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RESEARCH THAT MATTERS

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# ENFORCEMENT OF HIV CRIMINALIZATION IN INDIANA

## Donation Laws

July 2024

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## OVERVIEW

The Williams Institute analyzed data from the Indiana courts regarding individuals arrested and prosecuted for an HIV-related donation crime in that state. Indiana has six laws criminalizing people living with HIV (PLWH), spanning the criminal code and public health code. This report—one in a series examining HIV criminalization in Indiana—analyzes the enforcement of two laws that criminalize the donation of blood, plasma, and semen for artificial insemination if the person knows they have HIV:

- Indiana Criminal Code § 35-45-21-1 Transferring Contaminated Body Fluids (enacted in 1988)
- Indiana Health Code § 16-41-14-17 Donation, Sale, or Transfer of HIV Infected Semen; penalties (enacted in 1989)

The data were obtained between January 2022 and March 2024 and cover enforcement of the laws between 2001 and 2023. We identified 18 unique individuals charged with 21 violations of the state's criminal donation law related to HIV, resulting in 18 court cases. While other states have similar HIV-related criminal donation laws, Indiana had the greatest number of convictions under a donation law documented in a single state.

## KEY FINDINGS

- Indiana's HIV-related donation crimes were created nearly four decades ago (1988 and 1989) before effective and easily accessible testing and treatment for HIV was available.
- All 18 cases stemmed from an attempt to donate at a plasma center.
- No cases (0) involved attempts to donate whole blood or semen.
- No people (0) were charged under the provision of the code penalizing actual HIV transmission.
- Marion County—home to Indianapolis, the state capital and largest city—was substantially overrepresented in arrests: it accounted for about 14% of the state's population and 41% of PLWH in 2021 but nearly 80% of all donation-related arrests. Only three other counties had arrests.
- Alleged violations of the donation laws regularly occurred between 2001 and 2018, with the most recent arrest happening in 2019 for an incident in 2018. On average, one court case was filed per year for an alleged violation of Indiana's HIV blood donation law during this time period.
- The demographic data reveal that:
  - The range for age at time of arrest was between 20 and 58 years old; the mean (average) age at time of arrest was 33 years old.
  - Men were 72% of people arrested while women were 28%.
  - Black people were nearly eight in ten (78%) of all people arrested. White people were the remainder (22%) of those arrested. However, Black people were only 38% of PLWH in Indiana in 2021 and just 10% of the state's population. No other race/ethnicity group was represented among those arrested.
- In total, 17 of the 18 people charged were found indigent and assigned a public defender.
- More than four-fifths (89%) of people arrested were convicted of at least one HIV-related crime.

- The Indiana Department of Health (IDOH) devoted resources to determining whether a possible crime was committed—a public health investigator (PHI) routinely referred cases to law enforcement and provided them with personal HIV information in accordance with IDOH policy at the time.
- The criminal law has not been enforced since the last court case was filed in 2019, suggesting a recent decline in the use of Indiana’s HIV-related donation crime laws.

To our knowledge, this report is the first comprehensive look at the enforcement of HIV criminal donation laws in a single U.S. state, and it demonstrates one of the highest levels of enforcement observed in any state to date.<sup>1</sup>

This report found that people who know they have HIV can, and have, been prosecuted under Indiana’s HIV criminalization donation laws for acts that pose no HIV transmission risk. Because of universal screening for HIV antibodies, donated blood, plasma, and semen are now safe from HIV for recipients.<sup>2</sup> Moreover, plasma—which represented 100% of attempted donations in this study—is heat treated, which inactivates all bloodborne pathogens, including HIV. There has not been a reported case of HIV transmission from plasma donation in nearly 40 years.<sup>3</sup> Yet, as recently as 2019, Indiana arrested, prosecuted, and convicted a person for attempting to donate at a plasma center in the state.

Further, HIV criminalization laws could undermine the state’s efforts to work cooperatively with the communities most impacted by the HIV/AIDS epidemic. In recent years, there has been growing consensus among public health and medical experts that ending the HIV epidemic requires modernizing a state’s HIV criminal laws to reflect what is known about HIV science today. Indiana’s own statewide plan to end the HIV epidemic in the state by 2030, called *Zero is Possible*, includes criminal law modernization as one of the current approaches and priorities.<sup>4</sup> The plan echoes the Centers for Disease Control and Prevention (CDC) and the White House’s Office of National AIDS Policy (ONAP) position on HIV-specific criminal laws, both of which call on states to modernize their HIV criminal laws to reflect advances in treatment and what we know today about how HIV is—and is not—transmitted.<sup>5</sup>

<sup>1</sup>The Williams Institute counted 22 people and 10 convictions for violations of Missouri’s HIV-related donation law, which also includes organ and tissue donation, although many of these might be miscodes. Ohio had six arrests for alleged violations of that state’s donation law. In Kentucky there was one donation offense arrest. Complete citations for previous Williams Institute reports on state level HIV criminal enforcement are available in Appendix A3 at the end of this report.

<sup>2</sup>FDA.gov. (2023). Revised Recommendations for Reducing the Risk of HIV Transmission by Blood and Blood Products: Guidance for Industry. <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/recommendations-evaluating-donor-eligibility-using-individual-risk-based-questions-reduce-risk-human>; Practice Committee of the American Society for Reproductive Medicine. (2020). Recommendations for reducing the risk of viral transmission during fertility treatment with the use of autologous gametes: a committee opinion. *Fertil Steril*, 114(6), 1158-1164. <https://doi.org/10.1016/j.fertnstert.2020.09.133>

<sup>3</sup>Evatt, B. L. (2007) The tragic history of AIDS in the Hemophilia population, 1982-1984. *Journal of Thrombosis & Haemostasis*, 4(11), 2295-2301. <https://www1.wfh.org/publication/files/pdf-1269.pdf>

<sup>4</sup>Indiana Department of Health. (2020) *Zero is Possible: Indiana’s Plan to End HIV and Hepatitis C (2021-2030)*, 19-20. Indianapolis, IN. <https://www.zipindiana.org/>

<sup>5</sup>Mermin, J., Valentine, S. S., & McCray, E. (2021). HIV criminalisation laws and ending the US HIV epidemic. *Lancet HIV*, 8(1), e4-e6. [https://doi.org/10.1016/S2352-3018\(20\)30333-7](https://doi.org/10.1016/S2352-3018(20)30333-7); The White House. (2021) *National HIV/AIDS Strategy for*

## BACKGROUND

HIV criminalization is a term used to describe laws that criminalize otherwise legal conduct or that increase the penalties for already illegal conduct based on a person's HIV-positive status.<sup>6</sup> While there is only one federal HIV criminalization law,<sup>7</sup> more than half of states and territories across the United States have HIV criminal laws.<sup>8</sup> Most HIV criminal laws, including those in Indiana, do not require actual transmission of HIV or an intent to transmit HIV. Often, these laws criminalize conduct that poses no actual risk of transmission, such as spitting or biting.<sup>9</sup> Most laws criminalizing PLWH were enacted in the early years of the HIV/AIDS epidemic,<sup>10</sup> long before there were effective tests for HIV,<sup>11</sup> before treatments became available that allow PLWH to live normal lifespans in good health,<sup>12</sup> and before highly effective methods for preventing transmission of HIV became widely available.<sup>13</sup> Moreover, research suggests that HIV criminalization may discourage testing and treatment and, as a result, have the perverse effect of making it harder to end the HIV epidemic.<sup>14</sup> In recent years, several states have reformed or repealed their HIV-related criminal laws to reflect advances in HIV science and public health.<sup>15</sup>

Indiana has six laws criminalizing PLWH, spanning the criminal and public health codes.<sup>16</sup> This report—one in a series examining HIV criminalization in Indiana—examines the enforcement of two laws that criminalize the donation of certain body fluids if the person knows they have HIV:<sup>17</sup>

- Indiana Criminal Code § 35-45-21-1 Transferring Contaminated Body Fluids
- Indiana Health Code § 16-41-14-17 Donation, Sale, or Transfer of HIV Infected Semen; penalties

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*the United States 2022–2025*. Washington, DC. <https://files.hiv.gov/s3fs-public/NHAS-2022-2025.pdf>

<sup>6</sup>Harsono, D., Galletly, C., O'Keeffe, E., & Lazzarini, Z. (2017). Criminalization of HIV exposure: A review of empirical studies in the United States. *AIDS and Behavior*, 21(1), 27-50. <https://doi.org/10.1007/s10461-016-1540-5>

<sup>7</sup>18 U.S.C. § 1122 (2022) *Protection against the human immunodeficiency virus*. Enacted in 1994, this code criminalizes donation or sale of blood, semen, tissues, organs, or other bodily fluids except for use in research or testing purposes. <https://www.govinfo.gov/app/details/USCODE-2022-title18/USCODE-2022-title18-partI-chap51-sec1122/summary>

<sup>8</sup>Centers for Disease Control and Prevention (here out abbreviated as CDC). (2023, Dec 19). *HIV and STD Criminalization Laws* <https://www.cdc.gov/hiv/policies/law/states/exposure.html>

<sup>9</sup>Barré-Sinoussi, F., et al. (2018). Expert consensus statement on the science of HIV in the context of criminal law. *Journal of the International AIDS Society*, 21(7), 251-261. <https://doi.org/10.1002/jia2.25161>; and Lehman, J.S., et al. (2014). Prevalence and public health implications of state laws that criminalize potential HIV exposure in the U.S. *AIDS and Behavior*, 18, 997-1006. <https://doi.org/10.1007/s10461-014-0724-0>

<sup>10</sup>Harsono, D., Galletly, C., O'Keeffe, E., & Lazzarini, Z. (2017). Criminalization of HIV exposure: A review of empirical studies in the United States. *AIDS and Behavior*, 21(1), 27-50. <https://doi.org/10.1007/s10461-016-1540-5>

<sup>11</sup>HIV.gov. (n.d.). *A timeline of HIV/AIDS*. <https://files.hiv.gov/s3fs-public/aidsgov-timeline.pdf>.

