

# HR 130 TASK FORCE

*to study the public health outcomes related  
to the criminalization of the  
human immunodeficiency virus (HIV)*



**Report to the Legislature  
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# 2023-2024 Report of HIV Criminalization (HR 130) Task Force

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# **2023-2024 Report of HIV Criminalization (HR 130) Task Force**

## **LEGISLATIVE BACKGROUND**

The Louisiana legislature created the HIV Criminalization Task Force (Task Force) during the Regular Session of 2023 through the unanimous passage of House Resolution 130, which was enrolled in June 2023.

## **MEMBERSHIP OF THE TASK FORCE**

House Resolution 130 established the Task Force composed of the following members:

- (1) The state representative who represents House District No. 98, or her designee.
- (2) The chairman of the House Committee on Administration of Criminal Justice, or his designee.
- (3) The chairman of the House Committee on Health and Welfare, or his designee.
- (4) A member of the Louisiana Coalition on Criminalization and Health.
- (5) One representative from the Bureau of Infectious Diseases within the Louisiana Department of Health, office of public health.
- (6) One representative from the Louisiana District Attorney's Association.

The membership of the Task Force unanimously voted to add two (2) additional members at their first meeting on September 28, 2023: (1) one representative of the Louisiana Commission on HIV and Hepatitis C Education, Prevention, and Treatment, and (2) one community member representing people living with HIV (PLWH).

## **PURPOSE OF THE TASK FORCE**

Pursuant to HR 130, the purpose of the Task Force is to study the public health outcomes related to the criminalization of the human immunodeficiency virus (HIV) and provide recommendations to modernize R.S. 14.43.5 to reflect both the realities regarding the routes and risks of transmission of HIV and to better serve the public interest in the Ending the HIV Epidemic initiative in Louisiana in a final report of its findings prior to the convening of the 2024 Regular Session of the Legislature of Louisiana.

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### **MEETINGS OF THE TASK FORCE**

The Task Force held meetings on September 28, 2023, November 10, 2023, November 17, 2023, and February 1, 2024. The following is a summary of the minutes for each:

#### **September 28, 2023 Task Force Meeting**

The first meeting of the Task Force was held on September 28, 2023, at the Louisiana State Capitol in House Committee Room 6. The meeting was called to order by HR 130 co-author Representative Aimee Adatto Freeman at 2:36 PM. Representative Freeman offered a brief welcome highlighting the objectives of the Task Force and the HR 130 Study Resolution. Roll was called (all members of the Task Force present), and each Task Force member introduced themselves.

The Task Force then received a presentation from member Dr. Samuel Burgess of the Louisiana Department of Health. The presentation (entitled, “Overview of HIV Including HIV Epidemiology in Louisiana”) offered an overview of the science and transmission routes of the human immunodeficiency virus (HIV). Dr. Burgess noted that primary transmission routes are specific sexual behaviors and injection drug use. Also reviewed were pre-exposure prophylaxis (PrEP), post-exposure prophylaxis (PEP), current scientific findings that people living with HIV cannot transmit the virus sexually when they are in successful treatment and have “undetectable” viral loads (“Undetectable equals Untransmittable,” or, “U=U” and viral suppression as a mode of stopping transmission), and the current picture of the HIV epidemic in Louisiana. Following the presentation, the Task Force asked questions of Dr. Burgess to clarify their understanding of HIV transmission factors.

Next, the Task Force received a presentation from Christal Hurst (Director of Policy, Frontline Legal Services), entitled, “HIV Criminalization 101,” covering definitions pertaining to HIV Criminalization, background on Louisiana’s R.S. 14:43.5 (which criminalizes HIV status based upon potential “exposure” using vague and unspecified language), and issues with the current statute that could be solved by modernizing Louisiana’s statute regarding HIV exposure. Following the presentation, the Task Force asked questions centering mostly on client experiences with HIV criminalization Ms. Hurst shared from her work with Frontline Legal Services. Members of the Task Force heard anecdotal case reports of coercive control tactics experienced by people living with HIV (i.e., an intimate partner threatening to report “exposure” to law enforcement in



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order in order to stop a person from exiting a romantic or sexual relationship, HIV status being raised in child custody cases). Task Force members asked questions about how a person living with HIV might document disclosure of status, and learned proving such disclosure is challenging, or, in the case of first responder “exposure”, that in actual emergencies, a person may not be able to disclose due to the circumstances of that emergency.

Representative Freeman initiated a discussion on the structure of the Task Force going forward, nominating Dr. Samuel Burgess to serve as Chair of the Task Force going forward. Without objection, Dr. Burgess accepted the role of Chair and led the remainder of the meeting. The Task Force agreed unanimously to add a representative from the Louisiana Governor’s Commission on HIV and Hepatitis C Education, Prevention, and Treatment as well as a representative community member of the Louisiana population of people living with HIV as two additional Task Force members to join them going forward. The Task Force then decided (again unanimously) to have staff (Aisha McKenzie) schedule two to three (2-3) more meetings to accomplish Task Force duties before the legislative report was due. Aisha McKenzie offered a contact email of [aisha.mckenzie@la.gov](mailto:aisha.mckenzie@la.gov) for anyone wishing to provide information, opinion, and/or data to the Task Force. The Task Force then opened the meeting for public comments. Following public comment, the meeting was adjourned at 4:06 PM.

### **November 8, 2023 Task Force Meeting**

The second Task Force meeting was held on November 8, 2023 at the Louisiana State Capitol in House Committee Room 6. Ms. Julie Fitch, of the Bureau of Infectious Diseases with the Louisiana Department of Health sat as Chair serving as proxy for Dr. Samuel Burgess. The meeting was called to order at 2:10 PM, with the roll called (representative from the Louisiana District Attorney’s Association absent, three alternative designees present). Alternative designees (“proxies”) introduced themselves and then the Task Force chose to approve the September 28, 2023 meeting minutes unanimously.

Dr. Joyce Turner Keller, nominated by Representative Vanessa LaFleur to sit on the Task Force as a community member living with HIV, introduced herself as an ordained minister, bishop, and community member. Dr. George Nawas, PharmD, nominated by the Louisiana Governor’s Commission on HIV and Hepatitis C Education, Prevention, and Treatment to sit on the Task Force as a representative of the Commission introduced himself as a clinical pharmacist

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specializing in infectious disease and associate professor at Xavier University. After introductions, the Task Force decided unanimously to add the two nominees as members of the Task Force.

Ms. Fitch presented a request from the Louisiana Coalition on Criminalization and Health (LCCH) to collect data from law enforcement, judicial districts, and health department entities on behalf of the Task Force. Representative LaFleur motioned to vote on allowing LCCH to collect data on behalf of the Task Force, Representative Barbara Freiberg seconded the motion, and the Task Force voted unanimously in favor of allowing LCCH to collect this data on behalf of the Task Force.

The Task Force reviewed current Louisiana statute pertaining to HIV (R.S. 14:43.50) line-by-line. Throughout the discussion, members noted for staff where they felt the current statute needed clarification and/or better definitions in order to address vagueness, and issued research requests for staff (Aisha McKenzie) to provide them with more information regarding HIV criminalization and modernization of such statutes in other states prior to the next meeting of the Task Force. The Task Force then opened the meeting for public comments. Following the public comment period, the meeting was adjourned at 3:38 PM.

### **November 17, 2023 Task Force Meeting**

The third Task Force meeting was held on November 17, 2023 at the Louisiana State Capitol in House Meeting Room 6. Chair called the meeting to order at 2:10 PM and roll was called (representative from the Louisiana District Attorney's Association absent, two alternative designees present). Alternative designees ("proxies") introduced themselves, and the Task Force unanimously approved the minutes from the November 10, 2023 meeting.

The Task Force then received a presentation from Dr. Ceryl Lynn Besch on HIV transmission and science, entitled, "Undetectable Equals Untransmissible; Updating the Story of HIV". Dr. Besch introduced herself as a product of LSU education and training, specializing in internal medicine and infectious diseases. From 1989 through 1998, Dr. Besch worked for Tulane Health Sciences Center as an infectious disease faculty member and principal investigator for the HIV research unit. From 1998 through 2020, Dr. Besch was employed by LSU Health Sciences Center as the HIV Division Director within the section of Infectious Diseases (clinically active, including providing HIV care via telemedicine to the jail and prison populations in Southern Louisiana), as

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the Medical Director of the HIV Outpatient Program, and as the State-wide Lead of the HIV Disease Management Program. Dr. Besch's presentation reviewed modes of transmission for HIV (again, noting primary modes of transmission are certain sexual behaviors and injection drug use), explained how HIV treatments function, and gave an in-depth look into "treatment as prevention" as embraced by the Centers for Disease Control and the Federal Government's Ending the HIV Epidemic initiative, started under President Trump in February 2019.

Following Dr. Besch's presentation, the Task Force asked questions of clarification to further increase their knowledge about the science of HIV transmission and treatment and Dr. Besch's experience in treating either currently or formerly incarcerated persons living with HIV. Task Force members also sought clarification on potential modes of transmission relative to first responders, given specified provisions in existing statute.

Next, the Task Force received a presentation from Morgan Lamandre, Esq. entitled, "Meeting the Sexual Health Needs of Sexual Assault Survivors". Ms. Lamandre introduced herself as President and CEO of Sexual Trauma Awareness and Response (STAR). She shared that she deeply regretted standing in opposition to certain original language in HB 275 of the 2018 legislative session, because she had since learned how the statute harms certain members of the public and exposes them to risks of sexual violence. The presentation covered the health concerns of sexual assault survivors, explaining that under R.S. 40:1216.1, survivors are guaranteed cost-covered forensic medical exams (FME), emergency contraception, and medication (provided during the FME only). Ms. Lamandre addressed gaps in R.S. 40:1216.1, clarifying that current statute does not mandate which screenings must occur (only that a pregnancy test must occur to administer emergency contraception), or any prophylactic medications for the prevention of sexually transmitted infections/diseases (only that the costs of any testing/screening/medication providing *during* the FME be billed to Crime Victims Reparations). The current statute also does not mandate that hospitals stock prophylactic medications for the prevention of sexually transmitted infections/diseases, meaning that survivors are typically issued a prescription which they might not be able to fill within the necessary timeframe for the medication to actually be effective. Ms. Lamandre then explained how the current HIV criminalization statute in Louisiana can create an environment where sexual assault perpetrators specifically seek people living with HIV to target for assault and abuse, and that the mandatory sex offender registration associated with R.S. 14:43.5

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makes those convicted ineligible for services provided to sexual assault survivors. Ms. Lamandre pointed out this requirement applies even if the action in question was not sexual in nature (i.e., spitting), and noted a high rate of sexual assault survivors in the minority populations most highly affected by HIV. Ms. Lamandre advised the Task Force that legislation most concerned with protecting and defending sexual assault survivors would mandate hospitals stock prophylactic medication for sexually transmitted infections/diseases, provide survivors with *at least* a three-day supply of post-exposure prophylaxis (PEP) to protect against HIV transmission when medically indicated, and ensure survivors have no out-of-pocket costs for this treatment, nor would survivors be subject to balance billing for follow-up services. The presentation ended with a suggestion to modernize R.S. 14:43.5 to include specificity of a definitions section, scientifically accurate information about the transmission of HIV, reconsider sex offender registration as it pertains to this statute, review and vacate the sex offender registry for at the very least the people who were convicted in cases with no sexual contact, require transmission to occur for someone to be convicted, and create a system that encourages testing and linkage to treatment/reduction of viral load. Following her presentation, the Task Force asked questions of Ms. Lamandre to better understand R.S. 40:1216.1 and the impact of R.S. 14:43.5 on sexual assault survivors as well as on people living with HIV.

After the presentation, the Task Force turned to discussion about their recommendations for modernizing R.S. 14:43.5. Task Force consensus was that statutory language needs to be changed and clarified to both reflect modern science and reduce stigmatized social opinion, explicitly noting “exposure” versus “transmission”, and the need for a clear definition for “intent”. Task Force members also discussed in detail the provisions relative to “first responders” in relation to data presented by Drs. Burgess and Besch about primary modes of transmission being certain sexual behaviors and injection drug use.

Representative LaFleur motioned to have Aisha McKenzie (staff) draft proposed legislative language for the Task Force’s next meeting; Representative Wayne McMahan seconded the motion. The Task Force voted (unanimously) to proceed with having Aisha McKenzie draft their proposed language. The body turned to discussion of writing their legislative study report. Dr. Samuel Burgess noted a proposal the Louisiana Department of Health had received from an outside entity to write such a report, and Representative LaFleur suggested that, as the report would simply

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be an explanation of recommendations and rationale, Aisha McKenzie draft this as well. The Task Force agreed (by consensus, unanimously) to have Aisha McKenzie proceed with drafting proposed legislation and rationale/report.

The Task Force then opened the meeting for public comments. Following the public comment period, the meeting was adjourned at 4:01 PM.

### **February 1, 2024 Task Force Meeting**

The fourth Task Force meeting was held on February 1, 2024 at the Louisiana State Capitol in House Meeting Room 6. Chair called the meeting to order at 2:10 PM and roll was called (one member absent). Mr. Zachary Daniels, Executive Director of the Louisiana District Attorney's Association (LDAA) introduced himself as the new representation of the LDAA on the Task Force. The Task Force unanimously approved the minutes from the November 17, 2023 meeting.

The Task Force then received a presentation from Dietz, Statewide Coordinator of the Louisiana Coalition on Criminalization and Health (LCCH) entitled, "Community Research for HR 130." Dietz re-introduced LCCH and explained the research the Coalition had constructed to assist the efforts of the Task Force in looking at the impact of R.S. 14:43.5 upon people living with HIV (PLWH) in the state of Louisiana. The presentation explained LCCH's process in conducting focus groups located in each of Louisiana's nine (9) public health regions, partnering with local HIV service organizations and co-facilitated by local leadership. Focus group demographics were shared, showing that across the nine (9) focus groups, seventy-eight PLWH participated from a variety of demographics representative of the diversity of the HIV epidemic in Louisiana. The presentation went on to share some of the key data points LCCH found in their standardized questioning of focus group participants, namely the negative psychological and quality-of-life impacts of R.S. 14:43.5 on PLWH and upon willingness to participate in HIV testing. Following the presentation, the Task Force asked questions and commented on their views of necessary changes in statute; during discussion, the Task Force requested data showing impacts of modernization in other states.

The Task Force then turned to discussion on the drafted Task Force report. Mr. Zachary Daniels, newly representing the Louisiana District Attorney's Association (LDAA) on the Task Force, noted that the members of the LDAA would benefit greatly from updated educational presentations

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on the modern science surrounding HIV. He also expressed that while he didn't have consensus from his members, they would likely object to a full repeal of R.S. 14:43.5 as well as seek feedback from first responders regarding any first responder provisions in legislation. Representative LaFleur requested specific language edits to the recommendation, agreed to by the rest of the Task Force. After discussion, the Task Force agreed (unanimously, by consensus) to have the report re-circulated with the amendments and comments made at this meeting included.

The Task Force then opened the meeting for public comments. Following the public comment period, the meeting was adjourned at 3:19 PM.

### **March 6, 2024 Task Force Meeting**

The fifth and final Task Force meeting was held on March 6, 2024 at the Louisiana State Capitol in House Meeting Room 4. Chair called the meeting to order at 3:04 PM and roll was called (one member absent). The Task Force unanimously approved the minutes from the February 1, 2024 meeting. Representative McMahan motioned to approve the the Task Force's final report; Representative LaFleur seconded the motion. Chair asked for a show of hands, with all Task Force members showing approval except Mr. Zachary Daniels of the Louisiana District Attorney's Association, who opposed the report.

The Task Force discussed Mr. Daniel's opposition to the report and LDAA's lack of participation in the Task Force. After discussion, the Chair asked for a roll call vote to approve the report. Dr. Samuel Burgess, Dietz, Representative Vanessa LaFleur, Representative Wayne McMahan, Dr. Joyce Turner Keller, and Dr. George Nawas voted to approve the Task Force's final report. Mr. Zachary Daniels voted in opposition. The motion to approve the Task Force's final report carried, with six votes to approve, and one to oppose.

The Task Force then opened the meeting for public comments. Following the public comment period, the meeting was adjourned at 3:26 PM.

## **TASK FORCE FINDINGS**

The Task Force received data and input from numerous stakeholders regarding the impact of the HIV criminalization statute in Louisiana. After thorough review and discussion of the complex nature of these laws and their impacts upon public health, the Task Force offers the following

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findings in conjunction with proposed legislative recommendations for consideration by the Louisiana State legislature and the citizens they represent.

### **Current Issues and Areas of Potential for Improvement Identified within L.R.S. 14:43.5**

The Task Force recognizes that HIV is an ongoing public health concern, with Louisiana holding the fourth highest rate of new HIV diagnoses in the nation and *leading* the nation in late-stage diagnoses (in which an individual does not learn of their HIV-positive status until the virus has progressed to the point of an AIDS diagnosis). The Task Force learned during its study that research shows that criminalization of HIV exposure may actually *undermine* public health efforts and goals. Studies presented to the Task Force show that these laws often provide a disincentive for high-risk populations to engage in HIV testing (because criminalization statutes typically require a person know their positive status for successful prosecution, as does R.S. 15:43.5). Criminalization also proves to discourage disclosure of HIV status, encourage discrimination against persons living with HIV (PLWH), and aggravating HIV-related stigma. Notably, the Task Force was made aware of the challenges of documenting disclosure and how, upon disclosure of HIV status, a person may face unjustified violence or coercive threats regarding Louisiana's criminal code. Additionally, the Task Force learned of negative impacts of criminalization on the provider/patient relationship, especially in regards to honesty about risk profiles, mental health, and adherence to HIV treatment.

