

SUPPORT 2023 HOUSE BILL 1198

Modernizing Indiana's HIV Criminal Laws

SUMMARY

Removes 1980/90s sentence enhancements and criminal offenses related to HIV that were based on stigma and misinformation about people who are HIV positive. Adds 'intent to harm' to existing crime for people who engage in an act that can transmit HIV.

BACKGROUND

During the early years of the HIV epidemic many states, including Indiana, implemented HIV-specific criminal exposure laws to discourage behavior that might lead to transmission and receive funds for HIV prevention activities.

These laws were passed at a time of limited medical understanding of HIV; there were no effective treatments and HIV stigma was high. Many of these laws punish behaviors that cannot transmit HIV, such as spitting or sex using proven prevention methods, and apply regardless of actual transmission or intent.

After more than 40 years of HIV research and significant biomedical advancements to treat and prevent HIV, Indiana laws are now outdated and do not reflect our current scientific understanding of HIV. Further, we now know that these laws...

- **Have no public health benefit.** Not a single study has found them to reduce HIV transmission; they also reinforce inaccurate information about HIV.
- **Increase stigma,** which experts agree is one of the biggest obstacles to ending the HIV epidemic because it is a barrier to testing and treatment.
- **Lead to disproportionate punishments** by punishing acts with virtually no HIV transmission risks and disproportionately affects racial minorities.
- **Are costly to the state,** as they subject people with HIV to potential prosecution and incarceration – wasted expenses with no public health benefits.
- **Are rejected by expert authorities** such as the CDC, the American Medical Association, the U.S. Department of Justice, the National Association for Public Defenders and numerous other public health and legal experts.

SCIENCE

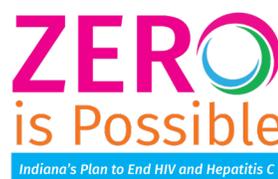
- **Life expectancy is high:** a person with HIV, on treatment, can live as long as a person who does not have HIV.
- **HIV transmission can be prevented** with testing and medication, e.g., a person on treatment with an undetectable HIV viral load cannot transmit HIV: Undetectable=Untransmittable (U=U).
- **HIV is not transmitted through any** kind of contact with saliva, sputum, tears, sweat, urine, and feces; or fluids that can transmit HIV (e.g., blood, semen) outside the body (e.g., touching, placing, throwing).
- **Biting by someone with HIV** is not an established route of HIV transmission; there is no substantial risk of transmission.
- **The FDA requires blood products** to be tested for infectious agents, such as HIV and Hepatitis B to ensure safety. Blood that tests positive is destroyed. The U.S. blood supply is the safest in the world.
- **Safe conception practices** are regulated by the FDA and enable people with HIV to conceive babies without transmitting HIV to their partners or children.

SOLUTION

Indiana laws should be modernized to reflect current advances in HIV science, not punish behavior that poses virtually zero risk of HIV transmission and **help efforts to end the Indiana HIV epidemic!**

Ending the HIV epidemic requires reforming and rescinding HIV criminal laws to align with science for the sake of people with HIV & for the public's health.
(CDC Officials, [Lancet](#): Vol 8, #1, e4-e6, Jan 01, 2021)

Current laws criminalize and stigmatize PLHIV, so modernizing and updating these laws would contribute to ending the Indiana HIV epidemic.
(IDOH <https://www.zipindiana.org/> p.19-20)



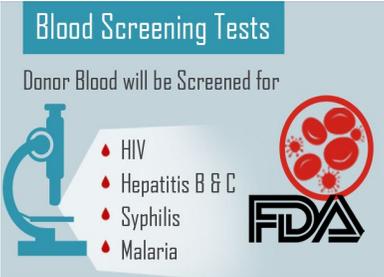
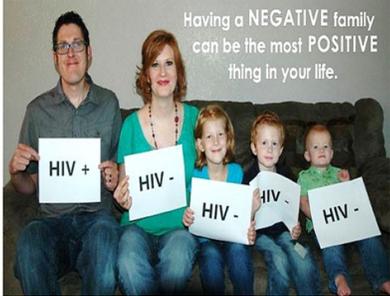
SUPPORT 2023 HOUSE BILL 1198

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WHAT DOES THIS BILL DO?

- 1. Repeals** offenses concerning the donation, sale, or transfer of blood products, or semen for artificial insemination in fertility care, that pose no risk of HIV transmission.
The FDA policy to destroy blood products that test positive for HIV remains in place
- 2. Removes** sentencing enhancements based on HIV status under the battery and malicious mischief by bodily fluid statutes.
People with HIV who violate the bodily fluids crimes will still be punished under the law, just not with penalty enhancement based on their disease status
- 3. Adds** a “mens rea” intent to harm requirement to the duty to inform law, when engaging in high-risk activity.
***For the first time in Indiana, provides a way to fairly distinguish people who intended harm from those who did not. Reserves felony sentence enhancement for those who did intend harm.*

FREQUENTLY ASKED QUESTIONS

- 1. How will this bill improve public health in Indiana?**
This bill aligns with the Indiana Department of Health (IDOH) *Zero is Possible* plan to end the HIV epidemic which also calls for reform of Indiana’s HIV criminal codes. This bill aligns laws with current HIV science and reduces HIV-related law stigma, thereby eliminating a barrier to testing and care.¹
- 2. How will this bill impact the safety of the blood supply?** The [Indiana Red Cross](#) is not opposed to reform because the blood supply will remain safe. Punishment adds no additional safety in the rare event that a person with HIV attempts to donate. By the time a person learns they have HIV, FDA screening will detect HIV and destroy the donation.² This bill treats people with HIV like those with Hepatitis B and C, who are also screened but do not face penalties and, instead, are referred to treatment services.

- 3. What if someone intentionally tries to transmit HIV? Will they be punished?**
It is actually very rare that someone acts with the intent to transmit HIV to another. However, by adding a “mens rea” intent to harm requirement to the disclosure law, Indiana will now have a way to prosecute anyone living with HIV who engaged in conduct that presented a significant risk of transmission and intended to transmit HIV.

- 4. How will this bill improve HIV reproductive care?**
This bill removes legal barriers to using FDA and CDC endorsed safe conception fertility care under the guidance of medical professionals.³
- 5. Who supports modernizing Indiana’s HIV criminal laws?**
Numerous state public health experts, medical and support services providers, and HIV advocates, such as the HIV Modernization Movement-Indiana, the Indiana Primary Health Care Association, the Indiana Public Defenders Council, the Indiana Minority Health Coalition, the [Indiana State Medical Association](#), the Indiana Department of Health, [Indiana Disability Rights](#), the ACLU, among others.

¹ Indiana Department of Health *Zero Is Possible Strategic Plan to End HIV 2021-30*) <https://www.zipindiana.org/> p.19-22)

² <https://www.fda.gov/vaccines-blood-biologics/safety-availability-biologics/keeping-blood-transfusions-safe-fdas-multi-layered-protections-donated-blood> & <https://www.fda.gov/vaccines-blood-biologics/blood-blood-products>

³ <https://www.cdc.gov/mmwr/volumes/66/wr/mm6621a2.htm>



HIV Modernization Movement
INDIANA