

HIV Criminal Laws in Tennessee

Why take action on this issue?

Major medical and scientific advances have made HIV a manageable long-term condition. According to the [Centers for Disease Control and Prevention](#) (2020) “many state laws are now outdated and do not reflect our current understanding of HIV. In many cases, this same standard is not applied to other treatable diseases. Further, these laws have been shown to discourage HIV testing, increase stigma, and exacerbate disparities.”

Criminal laws have not been shown to be effective in reducing rates of HIV ([Sweeney et al., 2017](#)). In fact, the opposite is true. Criminalization laws undermine HIV prevention efforts by discouraging people from knowing their HIV status due to increased stigma, shame and the fear of prosecution. HIV stigma makes it more difficult to live openly with HIV and serves as a deterrent to HIV testing and HIV disclosure making it *less likely* that people living with HIV will disclose their positive status to others ([Cann et al., 2019](#)).

The [Centers for Disease Control and Prevention](#) (CDC) estimates that about 40% of people who either don't know that they are infected or are not receiving HIV care are thought to be responsible for about 80% of new HIV infections in the U.S. The CDC recommends that everyone between the ages of 13 and 64 get tested for HIV at least once as part of routine health care.

Tennessee has two statutes that apply only to people with HIV.

1. **Aggravated Prostitution TCA 39-13-516:** If you know you are HIV positive and you engage in sexwork it is a Class C felony (3 to 15 years). *Passed in 1991.*
2. **Criminal Exposure to HIV TCA 39-13-109:** If you know you are HIV positive or have viral hepatitis and (1) engage in “intimate contact” without first disclosing your status, (2) donate blood, tissue, organs, or semen, or (3) share needles, it is a Class C felony (3 to 15 years). *Passed in 1994.*

What elements of the problem/policy illustrate its importance and urgency?

The severity level of punishment is unwarranted.

- HIV is not a death sentence. There are many highly effective HIV treatment options available, including once a day regimen, that make HIV a treatable chronic illness. HIV preexposure prophylaxis (PrEP) is an available treatment that can prevent the acquisition of HIV.
- “The science is clear. [Undetectable Equals Untransmittable or U=U](#) promotes the message that individuals with HIV who get medication and achieve and maintain an undetectable viral load cannot transmit the virus” said Pamela Talley, MD, MPH, medical director of TDH HIV/STD/Viral Hepatitis.

An arrest for either HIV statute requires registration as a violent sex offender.

- Being arrested for aggravated prostitution or HIV exposure carries the collateral consequence of *lifetime violent sex offender registration*. This collateral consequence permanently damages an individual's legal status and prevents full reentry into society (Chin, 2012; Murray, 2020).
- Being categorized as a sex offender automatically condemns the person to the harshest and most severe restrictions of political, economic, and social rights; what is considered a “civil death” (Chin, 2012). The term sex offender is associated with people who target children and are pedophiles.

- There is no justification for the state of Tennessee to require people living with HIV to be on the sex offender registry *unless the crime involved a sexual offense with the use of force, violence or a crime against children*. There is absolutely no research evidence that supports a public benefit that results from registering people with HIV as sex offenders. Criminal exposure to HIV and aggravated prostitution *do not* require sex offender registration under the Sex Offender Registration and Notification Act (SORNA).

Laws are not punishing HIV transmission.

- Most HIV criminal prosecutions are not for HIV transmission, but for the failure to disclose one's HIV status prior to intimate contact, which in most cases comes down to competing stories about verbal consent that are nearly impossible to prove ([NASTAD, 2011](#)).
- Aggravated prostitution charges are almost 100% the result of undercover police stings in which there is never any contact or possibility of transmission.

Intent.

- As written, Tennessee's current laws do not require a person's "intention" to transmit the HIV virus. Modernizing HIV statutes should focus on a person's intention to transmit and conduct likely to cause harm, not a failure to disclose.

HIV Laws overwhelmingly impact minorities and marginalized populations.