The Task Force acknowledges that when Louisiana first criminalized HIV in 1987, the science of HIV was poorly understood, and the state's statute reflected common misunderstandings about the virus. In fact, the Ryan White Comprehensive AIDS Resources Emergency Act, first enacted August 18, 1990, *required* states to enact harsh HIV criminalization legislation to secure the federal funds available through contingency grants for uninsured/under-insured people to receive one of the first HIV treatments, AZT. Since that time, science and knowledge have advanced; modern HIV treatments have the ability to virally suppress people living with HIV (PLWH) to the point where they cannot transmit the virus through sexual contact. And since that time, the federal government has recognized the advance in science and understanding of HIV, with President Trump's Ending the HIV Epidemic Initiative in 2019 specifically encouraging states to repeal and/or modernize these laws, as they do not reflect current science and can actually interfere with work to end the HIV epidemic.

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According to the William’s Institute report of September 2022, entitled Enforcement of HIV Criminalization in Louisiana,

*The legislative record for Louisiana’s original HIV criminalization bill passed in 1987 indicated that the bill’s aim was to compel people living with HIV to not be sexually active. The bill’s lead sponsor, Representative Kernan Hand, said during a committee hearing that, “the purpose of this bill is to deter those infected with [HIV] from remaining sexually active in the community.”<sup>1</sup>*

If the statute was intended to deter people living with HIV (PLWH) from sexual activity, and sexual activity is not a mode of transmission for PLWH who are virally suppressed in successful treatment, then it would seem to this body that there is no need for such deterrence or prolonged criminalization of this health status, especially in a state where no other health status is criminalized.

Three years after Louisiana’s original HIV criminalization bill passed, in 1990, President George H. W. Bush signed into law 42 U.S.C. § 12101, otherwise known as the Americans with Disabilities Act. In 1999, the Supreme Court of the United States, in *Bragdon v Abbott*, held 1) that reproduction is a “major life activity” under the Americans with Disability Act, and 2) that HIV is a covered health condition under the Americans with Disability Act, regardless of symptomology. Subsequently, every Circuit Court of Appeals since has similarly ruled that “sexual relations” are specifically protected under the Abbott ruling language of “major life activity”. The Americans with Disability Act protects persons with covered disabilities from discriminatory laws affecting their ability to engage in or as a consequence of engaging in “major life activities”, among other things. Therefore, if the Legislature’s intent of R.S. 14:43.5 is to prohibit consensual sexual relations among persons living with HIV, the statutory intent necessarily constitutes impermissible discriminatory intent under the Americans with Disabilities Act.

If the Legislature’s intent with R.S. 14:43.5 is to prohibit malevolent actors from malicious transmission of HIV and provide a meaningful protection of public health, statutory language must

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<sup>1</sup> Cited from page 5 of the William’s Institute’s Enforcement of HIV Criminalization in Louisiana report, dated September 2022 with the citation: Minutes of Meeting of June 23, 1987: Hearing on H.B. 1728 Before the S. Comm. on Judiciary C, 1987 Leg., 13th Reg. Sess. (La. 1987) (statement of Rep. Kernan Hand). Both Rep. Hand and the bill itself incorrectly referred to HIV as “the AIDS virus.” 1993 La. Acts 411 (codified at LA. rev. S tAt . § 14:43.5).



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be narrowly tailored to achieve this end. The Task Force identified problematic vagueness in Louisiana’s current statute, leaving the potential for overly broad prosecution under R.S. 14:43.5. Specificity in definitions, especially relative to intent, allows for narrow prosecution of malicious actors while preserving the interests of public health and known best practices as reported to the Task Force from qualified experts. Recognizing information provided by medical experts, the Task Force also recognizes the issues relative to provisions referencing “first responders”; because HIV is primarily transmitted by sexual contact or injection drug use, first responders cannot be factually “exposed” to HIV without also committing a crime themselves. As the United States Centers for Disease Control and Prevention (CDC) has noted, “To end the HIV epidemic, public health, criminal justice, and legislative systems must work together to ensure that laws *are evidence-based and just, and support public health efforts.*”<sup>2</sup> While Louisiana attempted modernization of R.S. 14:43.5 in 2018, amendments at that time served to broaden the state’s criminalization of HIV, rather than (as President Trump’s Ending the HIV Epidemic initiative urged) “updating or repealing outdated [HIV criminalization] laws and practices”.<sup>3</sup>

The body has expressly noted a problematic lack of definition to the phrasing “No person shall **intentionally expose** another”. Without a definitions subsection in this statute, “intentionally” and “expose” are both left to the interpretation of arresting, prosecuting, and judicial bodies. While R.S. 14:10(1) defines “specific criminal intent”, R.S. 14:43.5 does not specify “specific criminal intent”, and prosecution/conviction records under this statute show that specific criminal intent has not been required in the enforcement of this statute in Louisiana. In the practicalities of enforcement, all that is required is that a person accused of violating the statute know their HIV status, which dramatically discourages HIV testing, pre-exposure prophylaxis (PrEP) usage, and thus, linkage to treatment in the state. Likewise, imprecision of the concept of “exposure” with regards to modern medical science and knowledge has presented an issue in implementation with inconsistent standards for arrest, prosecution, and conviction, which may be contradictory with certain Constitutional protections.

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<sup>2</sup> CDC. (2023, January 19). HIV Criminalization and *Ending the HIV Epidemic in the US*. (<https://www.cdc.gov/hiv/policies/law/criminalization-ehe.html>)

<sup>3</sup> CDC. (2020, December). HIV Criminalization and *Ending the HIV Epidemic in the US*. (<https://www.cdc.gov/hiv/policies/law/criminalization-ehe.html>)

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The Task Force also found the section of the statute pertaining to first responders particularly problematic. With medical experts testifying as to the factual risks and routes of HIV transmission, first responders cannot meaningfully be “exposed” to HIV unless those first responders are either engaging in sexual activity with an accused person or sharing injection drug supplies with an accused person – both of which are tacit admissions of a first responder engaging in criminal activities. As zero vocational transmissions of HIV have been reported among first responders, and with the specific availability (and procedural institution) of post-exposure prophylaxis (PEP) for first responders, it is logical to remove the section of statute pertaining to transmission to first responders in its entirety.

Task Force members also noted that according to the Williams Institute Report, several convictions occurred among incarcerated persons. While, legally, incarcerated persons cannot consent to sexual activity, the entity responsible for the care and well-being of an incarcerated person is particularly responsible for providing timely, clinically appropriate care for incarcerated persons living with HIV. The Task Force concluded that if an incarcerated person living with HIV was convicted of “intentional exposure”, the responsible agency failed both in its duty to sufficiently prohibit sexual activity in the facility and in providing sufficient medical care,ml for the accused person to achieve viral suppression, a tacit admission of the responsible agency failing its 8<sup>th</sup> Amendment responsibilities.

Overall, the Task Force recognized the need to update statutory language, particularly with regard to ensuring definitions are narrowly tailored in a fashion that 1) does not encourage harmful, unintended consequences against a variety of vulnerable populations, 2) aligns with known best practices in public health and successfully address a particular disincentive to a core pillar of Louisiana’s Ending the HIV Epidemic in alignment with the initiative begun under the Trump Administration, and 3) identifies a pathway for those previously convicted under unjust circumstances to expunge their record and return to usual public life, gaining access to services and supports all other persons with chronic health conditions have. The Task Force found particular alignment in assessing these issues and goals in relation to specific Legislative commentary and recently passed legislation as it relates to other public health concerns, such as COVID-19.

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### Task Force Recommendations to Address Identified Issues and Improve Public Health Outcomes within L.R.S. 14:43.5

The Task Force has reviewed and discussed the numerous ways other states have repealed and/or modernized their HIV criminalization statutes since 1994, specifically focusing on those states,

(1) in the Southern geographic region:

- Texas (*fully* repealed statutes criminalizing HIV exposure/transmission in 1994)
- Virginia (modernized statutes criminalizing HIV in 2021)
- Kentucky (modernized HIV criminalization statutes in 2023)
- Tennessee (removed criminal exposure to HIV from sex offender registry in 2023)
- West Virginia (no specific HIV code, communicable disease statutes contained in public health code)
- Georgia (modernized its HIV criminalization statutes in 2022),

*and*

(2) which followed a similar process as Louisiana has thus far, employing a task force to develop legislative recommendations for modernization:

- Iowa (modernized HIV criminal code in 2014)
- Nevada (HIV criminalization statutes modernized in 2021)

The Task Force also requested data on the public health outcomes relative to modernization of HIV criminalization statutes. When examining the epidemiological data implications of Iowa's 2014 modernization, the Task Force found truly impressive results. By 2021, Iowa led the nation in rates of HIV viral suppression (viral suppression being that which renders PLWH unable to transmit HIV via sexual activity) and linkage to care, both key public health goals in the effort to end the HIV epidemic<sup>4</sup>. When Iowa's HIV viral suppression rates are compared with that of Louisiana, Iowa's rates exceed Louisiana's by greater than 10%.<sup>5</sup> Given Louisiana's standing as number one in the nation for late stage diagnoses, the Task Force was especially interested to learn that Iowa has seen a *dramatic* drop in late stage diagnoses since 2014.<sup>6</sup> This is impactful knowledge

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<sup>4</sup> Axios. (2023, August 17). *Iowa Leads U.S. in HIV Suppression*. <https://www.axios.com/local/des-moines/2023/08/18/iowa-top-us-hiv-suppression>. See Appendix III for full data.

<sup>5</sup> America's HIV Epidemic Analysis Dashboard (AHEAD). (Data retrieved: 2024, March 1). <https://ahead.hiv.gov/?indicator=282&measure=rate&location=16&location=19>. See Appendix III for full data.

<sup>6</sup> State of Iowa Department of Health and Human Services, Bureau of HIV, STI, and Hepatitis (2023, September). *State of Iowa HIV Disease End-Of-Year 2022 Surveillance Report*. [https://publications.iowa.gov/47082/1/2022%20HIV%20End%20of%20Year%20Report\\_final%20edits.pdf](https://publications.iowa.gov/47082/1/2022%20HIV%20End%20of%20Year%20Report_final%20edits.pdf) (p18). See Appendix III for full data.

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after extensive public comment and presentation from subject matter experts concerning how R.S. 14.43.5 disincentivizes HIV testing through the threat of criminal liability.

The Task Force submits the following recommendations that the legislature may review and prioritize when crafting legislative proposals for any legislative session.

**RECOMMENDATION ONE:** repeal R.S. 14:43.5 in its entirety (as in Texas), leaving R.S. 40:1121.2 in place (penalty referenced in R.S. 40:1121.11). The state of Nevada offered a similar approach following their task force’s recommendations in 2021 and the state of West Virginia has done so as well. The scientific data available today supports placing laws concerning the transmission of sexually transmitted infections within the purview of public health code rather than criminal code.

1. If this recommendation is to be followed, R.S. 40:1121.2 should be amended to reflect intentional inoculation or transmission of sexually transmitted infections (updating language from “venereal disease”).
2. If this recommendation is to be followed, definitions in R.S. 40:1121.1 should be amended to include a definition for “specific intent”, so as to avoid future issues and concern with the vague language (see recommended definitions below).
3. If this recommendation is to be followed, R.S. 15:541 should be amended to remove reference to R.S. 14:43.5 in subsection (24)(a). R.S. 15:542 should be amended to add (5) to subsection F:

(5) Any person who was convicted of intentional exposure to HIV (R.S. 14.43.5) prior to [insert effective date], or the district attorney in the parish where the offender was convicted, may file a motion in the court of conviction to relieve the offender of the sex offender registration and notification requirements of this Chapter if the actions for which the offender was convicted were in offense of R.S. 14:43.5 alone.

4. If this recommendation is to be followed, LCCP, Title XXXIV, Article 978 should be amended by adding the following to subsection (2):

(c) Notwithstanding any other provision of law, any person who was convicted of intentional exposure to HIV (R.S. 14:43.5) prior to [insert effective date] is eligible for

## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

an expungement pursuant to the provisions of this Title if the actions for which the offender was convicted were in offense of R.S. 14:43.5 alone.

**RECOMMENDATION TWO:** if R.S. 14:43.5 is not to be repealed in its entirety (leaving R.S. 40:1121.2 in its place), the Task Force recommends altering current statute, including, but not limited to, the following amendments (similar to modernization of legislation in Kansas, Virginia, and Georgia), in alignment with the findings of vagueness, broad prosecution of non-malicious persons, and in recognition of how the current language of the statute may be exploited by bad actors:

1. Change the name of R.S. 14:43.5 to “Intentional Transmission of HIV”.
2. Create R.S. 14:43.5(a): Definitions
  - (a) For the purposes of this subpart, the following definitions shall apply:
    - (1) “Contact that poses a substantial risk of transmission” means an activity that results in the exchange of blood, semen, or vaginal fluid and has a reasonable probability of disease transmission as proven by current scientifically supported levels of risk of transmission. Conduct posing a low or negligible risk of transmission as proven by current scientifically supported levels of risk of transmission does not meet the definition of conduct posing a substantial risk of transmission.
    - (2) “HIV” means human immunodeficiency virus.
    - (3) “Intent” or “intentionally” shall only mean “specific criminal intent” as defined in R.S. 14:10(1). In the context of this subpart, “intentionally” means that the accused acts with the specific intent to transmit when the circumstances indicate that the accused actively desired HIV transmission to result from the act in which the accused allegedly engaged.
    - (4) “Means to prevent transmission” is any method, device, behavior, or activity scientifically demonstrated to measurably limit, reduce, or eliminate the risk of transmitting HIV, including—but not limited to—the use of a condom, barrier protection, or prophylactic device, or the use of pre-exposure prophylaxis (PrEP).

## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

(5) “Transmit” is the act of transferring HIV to another person, resulting in the actual infection of another person.

3. In addition to adding a definitions section, the body recommends the following amendments to the text:

A. No person shall intentionally ~~transmit to another person~~ expose another to the human immunodeficiency virus (HIV) through sexual contact that poses a substantial risk of transmission ~~without the knowing and lawful consent of the victim, if at the time of the exposure the infected person knew he was HIV positive.~~

~~B. No person shall intentionally expose another to HIV through any means or contact without the knowing and lawful consent of the victim, if at the time of the exposure the infected person knew he was HIV positive.~~

~~C. No person shall intentionally expose a first responder to HIV through any means or contact without the knowing and lawful consent of the first responder when the offender knows at the time of the offense that he is HIV positive, and has reasonable grounds to believe the victim is a first responder acting in the performance of his duty.~~

~~D. For purposes of this Section, “first responder” includes a commissioned police officer, sheriff, deputy sheriff, marshal, deputy marshal, correctional officer, constable, wildlife enforcement agent, and probation and parole officer, any licensed emergency medical services practitioner as defined by R.S. 40:1131, and any firefighter regularly employed by a fire department of any municipality, parish, or fire protection district of the state or any volunteer firefighter of the state.~~

B. Intent cannot be proven if:

1. If the accuser knew the person was living with HIV and knew the action could result in transmission of HIV.

2. If the transmission occurred after advice from a licensed physician that the accused was noninfectious.

3. If the accuser and/or the accused enacted means to prevent transmission.

C. E(4) Whoever commits the crime of intentional transmission of exposure to HIV shall be fined not more than one ~~five~~ thousand dollars, imprisoned with or without hard labor for not more than one ~~five~~ years, or both.

## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

~~(2) Whoever commits the crime of intentional exposure to HIV against a first responder shall be fined not more than six thousand dollars, imprisoned with or without hard labor for not more than eleven years, or both.~~

~~F. (1) It is an affirmative defense, if proven by a preponderance of the evidence, that the person exposed to HIV knew the infected person was infected with HIV, knew the action could result in infection with HIV, and gave consent to the action with that \_\_\_\_\_ knowledge.~~

~~(2) It is also an affirmative defense that the transfer of bodily fluid, tissue, or organs occurred after advice from a licensed physician that the accused was noninfectious, and the accused disclosed his HIV positive status to the victim.~~

~~(3) It is also an affirmative defense that the HIV positive person disclosed his HIV positive status to the victim, and took practical means to prevent transmission as advised by a physician or other healthcare provider or is a healthcare provider who was following professionally accepted infection control procedures.~~

4. If this recommendation is to be followed, R.S. 15:541 should be amended to remove reference to R.S. 14:43.5 in subsection (24)(a). R.S. 15:542 should be amended to add (5) to subsection F:

(5) Any person who was convicted of intentional exposure to HIV (R.S. 14:43.5) prior to [insert effective date], or the district attorney in the parish where the offender was convicted, may file a motion in the court of conviction to relieve the offender of the sex offender registration and notification requirements of this Chapter if the actions for which the offender was convicted would not be considered intentional transmission of HIV (R.S. 14:43.5) had the offender been convicted on or after [insert effective date].

5. If this recommendation is to be followed, LCCP, Title XXXIV, Article 978 should be amended by adding the following to subsection (2):

(c) Notwithstanding any other provision of law, any person who was convicted of intentional exposure to HIV (R.S. 14:43.5) prior to [insert effective date] is eligible for an expungement pursuant to the provisions of this Title if the actions for which the

## **2023-2024 Report of HIV Criminalization (HR 130) Task Force**

offender was convicted would not be considered intentional transmission of HIV (R.S. 14:43.5) had the offender been convicted on or after [insert effective date].

### **CONCLUSION**

The Task Force and its members thank the legislature for the opportunity to study such matters as vitally important to the public health of the state of Louisiana as HIV criminalization and its outcomes. The Task Force strongly believes the recommendations contained herein provide an opportunity to reduce the burden of the HIV epidemic in the state of Louisiana, to improve the lives of the citizens of Louisiana, and to contribute significantly to President Trump's and Louisiana's Ending the HIV Epidemic Initiatives. The Task Force and its members look forward to assisting state legislators and the entire state of Louisiana in achieving the goal of modernizing Louisiana's HIV criminal codes and providing the best public health outcomes possible for the residents of Louisiana.