<sup>12</sup>Trickey, A., et al. (2017). Survival of HIV-positive patients starting antiretroviral therapy between 1996 and 2013: A collaborative analysis of cohort studies. *The Lancet HIV*, 4(8), p. 349-356. [https://doi.org/10.1016/S2352-3018\(17\)30066-8](https://doi.org/10.1016/S2352-3018(17)30066-8)

<sup>13</sup>CDC (2021, Jun 1) *HIV Prevention*. <https://www.cdc.gov/hiv/prevention/index.html>

<sup>14</sup>Mermin, J., Valentine, S. S., & McCray, E. (2021). HIV criminalisation laws and ending the US HIV epidemic. *Lancet HIV*, 8(1), e4-e6. [https://doi.org/10.1016/S2352-3018\(20\)30333-7](https://doi.org/10.1016/S2352-3018(20)30333-7)

<sup>15</sup>The Center for HIV Law and Policy (2022). *Timeline of State Reforms and Repeals of HIV Criminal Laws, CHLP* <https://www.hivlawandpolicy.org/resources/timeline-state-reforms-and-repeals-hiv-criminal-laws-chlp-updated-2022>

<sup>16</sup>See Appendix A1 for summaries of the relevant laws in Indiana.

<sup>17</sup>See Appendix A2 for the text of Indiana Code § 35-45-21-1 and Indiana Code § 16-41-14-17.

Both laws were enacted before 1990. In the sections below, we briefly summarize these donation laws and then provide an analysis of their enforcement, including details about the alleged crimes, circumstances of arrest, and case outcomes.

## INDIANA'S HIV CRIMINALIZATION DONATION LAWS

Indiana's criminal code § 35-45-21-1 (Transferring Contaminated Body Fluids) was enacted in 1988.<sup>18</sup> It creates a Level 5 felony if a person "recklessly, knowingly, or intentionally donates, sells, or transfers blood or semen for artificial insemination" that contains HIV. The penalty is increased to a Level 3 felony if actual HIV transmission occurs. Blood includes both blood and blood-based components or derivatives, such as those harvested from blood plasma.<sup>19</sup> Artificial Insemination is defined as the "introduction of semen into the vagina or cervix of a woman by means other than through the act of coitus."<sup>20</sup>

In 1989, semen was added to the Transferring Contaminated Body Fluids law. The legislature also created a nearly identical health code law § 16-41-14-17 (Donation, Sale, or Transfer of HIV Infected Semen; Penalties) at the same time.<sup>21</sup> The duplicate health code law made it a Level 5 felony for individuals "who, for the purpose of artificial insemination, recklessly, knowingly, or intentionally donate, sell, or transfer semen that contains antibodies for HIV." However, if actual transmission occurs, the offense is increased to a Level 4 rather than a Level 3 felony, as in the related criminal law.<sup>22</sup> Table 1 describes the penalties for each level of felony conviction.

**Table 1. HIV donation law penalty descriptions<sup>23</sup>**

FELONY LEVEL	PENALTY
Level 5 felony	Punishable by imprisonment for up to 6 years and a fine of up to \$10,000
Level 4 felony	Punishable by imprisonment for up to 12 years and a fine of up to \$10,000
Level 3 felony	Punishable by imprisonment for up to 20 years and a fine of up to \$10,000

<sup>18</sup>Ind. Code § 35-45-21-1 (2023) <https://iga.in.gov/laws/2023/ic/titles/35#35-45-21-1> was first enacted in 1988 as § 35-42-1-7 but was relocated to a new section during Indiana's comprehensive Criminal Code review and enactment of HEA 1006-2013 which amended large portions of the Indiana Criminal Code.

<sup>19</sup>The term does not include human cells, tissues, or cellular or tissue-based products (HCT/Ps). See: Ind. Code § 16-41-12-2.5 (2023) *Blood*. <https://iga.in.gov/laws/2023/ic/titles/16#16-41-12-2.5>.

<sup>20</sup>Ind. Code § 16-41-14-2 (2023) *Artificial Insemination* <https://iga.in.gov/laws/2023/ic/titles/16#16-41-14-2>. "Coitus" is not defined in Indiana statute.

<sup>21</sup>See Indiana Public Law 184-1989 Sec 27 and Indiana Public Law 184-1989 Sec 20; Indiana Public Law 2 Sec 209 & 24 repealed the original placement of the public health section, placing it in today's code location.

<sup>22</sup>Ind. Code § 16-41-14-17 (2023) *Donation, sale, or transfer of HIV infected semen; penalties* <https://iga.in.gov/laws/2023/ic/titles/16#16-41-14-17>.

<sup>23</sup>Ind. Code § 35-50-2 (2023) describes the penalties associated with each level. Via Ind. HEA. 1006-2013, Indiana switched from a felony letter system A through D to a number system, 1 thru 6 in which the following changes occurred: A=1, B=3, C=5, D=6 with 2 and 4 in between penalties.

The felony classification for semen donation differs between the two laws. It appears that during the major revision of Indiana’s criminal code (HEA 1006-2013)—which added § 35-45-21-1 as a new statute and switched to a new penalty system—an oversight occurred, resulting in this felony discrepancy. Before the revision, both § 16-41-14-17 and § 35-42-1-7 (which was replaced by § 35-45-21-1 and contained almost identical wording) provided the same punishments for both the initial act and if transmission occurred.<sup>24</sup>

It is unclear why the criminal code specifies the presence of HIV while the health code specifies the presence of HIV antibodies. The criminal code creates exceptions for autologous (self) blood donation. If the donor notifies the blood center of their HIV status prior to donating, then “the blood must be disposed of and may not be used for any purpose.” Additionally, both laws have exceptions for donation for research purposes.

## PREVIOUS STUDIES OF HIV CRIMINALIZATION LAW ENFORCEMENT

This report builds on a series of studies analyzing the enforcement of HIV criminal laws using state-level data. Since 2015, the Williams Institute has published similar studies for just over a dozen states across the United States, including California, Georgia, Florida, Missouri, Nevada, Kentucky, Virginia, Tennessee, Louisiana, Arkansas, Maryland, Mississippi and Ohio.<sup>25</sup> These studies show that HIV criminal laws disproportionately affect people who are Black and women, are financially costly to state governments, and often penalize behaviors that cannot transmit HIV. These reports also show that, in every state examined, enforcement continues to the present day. These studies follow a few earlier attempts, which included Indiana, to document whether HIV criminal laws are enforced at all.<sup>26</sup> Together, these studies show that thousands of PLWH across the United States have been arrested or prosecuted for allegations of crimes involving their HIV status.

As of 2022, it was a crime for PLWH to donate blood products and/or semen in about 12 U.S. states.<sup>27</sup> Existing studies find very little enforcement of blood donation and semen donation laws—in the range of low tens of arrests or convictions nationwide.<sup>28</sup> As the findings in this report show, previous

<sup>24</sup>Ind. HEA 1006-2013 <https://archive.iga.in.gov/2013/bills/billinfoc250.html?year=2013&session=1&request=getBill&doctype=HB%20&docno=1006>

<sup>25</sup>See also the Williams Institute’s archive of HIV criminalization reports at <https://williamsinstitute.law.ucla.edu/issues/hiv-criminalization/>. Complete citations for each state report occurs at the end of this report in Appendix A3.

<sup>26</sup>See, for example, HIV Justice Network. (n.d.). *Global HIV Criminalization Database*. <https://www.hivjustice.net/global-hiv-criminalisation-database/>; The Center for HIV Law and Policy (2019, June). *Chart of U.S. Arrests and Prosecutions for HIV Exposure in the United States, 2008-2019*. <https://www.hivlawandpolicy.org/resources/arrests-and-prosecutions-hiv-exposure-united-states-2008-2019-center-hiv-law-policy-2019>; Hernandez, Sergio. (2013, Dec. 1). About the HIV Criminalization Data. *ProPublica*. <https://www.propublica.org/article/about-the-hiv-criminalization-data..>

<sup>27</sup>The Center for HIV Law and Policy (2024). *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice* (Third Edition) <https://www.hivlawandpolicy.org/sites/default/files/2024-01/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20Jan24.pdf>. In all, 12 states had laws criminalizing the donation of blood, organs, semen, or tissue. The Center for HIV Law and Policy also counts an additional six states that have broad criminalization statutes that would include donation.

