

RESEARCH THAT MATTERS

ENFORCEMENT OF HIV CRIMINALIZATION IN INDIANA

Body Fluid/Waste
Enhancement Laws

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OVERVIEW

The Williams Institute examined arrest and court records from Indiana regarding people living with HIV (PLWH) who were prosecuted for an alleged HIV-related body fluid exposure crime. Indiana has six laws criminalizing PLWH spanning both the criminal and health codes. This report—one in a series examining HIV criminalization in Indiana—analyzes the enforcement of HIV-related body fluid/waste penalty enhancements between 2012 and 2023.¹ Almost all charges under these two statutes involved bodily fluids (such as saliva and urine) and conduct (such as spitting and coughing) that do not transmit HIV. None of the charges involved an allegation that HIV was actually transmitted.

- IC § 35-42-2-1(c2)(f)(h), *Battery by Bodily Fluid or Waste*, creates penalty enhancement when a person, knowingly or intentionally, “in a rude, insolent or angry manner places any bodily fluid or waste on another person” and the “person knew or recklessly failed to know that the fluid or bodily waste was infected” with HIV.
 - The base misdemeanor becomes a Felony 6 if the person accused is living with HIV. If the victim is a “public safety official,” the base Felony 6 penalty increases to a Felony 5.
- IC § 35-45-16-2(c-f), *Malicious Mischief by Body Fluid or Waste*, creates a penalty enhancement when a person causes another involuntarily to come into contact with or ingest a body fluid or waste and “the person knew or recklessly failed to know that the body fluid or fecal waste is infected with” HIV.
 - The base misdemeanor becomes a Felony 6 if the person accused is living with HIV. If transmission occurs, it further increases to a Felony 4.

In Indiana, a Felony 6 conviction can result in incarceration for up to 2.5 years. A Felony 5 conviction can result in incarceration for up to 6 years, and a Felony 4 conviction can result in incarceration for up to 12 years.

KEY FINDINGS

- We identified 42 unique people across 51 unique cases who were charged under the two body fluid/waste HIV penalty enhancements between 2012 and 2023. In each battery case, the PLWH was charged with a penalty enhancement for behaviors that pose no transmission risk.
 - No cases under either law involved allegations of or charges for HIV transmission.

Battery by Bodily Fluid or Waste

- In all, there were 41 cases involving 38 PLWH charged with an HIV-related battery by bodily fluid or waste crime. Of those, about half (49%) involved the public safety official HIV penalty enhancement.

¹These statutes also criminalize people living with any type of viral hepatitis and tuberculosis. Here we only examine cases involving HIV.

- None of the cases reviewed alleged actual HIV transmission or conduct that can transmit HIV.
 - In all, 82% of the alleged acts solely involved exposure to saliva, mainly through spitting. Saliva exposure is not an HIV transmission route. Urine exposure occurred in 3% of the incidents. Urine exposure is not an HIV transmission route.
 - Only 15% of cases involved exposure to blood. However, HIV is not transmitted by blood via the acts described in the cases reviewed (for example, spitting saliva mixed with blood at someone).
- Enforcement increased over time, from 2.7 cases per year between 2012 and 2018 to 4.4 per year between 2019 and 2023.
- About four in five (81%) of people charged were men.
- White people were 64% of people charged, although they accounted for only 45% of the state's population of PLWH. Likewise, white men were overrepresented, accounting for about half (51%) of all people accused of an HIV-related battery by bodily fluid crime, although they made up only 38% of the state's population of PLWH.
- Cases were highly concentrated in 17 of Indiana's 92 counties, with about a third (31%) of cases occurring in Marion County—home to Indianapolis, the state capital and largest city.
- Most alleged crimes took place in private residences (29%), public spaces (27%), hospitals (24%), and jails or prisons (15%).
- In more than one in five (22%) cases, victims were advised to undergo HIV testing or post-exposure treatment even though none of the cases analyzed in this report alleged conduct that can transmit HIV.
- Many cases indicated a period of heightened tension prior to alleged exposure:
 - Just over half (54%) of cases reviewed involved officer use of force prior to the alleged exposure incident.
 - Just under half (46%) of the cases described the person accused as apparently experiencing acute mental distress, intoxication, or both.
- Nearly all (93%) people accused were found indigent by the courts and assigned a public defender.
- Among the cases for which we have final outcomes, about four in ten (42%) had all charges dismissed.
- In all, 17 cases led to a conviction on at least one HIV-related battery by bodily fluid charge; of those, 41% also included a public safety official enhancement. All convictions came from plea agreements. None of these cases proceeded to trial.
 - HIV-related convictions disproportionately resulted in incarceration in the Indiana Department of Corrections (72%), compared to just 32% for other non-HIV-related offenses connected to the analyzed cases.
 - HIV-related offenses resulted in significantly longer sentences, averaging 2.3 years, compared to 1.2 years for other offenses. Sentences for battery by bodily fluid/waste HIV offenses with public safety official enhancements averaged 3.1 years, more than double the 1.5-year average for those without enhancements.

Malicious Mischief

- Only four people, involving 10 cases, were charged under malicious mischief enhancement. Many (eight in total) of these may have been inappropriate applications of the law—they involved conduct not intended to be covered by the law.
 - Two of the four people (eight cases) involved a person living with HIV allegedly failing to disclose their HIV status to an intimate partner. All eight resulted in convictions. The other two cases involved a person throwing a towel with urine and a person coughing; both were dismissed.
- None of these cases involved charges for or allegations of HIV transmission.

Indiana's HIV-related body fluid/waste exposure laws continue to punish PLWH more severely. None of the cases reviewed alleged actual HIV transmission. All the battery by bodily fluid cases describe conduct that does not transmit HIV, such as spitting or biting. The handful of malicious mischief cases that alleged conduct capable of HIV transmission appeared to be a misapplication of the law. None of these alleged HIV transmission either. Indeed, neither of Indiana's HIV-related bodily fluid exposure laws contemplate behaviors that can normally transmit HIV. Rather, the laws appear to single PLWH out for harsher punishment merely because of their HIV status.

