

RESEARCH THAT MATTERS

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# HIV CRIMINALIZATION IN INDIANA

Evaluation of  
Transmission Risk

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# CONTENTS

OVERVIEW .....	2
BACKGROUND.....	5
APPLICATION OF HIV SCIENCE TO INDIANA’S HIV CRIMINALIZATION LAWS.....	10
TRANSFERRING CONTAMINATED BODY FLUIDS AND SEMEN DONATION LAWS.....	10
HIV DUTY, AND FAILURE, TO INFORM LAWS .....	13
BATTERY AND MALICIOUS MISCHIEF BY BODILY FLUID/WASTE LAWS: HIV PENALTY ENHANCEMENT .....	16
CONCLUSION .....	19
AUTHORS .....	21
ACKNOWLEDGMENTS.....	21
SUGGESTED CITATION .....	21
APPENDIX.....	22
INDIANA HIV CRIMINALIZATION CODES AS OF 2024 .....	22

## OVERVIEW

The authors analyzed how current scientific knowledge on HIV transmission applies to laws in Indiana that criminalize certain behaviors of people living with HIV (PLWH). Indiana has six such laws criminalizing PLWH, spanning both the public health and criminal code, hereafter referred to as HIV criminal laws. These Indiana codes (IC) are as follows. Shortened versions of the laws in parentheses are used throughout the report.

- IC § 35-45-21-1 *Transferring contaminated body fluids* (Contaminated Body Fluids)
- HIV-Infected Semen: IC § 16-41-14-17 *Donation, sale, or transfer of HIV-infected semen; penalties* (HIV-Infected Semen)
- IC § 16-41-7-1 *Individual with a communicable disease's duty to inform persons at risk* (Duty to Inform)
- IC § 35-45-21-3 *Failure of individuals with communicable diseases to inform persons at risk* (Failure to Inform)
- IC § 35-42-2-1(c2)(f)(h) *Battery by bodily fluid or waste with HIV penalty enhancement* (Battery by Bodily Fluid/Waste)
- IC § 35-45-16-2 (c-f) *Malicious mischief by body fluid or waste with HIV penalty enhancement* (Malicious Mischief)

This report—one in a series examining HIV criminalization in Indiana—evaluates whether Indiana's HIV criminal laws reflect accurate and up-to-date understandings of HIV science and whether these laws criminalize conduct that has negligible or no risk of transmitting HIV.

## KEY FINDINGS

- Indiana's HIV criminal laws were passed when HIV was often a terminal condition, and there were few treatment options available.
  - Four laws were enacted between 1988 and 1995 before effective HIV treatment options were available.
  - The other two laws were enacted in 1998 and 2002 before it was established that those taking effective HIV treatments could not sexually transmit HIV.
- All of Indiana's HIV criminal laws make HIV exposure a crime in certain situations; three include penalty enhancements for actual HIV transmission. None of the laws require an intent to transmit HIV to sustain a conviction.
- The Contaminated Body Fluids and HIV-Infected Semen laws criminalize conduct that does not transmit HIV. The donor supply is safe because every donation is tested for HIV, and units that come back positive are destroyed.
  - Indiana public health code creates an exception to disposal if the semen is "used according to safer conception practices endorsed by the federal Centers for Disease Control and Prevention or other generally accepted medical experts."<sup>1</sup> However, the code

<sup>1</sup> See § IC 16-41-14-8 which was amended to include this language by HE 1182-2020 (P.L.112-2020, SEC.51.) <https://iga.in.gov/pdf->

sections that continue to criminalize semen donation remain unchanged to reflect this science update, leading to an inconsistency in Indiana law.

- The Duty and Failure to Inform laws reflect some advances in HIV science by restricting criminal conduct to only certain forms of sexual contact and needle sharing—acts that, according to the Centers for Disease Control and Prevention (CDC), can pose a significant transmission risk.
  - However, the language remains open to interpretation because the exact meaning of “significant risk” has not yet been codified. The law does not require transmission for a conviction, nor does it specify the variety of HIV prevention measures that exist to effectively prevent transmission.
  - Therefore, it is difficult to conclusively identify the circumstances under which PLWH are legally obligated to disclose their status and whether behaviors that pose no risk might be criminalized in practice.
- There is effectively zero risk of HIV transmission for the conduct criminalized in the Battery by Bodily Fluid/Waste and Malicious Mischief laws. HIV is neither transmitted by simply being exposed to someone’s body fluids or waste outside the body nor by ingesting fluids or waste from someone living with HIV (for example, by spitting).
  - Because there’s no realistic risk of HIV transmission from the conduct criminalized, PLWH who are charged under the HIV enhancement sections of these laws are subjected to differential punishment solely because of their health condition.
- These laws have remained mostly unchanged since enactment and do not account for the remarkably effective medical advances in HIV treatment and prevention science over the past three decades, including
  - Highly effective HIV medications that normalize life expectancy and allow most PLWH to achieve an undetectable viral load within six months, which eliminates HIV transmission through sex.<sup>2</sup> This is commonly referred to as undetectable=untransmittable (or “U=U”).
  - Highly effective HIV prevention tools beyond condom use, including Pre-Exposure Prophylaxis (PrEP) medications that can be taken by a person who does not have HIV to prevent HIV transmission through sex.<sup>3</sup>
  - Definitive science confirms that HIV is not transmitted through any kind of contact with saliva, urine, or feces and that other fluids (e.g., blood and semen) cannot transmit HIV when exposure happens outside the body (as with someone placing, spitting, or throwing a fluid at someone).<sup>4</sup>
  - Universal screening for blood donation. Every unit of blood and plasma in the United

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[documents/121/2020/house/bills/HB1182/HB1182.05.ENRS.pdf](#)

<sup>2</sup> Centers for Disease Control and Prevention (hereafter referred to as the CDC.gov). (2024, April 24). *Clinical Care of HIV*. <https://www.cdc.gov/hivnexus/hcp/clinical-care/index.html>

<sup>3</sup> CDC.gov. (2024, Jun 18). *Preventing HIV with PrEP*. <https://www.cdc.gov/hiv/prevention/prep.html>

<sup>4</sup> CDC.gov. (2024, Jan 18). *How HIV Spreads*. <https://www.cdc.gov/hiv/causes/index.html>

States is tested for HIV. If found positive for HIV, donated blood or plasma is destroyed. As a result, the domestic blood supply has been safe for decades.<sup>5</sup>

- Semen donation from people living with HIV can be done without risk of HIV transmission.<sup>6</sup>

Indiana's HIV criminal laws were enacted between 1988 and 2002, a period overlapping with the height of the HIV/AIDS crisis in the United States. Thanks to advances in the science, medicine, and public health of HIV treatment and prevention, this report found that much of the conduct criminalized in Indiana's HIV criminal laws cannot transmit HIV. Scientifically outdated laws work against public health goals regarding HIV testing, prevention, and treatment, thereby undermining efforts to end the HIV epidemic—a goal that many experts agree is supported by modernizing HIV criminal laws to reflect what is known about HIV science today.<sup>7</sup>

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<sup>5</sup> FDA.gov. (2023). Revised Recommendations for Reducing the Risk of HIV Transmission by Blood and Blood Products: Guidance for Industry. <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/recommendations-evaluating-donor-eligibility-using-individual-risk-based-questions-reduce-risk-human>; Evatt, B. L. (2007) The tragic history of AIDS in the Hemophilia population, 1982-1984. *Journal of Thrombosis & Haemostasis*, 4(11), 2295-2301. <https://www1.wfh.org/publication/files/pdf-1269.pdf>

<sup>6</sup> Practice Committee of the American Society for Reproductive Medicine. (2020). Recommendations for reducing the risk of viral transmission during fertility treatment with the use of autologous gametes: a committee opinion. *Fertil Steril*, 114(6), 1158-1164. <https://doi.org/10.1016/j.fertnstert.2020.09.133>.

