or communicable disease during pregnancy does not constitute a crime. *Id*

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<sup>23</sup> HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice: [https://www.hivlawandpolicy.org/sites/default/files/Texas%20-%20Excerpt%20from%20CHLP's%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S.\\_0.pdf](https://www.hivlawandpolicy.org/sites/default/files/Texas%20-%20Excerpt%20from%20CHLP's%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S._0.pdf)

<sup>24</sup> *eg. Mathonican v. State*, 194 S.W.3d 59, 67-71 (Tex. App. 2006)

### C. Illinois

In 2021, Governor J.B. Pritzker signed Senate Bill 655 into law, making Illinois another state in the U.S. that repealed its HIV criminal laws<sup>25</sup>. The legislation eliminates threat of arrest, prosecution and incarceration for people living with HIV in Illinois. However, a person living with HIV or other STI may be subject to isolation and quarantine. To prevent the probable spread of a sexually transmitted disease, the Department of Health may order someone with an STI to be isolated or quarantined until such time as the condition can be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists. 410 ILL. COMP. STAT. ANN. 325/7(a).

### D. Nevada

In 2021, the Nevada Senate Bill (SB) 275 was signed into law, recognizing HIV as a public health issue, rather than a criminal one. SB 275 also encourages increased HIV testing, treatment and the use of other preventative options that will help to reduce the spread of HIV. The updated Nevada law prohibits an individual infected with a communicable disease in an infectious state from conduct himself or herself in any manner that has a high probability of transmitting the disease to another person; or Engage in any occupation in which there is a high probability that the disease will be transmitted to other persons. *See* NEV. REV. STAT. § 441A.180 (1). It is an affirmative defense to an offense if the defendant used or attempted to use means to prevent the transmission of the communicable disease. *See* NEV. REV. STAT. § 441A.180 (6).

### E. Michigan

In 2019, Michigan reformed its HIV-related criminal and public health law. There are now separate level of offenses based on the PLHIV's state of mind and whether HIV transmission occurred. *See* MICH. COMP. LAWS ANN. § 333.5210. A person who knows that he or she HIV who engages in anal or vaginal intercourse with another person without having first informed the other person that he or she has HIV with the specific intent that the uninfected person contract HIV is guilty of a felony. *Id* A person who knows that he or she has HIV who, without having first informed the other person that he or she has HIV, engages in vaginal or anal intercourse, and transmits HIV to an uninfected person causing that person to become HIV positive, acts with reckless disregard and is guilty of a felon. *Id* A person who knows that he or she has HIV who, without having first informed the other person that he or she has HIV, engages in vaginal or anal intercourse, and who acts with reckless disregard but does not transmit HIV, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both. *Id* A person who knows that he or she has HIV who is adherent with the treatment plan of an attending physician and has been medically suppressed per accepted medical standards is not acting with reckless disregard. *Id*.

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<sup>25</sup> Illinois Becomes Second State to Repeal HIV Criminalization Laws, CENTER FOR HIV LAW AND POLICY, July 28, 2021, available at <https://www.hivlawandpolicy.org/news/illinois-becomes-second-state-repeal-hiv-criminalization-laws>.

## **F. Florida**

Florida has no HIV modernization law, it has HIV-specific criminal statutes. Florida is one of the states that have criminal laws that apply only to people living with HIV. In Florida, having consensual sex, donating blood or organs, or engaging in sex work without disclosing one's status is a third-degree felony, subject to up to five years in prison and up to a \$5,000 fine<sup>26</sup>. House Bill 427/Senate Bill 626 would have reduced the charges for engaging in consensual sex without HIV status disclosure to a first-degree misdemeanor, currently the penalty for exposure to other sexually transmitted diseases. Under the bill, which was first introduced in 2016, a person would be charged with a first-degree misdemeanor only if the prosecutor could prove they intended to transmit the virus. However, the bill died in the House in 2020.<sup>27</sup>

## **HIV/ AIDS Testing**

### **A. Nevada**

The Sexual Assault Survivors' Bill of Rights requires information concerning testing for sexually transmitted diseases to be included in the information provided to victims of sexual assault *See* NRS 178A.280. Survivors are not required to pay for forensic medical examinations. *See* NRS 178A.190.

### **B. California**

Upon the victim's request, the local health officer shall be responsible for disclosing HIV test results to the victim who requested the test and the person who was tested. However, positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances as follows<sup>28</sup>:

(A) To help the victim understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the perpetrator, (B) To ensure that the victim understands both the benefits and limitations of the current tests for HIV, (C) To obtain referrals to appropriate health care and support services.