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.² During the early years of the HIV epidemic in the 1980s and 1990s, many states, including Indiana, enacted HIV-specific criminal laws.³ Most HIV criminal laws require neither actual transmission of HIV nor an intent to transmit HIV to sustain a conviction. Often, these laws criminalize conduct that poses no actual risk of transmission, such as spitting or engaging in intimate contact while using HIV prevention methods such as condoms or HIV medication.⁴ HIV science and medicine have rapidly developed in the intervening decades.⁵ Today, treatments allow people living with HIV (PLWH) to live normal lifespans in good health.⁶ Highly effective methods for preventing transmission of HIV—both prior to and following a potential HIV exposure—are also now widely available.⁷

Indiana has six laws criminalizing PLWH, spanning both the criminal code and health code.⁸ This report—one in a series examining HIV criminalization in Indiana—examines the enforcement of two criminal laws that create penalty enhancements for PLWH:⁹

- IC § 35-42-2-1(c2)(f)(h), *Battery by Bodily Fluid or Waste*, creates penalty enhancement when a person, knowingly or intentionally, “in a rude, insolent or angry manner places any bodily fluid or waste on another person” and the “person knew or recklessly failed to know that the fluid or bodily waste was infected” with HIV.
 - The base misdemeanor becomes a Felony 6 if the person accused is living with HIV. If the victim is a “public safety official,” the base Felony 6 penalty increases to a Felony 5.
- IC § 35-45-16-2(c-f), *Malicious Mischief by Body Fluid or Waste*, creates a penalty enhancement when a person causes another to involuntarily come into contact with or ingest a body fluid or waste and “the person knew or recklessly failed to know that the body fluid or fecal waste is infected with” HIV.
 - The base misdemeanor becomes a Felony 6 if the person accused is living with HIV. If transmission occurs, it further increases to a Felony 4.

² Harsono, D., Galletly, C., O’Keeffe, E., & Lazzarini, Z. (2017). Criminalization of HIV exposure: A review of empirical studies in the US. *AIDS and Behavior*, 21(1), 27-50. <https://doi.org/10.1007/s10461-016-1540-5>

³ Harsono, D., Galletly, C., O’Keeffe, E., & Lazzarini, Z. (2017). Criminalization of HIV exposure: A review of empirical studies in the US. *AIDS and Behavior*, 21(1), 27-50. <https://doi.org/10.1007/s10461-016-1540-5>

⁴ 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>

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

⁶ 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)

⁷ CDC.gov (2021, Jun 1) *HIV Prevention*. <https://www.cdc.gov/hiv/prevention/index.html>

⁸ See Appendix 1 for summaries of the relevant laws in Indiana.

⁹ See Appendix 2 for the text of the codes: IC 35-42-2-2(c2)(f)(h) & IC 35-45-16-2(c-f).

For almost four decades, we have had clear science that acts involving body fluids like those criminalized under Indiana’s HIV body fluid enhancement laws cannot transmit HIV. However, these laws were apparently passed with a lack of knowledge of that science. For example, the 1995 bill that led to the enactment of the state’s law defining battery by bodily fluids against public safety officials was spurred by inmates allegedly “tossing substances that could cause hepatitis or AIDS,” despite leading health authorities at the time having confirmed that HIV cannot survive outside the body in such a manner.¹⁰ Similarly, the 2002 bill¹¹ that led to the enactment of the malicious mischief law was the result of a school prank in which one child threw water that was claimed to be urine on another child.¹² News reports from the time suggest that parents, a medical provider, and legislators all incorrectly believed the act posed a risk for HIV transmission.¹³

In the sections below, we review previous studies of HIV criminal law enforcement, provide a summary of these two Indiana laws, and analyze their enforcement. The analysis here uses data extracted from Indiana criminal court case records and probable cause affidavits and includes details about the alleged crimes, circumstances of arrest, and case outcomes. (See Appendix 3 for a detailed description of sources and research methods.)

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 over a dozen states across the United States: California, Georgia, Florida, Missouri, Nevada, Kentucky, Virginia, Tennessee, Louisiana, Arkansas, Maryland, Mississippi, Ohio, and Indiana.¹⁴ Although the demographics vary by state, overall, these studies show that HIV criminal laws disproportionately affect women and Black people, are financially costly to state governments, and often penalize behaviors that cannot transmit HIV. They also provide evidence that enforcement continues to the present day. Prior research also attempted to identify enforcement patterns, including in Indiana.¹⁵ Together, this body of work demonstrates that thousands of PLWH across the United States have been arrested or prosecuted for allegations of crimes involving one’s HIV status.

¹⁰ Smith, Jennifer. (1996, Mar 17). Activists hope ruling will lead to repeal of HIV law. *The Indianapolis Star*. Retrieved from Newspapers.com April 1, 2024 <https://www.newspapers.com/article/the-indianapolis-star-activists-hope-rul/133022209/>

¹¹ Indiana PL 88 2002 <https://iga.in.gov/publications/act/2002%20Acts.pdf>

¹² Gelarden, Joseph. (2002, Jan 5). School prank leads to proposed bill. *The Indianapolis Star*. Retrieved from newspapers.com April 1, 2024. <https://www.newspapers.com/article/the-indianapolis-star-school-prank-leads/134972115/>

¹³ Gelarden, Joseph. (2002, Jan 5). School prank leads to proposed bill. *The Indianapolis Star*. Retrieved from newspapers.com April 1, 2024. <https://www.newspapers.com/article/the-indianapolis-star-school-prank-leads/134972115/>

¹⁴ A complete list of HIV criminalization publications can be found at <https://williamsinstitute.law.ucla.edu/issues/hiv-criminalization/>

¹⁵ 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 & 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>

Body fluid exposure is among the several ways in which PLWH can be criminalized. As recently as 2022, PLWH in over a dozen states across the U.S. faced penalty enhancements for body fluid/waste exposure because of their HIV status.¹⁶ The Williams Institute has previously analyzed several states with laws specifically criminalizing body fluid/waste exposure by PLWH, including Missouri, Mississippi, Georgia, Louisiana, and Ohio.¹⁷ Similar to Indiana, all these states except Louisiana also criminalize body fluid/waste exposure by people living with viral hepatitis. This report is the first to identify which of the multiple criminalized health conditions—HIV, hepatitis, or tuberculosis—was associated with most arrests under the state’s body fluid/waste penalty enhancement law.¹⁸

There has been little documentation of people charged under Indiana’s body fluid/waste enhancement crimes prior to this report. As this report shows, previous numbers based on media reports or court documents alone have undercounted the extent of enforcement in the state. For example, the HIV Justice Worldwide database, which relies on media reporting, was able to identify only three cases where PLWH were charged under Indiana’s body fluid/waste enhancement laws.¹⁹ Finally, for the first time, this report also provides details about the context of these arrests—including the alleged conduct, body fluid/waste act involved, victim type, and prosecution outcomes.