<sup>28</sup>Three states, including Indiana, were identified as having a blood donation prosecution in one 2022 report. See Hatt, E., Beaumont, S. and Bernard, E J. (2022, Sept) *Bad Blood: Criminalisation of Blood Donations by People Living with HIV*.



attempts to measure the extent of HIV-related criminal enforcement of blood donation laws in Indiana have understated the frequency with which HIV criminal donor allegations occur in the state. This report also provides, for the first time in the U.S., information about the contexts of arrest, including how they happen, where they happen, and prosecutorial outcomes.

# ANALYSIS OF INDIANA'S HIV CRIMINALIZATION DONATION LAW ENFORCEMENT DATA

## DATA SOURCES

We obtained administrative data related to Indiana's six HIV criminal laws in a series of data requests between January 2022 and December 2023.<sup>29</sup> Data relating to criminal cases, including demographic information on the person accused, case progress, and final case outcomes, were extracted from three sources: (1) the Indiana Office of Court Services,<sup>30</sup> (2) [Doxpop.com](https://www.doxpop.com) (via requests to Indiana Legal Services), an online tool that collates Indiana court documents and dockets online,<sup>31</sup> and (3) [MyCase.IN.gov](https://mycase.in.gov), the public-facing online courts portal in Indiana for non-confidential case tracking.<sup>32</sup> Data relating to the alleged crimes came from individual Probable Cause Affidavits (PCAs) obtained from county court clerks in the jurisdiction where a criminal case was filed.<sup>33</sup> (See Appendix A4 for a detailed description of each data source.)

## NUMBER, FREQUENCY, AND CIRCUMSTANCES OF ARREST

In total, we identified 18 unique individuals across 18 separate arrests for an alleged violation of Indiana's HIV-related blood donation law from 2001 to 2023. There were 21 separate HIV donation charges that resulted from these arrests; one person was charged with four separate violations of the law. We could find no arrests for semen donation in Indiana (including under either the criminal code or public health code) and no arrests under the transmission sections of these codes.

**Table 2. Number of arrests, people arrested, and HIV-related charges for donation, and type of donation in Indiana**

	N
Number of people arrested	18
Number of arrests	18
Number of arrests involving alleged HIV transmission	0
Number of individual donation charges	21
Number of charges for donating plasma	21
Number of charges for donating whole blood	0
Number of charges for donating semen	0

Every one of these arrests resulted from an allegation of attempted donation at a for-profit plasma center rather than a blood donation center. The PCAs indicate that 15 out of the 18 people arrested

<sup>29</sup>This study received IRB approval in July 2021 — Indiana University IRB#12095.

<sup>30</sup>Indiana Judicial Services Bulk Data Applications <https://www.in.gov/courts/iocs/statistics/bulk-data/>

<sup>31</sup>DoxPop: <https://www.doxpop.com/prod/>; Indiana Legal Services <https://www.indianalegalservices.org/>

<sup>32</sup>Indiana My Case Court record search data base. <https://public.courts.in.gov/mycase/#/vw/Search>

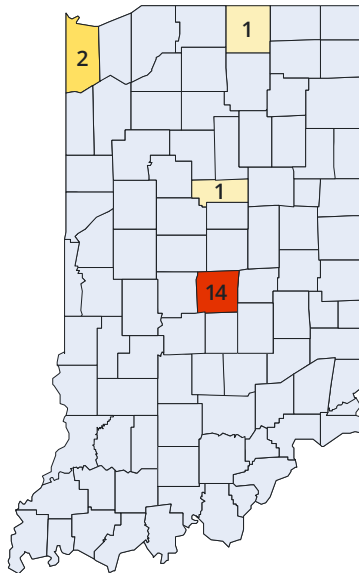
<sup>33</sup>We use PCA here as a catchall term for documents containing a law enforcement officer's narrative summary of an alleged crime that forms the basis for an arrest warrant, warrantless arrest, or criminal indictment. Many of these documents are titled "Affidavit for probable cause," "Affidavit in support of warrantless arrest," or similar.

only attempted to donate plasma once. Three people attempted to donate plasma more than once but were initially turned away at the screening phase, for example, because of low iron levels.

All the facilities offered monetary compensation for the plasma donations. We have compensation amounts from five PCAs. The mean (average) dollar amount offered was \$40; the median amount was \$50.

The overwhelming majority of donation-related arrests (78%) happened in Marion County, home to Indianapolis, the state capital and largest city. However, there were also two arrests in Lake County and one arrest in each of Elkhart and Howard counties. Marion County was substantially overrepresented in arrests, accounting for about 14% of the state's population and 40% of PLWH in 2021 but nearly 80% of all donation-related arrests.<sup>34</sup> Elkhart and Howard counties were also overrepresented, given their small share of PLWH in the state—less than 2% of PLWH in the former and less than 1% of PLWH in the latter.<sup>35</sup>

**Figure 1. Number of HIV-related blood donation arrests in Indiana by county**



At the plasma donation centers, according to the PCAs, individuals were asked about their HIV status at least once during the screening process. For example, a person might be asked about their HIV status on a pre-screening donation questionnaire. Indiana state law mandates that donation sites inform potential donors that every unit of blood will be tested for HIV, that positive results will be reported to the Indiana Department of Health (IDOH), and that it is a crime to donate if the person knows they are living with HIV.<sup>36</sup>

<sup>34</sup>IDOH HIV/STD/Viral Hepatitis Division (2022, Apr) Spotlight - HIV/STI/Viral Hepatitis Annual Reports. <https://www.in.gov/health/hiv-std-viral-hepatitis/files/Final-Indiana-Spotlight-April-2022.pdf>; Stats Indiana. Population Estimates for Indiana Counties 2020-2021. [https://www.stats.indiana.edu/population/popTotals/2021\\_cntyest.asp](https://www.stats.indiana.edu/population/popTotals/2021_cntyest.asp)

<sup>35</sup>See previous footnote.

<sup>36</sup>Ind. Code § 16-41-12-15 (2024) *Donor information; informed consent*. <https://iga.in.gov/laws/2023/ic/titles/16#16-41-12-15>

Nearly every person (89%) arrested admitted to police that they either saw or completed the pre-screening and informed consent forms that asked about HIV status, according to the PCAs. Nearly half (44%) of the PCAs alleged that the person arrested indicated their status was negative at the time of donation, either verbally when directly asked or by checking “no” to the HIV status question on a pre-screening questionnaire.

As is the case with every unit of blood or plasma donated in the United States, the units of plasma donated in the 18 cases analyzed here were screened for pathogens, including HIV. Indiana state law requires reporting positive results to the IDOH.<sup>37</sup> From at least 1996 through 2018, IDOH had a policy of referring to law enforcement whenever IDOH confirmed that the PLWH knew of their HIV-positive status when they donated.<sup>38</sup> (See Appendix A5 for a summary of IDOH’s reporting policy during this period.)

We found evidence in the PCAs that IDOH devoted considerable resources to determining whether a possible crime was committed and routinely referred cases to law enforcement. IDOH also provided investigative support to law enforcement agencies for criminal prosecution. For example,

- Among the 18 PCAs, at least two-thirds (67%) mentioned involving a public health investigator (PHI) investigator from IDOH.
- In at least over half of the cases (56%), following a public health investigation, the PCAs mentioned the matter was referred to police.

Regardless of whether the investigation originated with IDOH or was directly referred to police, once a formal police investigation commenced, the PCAs indicate that IDOH furnished documents to law enforcement almost three-quarters (72%) of the time. These documents included confirmatory HIV test results and a state-mandated Duty to Warn (DTW) form that all people who receive an HIV diagnosis were required to sign in Indiana up until 2021. The forms were used to inform PLWH about the criminal HIV donation and disclosure laws. (See Appendix A6 for the DTW form policy).<sup>39</sup> Reviewing and signing the form usually happened at the same time a person received an HIV diagnosis—along with a litany of other information regarding the need to seek health care. IDOH DTW forms were used in police investigations as evidence that the person arrested knew of their HIV-positive status at the time they attempted to donate.

Law enforcement agencies themselves also allocated substantial resources to investigating these alleged donation cases. Nearly a quarter (22%) of the PCAs indicate that police used a photo lineup. Donation center staff were interviewed in over half (56%) of the PCAs. Indeed, in 94% of the PCAs examined, police or IDOH staff did one or more of the following: interview donation center staff, employ a police lineup, furnish confidential medical records for investigation, and/or engage a public health investigator. It is clear from the records that many investigations soaked up a meaningful amount of government resources.

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<sup>37</sup>See previous footnote.

