

# 2016 INDIANA DUTY TO WARN PROVIDER SURVEY RESULTS

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**OVERVIEW:** This survey assessed Indiana HIV provider knowledge of Indiana HIV Criminal Laws and their experiences with the Duty to Warn (DTW) Law. A total of 171 providers (range by question 166-171) completed a 24 closed-ended question, and 3 open-ended question survey between August 5 and October 1, 2016. The open-ended responses are currently being analyzed and not reported here. Below are the quantitative results. We also include some clarifying notes for some of the findings.

**TABLE 1: PROVIDER BACKGROUND CHARACTERISTICS**

<b>TABLE 1: PROVIDER BACKGROUND CHARACTERISTICS</b>		
<b>Provider has read the exact text of the Indiana DTW Code (Law) (IC 41-16-7-1)</b>	<b>N</b>	<b>%</b>
Yes	98	58
No	72	42
<b>Whether received adequate training around informing clients/patients about the DTW Law</b>	<b>N</b>	<b>%</b>
Mostly adequate	57	34
Somewhat adequate	55	32
Hardly adequate or has never received any training	24/34	14/20
<b>Whether provider supports the DTW Law</b>		
Strongly support or support	90	52
No opinion or don't know	32	19
Strongly non-support or non-support	49	29
<b>Position</b>	<b>N</b>	<b>%</b>
Care Coordinator/Case Manager/Social Worker	57	33
HIV/STI Tester	37	22
Nurse/Nurse Practitioner	24	14
Disease Intervention Specialist	18	11
Physician	8	5
Other (e.g., CRCS Counselor, Program Director, Multiple Positions)	26	15
<b>Region</b>	<b>N</b>	<b>%</b>
Northwest/Northwest Central (Lake/Tippecanoe County)	15	9
North Central/North East (St. Joseph/Allen County)	31	18
Central (Marion)	89	52
Southwest/West Central (Vanderburgh, Monroe, Vigo)	24	14
Southeast/East Central (Clark, Scott, Wayne, Madison)	11	7

- Better than half (58%) of the providers have read the Indiana DTW Code, found here: [IC 41-16-7](#). Yet, as reported below, many providers had inaccurate knowledge about the DTW Law.
- About a third either received no training (20%) or felt their training was hardly adequate (14%), a third (32%) felt it was somewhat adequate and just over a third (34%) felt their training was mostly adequate.
- Just over half (52%) support the Indiana DTW Law, 19% have no opinion or don't know if they support, and almost a third (29%) do not support the DTW Law.
- The exact population of each of these roles is unknown for Indiana. However, ISDH staff confirmed that at the time of the survey, there were about 80 HIV Care Coordinator-type positions, and 28 DIS which is a response rate of at least 71% and 64% for those two groups, respectively.
- The majority of providers were from Central Indiana (52%) followed by North Central and North Eastern Indiana (18%) and Southwest and West Central Indiana (14%).

## HIV CRIMINAL LAW KNOWLEDGE QUESTIONS

<b>TABLE 2: TO WHOM THE DTW LAW APPLIES &amp; PUNISHMENT/SCIENCE KNOWLEDGE</b>				
<b>DTW Law applies to which diseases other than HIV?</b>		<b>Correct Answer</b>	<b>N</b>	<b>%</b>
HBV		Yes	25	15
HCV, Chlamydia, Gonorrhea, Syphilis, HPV		No	125-129	73-79
<b>Providers legally required to share DTW information with patients/clients</b>		<b>Correct Answer</b>	<b>N</b>	<b>%</b>
Physicians		Yes	129	77
Substance Abuse Treatment Provider		No	39	24
Nurse/Nurse Practitioner		No	16	10
HIV Care Coordinator, Case Manager, Social Worker		No	10	6
HIV Tester		No	8	5
Disease Intervention Specialist		No	6	4
<b>Knows specific punishment associated with the DTW Law</b>			<b>N</b>	<b>%</b>
Yes			98	57
No			73	43
<b>DTW Law is consistent with current HIV science and knowledge</b>			<b>N</b>	<b>%</b>
Yes			64	37
No (Correct Answer)			75	44
Don't know			32	19