INDIANA’S HIV-RELATED BODY FLUID/WASTE LAWS

Indiana’s Battery by bodily fluid/waste (BBF) law was enacted in 1995 and makes it a felony for PLWH to knowingly or intentionally place body fluid or waste on another person in a rude, insolent, or angry manner. Two sections in the code include two separate base penalties and an HIV enhancement for each:

- The base penalty for the BBF offense is a class B misdemeanor that is enhanced to a Level 6 felony if “the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with” HIV.
- The base penalty for the BBF offense is a Level 6 felony if committed against a “public safety official.” It increases to a Level 5 felony if “the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with” HIV.
 - In Indiana code, public safety official is broadly defined to include 13 different professions, such as law enforcement officers, employees of the Department of Corrections, and emergency medical services providers.²⁰ Emergency medical services providers are further defined to encompass paramedics, physicians, nurses, hospital emergency room staff, and others.²¹

¹⁶ The Center for HIV Law and Policy (2022). *U.S. HIV Laws and Prosecutorial Tools, CHLP* (last updated 2022) <https://www.hivlawandpolicy.org/resources/us-hiv-laws-and-prosecutorial-tools-chlp-updated-2022>

¹⁷ UCLA Williams Institute. HIV Criminalization Publications Archive. <https://williamsinstitute.law.ucla.edu/publications/?issues=hiv-criminalization>

¹⁸ See the appendix for more details on the number of cases involving alleged hepatitis and tuberculosis. This report only analyzes cases for which we could affirmatively identify that the fluid exposure was HIV.

¹⁹ HIV Justice Network. (n.d.). Global HIV Criminalization Database. <https://www.hivjustice.net/global-hiv-criminalisation-database/>

²⁰ Public safety official is defined in *Ind. Code § 35-42-2-1 Battery by Bodily Fluid/Waste Law Sec. 1. (a)*.

²¹ See *IC 16-41-10-1* and *IC 35-31.5-2-115.5* “medical services provider” definition.

Indiana’s Malicious Mischief by body fluid/waste (MM) law creates a penalty for people who recklessly, knowingly, or intentionally place a body fluid or waste in a location where it will be involuntarily touched or ingested by another person.

- The MM base penalty is a class B misdemeanor but is increased to a Level 6 felony if “the person knew or recklessly failed to know that the body fluid or fecal waste was infected with” HIV. If transmission occurs, the penalty increases to a Level 4 felony.

Table 1 describes the penalties for PWLH convicted under each law.²²

Table 1. Indiana Criminal Body Fluid/Waste HIV Enhancement Laws Penalty Descriptions

PENALTY DESCRIPTIONS	
LEVEL	DESCRIPTION
Felony 6	Punishable by imprisonment for up to 2.5 years and a fine of up to \$10,000.
Felony 5	Punishable by imprisonment for up to 6 years and a fine of up to \$10,000.
Felony 4	Punishable by imprisonment for up to 12 years and a fine of up to \$10,000.

While Indiana’s BBF law does not define which body fluid/waste exposures are criminalized, the MM law enumerates the criminalized fluid/wastes (including aerosols): blood, saliva, sputum, semen, vaginal secretions, human milk, urine, sweat, tears, or any other liquid produced by the body.

Indiana’s BBF law has been amended several times since its enactment in 1995. Some changes resulted in a more expansive application of the law to include more diseases and public safety official categories, while other changes lessened the situations in which the law applied. The MM law was amended once since enactment; it expanded the types of fluids involved and viral hepatitis. (See Appendix 2 for a summary of changes since enactment.)

This report analyzes the enforcement of the HIV-related BBF and MM penalty enhancements.

²²Ind. Code §35-50-2 (2024) describes the penalties associated with each level. Via Ind. In 2013, Indiana switched from a felony letter system (A through D) to a number system in which the following changes occurred: A=1, B=3, C=5, D=6. 2 and 4 fall between the new letter penalty increments.

ENFORCEMENT OF INDIANA'S BATTERY BY BODILY FLUID/WASTE LAW

We first analyze the enforcement of Indiana's BBF law, which accounted for 80% of all HIV-related body fluid/waste exposure criminal cases and 90% of people charged. We then briefly turn to the enforcement of Indiana's MM law, which accounted for a much smaller share of cases (20% of cases and 10% of people charged).

NUMBER, FREQUENCY, AND DEMOGRAPHICS OF INCIDENTS

Prevalence and Number of Cases Over Time

We identified 41 cases between 2012 and 2023 involving 38 individuals and 54 charges under Indiana's HIV-related BBF enhancement. Three individuals were arrested twice, each resulting in new cases. About half (51%) of the cases involved HIV-related BBF charges against only people who were not public safety officials (civilians). Another 39% included charges for alleged HIV-related BBF against only a public safety official. Additionally, 10% of cases included both types of HIV-related BBF charges.

Until 2014, the HIV-related BBF crime included additional enhancements if HIV transmission occurred.²³ We found no cases that included this charge, and we found no allegations of HIV transmission in the arrest records.

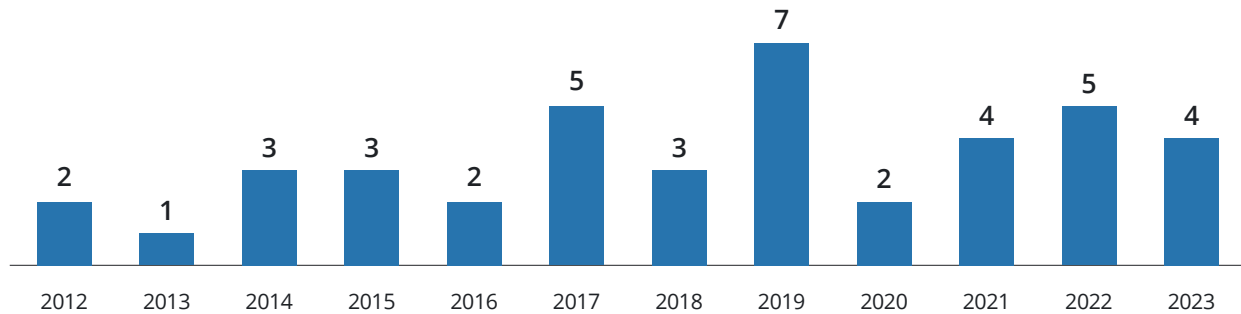
Table 2. Number of people, cases, and charges involving HIV-related BBF allegations in Indiana

VARIABLE	N
Total number of people with cases involving an HIV-related BBF charge	38
Total number of cases involving an HIV-related BBF charge	41
Only alleging BBF against a civilian	21
Only alleging BBF against a public safety official	16
Alleging BBF against a civilian and public safety official	4
Total number of HIV-related BBF charges	54
Total number of cases alleging HIV transmission	0

Figure 1 reports criminal case filings in Indiana courts over time. The number of criminal cases rose from an average of 2.7 per year between 2012 and 2018 to an average of 4.4 per year between 2019 and 2023, despite a temporary dip in 2020 (the first year of the COVID-19 pandemic in the United States).