# 2023-2024 Report of HIV Criminalization (HR 130) Task Force

## APPENDIX I: LEGISLATION

### HR 130 Study Resolution

ENROLLED

2023 Regular Session

HOUSE RESOLUTION NO. 130

BY REPRESENTATIVES FREEMAN AND LANDRY

#### A RESOLUTION

To create a task force to study the public health outcomes related to the criminalization of the human immunodeficiency virus (HIV) and to report its findings prior to the convening of the 2024 Regular Session of the Legislature of Louisiana.

WHEREAS, HIV represents an ongoing public health concern; and

WHEREAS, Louisiana has the fourth highest rate of new HIV diagnoses in the nation; and

WHEREAS, the Centers for Disease Control and Prevention has recommended modernization of HIV criminalization laws, stating "many state laws are now outdated and do not reflect our current understanding of HIV"; and

WHEREAS, as part of the federal government's *Ending the HIV Epidemic* initiative, started under President Trump, states are urged to "consider updating or repealing outdated [HIV criminalization] laws and practices"; and

WHEREAS, the state of Louisiana launched a state-level initiative similar to the federal government's *Ending the HIV Epidemic* initiative and has similarly recommended modernization of Louisiana's HIV criminalization law to better serve public interests and public health best practices; and

WHEREAS, advancements in clinical research and medical evidence have changed since the inception of HIV criminalization laws, reflecting that HIV cannot be transmitted by casual contact, spitting, or biting; and

WHEREAS, advancements in antiretroviral medications, through "treatment as prevention", can reduce HIV to undetectable levels and reduce the risk of transmitting HIV to zero percent while also increasing the life expectancy of affected persons; and

Page 1 of 3

**[continued]**

## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

HR NO. 130

ENROLLED

WHEREAS, research has shown HIV criminalization laws disincentivize HIV testing, discourage disclosure, and undermine public health goals; and

WHEREAS, since 1994, fifteen states have modernized their HIV criminal laws; and

WHEREAS, R.S. 14:43.5 provides for the felony crime of intentional exposure to HIV; and

WHEREAS, Louisiana is one of thirty-five states with criminal laws specific to HIV and is one of four states that require a person convicted under an HIV-specific law to register as a sex offender; and

WHEREAS, in 2018, R.S. 14:43.5 was amended to include affirmative defenses; and

WHEREAS, in December 2021, the REPEAL HIV Discrimination Act of 2021 was introduced in the United States House of Representatives with the intent of providing states guidance on reexamining their HIV-specific crime laws and providing incentives for states to explore the repeal or reform of laws and best practices.

THEREFORE, BE IT RESOLVED that the House of Representatives of the Legislature of Louisiana does hereby create a task force to study the public health outcomes related to the criminalization of HIV and provide for recommendations to modernize R.S. 14:43.5 to reflect both the realities regarding the routes and risks of transmission of HIV and to better serve the public interest in the *Ending the HIV Epidemic* initiative in Louisiana.

BE IT FURTHER RESOLVED that the task force shall be composed of the following members:

- (1) The state representative who represents House District No. 98, or her designee.
- (2) The chairman of the House Committee on Administration of Criminal Justice, or his designee.
- (3) The chairman of the House Committee on Health and Welfare, or his designee.
- (4) A member of the Louisiana Coalition on Criminalization and Health.
- (5) One representative from the Bureau of Infectious Diseases within the Louisiana Department of Health, office of public health.
- (6) One representative from the Louisiana District Attorney's Association.

BE IT FURTHER RESOLVED that the chairman and vice chairman of the task force shall be elected by a majority of the task force members at its first meeting, which shall be called by the chairman of the House Committee on Administration of Criminal Justice no

## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

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ENROLLED

later than September 1, 2023, and the members may select other officers as the task force deems appropriate.

BE IT FURTHER RESOLVED that the task force shall meet at such times and places as determined by its chair.

BE IT FURTHER RESOLVED that the members of the task force shall serve without compensation, except per diem or expenses reimbursement to which they may be individually entitled to as members or employees of their constituent organizations.

BE IT FURTHER RESOLVED that a majority of the total membership shall constitute a quorum of the task force, and any official action by the task force shall require an affirmative vote of a majority of the quorum present and voting.

BE IT FURTHER RESOLVED that the Louisiana Department of Health shall provide staff support to the task force.

BE IT FURTHER RESOLVED that the task force shall report its findings to the House of Representatives prior to the convening of the 2024 Regular Session of the Legislature of Louisiana.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to each of the task force members provided in this Resolution.

BE IT FURTHER RESOLVED that one print copy and one electronic copy of any report produced pursuant to this Resolution shall be submitted to the David R. Poynter Legislative Research Library as required by R.S. 24:772.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

# 2023-2024 Report of HIV Criminalization (HR 130) Task Force

## L.R.S. 14.43.5

Louisiana Laws - Louisiana State Legislature

<https://legis.la.gov/Legis/LawPrint.aspx?d=78536>

### RS 14:43.5

#### §43.5. Intentional exposure to HIV

A. No person shall intentionally expose another to the human immunodeficiency virus (HIV) through sexual contact without the knowing and lawful consent of the victim, if at the time of the exposure the infected person knew he was HIV positive.

B. No person shall intentionally expose another to HIV through any means or contact without the knowing and lawful consent of the victim, if at the time of the exposure the infected person knew he was HIV positive.

C. No person shall intentionally expose a first responder to HIV through any means or contact without the knowing and lawful consent of the first responder when the offender knows at the time of the offense that he is HIV positive, and has reasonable grounds to believe the victim is a first responder acting in the performance of his duty.

D. For purposes of this Section, "first responder" includes a commissioned police officer, sheriff, deputy sheriff, marshal, deputy marshal, correctional officer, constable, wildlife enforcement agent, and probation and parole officer, any licensed emergency medical services practitioner as defined by R.S. 40:1131, and any firefighter regularly employed by a fire department of any municipality, parish, or fire protection district of the state or any volunteer firefighter of the state.

E.(1) Whoever commits the crime of intentional exposure to HIV shall be fined not more than five thousand dollars, imprisoned with or without hard labor for not more than ten years, or both.

(2) Whoever commits the crime of intentional exposure to HIV against a first responder shall be fined not more than six thousand dollars, imprisoned with or without hard labor for not more than eleven years, or both.

F.(1) It is an affirmative defense, if proven by a preponderance of the evidence, that the person exposed to HIV knew the infected person was infected with HIV, knew the action could result in infection with HIV, and gave consent to the action with that knowledge.

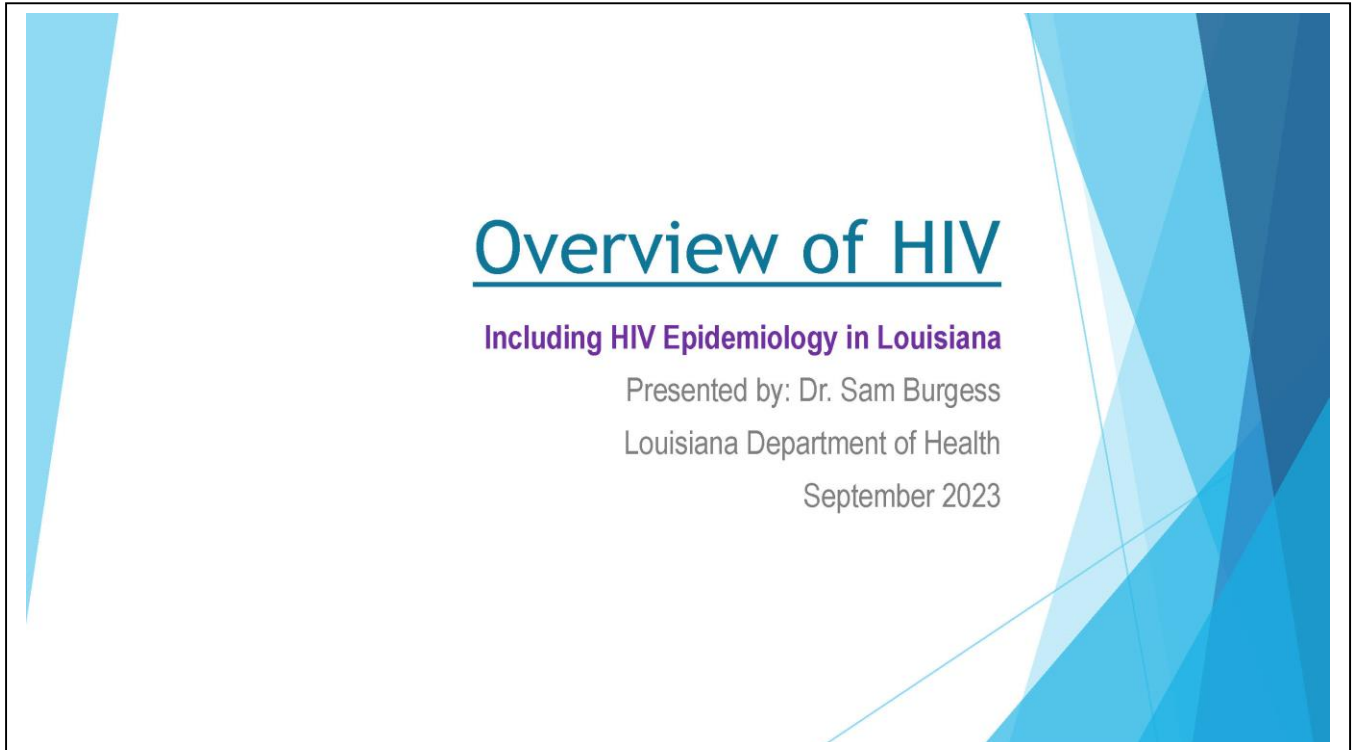
(2) It is also an affirmative defense that the transfer of bodily fluid, tissue, or organs occurred after advice from a licensed physician that the accused was noninfectious, and the accused disclosed his HIV-positive status to the victim.

(3) It is also an affirmative defense that the HIV-positive person disclosed his HIV-positive status to the victim, and took practical means to prevent transmission as advised by a physician or other healthcare provider or is a healthcare provider who was following professionally accepted infection control procedures.

Acts 1987, No. 663, §1; Acts 1993, No. 411, §1; Acts 2018, No. 427, §1.

**APPENDIX II: PRESENTATIONS**

**Overview of HIV Including HIV Epidemiology in Louisiana  
(Dr. Sam Burgess, Louisiana Department of Health)**



## What is HIV?



- ▶ *HIV*
- ▶ *Human Immunodeficiency Virus*

**H:** *stands for human.* It's transferred from human to human contact only.

**I:** *stands for immunodeficiency.* This means that our immune system is not working as well as it should.

**V:** *stands for virus.* This is a particular virus that targets and fights our white blood cells.

As the body loses white blood cells it becomes harder for our body to fight infection & disease.

- ▶ *AIDS*
- ▶ *Acquired Immune Deficiency Syndrome*

*AIDS is a syndrome.*

Patients do not die from HIV or AIDS, but from *opportunistic infections*, commonly Tuberculosis or pneumonia.

## The 4 Fluids that Transmit HIV

1. BLOOD
2. SEMEN
3. VAGINAL FLUID
4. BREAST MILK

**HIV is NOT transmitted by...**

Kokilaben Dhirubhai Ambani  
Hospital & medical research institute  
Every Life Matters



Insect Bites



Sharing Cutlery



Toilet Seats



Touching



Kissing

## Transmission Routes

HIV CAN BE TRANSMITTED THROUGH...



Sexual Contact



Pregnancy, Childbirth & Breast Feeding



Injection Drug Use



Occupational Exposure



and rarely,  
Blood Transfusion/Organ Transplant

### Estimated Per-Act Probability of Acquiring HIV (when source of exposure has HIV)

Type of Exposure	Risk per 10,000 Exposures
<b>Exposure Through Needles:</b>	
Blood Transfusion	9,250
Needle-Sharing During Injection Drug Use	63 (1 out of 159 exposures)
Percutaneous (Needle-Stick)	23 (1 out of 435 exposures)
<b>Sexual Exposures:</b>	
Receptive Anal Intercourse	138 (1 out of 73 exposures)
Insertive Anal Intercourse	11 (1 out of 909)
Receptive Penile-Vaginal Intercourse	8 (1 out of 1,250)
Insertive Penile-Vaginal Intercourse	4 (1 out of 2,500)
Receptive Oral Intercourse	Low
Insertive Oral Intercourse	Low

Source: <https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html>

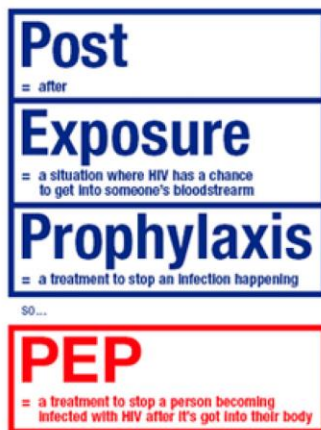


## Pre-Exposure Prophylaxis (PrEP)

- PrEP is a medication that utilizes ARVs to prevent HIV infection in people who are not living with HIV.
- When a person taking PrEP is exposed to HIV, the medication blocks the virus from making copies of itself and prevents them from becoming infected.
- *PrEP does not protect against other STIs or pregnancy.*
- PrEP can reduce the risk of getting HIV by as much as 99%



## Post-Exposure Prophylaxis (PEP)



- PEP involves taking anti-HIV drugs within 72 hours after a potential exposure to HIV.
- 1-2 pills per day for 28 days.
- When should someone take PEP?
  - Workplace sharps exposure
  - After sexual assault
  - Unprotected sex
  - Needle sharing
- *PEP should only be used in emergency situations. It is not a substitute for PrEP or other risk reduction methods.*



## Undetectable=Untransmittable

- ▶ When a person undergoing HIV treatment reaches **viral suppression**, their viral load (amount of HIV in the body) becomes very low and is considered **undetectable**.
- ▶ **U=U or UNDETECTABLE = UNTRANSMITTABLE**
- ▶ **SDOH** : Access to healthcare, housing and other environmental factors impact a person's ability to remain engaged in HIV medical care to achieve/maintain viral suppression.

### The PARTNER study (2016)



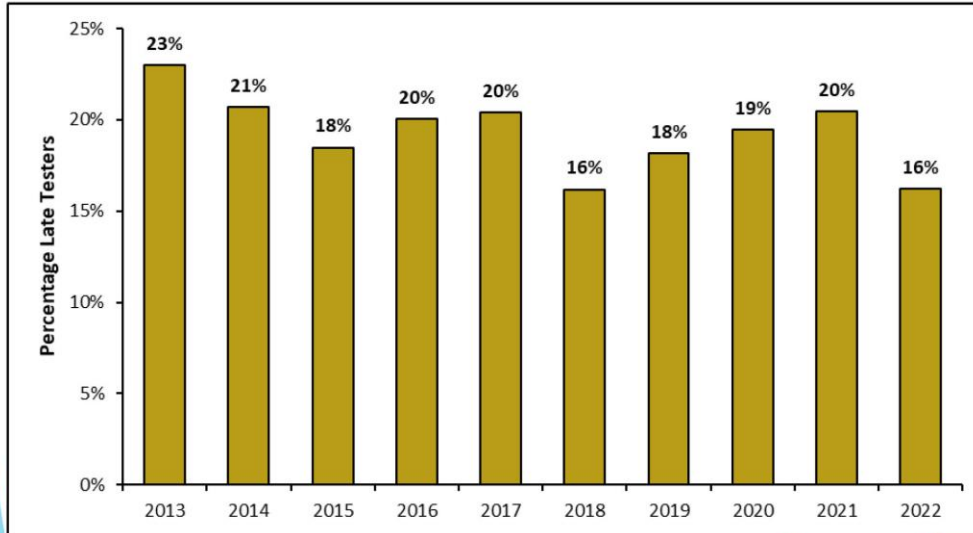
Viral suppression from ART prevents HIV transmission ←

AVERT.org Source: The PARTNER study (2016)

## The current picture of HIV in Louisiana

# 2023-2024 Report of HIV Criminalization (HR 130) Task Force

## Late Testers among People Newly Diagnosed with HIV Louisiana, 2013-2022



Late tester defined as a person meeting the AIDS case definition within 30 days of initial HIV diagnosis.

## Knowledge of HIV Status in the United States\*



In 2021, an estimated **1.2 million people** had HIV.

For every 100 people with HIV

**87** knew their HIV status.

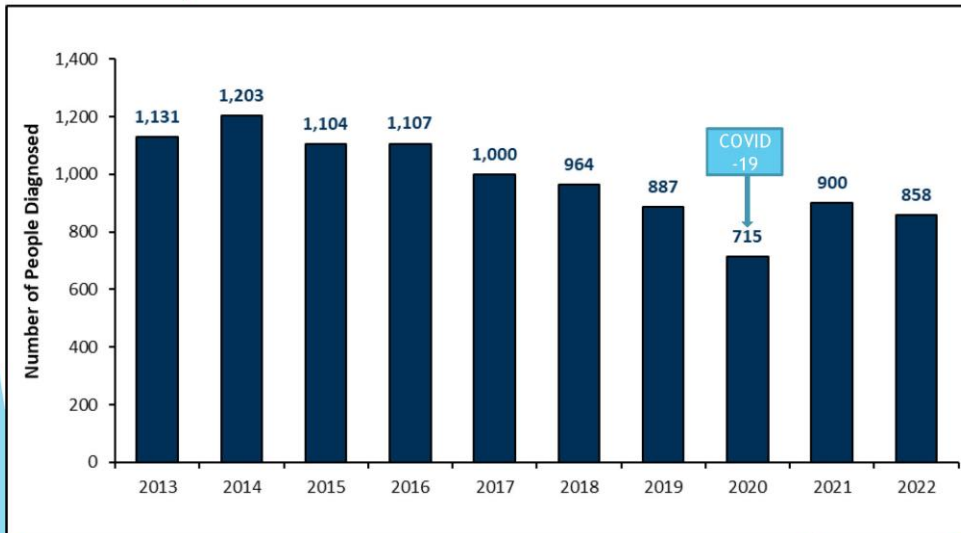
In Louisiana, only 84.4% of persons living with HIV are aware of their diagnosis (~4000 people living with undiagnosed HIV in Louisiana).