- African Americans make up 17% of the state population and accounted for 58.5% of all persons newly diagnosed with HIV in 2018. The total number of people living with HIV in Tennessee was 18,069; of those, 10,179 or 56% were African American or black (TDOH, 2020).
- "The majority of people charged and convicted for HIV crimes are poor, from marginalized groups, and often suffer from drug dependency or mental illness, or both. Drug addiction, homelessness, and other concurrent problems may leave defendants feeling they have no other means of survival" ([Galletly & Lazzarini, 2013, p. 2634](#)).
- People who are poor, homeless, or indigent are at a severe disadvantage typically receiving the services of a public defender who will counsel them to plead guilty, even in cases where they do not believe themselves to be guilty. Records from Tennessee's Administrative Office of the Courts (2020) document that 100% of defendants charged with aggravated prostitution between 2009-2019 in the state of Tennessee have pled guilty. Vulnerable and undereducated defendants may be entering guilty pleas without full knowledge of the collateral consequences associated with this decision.
- The focus of the aggravated prostitution statute is entirely on arresting the street-based prostitute, who the literature has consistently identified as being primarily from poor, homelessness African American communities of women and transgender and gender non-conforming individuals ([Kattari & Begun, 2017](#); Monroe, 2005).
- "It's just about surviving to be honest with you, it's about surviving," said one of the women arrested in a Memphis prostitution sting. If law enforcement continues to carry out undercover stings that are focused only on arresting prostitutes while offering little or no assistance to help these women change their underlying circumstances, then once released from jail they will be compelled to return to the streets ([Broach, 2020](#)).

How many people are affected by HIV criminal laws in Tennessee?

HIV Criminal Arrests reported to TN AOC 2009-2019 from the trial courts in the state		
Total arrests reported from 2009-2019	Aggravated Prostitution 39-13-516	Criminal Exposure To HIV 39-13-109
358 HIV charges filed $M = 29.8$ per year	148 charges filed $M = 14.8$ per year	210 charges filed $M = 21$ per year

Source of information: Tennessee Administrative Office of the Courts
For complete breakdown please see Appendix A.

What is Tennessee doing?

The state of Tennessee is enforcing outdated, dangerous and discriminatory laws that criminalize people with HIV for non-disclosure. Tennessee's HIV laws are working *against* the public health efforts to end the HIV epidemic by discouraging people from knowing their HIV status. HIV stigma and the fear of prosecution makes it more difficult to live openly with HIV and serves as a deterrent to HIV testing and HIV disclosure.

Further, in the Tennessee Department of Corrections, the average cost per-day to house an offender is \$79.06 or \$28,856 per year. This does not include the cost to the state for HIV medications. Antiretroviral treatment for HIV can cost up to \$48,000 annually per person.

Governor Bill Lee has said criminal justice reform is a top priority.

Governor Lee explains,

People, given the chance, can turn their lives around if we only have a system and a process that allows them to have that chance. This is how we make sure that we save taxpayer dollars. This is how we make sure that we ensure safe neighborhoods. [This is how we transform lives.](#)

Two new laws (2021) are exemplars of Governor Lee's philosophy of criminal justice reform.

- The [Reentry Success Act](#) (House Bill 785/Senate Bill 768) makes it easier for those re-entering society to find employment opportunities. The Reentry Success Act supports the evidence that individuals need the ability to be self-sufficient through employability. [Employment](#) is the answer to breaking the cycle of crime and poverty.
- The Alternatives to Incarceration Act, [House Bill 784/Senate Bill 767](#), provides resources to develop community-based alternatives to incarceration. The Alternatives to Incarceration Act models the evidence that treating substance use in community-based treatment programs is cost effective. Sending drug abusers to community-based treatment programs rather than prison could help reduce crime and [save the criminal justice system billions of dollars.](#)

Evidence suggests that many people who are arrested for an HIV crime suffer from substance and alcohol use disorders, mental health disorders and homelessness ([Galletly & Lazzarini, 2013](#)). Resources allocated to public health approaches should be prioritized as an alternative to increasing the burden of the criminal and judicial justice systems ([Harsono et al., 2017](#)). Arresting and incarcerating people for HIV exposure or aggravated prostitution contradicts what is essential when working to increase a person's employability and capacity to become productive citizens. Encumbering individuals with a felony criminal record and labeling them as violent sex offenders prevents them from obtaining jobs, housing and attending treatment programs for addiction.

What have other states done regarding their HIV laws?

Illinois, Nevada, Washington, Michigan, North Carolina, California, Colorado and Iowa are states that have reformed their HIV specific laws.