²³ See Appendix 2 for a history of the various amendments to the BBF statute since enactment.

Figure 1. Number of HIV-related BBF criminal cases in Indiana by year



HIV Status, Age, Sex, and Race Distribution

All of the people arrested knew of their HIV-positive status when arrested. Law enforcement learned of the person's HIV status through a variety of sources. The majority (56%) of the time, the person's HIV status was learned from the PLWH themselves. PLWH disclosed or volunteered their HIV status to law enforcement or other first responders. In about a quarter (22%) of cases, the victims or witnesses to the alleged crime disclosed the arrestee's HIV status. Jail or medical records accounted for an additional 10% of cases. In 12% of cases, it was unclear how the person's HIV status was learned.

Arrestee age was available for 37 cases. The mean age at arrest was 36 years old. The youngest person arrested was 18 years old; the oldest person arrested was 58 years old.

The overwhelming majority of people arrested were men (81%); women accounted for only 17% of the cases.²⁴ The rate of cases by sex was comparable to the population of PLWH—men were 79% and women 21% of PLWH in Indiana in 2021. Overall, white individuals made up nearly two-thirds (64%) of all cases but were overrepresented compared to the population of PLHIV—white people were 45% of PLWH in Indiana in 2021.²⁵

²⁴ Sex information was missing for 1 person (2% of people with cases). We do not have information on the gender identity of people arrested and prosecuted in Indiana and cannot identify whether the people in our data would identify as cisgender or transgender.

²⁵ AIDSvu (n.d.) Indiana data retrieved from <https://aidsvu.org> Aug 7 2024 and reflect 2021 data. Census Bureau. (n.d.) Indiana Census State Profile 2020. Data retrieved Aug 7, 2024 from <https://www.census.gov/library/stories/state-by-state/indiana-population-change-between-census-decade.html>

Figure 2. Sex and race of people charged with an HIV-related BBF offense in Indiana

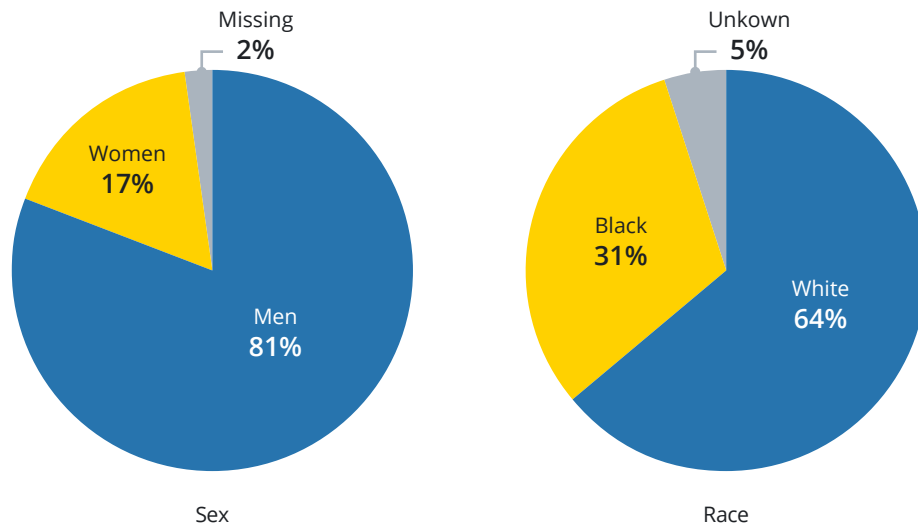
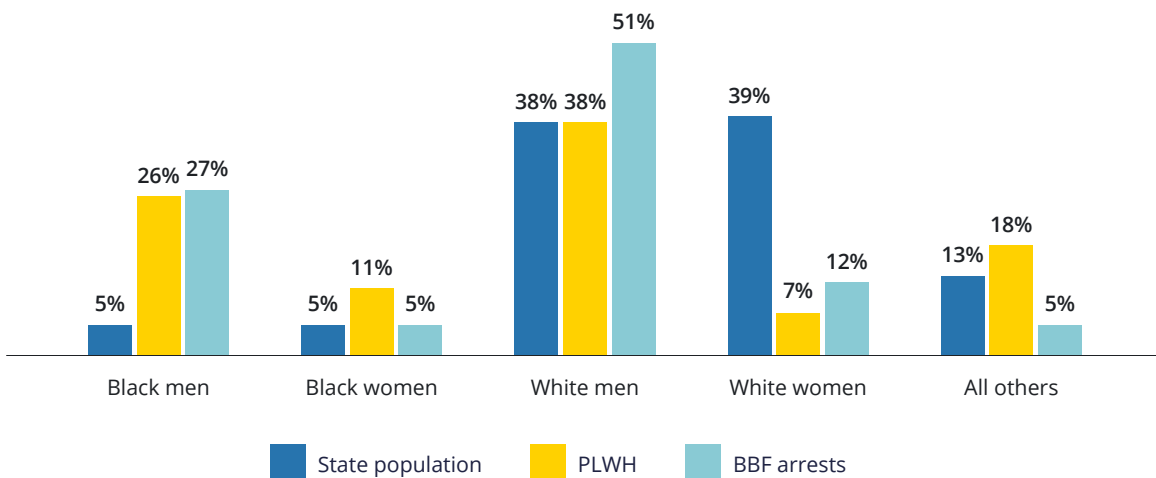


Figure 3 shows the intersection of sex and race.²⁶ In contrast to previous Williams Institute reports on HIV-related criminal enforcement, white people, especially white men, are overrepresented in the BBF cases in Indiana. White men were 38% of both the state population and the population of PLWH but accounted for 51% of HIV-related BBF cases. White women made up 12% of cases but 7% of Indiana’s PLWH population and 12% of the state’s population. On the other hand, Black women were underrepresented in HIV-related BBF cases, accounting for 11% of PLWH in Indiana but only 5% of cases. Black men constituted 26% of PLWH and 27% of BBF HIV cases. Black men constituted 26% of PLWH and 27% of BBF HIV cases.