- Most providers (73-79%) correctly knew that the law does NOT apply to HCV, Chlamydia, Gonorrhea, Syphilis, and HPV. In contrast, only 15% of providers correctly knew that the DTW law also applies to HBV. [IC 16-41-7-1 Carriers' duty to warn persons at risk](#) Sec.1 states that: (a) *This section applies to the following dangerous communicable diseases: (1) Acquired immune deficiency syndrome (AIDS). (2) Human immunodeficiency virus (HIV). (3) Hepatitis B.*
- Other than in regards to physicians (in which 77% correctly answered that they are legally required to inform), nearly all providers incorrectly answered these questions (only between 4 and 24% correctly knew the law did not apply to the other providers). According to [IC 16-41-7-3 Notification by physician, Sec. 3.](#) (a) *A licensed physician who diagnoses, treats, or counsels a patient with a dangerous communicable disease shall inform the patient of the patient's duty under section 1 of this chapter.*
- Better than half (57%) knew the specific punishment associated with the DTW Law. Below are links to the Indiana Code describing the associated punishments. A level 6 felony is punishable by up to two and one-half years imprisonment and up to a \$10,000 fine.
  - [IC 16-41-7-5 Violations Sec. 5.](#) (a) Except as provided in IC 35-45-21-3, a person who recklessly violates or fails to comply with this chapter commits a Class B misdemeanor. (b) Each day a violation continues constitutes a separate offense.
  - [IC 35-45-21-3 Failure of carriers of dangerous communicable diseases to warn persons at risk. Sec. 3.](#) (a) A person who recklessly violates or fails to comply with IC 16-41-7 commits a Class B misdemeanor. (b) A person who knowingly or intentionally violates or fails to comply with IC 16-41-7-1 commits a Level 6 felony.
- Just under half (44%) of providers correctly answered that the DTW Law is not consistent with current knowledge and science around HIV. The Indiana DTW Law was enacted in 1993, before the onset of highly effective antiretroviral therapy and successful biomedical prevention options (e.g., PrEP, TasP, Undetectable=Untransmittable). Expert [researchers, professionals, and policy](#) makers now widely agree that such disclosure laws are outdated and NOT based on current knowledge and science around HIV.

**TABLE 3: KNOWLEDGE OF OTHER INDIANA CODES THAT CRIMINALIZE HIV**

<b>Illegal in Indiana for known HIV-positive persons</b>	<b>Correct Answer</b>	<b>N</b>	<b>%</b>
Donating blood if someone knows they are HIV positive	Yes	153	90
Donating sperm if the man knows he is HIV positive	Yes	142	83
Signing an organ donor card/document if someone knows they are HIV positive	No	12	7
<b>Sentence enhancement penalties applied when HIV-Positive</b>	<b>Correct Answer</b>	<b>N</b>	<b>%</b>
Battery charges that involve bodily fluids that do not transmit HIV, such as spit, if the person charged knows they are HIV positive	Yes	80	47
Malicious mischief charges that involve bodily fluids, including fluids that do not transmit HIV, such as spit, if the person knows they are HIV positive	Yes	74	44
Prostitution charges if the sex worker knows they have HIV	No	7	4

- Two laws criminalize donating sperm and blood in the state of Indiana if you know you are HIV-positive. Nearly all providers answered this question correctly (83% and 90%).
  - [IC 16-41-14-17](#) Donation, sale, or transfer of HIV-infected semen
  - [IC 35-45-21-1\(b\)-\(c\)](#) Transferring contaminated body fluids
  
