

Modernizing Indiana's Public Health HIV Laws Related To Blood Products And Artificial Insemination Use

WHICH LAWS NEED REFORM?

[IC 16-41-12](#) Precautionary measures for use of human tissues and blood products and regulation of blood centers

[IC 16-41-14](#) Testing of semen used in artificial insemination for communicable and sexually transmitted disease

[IC 35-45-21-1](#) Offenses against public health; Transferring contaminated body fluids

It is a **Level 5 Felony**, for a person living with HIV (PLHIV) to recklessly, knowingly, or intentionally donate, sell, or transfer blood products or semen for artificial insemination that has HIV. If the act results in HIV transmission, the offense level is not clear. Under [IC 35-45-21-1](#), it is a **Level 3 Felony**. Under [IC 16-41-12-15-C-3](#) and [IC 16-41-14-17](#), it is a **Level 4 Felony**.

WHY DO THESE LAWS NEED REFORM?

- **Outdated.** These laws were enacted in 1988 and 1993 and were based on fear, stigma and limited HIV science at the time. Today we know much more about HIV; it is time to bring the laws up-to-date with the science.
- **HIV Science Advances.** With treatment, PLHIV have a near-average life expectancy (70+ years), can conceive without transmitting HIV to their sexual partners, and give birth without transmitting HIV. The risk of HIV transmission while on treatment is negligible to nonexistent.
- **No Public Health Benefit.** There is no evidence that these laws contribute anything toward their intended goal to reduce HIV transmission. In fact, research suggests that these laws may do the opposite - increase HIV transmission - because they act as a disincentive for testing, create barriers to those seeking care, and exacerbate stigma. Experts agree that HIV stigma is one of the biggest obstacles to ending the HIV epidemic.
- **Blood Supply is Safe.** The US blood supply is one of the safest in the world because the CDC and FDA implement safety measures to protect the blood supply from multiple infectious agents, including HIV, Hepatitis B (HBV) and Hepatitis C (HCV). There is no added benefit to public health to criminalize PLHIV who may attempt to donate blood products. Rather they should be treated the same as people living with HBV and HCV, who do not face charges, and referred for further counseling and testing services, which is in the interest of public health.
- **Safe Conception Options.** Technologies endorsed by the CDC and others (e.g. American Society for Reproductive Medicine) allow individuals to safely engage in artificial insemination using semen from men living with HIV. It is not in the interest of public health to criminalize people who choose to use these technologies under the guidance of medical professionals.
- **Result in Unjust, Racially Disparate, and Costly Prosecutions.** These laws impose punishment based on a person's HIV status in response to identical conduct by people living with similar communicable diseases which is a violation of the Americans with Disability Act. They further punish behavior that neither caused, nor intended to cause harm and disproportionately impact people of color (e.g., at least a dozen people have been prosecuted under IC 35-45-21-1, previously IC 35-42-1-7, and all have African Americans).

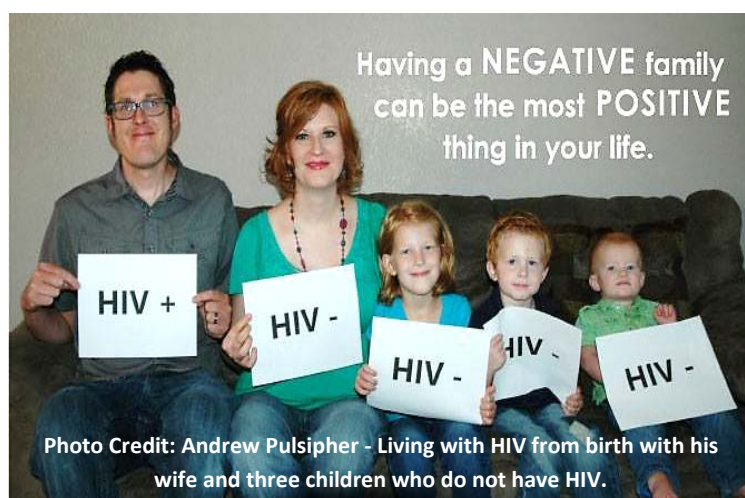
WHO SUPPORTS REFORM?

- **Numerous professional and public health authorities**, including the International AIDS Society, International Association of Providers in AIDS Care, UNAIDS, World Health Organization; The U.S. Department of Justice, American Medical Association, American Nursing Association, American Psychiatric Association, American Psychological Association, National Alliance of State and Territorial AIDS Directors, U.S. Conference of Mayors, Association of Nurses in AIDS Care, HIV Medicine Association, among others.