\* Among people aged 13 and older.

Source: CDC. Estimated HIV incidence and prevalence in the United States 2017–2021. *HIV Surveillance Supplemental Report* 2023;28(3).



### Number of People Newly Diagnosed with HIV Louisiana, 2013-2022

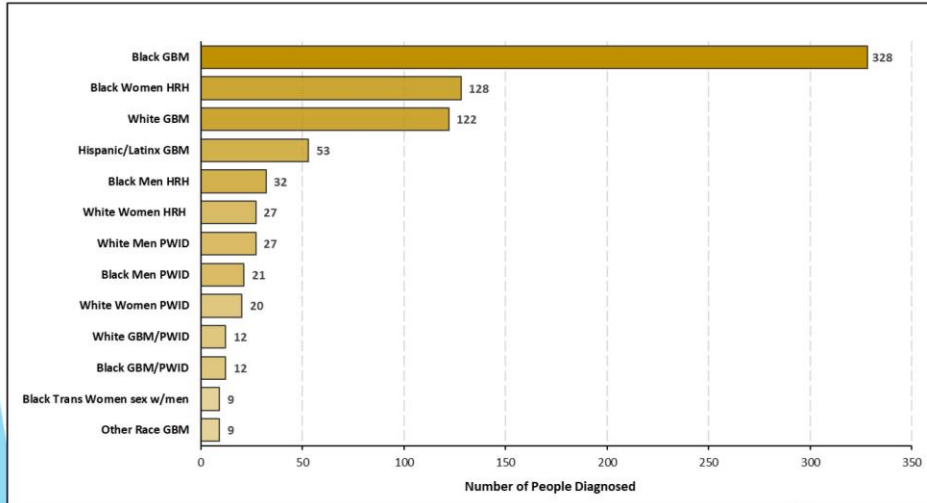


### People Newly Diagnosed with HIV By Public Health Region, 2022

	No.	%	Rate
<i>Louisiana</i>	858	100%	18.6
1-New Orleans	207	24%	23.6
2-Baton Rouge	167	19%	24.0
3-Houma	46	5%	11.8
4-Lafayette	90	10%	15.2
5-Lake Charles	42	5%	13.9
6-Alexandria	55	6%	18.7
7-Shreveport	121	14%	23.3
8-Monroe	67	8%	19.3
9-Hammond/Slidell	63	7%	10.4

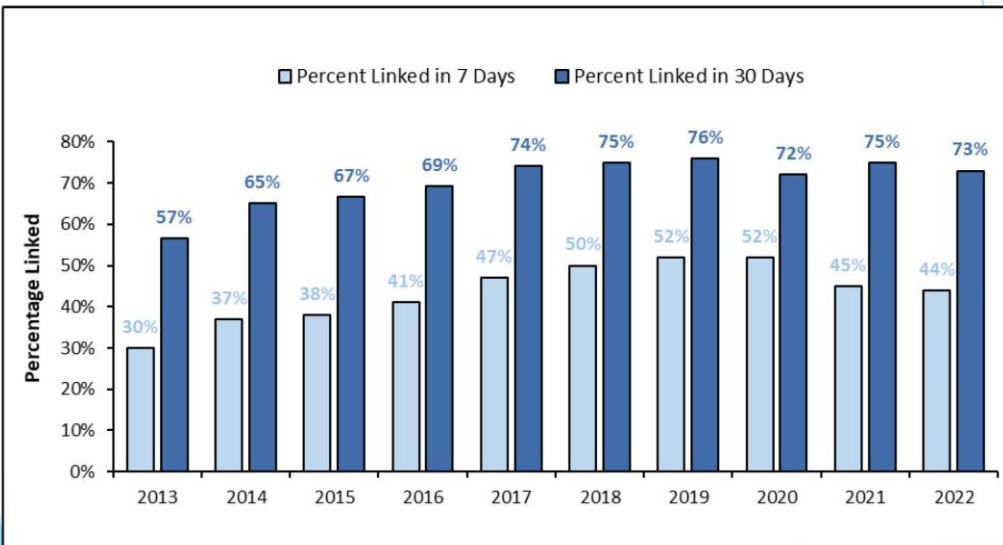
# 2023-2024 Report of HIV Criminalization (HR 130) Task Force

## People Newly Diagnosed with HIV by Race/Gender/Risk Louisiana, 2022



Subgroups <9 not shown. GBM: Gay, bisexual, & other men who have sex with men. HRH: High risk heterosexual. PWID: Person who inject drugs.

## Linkage to Care among People Newly Diagnosed with HIV Louisiana, 2013-2022



Linkage to care defined as the first CD4 or viral load lab collected on or after date of HIV diagnosis.

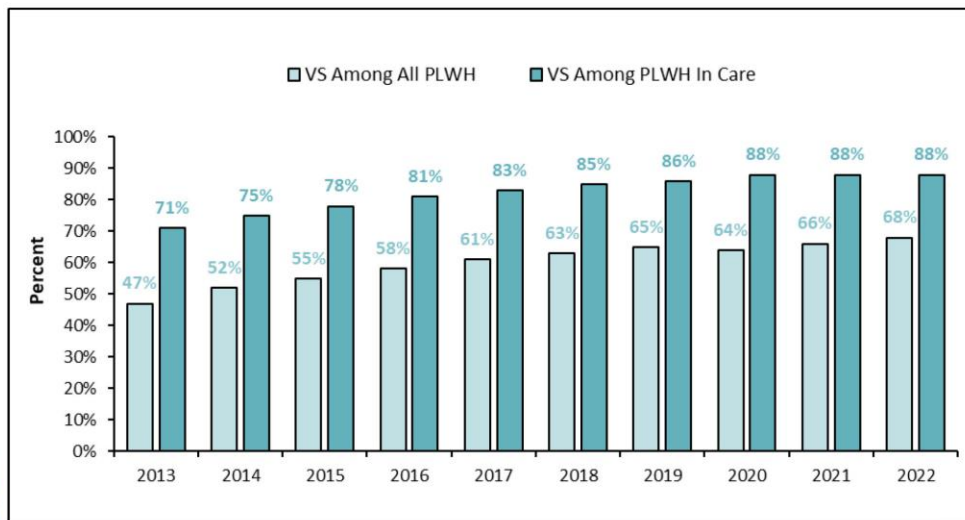
## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

### Linkage to Care among People Newly Diagnosed with HIV By Public Health Region, 2022

	Total No. Diagnoses	% Linked within 7 Days	% Linked within 30 Days
<b>Louisiana</b>	<b>858</b>	<b>44%</b>	<b>73%</b>
1-New Orleans	207	46%	78%
2-Baton Rouge	167	50%	80%
3-Houma	46	30%	63%
4-Lafayette	90	46%	73%
5-Lake Charles	42	43%	74%
6-Alexandria	55	36%	67%
7-Shreveport	121	44%	60%
8-Monroe	67	40%	75%
9-Hammond/Slidell	63	44%	75%

Linkage to care defined as the first CD4 or viral load lab collected on or after date of HIV diagnosis.

### Viral Suppression (VS) among People Living with HIV Louisiana, 2013-2022



Viral suppression is a count < 200 copies/mL. In HIV care is defined as having at least one CD4 or viral load during the measurement year.



# 2023-2024 Report of HIV Criminalization (HR 130) Task Force

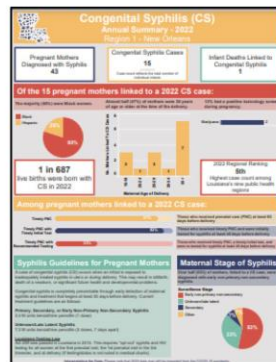
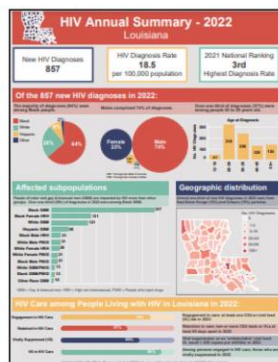
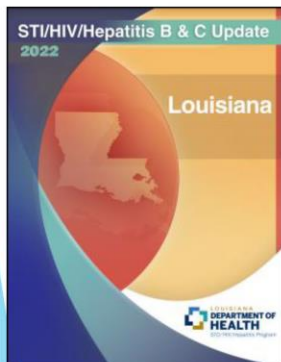
## Viral Suppression (VS) among People Living with HIV By Public Health Region, 2022

	% VS among All PLWH	% VS among PLWH in Care
<i>Louisiana</i>	68%	88%
1-New Orleans	68%	88%
2-Baton Rouge	74%	88%
3-Houma	70%	89%
4-Lafayette	70%	89%
5-Lake Charles	59%	86%
6-Alexandria	63%	88%
7-Shreveport	57%	82%
8-Monroe	62%	84%
9-Hammond/Slidell	71%	90%

Viral suppression is a count < 200 copies/mL. In HIV care is defined as having at least one CD4 or viral load during the measurement year.

## HIV/STI/Hepatitis Data Resources

► <https://www.louisianahealthhub.org/data-reporting/>



Month	Male	Female	Total
Jan	1,121	1,211	2,332
Feb	1,011	1,111	2,122
Mar	1,111	1,211	2,322
Apr	1,211	1,311	2,522
May	1,311	1,411	2,722
Jun	1,411	1,511	2,922
Jul	1,511	1,611	3,122
Aug	1,611	1,711	3,322
Sep	1,711	1,811	3,522
Oct	1,811	1,911	3,722
Nov	1,911	2,011	3,922
Dec	2,011	2,111	4,122
<b>All Regions</b>	<b>17,111</b>	<b>18,111</b>	<b>35,222</b>

## Ending the HIV Epidemic (EHE)



## Acknowledgments

- Thank you to the following staff for developing this presentation:
- ▶ Lauren Ostrenga & Jessica Fridge (SHHP Surveillance Supervisor and Manager)
  - ▶ Kelley Anderson (SHHP Capacity Building Supervisor)

## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

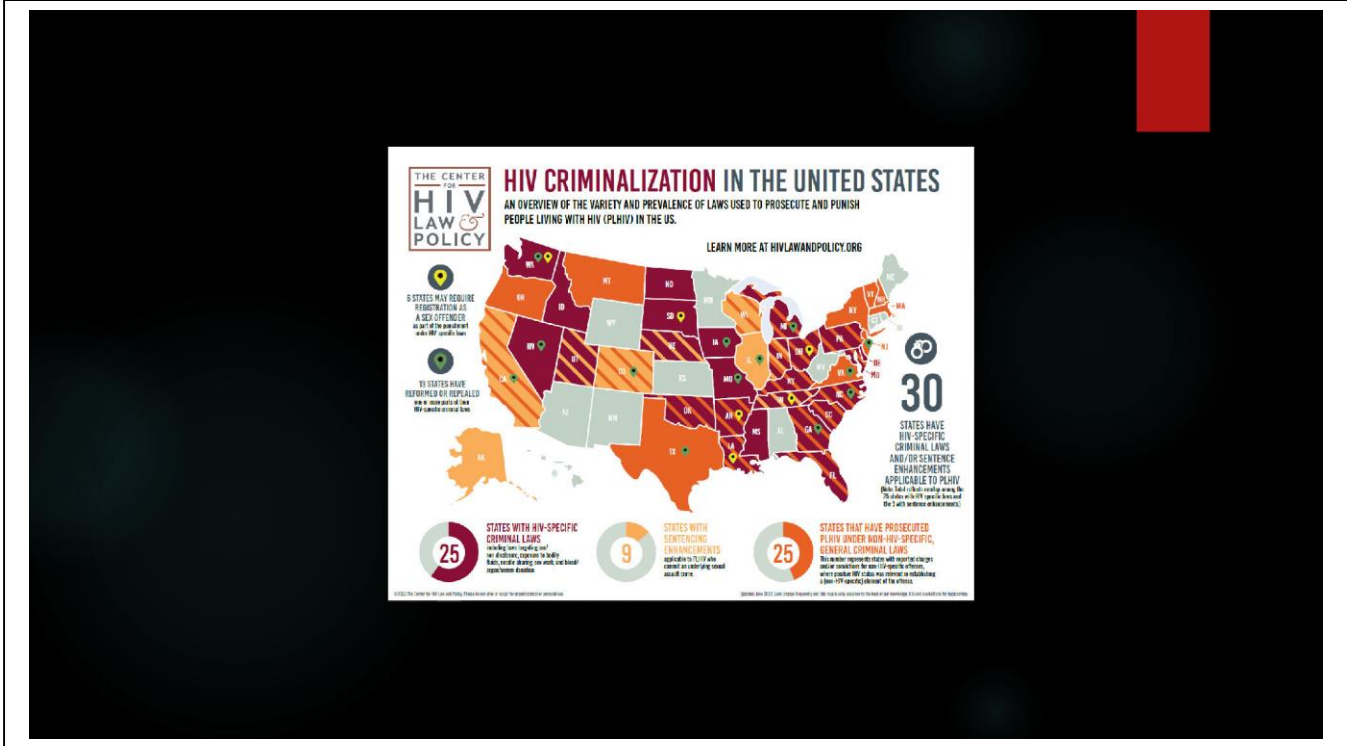
### HIV Criminalization 101 Presentation (Christal Hurst, Frontline Legal Services)

# HIV CRIMINALIZATION 101

HIV Criminalization : use of criminal law to penalize alleged, perceived, or potential HIV exposure; alleged nondisclosure of a known HIV positive status prior to sexual contact (including acts that do not risk HIV transmission); or non intentional HIV transmission. Sentencing in HIV criminalization cases sometimes involves decades in prison or requires sex offender registration, often in instances where no HIV transmission occurred or was extremely unlikely.



# 2023-2024 Report of HIV Criminalization (HR 130) Task Force



## RS 14:43.5. Intentional exposure to HIV

A. No person shall intentionally expose another to the human immunodeficiency virus (HIV) through sexual contact without the knowing and lawful consent of the victim, if at the time of the exposure the infected person knew he was HIV positive.

B. No person shall intentionally expose another to HIV through any means or contact without the knowing and lawful consent of the victim, if at the time of the exposure the infected person knew he was HIV positive.

C. No person shall intentionally expose a first responder to HIV through any means or contact without the knowing and lawful consent of the first responder when the offender knows at the time of the offense that he is HIV positive, and has reasonable grounds to believe the victim is a first responder acting in the performance of his duty.

D. For purposes of this Section, "first responder" includes a commissioned police officer, sheriff, deputy sheriff, marshal, deputy marshal, correctional officer, constable, wildlife enforcement agent, and probation and parole officer, any licensed emergency medical services practitioner as defined by R.S. 40:1131, and any firefighter regularly employed by a fire department of any municipality, parish, or fire protection district of the state or any volunteer firefighter of the state.

E.(1) Whoever commits the crime of intentional exposure to HIV shall be fined not more than five thousand dollars, imprisoned with or without hard labor for not more than ten years, or both.

(2) Whoever commits the crime of intentional exposure to HIV against a first responder shall be fined not more than six thousand dollars, imprisoned with or without hard labor for not more than eleven years, or both.

F.(1) It is an affirmative defense, if proven by a preponderance of the evidence, that the person exposed to HIV knew the infected person was infected with HIV, knew the action could result in infection with HIV, and gave consent to the action with that knowledge.

(2) It is also an affirmative defense that the transfer of bodily fluid, tissue, or organs occurred after advice from a licensed physician that the accused was noninfectious, and the accused disclosed his HIV-positive status to the victim.

(3) It is also an affirmative defense that the HIV-positive person disclosed his HIV-positive status to the victim and took practical means to prevent transmission as advised by a physician or other healthcare provider or is a healthcare provider who was following professionally accepted infection control procedures.

Acts 1987, No. 663, §1; Acts 1993, No. 411, §1; Acts 2018, No. 427, §1.

## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

### HIV CRIMINALIZATION IN LOUISIANA

- In Louisiana, any number of activities can result in prosecution and lengthy incarceration for people living with HIV. Intentional Exposure to HIV statute summary:
- Last updated in 2018, La. Rev. Stat. Ann. § 14:43.5 targets:
  - Sexual contact, which may be understood broadly to include things like oral sex
  - "Any means or contact" which functions as a general catchall and can include activities like spitting or other bodily fluid exposure
  - Penalty = 10 years imprisonment and up to \$5K fine
  - If the complainant is a first responder (e.g., a police officer, correctional employee, or EMT) then the penalty is up to 11 years imprisonment and \$6K fine
  - In cases of alleged sexual contact, sex offender registration may result
- What La. Rev. Stat. Ann. § 14:43.5 does NOT require:
  - Intent to transmit disease
  - Transmission of disease or any meaningful risk of disease transmission

## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

**U=U: Undetectable Equals Untransmissible Presentation**  
(Dr. Ceryl Lynn Besch, LSU Health Sciences Center)

# U=U

Undetectable Equals Untransmissible  
Updating the Story of HIV

### U = U: Goals of Presentation

- Context: brief review - HIV, treatment & care today
- Undetectable = Untransmissible
  - Explain what this means
  - Present data supporting this statement
  - Best practices

## C. Lynn Besch, MD – who am I?

- Product of LSU education and training
- MD 1979 Internal Medicine 1984 Infectious Diseases 1986
- Academic and clinical practice in NOLA area
- Career
  - 1989 – 1998 - Tulane Health Sciences Center:
    - ID faculty and Principal Investigator HIV research unit
  - 1998-2020 – LSU Health Sciences Center
    - ID faculty (telemedicine with state prisons)
    - Medical Director, HIV Outpatient Program
    - State-wide Lead HIV Disease Management Program (clinical quality improvement)

## HIV – Brief Review

- Human Immunodeficiency Virus
  - RNA virus that establishes life-long infection
  - Over time can damage immune system – serious/fatal infections and cancers



## The 4 Fluids that Transmit HIV

1. BLOOD
2. SEMEN
3. VAGINAL FLUID
4. BREAST MILK



## HIV – Brief Review 2

- HIV – treatable & manageable but not yet curable with available drugs

- combination therapy – 2 or more drugs
- Pills, tablets and now intermittent IV therapy
- HIV treatment works REALLY well



- HIV is preventable

- Abstinence, barrier protection, no IV drugs
- **PEP and PrEP and treatment as prevention** (HIV meds)

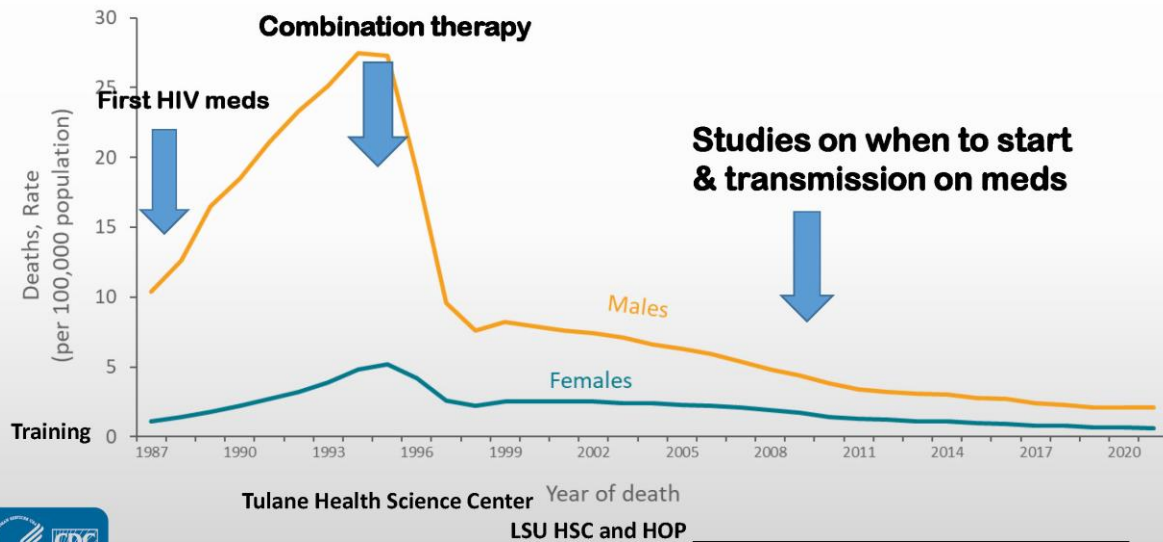


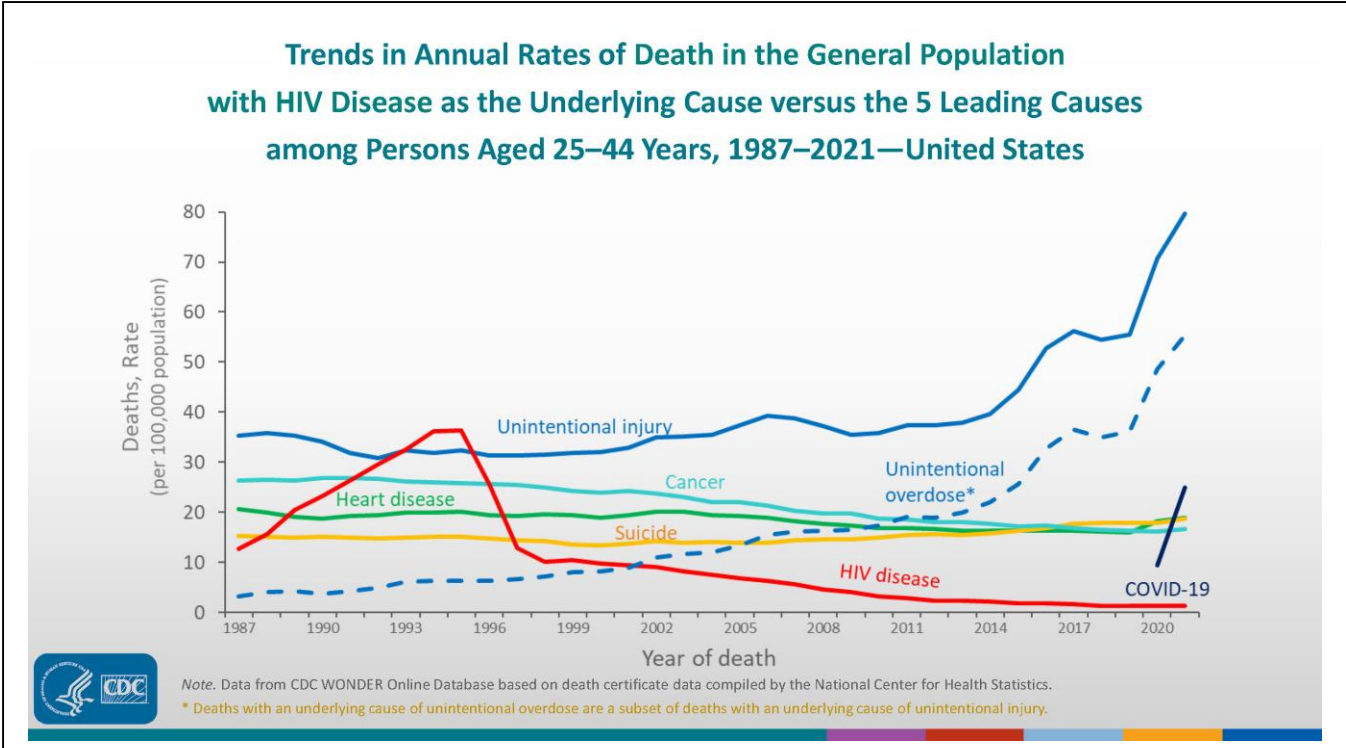
## Successful Therapy – HIV Viral Suppression

- HIV medicines –
  - stop HIV from making new virus – only work on replicating virus
  - Must be taken continuously – some HIV viruses are latent
- Combination of HIV meds
  - that a patient will take (and tolerate)
  - That reduces the amount of HIV virus in the blood to undetectable
- Undetectable goal - < 200 HIV virions per cc
  - This is HIV viral suppression



### Trends in Annual Age-Adjusted Rates of Death in the General Population with HIV Disease as the Underlying Cause, by Sex, 1987–2021—United States





## U = U – What Is It?

U = U is the scientific finding that people who achieve and maintain HIV viral suppression (HIV viral load < 200) do not transmit HIV through sex

## **Studies Supporting U=U**

- HPTN 052
  - HIV Prevention Trial Network 052
- Partner 1
- Partner 2
- Opposites Attract

## **HIV Prevention Trial Network 052 Study**

- Phase III, randomized controlled study of HIV treatment
- Aim: determine effectiveness in preventing sexual transmission of HIV
  - HIV treatment + primary care vs
  - Primary care alone
- 1763 sero-discordant couples, 97% heterosexual
- 9 countries including USA; enrolled 2005 – 2010



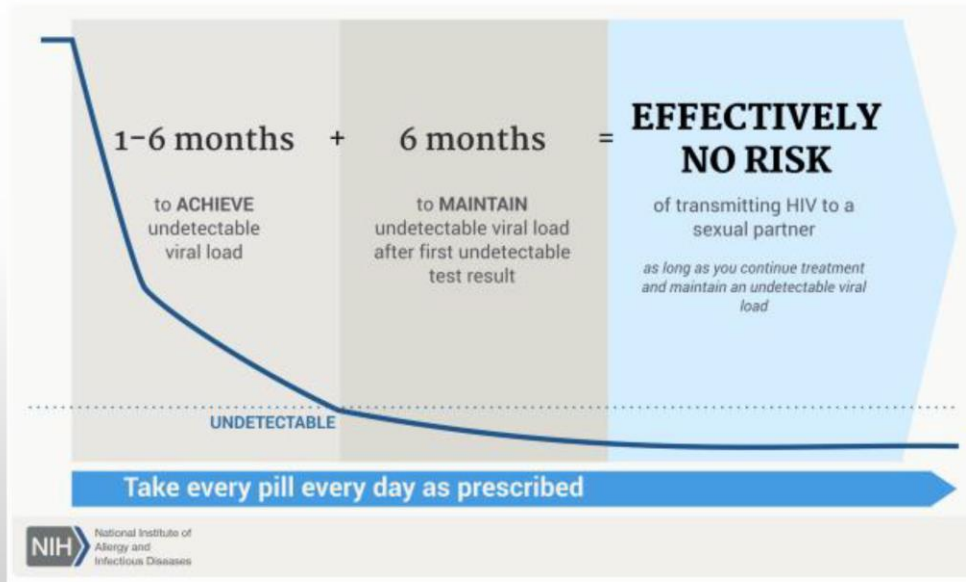
## HIV Prevention Trial Network 052 Study

- Design: randomized 1:1
  - start HIV meds immediately or
  - when CD4 count ↓ to 200-250 cells or AIDS-defining illness
- All received the following:
  - risk-reduction counseling
  - free condoms
  - STI testing

## HIV Prevention Trial Network 052: Results

- 2011: interim results
  - showed greatly decreased risk for developing AIDs
  - decreased risk of HIV transmission to uninfected partners
  - transmission occurred early after starting meds or when medication adherence decreased
- 2015: Final results (>10,000 person years follow-up)
  - 96% decreased risk of HIV transmission to uninfected partners
  - When HIV viral load consistently < 400 – NO HIV transmission

NEJM 2016; 375: 830-839



## **PARTNER Study**

- Partner of People on ART – a New Evaluation of the Risks
- Sexual Activity without Condoms and Risk of HIV Transmission in Sero-different Couples When the HIV-positive Partner is Using Suppressive Antiretroviral Therapy
- Design: prospective observational, began 2010
- 75 clinical sites in 14 European countries
- N = 1166 couples, mostly heterosexual (888 had good follow up data)
- Outcome – risk of acquiring HIV in negative partner if (+) partner had HIV viral load < 200

## **PARTNER: Results**

- Amount of data:
  - 20,000 – 36,000 acts of condomless sex over study
  - Median follow-up 1.3 years
  - 33% of HIV(-) partners had condomless sex outside the couple
- Number of new HIV infections in previously negative partners
  - 11 negative partners became (+), all analyzed
  - NONE linked to (+) partner
- Rate of within couple HIV transmission - ZERO

JAMA 2016;316:171-181

## **PARTNER 2**

- Risk of HIV Transmission through Condomless Sex in Serodifferent Gay Couples When the HIV Positive Partner is Using Suppressive Antiretroviral Therapy
- Adjunct and continuation of the PARTNER Study enrolling only gay men – to get enough data for risk assessment
- Multicenter, prospective observational study, 2010-2017
- 972 gay couples (HIV (-) partner not on PrEP)

## **PARTNER 2: Results**

- Follow up – 1593 couple-years follow-up, median 2 years
- 76000 sexual encounters
  
- 15 new HIV infections in (-) – all phylogenetically analyzed
- **NONE** of the HIV infections came from suppressed partners
- 37% of negative partners had sex outside the couple
  
- Transmission risk from suppressed (+) partner **EFFECTIVELY ZERO**

The Lancet 2019;393: 2428-2438

## **Opposites Attract Study**

- Australian-initiated study to get more transmission risk data on sero-discordant gay couples
- Design: prospective observational study, 2012-2016
  - 13 clinics in Australia, 1 in Brazil, 1 in Thailand
- N = 343 (588 couple-years)
- 75% of HIV (+) partners had consistently suppressed HIV, VL , 200
  
- **ZERO** transmission from a suppressed HIV (+) partner

The Lancet HIV 2018; 5: E438-E447

## Bottom Line

NIH: the body of scientific evidence to-date has established that there is effectively no risk of sexual transmission of HIV when the partner living with HIV has a durably undetectable viral load, validating the U=U message of HIV treatment as prevention.

### But, What About ....?

#### Breastfeeding?

Studies demonstrate that ART *greatly reduces* the risk of HIV transmission from individuals who breastfeed their babies.

However, research has not established that people whose HIV is undetectable do not transmit HIV during breastfeeding.

#### Injection Drug Use?

Studies demonstrate that ART *greatly reduces* the risk of HIV transmission through sharing of injection drug use equipment.

However, research *has not* established that people with an undetectable HIV viral load do not transmit HIV through needle sharing.

#### Needlestick Injuries?

Research *has not* established that people with an undetectable HIV viral load do not transmit HIV to people who are stuck by a needle containing their blood.

HIV PEP may be indicated.

## Applying U = U to Clinical Practice

Cornerstone of U = U is **ADHERENCE**

To medicine  
To clinical visits  
To lab testing

## U = U: Best Practices

- Check and work on medication adherence –
  - Identify and address barriers
  - Simplify regimen as much as possible
- Monitor HIV viral load (and other labs)
- Screen and treat sexually-transmitted diseases

## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

### Meeting the Sexual Health Needs of Sexual Assault Survivors (Morgan Lamandre, Esq., Sexual Trauma Awareness and Response)



#### **MEETING THE SEXUAL HEALTH NEEDS OF SEXUAL ASSAULT SURVIVORS**

Morgan Lamandre, Esq.

### **HEALTH CONCERNS FOR SEXUAL ASSAULT SURVIVORS**

- Physical injuries
- Mental health (PTSD, depression, anxiety)
- Pregnancy
- Sexually Transmitted Infections

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## **HEALTH CONCERNS FOR SEXUAL ASSAULT SURVIVORS**

### LA. R.S. 40:1216.1--Health care Services for Victims of Sexually Oriented Criminal Offenses

- Establishes procedures for survivors to obtain forensic medical exams (FME);
- Prohibits billing a survivor directly for an FME;
- Does not require a survivor to report to law enforcement in order to obtain an exam\*;

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## **HEALTH CONCERNS FOR SEXUAL ASSAULT SURVIVORS**

### LA. R.S. 40:1216.1--Health care Services for Victims of Sexually Oriented Criminal Offenses Contd.

- Requires hospitals to provide emergency contraception after a negative pregnancy test if requested by the survivor;
- Costs that must be covered in the FME include “any medication provided during the forensic medical examination.”

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## **HEALTH CONCERNS FOR SEXUAL ASSAULT SURVIVORS**

LA. R.S. 40:1216.1--Gaps in the current law

- Law does not mandate what testing or screenings must occur (only requirement is a pregnancy test for emergency contraception);
- Law does not mandate any prophylactic medication for the prevention of STIs, only that the costs of any screening, testing, and medication provided during the FME be billed to Crime Victims Reparations

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## **HEALTH CONCERNS FOR SEXUAL ASSAULT SURVIVORS**

LA. R.S. 40:1216.1--Gaps in the current law

- Law does not mandate that hospitals keep prophylactic medication in stock.
- If the hospital does not keep the medication in stock, a prescription is usually provided to the survivor. Depending on the day and time of the sexual assault, a pharmacy may not be accessible and the survivor would be required to pay for the medication upfront.

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## ***HOW DOES R.S. 14:43.5 AFFECT SURVIVORS***

- R.S. 14:43.5 creates situations where individuals may disclose their status to people upfront because of fear surrounding prosecution for “exposure” even though there may not be any intent or scientific basis to expose or transmit HIV to another;
- Sexual predators use this knowledge and commit sexual assault against an individual, then threaten to report individuals for “exposure.”

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## ***HOW DOES R.S. 14:43.5 AFFECT SURVIVORS***

- Conviction under R.S. 14:43.5 requires sex offender registration even if there is nothing sexual about the basis for the conviction (ie spitting on someone).
- Sex offender registration disqualifies individuals for many services when they may actually be the victim of sexual assault.

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## ***HOW TO PREVENT SEXUAL ASSAULT AND SUPPORT SURVIVORS***

- Mandate hospitals to keep prophylactic medication in stock;
- Require hospitals to provide survivors with at least a 3-day supply of Post-exposure prophylaxis (PEP) when medically indicated in order to give someone time to obtain the full supply.
- Create a system where a survivor does not have to pay for any costs upfront.

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## ***HOW TO PREVENT SEXUAL ASSAULT AND SUPPORT SURVIVORS***

- Modernize R.S. 14:43.5 to include scientifically accurate information about transmission;
- Louisiana is only 1 of 5 states to require sex offender registration--this makes an individual's status well known and puts them at risk for being sexually assaulted; Assess whether registration helps with public safety or if it actually puts people at risk.
- Review old convictions and vacate records for people who were convicted when there was no sexual contact;

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## ***HOW TO PREVENT SEXUAL ASSAULT AND SUPPORT SURVIVORS***

- Review old convictions to determine if prosecutors actually proved someone was living with HIV;
- Require transmission to occur in order for someone to be convicted;
- Create a system that incentives and encourages testing and reducing viral load;

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2023-2024 Report of HIV Criminalization (HR 130) Task Force

Community Research for HR 130  
(Dietz, Louisiana Coalition on Criminalization and Health)



**Community Research for HR 130**

Dietz  
*(any pronoun used with Respect)*  
Statewide Coordinator

**LCCH**  
LOUISIANA COALITION ON CRIMINALIZATION & HEALTH

**Who we are**

The Louisiana Coalition on Criminalization and Health (LCCH) is a statewide group of people Living With HIV (PLWH), advocates, allies, public health professionals and clinicians who are fighting to end the harmful impacts of laws that stigmatize people who are living with HIV in our community.



## LCCH's Goal:

To better understand how HIV exposure laws impact the lives of People Living with HIV (PLWH) throughout Louisiana.