- [Illinois legislators approve bill that would decriminalize HIV transmission](#). The Illinois Senate passed a bill that would repeal a law that left HIV-positive people open to felony charges for failing to disclose their health status.
- [Nevada Legislature updates criminal code on HIV transmission](#). Now, instead of facing a felony, offenders will receive a warning on their first offense and can be charged with a misdemeanor for a second offense.
- [Washington Changed its HIV Criminal Law in 2020](#). Intentional transmission of HIV is a simple misdemeanor. The new law is now in the public health code and eliminates sex offender registration.
- [Michigan Changed its HIV Criminal Law in 2019](#). There are now separate levels of offenses based on the PLHIV's state of mind and whether HIV transmission occurred.
- [North Carolina Changed its HIV Control Law in 2018](#). PLHIV are no longer required to disclose their HIV status or use a condom if they adhere to a treatment plan and have been virally suppressed for at least six months.
- [California Changed its HIV Criminal Law in 2017](#). Intentional transmission of an infectious or communicable disease is a misdemeanor punishable by up to 6 months' imprisonment.
- [Colorado Changed its HIV Criminal Law in 2016](#). It is no longer a felony for PLHIV to engage in sex work.
- [Iowa Changed its HIV Criminal Law in 2014](#). There are different levels of intention and punishment for transmission and the definition of exposure is "a substantial risk of transmission." The new law eliminates sex offender registration for past as well as future convictions.

The [American Medical Association](#), the [Centers for Disease Control and Prevention](#), the [National Alliance of State and Territorial AIDS Directors](#), and the [U.S. Department of Justice](#) each advocate for repealing or revising state laws that criminalize non-disclosure of HIV status.

Proposed Policy Option for Tennessee

Now is the time that Tennessee passes an HIV Modernization Bill. Action should be taken to modernize Tennessee's current criminal statutes to reflect the most up-to-date scientific, medical and legal considerations. Research and consultation was done with local, state and federal policy experts to propose the HIV Modernization Bill. House Bill 1599 (2020) was withdrawn because it needed bipartisan support. Please see Appendix B.

Tennessee HIV Modernization Coalition

July 7, 2021

<https://www.tnhivmodernizationcoalition.org/>

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Appendixes

		Page
Appendix A	HIV Criminal Arrests 2009-2019 reported to TN AOC	6
Appendix B	HB 1599 HIV Modernization Act (2020)	7-9

Appendix A



Administrative Office of the Courts Filings

Criminal Exposure to HIV

TCA: 39-13-109

	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016	FY 2016-2017	FY 2017-2018	FY 2018-2019
Felony - C	27	13	17	22	43	5	19	36	10	16
Felony - D				2						
Misdemeanor - A				9	5	12	6	8	4	5
Total	27	13	17	33	48	17	25	44	14	21

Felonies = 210
Misdemeanors = 49
Total filings = 259

Dispositions Criminal Exposure to HIV

TCA: 39-13-109

		FY 2008-2009	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016	FY 2016-2017	FY 2017-2018	FY 2018-2019
Felony - C	Acquittal	0	0	0	0	0	0	1	0	0	0	0
	Conviction Trial	0	0	0	1	1	0	2	1	0	0	0
	Dismissal/Nolle Prosequi	0	22	13	0	5	3	5	6	15	1	0
	Guilty Plea-As Charged	4	11	4	20	9	5	5	35	6	12	3
	Guilty Plea-Lesser Charge	0	0	0	0	0	4	1	0	0	0	0
	Retired/Unapprehended Defendant	0	1	0	4	0	0	0	0	0	0	0
Total	4	34	17	25	15	12	14	42	21	13	3	
Felony - D	Guilty Plea-As Charged	0	0	0	0	2	0	0	0	0	0	0
	Total	0	0	0	0	2	0	0	0	0	0	0
Misdemeanor - A	Dismissal/Nolle Prosequi	0	0	0	0	0	0	9	2	7	3	1
	Guilty Plea-As Charged	0	0	0	0	2	5	1	1	5	8	1
	Total	0	0	0	0	2	5	10	3	12	11	2
Total	4	34	17	25	19	17	24	45	33	24	5	

Convicted = 5
Acquitted = 1
Dismissed = 70
Pled guilty = 121

Misdemeanors = 45
Dismissed = 22
Pled guilty = 23

Total dispositions = 247

Filings Aggravated Prostitution

TCA: 39-13-516

	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016	FY 2016-2017	FY 2017-2018	FY 2018-2019
Felony - C	28	38	12	8	10	9	14	5	4	2
Felony - D	9	2	2	1				1	1	1
Felony - E		1								
Total	37	41	14	9	10	9	14	6	5	3