Figure 3. State and PLWH population and BBF HIV enhancement cases in Indiana by race and sex



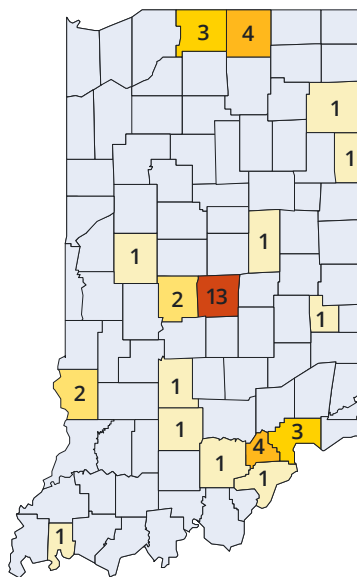
²⁶ AIDSvu (n.d) Indiana data retrieved from <https://aidsvu.org> Aug 7 2024 and reflect 2021 data. Census Bureau. (n.d.) Indiana Census State Profile 2020. Data retrieved Aug 7, 2024 from <https://www.census.gov/library/stories/state-by-state/indiana-population-change-between-census-decade.html>

CIRCUMSTANCE OF INCIDENTS

County and Location of Incident

The enforcement of Indiana’s HIV-related BBF crime was highly geographically concentrated. All prosecutions originated in just 17 of the state’s 92 counties. Marion County, which includes the state capitol and largest urban area, had the most cases (31%) but was underrepresented compared to its proportion of the state’s population of PLHIV (41%).²⁷ Four other counties—Elkhart, Scott, Jefferson, and St. Joseph—had disproportionately high numbers of cases compared to their share of both the state’s population and the population of PLWH. Each of these counties represents 0.4-3% of the state’s population and 1-5% of its PLWH population, yet each was responsible for 7-10% of all BBF HIV enhancement cases.²⁸ In contrast, NW Indiana’s Lake County near Chicago—which has the second highest number of PLWH in Indiana—had zero cases.²⁹ Together, Marion, Elkhart, Scott, Jefferson, and St. Joseph counties accounted for two-thirds of Indiana’s HIV-related BBF cases (66%).

Figure 4. Number of HIV-related BBF cases in Indiana by county



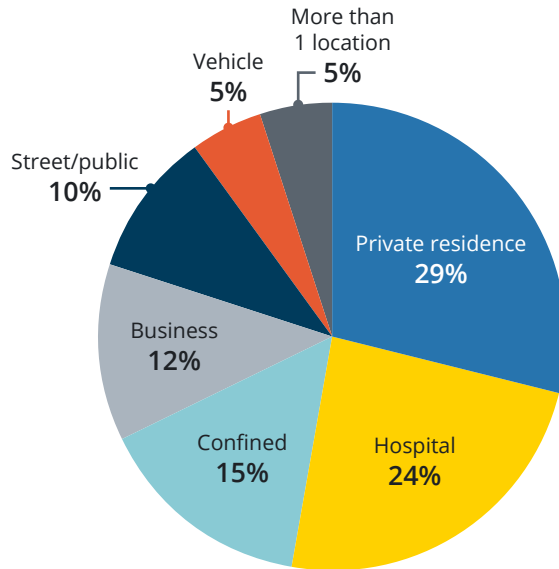
The alleged fluid exposures occurred in a variety of locations. About three in ten (29%) incidents occurred in a private residence. Just over a quarter (27%) of all incidents were in public spaces—at a place of business, on a public road, or in a vehicle in a public area, while another 15% were reported from a jail or prison. Two incidents involved separate exposures in more than one of these locations. About a quarter (24%) of all alleged HIV-related fluid exposures were in a hospital setting.

²⁷ AIDSvu (n.d) Indiana data retrieved from <https://aidsvu.org> Aug 7, 2024 and reflect 2021 data. Census Bureau. (n.d.) Indiana Census 2020 Retrieved Aug 7, 2024, from <https://www.census.gov/library/stories/state-by-state/indiana-population-change-between-census-decade.html>

²⁸ AIDSvu (n.d) Indiana data retrieved from <https://aidsvu.org> Aug 7, 2024 and reflect 2021 data. Census Bureau. (n.d.) Indiana Census 2020 Retrieved Aug 7, 2024, from <https://www.census.gov/library/stories/state-by-state/indiana-population-change-between-census-decade.html>

²⁹ Indiana Dept. of Health. 2023 Spotlight on HIV/STDs/Viral Hepatitis. https://www.in.gov/health/hiv-std-viral-hepatitis/files/Final-Rev-Whole-Spotlight-2023_IDOH.pdf

Figure 5. Share of HIV-related BBF cases in Indiana by location type



Type of Fluid/Waste Exposure and Exposure Risk

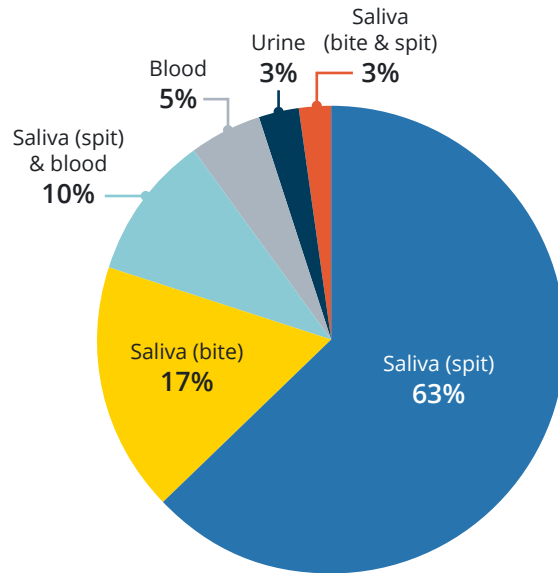
The HIV-related BBF cases in Indiana only alleged fluid exposures that are not HIV transmission routes: 82% of cases only alleged saliva exposure (through mainly spitting and less often through biting), and 3% involved urine. Another 15% of cases involved blood exposure (5% involved only blood exposure, and 10% involved a combination of blood and saliva through spitting). Blood exposure, as contemplated in Indiana's fluid exposure laws and described in the cases reviewed, is not a transmission route.³⁰ A person is not at risk of HIV transmission from blood or blood-and-saliva that lands on a person's clothes or unbroken skin, and HIV rapidly inactivates when exposed to conditions outside the body.³¹ In none of these cases was actual transmission alleged, and none of the cases alleged a fluid exposure that could lead to HIV transmission.³²

³⁰ CDC.gov (2024, Jan 18). *How HIV Spreads*. <https://www.cdc.gov/hiv/causes/index.html>.