### **C. New York<sup>29</sup>**

A sexual assault survivor has the right to ask that HIV testing be done on a defendant. Under the Defendant HIV Testing law, sexual assault survivors can: Find out if they may have been exposed to HIV during the sexual assault by asking the court to make the defendant be tested for HIV<sup>30</sup>.

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<sup>26</sup> FLORIDA'S HIV CRIMINALIZATION LAWS TARGET SEX WORKERS. A REFORM BILL OFFERS LITTLE RELIEF. <https://theappeal.org/florida-hiv-criminalization/>

<sup>27</sup> *Id.*

<sup>28</sup> Cal. Pen Code §§ 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 287, 288, 288.5, 289, 289.5, 626, 1202.1, 1524.1; Cal. Health & Safety Code §§ 121055, 121060.1, 121065

<sup>29</sup> N.Y. Penal Law § 130.00; N.Y. Crim. Proc. Law § 210.16 and 390.15; N.Y. Pub. Health Law art. 27-F, §§ 2781 and 2785-A; NY Family Court Act § 347.1

<sup>30</sup> N.Y. Penal Law § 130.00; N.Y. Crim. Proc. Law § 210.16 and 390.15; N.Y. Pub. Health Law art. 27-F, §§ 2781 and 2785-A; NY Family Court Act § 347.1

#### **D. Illinois<sup>31</sup>**

Illinois does have mandatory HIV testing laws that apply to convicted sex offenders. For convicted adult offenders, the court must notify the offender of the results and, if requested by the victim, must also notify the victim and if the victim is under the age of 15, and the results are requested by the victim's parent or legal guardian, the court will notify the victim's parents or legal guardian, if applicable. The judge has discretion to determine who else receives the results.

#### **E. Pennsylvania**

Upon request of the victim and with notice to the defendant, the attorney for the Commonwealth will make an application to the court for HIV-related testing, which application will be granted upon a finding of probable cause to believe there is a probable transmission of bodily fluids between a defendant and victim<sup>32</sup>.

#### **F. Oregon**

Upon request by the victim or the parent or guardian of a minor or incapacitated victim, the district attorney may petition for a court order requiring a test for HIV if the person charged does not give consent or fails to submit to a test<sup>33</sup>. The court will order testing if it determines there is probable cause to believe that: the person charged committed the crime; and the victim has received a substantial exposure, as defined by rule of the Oregon Health Authority.

#### **G. Florida**

Upon the request of the victim, or of the victim's legal guardian if the victim is a disabled adult or elderly person, or of the parent or legal guardian of the victim if the victim is a minor, the court shall order testing of persons charged with or alleged by petition for delinquency to have committed an enumerated offense which involves the transmission of body fluids from one person to another. Where the victim is under the age of 18 at the time the offense was committed, or is a disabled adult or elderly person, regardless of whether the offense involves the transmission of body fluids, the court shall order testing upon the request of the victim, or of the victim's legal guardian if the victim is a disabled adult or elderly person, or of the parent or legal guardian of the victim if the victim is a minor.

#### **H. Texas<sup>34</sup>**

Upon request of the victim, the court will order the defendant to undergo testing within 48 hours after indictment or defendant's waiver of indictment. If the victim requests the testing of the defendant and a law enforcement agency is unable to locate the defendant during the 48-hour

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<sup>31</sup> 705 Ill. Comp. Stat. 405/5-710(9); 720 Ill. Comp. Stat. 5/11-1.10 through 5/11-1.60; 730 Ill. Comp. Stat. 5/5-5-3.

<sup>32</sup> 35 Pa. Stat. §§ 7605, 7620.301-304

<sup>33</sup> Or. Rev. Stat. Ann. §§ 135.139 and 419C.475

<sup>34</sup> Tex. Penal Code Ann. §§ 21.01, 21.02, 21.11, 22.011, 22.021; and Tex. Code Crim. Proc. Ann. art. 21.31, 56A.001, 56A.052, 56A.251, 56A.401, 56A.402

period allowed for testing, the running of the 48 hour period is tolled until such defendant is located.

### **I. Vermont<sup>35</sup>**

HIV/AIDS testing of sexual offenders is available upon the victim's request following conviction or adjudication, in which case the State's Attorney shall petition the court on behalf of the victim for an order for AIDS testing.

### **J. Wisconsin**

Testing is available upon the victim's request, if the victim is an adult (or parent's or guardian's request if the victim is a child) following a court order (and finding of probable cause)<sup>36</sup>.