Total filings from 2009-2019 = 148

Dispositions Aggravated Prostitution

TCA: 39-13-516

		FY 2008-2009	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016	FY 2016-2017	FY 2017-2018	FY 2018-2019
Felony - C	Dismissal/Nolle Prosequi	5	10	10	6	2	1	4	3	2	1	0
	Guilty Plea-As Charged	6	18	19	11	6	7	7	5	5	2	1
	Guilty Plea-Lesser Charge	2	2	2	2	0	0	0	0	1	0	1
	Other	1	0	0	0	1	0	0	0	0	0	0
	Retired/Unapprehended Defendant	0	0	2	0	0	0	0	0	0	0	0
Total	14	30	33	19	9	8	11	8	8	3	2	
Felony - D	Guilty Plea-As Charged	1	8	2	3	0	0	0	0	0	2	0
	Total	0	0	0	0	0	1	0	0	0	0	0
Felony - E	Guilty Plea-As Charged	1	8	2	3	0	1	0	0	0	2	0
	Total	0	0	1	0							
Total	15	38	36	22	9	9	11	8	8	5	2	

Dismissed = 44
Pled guilty = 116
Other = 3

Total dispositions from 2009-2019 = 163

Information provided by:
Tennessee Administrative Office of the Courts
511 Union Street, Suite 600 Nashville, TN 37219

Appendix B

HOUSE BILL 1599 (2020)
By Clemmons

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 13; Title 40 and Title 68, Chapter 10,
relative to the HIV Modernization Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:	Explanation
SECTION 1. This act shall be known and may be cited as the "HIV Modernization Act."	
SECTION 2. Tennessee Code Annotated, Section 39-13-109, is amended by deleting the section in its entirety and substituting instead the following:	
39-13-109. Intentional transmission of an infectious or communicable disease.	
(a) A person commits the offense of intentional transmission of an infectious or communicable disease when the person knows that the person is infected with an infectious or communicable disease and knowingly:	Intent to transmit is required.
(1) Acts with the specific intent to transmit the disease to another person and intentionally engages in conduct that poses a substantial risk of transmission to that other person; and	
(2) The person actually transmits the infectious or communicable disease to that other person.	
(b) Becoming pregnant while infected with an infectious or communicable disease, continuing a pregnancy while infected with an infectious or communicable disease, and declining treatment for an infectious or communicable disease during pregnancy is not an offense under this section.	A woman's health care decisions are best made in consult with her physician.
(c) A person who knows that the person is infected with an infectious or communicable disease has not acted with intent to transmit an infectious or communicable disease if that person has taken action to reduce the risk of transmission of the infectious or communicable disease or attempted to reduce the risk of transmission of the infectious or communicable disease.	
(d) As used in this section:	
(1) "Action to reduce the risk of transmission" means the use of any method, device, behavior, or activity that measurably limits or reduces the risk of transmission of an infectious or communicable disease, including, but not limited to, the use of a condom, barrier protection, or prophylactic device; the use of medical treatments scientifically known to reduce the risk of transmission of the infectious or communicable disease; or other conduct that is known to reduce the risk of transmission;	Evidence that a defendant took or tried to take steps to reduce the risk of transmission demonstrates lack of an intent to harm.
(2) "Infectious or communicable disease" means a non-airborne disease spread from person to person that is fatal or causes disabling long-term consequences in the absence of lifelong treatment and management; and	
(3) "Substantial risk of transmission" means a reasonable likelihood of disease transmission to another person as proven by competent medical or scientific evidence. Conduct that competent medical or scientific evidence has proven to pose a low or negligible risk of transmission is not conduct posing a substantial risk of transmission.	
(e)	
(1) The medical records, medications, prescriptions, or medical devices of the defendant are not admissible as evidence to prove the specific intent required under this section in the absence of the defendant's stated intent in the medical record to do specific harm to another person.	