<sup>7</sup> Indiana Department of Health. (2020) *Zero is Possible: Indiana's Plan to End HIV and Hepatitis C (2021-2030)*. Indianapolis, IN. <https://www.zipindiana.org/>; Mermin, J., Valentine, S. S., & McCray, E. (2021). HIV criminalization laws and ending the US HIV epidemic. *Lancet HIV*, 8(1), e4-e6. [https://doi.org/10.1016/S2352-3018\(20\)30333-7](https://doi.org/10.1016/S2352-3018(20)30333-7); The White House. (2021) *National HIV/AIDS Strategy for the United States 2022-2025*. Washington, DC. <https://files.hiv.gov/s3fs-public/NHAS-2022-2025.pdf>

## BACKGROUND

HIV criminalization is a term used to describe laws that criminalize otherwise legal conduct or that increase the penalties for illegal conduct based on a person's HIV-positive status.<sup>8</sup> During the early years of the HIV epidemic in the 1980s and 1990s, many states, including Indiana, enacted HIV-specific criminal laws based on both the reality and perception of HIV at that time—a time characterized by fear and stigma—when much less was known about HIV and there were no effective treatments available.<sup>9</sup>

After more than 40 years of HIV research and transformative biomedical advancements, HIV has become a chronic, manageable health condition. Today, we have a much greater understanding of how hard it is to transmit HIV, even without medical or non-medical precautions to prevent transmission.<sup>10</sup>

- There are now effective treatments that allow people living with HIV (PLWH) to lead full, healthy lives with little to zero risk of passing on HIV to others.<sup>11</sup> They can also become organ donors to other PLWH and can safely conceive and have babies without risking transmission to their children or partners.<sup>12</sup>
- The blood supply is safe from HIV transmission risk.<sup>13</sup>
- Medicines called pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis PEP are available to prevent HIV transmission. In fact, PrEP taken by a person who does not have HIV reduces the risk of getting HIV from sex by about 99%. Likewise, PLWH can take HIV medications to eliminate the possibility of passing on HIV through sex—this is commonly referred to as undetectable=untransmittable (or “U=U”).<sup>14</sup>
- Finally, research has shown that HIV criminalization may actually discourage testing and treatment and, as a result, have the perverse effect of making it harder to end the HIV epidemic.<sup>15</sup>

<sup>8</sup> Harsono, D., Galletly, C. L., O’Keefe, E., & Lazzarini, Z. (2017). Criminalization of HIV exposure: A review of empirical studies in the United States. *AIDS Behav*, 21(1), 27-50. <https://doi.org/10.1007/s10461-016-1540-5>

<sup>9</sup> See previous footnote.

<sup>10</sup> CDC.gov. (2019, Nov 13). *HIV Risk Behaviors*. <https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html>

<sup>11</sup> CDC.gov. (2024, Mar 26) *Living with HIV*. <https://www.cdc.gov/hiv/living-with/index.html>

<sup>12</sup> HIV.gov. (2024, Feb 15) Blog: HHS Intends to Propose Rulemaking on HIV-positive Organ Transplantation. <https://www.hiv.gov/blog/hhs-intends-to-propose-rulemaking-on-hiv-positive-organ-transplantation>; Practice Committee of the American Society for Reproductive Medicine. (2020). Recommendations for reducing the risk of viral transmission during fertility treatment with the use of autologous gametes: a committee opinion. *Fertil Steril*, 114(6), 1158-1164. <https://doi.org/10.1016/j.fertnstert.2020.09.133>

<sup>13</sup> CDC.gov. (2024, Feb 24) *Preventing HIV*. <https://www.cdc.gov/hiv/prevention/index.html>; FDA.gov. (2023). Revised Recommendations for Reducing the Risk of HIV Transmission by Blood and Blood Products: Guidance for Industry. <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/recommendations-evaluating-donor-eligibility-using-individual-risk-based-questions-reduce-risk-human>

<sup>14</sup> CDC.gov. (2024 Feb 24) *Preventing HIV*. <https://www.cdc.gov/hiv/prevention/index.html>

<sup>15</sup> Mermin, J., Valentine, S. S., & McCray, E. (2021). HIV criminalization laws and ending the US HIV epidemic. *Lancet HIV*, 8(1), e4-e6. [https://doi.org/10.1016/S2352-3018\(20\)30333-7](https://doi.org/10.1016/S2352-3018(20)30333-7).

Indiana’s HIV criminal laws were enacted between 1988 and 2002, a period overlapping with the height of the HIV/AIDS crisis in the United States. Thanks to advances in science, medicine, and public health of HIV treatment and prevention, it is now likely that many of the behaviors criminalized in Indiana’s HIV criminal laws cannot transmit HIV. Scientifically outdated laws can work against public health goals regarding HIV testing, prevention, and treatment and undermine efforts to end the HIV epidemic. Both the Centers for Disease Control and Prevention (CDC) and the White House’s Office of National AIDS Policy (ONAP) have called on states to modernize their HIV criminal laws to reflect advances in both treatment and what we know today about how HIV is—and is not—transmitted.<sup>16</sup> HIV criminal law modernization also aligns with Indiana’s plans to end the HIV epidemic in the state. The plan, called ZERO is Possible, acknowledges that “[C]riminal legislation regarding HIV has not reflected advancements in the understanding of HIV. Current laws criminalize and stigmatize PLWH, so modernizing and updating these laws would contribute to ending the HIV epidemic.”<sup>17</sup>

With this in mind, the authors of this report conducted a comprehensive review of Indiana’s laws that criminalize HIV. Indiana has six laws where a person’s HIV status is a key element of a crime—four within the criminal code and two within the public health code, hereafter together referred to as HIV criminal laws. Tables 1 and 2 summarize these laws and the penalties; the Appendix includes the text of each law. For each of Indiana’s HIV criminal laws, this report will

1. Analyze statutory language to determine exactly what kind of behavior is prohibited.
2. Apply what is known about HIV science in 2024 to the law to determine whether the behaviors criminalized by each law involve conduct that could transmit HIV.

## Previous Studies of HIV Criminalization Law Transmission Risk

This report builds on a series of studies analyzing HIV criminal laws across the United States. Since 2015, the Williams Institute has published studies documenting the enforcement of HIV-related criminal laws in over a dozen states.<sup>18</sup> These studies show that HIV criminal laws disproportionately affect people who are Black and women, are financially costly to state governments, and often penalize behaviors that cannot transmit HIV. These studies follow a few earlier attempts to document the geographic extent of HIV criminalization.<sup>19</sup>

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<sup>16</sup>Mermin, J., Valentine, S. S., & McCray, E. (2021). HIV criminalization laws and ending the US HIV epidemic. *Lancet HIV*, 8(1), e4-e6. [https://doi.org/10.1016/S2352-3018\(20\)30333-7](https://doi.org/10.1016/S2352-3018(20)30333-7); The White House. (2021) *National HIV/AIDS Strategy for the United States 2022–2025*. Washington, DC. <https://files.hiv.gov/s3fs-public/NHAS-2022-2025.pdf>

<sup>17</sup>Indiana Department of Health. (2020) *Zero is Possible: Indiana’s Plan to End HIV and Hepatitis C (2021-2030)*. Indianapolis, IN. <https://www.zipindiana.org/>

<sup>18</sup>Williams Institute’s HIV criminalization report archive: <https://williamsinstitute.law.ucla.edu/issues/hiv-criminalization/>

<sup>19</sup>See, for example, HIV Justice Network. (n.d.). *Global HIV Criminalization Database*. <https://www.hivjustice.net/global-hiv-criminalisation-database/>; The Center for HIV Law and Policy (2019, June). *Chart of U.S. Arrests and Prosecutions for HIV Exposure in the United States, 2008-2019*. <https://www.hivlawandpolicy.org/resources/arrests-and-prosecutions-hiv-exposure-united-states-2008-2019-center-hiv-law-policy-2019>; Hernandez, Sergio. (2013, Dec. 1). About the HIV Criminalization Data. *ProPublica*. <https://www.propublica.org/article/about-the-hiv-criminalization-data>.

Studies of HIV criminal enforcement show that enforcement continues to the present day, including in Indiana. Since 2001, Indiana’s HIV Contaminated Body Fluids law has been enforced at least 18 times (89% convicted), all for attempts to donate at plasma centers.<sup>20</sup> Indiana’s Battery by Bodily Fluid/Waste law has been enforced at least 41 times (41% convicted), nearly all involving spitting/saliva (92%).<sup>21</sup> Likewise, at least 60 PLHIV have been prosecuted under Indiana’s HIV Failure to Inform law.<sup>22</sup>

Three Williams Institute reports also evaluated what we know about the actual risk of HIV transmission for conduct criminalized in Georgia, Florida, and California. These reports found many instances of outdated or inaccurate language and science pertaining to PLWH and HIV transmission. The reports also found that all three states criminalized behaviors that posed no or negligible risk of HIV transmission at the time of publication.<sup>23</sup> In other words, in each state, PLWH risked criminalization for conduct that could not transmit HIV or that posed a risk of transmission so low that the risk was unquantifiable.