## **Expungement**

### **A. California**

"Notwithstanding any other provision of law, civil liability or criminal sanction shall not be imposed for disclosure of test results to a local health officer if the disclosure is necessary to locate and notify a blood or blood components donor of a reactive result if reasonable efforts by the blood bank or plasma center to locate the donor have failed. Upon completion of the local health officer's efforts to locate and notify a blood or blood components donor of a reactive result, all records obtained from the blood bank or plasma center pursuant to this subdivision, or maintained pursuant to this subdivision, including, but not limited to, any individual identifying information or test results, shall be expunged by the local health officer." *See* Cal Health & Saf Code § 121015 (d).

### **B. Illinois**

It should be noted that the repeal of the HIV statute does not expunge the records of individuals previously found guilty of the offense. However, there were individuals who successfully expunged their record<sup>37</sup>.

### **C. Pennsylvania**

There are no laws that address expunging HIV convictions. However, there are individuals expunge the charges from their record with the help of counsel<sup>38</sup>.

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<sup>35</sup> Vt. Stat. Ann. tit. 13, §§ 3251, 3256

<sup>36</sup> HIV/AIDS Testing of Offenders Wisconsin <https://apps.rainn.org/policy/policy-state-laws-export.cfm?state=Wisconsin&group=2>

<sup>37</sup> The history and harm behind Illinois's criminal HIV transmission law. <https://www.injusticewatch.org/longreads/2021/illinois-hiv-criminalization-law-the-circuit/>

<sup>38</sup> People living with HIV ask for 'dehumanizing' state laws to be taken off the books <https://www.witf.org/2021/10/07/people-living-with-hiv-ask-for-dehumanizing-state-laws-to-be-taken-off-the-books/>

#### **D. Colorado**

When the executive director or the local director, within his or her respective jurisdiction, knows or has reason to believe, because of evidence-based, medical, or epidemiological information, that a person has a sexually transmitted infection and poses a credible risk to the public health, he or she may issue an order to require the person to be examined and tested to determine whether he or she has acquired a sexually transmitted infection. If the executive director or local director does not petition the district court for an order of compliance within thirty days after the person who is the subject of the order refuses to comply, the person may petition the district court for dismissal of the order. If the district court dismisses the order, the fact that the order was issued must be expunged from the records of the state department or the local public health agency. *See* SB 146 25-4-412 (4)(b).

#### **E. Washington**

The state or local health officer shall document measures taken to protect the public health, if the measures fail to protect the public health, the state or local health officer may issue a health order requiring the person to: submit to a medical examination or testing, receive medical treatment, immediately cease and desist from specified behavior that endangers the public health<sup>39</sup>. If the superior court dismisses the health order, the fact that the order was issued shall be expunged from the records of the department or local department of health.

### **Sex Education**

#### **A. New York**

Commissioner's regulation § 135.3 requires that appropriate instruction concerning AIDS be taught in all public schools.

#### **B. Oregon**

According to OAR 581-022-1440, Each Oregon school district shall provide an age-appropriate, comprehensive plan of instruction on human sexuality, HIV/AIDS and sexually transmitted disease (STD) prevention in elementary and secondary schools.

#### **C. Colorado**

According to SB 146, 25-4-408. "Infection control – duties", it is the duty of the executive director, health officers, and local directors to provide public information; risk-reduction education; voluntary testing; counseling; age-appropriate, medically accurate, and culturally responsive educational materials for school use; and professional education for public safety workers and health care providers.

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<sup>39</sup> Washington Engrossed Substitute House Bill 1551, Sec.3

## **D. Washington**

The HIV modernization law recognizes that schools and communities vary throughout the state and that locally elected school directors should have a significant role in establishing a program of sexually transmitted disease education in their districts<sup>40</sup>.

## **E. Michigan**

PLHIV may be required to participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person's status as a carrier, if the health department determines they are a health threat to others *See* MICH. COMP. LAWS ANN. § 333.5203(1).

## **Law Enforcement/ First Responders**

### **A. California**

Unless the witness requests otherwise, a court in which a defendant is guilty of intentional transmission of an infectious or communicable disease shall, at the first opportunity, issue an order that prohibits counsel, their agents, law enforcement personnel, and court staff from making a public disclosure of the name or any other identifying characteristic of the complaining witness. Unless the defendant requests otherwise, a court in which a defendant is guilty, at the earliest opportunity, shall issue an order that counsel and their agents, law enforcement personnel, and court staff, before a finding of guilt, not publicly disclose the name or other identifying characteristics of the defendant, except by counsel as part of discovery or to a limited number of relevant individuals in its investigation of the specific charges under this section. In any public disclosure, a pseudonym shall be substituted for the true name of the defendant. *See* Cal Health & Saf Code § 120290(h).

