

STATE STATUTES DEALING WITH HIV AND AIDS: A COMPREHENSIVE STATE-BY-STATE SUMMARY

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INTRODUCTION

In June 1981, surveillance data compiled from reports filed by state and local health departments by the United States Centers for Disease Control (CDC) first alerted it to the fact that five cases of an extremely rare type of pneumonia had been diagnosed in the Los Angeles area in the prior eight months.¹ Concurrently, the CDC was receiving reports of increased occurrence of Karposi's sarcoma, a cancer rarely seen in the United States. Following soon after these reports were reports of an increased occurrence of two unexplained conditions: chronic lymphadenopathy and diffuse, undifferentiated non-Hodgkin's lymphoma.² The only common underlying factor among these findings was a severely impaired immune system.³ Ultimately, "[t]his collection of clinical conditions was recognized as an entirely new syndrome that became known in 1982 as acquired immunodeficiency syndrome, or AIDS."⁴

Further research strongly suggested that the cause of AIDS was a virus. This was confirmed when the human immunodeficiency virus (HIV) was isolated by the Pasteur Institute in Paris and the National Cancer Institute in Maryland. The discovery of HIV led to the development of a test to detect antibodies to HIV. A positive test for these antibodies was a reliable indication that the person was infected with the virus, even though no clinical symptoms of AIDS existed.⁵

Since the early 1980s, the spread of AIDS and the number of persons diagnosed as HIV positive has been dramatic. As of December

1. William L. Heyward and James W. Curran, *The Epidemiology of AIDS in the U.S.*, *Sci. AM.* 72, 77 (Oct. 1988).

2. *Id.*

3. *Id.* at 72, 74.

4. *Id.* at 74.

5. *Id.* at 75.

1993, more than 360,000 persons were reported as diagnosed with AIDS in the United States alone.⁶ Moreover, it has been estimated by the World Health Organization that at least thirty million people could be infected with HIV around the world by the year 2000.⁷ It seems appropriate to apply the term “pandemic” to the spread of HIV and AIDS.

Along with the medical effort to control the pandemic,⁸ the spread of HIV and AIDS has generated an unprecedented legal response.⁹ Beginning in the mid-1980s, states began legislating on a number of HIV and AIDS related matters.¹⁰ Not surprisingly, most of this legislation related to testing procedures and confidentiality, but as early as 1986 Illinois made it a crime to knowingly transmit HIV to another,¹¹ and, in 1987, Florida expressly legislated education in the public schools relating to AIDS and HIV.¹²

Today, states have enacted HIV and AIDS specific legislation in many areas. In addition to the above mentioned areas of criminal law, education, and testing, this legislation includes provisions dealing with housing, employment, and insurance. However, these HIV and AIDS specific statutes reflect only a part of the legal response to this pandemic. Many state statutes that are not HIV or AIDS specific have been applied by government officials or by the courts to situations where it is relevant to the resolution of the issue that a person involved is either HIV positive or diagnosed with AIDS. For example, a general discrimination statute

6. David R. Holtgrave et al, *An Overview of the Effectiveness and Efficiency of HIV Prevention Programs*, 110 PUBLIC HEALTH REP. 134, 134 (1995).

7. Christine Gorman, *Invisible AIDS*, 140 TIME 30, 30 (Aug. 3, 1992).

8. Cumulative costs for treating all HIV positive persons in the United States through 1992 were estimated to be \$10.3 billion and to rise to \$15.2 billion by 1995. Holtgrave, *supra* note 6, at 134.

9. For example, the deadly outbreak of polio in the 1950s resulted in little state legislation. Perhaps the only medical problems producing analogous state legislation ironically are drug abuse and sexually transmitted diseases.

10. Based on a random sample by the authors of nine states and the District of Columbia, a great deal of legislation occurred during this period. For example, Illinois enacted its AIDS Confidentiality Act in 1985. See ILL. REV. STAT. ch. 410, §§ 305/1 to 305/16 (1995)). Also in 1985, Wisconsin passed a statute requiring testing of donated blood for HIV. See WIS. STAT. § 252.13 (1995). Much of New York's HIV and AIDS related legislation was enacted in 1988. See, e.g., New York's provision on confidentiality and disclosure, N.Y. Pub. Health Law § 2782 (1995).