In this report, we provide for the first time a comprehensive evaluation of HIV transmission risk for conduct criminalized under Indiana’s six HIV criminalization laws.<sup>24</sup>

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<sup>20</sup> Cisneros, N., Foote, C., Schlebecker, P., Sears, B. (2024). *Enforcement of HIV Criminalization in Indiana: Donation Laws*. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-Donation-IN-Jul-2024.pdf>

<sup>21</sup> Cisneros, N., Foote, C., Schlebecker, P., Grasso, J. and Sears, B. (forthcoming). *Enforcement of HIV Criminalization in Indiana: Body Fluid/Waste Enhancement Laws*. The Williams Institute, UCLA School of Law, Los Angeles, California.

<sup>22</sup> Correspondence: The Williams Institute HIV Criminalization Project Director, Nathan Cisneros, Sept. 1, 2024.

<sup>23</sup> Sears, B. and Goldberg, S. (2020). *HIV Criminalization in Georgia: Evaluation of Transmission Risk*. Los Angeles, CA: The Williams Institute. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Crim-Transmission-GA-Mar-2020.pdf>; Sears, B. and Goldberg, S. (2020). *HIV Criminalization in Florida: Evaluation of Transmission Risk*. Los Angeles, CA: The Williams Institute. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Crim-Transmission-FL-Mar-2020.pdf>; Amira Hasenbush & Brian Zaroni (2016). *HIV Criminalization in California: Evaluation of Transmission Risk* Los Angeles, CA: The Williams Institute. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-Transmission-Dec-2016.pdf>

<sup>24</sup> The Williams Institute’s Indiana HIV criminalization enforcement reports, available in their report archive, also briefly discuss the transmission risk associated with arrests under Indiana’s donation and penalty enhancement laws. <https://williamsinstitute.law.ucla.edu/issues/hiv-criminalization/>

**Table 1. HIV criminalization laws in Indiana as of 2024 and year enacted**

YEAR	CODE SECTION <sup>25</sup>	WHAT IS CRIMINALIZED AND PENALTY. <sup>26</sup>
<b>TRANSFERRING CONTAMINATED BODY FLUIDS</b>		
1988	§ 35-45-21-1 Pre-2014 § 35-42-1-7	A person who recklessly, knowingly, or intentionally donates, sells, or transfers blood or semen for artificial insemination that contains HIV commits a Felony 5. If transmission occurs to another person, it is a Felony 3. Does not apply to research or autologous blood donor.
<b>DONATION, SALE, OR TRANSFER OF HIV INFECTED SEMEN; PENALTIES</b>		
1989	§ 16-41-14-17 Pre-2014 § 16-8-7.5-17	A person who, for the purpose of artificial insemination, recklessly, knowingly, or intentionally donates, sells, or transfers semen that contains antibodies for HIV commits a Felony 5. If transmission occurs to another person, it is a Felony 4. Does not apply for research.
<b>INDIVIDUAL WITH A COMMUNICABLE DISEASE'S DUTY TO INFORM PERSONS AT RISK AND VIOLATIONS*</b>		
1989	§ 16-41-7-1 § 16-41-7-5 Pre-2014 § 16-1-10.5-8.5 § 16-1-35-1	Describes the duty to disclose one's HIV status to a "person at risk" defined as past, present, or future partners with whom they may have engaged, or will engage, in "high risk" activity defined as sexual or needle sharing acts that have been epidemiologically demonstrated, as determined by the CDC, to bear a significant risk of transmitting HIV. The penalties are outlined in § 35-45-21-3.
<b>FAILURE OF INDIVIDUALS WITH SERIOUS COMMUNICABLE DISEASES TO INFORM PERSONS AT RISK*</b>		
1998	§ 35-45-21-3 Pre-2014 § 35-42-1-9	A person who recklessly violates or fails to comply with § IC 16-41-7-1 (described in the previous row) commits a Class B Misdemeanor. If knowingly or intentionally, then the charge enhances to a Felony 6. Each day a violation continues is a separate offense.
<b>BATTERY BY BODILY FLUID OR WASTE ON ANOTHER PERSON WITH HIV PENALTY ENHANCEMENT**</b>		
1995 <sup>27</sup>	§ 35-42-2-1(c2)(f)(h) 2014-2016: § 35-42-2-1(b2)(e)(g) Pre-2014: § 35-42-2-6	A person who knowingly or intentionally, in a rude, insolent, or angry manner, places any bodily fluid or waste on another person and if the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with HIV, faces a Felony 6. If the victim is a public safety official, it enhances to a Felony 5.
<b>MALICIOUS MISCHIEF BY BODY FLUID OR WASTE WITH HIV PENALTY ENHANCEMENT**</b>		
2002	§ 35-45-16-2(c-f)	A person who recklessly, knowingly, or intentionally places human (1) body fluid or (2) fecal waste in a location with the intent that another person will involuntarily touch or ingest it, and the person knew or recklessly failed to know that the body fluid or waste was infected with HIV, faces a Felony 6. If transmission occurs, it enhances to a Felony 4.

Note: \*This code also criminalizes viral hepatitis B. \*\*The baseline for these codes is a misdemeanor crime for anyone without these diseases. However, it is enhanced to a Felony 6 for people with HIV, any viral hepatitis types, and tuberculosis. In the case of the battery code, the base crime penalty for public safety officials is a Felony 6 and is further enhanced to a Felony 5 for people with those diseases.

<sup>25</sup>The Indiana code can be found here: <https://iga.in.gov/laws/2024/ic/titles/1>. The code text is in the Appendix to this report. Some of these statutes have been amended, or repealed and moved to different code sections, since enactment—relevant changes are mentioned in the application section of this report.

<sup>26</sup>Table 2 summarizes the penalties.

<sup>27</sup>The original battery code was amended several times since enactment. A detailed description of those changes can be found in Cisneros, N., Foote, C., Schlebecker, P., Grasso, J. and Sears, B. (forthcoming). *Enforcement of HIV Criminalization in Indiana: Body Fluid/Waste Enhancement Laws*.

Table 2. Indiana criminal law penalty description

PENALTY DESCRIPTIONS <sup>28</sup>	
LEVEL	DESCRIPTION
Class B Misdemeanor	Punishable by imprisonment up to 180 days and a fine of up to \$1,000.
Felony 6	Punishable by imprisonment for up to 2.5 years and a fine of up to \$10,000.
Felony 5	Punishable by imprisonment for up to 6 years and a fine of up to \$10,000.
Felony 4	Punishable by imprisonment for up to 12 years and a fine of up to \$10,000.
Felony 3	Punishable by imprisonment for up to 20 years and a fine of up to \$10,000.

<sup>28</sup> Ind. Code § 35-50-2 (2024) <https://iga.in.gov/laws/2024/ic/titles/35#35-50-2> describes the penalties associated with each level. Via Ind. HEA. 1006-2013, Indiana switched from a Letter system A through D to numbers, 1 thru 6 in which the following changes occurred: A=1, B=3, C=5, D=6 with 2 and 4 in between penalties. See: <https://archive.iga.in.gov/2013/bills/billinfoc250.html?year=2013&session=1&request=getBill&doctype=HB%20&docno=1006>

## APPLICATION OF HIV SCIENCE TO INDIANA'S HIV CRIMINALIZATION LAWS

In this section, for each HIV criminalization law in Indiana, we

1. Describe the offense—which conduct is criminalized under each law.
2. Apply today's science of transmission risk to the law—take what is currently known about HIV transmission, prevention, and treatment and apply that knowledge to each of Indiana's HIV criminal laws.
3. Assess whether these laws represent accurate understandings of HIV science in 2024.

### TRANSFERRING CONTAMINATED BODY FLUIDS AND SEMEN DONATION LAWS

#### Offense

Pursuant to Indiana Criminal Code § 35-45-21-1 Contaminated Body Fluids, any person who recklessly, knowingly, or intentionally donates, sells, or transfers blood or semen for artificial insemination that contains HIV is liable for a Level 5 felony. The offense is enhanced to a Level 3 felony if the conduct results in the transmission of HIV to any person other than the person accused. The statute does not apply if the acts are done for research, for autologous (self) blood donation, or if the person discloses their HIV status to the donation site. Indiana Health Code § 16-41-14-17 Donation, Sale or Transfer of HIV Infected Semen; Penalties duplicates part of the Contaminated Body Fluids crime. Thus, semen donation is criminalized twice—as a part of the criminal code and as part of the health code, but with slight variations in wording and penalties. In the criminal code, semen “containing HIV” is criminalized, while in the health code, it must contain “antibodies for HIV.”<sup>29</sup> If transmission occurs, the penalty is a Level 4 felony rather than a Level 3.<sup>30</sup>

#### Transmission Risk

Indiana's contaminated body fluids and semen donation laws are the state's oldest HIV criminal laws; both were enacted before 1990. At that time, legislators would have been aware that numerous people living with hemophilia and many who received blood transfusions had contracted HIV from blood donations or products derived from blood products in the U.S. HIV testing for blood donors began in 1985, was required by the FDA in 1987, and highly effective screening procedures were implemented in the early 1990s.<sup>31</sup> As a result, the blood supply is now safe, and it has been for decades.