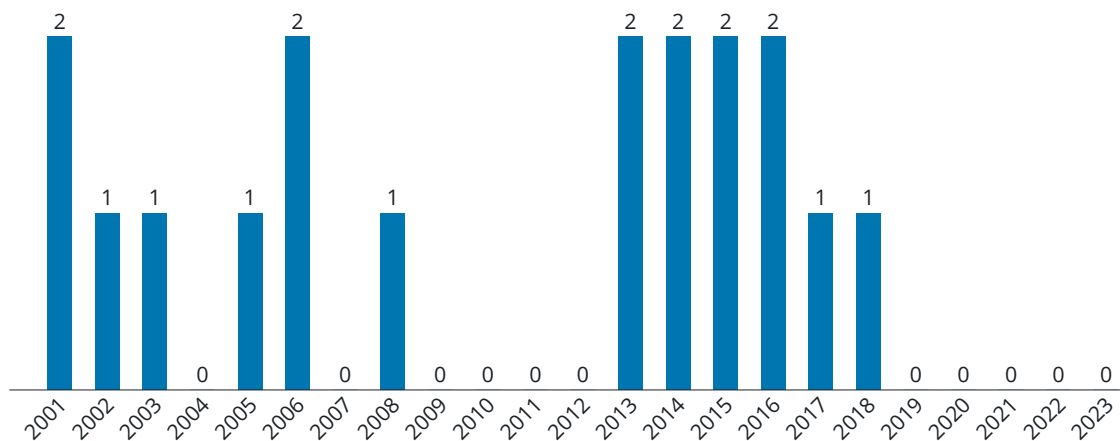
<sup>38</sup>Policy Source: IDOH HIV/STD/Viral Hepatitis Division Staff correspondence 2021. At that time, one of this report’s authors, Dr. Foote, worked closely with the Division’s staff to review and modernize policy linked to Indiana’s HIV criminal laws, to align with HIV science today and ensure protection of private health information.

<sup>39</sup>See appendix A6 for a description of the DTW form policy and an example of a form, used during the time of these arrests.

The underlying incidents that formed the basis of the alleged crime spanned a time period between 2001 and 2018. Perhaps because of the amount of investigatory resources involved, actual arrest and charging sometimes lagged after the initial incident that initiated an investigation. The shortest lag time between incident and charging was about two months, but it could take up to two years before charges were filed. The median time was a little over three months between donating plasma and being charged with a crime. There was, on average, one arrest per year for an alleged violation of Indiana’s HIV-related blood donation law during this time.

Notably, the IDOH policy related to this criminal HIV law changed at the end of 2018 so that positive HIV results from donation centers that were found to be from donors who were aware of their HIV-positive status were no longer automatically referred to police. Although one case was filed in 2019, the actual investigation began and was already reported to police in mid-2018. The criminal law has not been enforced since the last case was filed in 2019, suggesting a recent decline in the use of Indiana’s HIV donation crime law. This decline is likely a result of the IDOH policy change in 2018.

Figure 2. Number of HIV-related blood donation incidents by year in Indiana



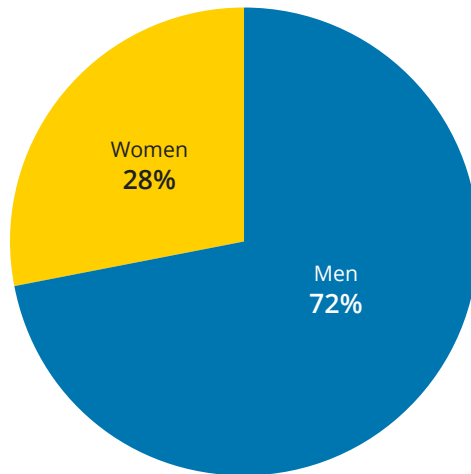
## DEMOGRAPHICS OF PEOPLE ARRESTED

We have demographic information on all 18 people arrested for an alleged violation of Indiana’s HIV-related blood donation law. The range for age at time of arrest was between 20 and 58 years; the mean (average) age at time of arrest was 33 years. Men were 72% of people arrested, while women were 28%.<sup>40</sup> When compared to the population of PLWH in the state, men were slightly overrepresented in arrests: about 79% of PLWH in Indiana were men in 2021.<sup>41</sup>

<sup>40</sup>We do not have information on gender identity in either the PCAs or the Indiana courts data.

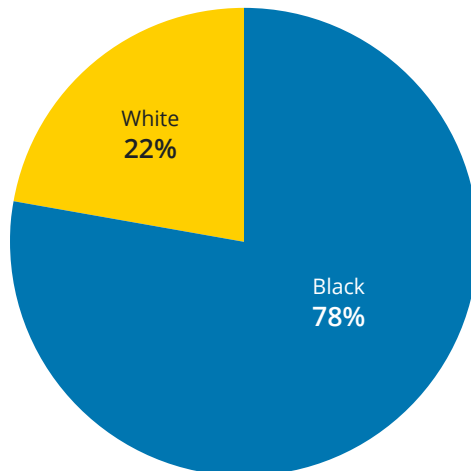
<sup>41</sup>AIDSVu Local Data: Indiana. <https://aidsvu.org/local-data/united-states/midwest/indiana/>; Indiana Census 2020 <https://www.census.gov/library/stories/state-by-state/indiana-population-change-between-census-decade.html>

Figure 3. HIV-related blood donation arrests in Indiana by sex



Likewise, Black people were nearly eight in ten (78%) of all people arrested. White people were the remainder (22%) of those arrested. (No other race/ethnicity groups were indicated.) However, Black people were only 38% of PLWH in 2021 and just 10% of the state's population. In contrast, 45% of PLWH in Indiana were white that year.<sup>42</sup>

Figure 4. HIV-related blood donation arrests in Indiana by race

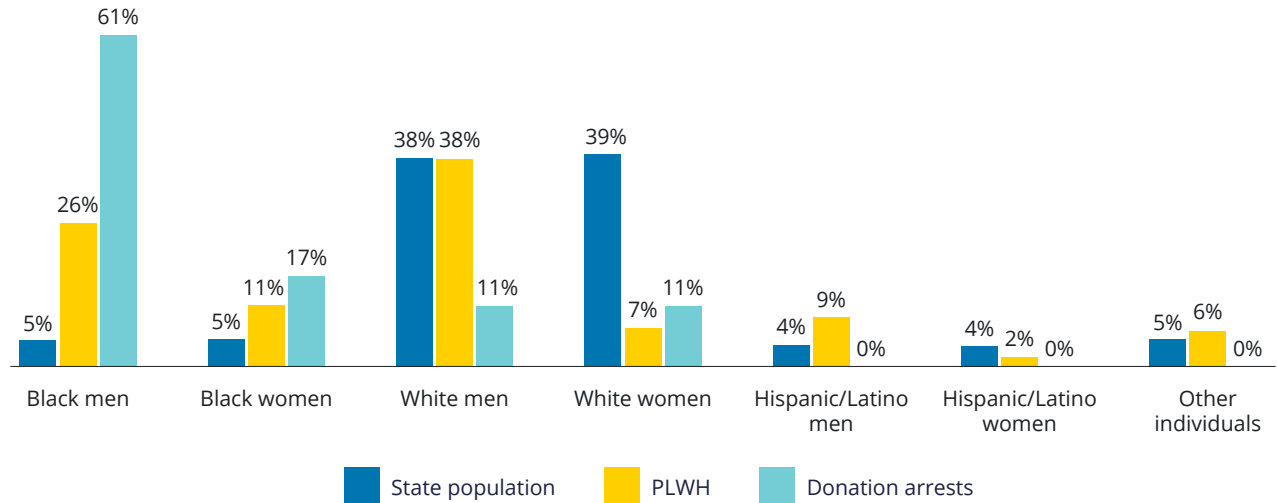


Looking at the intersection of race and sex, Black men were substantially over-represented among blood donation arrests. Black men were only 5% of the state population and 26% of PLWH, but 61% of people arrested for an alleged violation of Indiana's HIV-related blood donation law. Black women were also over-represented among these arrests: 5% of the state's population and 11% of PLWH, but 17% of arrests. On the other hand, white men were substantially under-represented: 38% of the state's population and 38% of PLWH, but only 11% of donation arrests. White women were 39% of the state's population, but only 7% of PLWH and 11% of donation arrests. Other race/ethnicity groups,

<sup>42</sup>AIDSVu Local Data: Indiana. <https://aidsvu.org/local-data/united-states/midwest/indiana/>; Indiana Census 2020 <https://www.census.gov/library/stories/state-by-state/indiana-population-change-between-census-decade.html>

while constituting a meaningful share of the state population (13%) and share of PLWH (17%), were completely absent in the HIV-related blood donation arrests.<sup>43</sup> It is possible that some of the people arrested would have identified as another race/ethnicity but were instead recorded as Black or white.

**Figure 5: Demographic distribution of state population, population of PLWH, and HIV-related blood donation arrests in Indiana**



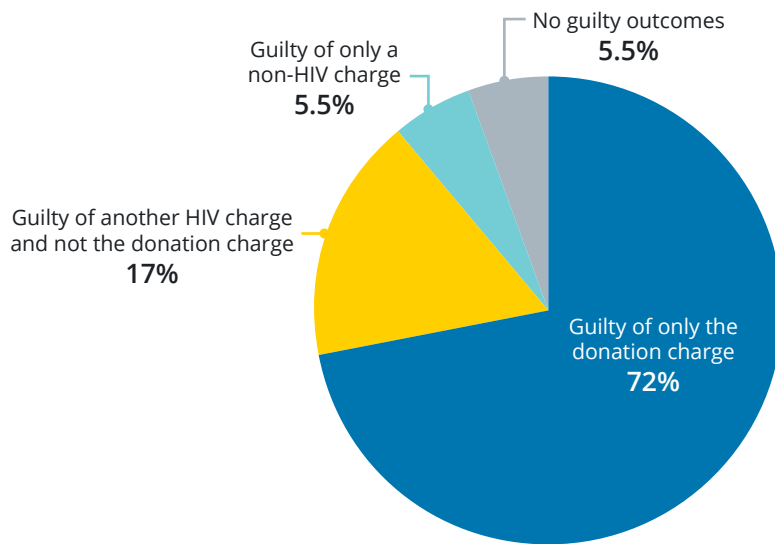
## ARREST OUTCOMES

All 18 cases resulted in a prosecution for an HIV-related offense. All but one individual (94%) were found indigent by the court and assigned a public defender. There appeared to be some confusion as to which of Indiana’s HIV-related criminal laws should be used as three people were charged with both the HIV blood donation law and the so-called “duty to warn” law that makes it a crime for a person not to disclose their HIV status before engaging in certain activities (such as sex). Curiously, all three of these cases resulted in a conviction on the disclosure charge, not the blood donation law. It is possible prosecutors pursued charges under both statutes because the DTW form, which covered both laws, was used as evidence in these cases. It is also possible they were used to exact a plea agreement on one of the charges, as the disclosure charge carries a lesser penalty than the blood donation charge.

