



The DOJ Findings in Tennessee: Frequently Asked Questions

In response to a complaint filed by CHLP, the U.S. Department of Justice found that the enforcement of Tennessee’s aggravated prostitution statute against people living with HIV violates the Americans with Disabilities Act. Made on World AIDS Day, this announcement is an exciting, game-changing development in the state-based advocacy work to decriminalize HIV.

What did CHLP say in the complaint?

In 2022, [CHLP filed a complaint](#) with the U.S. Department of Justice (DOJ) alleging that Tennessee’s laws criminalizing people living with HIV (PLHIV) violate the Americans with Disabilities Act (ADA).

The laws we challenged either penalize PLHIV for engaging in sexual conduct without disclosing their serostatus (“disclosure”) or enhance the penalties faced by PLHIV who engage or try to engage in sex work under the aggravated prostitution statute. CHLP filed a similar complaint in Ohio, on which the DOJ has yet to issue findings.

What did the DOJ find?

On December 1, 2023, the DOJ [notified Tennessee state officials](#) that it found the state’s aggravated prostitution statute in violation of the ADA.

(The DOJ did not make any findings on our “disclosure” allegations.)

The findings held that Tennessee treats sex workers living with HIV differently than sex workers who do not have HIV in two ways:

- When charged, if sex workers were living with HIV, they were charged with a felony rather than a misdemeanor;
- When convicted, if sex workers were living with HIV, they were considered violent sex offenders and required to register as sex offenders for life.

The DOJ issued recommendations to the Tennessee government including: stopping prosecutions under the law; removing people from the sex offender registry; and paying compensation to those previously prosecuted.

What happens next?

Tennessee has until December 15, 2023, to respond to the DOJ. If they do, the two sides might agree to enter into a consent decree, where Tennessee agrees to take steps to fix the violations. If Tennessee doesn’t respond or both sides do not reach an agreement, the DOJ may then sue Tennessee for violating the ADA.

Why does the ADA matter here?

Title II of the ADA prohibits government entities from discriminating against people living with disabilities either explicitly, through limiting or denying their access to programs, or through failure to prevent or ameliorate unintentional discrimination.

Under the ADA, HIV is considered a disability due to the impact it has on a PLHIV’s ability to participate in daily activities and the discrimination they face due to their serostatus. The DOJ is the agency responsible for enforcing the ADA as it applies to state and local government agencies.

What is the impact?

The findings by the DOJ are just that: findings—they are not a court decision, nor are they case law. The findings do not automatically invalidate any Tennessee laws.

A best-case scenario would be for Tennessee to adopt the recommendations made by the DOJ. If they opt not to, it is possible the DOJ will then enter into litigation, which would be costly for the state, and prolong any resolution for Tennesseans prosecuted under this statute.

In the other [30 states](#) with HIV criminalization laws, these findings give advocates leverage in the ongoing work to modernize their laws. While the DOJ findings only addressed the aggravated prostitution statute, laws criminalizing “transmission” or “exposure” in other states may be subject to challenges and could be found to be discriminatory by the DOJ. The findings, in essence, put those states on notice that they may be subject to costly litigation if they do not reform their laws.

For more information, visit hivlawandpolicy.org.

CHLP is an abolitionist legal and policy organization that envisions and works for a world where HIV and other stigmatized health conditions are no longer criminalized but met with compassion and the resources to thrive.

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