- In contrast, only 7% correctly answered whether it was illegal to sign an organ donor card if someone knows they are HIV-positive. There is no Indiana law, and never has been a law, that criminalizes people living with HIV for signing such a document. The only law that existed affecting such donations in the state of Indiana was a federal law that prohibited procuring organs from people who were HIV-positive but this law did not criminalize people with HIV for signing a document.
  - Further, the Federal HOPE Act signed by Pres. Obama in 2014 allowed for organ donations between HIV-positive people. In response to this act, the Indiana Donor Network recently started screening HIV-positive people as possible organ donors and Indiana University Hospital will soon be approved to complete such transplants. For more information on the HOPE Act and what is occurring in Indiana, visit here. <http://indianadonornetwork.org/hope-act/>
  - The Duty to Warn Signature Forms used throughout the State of Indiana incorrectly note that it is illegal for people with HIV to sign an organ donor card or document. We have been in touch with ISDH leadership about the legal inaccuracy of that policy, and how it poses a public health barrier to implementing the HOPE Act, and they have responded positively.
  
- Just under half of providers correctly identified sentence enhancement charges for Battery and Malicious Mischief with a bodily fluid (47% and 44%). Of note, these laws were enacted with errors about HIV transmission (e.g., includes bodily fluids that do not transmit HIV such as saliva and activities that do not transmit HIV such as placing blood from an HIV-positive person on another person).
  - [IC 35-42-2-1\(b2\), \(e\), \(g\)](#) Battery [HIV sentence enhancement]
  - [IC 35-45-16-2\(a\)-\(f\)](#) Malicious Mischief [HIV sentence enhancement]
  
- There are no sentence enhancement charges under Indiana Prostitution laws for a sex worker who knows he/she is HIV-positive. Only 4% of providers answered this correctly.

**TABLE 4: DTW LAW CIRCUMSTANCES THAT REQUIRE DISCLOSURE**

	Yes		No		Don't Know	
	N	%	N	%	N	%
Before any kissing or touching	16	10	141	85	9	5
Before protected oral sex	158	93	9	5	4	2
Before unprotected oral sex	165	97	2	1	4	2
Before protected vaginal or anal sex	167	98	3	2	1	>1
Before unprotected vaginal or anal sex	171	100	0	0	0	0
Before sharing the same needle to inject drugs	167	98	0	0	4	2
Before sharing other drug injection paraphernalia	123	72	30	18	17	10

- This question asked, “Which of the following circumstances does the DTW Law require a person who knows they have HIV to disclose their HIV-positive status to a partner?” [IC 16-41-7-1 Carriers' duty to warn persons at risk](#) Sec.1 states that:

*(b) As used in this section, "high risk activity" means sexual or needle sharing contact that has been demonstrated epidemiologically to transmit a dangerous communicable disease described in subsection (a) [ i.e., AIDS, HIV, or HBV].*

*(c) As used in this section, "person at risk" means: (1) past and present sexual or needle sharing partners who may have engaged in high risk activity; or (2) sexual or needle sharing partners before engaging in high risk activity; with the carrier of a dangerous communicable disease described in subsection (a).*

*(d) Carriers who know of their status as a carrier of a dangerous communicable disease described in subsection (a) have a duty to warn or cause to be warned by a third party a person at risk of the following: (1) The carrier's disease status. (2) The need to seek health care such as counseling and testing.*

- The Duty to Warn Code is vague in regards to the question as the statute gives no definition for what acts are “*demonstrated epidemiologically to transmit*”. The Code fails to specifically recognize what constitutes risk (e.g., protected or unprotected), has scientific errors (e.g. incorrectly states that AIDS is a communicable disease), and fails to recognize that best public health practices for HIV prevention,
  - 1) promote safer sex which in the context of preventing HIV now includes, condoms, PreP, TasP, Undetectable=Untransmittable, among other HIV prevention measures,
  - 2) doesn't depend on HIV disclosure, and
  - 3) emphasizes mutual responsibility for sexual health (rather than rely on the HIV-positive partner to protect others).
- As such, it is extremely difficult to understand which behaviors fall within the Code.