In total, more than two-thirds (72%) of the people charged under Indiana’s HIV-related donation criminal law were convicted for that crime.<sup>44</sup> An additional 17% of people were convicted under the disclosure HIV-related criminal law. Put differently, 89% of people were convicted of at least one HIV-related crime. An additional person made a plea agreement and was convicted of a non-HIV-related crime, specifically a battery charge, and one person was found not guilty of any crime.

<sup>43</sup> AIDS Vu Local Data: Indiana. <https://aidsvu.org/local-data/united-states/midwest/indiana/>; Indiana Census 2020 <https://www.census.gov/library/stories/state-by-state/indiana-population-change-between-census-decade.html>

<sup>44</sup> One case was reported as “conversion unknown” in the bulk data, but the chronological case summary indicated a guilty outcome on the donation charge and was added to the total here.

Figure 6. Final disposition of people charged with an HIV-related blood donation offense<sup>45</sup>

## DATA LIMITATIONS

Our data do not include arrests or other police interactions that PLWH may have experienced in relation to Indiana's HIV criminalization laws that did not result in a filing of charges in court. They also do not include any court cases that may have been sealed, expunged, or deemed confidential. Due to these limitations, the actual use of these laws in Indiana may be greater than the findings presented in this report.

## DISCUSSION: BLOOD, PLASMA, AND SEMEN SAFETY

People who know they have HIV can, and have, faced prosecution under Indiana's HIV criminalization donation laws for acts that pose no HIV transmission risk. We found no cases involving whole-blood donation, and the blood supply remains safe even if a person who knows of their HIV-positive status donates blood.<sup>46</sup> This is because, by the time a person learns they have HIV, FDA universal screening practices are able to detect the presence of HIV in the donation, and the donation is destroyed.<sup>47</sup>

All the donation attempts analyzed here occurred at plasma centers. As with all whole blood donation centers, Indiana's plasma donation centers also practice universal screening for HIV and other

<sup>45</sup>All other HIV charges were for nondisclosure.

<sup>46</sup>Whole blood donations include all four blood components—red blood cells, white blood cells, platelets, and plasma—and are used to treat blood loss through blood transfusions. In contrast, plasma donation involves collecting just one component of whole blood and returning the other three to the donor. Plasma Hero. *What's the difference between blood and plasma donation?* <https://www.plasmahero.org/news/whats-difference-between-blood-and-plasma-donation>.

<sup>47</sup>The last reported case of HIV transmission in the United States through a blood transfusion, which uses whole blood donations, was in 2008, and before that the last known case was in 2002. Transfusion of window period units (i.e., units from individuals who have HIV but who are in the window during which testing has not yet become positive, about 9-11 days) accounts for virtually all these rare cases of transfusion-transmitted HIV. CDC. (2010). Transmission through transfusion—Missouri and Colorado, 2008. *MMWR*. 59(41);1335-1339 <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5941a3.htm>;



bloodborne pathogens. Positive HIV test results are legally mandated to be reported to IDOH,<sup>48</sup> which is how IDOH initially identified these cases. Moreover, in addition to multiple safeguards used for both whole blood and plasma donations, such as donor questionnaire screening, HIV RNA testing, and regulation of donation centers, plasma-derived products are also heat treated to inactivate bloodborne pathogens, including HIV. Plasma donors identified as positive for any bloodborne virus in the screening and testing process are also placed in a national permanent donor deferral registry.<sup>49</sup> Because of these safety measures, there has not been a documented case of HIV transmission through plasma donation since the 1980s.<sup>50</sup>

Unlike with whole blood donation, people who donate plasma are paid for their donation. One of the reasons payments are allowed for plasma donations is precisely because of plasma supply viral transmission safety—as the plasma is processed, all viruses are destroyed. As a result, concerns that people will conceal behaviors related to disease transmission in order to receive compensation are alleviated; the plasma, once processed, is safe regardless of the donor’s HIV status.<sup>51</sup>

While we found no cases involving semen donations for artificial insemination, it should also be noted that people can safely donate sperm without risk of HIV transmission. Anonymous sperm donors in the U.S. who test positive for HIV are disqualified from donating.<sup>52</sup> FDA policies and practices effectively regulate the safety of known semen donations and transfers for reproductive medicine procedures from bloodborne viral infections, particularly through HIV safe conception practices involving sperm washing procedures.<sup>53</sup> Since 1987, thousands of U.S. reproductive medicine procedures have used processed sperm from donors living with HIV with zero instances of HIV transmission.<sup>54,55</sup>

<sup>48</sup>Ind. Code § 16-41-12-15 (2023) *Donor information; informed consent*. <https://iga.in.gov/laws/2023/ic/titles/16#16-41-12-15>

<sup>49</sup>The National Donor Deferral Registry (NDDR®) <https://www.pptaglobal.org/material/national-donor-deferral-registry-nddr-r>

<sup>50</sup>FDA.gov. (2023). *Revised Recommendations for Reducing the Risk of HIV Transmission by Blood and Blood Products: Guidance for Industry*. <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/recommendations-evaluating-donor-eligibility-using-individual-risk-based-questions-reduce-risk-human>; Evatt, B. L. (2007). The tragic history of AIDS in the Hemophilia population, 1982-1984. *Journal of Thrombosis & Haemostasis*, 4(11), 2295-2301. <https://www1.wfh.org/publication/files/pdf-1269.pdf>; National Donor Deferral Registry. <https://www.pptaglobal.org/material/national-donor-deferral-registry-nddr-r>

<sup>51</sup>Preston, E. (2016, Jan 22). Why you get paid to donate plasma, but not blood. *STAT News*. <https://www.statnews.com/2016/01/22/paid-plasma-not-blood/>

<sup>52</sup>American Society for Reproductive Medicine (2021). Guidance regarding gamete and embryo donation. <https://www.asrm.org/practice-guidance/practice-committee-documents/guidance-regarding-gamete-and-embryo-donation-2021/> & U.S. Food & Drug Admin., (2007) Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products. <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/eligibility-determination-donors-human-cells-tissues-and-cellular-and-tissue-based-products>

<sup>53</sup>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 the risk of HIV transmission. Kawwass JF, Smith DK, Kissin DM, et al. (2017) Strategies for Preventing HIV Infection Among HIV-Uninfected Women Attempting Conception with HIV-Infected Men — United States. *MMWR* 2017;66:554–557. DOI: <http://dx.doi.org/10.15585/mmwr.mm6621a2>.

<sup>54</sup>Practice Committee of the American Society for Reproductive Medicine. (2020). Recommendations for reducing the risk of viral transmission during fertility treatment with the use of autologous gametes: a committee opinion. *Fertil Steril*, 114(6), 1158-1164. <https://doi.org/10.1016/j.fertnstert.2020.09.133>

<sup>55</sup>Notably, Indiana lawmakers recognized advances in semen donation safety when they amended the code in 2020.

## CONCLUSION

Indiana has a long history with HIV and plasma donation. Ryan White, a child who rose to national prominence after his December 1984 HIV diagnosis and subsequent legal and health struggles, was from Kokomo, Indiana.<sup>56</sup> Notably, Ryan White became a poster child for HIV as a hemophiliac who acquired HIV through Factor VIII transfusion—a plasma-based product that can restore the blood's ability to clot. Today, PLWH in the state are exposed to criminal liability in several ways because of their HIV status, including for blood, plasma, and semen donation. These laws were enacted nearly four decades ago when Ryan White was still alive. However, because of universal safety measures implemented since then, donated blood, plasma, and semen are now safe from HIV for recipients.

Moreover, plasma, which represented 100% of attempted donations in this study, is heat treated to inactivate HIV. Heat treatment abruptly halted the epidemic in the hemophiliac population. Yet, as recently as 2019, Indiana prosecuted and convicted a person for attempting to donate at a plasma center in the state. Notably, the criminal law has not been enforced since that last court case, suggesting a recent decline in the use of Indiana's HIV-related donation crime laws.