³¹ CDC.gov (2024, Jan 18). *How HIV Spreads*. <https://www.cdc.gov/hiv/causes/index.html>.

³² Cisneros, N, Foote, C., Schlebecker, P., and Sears, B. (2024). *HIV Criminalization in Indiana: Evaluation of Transmission Risk*. Los Angeles, CA: Williams Institute. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Crim-Transmission-IN-Nov-2024.pdf> & 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>

Figure 6. Share of HIV-related BBF cases in Indiana by body fluid/waste type



Note: Percentages may not add to 100% due to rounding.

Just over a quarter (27%) of the cases alleged intentional HIV exposure. Law enforcement officers were the victims in almost all (91%) of those incidents. In all of these cases, the arrestee was restrained when the alleged verbal threat and exposure occurred. In over two-thirds (70%) of those cases, law enforcement had used force prior to the alleged exposure. Regardless of intent, transmission did not occur in any of these cases, and there was no actual transmission risk.

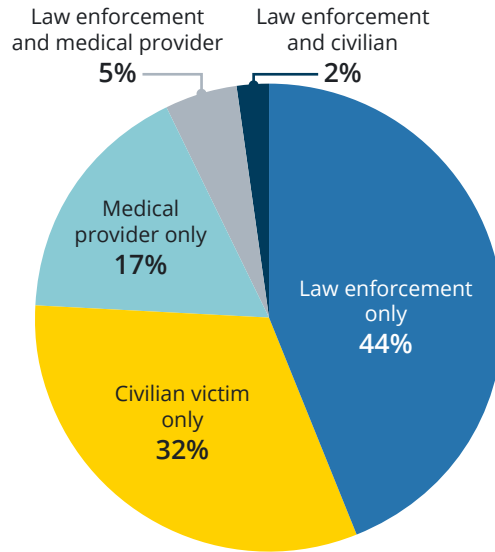
Nevertheless, it appears that several people were advised to undergo medically unnecessary testing and/or treatment. Nearly a quarter (22%) of all cases reported that the victim was recommended for HIV testing or medical treatment, such as post-exposure prophylaxis (PEP) medications after body fluid exposure.³³ Notably, almost all (78%) of the victims who were advised to test for HIV or to take PEP had been exposed solely to saliva, a body fluid that cannot transmit HIV.

Victim Type

Over 70% of people identified as victims in Indiana's HIV-related BBF cases were among the categories of public safety officials defined in Indiana law. This included law enforcement personnel—such as police officers, jail or correctional officers, and Department of Corrections officers—who collectively accounted for just over half (51%) of all victims. Medical providers—also classified as public safety officials—represented an additional 20% of victims. About a third (32%) of all cases identified only a person who was not a public safety official (civilian) as a victim. Crimes involving public safety officers carry a higher penalty than those involving civilians.

³³ CDC.gov. (2024 Feb 7). *What is PEP?* <https://www.cdc.gov/stophivtogether/hiv-prevention/pep.html>

Figure 7. Share of victims in BBF HIV enhancement cases in Indiana



Use of Force and Restraints Prior to Exposure Incident

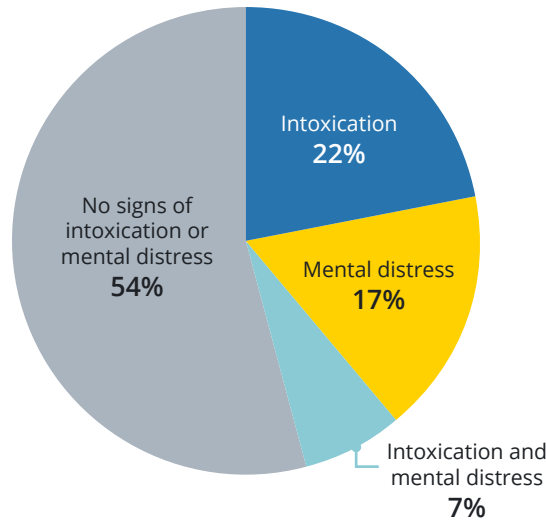
Over half (54%) of Indiana's HIV-related BBF incidents involved law enforcement officers who used force to arrest the individual (e.g., took the arrestee to the ground, deployed a weapon), and/or used restraints (e.g., handcuffs, leg shackles, medical restraints). In all those cases, the alleged HIV exposure took place after the use of force and/or after the person was already restrained. Further, most of the force and/or restraints cases (82%) involved individuals whom law enforcement officers alleged as physically resisting arrest or attempting to flee.

Mental State and Impairment Among People Arrested

Many people charged with an HIV-related BBF offense in Indiana showed signs of mental impairment. Almost half (46%) of the incidents involved individuals who appeared from the description to be either experiencing a substantial mental health challenge (17%), who appeared intoxicated at the time of arrest (22%), or both (7%). Examples included screaming for help, erratic behavior, extreme emotional distress, being medically detained, and attempting suicide. Alcohol was the most common substance mentioned.

Arrestees who showed signs of impairment were also more likely to involve first responders. In about two-thirds (63%) of incidents where there were signs of intoxication or mental health distress, individuals were restrained at the time of fluid exposure, sometimes while receiving medical care. Additionally, law enforcement officers used force prior to exposure in 42% of these cases. In the majority (74%) of incidents involving impairment, law enforcement or medical providers were the victims.