HOW CAN MEN LIVING WITH HIV SAFELY CONCEIVE CHILDREN?

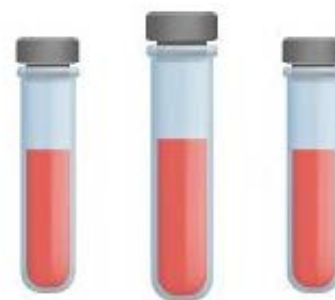
Whether members of the parenting partnership are both living with HIV or one person is living with HIV and one is not, multiple safer conception options exist including:

- **Treatment as Prevention (TasP)** People with an undetectable viral load (when no HIV is found in the blood) cannot transmit HIV sexually.
- **Pre-Exposure Prophylaxis (PrEP)** Antiretroviral drugs may be taken by the co-parent before sex, home insemination, or artificial insemination. PrEP is highly effective at preventing HIV transmission.
- **Sperm Washing** refers to a process in which sperm is separated from seminal fluid (semen = sperm + seminal fluid). Since HIV exists in seminal fluid but not in sperm, 'washing' the sperm clean of the seminal fluid eliminates any chance of HIV transmission. Commonly used types of artificial insemination such as Intra-uterine insemination (IUI) and In-vitro fertilization (IVF), can be used with washed sperm to impregnate an HIV- woman.
- **Fertility Clinics** increasingly offer artificial insemination procedures to HIV-affected individuals and couples.



WHAT SAFETY MEASURES PROTECT THE NATIONS BLOOD SUPPLY?

- All **donors** are **screened** for their HIV risk using a questionnaire.
- All **donated blood is screened** using the highest quality screening test for several viral infections including HIV, Hepatitis B (HBV), & Hepatitis C (HCV).
- All **blood** that **test reactive** for HIV, HBV and HCV are **destroyed**. **Plasma** is also further **heat treated** which **destroys** all viruses.
- All **donors** who **test reactive** for HIV, HBV, and HCV are added to the National Donor Deferral Registry (NDDR) and **permanently prohibited** from donating plasma in the U.S. and Canada. They are also **contacted** for further **referral testing and counseling**.



TESTING DONATED BLOOD
U.S. REGULATIONS REQUIRE THAT EACH UNIT OF DONATED BLOOD IS TESTED FOR INFECTIOUS AGENTS TO ENSURE ITS SAFETY.

SUPPORTING REFERENCES

1. Expert consensus statement on the science of HIV in the context of the criminal law. *Journal of the International AIDS Society*. 21 (2018) www.ncbi.nlm.nih.gov/pubmed/30044059
2. Criminalization of HIV exposure: A review of empirical studies in the U.S. *AIDS and Behavior* 21.1 (2017) www.ncbi.nlm.nih.gov/pubmed/27605364
3. Blood and Plasma donation centers must maintain lists such as the *National Donor Deferral Registry* (www.pptaglobal.org/safety-quality/national-donor-deferral-registry) of unsuitable donors to prevent donations in the future.
4. *Blood and Blood Products*, U.S. Food and Drug Administration (2016), www.fda.gov/BiologicsBloodVaccines/BloodBloodProducts/default.htm
5. Strategies for preventing HIV infection among HIV-uninfected women attempting conception with HIV-infected men – U.S. (2017) www.cdc.gov/mmwr/volumes/66/wr/mm6621a2.htm
6. HIVE www.hiveonline.org : Since 1989, HIVE has provided preconception and prenatal care to women, men and couples affected by HIV. They are the nation's number one resource for people living with, and affected by, HIV who seek to have children.

Modernization Changes Needed

16-41-12 Precautionary measures for use of human tissues and blood products

<http://iga.in.gov/legislative/laws/2018/ic/titles/16/articles/41/chapters/12/pdf/IC%2016-41-12>

1. **Section 15 of Chapter 12 of Article 41 of Title 16 is amended to read:**

IC 16-41-12-15 Donor information; informed consent

- a) A blood center shall require a blood donor to provide to the blood center the following information: (1) Name. (2) Address. (3) Date of birth. (4) The blood donor's Social Security number, if the blood donor is receiving monetary compensation for the donation.
- b) A blood center shall report the name and address of a blood donor to the state department when a confirmatory test of the blood donor's blood confirms the presence of antibodies to the human immunodeficiency virus (HIV).
- c) A blood center shall provide to a blood donor information to enable the blood donor to give informed consent to the procedures required by this chapter or IC 16-36. The information required by this subsection must be in the following form: NOTICE

(1) This blood center performs a screening test for the human immunodeficiency virus (HIV) on every donor's blood.