## PROVIDERS AND THE ISDH DTW PROGRAMS

**TABLE 5: PROVIDER BEHAVIOR AND KNOWLEDGE REGARDING ISDH DTW PROGRAMS**

<b>Provider ever reported a client/patient to the ISDH ARC Program</b>	<b>N</b>	<b>%</b>
Yes	55	32
No	116	68
<b>Times a client/patient can be referred to the ISDH ARC Program before pursuing criminal charges</b>	<b>N</b>	<b>%</b>
One	30	18
Two	17	10
Three	23	13
Four	3	2
Don't know	84	49
Other	14	8
<b>HIV testing scenario in which ISDH staff asks a client/patient to sign the DTW Form</b>	<b>N</b>	<b>%</b>
Only when there is a reactive/preliminary positive rapid test	2	1
Only when there is a positive confirmatory test	80	47
Both when there's a reactive/preliminary test AND positive confirmatory test	76	44
Don't know	13	8
<b>Whether it is optional or required for HIV-positive clients/patients to sign the DTW Form</b>	<b>N</b>	<b>%</b>
Optional	67	39
Required	89	53
Don't know	14	8

- About a third (32%) of providers have ever reported a client/patient to the ISDH ARC program.
- We are not sure what the correct answer is regarding the number of times a client/patient can be reported to the ISDH ARC program before criminal charges are pursued. We have learned that during recent ISDH DTW trainings, participants are told “three” times but have also heard from community members that it varies depending on the particular case.
- Current ISDH Policy only requires a signature form on a positive confirmatory test result. 47% correctly answered the question.
- Current ISDH Policy requires certain ISDH funded staff (e.g., HIV Testers, Care Coordinators, and DIS) to obtain signatures on the DTW Form (53% answered correctly based on ISDH policy). It is not presented as an option to the client. However, the forms are not part of Indiana State Law and therefore not legally required.
  - Indiana is only among a handful of states that use these signature forms. Advocates argue that programs requiring people to sign forms in which they acknowledge the law does incredible harm. Harms include further stigmatizing people with HIV, creating barriers to forming trusting provider/client relationships, subjecting PLHIV to unnecessary inquiry and interference around their sexual behaviors, and incriminating PLHIV merely suspected of violating the Duty to Warn law. Advocates also have concerns about the legal accuracy of such forms.

## PROVIDER PRACTICE EXPERIENCES WITH DTW

**TABLE 6: PROVIDER EXPERIENCES PROVIDING INFORMATION ABOUT THE DTW LAW**

<b>What providers normally do when initially informing clients/patients about the DTW Law</b>	<b>N</b>	<b>%</b>
Verbally explain to them what the law requires them to do	169	99
Give them a copy of the law to take with them	95	57
Provide them with information about the ISDH ARC program	90	54
Tell them what types of specific punishment they could face if they break the law	67	40
Tell them what would happen if the signed form is requested by a legal authority	47	28
Provide them with written resources should they be accused of violating the law	35	21
Tell them that they can consult a lawyer before signing the DTW Form	16	10
Other	8	5
<b>Provider expertise informing clients/patients about the DTW Law</b>	<b>N</b>	<b>%</b>
No, I do not feel like I have expertise	21	12
Somewhat, I feel like I have some expertise	107	64
Yes, I feel like I have complete expertise	35	21
Don't know	5	3
<b>Informing about the DTW Law affects trust between provider and client</b>	<b>N</b>	<b>%</b>
It sometimes negatively affects how my clients/patients trust me	45	26
It has no effect on how my clients/patients trust me	68	40
It sometimes positively affects how my clients/patients trust me	16	9
Don't know	34	20
Other	8	5
<b>Client/patients understood the DTW Form when signing</b>	<b>N</b>	<b>%</b>
They have no understanding of what they are signing	0	0
They have some understanding of what they are signing	52	35
They have a good understanding of what they are signing	85	58
Don't Know	11	7
N/A - I have never had a client/patient sign the DTW Form	23	N/A
<b>Client ever expressed fears/concerns about the DTW Law</b>	<b>N</b>	<b>%</b>
All or nearly all of them have	11	6
About half of them have	21	12
Less than half of them have	70	41
None of them have	69	41