Figure 8. HIV-related BBF cases in Indiana by indications of impairment



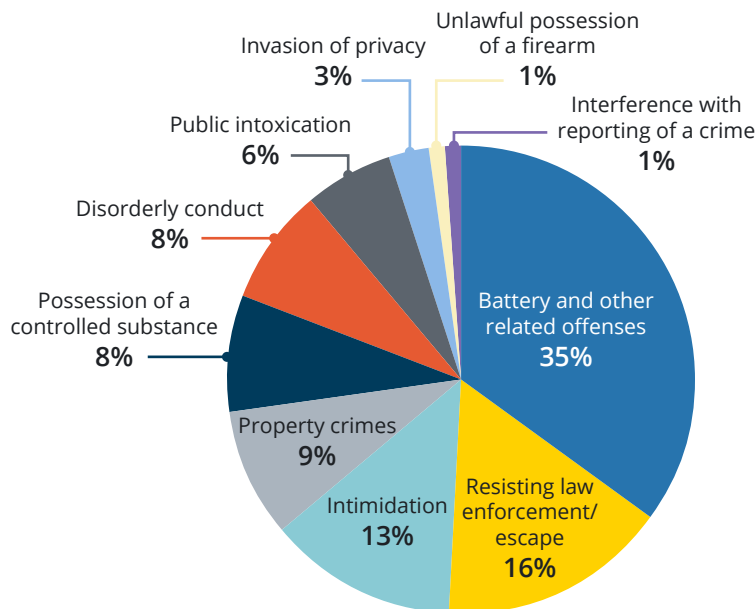
CHARGES, CONVICTIONS, AND SENTENCES

Frequency and Types of Charges

Between 2012 and 2023, a total of 54 HIV-related BBF charges were filed against 38 people across 41 cases. Each case had between one and six HIV-related charges, with an average of 1.3 per case. Cases involving law enforcement as victims were particularly likely to result in more than one HIV-related charge (48%), compared to incidents involving medical providers (33%) or people who were not public safety officials (14%).

In addition to the HIV-related charges, there were 91 charges for offenses unrelated to HIV. The most common additional charges were other battery-related offenses (35%), resisting law enforcement or attempting to escape (16%), and intimidation (13%).

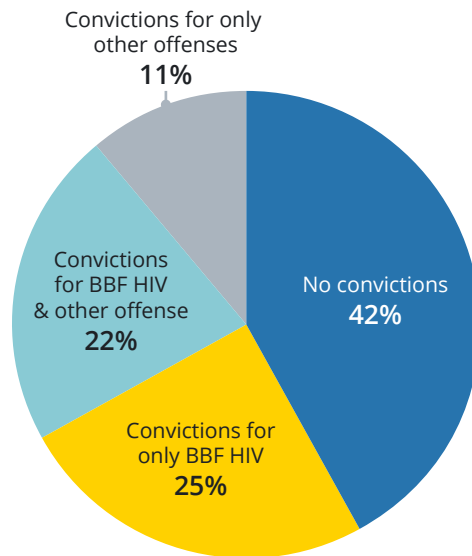
Figure 9. Share of charges by other offense type among BBF HIV cases in Indiana



Convictions

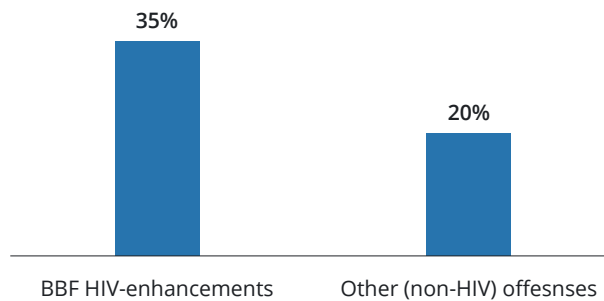
We were able to track court cases all the way to their conclusion for 36 of the 41 cases involving an allegation of an HIV-related BBF offense in Indiana. Among these cases, about four in ten (42%) resulted in all charges being dismissed. The remaining 58% of cases had at least one guilty outcome: nine cases resulted in convictions solely for HIV-related charge(s), eight cases included convictions for both an HIV-related charge and at least one other offense, and four cases led to convictions for only non-HIV-related charges. Of the 17 cases involving an HIV-related conviction, 41% included the public safety official enhancement.

Figure 10. HIV-related BBF case outcomes in Indiana



Convictions for BBF HIV enhancement charges were disproportionately high, with 35% of all charges resulting in convictions. In contrast, the conviction rate for non-HIV-related charges among the cases analyzed was 20%.

Figure 11. Conviction rates among charged offenses in BBF HIV cases in Indiana

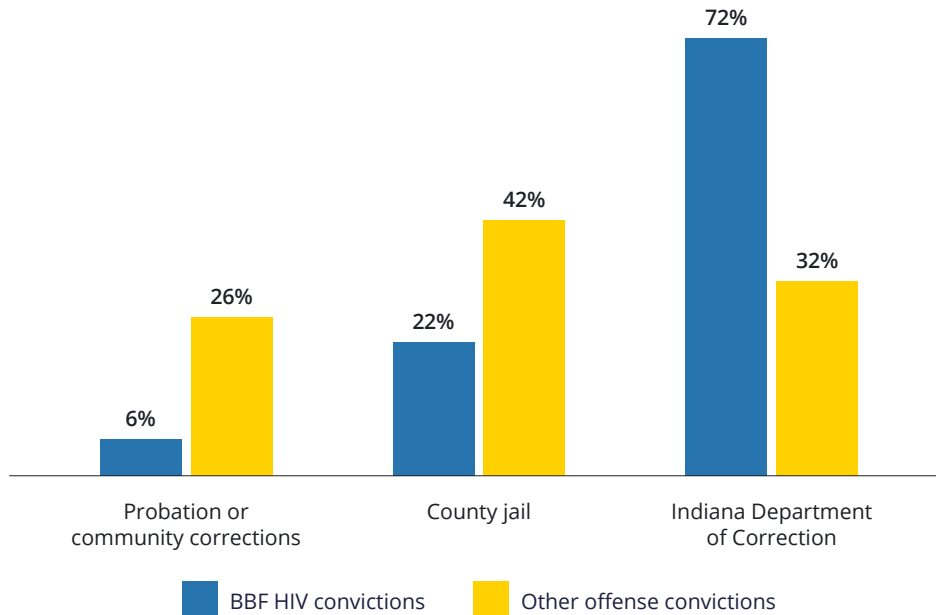


All convictions for these 36 cases came from guilty pleas (plea deals), as none of the cases proceeded to trial. The court found nearly all individuals indigent and assigned a public defender (93%).

Sentences, Placement, and Penalties

In Indiana, if a person was convicted of an HIV-related BBF offense, they likely went to prison. Nearly three-quarters (72%) of HIV-related BBF convictions resulted in incarceration with the Indiana Department of Corrections. Conversely, less than one-third (32%) of convictions for non-HIV-related offenses among the cases analyzed here resulted in incarceration in the state prison system.