(2) This blood center reports to the state department of health the name and address of a blood donor when a confirmatory test of the blood donor's blood confirms the presence of antibodies to the human immunodeficiency virus (HIV).

~~(3) A person who recklessly, knowingly, or intentionally donates (excluding self-donations for stem cell transplantation, other autologous donations, or donations not intended by the blood center for distribution or use), sells, or transfers blood that contains antibodies for the human immunodeficiency virus (HIV) commits transferring contaminated blood, a Level 5 felony. The offense is a Level 4 felony if the offense results in the transmission of the virus to another person.~~

16-41-14 Testing of semen used in artificial insemination for communicable & sexually transmitted disease

<http://iga.in.gov/legislative/laws/2018/ic/titles/16/articles/41/chapters/14/pdf/IC%2016-41-14>

2. **Section 7 of Chapter 14 of Article 41 of Title 16 is amended to read:**

IC 16-41-14-7 Use of semen; conditions; HIV testing

- a) Except as provided in subsection (b), a practitioner may not use a donation of semen until the following conditions are met:
 - (1) The specimen has been frozen and quarantined for at least one hundred eighty (180) days.
 - (2) The donor is retested after one hundred eighty (180) days for the HIV antibody.
- b) If the recipient indicates that the donor is in a mutually monogamous relationship with the recipient, the practitioner:
 - (1) shall perform the HIV test required under this chapter for the donor at least annually as long as artificial insemination procedures are continuing; and
 - (2) may not perform artificial insemination unless ~~the tests for HIV antibody performed under this chapter produce negative results.~~ **safer conception practices are used and such practices are endorsed by the Centers for Disease Control and Prevention of the United States or other generally accepted experts.**

3. **Section 8 of Chapter 14 of Article 41 of Title 16 is amended to read:**

IC 16-41-14-8 Disposal of HIV infected semen

Sec. 8. a) Except as provided in subsection (b) A practitioner shall dispose of a donation of semen after a confirmatory test indicates the presence of the HIV antibody. The disposal must be made according to the rules concerning the disposal of infectious waste.

b) This section does not apply to semen used in the context of safer conception practices endorsed by the Centers for Disease Control and Prevention of the United States or other generally accepted experts.

4. Section 13 of Chapter 14 of Article 41 of Title 16 is amended to read:

IC 16-41-14-13 Informed consent

A practitioner shall provide information to a semen donor to enable the semen donor to give informed consent to the procedures required by this chapter. The information required by this section must be in the following form: NOTICE

(1) This facility performs a screening test for the human immunodeficiency virus (HIV) on every donor's blood.

(2) This facility reports to the state department of health the name and address of a semen donor or recipient when a confirmatory test of the semen donor's blood or the recipient's blood confirms the presence of antibodies to the human immunodeficiency virus (HIV).

~~(3) A person who, for the purpose of artificial insemination, recklessly, knowingly, or intentionally donates, sells, or transfers semen that contains antibodies for the human immunodeficiency virus (HIV) commits transferring contaminated semen, a Level 5 felony. The offense is a Level 4 felony if the offense results in the transmission of the virus to another person.~~

5. Section 17 of Chapter 14 of Article 41 of Title 16 is repealed:

IC 16-41-14-17 Donation, sale, or transfer of HIV infected semen; penalties

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

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

IC 35-45-21 Offenses against public health

<http://iga.in.gov/legislative/laws/2018/ic/titles/35/articles/45/chapters/21/pdf/IC%2035-45-21>

6. Section 1 of Chapter 21 of Article 45 of Title 35 is repealed.

IC 35-45-21-1 Transferring contaminated body fluids

~~a) As used in this section, "blood" has the meaning set forth in IC 16-41-12-2.5.~~

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

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

~~d) This section does not apply to: (1) a person who, for reasons of privacy, donates, sells, or transfers blood at a blood center (as defined in IC 16-41-12-3) after the person has notified the blood center that the blood must be disposed of and may not be used for any purpose; (2) a person who transfers blood semen, or another body fluid that contains the human immunodeficiency virus (HIV) for research purposes; or (3) a person who is an autologous blood donor for stem cell transplantation.~~