<sup>29</sup> There is a difference between “HIV” and the “anti-bodies for HIV”. Whereas, testing for HIV antibodies was approved in 1985, testing for the actual virus, called viral load testing, occurred a decade later in 1995. Source: I-Base Home Treatment training manual. (2023) Virology, HIV and viral load, section 2.9 History of viral load and different cut-off. <https://i-base.info/ttfa/section-2/9-history-of-viral-load-tests/>

<sup>30</sup> During the major revision of Indiana's criminal code (HEA 1006-2013)—which added Ind. Code § 35-45-21-1 as a new statute, effective July 1, 2014—an oversight occurred which resulted in this felony discrepancy. Before the revision both Ind. Code § 16-41-14-17 and Ind. Code § 35-42-1-7, which was replaced by Ind. Code § 35-45-21-1 and contained almost identical wording, provided the same punishments for both the initial act and for if transmission occurred. <https://archive.iga.in.gov/2013/bills/billinfoc250.html?year=2013&session=1&request=getBill&doctype=HB%20&docno=1006>

<sup>31</sup> CDC.gov. (1996) U.S. Public Health Service Guidelines for Testing and Counseling Blood and Plasma Donors for Human

Similarly, there is evidence of HIV transmission through donor artificial insemination before 1986 in the U.S. However, like blood supply safety measures, changes to FDA policy for screening and testing sperm donors have also guaranteed the safety of donated sperm.<sup>32</sup> Specifically, we now know that

- Current FDA policies and practices are highly effective at keeping the blood supply free from HIV and other blood-borne viral pathogens through multiple, overlapping safeguards. These include, among other safety measures, donor screener questionnaires, blood HIV antibody and RNA testing, donor permanent deferral lists, plasma heat treatment, and blood establishment routine oversight.<sup>33</sup>
- There have been no cases of HIV transmission through U.S.-licensed plasma-derived products in well over three decades.<sup>34</sup> The last reported case of HIV transmission through a blood transfusion was in 2008, and before that, the last known case was in 2002. Both cases were attributed to the window period after a person has been exposed to HIV but before they test positive on a standard HIV test.<sup>35</sup> If a person has already tested positive for HIV, HIV will be detected through universal screening procedures, and their donation will be destroyed.
- Anonymous sperm donors in the U.S. who test positive for HIV are disqualified from donating.<sup>36</sup> FDA policies and practices effectively regulate the safety of known semen donations and transfers for reproductive medicine procedures from blood-borne viral infections, particularly through HIV-safe conception practices involving sperm washing procedures.<sup>37</sup> Since 1987, thousands of U.S. reproductive medicine procedures have used processed sperm from donors living with HIV with zero instances of HIV transmission.<sup>38</sup>

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Immunodeficiency Virus Type 1 Antigen. *MMWR*. March 01/ 45(RR-2);1-9 <https://www.cdc.gov/mmwr/preview/mmwrhtml/00040546.htm>

<sup>32</sup>Araneta MR, Mascola L, Eller A, et al. (1995). HIV transmission through donor artificial insemination. *JAMA*. Mar 15;273(11):854-8. <https://pubmed.ncbi.nlm.nih.gov/7869555/>

<sup>33</sup>FDA.gov. (2023). *Revised Recommendations for Reducing the Risk of HIV Transmission by Blood and Blood Products: Guidance for Industry*. <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/recommendations-evaluating-donor-eligibility-using-individual-risk-based-questions-reduce-risk-human>

<sup>34</sup>Evatt, B. L. (2007). The tragic history of AIDS in the Hemophilia population, 1982-1984. *Journal of Thrombosis and Haemostasis*, 4(11), 2295-2301. <https://www1.wfh.org/publication/files/pdf-1269.pdf>

<sup>35</sup>Transfusion of window period units (i.e., units from individuals who have HIV but who are in the window during which testing has not yet become positive, about 9-11 days) accounts for virtually all these rare cases of transfusion-transmitted HIV. CDC. (2010). Transmission through transfusion— Missouri and Colorado, 2008. *MMWR*. 59(41);1335-1339 <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5941a3.htm>;

<sup>36</sup>American Society for Reproductive Medicine (2021). Guidance regarding gamete and embryo donation. <https://www.asrm.org/practice-guidance/practice-committee-documents/guidance-regarding-gamete-and-embryo-donation-2021/> & U.S. Food & Drug Admin., (2007) Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products. <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/eligibility-determination-donors-human-cells-tissues-and-cellular-and-tissue-based-products>

<sup>37</sup>Sperm washing refers to a process in which sperm is separated from seminal fluid (semen = sperm + seminal fluid). Since HIV exists in seminal fluid but not in sperm, ‘washing’ the sperm clean of the seminal fluid eliminates the risk of HIV transmission. Kawwass JF, Smith DK, Kissin DM, et al. (2017) Strategies for Preventing HIV Infection Among HIV-Uninfected Women Attempting Conception with HIV-Infected Men — United States. *MMWR* 2017;66:554–557. <http://dx.doi.org/10.15585/mmwr.mm6621a2>.

<sup>38</sup>Practice Committee of the American Society for Reproductive Medicine. (2020). Recommendations for reducing the risk of viral transmission during fertility treatment with the use of autologous gametes: a committee opinion. *Fertil Steril*, 114(6), 1158-1164. <https://doi.org/10.1016/j.fertnstert.2020.09.133>

## Assessment

Indiana’s Contaminated Body Fluids and HIV-Infected Semen laws have not been substantially modified since they were passed in the late 1980s and, therefore, do not reflect advances in HIV science since the law’s enactment. A person must know they have HIV to commit either donation crime—that is, they must have received a positive HIV test result. By the time a person learns they have HIV, FDA universal screening practices are able to detect the presence of HIV in the donation, and the donation is destroyed. As a result, there is zero chance of HIV transmission via blood or semen donated to donation centers in the event that someone who is knowingly living with HIV attempts to donate.

Moreover, in addition to multiple screening safeguards, plasma donations are also heat treated, which inactivates HIV. Heat treating, which has been used since 1985 and which abruptly halted the AIDS epidemic in hemophiliac patients, adds an additional layer of protection in the very rare case that a person donates in the nine-to-eleven-day conversion window in which a person may have contracted HIV but not yet test positive.<sup>39</sup> Plasma donors identified as positive for any blood-borne virus in the screening and testing process are also placed in a national permanent donor deferral registry, prohibiting them from donating in the future.<sup>40</sup>

Further, unlike with whole blood donation, people who donate plasma are paid for their donation. One of the reasons payments are used to encourage plasma donations is precisely because of the safety of the plasma with regard to viral pathogens. Plasma is processed to inactivate blood-borne viruses. As a result, monetary compensation can be used to incentivize donation without concerns that people will conceal behaviors related to disease transmission; the plasma, once processed, is safe regardless of the donor’s HIV status.<sup>41</sup>

The Indiana Red Cross recently affirmed that the blood supply would remain safe with full repeal of the HIV-related blood donation law, noting, “The Red Cross does not rely on criminalization to protect the blood supply. Instead, we carefully follow federal FDA guidelines for blood collection and testing.”<sup>42</sup>

Similarly, reproductive medicine clinics are required to follow FDA policies that effectively regulate the safety of semen used for reproductive medicine procedures, and HIV-safe conception practices are widely used across the U.S.<sup>43</sup> Indiana lawmakers recognized these advances when they amended the code in 2020. Prior to 2020, Indiana law required the disposal of any donation of semen that

<sup>39</sup> Evatt, BL. (2006). The tragic history of AIDS in the hemophilia population, 1982-1984. *Journal of Thrombosis and Haemostasis*. Nov;4(11):2295-301. <https://pubmed.ncbi.nlm.nih.gov/16972935/>