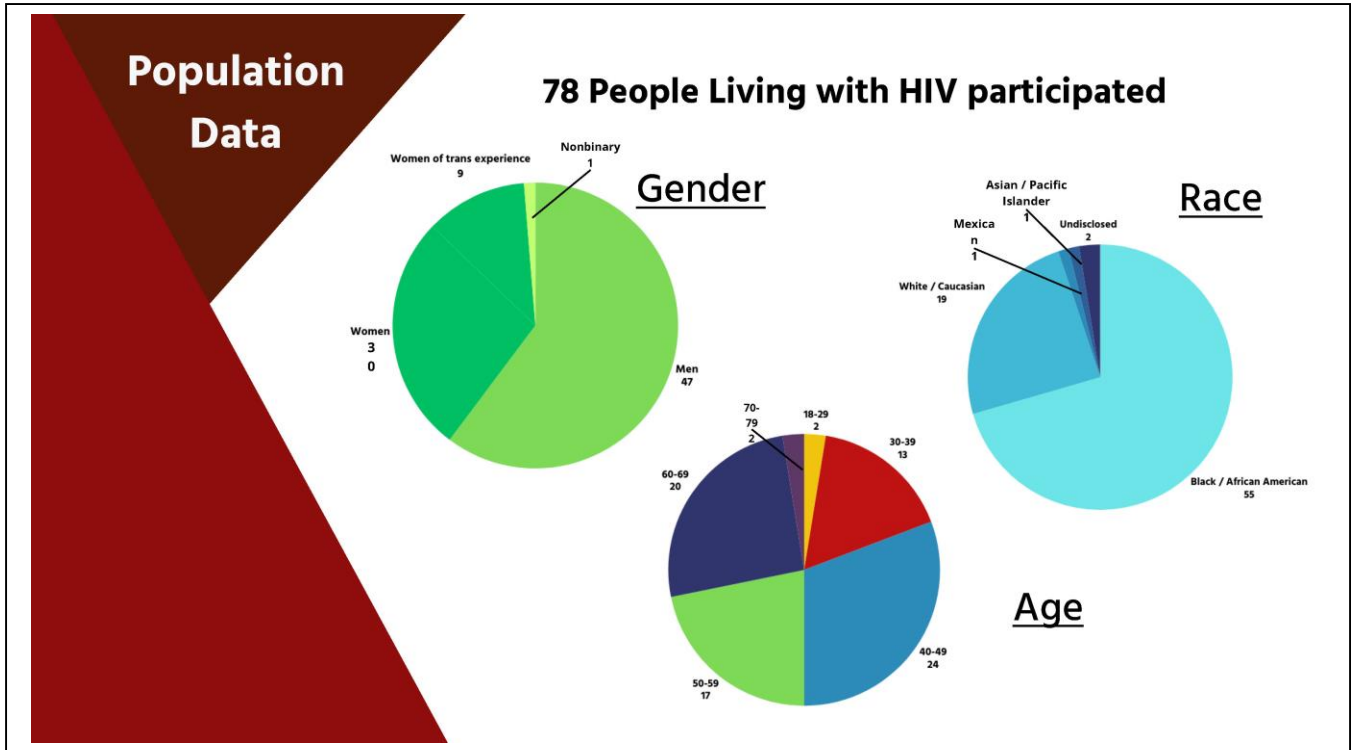
## Our Strategy

1 Focus Group in each Public Health Region (9)


- Partnership with HIV Service Organizations
  - Co-facilitated by local leadership



# 2023-2024 Report of HIV Criminalization (HR 130) Task Force




### YOU **CAN** GET HIV VIA...




SEX WITHOUT A CONDOM

(With someone who has a detectable HIV viral load)




PASSED FROM MOTHER TO BABY

(If they're unable to be on HIV medication)



SHARING INJECTING EQUIPMENT

(awaiting data on U=U)




CONTAMINATED BLOOD TRANSFUSIONS & ORGAN TRANSPLANTS

(In countries that do not practice universal precautions)


# 70.49%

Stated concern that if charged, a jury would not have an up to date understanding of HIV science (example: how HIV is and isn't transmitted, U=U, PrEP, and PEP)


#### HIV IS **NOT** TRANSMITTED BY...




Spitting




Biting




Insect bites




Toilet seats



Kissing



Sharing cutlery



Touching

## Impacts of Stigma

"Please indicate which of the following reasons you think might impact whether or not you would receive a fair hearing if someone were to file charges against you for not disclosing your HIV status: "

General inaccurate stigma that people living with HIV are not honest

# 57.69%

General inaccurate stigma that people living with HIV are "bad people"

# 56.41%



**Focus  
Group  
Feedback**

*“HIV is no longer an epidemic, stigma is, and this law perpetuates that.”*

*“We become silenced, and silence is a driving force for stigma.”*

**Focus  
Group  
Feedback**

- Multiple instances of reliance on physical documentation to prove disclosure against people who had threatened to weaponize the law against them

*“Every day my, my waking thought was, is this the day I'm gonna go to jail, or is this the day I'm gonna die.”*

**Focus  
Group  
Feedback**

- Multiple reports of pressure to plead guilty without being given adequate explanation of the legal ramifications of the charge (SOR)

*“...it could be your word against hers...we'll give you six months if you plead guilty to the charge. And I did....had I had known, because I mean, I wasn't aware about how these things work. Now I'm considered a sex offender.*”

**Focus  
Group  
Feedback**

*“The law is telling people that your state is prosecuting you which tells the world why should I get tested? And if I can be prosecuted for knowing my status, I am not getting tested.”*

*“I feel like these laws are very dehumanizing.”*

## APPENDIX III: EDUCATIONAL MATERIALS

### Briefing from Advocate: Transmissibility of Biting and Spitting (9/29/2023)

Hello Aisha,

I appreciate your work to assist the legislative task force in navigating the issue of HIV criminalization. Please, feel free to pass along my information to the task force members.

#### **Occupational exposure risks (general):**

Here, you'll find the CDC's splash page on occupational exposure and transmission in healthcare settings:

<https://www.cdc.gov/hiv/workplace/healthcareworkers.html#:~:text=Occupational%20HIV%20transmission%20is%20extremely,also%20been%20reported%20to%20CDC.>

CDC notes the following at the top of the page: "Only 58 cases of confirmed occupational HIV transmission to health care personnel have been reported in the United States. An additional 150 possible transmissions have also been reported to CDC." Other data available on reveals that **no** cases of occupational HIV transmission in healthcare settings have occurred in the United States since 2003. **All** possible exposures in healthcare settings are required to be reported to local health department authorities.

#### **Spitting and biting, occupational exposure risks:**

Additionally, a systemic review from 2018 sought to understand the risks associated with spitting and biting among first responders. The review can be found here:

<https://onlinelibrary.wiley.com/doi/full/10.1111/hiv.12625>

Conclusions of the review were as follows: "There is **no risk of transmitting HIV through spitting**, and the **risk through biting is negligible**. Post-exposure prophylaxis is not indicated after a bite in all but exceptional circumstances. Policies to protect emergency workers should be developed with this evidence in mind." (emphasis added)

Noteworthy:

- Researchers reviewed case reports spanning many years, some as far back as 1996.
- Only 13 cases were identified wherein no other route of exposure was reported.
- Reviewed articles and case reports were not isolated to a single country.
- In each situation, the "biter's" blood was present, the resulting wound was described as "a deep gaping wound", and the person bitten was not prescribed post-exposure prophylaxis.

#### **With regard to first responder provisions in the Louisiana statute and policy considerations to address occupational risks:**

- Biting is the only action a person might take that presents any occupational exposure risk to first responders.
- Biting is already classified as assault.
- Pragmatically, all other risk factors (sex, needle stick, breast feeding) are not within the control of the person living with HIV interacting with first responders.
- Occupational policies should already address exposure risks and providing first responders post-exposure prophylaxis (PEP) when a concern arises.

[continued]

## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

- Strengthening access to PEP beyond hospital or emergency room settings may expand options for first responders to pursue care after any exposure. Regulatory or legislative actions to achieve this might include: A) Requiring hospitals to stock medications for PEP, B) Funding for accessing these medications might be addressed via insurance coverage, Medicaid, and 340B rebate dollars in order to prioritize a "no balance billing" scheme, C) Expanding scope of practice to allow pharmacists to dispense PEP and PrEP would increase physical access points across the state for any variety of residents, regardless of occupation, D) Clarification of no cost-sharing requirements under the Affordable Care Act's orientative coverage rules due to "prophylaxis" being preventative in nature.

### **Other states that have modernized: (these states were specifically mentioned yesterday)**

- Georgia (2022 - SB 164): <https://www.legis.ga.gov/legislation/59624>  
- Click "current version" at top of page. Vote support can be found further down the page.

- Iowa (2014 - Senate File 2297, state law 709c): Bill on amended law:

<https://www.legis.iowa.gov/legislation/BillBook?ba=SF2297&ga=85>

- Passed unanimously

- Current law to be found here:

<https://www.legis.iowa.gov/law/iowaCode/sections?codeChapter=709C&year=2014>

### **Other Materials:**

**HIV Criminalization May Discourage Testing:** Survey on impacts of HIV criminalization on willingness to test: <https://toolkit.hivjusticeworldwide.org/wp-content/uploads/2017/02/Sero-Survey-Complete.pdf.pdf>

**American Psychological Association Assessment of HIV Criminalization Laws and Impacts on Public Health (as a continuing education credit):** <https://www.apa.org/monitor/2018/10/ce-corner>

(Note, this is from 2018 and certain state references may not be accurate due to legislative changes)

--

Jen Laws

He/Him/His

President & CEO

Community Access National Network

tiicann.org

HIV-HCV-Watch.com

# 2023-2024 Report of HIV Criminalization (HR 130) Task Force

Staff Research Data Prepared/Collected at the Request of the Task Force (11/15/2023)

## HR 130 Task Force to Study HIV Criminalization

### State-Level Supplemental Education

#### States without HIV Criminalization Statutes:

- Arizona
- Connecticut
- Delaware (only statutes regarding blood/semen/tissue/cornea/bone/organ donation)
- Hawaii
- Illinois (fully repealed statutes criminalizing HIV exposure in 2021)
- New Hampshire
- New Jersey (fully repealed statutes criminalizing HIV exposure in 2022)
- New Mexico
- Oregon
- Texas (fully repealed statutes criminalizing HIV exposure in 1994)
- Vermont
- Wyoming

#### States who have HIV-specific Criminalization Enhancements Only:

- Alaska (HIV status may increase sentencing for felony sexual offenses)
- Colorado (HIV enhancements for sexual offenses)
- Kentucky
- Nebraska (HIV enhancements for assault with a bodily fluid to a public safety officer)
- Pennsylvania
- Utah
- Washington (modernized in 2020; criminal assault statute applies only to persons who transmit HIV to a child or a vulnerable adult with the intent to cause harm)
- Wisconsin (enhanced penalties for some sexual offenses)

#### States with Communicable Disease Criminalization Statutes:

- Alabama (communicable disease enhancement for “assault with bodily fluids” statute)
- California (specific intentional transmission of a communicable disease statute)
- District of Columbia (those with communicable diseases may be subject to quarantine, isolation, and mandatory treatment)
- Iowa (requires specific intent)
- Kansas
- Maine (those with STDs/STIs may be subject to quarantine, isolation, and mandatory treatment)
- Massachusetts (STDs/STIs can be the basis for enhanced criminal sentences)
- Nevada (modernized in 2021; prohibits an individual infected with a communicable disease in an infectious state from engaging in behavior that has a high probability of transmitting the disease to another person)
- New York
- North Carolina (individuals with communicable diseases must comply with control measures)
- Rhode Island
- Virginia (modernized in 2021; requires behavior that poses a substantial risk of transmission, intent to transmit the infection, and transmission)
- West Virginia

[continued]

## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

### Intent (language and definitions)

- California (“a specific intent is a conscious desire to transmit HIV, (2) A defendant’s medical records, medications, prescriptions, or medical devices shall not be used as the sole basis of establishing the specific intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).”)
- Michigan (“with the “specific intent” to transmit the disease”.)
- Nevada (modernized in 2021; “Proof of a person’s intent to transmit a communicable disease cannot rest solely on a failure to take reduce the risk of transmission.” And “specifically intended to transmit the disease to another person”)
- measures to prevent transmission, such as condom use or adherence to medical treatments that
- Georgia (“Knowingly engages in a sexual act with the intent to transmit HIV”)
- Iowa (“with the intent that the uninfected person contract the contagious or infectious disease, and the conduct results in the uninfected person becoming infected with the contagious or infectious disease”)
- Kansas (“Knowingly Intending to Transfer Human Immunodeficiency Virus”)
- Virginia (“Intent to transmit the infection”)
- Washington (modernized in 2020; “intent to cause harm”)

**Louisiana has a definition for “specific intent” (rather than “intent” or “general intent” / “general criminal intent”):** 1) Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act (

LA. REV. STAT. ANN. § 14:10 (2018)

Criminal intent

Criminal intent may be specific or general:

- (1) Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act.
- (2) General Criminal intent is present whenever there is specific intent, and also when the circumstances indicate that the offender, in the ordinary course of human experience, must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act.

LA. REV. STAT. ANN. § 14:11 (2018)

Criminal Intent; how expressed

The definitions of some crimes require a specific criminal intent, while in others no intent is required. Some crimes consist merely of criminal negligence that produces criminal consequences. However, in the absence of qualifying provisions, the terms “intent” and “intentional” have reference to “general criminal intent.”

[continued]

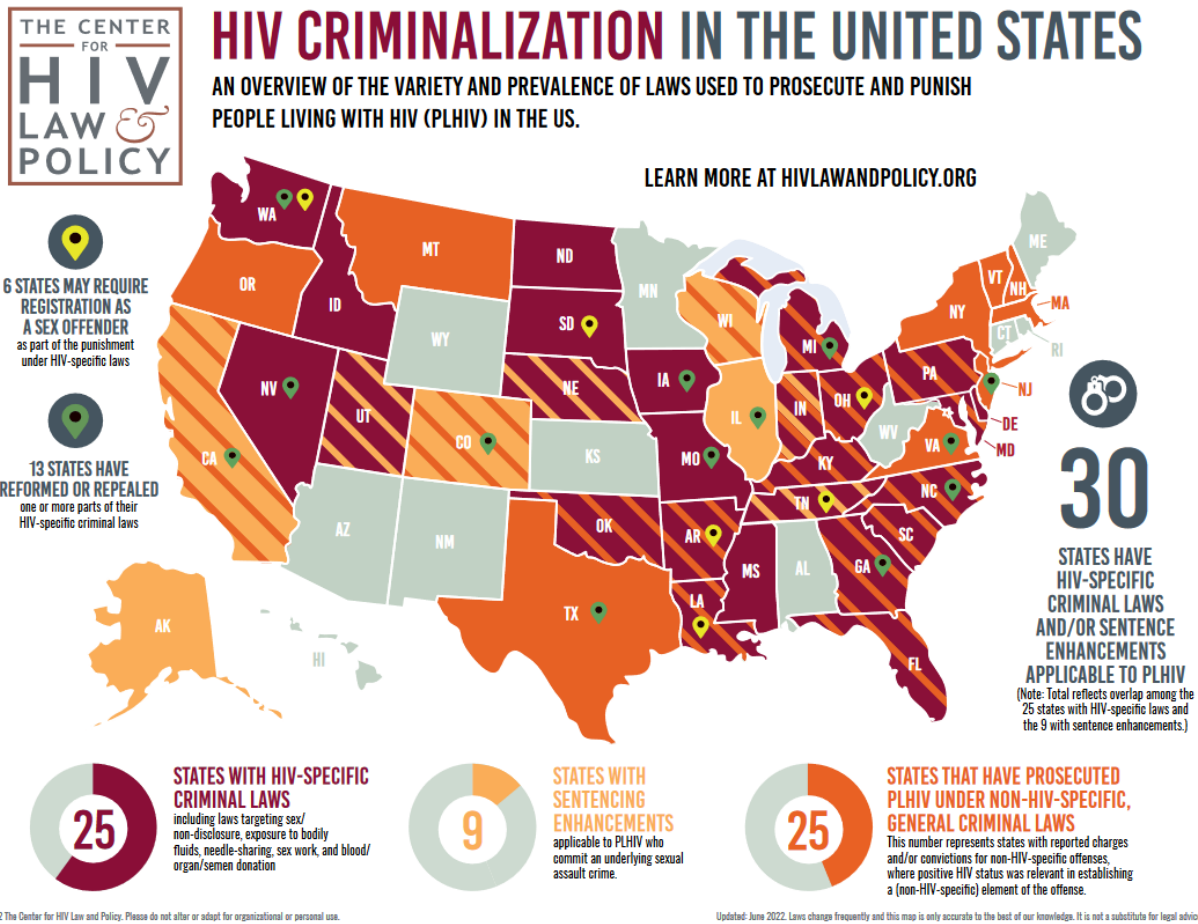
# 2023-2024 Report of HIV Criminalization (HR 130) Task Force

## Risk (language/definitions)

### States that use “conduct that poses a substantial risk of transmission” or similar language:

- California
- Nevada (“high probability of transmitting the disease to an other person”)
- Georgia (modernized 2022; “significant risk of transmission based on current scientifically supported levels of risk of transmission; provided, however, that this paragraph shall not apply to a person living with HIV who is forced into a sexual act against his or her will”)
- Kentucky (“likely to transmit HIV”)
- Missouri (“an activity that creates a substantial risk of disease transmission as determined by competent medical or epidemiological evidence”)
- Rhode Island (“knowingly, while in the infectious condition”)
- Virginia (“behavior that poses substantial risk of transmission”)

