

# Criminalization of Viral Hepatitis in Indiana

## What is Hepatitis Criminalization?

The inappropriate arrest or prosecution of people living with Viral Hepatitis under criminal laws that single them out for disproportionately harsh punishment based on their disease status.<sup>2</sup>



The 3 main behaviors criminalized are sex, needle-sharing and bodily-fluid exposure.



## Indiana Laws That Criminalize Viral Hepatitis

Criminal Statute & Year Enacted	Type of Hep Criminalized	Behavior Criminalized	Criminal Penalty
Battery By Bodily Fluids IC 35-42-2-1(c2)(f)(h) [1995]	All Hepatitis	Bodily Fluid and/or Waste Exposure	Level 6 Felony, becomes a Level 5 Felony if committed against a public safety official
Malicious Mischief IC 35-45-16-2(a)-(f) [2002]	All Hepatitis	Bodily Fluid and/or Waste Exposure	Level 6 Felony, becomes a Level 5 Felony if Hepatitis transmission occurs
Duty/Failure to Inform IC 16-41-7-1 [1988] & IC 35-45-21-3 [1998]	Hepatitis B	Sex and/or Needle-Sharing	Failure to comply with IC 16-41-7-1 (duty to inform partners before engaging in "high risk activity") is a Level 6 Felony

COMBINES  
Public Health &  
Criminal Code

3 out of 4 of  
Indiana's HIV criminal  
laws ALSO criminalize  
Viral Hepatitis.

## Unequal Treatment Under the Law

- Anyone can be charged under the Battery by Bodily Fluids and Malicious Mischief laws, but the charge is **ENHANCED** from a Class B Misdemeanor to a Level 6 Felony if a person is living with HIV, Hepatitis or Tuberculosis.
- The acts that result in these charges **almost NEVER** pose any risk of Hepatitis transmission.<sup>7</sup>
- There is **NO** evidence these laws increase disclosure of viral hepatitis status or reduce transmission as were the purported goal.
- The Viral Hepatitis National Strategic Plan recognizes that **STIGMA** and fear perpetuated by outdated criminal laws that do not reflect current understanding of viral hepatitis inhibit efforts to engage people in testing and treatment and delay the elimination of viral hepatitis as a substantial impediment to public health.<sup>1</sup>



The ISMA supports Indiana law reform to reflect the current scientific understanding of viral hepatitis and eliminate criminal sanctions based on viral hepatitis status, thereby reducing viral hepatitis related stigma and helping to eliminate viral hepatitis as a substantial impediment to public health (Resolution 22-54).<sup>4</sup>



# Criminalization of Viral Hepatitis in Indiana

**82** Viral Hepatitis criminal cases from 2015-2022, involving 80 individuals living with Viral Hepatitis.<sup>7</sup>

**100%** were charged with a **FELONY** enhancement for Hepatitis exposure under Indiana's **BATTERY BY BODILY FLUIDS** law.\*<sup>7</sup>

**73%** of cases were for **SPITTING**, posing **ZERO** risk of transmission.<sup>7</sup>



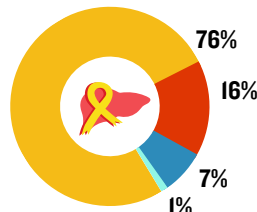
## A NATIONAL OUTLIER

Indiana is only 1 of 9 US states with laws that criminalize people based on Viral Hepatitis status. All 9 states also criminalize HIV, adding to the stigma of both health conditions.<sup>3</sup>



Most people charged were living with Hepatitis C (HCV).<sup>7</sup>

Hepatitis A  
Hepatitis B  
Hepatitis C  
Hepatitis\*  
Unspecified



Hepatitis C (HCV) is primarily transmitted through sharing syringes and injection equipment.

## HCV IS ON THE RISE

Indiana ranked 1st in the US in the rate of acute cases of HCV in 2019. Timely access to treatment helps save lives by halting the progression of liver failure and preventing ongoing spread of HCV.<sup>4,5</sup>



## MORE SSPS ARE NEEDED

People who inject drugs are at elevated risk for HIV & HCV. Indiana currently has SSPs in only 8 counties. Requiring municipal approval for SSPs limits access to sterile injection equipment where it's most needed.<sup>6</sup>



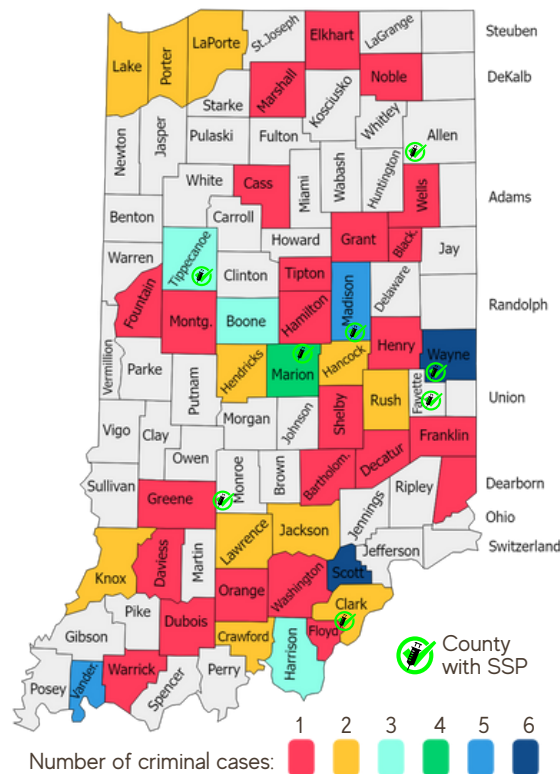
Indiana's restrictive SSP and felony syringe possession laws make sterile injection equipment less accessible to people who inject drugs (PWID).

This makes PWID more likely to engage in unsafe injection practices that put them at higher risk of HCV & HBV.

These laws also make PWID more likely to have contact with law enforcement, increasing their likelihood of experiencing criminalization.



## Where are Cases Occurring?



## HEPATITIS C HAS A CURE

People can't be charged if they've been cured. Adopting a test-and-treat model for HCV will help end criminalization.



### References

- <https://www.hhs.gov/sites/default/files/Viral-Hepatitis-National-Strategic-Plan-2021-2025.pdf>
- <https://www.hivlawandpolicy.org/resources/punishment-not-public-health-strategy-criminalization-viral-hepatitis-center-hiv-law-and>
- <https://www.hivlawandpolicy.org/resources/map-overview-states-criminalizing-viral-hepatitis-chlp-updated-may-2022>
- [https://actionnetwork.org/user\\_files/user\\_files/000/078/555/original/ISMA\\_HCV\\_Resolution\\_Final\\_6.6.2022.pdf](https://actionnetwork.org/user_files/user_files/000/078/555/original/ISMA_HCV_Resolution_Final_6.6.2022.pdf)
- <https://www.zipindiana.org/> (Indiana's plan to eliminate viral hepatitis C)
- <https://www.in.gov/health/overdose-prevention/overdose-surveillance/indiana/>
- IU & UCLA Williams Law Institute Research Study - IU IRB #1209

\*One person was also charged under the Malicious Mischief law. There were zero cases under the Failure to Inform law.