<sup>40</sup> The National Donor Deferral Registry (NDDR®) <https://www.pptaglobal.org/material/national-donor-deferral-registry-nddr-r>

<sup>41</sup> Preston, E. (2016, Jan 22). Why you get paid to donate plasma, but not blood. *STAT News*. <https://www.statnews.com/2016/01/22/paid-plasma-not-blood/>

<sup>42</sup> Red Cross Letter presented at the 2020 Indiana Interim General Assembly Study Committee on Indiana’s HIV criminal Laws. [https://iga.in.gov/pdf-documents/122/2022/universal/committees/interim/corrections-and-criminal-code-interim-study-committee/aa8a4f37-90e5-4236-aca6-607dc90ef30e/exhibits/attachment\\_4650.pdf](https://iga.in.gov/pdf-documents/122/2022/universal/committees/interim/corrections-and-criminal-code-interim-study-committee/aa8a4f37-90e5-4236-aca6-607dc90ef30e/exhibits/attachment_4650.pdf)

<sup>43</sup> Practice Committee of the American Society for Reproductive Medicine. (2020). Recommendations for reducing the risk of viral transmission during fertility treatment with the use of autologous gametes: a committee opinion. *Fertil Steril*, 114(6), 1158-1164. <https://doi.org/10.1016/j.fertnstert.2020.09.133>

“indicates the presence of the HIV antibody.” The 2020 revision created an exception if the donation is “used according to safer conception practices endorsed by the federal Centers for Disease Control and Prevention or other generally accepted medical experts.”<sup>44</sup> However, health and criminal codes relating to HIV criminalization remain unchanged, leading to some inconsistency in Indiana law.

## Summary

Indiana’s Contaminated Body Fluids and HIV-Infected Semen laws provide no added protection to blood and semen donor supply safety above those already in place under state and federal regulations. Further, while it is current FDA policy to destroy blood products from donors who test positive for HIV and disqualify men who test positive for HIV from making anonymous semen donations, semen from a person living with HIV can be used for artificial insemination in known donor situations that involve safer conception practices. Therefore, except for the uses for research and autologous donations, Indiana’s HIV criminalization donation laws do not reflect advances in HIV science today.

## HIV DUTY, AND FAILURE, TO INFORM LAWS

### Offense

Indiana Health Code § 16-41-7-1 Duty to Inform creates a legal duty for PLWH in Indiana to disclose their HIV status to a “person at risk,” defined as past, present, or future partners with whom they may have engaged or will engage in “high risk” sexual or needle-sharing acts—activities that have been “epidemiologically demonstrated, as determined by the Centers for Disease Control and Prevention, to bear a significant risk of transmitting HIV.”

Indiana Criminal Code § 35-45-21-3 Failure to Inform outlines the penalties for violation of the Duty to Inform law: “A person who recklessly violates or fails to comply with Indiana Code § 16-41-7-1 commits a Class B misdemeanor.” If a person living with HIV knowingly or intentionally fails to disclose their HIV status under the circumstances described above, then they are liable for a Level 6 felony. Each day a violation occurs is a separate offense, meaning that a PLWH can be charged for each high-risk encounter on sequential days with the same individual. The statute does not require transmission for criminal penalties.

### Transmission Risk

Indiana’s Duty to Inform law was passed in 1989 as part of Indiana’s Health Code when there were no effective treatments for HIV, and HIV was still mostly a death sentence. When passed, Indiana Health Code § 16-41-7-1 only included the misdemeanor penalty. The statute containing the felony crime was added to Indiana’s criminal code (§ 35-45-21-3) in 1998, which, in effect, linked together Indiana’s Criminal and Health Codes. Since its enactment in 1989

- Antiretroviral therapy medications have been developed to enable PLWH to have normal life spans.

<sup>44</sup> See § IC 16-41-14-8 which was amended to include this language HE 1182-2020 (P.L.112-2020, SEC.51.) <https://iga.in.gov/pdf-documents/121/2020/house/bills/HB1182/HB1182.05.ENRS.pdf>

- Studies have shown that a person can manage their HIV with antivirals so well that the virus becomes suppressed and is undetectable in a person's blood.<sup>45</sup> Most PLWH achieve viral suppression within six months of starting treatment.<sup>46</sup> There is zero risk of transmitting HIV through sexual contact if a PLWH has an undetectable viral load—this is commonly known as “undetectable=untransmittable” (or U=U).<sup>47</sup>
- Medications have been developed to allow a person who does not have HIV to nearly eliminate the risk of HIV transmission through sex (PrEP). Additionally, someone exposed to HIV can take medications (PEP) up to 72 hours after exposure to decrease the risk of HIV transmission.<sup>48</sup>

Until 2020, “high-risk activities” were restricted to “sexual or needle-sharing contact” that had been “epidemiologically demonstrated to transmit HIV.”<sup>49</sup> Since the statute did not define specific acts included, it presumably could have included any act that poses a risk of transmission above zero (e.g., any kind of anal and vaginal intercourse in the presence of a detectable HIV viral load). It may also have possibly criminalized acts that pose virtually no risk, like oral sex.<sup>50</sup>

The definition of “high-risk activities” was amended in 2020 to “sexual and needle-sharing contact,” identified by the “CDC as bearing a significant risk” of transmission.<sup>51</sup> While the specific criminalized acts remained unspecified, the 2020 amendment created clearer guidelines for prosecutors and courts as to what specific activities were likely to be criminalized by deferring to the authority of the CDC. For example, according to the CDC, the per-act risk of most activities is less than one in a thousand—even when a PLWH is not virally suppressed. (See Table 3.) Even these risks are eliminated or reduced when a person is on HIV medication treatment and has attained an undetectable viral load.

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<sup>45</sup> A person will still test positive for HIV antibodies.

<sup>46</sup> CDC.gov. (2024, April 24). *Clinical Care of HIV*. <https://www.cdc.gov/hiv/nexus/hcp/clinical-care/index.html>

<sup>47</sup> CDC.gov. (2023, Aug 9). *Treatment as Prevention*. <https://www.cdc.gov/hiv/risk/art/index.html>

<sup>48</sup> CDC.gov. (2024, June 18). *Preventing HIV with PrEP* <https://www.cdc.gov/hiv/prevention/prep.html>

<sup>49</sup> Ind Code § 16-41-7-1 (2019) <https://iga.in.gov/laws/2019/ic/titles/16#16-41-7-1>

<sup>50</sup> CDC.gov. (2024, Jan 18). *How HIV Spreads*. <https://www.cdc.gov/hiv/causes/index.html>

<sup>51</sup> House Enrolled Act 1182 (2020). <https://iga.in.gov/legislative/2020/bills/house/1182/details>

**Table 3. Sexual and needle-sharing activity risk-per-exposure of HIV transmission**

ACTIVITY	RISK-PER-EXPOSURE WITHOUT A CONDOM <sup>52</sup>	RISK-PER-EXPOSURE WITH AN UNDETECTABLE VIRAL LOAD <sup>53</sup>
Needle-Sharing During Injection Drug Use	63%	Unknown, but likely reduced risk.
Receptive Anal Sex	1.38%	0%
Insertive Anal Sex	0.11%	0%
Receptive Penile-Vaginal Sex	0.08%	0%
Insertive Penile-Vaginal Sex	0.04%	0%
Receptive & Insertive Oral Sex	Low	0%

In the context of sexual activities, receptive anal sex carries the greatest risk, albeit low, with an average HIV transmission risk in the range of 1.4 transmission per 100 sex acts. According to the CDC, the risk from oral sex is so low (<1 per 10,000 exposures) that it is not possible to put a precise number on it. Having an undetectable viral load eliminates the risk of passing on HIV through all types of sexual activity.

The CDC also recognizes other steps a person can take to significantly lower or eliminate the risk of HIV transmission through sex, such as male circumcision for vaginal intercourse, condom use, and consistent use of PrEP.<sup>54</sup> Similarly, the CDC recognizes factors that significantly lower the risk of transmission in the context of sharing syringes, such as taking PrEP and using bleach to rinse the syringe prior to use.<sup>55</sup> None of these factors are accounted for in the transmission risk per exposure estimates in column two of Table 3.