11. ILL. REV. STAT. ch. 720, § 5/12 - 16.2 (1995).

12. FLA. STAT. ch. 233.0672 (1995). In 1988 Washington began to require state educational institutions to make information on AIDS available. WASH. REV. CODE § 28B.10.730 (1995).

may be used to protect a person with AIDS under the rubric of disability in one state while there is a specific statute prohibiting discrimination against a person because they are HIV positive or have AIDS in another state.

This comprehensive statutory summary is the first part of a project¹³ to gather all such state legislation.¹⁴ The following text contains a comprehensive summary¹⁵ of every¹⁶ provision in each state, the District of Columbia, Puerto Rico and the Virgin Islands that contains a reference to “HIV,” “AIDS,” or “sexually transmitted disease.”¹⁷ The summaries are divided into nine broad categories: Criminal Law; Education; Employment; Housing; Insurance; Research; Social & Medical Services; Testing & Reporting; and Miscellaneous. Because a number of statutes have application to more than one category, the statute is included in the most relevant category and then cross-referenced at the end of the other applicable categories.¹⁸ Important definitions are listed at the beginning of each state summary and reference back to these definitions is made within the summaries.¹⁹ Finally, case law that interprets a statute as it relates to HIV or AIDS is noted. The information is current through January 15, 1996.²⁰

13. This project actually began as a directed research paper by Peter O'Reilly, JD, Tulane Law School, 1994. The authors wish to thank him for all of his work. Without his efforts, this project would not have been initiated or successfully completed.

14. The second part of this project is to review all reported cases that refer to HIV or AIDS to determine those state statutes that are not HIV or AIDS specific but are applied to persons because of the person's HIV status or because the person has AIDS. These statutes will then be summarized on a state by state basis. We also hope to continue to update the summary of the HIV or AIDS specific statutes on an annual basis.

15. In preparing the individual summaries, we have attempted to use as much of the actual statutory language as we could. Obviously, however, these are summaries and the reader should consult the original statute for its precise wording and application.

16. The use of the word “every” is a slight overstatement. Statutes that dealt with a particular year's allocation of funds for an HIV or AIDS related purpose were omitted.

17. Sexually transmitted disease was included because in most jurisdictions, HIV and AIDS are either specifically included in the definition of a sexually transmitted disease or are not specifically excluded in the general definition of a sexually transmitted disease. Those statutes that exclude HIV and AIDS from a specific list of diseases are not included in the summary.

18. Cross-referencing is also provided between summaries.

19. The first time a defined word is used in a category, a reference to the definition is made. In a similar fashion, a phrase used frequently in a category may be given a shortened form that is used thereafter.

20. The statutes were found by a LEXIS-NEXIS search. After much trial and error, the following search language was used: “UNANNO(ACQUIRED IMMUN! OR HUMAN IMMUN! OR HIV OR HTLV OR SEXUALLY TRANSMITTED DISEASE! OR PLURAL(ALLCAPS(AIDS)) AND NOT AIDS W/2 HEARING).” The Library used was

These summaries should be useful for anyone doing legal research on HIV or AIDS related problems. In addition, these summaries show trends in state legislation in this area.²¹ Perhaps most importantly, for those persons involved in advocacy on behalf of persons who are HIV positive or have AIDS, this material should be a source for finding examples of appropriate and well drafted statutes that could be usefully adopted in their jurisdiction.

“Codes” and the files were the “code” and “als” files for each state. In the case of Iowa, Massachusetts, Oklahoma, Washington, and West Virginia, an additional search was also made for statutes referring to “venereal disease.”

21. Two example make this point. Eighteen jurisdictions have statutes relating to knowingly transferring HIV, criminal exposure of another to HIV, criminal transmission of HIV, criminal transmission of or exposure of another to HIV through sexual contact, criminal penalties for donating blood, semen, or other body fluid or part with knowledge of being HIV positive, or a criminal penalty, separate from underlying offense, for engaging in or soliciting prostitution knowingly infected with HIV. These states are: Alabama, Arkansas, Florida, Georgia, Idaho, Illinois, Kentucky, Louisiana, Maryland, Michigan, Missouri, Montana, Nevada, North Dakota, Oklahoma, South Carolina, Tennessee, and Washington. Twenty-three jurisdictions have statutes providing immunity from liability for sellers or transferors of real property who do not disclose that a previous owner or occupant had or was suspected of having HIV or AIDS. They are: Arizona, California, Colorado, Connecticut, Delaware, D.C., Florida, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maryland, Missouri, Nevada, New Mexico, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, and Virginia.