- Nearly all providers verbally explained what the law required them to do (99%). More than half (57%) give them a copy of the law (57%) and provided them with information about the ISDH ARC program (54%). Less than half did any of the other items (<40%).
- Most providers felt like they had some expertise to inform their clients about the DTW law (64%) or complete expertise (21%). 15% felt like they had either no expertise (12%) or did not know (3%).
- The majority reported that informing about the DTW law had no effect on client/patient's trust or didn't know (60%).
- All of the providers felt their clients/patients had at least some understanding (35%) or good understanding (58%) of the DTW Form they were signing.
- The majority of providers have had at least some clients/patients who expressed fears/concerns about the DTW law (59%) with 31% of those reporting half or more of their clients expressing concerns.

## PROVIDER LEGAL EXPERIENCES WITH DTW

**TABLE 7: PROVIDER LEGAL EXPERIENCES WITH THE DTW LAW**

<b>Legal authority ever requested signed client/patient DTW Form</b>	<b>N</b>	<b>%</b>
Yes	32	19
No	108	63
Don't Know	30	18
<b>What provider or agency/clinic did when the legal authority made the request for the DTW Form</b>		
Providing the form as requested without informing the client/patient	15	44
Informed the client/patient of the request and provided form	7	21
Sought legal advice because our agency/clinic didn't know what was required of the situation	7	20
Contested the subpoena by asserting provider-client/patient confidentiality without informing the client/patient	1	3
Informed the client/patient of the request and let the client/patient assert any rights to provider-client/patient confidentiality	0	0
Don't know/Other	1/3	3/9
<b>Comfort testifying for the prosecution if client/patient faced DTW charges for consensual adult sex</b>		
	<b>N</b>	<b>%</b>
Not comfortable at all	68	40
Somewhat comfortable	49	23
Completely comfortable	10	6
Neutral/Don't Know	54	31

- Just under a fifth (19%) reported ever receiving a request for their client/patient's signed DTW form.
- When a legal authority made a request for a patient/client's signed DTW form [n=34], nearly half (44%) of providers provided the form as requested without informing the client/patient and another 21% provided the form but informed the patient/client. Only one provider contested the subpoena, no providers let the client/patient decide what to do, and 20% sought legal advice.
- Only 6% of providers would be completely comfortable testifying for the prosecution against a client/patient accused of violating DTW. In contrast, 40% would not be comfortable at all testifying. The rest were either somewhat comfortable (23%) or neutral/didn't know (31%).

**Note:** Indiana is among only a few states that have a state health department policy/program linked to the Duty to Warn [i.e., disclosure] Law. The National Alliance of State and Territorial AIDS Directors (NASTAD) advise against using public health providers to inform clients/patients about the law.

[https://www.nastad.org/sites/default/files/decriminalization\\_guidelines.pdf](https://www.nastad.org/sites/default/files/decriminalization_guidelines.pdf)

- According to NASTAD (Pg. 3), “While programs and providers sometimes play a role in informing clients or patients about the criminal laws related to HIV status, this is not the advisable method of conveying this information. It is very important that programs and providers do not engage in activity that could compromise the integrity of the patient-provider relationship, or that potentially create actual or perceived conflicting obligations that might lead to a violation of patient confidentiality. If providers or programs engage in counseling on legal issues, this could unintentionally result in an appearance of support for (or involvement with) the criminal prosecution of their patients living with HIV and lead to a potential violation of patient confidentiality.”
- According to NASTAD (Pg.2), “best practices require notification to the individual whose medical information is being requested by law enforcement, and opportunity for that individual to secure legal assistance before the information is released.”