## Assessment

While the current amended Duty to Inform law aligns more with current HIV science, the exact application of the CDC language remains unclear as it lacks specificity in the code regarding specific prevention or mitigation measures, such as using a condom or having an undetectable viral load.<sup>56</sup> Nevertheless, the statute acknowledges the CDC's authority on transmission, and according to the CDC, "a person with HIV who takes HIV medicine as prescribed and gets and stays virally suppressed or undetectable can stay healthy and will not transmit HIV to their sex partners."<sup>57</sup> A person accused may, therefore, argue that due to their use of these prophylactic measures, such as sustained treatment with an undetectable viral load, their behavior no longer represents a significant risk of transmission and, therefore, HIV nondisclosure should not be criminalized in those contexts under the statute. The CDC also states that certain activities that may have been covered by previous statutory language, such as oral sex, do not represent a per-act significant risk of transmission, which might also be used to guide prosecutorial decisions.

<sup>52</sup> CDC.gov. (2019, Nov 13). *HIV Risk Behaviors*. <https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html>

<sup>53</sup> CDC.gov. (2023, Aug 9). *Treatment as Prevention*. <https://www.cdc.gov/hiv/risk/art/index.html>

<sup>54</sup> CDC.gov. (2020, Dec 7). *HIV Risk and Prevention*. <https://www.cdc.gov/hiv/risk/index.html>

<sup>55</sup> CDC.gov. (2024, Feb 5). *Preventing HIV*. <https://www.cdc.gov/hiv/prevention/>

<sup>56</sup> The Center for HIV Law and Policy (2024). *Indiana section of the HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice* (Third Edition). <https://www.hivlawandpolicy.org/sites/default/files/2024-01/Indiana%20-%20Pages%20from%20HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20Jan24.pdf>

<sup>57</sup> CDC.gov. (2023, Aug 9). *Treatment as Prevention*. <https://www.cdc.gov/hiv/risk/art/index.html>

The amended language is an improvement over the original statute because it refers to the CDC's definition of significant risk factors, thereby recognizing advances in HIV science. However, the statutory language remains unclear because the exact meaning of "significant risk" has not yet been codified. Therefore, it is difficult to conclusively say which behaviors might be criminalized in practice. It is important to note as well that the statute does not require actual HIV transmission to occur to sustain a conviction.

## Summary

Indiana's HIV Duty and Failure to Inform laws reflect some advances in HIV science. It does so by referring to a public health authority, the CDC, and limiting the behaviors criminalized to only those sexual and needle-sharing acts known to be significant HIV transmission routes. However, the law does not specify which activities do not pose a significant risk without any prevention measures (such as oral sex) or the variety of HIV prevention measures that exist to effectively prevent transmission (such as having an undetectable viral load). Therefore, while Indiana's HIV Duty and Failure to Inform laws do reflect certain scientific advancements in HIV transmission and prevention, their lack of specificity means legal uncertainty regarding the exact circumstances under which PLWH are legally obligated to disclose their status.

## BATTERY AND MALICIOUS MISCHIEF BY BODILY FLUID/WASTE LAWS: HIV PENALTY ENHANCEMENT

### 1. Offense

Indiana Code § 35-42-2-1(c2)(f)(h) Battery by Bodily Fluid/Waste makes it a felony for PLWH to knowingly place on others any bodily fluid or waste in a rude, insolent, or angry manner. The base penalty for Battery by Bodily Fluid/Waste is a misdemeanor, but it is enhanced to a Level 6 felony if the person "knew or recklessly failed to know" that the "the bodily fluid or waste placed on another person was infected with" HIV. The penalty is further enhanced for those without any diseases to a Level 6 felony if committed against a "public safety official" rather than a civilian. Still, for those with HIV, it is a Level 5 felony.<sup>58</sup>

Similarly, Indiana Code § 35-45-16-2(c-f) Malicious Mischief creates a sentence enhancement for PLWH who recklessly, knowingly, or intentionally place body fluid or waste in a location where it will be involuntarily touched or ingested. The base penalty for Malicious Mischief is a misdemeanor but is enhanced to a Level 6 felony if "the body fluid or fecal waste was infected with" HIV. While not defined in the battery section of the criminal code, body fluid and waste are defined in the Malicious Mischief section of the criminal code to include blood, saliva, sputum, semen, vaginal secretions, human milk, urine, sweat, tears, or any other liquid produced by the body—including aerosols generated from these fluids.

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<sup>58</sup> "Public safety official" is defined in Section 1a of the *Battery by Bodily Fluid/Waste* code. See the Appendix for the text of the code.

Until 2014, the Battery by Bodily Fluid/Waste crime included a further enhancement if HIV transmission occurred, but that portion was removed with changes to the criminal code in 2014.<sup>59</sup> The Malicious Mischief code always included separate penalties for exposure and transmission. If transmission occurs, the penalty enhances to a Level 4 felony.

## 2. Transmission Risk

The HIV-related penalty enhancements for bodily fluid/waste exposure were created in 1995 (Battery by Bodily Fluid/Waste) and 2002 (Malicious Mischief). While it was general knowledge at that time among public health experts that HIV was not transmitted by bodily fluids/wastes or associated conduct implied by these codes, this may not have been common knowledge among legislators and the general public at the time of passage. Today, it is well established that there is zero risk of HIV transmission from the behaviors criminalized under these laws (e.g., placing, touching, or ingesting any of the fluids or waste listed in the relevant codes). For example,<sup>60</sup>

- HIV is not transmitted, whether through exposure on the skin or ingestion, by urine, fecal waste, saliva, tears, or sweat, or by sharing toilets or dishes; HIV dies quickly upon exposure to air.<sup>61</sup>
- Contact with blood on unbroken skin is not an HIV transmission route, and there have been no cases of transmission from spitting blood that lands on a mucosal tissue (e.g., landing in the eye or mouth).<sup>62</sup>
- There is also virtually no risk of transmitting HIV through biting—even if the skin is broken.<sup>63</sup>

## Assessment

The HIV enhancement sections in these laws criminalize behaviors that pose no risk of transmission. Medical and public health experts agree that the possibility of HIV transmission is essentially zero outside the context of penetrative sexual activity, sharing used syringes, and perinatal transmission without any prevention measures. The fluids and behaviors described in these laws do not pose a risk, as HIV cannot be transmitted by simply coming into contact with or ingesting these fluids.<sup>64</sup> Therefore, PLWH are subject to harsher punishment for acts that cannot transmit HIV—for example, spitting—simply because they are living with HIV. It is unclear why PLWH are singled out in this law, as there is no further risk of harm from the fluid exposure described in statute simply because of a person’s HIV-positive status, and the underlying acts are already criminalized for everyone.

<sup>59</sup> This change was made via Ind. HEA. 1006-2013 which made significant revisions to Indiana’s criminal code. <https://archive.iga.in.gov/2013/bills/billinfoc250.html?year=2013&session=1&request=getBill&doctype=HB%20&docno=1006>

<sup>60</sup> Barre-Sinoussi, F., Abdool Karim, S. S., Albert, J., Bekker, L. G., Beyrer, C., et. al. (2018). Expert consensus statement on the science of HIV in the context of criminal law. *J Int AIDS Soc*, 21(7), e25161. <https://doi.org/10.1002/jia2.25161>

<sup>61</sup> CDC.gov. (2024, Jan 18). *How HIV Spreads*. <https://www.cdc.gov/hiv/causes/index.html>

<sup>62</sup> Cresswell et al. (2018). A systematic review of risk of HIV transmission through biting or spitting: implications for policy. *HIV Medicine*. 19(8), 532-540 <https://doi.org/10.1111/hiv.12625>

<sup>63</sup> Extremely rare biting transmission cases have all involved severe tissue trauma and blood. CDC.gov (2024, Jan 18). *How HIV Spreads*. <https://www.cdc.gov/hiv/causes/index.html>

<sup>64</sup> CDC.gov. (2024, Jan 18) “*How HIV spreads*” <https://www.cdc.gov/hiv/causes/> The CDC definitely states that “only certain fluids—blood, semen (cum), pre-semenal fluid (pre-cum), rectal fluids, vaginal fluids, and breast milk—from an HIV-infected person can transmit HIV”; However, those fluids only pose a risk if it involves penetrative vaginal or anal sex, and rare cases oral sex, or through vertical transmission from parent to child during pregnancy, childbirth and breastfeeding.”

## Summary

There is no risk of HIV transmission for the acts described in Indiana’s Battery by Bodily Fluid/Waste and Malicious Mischief laws. PLWH who faced penalty enhancement charges under this code were likely all charged for acts that cannot transmit HIV and experienced differential punishment solely because of their HIV-positive health status.<sup>65</sup>

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<sup>65</sup> Cisneros, N., Foote, C., Schlebecker, P., Grasso, J. and Sears, B. (forthcoming). *Enforcement of HIV Criminalization in Indiana: Body Fluid/Waste Enhancement Laws*. The Williams Institute, UCLA School of Law, Los Angeles, California.