(2) Surveillance reports and records maintained by state and local health officials may not be subpoenaed or released for the purpose of establishing the specific intent required under this section.	
(3) A court shall take judicial notice of any fact establishing an element of the offense upon the defendant's motion or stipulation.	
(f)	
(1) Intentional transmission of an infectious or communicable disease is a Class A misdemeanor.	
(2) Attempted intentional transmission of an infectious or communicable disease is a Class B misdemeanor.	
(g) Prior to sentencing, a defendant must be assessed for placement in a community-based program that provides counseling, supervision, and education.	
SECTION 3. Tennessee Code Annotated, Section 39-13-516, is amended by deleting the section in its entirety.	Aggravated prostitution is repealed. Tennessee already has a prostitution statute making prostitution a crime. The criteria should be the same for everyone.
SECTION 4. Tennessee Code Annotated, Section 40-32-101(a)(1), is amended by adding the following new subdivision:	
(G) All public records of a person charged with or convicted of a misdemeanor or a felony under § 39-13-109 committed prior to July 1, 2020, or under the provisions of § 39-13-516 as it existed prior to July 1, 2020, must, upon petition by that person to the court having jurisdiction in the previous action, be removed and destroyed without cost to the person.	
SECTION 5. Tennessee Code Annotated, Section 40-35-114, is amended by deleting subsection (21) in its entirety.	
SECTION 6. Tennessee Code Annotated, Section 40-39-202, is amended by deleting subdivisions (20)(A)(iii), (31)(N), and (31)(X) in their entireties.	
SECTION 7. Tennessee Code Annotated, Section 40-39-218, is amended by deleting the section in its entirety and substituting instead the following:	
40-39-218. Termination of registration requirements for certain offenses.	
(a) A person who was mandated to comply with the requirements of this part, based solely upon a conviction prior to July 1, 2020, for criminal exposure to HIV under § 39-13-109 or for a conviction of aggravated prostitution under the provisions of § 39-13-516 as it existed prior to July 1, 2020, may petition the sentencing court for termination of the registration requirements.	
(b) Upon receiving a petition, the court shall, at least thirty (30) days prior to a hearing on the petition, cause the office of the district attorney general responsible for prosecuting the person to be notified of the person's petition for release from the registration requirements. Upon being notified, the district attorney general shall conduct a criminal history check on the person to determine if the person has been convicted of a sexual offense or violent sexual offense other than criminal exposure to HIV under § 39-13-109 or aggravated prostitution under the provisions of § 39-13-516 as it existed prior to July 1, 2020, during the period the person was required to comply with the requirements of this part. The district attorney general shall report the results of the criminal history check to the court, together with any other comments the district attorney general may have concerning the person's petition for release. The district attorney general may also appear and testify at the hearing in lieu of, or in addition to, submitting written comments.	This section will not put any financial burden on the person with HIV who has been criminalized to be removed from the SOR. There must be a mandatory mechanism that will provide this service for indigent petitioners.

	Otherwise, they will not receive relief.
(c)	
(1) If the report of the district attorney general indicates that the petitioner has been convicted of a sexual offense or violent sexual offense other than criminal exposure to HIV under § 39-13-109 or aggravated prostitution under the provisions of § 39-13-516 as it existed prior to July 1, 2020, while mandated to comply with the requirements of this part, then the court shall deny the petition without conducting a hearing.	
(2) If the report of the district attorney general indicates that the petitioner has not been convicted of a sexual offense or violent sexual offense other than criminal exposure to HIV under § 39-13-109 or aggravated prostitution under the provisions of § 39-13-516 as it existed prior to July 1, 2020, then the court shall grant the petition.	Remove the label of violent sex offender (and all its requirements) from the many people who have been arrested since the law was enacted.
(d) Upon the court's order granting the petition, the petitioner shall file a request for termination of registration requirements with the Tennessee bureau of investigation headquarters in Nashville, pursuant to § 40-39-207.	
SECTION 8. Tennessee Code Annotated, Section 68-10-107, is amended by deleting the section in its entirety.	
SECTION 9. Tennessee Code Annotated, Section 39-13-521(e), is amended by deleting the language "For the sole purpose of determining whether there is probable cause to prosecute a person for aggravated prostitution under § 39-13-516, the district attorney general may view the record, notwithstanding subdivision (b)(2). The district attorney general shall be required to file a written, signed request with the court stating the reason the court should grant permission for the district attorney general to view the record. If the test results indicate the defendant is infected with HIV, then the district attorney general may use the results of the test in a prosecution for aggravated prostitution."	
SECTION 10. Tennessee Code Annotated, Section 40-17-124(a), is amended by deleting the language "39-13-516" wherever it appears and substituting instead "39-13-515".	
SECTION 11. Tennessee Code Annotated, Section 40-35-313, is amended by deleting subdivision (a)(1)(B)(ii)(a) in its entirety.	
SECTION 12. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.	
SECTION 13. This act shall take effect July 1, 2020, the public welfare requiring it.	