### **B. New York**

NYS Public Health Law Article 21 requires the reporting of persons with HIV as well as AIDS to notify the NYSDOH. The Medical Provider Report Form (PRF) (DOH-4189) must be completed within 14 days of diagnosis for persons with the following diagnoses or with known sex or needle-sharing partners. Laboratories and blood and tissue banks conducting HIV-related testing for NYS residents and/or for NYS providers (regardless of patient residence) are required to electronically report to NYSDOH results of any laboratory test, tests or series of tests approved for the diagnosis of HIV or for the periodic monitoring of HIV. Medical providers must complete the NYS PRF (DOH-4189) for all reportable cases. Moreover, NYS Public Health Law requires that medical providers talk with HIV-infected individuals about their options for informing their sexual and needle-sharing partners that they may have been exposed to HIV.

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<sup>40</sup> Washington Engrossed Substitute House Bill 1551, Sec 10

### **C. New Jersey**

S 3707 provides that in a prosecution against a person who knowingly or recklessly engages in conduct which creates a substantial risk of transmitting an infectious or communicable disease to another person, all court decisions, orders, petitions, motions, and other documents filed by the parties and the prosecutor shall be redacted to protect the name and other personal identifying information of the other person from public disclosure, unless the other person requests otherwise.

### **D. Illinois**

No person may disclose or be compelled to disclose HIV-related information, except to the following persons: Any law enforcement officer, involved in the line of duty in a direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his medical judgment. See 410 ILCS 305/9. Any health care provider, health care professional, or employee of a health facility, and any firefighter or EMR, EMT, A-EMT, paramedic, PHRN, or EMT-I, involved in an accidental direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his medical judgment. For convicted offenders, the test is mandatory. For those accused or charged, the prosecutor is required to seek an order from the court to compel testing of the accused within 48 hours after (i) a finding at a preliminary hearing that there is probable cause to believe the accused committed the prohibited act, (ii) the accused's indictment, (iii) a finding that the accused is unfit to stand trial, or (iv) the victim's request.

### **E. Colorado**

Pursuant to SB 146, 25-4-408 (6)(a), when a public safety worker, emergency or other health care provider, first responder, victim of crime, or a staff member of a correctional facility, the state department, or a local public health agency has been exposed to blood or other bodily fluids for which there is an evidence-based reason to believe it may result in exposure to a sexually transmitted infection, the state department or local public health agency, within their respective jurisdictions, shall assist in the evaluation and treatment of any involved persons by: (i) accessing information on the incident and any persons involved to determine whether a potential exposure to infection occurred; (ii) when the potential for exposure has been determined by the state department or a local public health agency, examining and testing any involved persons to determine infection; (iii) communicating relevant information and laboratory test results on involved persons directly to the involved person.

### **F. Washington**

The state or local health officer shall document measures taken to protect the public health, if the measures fail to protect the public health, the state or local health officer may issue a health order requiring the person to: submit to a medical examination or testing, receive medical treatment, immediately cease and desist from specified behavior that endangers the public health<sup>41</sup>.

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<sup>41</sup> Washington Engrossed Substitute House Bill 1551, Sec.3



## **G. Michigan**

A police officer, a fire fighter, a local correctional officer or other county employee, a court employee, or an individual making a lawful arrest may proceed under this section if he or she has received training in the transmission of bloodborne diseases under the rules governing exposure to bloodborne diseases in the workplace promulgated by the occupational health standards commission or incorporated by reference under the Michigan occupational safety and health act<sup>42</sup>.

### **Age of Consent<sup>43</sup>**

All 50 states and the District of Columbia explicitly allow minors to consent to STI services. However, Alabama, California, Delaware, Illinois, and Vermont require minor to be at least 12 years old to being allowed to consent. On the other hand, Hawaii, Idaho, New Hampshire, North Dakota, and Washington, and Vermont require minor to be at least 14 years old to being allowed to consent.

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<sup>42</sup> 1974 PA 154, MCL 408.1001 to 408.1094

<sup>43</sup> State Laws that Enable a Minor to Provide Informed Consent to Receive HIV and STD Services  
<https://www.cdc.gov/hiv/policies/law/states/minors.html>