## CONCLUSION

During the early days of the HIV/AIDS crisis, widespread stigma and fear led to punitive policies and practices that excluded PLWH from public life.<sup>66</sup> For example, in the mid-late 1980s, there was still widespread belief that HIV was casually transmitted through touching or kissing, no safety measures were in place to protect the blood supply, and many favored quarantining PLWH.<sup>67</sup> Indiana was no exception. For instance, the State Health Commissioner submitted a proposal in 1987 to the Indiana General Assembly to allow the Health Department to quarantine people who tested positive for HIV.<sup>68</sup> Another example that received national attention during those years involved a teenage boy living with both hemophilia and HIV from Kokomo, Indiana, named Ryan White. White was refused entry to his middle school because of his HIV status, and he and his family received death threats, including one incident in which a bullet was fired through the Whites' living room window.<sup>69</sup>

Indiana's punitive HIV criminal and public health laws were enacted during these early years when little was known about HIV, and there was widespread fear. Three of Indiana's six HIV criminal laws were enacted in the late 1980s (1988 and 1989), just four years after the virus itself was identified as the cause of AIDS and three years after the first effective HIV test was developed.<sup>70</sup> At that time, almost everyone known to have HIV was expected to die from HIV-related complications. This was also years before the first rapid HIV test (1992) and decades before the first rapid oral test (2004).<sup>71</sup> Two of the state's three remaining laws were enacted in 1995 and 1998—right around the time the first HIV viral load test was developed and effective HIV treatment began to be widely available in the U.S.<sup>72</sup> All of Indiana's HIV criminalization laws were enacted well before it was established that those taking effective HIV treatments could not sexually transmit HIV.<sup>73</sup>

We know today that outside of needle sharing and penetrative sexual activity with no precautions, there is very little risk of HIV transmission on a per-act basis. Today, effective treatments allow PLWH to live long, healthy, normal lives and not transmit HIV to their sexual partners. For many years, the blood, plasma, and semen supplies have been safe.

Given these tremendous advances, in 2022, a group of Indiana lawmakers on the bipartisan Interim Study Committee on Corrections and Criminal Code unanimously recommended modernizing the Indiana code to account for advances in HIV treatment and prevention since the laws were enacted

<sup>66</sup> Hoppe, T. (2018) Ch. 1-3. *Punishing Disease: HIV and the Criminalization of Sickness*. University of California Press. Altman, D. (1987). Ch. 4 Fear and Stigma. In *AIDS in the Mind of America*. Doubleday Publisher New York. & Conrad, P. (1986). The Social Meaning of AIDS. *Social Policy*. Vol. 17(1), 51-56.

<sup>67</sup> See previous footnote.

<sup>68</sup> The Indianapolis Star. (1987, Jan 5). *AIDS Quarantine*. <https://www.newspapers.com/article/the-indianapolis-star-aids-quarantine/136444671/>

<sup>69</sup> White, R., and Cunningham, A. (1992). *Ryan White My Own Story*. Penguin Books.

<sup>70</sup> HIV.gov (2023). *A Timeline of HIV and AIDS*. <https://www.hiv.gov/hiv-basics/overview/history/hiv-and-aids-timeline>.

<sup>71</sup> KFF (2024, May 29). *HIV Testing in the United States*. <https://www.kff.org/hiv/aids/fact-sheet/hiv-testing-in-the-united-states/>.

<sup>72</sup> HIV.gov (2023). *A Timeline of HIV and AIDS*. <https://www.hiv.gov/hiv-basics/overview/history/hiv-and-aids-timeline>.

<sup>73</sup> CDC.gov. (2024, April 24). *Clinical Care of HIV*. [https://www.cdc.gov/hiv/nexus/hcp/clinical-care/?CDC\\_AAref\\_Val=https://www.cdc.gov/hiv/clinicians/treatment-care/treatment-as-prevention.html](https://www.cdc.gov/hiv/nexus/hcp/clinical-care/?CDC_AAref_Val=https://www.cdc.gov/hiv/clinicians/treatment-care/treatment-as-prevention.html)

and “develop legislation lessening criminal penalties specific to HIV.”<sup>74</sup> Yet, as the findings in this report show, most of Indiana’s HIV criminal laws have yet to account for these advances, and none have done so with enough specificity to prevent arrests and prosecutions for behaviors that have little to no risk of transmitting HIV.<sup>75</sup>

Further, the criminalization of HIV could be undermining Indiana’s efforts to work cooperatively with the communities most affected by the HIV epidemic. In recent years, there has been growing consensus among public health and medical experts that ending the HIV epidemic requires modernizing the state’s HIV criminal laws to reflect what is known about HIV science today.<sup>76</sup> This consensus is shared by medical and public health experts in Indiana:

- The Indiana State Medical Association (ISMA) recently passed a policy resolution calling for reform, which declared: “ISMA support[s] efforts to reform Indiana law to reflect the contemporary scientific understanding of HIV and to eliminate criminal sanctions based on HIV status, thereby reducing HIV-related stigma and accelerating the end of the HIV epidemic.”<sup>77</sup>
- Indiana’s statewide plan to end the HIV epidemic by 2030 includes criminal law modernization as one of the current approaches and priorities. ZERO is Possible acknowledges that “[C]riminal legislation regarding HIV has not reflected advancements in the understanding of HIV. Current laws criminalize and stigmatize PLWH, so modernizing and updating these laws would contribute to ending the HIV epidemic.”<sup>78</sup>

Both expert groups echo the CDC and the White House’s ONAP position on HIV-specific criminal laws, which has called on states to modernize their HIV criminal laws to reflect advances in treatment and what we know today about how HIV is—and is not—transmitted.<sup>79</sup>

<sup>74</sup> Muniz, L. B. (2022, Oct 5). Lawmakers recommend lessening HIV Criminal Penalties. *Indiana Capital Chronicle*. <https://indianacapitalchronicle.com/2022/10/05/lawmakers-recommend-lessening-hiv-criminal-penalties/>

<sup>75</sup> Cisneros, N., Foote, C., Schlebecker, P., Sears, B. (2024). *Enforcement of HIV Criminalization in Indiana: Donation Laws*. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-Donation-IN-Jul-2024.pdf>; Cisneros, N., Foote, C., Schlebecker, P., Grasso, J. and Sears, B. (forthcoming). *Enforcement of HIV Criminalization in Indiana: Body Fluid/Waste Enhancement Laws*. The Williams Institute, UCLA School of Law, Los Angeles, California.

<sup>76</sup> Barre-Sinoussi, F., Abdool Karim, S. S., Albert, J., Bekker, L. G., Beyrer, C., et. al. (2018). Expert consensus statement on the science of HIV in the context of criminal law. *J Int AIDS Soc*, 21(7), e25161. <https://doi.org/10.1002/jia2.25161>; Mermin, J., Valentine, S. S., & McCray, E. (2021). HIV criminalisation laws and ending the US HIV epidemic. *Lancet HIV*, 8(1), e4-e6. [https://doi.org/10.1016/S2352-3018\(20\)30333-7](https://doi.org/10.1016/S2352-3018(20)30333-7).

<sup>77</sup> Indiana State Medical Association 2023 Policy Manual Resolution 22-53. [https://www.ismanet.org/ISMA/About\\_Us/Public\\_Policy/ISMA/About\\_Us/public\\_policy.aspx?hkey=d6c00f60-4a01-4e8b-81ed-4ce8949601f2](https://www.ismanet.org/ISMA/About_Us/Public_Policy/ISMA/About_Us/public_policy.aspx?hkey=d6c00f60-4a01-4e8b-81ed-4ce8949601f2). See also the ISMA letter to the members of the IGA Study Committee on Criminal Code Laws Concerning HIV: [https://iga.in.gov/pdf-documents/122/2022/universal/committees/interim/corrections-and-criminal-code-interim-study-committee/aa8a4f37-90e5-4236-aca6-607dc90ef30e/exhibits/attachment\\_4652.pdf](https://iga.in.gov/pdf-documents/122/2022/universal/committees/interim/corrections-and-criminal-code-interim-study-committee/aa8a4f37-90e5-4236-aca6-607dc90ef30e/exhibits/attachment_4652.pdf)

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RESEARCH THAT MATTERS



## APPENDIX

### INDIANA HIV CRIMINALIZATION CODES AS OF 2024

#### **Ind. Code § 35-45-21-3** Failure of individuals with serious communicable diseases to inform persons at risk

Sec. 3. (a) A person who recklessly violates or fails to comply with IC 16-41-7 commits a Class B misdemeanor.