Further, the criminalization of HIV could be undermining the state's efforts to work cooperatively with the communities most impacted by the HIV/AIDS epidemic. In recent years, there has been growing consensus among public health and medical experts stating that ending the HIV epidemic requires modernizing state's HIV criminal laws to reflect what is known about HIV science today.<sup>57</sup> This consensus is also shared by medical and public health experts in Indiana. For example,

- The Indiana Red Cross has affirmed that the blood supply would remain safe with full repeal of the blood donation code and notes that “the Red Cross does not rely on criminalization to protect the blood supply. Instead, we carefully follow federal FDA guidelines for blood collection and testing.”<sup>58</sup>
- The Indiana State Medical Association (ISMA) recently enacted a policy resolution calling for reform: be it “Resolved, that ISMA support efforts to reform Indiana law to reflect the contemporary scientific understanding of HIV and to eliminate criminal sanctions based on HIV status, thereby reducing HIV-related stigma and accelerating the end of the HIV epidemic.”<sup>59</sup>

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Prior to 2020, Indiana law required disposal of any donation of semen that “indicates the presence of the HIV antibody.” The code was amended to allow an exception to disposal, “if used according to safer conception practices endorsed by the CDC or other generally accepted medical experts”. However, the code sections that continue to criminalize semen donations remain unchanged, leading to inconsistencies in Indiana law. See § IC 16-41-14-8 which was amended to include this language by P.L.112-2020, SEC.51.

<sup>56</sup>HRSA (Feb 2022) *Who was Ryan White?* <https://ryanwhite.hrsa.gov/about/ryan-white>

<sup>57</sup>Barre-Sinoussi, F., Abdool Karim, S. S., Albert, J., Bekker, L. G., Beyrer, C., et. al. (2018). Expert consensus statement on the science of HIV in the context of criminal law. *J Int AIDS Soc*, 21(7), e25161. <https://doi.org/10.1002/jia2.25161>; Mermin, J., Valentine, S. S., & McCray, E. (2021). HIV criminalisation laws and ending the US HIV epidemic. *Lancet HIV*, 8(1), e4-e6. [https://doi.org/10.1016/S2352-3018\(20\)30333-7](https://doi.org/10.1016/S2352-3018(20)30333-7).

<sup>58</sup>Red Cross Letter presented at the 2022 Indiana Interim General Assembly Study Committee on Indiana's HIV criminal Laws. [https://iga.in.gov/pdf-documents/122/2022/universal/committees/interim/corrections-and-criminal-code-interim-study-committee/aa8a4f37-90e5-4236-aca6-607dc90ef30e/exhibits/attachment\\_4650.pdf](https://iga.in.gov/pdf-documents/122/2022/universal/committees/interim/corrections-and-criminal-code-interim-study-committee/aa8a4f37-90e5-4236-aca6-607dc90ef30e/exhibits/attachment_4650.pdf)

<sup>59</sup>Indiana State Medical Association 2023 Policy Manual Resolution 22-53. [https://www.ismanet.org/ISMA/About\\_Us/](https://www.ismanet.org/ISMA/About_Us/)

- Indiana’s own statewide plan to end the HIV epidemic by 2030 includes law modernization as one of the current approaches and priorities. The plan, called *ZERO is Possible*, acknowledges that “[C]riminal legislation regarding HIV has not reflected advancements in the understanding of HIV. Current laws criminalize and stigmatize PLHIV, so modernizing and updating these laws would contribute to ending the HIV epidemic.”<sup>60</sup>

All three echo the Centers for Disease Control and Prevention (CDC) and the White House’s Office of National AIDS Policy (ONAP) position on HIV-specific criminal laws, which has called on states to modernize their HIV criminal laws to reflect advances in treatment and what we know today about how HIV is—and is not—transmitted.<sup>61</sup>

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[Public\\_Policy/ISMA/About\\_Us/public\\_policy.aspx?hkey=d6c00f60-4a01-4e8b-81ed-4ce8949601f2](https://www.zipindiana.org/Public_Policy/ISMA/About_Us/public_policy.aspx?hkey=d6c00f60-4a01-4e8b-81ed-4ce8949601f2)

<sup>60</sup>Indiana Department of Health. (2020) *Zero is Possible: Indiana’s Plan to End HIV and Hepatitis C (2021-2030)*, 19-20. Indianapolis, IN. <https://www.zipindiana.org/>

<sup>61</sup>Mermin, J., Valentine, S. S., & McCray, E. (2021). HIV criminalisation laws and ending the US HIV epidemic. *Lancet HIV*, 8(1), e4-e6. [https://doi.org/10.1016/S2352-3018\(20\)30333-7](https://doi.org/10.1016/S2352-3018(20)30333-7); The White House. (2021) *National HIV/AIDS Strategy for the United States 2022–2025*. Washington, DC. <https://files.hiv.gov/s3fs-public/NHAS-2022-2025.pdf>

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RESEARCH THAT MATTERS



# APPENDIX

## A1. SUMMARY OF HIV CRIMINALIZATION LAWS IN INDIANA

Table A1. HIV Criminalization Laws in Indiana as of 2024 and Year Enacted

YEAR	CODE SECTION	WHAT IS CRIMINALIZED AND PENALTY <sup>62</sup>
<b>TRANSFERRING CONTAMINATED BODY FLUIDS.</b>		
1988	§ 35-45-21-1 Pre-2024: § 35-42-1-7	A person who recklessly, knowingly, or intentionally donates, sells, or transfers blood or semen for artificial insemination that contains HIV commits a <i>Felony 5</i> . If transmission occurs to another person, it is a <i>Felony 3</i> . Does not apply for research or autologous blood donor.
<b>DONATION, SALE, OR TRANSFER OF HIV-INFECTED SEMEN; PENALTIES</b>		
1989	§ 16-41-14-17 Pre-2024: § 16-8-7.5-17	A person who, for the purpose of artificial insemination, recklessly, knowingly, or intentionally donates, sells, or transfers semen that contains antibodies for HIV commits a <i>Felony 5</i> . If transmission occurs to another person, it is a <i>Felony 4</i> . Does not apply for research.
<b>INDIVIDUAL WITH A COMMUNICABLE DISEASE'S DUTY TO INFORM PERSONS AT RISK AND VIOLATIONS*</b>		
1989	§ 16-41-7-1 § 16-41-7-5 Pre-2024: § 16-1-10.5-8.5 & § 16-1-35-1	Describes the duty to disclose one's HIV status to a "person at risk" defined as past, present, or future partners with whom they may have engaged, or will engage, in "high risk" activity defined as sexual or needle sharing acts that have been epidemiologically demonstrated, as determined by the CDC, to bear a significant risk of transmitting HIV. The penalties are outlined in § 35-45-21-3.
<b>FAILURE OF INDIVIDUALS WITH SERIOUS COMMUNICABLE DISEASES TO INFORM PERSONS AT RISK*</b>		
1998	§ 35-45-21-3 Pre-2024: § 35-42-1-9	A person who recklessly violates or fails to comply with § IC 16-41-7-1 (described in the previous row) commits a <i>Class B Misdemeanor</i> . If knowingly or intentionally, then the charge enhances to a <i>Felony 6</i> . Each day a violation continues is a separate offense.
<b>BATTERY BY BODILY FLUID OR WASTE ON ANOTHER PERSON WITH HIV SENTENCE ENHANCEMENT**</b>		
1995	§ 35-42-2-1(c2)(f)(h) § 35-42-2-1(b2)(e)(g) Pre-2024: § 35-42-2-6(c)&(d)(1-3) § 35-42-2-6(c)(1-3)	A person who knowingly or intentionally in a rude, insolent, or angry manner places any bodily fluid or waste on another person and if the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with HIV, faces a <i>Felony 6</i> . If the victim is a public safety officer, it enhances to a <i>Felony 5</i> .
<b>MALICIOUS MISCHIEF BY BODY FLUID OR WASTE WITH HIV SENTENCE ENHANCEMENT**</b>		
2002	§ 35-45-16-2(d)(f)	A person who recklessly, knowingly, or intentionally places human (1) body fluid; or (2) fecal waste in a location with the intent that another person will involuntarily touch or ingest it; and the person knew or recklessly failed to know that the body fluid or waste was infected with HIV, faces a <i>Felony 6</i> . If transmission occurs, it enhances to a <i>Felony 4</i> .

Note: \*This code also criminalizes viral hepatitis B; \*\*The baseline for these codes is a misdemeanor crime for anyone without these diseases. However, it is enhanced to a felony for people with HIV, any type of viral hepatitis, or tuberculosis. In the case of the battery code, the base crime for public safety officers is a *Felony 6* and further enhanced to a *Felony 5* for people with those diseases.

<sup>62</sup>Ind. Code § 35-50-2 describes the penalties associated with each level. Via IN HEA. 1006-2013, Indiana switched from a felony letter system A through D to a number system, 1 thru 6 in which the following changes occurred: A=1, B=3, C=5, D=6 with 2 and 4 in between penalties. <https://iga.in.gov/laws/2023/ic/titles/35#35-50-2>

## A2. INDIANA'S RELEVANT DONATION STATUTES

### Ind. Code § 35-45-21-1 Transferring Contaminated Body Fluids<sup>63</sup>

Sec. 1. (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.

*As added by P.L.158-2013, SEC.547. Amended by P.L.213-2013, SEC.18.*

### Ind. Code § 16-41-12-2.5 Blood

Sec. 2.5. (a) As used in this chapter, “blood” means any of the following:

- (1) Human blood.
- (2) Human blood components.
- (3) Human blood derivatives.