### CHLP 2022 HIV Criminalization Map:

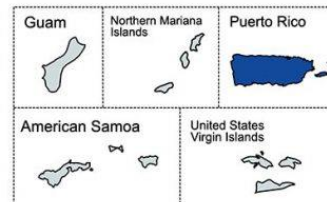
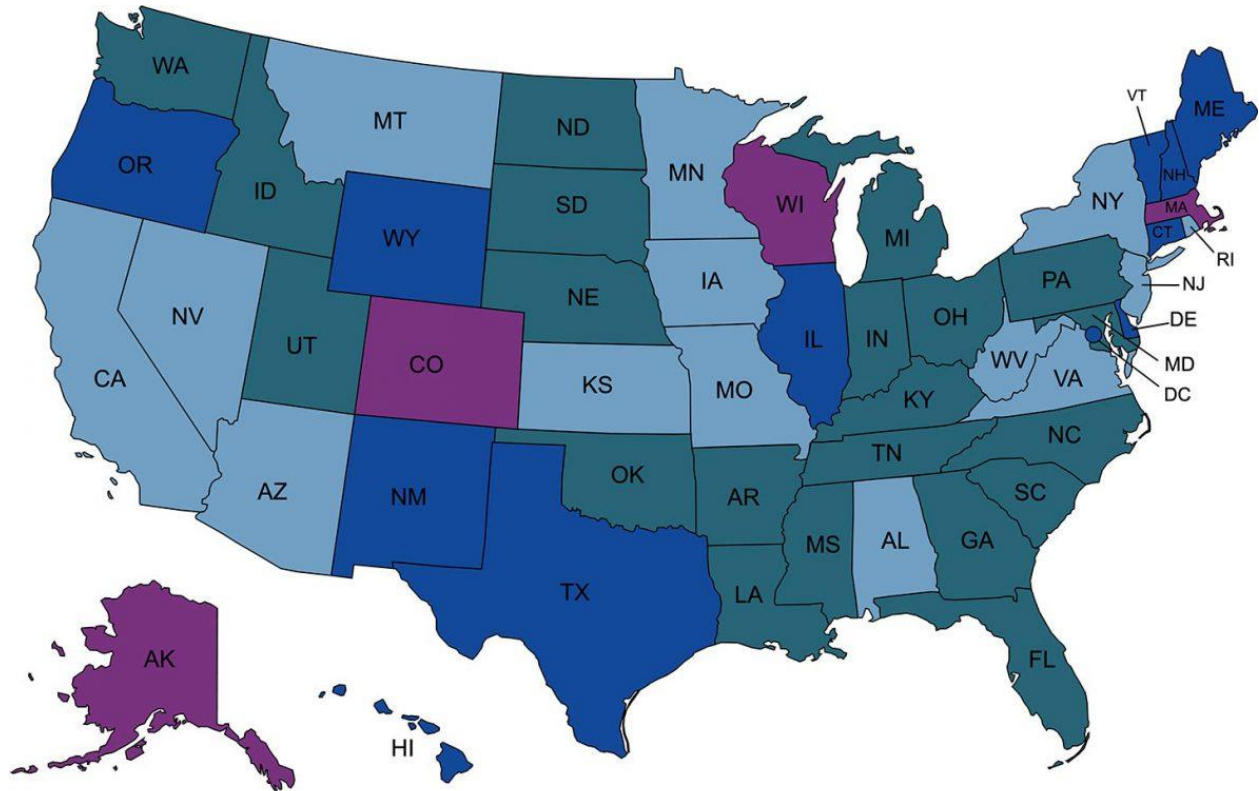






[continued]



## 2023-2024 Report of HIV Criminalization (HR 130) Task Force

CDC 2022 HIV Criminalization Map:



- |   |   |
|---|---|
| <p> Criminalize or Control Actions Through HIV-Specific Statutes and Regulations (n=21)</p> <p> Sentence Enhancement Statutes (n=4)</p> | <p> Criminalize or Control Actions Through STD/Communicable /Infectious Diseases Specific Statutes (n=14)</p> <p> None/General Criminal Statutes (n=13)</p> |
|---|---|

Criminalization of potential HIV exposure is largely a matter of state law, with some Federal legislation addressing criminalization in discrete areas, such as blood donation and prostitution. These laws vary as to what actions are criminalized or result in additional penalties. Several states criminalize one or more actions that pose a low or negligible risk for HIV transmission.



# 2023-2024 Report of HIV Criminalization (HR 130) Task Force

## Original Iowa HIV Criminalization Statute (included with staff research 11/15/2023)

1

### CRIMINAL TRANSMISSION OF HUMAN IMMUNODEFICIENCY VIRUS, §709C.1

#### CHAPTER 709C

#### CRIMINAL TRANSMISSION OF HUMAN IMMUNODEFICIENCY VIRUS

Referred to in §141A.9, 331.307, 364.22, 701.1, 915.43

[P]

For provisions relating to testing of  
offenders and alleged criminal offenders,  
see §915.40 - 915.43

709C.1 Criminal transmission of human  
immunodeficiency virus.

#### **709C.1 Criminal transmission of human immunodeficiency virus.**

1. A person commits criminal transmission of the human immunodeficiency virus if the person, knowing that the person's human immunodeficiency virus status is positive, does any of the following:

*a.* Engages in intimate contact with another person.  
*b.* Transfers, donates, or provides the person's blood, tissue, semen, organs, or other potentially infectious bodily fluids for transfusion, transplantation, insemination, or other administration to another person.

*c.* Dispenses, delivers, exchanges, sells, or in any other way transfers to another person any nonsterile intravenous or intramuscular drug paraphernalia previously used by the person infected with the human immunodeficiency virus.

2. For the purposes of this section:

*a.* "*Human immunodeficiency virus*" means the human immunodeficiency virus identified as the causative agent of acquired immune deficiency syndrome.

*b.* "*Intimate contact*" means the intentional exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of the human immunodeficiency virus.

*c.* "*Intravenous or intramuscular drug paraphernalia*" means any equipment, product, or material of any kind which is peculiar to and marketed for use in injecting a substance into or withdrawing a bodily fluid from the human body.

3. Criminal transmission of the human immunodeficiency virus is a class "B" felony.

4. This section shall not be construed to require that an infection with the human immunodeficiency virus has occurred for a person to have committed criminal transmission of the human immunodeficiency virus.

5. It is an affirmative defense that the person exposed to the human immunodeficiency virus knew that the infected person had a positive human immunodeficiency virus status at the time of the action of exposure, knew that the action of exposure could result in transmission of the human immunodeficiency virus, and consented to the action of exposure with that knowledge.

98 Acts, ch 1087, §7

Referred to in §692A.101, 692A.102

# 2023-2024 Report of HIV Criminalization (HR 130) Task Force

## Legislative Discussion RE: Iowa Modernization (included with staff research 11/15/2023)

### CHAPTER 1119

#### CRIMINAL TRANSMISSION OF CONTAGIOUS OR INFECTIOUS DISEASES

S.F. 2297

**AN ACT** relating to the criminal transmission of a contagious or infectious disease, providing penalties, and including effective date provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. **NEW SECTION. 709D.1 Title.**

This chapter shall be known and may be cited as the "*Contagious or Infectious Disease Transmission Act*".

Sec. 2. **NEW SECTION. 709D.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Contagious or infectious disease*" means hepatitis in any form, meningococcal disease, AIDS or HIV as defined in section 141A.1, or tuberculosis.
2. "*Exposes*" means engaging in conduct that poses a substantial risk of transmission.
3. "*Practical means to prevent transmission*" means substantial good faith compliance with a treatment regimen prescribed by the person's health care provider, if applicable, and with behavioral recommendations of the person's health care provider or public health officials, which may include but are not limited to the use of a medically indicated respiratory mask or a prophylactic device, to measurably limit the risk of transmission of the contagious or infectious disease.

Sec. 3. **NEW SECTION. 709D.3 Criminal transmission of a contagious or infectious disease.**

1. A person commits a class "B" felony when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease with the intent that the uninfected person contract the contagious or infectious disease, and the conduct results in the uninfected person becoming infected with the contagious or infectious disease.

2. A person commits a class "D" felony when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease with the intent that the uninfected person contract the contagious or infectious disease, but the conduct does not result in the uninfected person becoming infected with the contagious or infectious disease.

3. A person commits a class "D" felony when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease acting with a reckless disregard as to whether the uninfected person contracts the contagious or infectious disease, and the conduct results in the uninfected person becoming infected with the contagious or infectious disease.

4. A person commits a serious misdemeanor when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease acting with a reckless disregard as to whether the uninfected person contracts the contagious or infectious disease, but the conduct does not result in the uninfected person becoming infected with the contagious or infectious disease.

5. The act of becoming pregnant while infected with a contagious or infectious disease, continuing a pregnancy while infected with a contagious or infectious disease, or declining treatment for a contagious or infectious disease during pregnancy shall not constitute a crime under this chapter.

6. Evidence that a person knows the person is infected with a contagious or infectious disease and has engaged in conduct that exposes others to the contagious or infectious disease, regardless of the frequency of the conduct, is insufficient on its own to prove the intent to transmit the contagious or infectious disease.

7. A person does not act with the intent required pursuant to subsection 1 or 2, or with the reckless disregard required pursuant to subsection 3 or 4, if the person takes practical means

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CH. 1119

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to prevent transmission, or if the person informs the uninfected person that the person has a contagious or infectious disease and offers to take practical means to prevent transmission but that offer is rejected by the uninfected person subsequently exposed to the infectious or contagious disease.

8. It is an affirmative defense to a charge under this section if the person exposed to the contagious or infectious disease knew that the infected person was infected with the contagious or infectious disease at the time of the exposure and consented to exposure with that knowledge.

Sec. 4. NEW SECTION. 709D.4 Additional remedies.

This chapter shall not be construed to preclude the use of any other civil or criminal remedy available relating to the transmission of a contagious or infectious disease.

Sec. 5. Section 141A.9, subsection 2, paragraph i, Code 2014, is amended to read as follows:

i. Pursuant to sections 915.42 and 915.43, to a convicted or alleged sexual assault offender; the physician or other health care provider who orders the test of a convicted or alleged offender; the victim; the parent, guardian, or custodian of the victim if the victim is a minor; the physician of the victim if requested by the victim; the victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results; the victim's spouse; persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault; members of the victim's family within the third degree of consanguinity; and the county attorney who ~~may use the results as evidence in the prosecution of sexual assault under chapter 915, subchapter V, or prosecution of the offense of criminal transmission of HIV under chapter 709C~~ filed the petition for HIV-related testing under section 915.42. For the purposes of this paragraph, "victim" means victim as defined in section 915.40.

Sec. 6. Section 692A.101, subsection 1, paragraph a, subparagraph (9), Code 2014, is amended by striking the subparagraph.

Sec. 7. Section 692A.102, subsection 1, paragraph c, subparagraph (23), Code 2014, is amended by striking the subparagraph.

Sec. 8. Section 915.43, subsections 4 and 5, Code 2014, are amended to read as follows:

4. Results of a test performed under this subchapter, except as provided in subsection 13, shall be disclosed only to the physician or other practitioner who orders the test of the convicted or alleged offender; the convicted or alleged offender; the victim; the victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results; the physician of the victim if requested by the victim; the parent, guardian, or custodian of the victim, if the victim is a minor; and the county attorney who filed the petition for HIV-related testing under this chapter, ~~who may use the results to file charges of criminal transmission of HIV under chapter 709C.~~ Results of a test performed under this subchapter shall not be disclosed to any other person without the written informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under this subchapter is subject to the confidentiality provisions of section 141A.9, and shall not disclose the results to another person except as authorized by section 141A.9, subsection 2, paragraph "i".

5. If testing is ordered under this subchapter, the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the test conducted pursuant to this subsection shall be released only to the physician or other practitioner who orders the test of the convicted or alleged offender,

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the convicted or alleged offender, the victim counselor or person requested by the victim to provide the counseling regarding the HIV-related test and results who shall disclose the results to the petitioner, the physician of the victim, if requested by the victim, and the county attorney who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV under chapter 709C filed the petition for HIV-related testing under section 915.42.

Sec. 9. REPEAL. Chapter 709C, Code 2014, is repealed.

Sec. 10. SEX OFFENDER REGISTRY — EXPUNGEMENT OF RECORD.

1. The division of criminal investigation in the department of public safety shall expunge the registration of a registrant who was required to register on the state's sex offender registry pursuant to chapter 692A, Code 2014, on the basis of having been convicted of the aggravated offense of criminal transmission of human immunodeficiency virus in violation of section 709C.1, subsection 1, paragraph "a", Code 2014, provided the registrant has been convicted of no other offense requiring registration.

2. The department of public safety shall also remove the relevant information of such a person specified in subsection 1 from the sex offender registry internet site provided the person has been convicted of no other offense requiring registration. Upon removal of the relevant information from the sex offender registry internet site, the relevant information of the person shall no longer be displayed on the sex offender registry internet site unless the person is convicted of another offense that requires registration.

Sec. 11. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 30, 2014

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## Iowa Modernization Legislation (included with staff research 11/15/2023)

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### CONTAGIOUS OR INFECTIOUS DISEASE TRANSMISSION ACT, §709D.3

#### CHAPTER 709D

#### CONTAGIOUS OR INFECTIOUS DISEASE TRANSMISSION ACT

Referred to in §331.307, 364.22, 701.1

For provisions relating to testing of offenders and alleged criminal offenders, see  
§915.40 - 915.43

709D.1	Title.	709D.3	Criminal transmission of a contagious or infectious disease.
709D.2	Definitions.	709D.4	Additional remedies.

##### **709D.1 Title.**

This chapter shall be known and may be cited as the “Contagious or Infectious Disease Transmission Act”.

2014 Acts, ch 1119, §1, 11

##### **709D.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “Contagious or infectious disease” means hepatitis in any form, meningococcal disease, AIDS or HIV as defined in section 141A.1, or tuberculosis.
2. “Exposes” means engaging in conduct that poses a substantial risk of transmission.
3. “Practical means to prevent transmission” means substantial good-faith compliance with a treatment regimen prescribed by the person’s health care provider, if applicable, and with behavioral recommendations of the person’s health care provider or public health officials, which may include but are not limited to the use of a medically indicated respiratory mask or a prophylactic device, to measurably limit the risk of transmission of the contagious or infectious disease.

2014 Acts, ch 1119, §2, 11

##### **709D.3 Criminal transmission of a contagious or infectious disease.**

1. A person commits a class “B” felony when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease with the intent that the uninfected person contract the contagious or infectious disease, and the conduct results in the uninfected person becoming infected with the contagious or infectious disease.
2. A person commits a class “D” felony when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease with the intent that the uninfected person contract the contagious or infectious disease, but the conduct does not result in the uninfected person becoming infected with the contagious or infectious disease.
3. A person commits a class “D” felony when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease acting with a reckless disregard as to whether the uninfected person contracts the contagious or infectious disease, and the conduct results in the uninfected person becoming infected with the contagious or infectious disease.
4. A person commits a serious misdemeanor when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease acting with a reckless disregard as to whether the uninfected person contracts the contagious or infectious disease, but the conduct does not result in the uninfected person becoming infected with the contagious or infectious disease.
5. The act of becoming pregnant while infected with a contagious or infectious disease, continuing a pregnancy while infected with a contagious or infectious disease, or declining treatment for a contagious or infectious disease during pregnancy shall not constitute a crime under this chapter.
6. Evidence that a person knows the person is infected with a contagious or infectious disease and has engaged in conduct that exposes others to the contagious or infectious

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Iowa Code 2023, Chapter 709D (14, 0)

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## §709D.3, CONTAGIOUS OR INFECTIOUS DISEASE TRANSMISSION ACT

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disease, regardless of the frequency of the conduct, is insufficient on its own to prove the intent to transmit the contagious or infectious disease.

7. A person does not act with the intent required pursuant to [subsection 1 or 2](#), or with the reckless disregard required pursuant to [subsection 3 or 4](#), if the person takes practical means to prevent transmission, or if the person informs the uninfected person that the person has a contagious or infectious disease and offers to take practical means to prevent transmission but that offer is rejected by the uninfected person subsequently exposed to the infectious or contagious disease.

8. It is an affirmative defense to a charge under [this section](#) if the person exposed to the contagious or infectious disease knew that the infected person was infected with the contagious or infectious disease at the time of the exposure and consented to exposure with that knowledge.

[2014 Acts, ch 1119, §3, 11](#)

### **709D.4 Additional remedies.**

[This chapter](#) shall not be construed to preclude the use of any other civil or criminal remedy available relating to the transmission of a contagious or infectious disease.

[2014 Acts, ch 1119, §4, 11](#)

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## Georgia Modernization Bill (included with staff research 11/15/2023)

22

LC 33 8615

Senate Bill 164

By: Senators Hufstetler of the 52nd, Kirkpatrick of the 32nd, Orrock of the 36th and Butler of the 55th

**AS PASSED**

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Section 15-11-471, Title 16, and Code Section 31-22-9.1 of the Official  
2 Code of Georgia Annotated, relating to definitions relative to juvenile delinquency, crimes  
3 and offenses, and who may perform HIV tests, respectively, so as to provide for the  
4 modernization of HIV related laws to align with science to ensure that laws and policies  
5 support current understanding of best public health practices for preventing and treating HIV,  
6 scientific evidence about routes of transmission, and the public health goals of promoting  
7 HIV prevention and treatment; to revise definitions; to provide that certain conduct by a  
8 person living with HIV is unlawful if such conduct has a significant risk of transmission; to  
9 provide that hypodermic needles and syringes are not considered drug related objects; to  
10 provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 SECTION 1.

13 Code Section 15-11-471 of the Official Code of Georgia Annotated, relating to definitions  
14 relative to juvenile delinquency, is amended by revising paragraph (7) as follows:

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15 "(7) 'HIV test' means any antibody, antigen, viral particle, viral culture, or other test to  
16 indicate the presence of HIV in the human body, ~~and such test has been approved for~~  
17 ~~such purposes by the regulations of the Department of Community Health."~~

18 **SECTION 2.**

19 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
20 amended by revising Code Section 16-5-60, relating to reckless conduct causing harm to or  
21 endangering the bodily safety of another, conduct by HIV infected persons, and assault by  
22 HIV infected persons or hepatitis infected persons, as follows:

23 "16-5-60.

24 (a)(1) Any term used in this Code section and defined in Code Section 31-22-9.1 shall  
25 have the meaning provided for such term in Code Section 31-22-9.1.

26 (2) As used in this Code section, the term 'person living with HIV' means a person who  
27 has a confirmed positive HIV test, whether or not that person has AIDS, or who has been  
28 clinically diagnosed as having AIDS.