(b) A person who knowingly or intentionally violates or fails to comply with IC 16-41-7-1 commits a Level 6 felony.

(c) Each day a violation described in this section continues constitutes a separate offense.

*As added by P.L.158-2013, SEC.547.*

#### **Ind. Code § 16-41-7-1** Individual with a communicable disease's duty to inform persons at risk

Sec. 1. (a) This section applies to the following serious communicable diseases:

- (1) Human immunodeficiency virus (HIV).
- (2) Hepatitis B.

(b) As used in this section, "high risk activity" means sexual or needle sharing contact that has been epidemiologically demonstrated, as determined by the federal Centers for Disease Control and Prevention, to bear a significant risk of transmitting a serious communicable disease described in subsection (a).

(c) As used in this section, "person at risk" means:

- (1) past and present sexual or needle sharing partners who may have engaged in high-risk activity; or
- (2) sexual or needle sharing partners before engaging in high risk activity; with an individual with a communicable disease who has a serious communicable disease described in subsection (a).

(d) Individuals with a communicable disease who know of their status as an individual with a communicable disease and have a serious communicable disease described in subsection (a) have a duty to inform or cause to be notified by a third party a person at risk of the following:

- (1) The individual with a communicable disease's disease status.
- (2) The need to seek health care such as counseling and testing.

[Pre-1993 Recodification Citation: 16-1-10.5-8.5.] *As added by P.L.2-1993, SEC.24. Amended by P.L.112-2020, SEC.22.*

**Ind. Code § 35-45-21-1 Transferring contaminated body fluids**

Sec. 1. (a) As used in this section, “blood” has the meaning set forth in [IC 16-41-12-2.5](#).

(b) A person who recklessly, knowingly, or intentionally donates, sells, or transfers blood or semen for artificial insemination (as defined in [IC 16-41-14-2](#)) that contains the human immunodeficiency virus (HIV) commits transferring contaminated body fluids, a Level 5 felony.

(c) However, the offense under subsection (b) is a Level 3 felony if it results in the transmission of the human immunodeficiency virus (HIV) to any person other than the defendant.

(d) This section does not apply to:

(1) a person who, for reasons of privacy, donates, sells, or transfers blood at a blood center (as defined in [IC 16-41-12-3](#)) after the person has notified the blood center that the blood must be disposed of and may not be used for any purpose;

(2) a person who transfers blood semen, or another body fluid that contains the human immunodeficiency virus (HIV) for research purposes; or

(3) a person who is an autologous blood donor for stem cell transplantation.

*As added by P.L.158-2013, SEC.547. Amended by P.L.213-2013, SEC.18.*

**Ind. Code § 16-41-14-17 Donation, sale, or transfer of HIV infected semen; penalties**

Sec. 17. (a) This section does not apply to a person who transfers for research purposes semen that contains antibodies for the human immunodeficiency virus (HIV).

(b) A person who, for the purpose of artificial insemination, recklessly, knowingly, or intentionally donates, sells, or transfers semen that contains antibodies for the human immunodeficiency virus (HIV) commits transferring contaminated semen, a Level 5 felony. The offense is a Level 4 felony if the offense results in the transmission of the virus to another person.

[Pre-1993 Recodification Citation: 16-8-7.5-17.] *As added by P.L.2-1993, SEC.24. Amended by P.L.158-2013, SEC.245.*

**Ind. Code § 35-42-2-1 Battery by Bodily Fluid/Waste Sections applicable to HIV**

Sec. 1. (a) As used in this section, “public safety official” means:

(1) a law enforcement officer, including an alcoholic beverage enforcement officer;

(2) an employee of a penal facility or a juvenile detention facility (as defined in [IC 31-9-2-71](#));

(3) an employee of the department of correction;

(4) a probation officer;

(5) a parole officer;

(6) a community corrections worker;

- (7) a home detention officer;
- (8) a department of child services employee;
- (9) a firefighter;
- (10) an emergency medical services provider;
- (11) a judicial officer;
- (12) a bailiff of any court; or
- (13) a special deputy (as described in [IC 36-8-10-10.6](#)).

*Sections b not applicable so not included here.*

- (c) Except as provided in subsections (d) through (k), a person who knowingly or intentionally:
- (1) touches another person in a rude, insolent, or angry manner; or
  - (2) in a rude, insolent, or angry manner places any bodily fluid or waste on another person;
- commits battery, a Class B misdemeanor.

*Sections d, e not applicable so not included here.*

- (f) The offense described in subsection (c)(2) is a Level 6 felony if the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with hepatitis, tuberculosis, or human immunodeficiency virus.

*Section g not applicable so not included here.*

- (h) The offense described in subsection (c)(2) is a Level 5 felony if:
- (1) the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with hepatitis, tuberculosis, or human immunodeficiency virus; and
  - (2) the person placed the bodily fluid or waste on a public safety official, unless the offense is committed by a person detained or committed under [IC 12-26](#).

*Sections i, j, k not applicable so not included here.*

*As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.30; Acts 1979, P.L.298, SEC.1; Acts 1979, P.L.83, SEC.10; Acts 1981, P.L.299, SEC.1; P.L.185-1984, SEC.1; P.L.205-1986, SEC.1; P.L.322-1987, SEC.1; P.L.164-1993, SEC.10; P.L.59-1995, SEC.2; P.L.31-1996, SEC.20; P.L.32-1996, SEC.20; P.L.255-1996, SEC.25; P.L.212-1997, SEC.1; P.L.37-1997, SEC.2; P.L.56-1999, SEC.1; P.L.188-1999, SEC.5; P.L.43-2000, SEC.1; P.L.222-2001, SEC.4; P.L.175-2003, SEC.2; P.L.281-2003, SEC.3; P.L.2-2005, SEC.125; P.L.99-2007, SEC.209; P.L.164-2007, SEC.1; P.L.120-2008, SEC.93; P.L.131-2009, SEC.73; P.L.114-2012, SEC.137; P.L.158-2013, SEC.420; P.L.147-2014, SEC.2; P.L.65-2016, SEC.33; P.L.80-2018, SEC.3; P.L.142-2020, SEC.63; P.L.209-2023, SEC.2.*

**Ind. Code § 35-45-16-2 Malicious Mischief**

Sec. 2. (a) As used in this section, "body fluid" means:

- (1) blood;
- (2) saliva;
- (3) sputum;
- (4) semen;
- (5) vaginal secretions;
- (6) human milk;
- (7) urine;
- (8) sweat;
- (9) tears;
- (10) any other liquid produced by the body; or
- (11) any aerosol generated form of liquids listed in this subsection.

(b) As used in this section, "infectious hepatitis" means:

- (1) hepatitis A;
- (2) hepatitis B;
- (3) hepatitis C;
- (4) hepatitis D;
- (5) hepatitis E; or
- (6) hepatitis G.

(c) A person who recklessly, knowingly, or intentionally places human:

- (1) body fluid; or
- (2) fecal waste;

in a location with the intent that another person will involuntarily touch the body fluid or fecal waste commits malicious mischief, a Class B misdemeanor.

(d) An offense described in subsection (c) is a:

(1) Level 6 felony if the person knew or recklessly failed to know that the body fluid or fecal waste was infected with:

- (A) infectious hepatitis;
- (B) HIV; or
- (C) tuberculosis;

(2) Level 5 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with infectious hepatitis and the offense results in the transmission of infectious hepatitis to the other person; or

(B) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) Level 4 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

(e) A person who recklessly, knowingly, or intentionally places human:

(1) body fluid; or

(2) fecal waste;

in a location with the intent that another person will ingest the body fluid or fecal waste commits malicious mischief with food, a Class A misdemeanor.

(f) An offense described in subsection (e) is:

(1) a Level 6 felony if the person knew or recklessly failed to know that the body fluid or fecal waste was infected with:

(A) infectious hepatitis;

(B) HIV; or

(C) tuberculosis;

(2) a Level 5 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with infectious hepatitis and the offense results in the transmission of infectious hepatitis to the other person; or

(B) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Level 4 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

*As added by P.L.88-2002, SEC.2. Amended by P.L.158-2013, SEC.545.*