(b) The term does not include human cells, tissues, or cellular or tissue-based products (HCT/PS).

*As added by P.L.213-2013, SEC.5.*

<sup>63</sup>The blood/semen donation crime law was initially enacted as § 35-42-1-7 in 1988 (blood/plasma) and 1989 (semen for artificial insemination was added into the law). The law was initially placed in the Homicide section of the Indiana code. During a comprehensive review and revision of the Indiana criminal code in 2013, HEA 1006-2013 (effective July 1, 2014) repealed and relocated this section to a new Article titled, “Crimes Against Public Health” as § 35-45-21-1— and while the base crime penalty remained unchanged, the penalties for “if transmission occurs” were decriminalized from a Level A (equal to a Level 1) to a Level 3 (i.e., between 20- and 50-years, versus 6- and 20-years imprisonment). <https://archive.iga.in.gov/2013/bills/billinfoc250.html?year=2013&session=1&request=getBill&doctype=HB%20&docno=1006>

**Ind. Code § 16-41-12-15 Blood Donor Information; informed consent**

Sec. 15. (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 Indiana 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 a criminal offense as described in [IC 35-45-21-1](#).

[Pre-1993 Recodification Citation: 16-8-7-6.]

*As added by P.L.2-1993, SEC.24. Amended by P.L.59-2012, SEC.2; P.L.213-2013, SEC.14; P.L.158-2013, SEC.243; P.L.168-2014, SEC.31; P.L.133-2020, SEC.1; P.L.56-2023, SEC.159.*

**Ind. Code § 16-41-14-17 Donation, Sale, or Transfer of HIV Infected Semen; penalties<sup>64</sup>**

Sec. 17. (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.

<sup>64</sup>This section was initially enacted by Ind. *P.L. 184-1989* as IC 16-8-7.5-17 and later repealed and moved to its current place by *P.L.2-1993, SEC.24*. It was during the initial enactment in 1989, that the semen language was also amended into the Criminal "Transferring contaminated body fluids" law.

[Pre-1993 Recodification Citation: 16-8-7.5-17.]

*As added by P.L.2-1993, SEC.24. Amended by P.L.158-2013, SEC.245.*

**Ind. Code § 16-41-14-2 Artificial Insemination**

Sec. 2. As used in this chapter, “artificial insemination” means the introduction of semen into the vagina or cervix of a woman by means other than through the act of coitus.

[Pre-1993 Recodification Citation: 16-8-7.5-1.]

*As added by P.L.2-1993, SEC.24.*

**Ind. Code § 16-41-14-13 Informed Consent - Semen Donor**

Sec. 13. 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 Indiana 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 a criminal offense as described in [IC 35-45-21-1](#).

[Pre-1993 Recodification Citation: 16-8-7.5-14.]

*As added by P.L.2-1993, SEC.24. Amended by P.L.158-2013, SEC.244; P.L.133-2020, SEC.2; P.L.56-2023, SEC.160.*



### A3. WILLIAMS INSTITUTE STUDIES OF HIV CRIMINAL ENFORCEMENT 2015-2024

This report builds on a series of studies analyzing the enforcement of HIV criminal laws using state-level data. Since 2015, the Williams Institute has published similar studies for California,<sup>65</sup> Georgia,<sup>66</sup> Florida,<sup>67</sup> Missouri,<sup>68</sup> Nevada,<sup>69</sup> Kentucky,<sup>70</sup> Virginia,<sup>71</sup> Tennessee,<sup>72</sup> Louisiana,<sup>73</sup> Arkansas,<sup>74</sup> Maryland,<sup>75</sup> Mississippi,<sup>76</sup> and Ohio.<sup>77</sup>

### A4. DESCRIPTION OF DATA SOURCES USED IN THIS REPORT

We requested arrest and court records from Indiana state and local agencies and their data vendors relating to Indiana's six HIV criminal laws across several requests between January 2022 and March 2024.<sup>78</sup> State-level sources provided us with details on the individuals charged with an HIV-related offense, as well as case histories. We used three overlapping sources: (1) the Indiana Office of Court Services;<sup>79</sup> (2) [Doxpop.com](https://doxpop.com) (via requests to Indiana Legal Services), an online tool that collates

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<sup>65</sup>Hasenbush, A., Miyashita, A., & Sears, B. (2015). HIV Criminalization in California: Penal implications for People Living with HIV/AIDS. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-CA-Dec-2015.pdf>

<sup>66</sup>Hasenbush, A. (2018). HIV Criminalization in Georgia: Penal Implications for People Living with HIV/AIDS. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-GA-Jan-2018.pdf>

<sup>67</sup>Cisneros, N., & Sears, B. (2021). HIV Criminalization in Florida: Length of Incarceration and Fiscal Implications. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Incarceration-FL-Jul-2021.pdf>

<sup>68</sup>Sears, B., Goldberg, S., & Mallory, C. (2020). Criminalization of HIV and Hepatitis B and C in Missouri: An Analysis of Enforcement Data From 1990 to 2019. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MO-Feb-2020.pdf>

<sup>69</sup>Cisneros, N., & Sears, B. (2021). Enforcement of HIV Criminalization in Nevada," by N. Cisneros & B. Sears, The Williams Institute at UCLA School of Law 2021 <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-NV-May-2021.pdf>

<sup>70</sup>Cisneros, N., & Sears, B. (2021). Enforcement of HIV Criminalization in Kentucky. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-KY-Dec-2021.pdf>

<sup>71</sup>Cisneros, N., & Sears, B. (2021). Enforcement of HIV Criminalization in Virginia. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-VA-Dec-2021.pdf>

<sup>72</sup>Cisneros, N., & Sears, B. & Lennon-Dearing, R. (2022). Enforcement of HIV Criminalization in Tennessee. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-TN-Jun-2022.pdf>

<sup>73</sup>Cisneros, N., & Sears, B. (2022). Enforcement of HIV Criminalization in Louisiana. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-LA-Sep-2022.pdf>

<sup>74</sup>Cisneros, N., Macklin, M., Tentindo, W., Sears, B. (2023). Enforcement of HIV Criminalization in Arkansas. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-AR-Sep-2023.pdf>

<sup>75</sup>Cisneros, N., Tentindo, W., Macklin, M., Sears, B., (2023). Enforcement of HIV Criminalization in Maryland. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MD-Jan-2024.pdf>

<sup>76</sup>Cisneros, N., Macklin, M., Sears, B., (2024). Enforcement of HIV Criminalization in Mississippi. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MS-Feb-2024.pdf>

<sup>77</sup>Cisneros, N., Sears, B., Tentindo, W. (2024). Enforcement of HIV Criminalization in Ohio. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-OH-Feb-2024.pdf>

<sup>78</sup>This study received IRB approval in July 2021 – Indiana University IRB#12095.

<sup>79</sup>Indiana Judicial Services Bulk Data Applications <https://www.in.gov/courts/iocs/statistics/bulk-data/>

Indiana court documents and dockets online;<sup>80</sup> and (3) [MyCase.IN.gov](https://mycase.in.gov), the public-facing online courts portal in Indiana for non-confidential case tracking.<sup>81</sup>

Data relating to the alleged crimes came from individual Probable Cause Affidavits (PCAs) obtained from county court clerk requests in the jurisdiction where a criminal case was filed.<sup>82</sup> These were generally a collection of both local law enforcement records and county court documents.

The first two sources provided nearly identical non-confidential bulk court data.<sup>83</sup> These data included the chronological case histories from incident through disposition, including socio-demographic data of age, race, and sex; public defender appointment; types and counts of charges; and county where the incident occurred. The MyCase database was used to fill in any incomplete chronological case summary data. Each of these three sources retrieved data available in the Odyssey Case Management System, a fully integrated, web-based computer system used to manage court cases that was designed specifically for statewide deployment.<sup>84</sup> Indiana's 92 courts began using the system in 2007, and the last court was established in Odyssey in 2022.<sup>85</sup> Because of this uneven uptake, record availability varies by county. It depends on when the court began using Odyssey and whether or not the court had an online records system before Odyssey came online.<sup>86</sup> As a result, court data provide a more complete picture in recent years, with gaps in data further back in time.

After narrowing down the cases to only those court cases in which there was at least one charge involving Indiana's HIV criminalization codes, we then reached out to the individual courts where the cases occurred to request the Probable Cause Affidavits (PCAs) associated with the case. Probable cause is required to be submitted to the court before law enforcement may make an arrest or conduct a search. These publicly available documents describe in narrative form the justification and circumstances for arrest and include allegations of the nature of the crime and evidence used for those allegations. Because a person's disease status is a key element of the crime, these documents often mention the nature of the disease involved.

We secured PCAs for nearly all cases that included a potentially HIV-related criminal charge. However, occasionally, court clerks stated that a particular PCA was not in the file or that the PCAs were confidential. The PCAs were then used to identify which disease was implicated in cases involving

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<sup>80</sup>DoxPop: <https://www.doxpop.com/prod/>; Indiana Legal Services <https://www.indianalegalservices.org/>

<sup>81</sup>Indiana MyCase Court record search data base. <https://public.courts.in.gov/mycase/#/vw/Search>

<sup>82</sup>We use PCA here as a catchall term for documents containing a law enforcement officer's narrative summary of an alleged crime that forms the basis for an arrest warrant, warrantless arrest, or criminal indictment. Many of these documents are titled "Affidavit for probable cause," "Affidavit in support of warrantless arrest," or similar.