29 (b) A person who causes bodily harm to or endangers the bodily safety of another person  
30 by consciously disregarding a substantial and unjustifiable risk that his or her act or  
31 omission will cause harm or endanger the safety of the other person and the disregard  
32 constitutes a gross deviation from the standard of care which a reasonable person would  
33 exercise in the situation is guilty of a misdemeanor.

34 (c) A person ~~who is an HIV infected person~~ living with HIV who, ~~after obtaining~~  
35 ~~knowledge of being infected with HIV:~~

36 (1) Knowingly engages in a sexual act with the intent to transmit HIV and intercourse  
37 ~~or performs or submits to any sexual act involving the sex organs of one person and the~~  
38 ~~mouth or anus of another person and the HIV infected person does not disclose his or her~~  
39 status as being a person living with HIV to the other person ~~the fact of that infected~~  
40 ~~person's being an HIV infected person prior to that intercourse or sexual act; when such~~

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41 act has a significant risk of transmission based on current scientifically supported levels  
42 of risk of transmission: provided, however, that this paragraph shall not apply to a person  
43 living with HIV who is forced into a sexual act against his or her will; or  
44 ~~(2) Knowingly allows another person to use a hypodermic needle, syringe, or both, for~~  
45 ~~the introduction of drugs or any other substance into or for the withdrawal of body fluids~~  
46 ~~from the other person's body and the needle or syringe so used had been previously used~~  
47 ~~by the HIV infected person for the introduction of drugs or any other substance into or~~  
48 ~~for the withdrawal of body fluids from the HIV infected person's body and where that~~  
49 ~~infected person does not disclose to the other person the fact of that infected person's~~  
50 ~~being an HIV infected person prior to such use;~~  
51 ~~(3)(2) Offers or consents to perform with another person an act of a sexual intercourse~~  
52 ~~act for money with the intent to transmit HIV without disclosing his or her status as being~~  
53 ~~a person living with HIV to that other person the fact of that infected person's being an~~  
54 ~~HIV infected person prior to offering or consenting to perform that the sexual act of~~  
55 ~~sexual intercourse; when such act has a significant risk of transmission based on current~~  
56 ~~scientifically supported levels of risk of transmission~~  
57 ~~(4) Solicits another person to perform or submit to an act of sodomy for money without~~  
58 ~~disclosing to that other person the fact of that infected person's being an HIV infected~~  
59 ~~person prior to soliciting that act of sodomy; or~~  
60 ~~(5) Donates blood, blood products, other body fluids, or any body organ or body part~~  
61 ~~without previously disclosing the fact of that infected person's being an HIV infected~~  
62 ~~person to the person drawing the blood or blood products or the person or entity~~  
63 ~~collecting or storing the other body fluids, body organ, or body part,~~  
64 is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for  
65 not more than ~~ten~~ five years.  
66 (d) A person who is an HIV infected person or hepatitis infected person and who, after  
67 obtaining knowledge of being infected with HIV or hepatitis, commits an assault with the

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68 intent to transmit HIV or hepatitis, using his or her body fluids (blood, semen, or vaginal  
69 secretions), saliva, urine, or feces upon:

70 (1) A peace officer while the peace officer is engaged in the performance of his or her  
71 official duties or on account of the peace officer's performance of his or her official  
72 duties; or

73 ~~(2) A correctional officer while the correctional officer is engaged in the performance  
74 of his or her official duties or on account of the correctional officer's performance of his  
75 or her official duties~~

76 is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for  
77 not less than five nor more than 20 years."

### 78 SECTION 3.

79 Said title is further amended in Code Section 16-13-1, relating to drug related objects, by  
80 revising paragraph (3) of subsection (a) as follows:

81 "(3) 'Drug related object' means any machine, instrument, tool, equipment, contrivance,  
82 or device which an average person would reasonably conclude is intended to be used for  
83 one or more of the following purposes:

84 (A) To introduce into the human body any dangerous drug or controlled substance  
85 under circumstances in violation of the laws of this state;

86 (B) To enhance the effect on the human body of any dangerous drug or controlled  
87 substance under circumstances in violation of the laws of this state;

88 (C) To conceal any quantity of any dangerous drug or controlled substance under  
89 circumstances in violation of the laws of this state; or

90 (D) To test the strength, effectiveness, or purity of any dangerous drug or controlled  
91 substance under circumstances in violation of the laws of this state.

92 This term shall not include a hypodermic needle or syringe."

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93

SECTION 4.

94 Said title is further amended in Code Section 16-13-32, relating to transactions in drug  
95 related objects, civil forfeiture, and penalties, by revising subsections (a) and (e) as follows:

96 "(a) As used in this Code section, the term:

97 (1) 'Drug related object' means any instrument, device, or object which is designed or  
98 marketed as useful primarily for one or more of the following purposes:

99 (A) To ~~inject~~, ingest, inhale, or otherwise introduce marijuana or a controlled substance  
100 into the human body;

101 (B) To enhance the effect of marijuana or a controlled substance on the human body;

102 (C) To test the strength, effectiveness, or purity of marijuana or a controlled substance;

103 (D) To process or prepare marijuana or a controlled substance for introduction into the  
104 human body;

105 (E) To conceal any quantity of marijuana or a controlled substance; or

106 (F) To contain or hold marijuana or a controlled substance while it is being introduced  
107 into the human body.

108 This term shall not include a hypodermic needle or syringe.

109 (2) 'Knowing' means either actual or constructive knowledge of the drug related nature  
110 of the object; and a person or corporation has constructive knowledge of the drug related  
111 nature of the object if he or it has knowledge of facts which would put a reasonable and  
112 prudent person on notice of the drug related nature of the object."

113 "(e) All instruments, devices, and drug related objects which are distributed or possessed  
114 in violation of this Code section and any proceeds are declared to be contraband, and no  
115 person shall have a property right in them and shall be forfeited according to the procedure  
116 set forth in Chapter 16 of Title 9. As used in this subsection, the term 'proceeds' shall have  
117 the same meaning as set forth in Code Section 9-16-2."

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118

### SECTION 5.

119 Said title is further amended by revising Code Section 16-13-32.1, relating to transactions  
120 in drug related objects, evidence as to whether object is drug related, civil forfeiture, and  
121 penalties, as follows:

122 "16-13-32.1.

123 (a) It shall be unlawful for any person or corporation to sell, rent, lease, give, exchange,  
124 otherwise distribute, or possess with intent to distribute any object or materials of any kind  
125 which such person or corporation intends to be used for the purpose of planting,  
126 propagating, cultivating, growing, harvesting, manufacturing, compounding, converting,  
127 producing, processing, preparing, testing, analyzing, packaging, repackaging, storing,  
128 containing, concealing, ~~injecting~~, ingesting, inhaling, or otherwise introducing into the  
129 human body marijuana or a controlled substance.

130 (b) Unless stated within the body of the advertisement or notice that the object or materials  
131 that are advertised or about which information is disseminated are not available for  
132 distribution of any sort in this state, it shall be unlawful for any person or corporation to  
133 sell, rent, lease, give, exchange, distribute, or possess with intent to distribute any  
134 advertisement of any kind or notice of any kind which gives information, directly or  
135 indirectly, on where, how, from whom, or by what means any object or materials may be  
136 obtained or made, which object or materials such person or corporation intends to be used  
137 for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing,  
138 compounding, converting, producing, processing, preparing, testing, analyzing, packaging,  
139 repackaging, storing, containing, concealing, ~~injecting~~, ingesting, inhaling, or otherwise  
140 introducing into the human body marijuana or a controlled substance.

141 (c) In determining whether any object or materials are intended for any of the purposes  
142 listed in subsections (a) and (b) of this Code section, a court or other authority shall  
143 consider all logically relevant factors. In a trial under this Code section, any evidence  
144 admissible on this question under the rules of evidence shall be admitted. Subject to the

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145 rules of evidence, when they are the object of an offer of proof in a court proceeding, the  
146 following factors are among those that should be considered by a court or other authority  
147 on this question:

- 148 (1) Statements by an owner or anyone in control of the object or materials;
- 149 (2) Instructions provided with the object or materials;
- 150 (3) Descriptive materials accompanying the object or materials;
- 151 (4) National and local advertising or promotional materials concerning the object or  
152 materials;
- 153 (5) The appearance of, and any writing or other representations appearing on, the object  
154 or materials;
- 155 (6) The manner in which the object or materials are displayed for sale or other  
156 distribution;
- 157 (7) Expert testimony concerning the object or materials; and
- 158 (8) Any written or pictorial materials which are present in the place where the object is  
159 located.

160 (d) For a first offense, any person or corporation which violates any provision of this Code  
161 section shall be guilty of a misdemeanor. For a second offense, the defendant shall be  
162 guilty of a misdemeanor of a high and aggravated nature. For a third or subsequent  
163 offense, the defendant shall be guilty of a felony and, upon conviction thereof, shall be  
164 imprisoned for not less than one year nor more than five years and shall be fined not more  
165 than \$5,000.00.

166 (e) All objects and materials which are distributed or possessed in violation of this Code  
167 section and any proceeds are declared to be contraband and no person shall have a property  
168 right in them and shall be forfeited according to the procedure set forth in Chapter 16 of  
169 Title 9. As used in this subsection, the term 'proceeds' shall have the same meaning as set  
170 forth in Code Section 9-16-2.

171 (f) This Code section shall not apply to hypodermic needles or syringes."

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172 **SECTION 6.**

173 Said title is further amended by revising Code Section 16-13-32.2, relating to possession and  
174 use of drug related objects, as follows:

175 "16-13-32.2.

176 (a) It shall be unlawful for any person to use, or possess with the intent to use, any object  
177 or materials of any kind for the purpose of planting, propagating, cultivating, growing,  
178 harvesting, manufacturing, compounding, converting, producing, processing, preparing,  
179 testing, analyzing, packaging, repackaging, storing, containing, ~~injecting,~~  
180 ingesting, inhaling, or otherwise introducing into the human body marijuana or a controlled  
181 substance.

182 (b) Any person or corporation which violates any provision of this Code section shall be  
183 guilty of a misdemeanor.

184 (c) This Code section shall not apply to hypodermic needles or syringes."

185 **SECTION 7.**

186 Code Section 31-22-9.1 of the Official Code of Georgia Annotated, relating to who may  
187 perform HIV tests, is amended by revising paragraph (12) of subsection (a) as follows:

188 "(12) 'HIV test' means any antibody, antigen, viral particle, viral culture, or other test to  
189 indicate the presence of HIV in the human body, ~~which test has been approved for such~~  
190 ~~purposes by the regulations of the department."~~

191 **SECTION 8.**

192 All laws and parts of laws in conflict with this Act are repealed.

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# 2023-2024 Report of HIV Criminalization (HR 130) Task Force

Staff Research Data Prepared/Collected at the Request of the Task Force (3/1/2024)

## HR 130 Task Force to Study HIV Criminalization

### Epidemiological Data Implications of Modernization: Iowa

Iowa modernized their HIV criminalization statute in 2024, and now leads the country in viral suppression and has the second best rate in linkage to care in the United States.

Source: Axios

Date: August 17, 2023

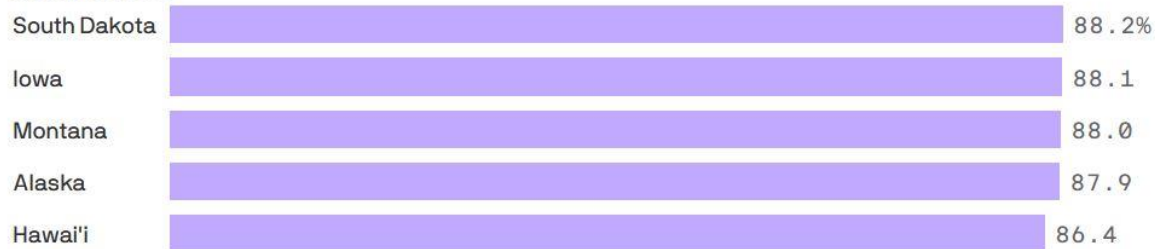
Headline: *Iowa Leads U.S. in HIV Suppression*

Location: <https://www.axios.com/local/des-moines/2023/08/18/iowa-top-us-hiv-suppression>

### Top states by receipt of HIV medical care and viral suppression in 2021

Among people 13+ years living with diagnosed HIV in 2021

#### Receipt of care



#### Viral suppression



Data: CDC; Chart: Axios Visuals

#### Text:

Iowa leads the nation in suppressing HIV in patients who are diagnosed with the disease, according to the most recent 2021 analysis by the [Centers for Disease Control](#).

**Why it matters:** Medication can [delay HIV-positive people](#) from getting AIDS, as well as prevent sexual transmission of the disease.

**State of play:** In Iowa, 81.7% of people diagnosed with HIV achieved viral suppression. It was only one of two states to break the 80% mark.

[continued]

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- The national average is 65.9%, according to the CDC.

**How it happened:** Bipartisan support and strong federal and state funding have helped boost local programs.

- The rural nature of the state means that partnering with agencies has also been crucial to help reach as many people as possible, according to Iowa's [Bureau of HIV, STI and Hepatitis](#).
- Iowa also has [lower incidences of HIV infections](#) overall in comparison to places like the South.

**Zoom in:** Nonprofit Primary Health Care runs "[The Project](#)," which provides HIV and AIDS care for around 670 central Iowans, supportive services manager Noah Beacom tells Axios.

- It receives \$2.3 million annually from the federal government's [Ryan White HIV/AIDS program](#), Beacom says.
- They also have case managers for ongoing care and can help pay for services like transportation and housing — potential barriers to receiving medication.

**Of note:** With the funding, The Project is able to take referrals and connect patients with medication within seven days of their diagnoses.

- They also have case managers for ongoing care and can help pay for services like transportation, a potential barrier to receiving medication.

**The big picture:** While HIV numbers are lowering, sexually transmitted infections like [syphilis are on the rise](#) statewide.

- HIV's decrease can be attributed to viral suppression medications as well as [PrEP](#), which helps prevent the chance of getting HIV, Melissa Brown of the Polk County Health Department tells Axios.

**What's next:** State officials created the "[Stop HIV Iowa Plan](#)" last year with the goal of reducing HIV diagnoses to fewer than 10 people by 2030.

[continued]



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## Late Stage Diagnosis Data

Iowa's surveillance report highlights a dramatic drop in late stage diagnoses\* since 2014.

*\*Iowa's use of "late testers" is used the same as Louisiana's reference to "late stage diagnoses".*

Source: State of Iowa Department of Health and Human Services, Bureau of HIV, STI, and Hepatitis

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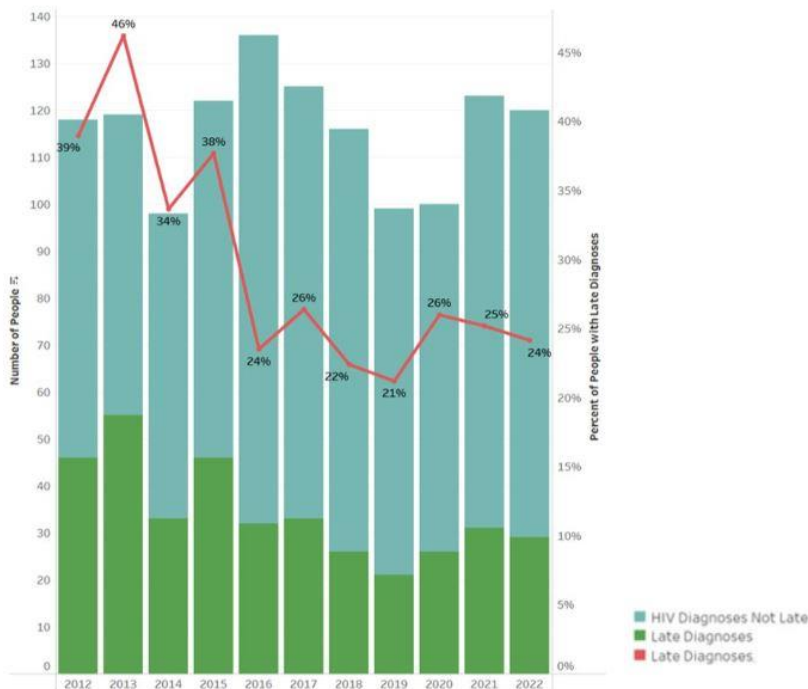
Location: [https://publications.iowa.gov/47082/1/2022%20HIV%20End%20of%20Year%20Report\\_final%20edits.pdf](https://publications.iowa.gov/47082/1/2022%20HIV%20End%20of%20Year%20Report_final%20edits.pdf)  
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**Late testers:** The proportion of people diagnosed with AIDS within three months of their initial HIV diagnosis ("late testers") decreased from 25% in 2021 to 24% in 2022. Overall, late diagnoses have decreased significantly since 2013, when 46% of people diagnosed were considered to be late testers. In 2022, 24% of people diagnosed were late testers, the third lowest proportion ever reported. The proportion of people that are late testers in 2022 was similar to the five-year (2017-2021) average, and lower than the 10-year average of 30%. The lower number of "late testers" is further confirmation that people at risk for HIV are getting timelier access to testing.

Of the 120 new HIV diagnoses in 2022, 7 (6%) were in an acute stage (i.e., very early) of HIV infection.

**FIGURE 3.7 NUMBER AND PERCENTAGE OF IOWANS DIAGNOSED LATE WITH HIV ("LATE TESTERS"): 1998 THROUGH 2022**



**Figure 3.7:** "Late testers" are people who receive AIDS diagnoses within three months of their HIV diagnoses. The proportion of late testers has been decreasing and reached its lowest level ever reported at 21% in 2019. Although the proportion of late testers increased to 26% in 2020, it dropped to 24% in 2022. It has remained consistently below 30% since 2015. Over 90% of "late testers" in Iowa were diagnosed with AIDS concurrently, meaning within one month of their HIV diagnoses.