<sup>83</sup>The bulk of the court data came from the Office of Court Services. We also requested data through Indiana Legal Services and received a smaller sample of mostly duplicate data. The unique cases were extracted and added to the bulk data set.

<sup>84</sup>Odyssey Case Management System <https://www.in.gov/courts/admin/tech/odyssey/>

<sup>85</sup>Morey, J. (2022, Feb) On the same page: Odyssey CMS now in all 92 counties. *The Indiana Lawyer*. <https://www.theindianalawyer.com/articles/on-the-same-page-odyssey-cms-now-in-all-92-counties>; A list of years each county court began using Odyssey is here: <https://www.in.gov/courts/help/odyssey-courts/>

<sup>86</sup>Ind.Gov FAQ: What information is available on the [mycase.in.gov](https://mycase.in.gov) case search? <https://courts-ingov.zendesk.com/hc/en-us/articles/115005075627-What-information-is-available-on-the-mycase-in-gov-case-search>

charges associated with multiple diseases other than HIV that could also be criminalized under four of the six laws that criminalize HIV. (For example, people living with viral hepatitis are also criminalized in Indiana.) PCAs also provided important contextual information about the cases, such as whether HIV prevention measures were involved (e.g., taking HIV medication), specific acts involved in the case, and type of evidence used.

In all, we collected 284 cases of individuals accused of violating at least one of Indiana's six HIV criminalization laws. Some of these cases involved diseases other than HIV. We further sorted those cases by charges and identified 20, filed between 2003 and 2019, involving the donation laws. We were unable to obtain PCAs for two cases, bringing the number of cases with court records and PCAs to 18. We subsequently identified media reports for one of the two cases with a missing PCA and confirmed the same fact pattern described above. That person was found guilty on the donation count. The other person appears to have had their charges dropped.

## A5. DEPARTMENT OF HEALTH POLICY FOR REPORTING HIV-POSITIVE DONATION CASES PRIOR TO 2019

The Indiana Department of Health (IDOH) has a policy linked to the state's transferring contaminated body fluids law (Ind Criminal Code § 35-45-21-1) to manage positive HIV cases reported from a blood/plasma donation site. Prior to 2019, the policy required IDOH to take a significant role in investigating and referring most—if not all—blood donation cases to law enforcement. A summary of the pre-2019 policy follows below.

When the Office of Clinical Data and Research at the IDOH HIV/STD/Viral Hepatitis Division received a positive case report from a donation site, the case was cross-checked with the division's confidential HIV database to see if it was a previously identified PLWH. If confirmed as previously HIV-positive, then a Public Health Investigator (PHI) investigated the case by reviewing the following documents:

- The first HIV case report (initial diagnosis date)
- The first Duty to Warn (DTW) form, which providers used to inform PLWH about blood and semen donation and HIV non-disclosure crimes, signed by the donor with the provider as a witness. If no form was in the division's electronic database, the PHI used other agency resources (i.e., HIV care coordination, HIV testing sites) to locate the form.<sup>87</sup>
- The donor consent form that was signed at the donation site (the consent form included information about HIV-related donation crimes).

If the initial diagnosis and DTW dates were prior to the donation date, then the PHI processed the case for prosecution. The IDOH legal department reviewed the documents, and if approved to proceed, the PHI filed a complaint with the police department in the district of the donation site; if outside the county where IDOH is located, the PHI traveled out of the county to file the complaint.

The policy of filing a complaint with the police ended by 2019 as the policy was modernized to provide supportive wrap-around mental health and other needed services to the donor.<sup>88</sup>

<sup>87</sup>See Appendix A6 for an example of the DTW form and description of procedures for administering the form.

<sup>88</sup>Correspondence between one of the report authors and the IDOH HIV/STD/Viral Hepatitis Division Director in 2018.

## A6. INDIANA'S DUTY TO WARN POLICY AND FORM PRIOR TO 2021

Until 2021, every person who received an HIV diagnosis in Indiana was required to sign a Duty to Warn (DTW) form. The forms were part of IDOH's HIV/STD/Viral Hepatitis Division policies and had been in use for at least 20 years.<sup>89</sup> Such forms were used as part of the Disease Intervention Specialists, HIV Counseling and Testing, and Care Coordination policies, with slightly different versions but more or less the same content—to ensure consistent and timely notification of an HIV-positive individual's legal duty to share their HIV status with sex and/or needle sharing partners and refrain from donating (e.g., blood), and for the individual to indicate, with their signature, that they understood their legal duties. The form briefly described these duties and noted that disclosure to partners was mandated by law.

The DTW forms were often administered as part of the counseling received immediately following an HIV diagnosis, along with other information regarding the need to seek health care. IDOH's old manual, for example, instructed HIV testing staff to

“Share this information with a client when reviewing the Information Sheet regarding HIV testing and when delivering positive test results. Staff are to review the “Duty to Warn” form with each HIV+ client and obtain the client's signature, acknowledging that he/she has had the law explained to him/her, she/he understands the law, and she/he understands his/her responsibility under the law. If the client refuses to sign the “Duty to Warn” form, a staff member is to sign as to the notification and refusal.”<sup>90</sup>

The forms would also reemerge as the PLWH sought care, for example, when seeking care coordination services. The signed forms were stored at the IDOH HIV/STD/Viral Hepatitis Division's Office of Clinical Data and Research, the individual's HIV care site, and possibly other service sites.<sup>91</sup>

We could not determine why or how the DTW forms were first created. However, we were able to confirm that there never has been a legal mandate to use the forms. Moreover, it appears that the forms did not accurately describe PLWH's legal obligations. For example, they erroneously informed the person diagnosed with HIV that it is illegal to sign an organ donor card and that they were required to disclose their HIV status prior to protected sex acts. Neither donor card signing nor disclosure before protected sex acts has ever been required by Indiana law.

In 2020, HB 1182 was signed into law. It eliminated stigmatizing HIV-related language and made some significant HIV science updates throughout the entire public health code. One notable change was

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Curiously, the last known prosecution was in January of 2019 after the policy officially ended and the PCA for that case confirms the case was initiated by IDOH staff. However, the incident that led to the initial police report occurred in August of 2018, prior to policy unofficially ending later that year.

<sup>89</sup>Policy Source: IDOH HIV/STD/Viral Hepatitis Division Staff correspondence 2018 through 2021. At that time, one of the report authors, Dr. Foote, worked closely with Division staff to review and modernize policy linked to Indiana's HIV criminal laws to align with HIV science today and increase protection of private health information. The IDOH stopped using the PLWH signature forms by the end of 2021.

<sup>90</sup>IDOH Division of HIV/STD/Viral Hepatitis *Outreach Testing Policies and Procedures Manual* (2019), page 23.

<sup>91</sup>IDOH Division of HIV/STD/Viral Hepatitis *ARC Blood/Plasma Donor Case Policy* (2018) and the *Duty to Warn Policy for Disease Intervention Specialist* (2019).

that “Duty to Warn” became “Duty to Inform” in relation to the HIV non-disclosure law.<sup>92</sup> The following year, IDOH substantially revised the form by, for example, removing the donor card language and eliminating the PLWH signature requirement.<sup>93</sup>

Figure A1. Example of a Duty to Warn form used prior to 2021

**HIV CARE COORDINATION**  
 A Program of the Indiana State Department of Health

**Duty To Warn**

**This form must be reviewed and signed during the initial assessment interview.** The duty to warn should be verbally reiterated to the client at each subsequent quarterly review. This law (IC 16-41-7) states that one must notify sex and needle-sharing partner(s) of his/her positive HIV or AIDS status prior to:

- Engaging in any sexual acts, including both protected and unprotected acts, even if one thinks the partner is HIV-positive;
- Engaging in sharing of needles or medical drug equipment;
- Signing an organ donor card or document; and
- Donating body fluids including blood, plasma, and/or sperm.

With my signature below, I attest that the responsibilities under the **Duty To Warn** laws in Indiana have been clearly explained to me.

Client Name (printed)	Date of Birth
Client Signature	Date
Care Coordinator Name (printed)	Agency
Care Coordinator Signature	Date

**Refusal to Sign**

The client named above has received information regarding Indiana’s Duty To Warn law, and any questions posed by the client have been answered. However, the client has refused to sign this acknowledgement. The client has been informed that this law remains in effect despite the refusal to sign and that the Advocacy, Responsibility, Counseling Program (ARC) at the Indiana State Department of Health may be notified.

Name of Staff Witness (printed)	
Signature of Staff Witness	Date

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HIV Care Coordination  
Policies and Procedures Manual  
Version 6.0 (November 2011)

<sup>92</sup>HB 1182-2020 IN General Assembly Bill History. <https://iga.in.gov/legislative/2020/bills/house/1182/details>

<sup>93</sup>See here for the modernized form: <https://www.in.gov/health/hiv-std-viral-hepatitis/files/Provision-of-Information.pdf>.