Figure 12. Share of sentence placements for HIV-related BBF convictions compared to other convictions in Indiana

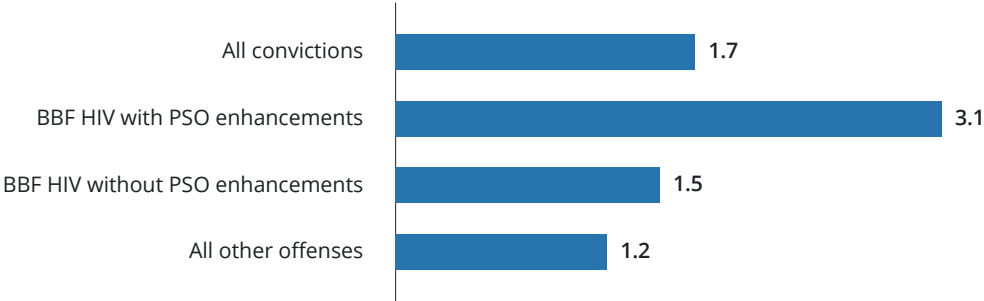


The length of sentences by convicted charge varied significantly, although HIV-related convictions were punished with greater severity than non-HIV-related convictions. Overall, sentences for individual convicted charges ranged from 0 to 5 years, with an average sentence length of 1.7 years.³⁴ For individual HIV-related BBF convictions, sentences ranged from 0 to 5 years, with an average sentence length of 2.3 years. In contrast, for convictions involving non-HIV-related convictions, sentence lengths ranged from 0 to 4 years, with an average of 1.2 years.

Indiana creates more severe penalties for HIV-related BBF convictions if the victim is a public safety official like a police officer or medical first responder. Indeed, sentences for these convictions were over twice as long (average of 3.1 years) as convictions for which the victim was not a public safety official (average of 1.5 years). Additionally, all of the HIV-related BBF convictions that involved a public safety official as a victim resulted in incarceration in the Indiana Department of Corrections. Conversely, HIV-related BBF convictions in which the victim was not a public safety official resulted in a variety of placements: 50% in the Indiana Department of Corrections, 40% in county jails, and 10% in community corrections.

³⁴ The total time served per case could not be calculated due to inconsistent or missing data indicating consecutive and concurrent convictions across individual charges within cases.

Figure 13. Average sentence lengths (in years) by convicted offenses among HIV-related BBF convictions in Indiana



Although people convicted of HIV-related BBF offenses in Indiana received sentences ranging from months into years (reflecting the felony level penalties), none of the cases that resulted in conviction alleged actual transmission, and none of the cases described conduct that can transmit HIV. Nevertheless, PLWH received harsher penalties because of their health status as people living with HIV. PLWH were subject to more severe punishments, even though their actions caused no greater harm than people not living with HIV. See Appendix 4 for an analysis comparing Indiana’s BBF HIV enhancement crime penalties with those of other crimes.³⁵

³⁵ The same logic holds true for the HIV enhancement in Indiana’s Malicious Mischief Code.

ENFORCEMENT OF INDIANA'S HIV MALICIOUS MISCHIEF (MM) LAW

In contrast to BBF, there were just 10 cases filed with an HIV-related MM charge involving a total of four individuals. The cases all fell between the years 2016 and 2021. The sections of Indiana's criminal code that address MM are like Indiana's BBF crime; both laws carry misdemeanor penalties that have felony enhancements when a person is alleged to have exposed another to body fluids or waste "infected" with HIV.³⁶

The MM offense was not intended for use in the context of sexual conduct between two individuals. Instead, it focuses on placing body fluids or waste "in a location" with "the intent that another person will involuntarily touch it."³⁷ Instead, Indiana has another statute that directly applies to a person's failure to disclose their HIV status before they engage in "high-risk" sexual activity.³⁸ What motivated the passage of the MM offense was not sexual conduct but a schoolyard prank where a student pretended to expose another student to urine.³⁹ Nevertheless, eight of the 10 MM cases involved PLWH allegedly failing to disclose their HIV status to sex partners. It is unclear why the MM offense was applied rather than Indiana's designated HIV Duty/Failure to Inform law (IC 35-45-21-3) in these cases.⁴⁰

Because of the small number of HIV-related MM cases and the apparent misapplication of the MM statute, we simply provide a brief narrative summary of the cases here:

- The MM law was apparently misapplied in nearly all cases (eight of the 10 cases involved allegations of failure to inform sexual partners of HIV status, which is not the conduct covered in the MM statute).
- None of the 10 cases involved alleged transmission of HIV.
- All eight of the cases involving sex acts resulted in a conviction.⁴¹
- The two dismissed cases involved alleged acts that cannot transmit HIV. These are the only two cases that fit the statutory definition of MM:
 - Urine/pus exposure through throwing a towel at nurses who were performing a medical procedure involving a catheter.
 - Respiratory droplet exposure via allegedly intentionally coughing on a police officer while being transported to jail for an unrelated crime.

The case involving coughing is illustrative of the inaccurate beliefs about HIV transmission across both the MM and BBF cases—the police documents report that because of the defendant's HIV status, coughing on the officer was a risk to the officer's health with potentially serious health consequences.

³⁶ HIV is not present in many of the bodily fluids named in Indiana's MM statute, and none of the fluid exposures described in either the BBF or MM law carry a transmission risk for HIV, although both statutes use the word "infected with" to describe HIV. (Bodily fluids/wastes are not enumerated in the BBF statute.)

³⁷ IC 35-45-16-2(c-f).

³⁸ IC 16-41-7-1.

³⁹ Gelarden, Joseph. (2002, Jan 5). School prank leads to proposed bill. *The Indianapolis Star*. Retrieved from newspapers.com April 1, 2024. <https://www.newspapers.com/article/the-indianapolis-star-school-prank-leads/134972115/>

⁴⁰ IC 16-41-7-1; IC 35-45-21-3.

⁴¹ None of these cases included a charge for nondisclosure of the person's HIV status.

CONCLUSION

PLWH in Indiana are exposed to criminal prosecution in many ways because of their HIV status, including for allegations of exposing others to body fluids and waste in ways that do not transmit HIV. Indiana’s HIV-related BBF and MM laws were enacted decades ago during the early years of the epidemic when the emerging science of HIV transmission had not yet reached many policymakers and when treatment options were few. The BBF law was enacted in 1995—right around the time the first HIV viral load test was developed, and effective HIV treatment began to be widely available in the U.S.⁴²

Experts agree that the gamut of body fluids and waste, as detailed in Indiana’s criminal HIV enhancement laws, pose no risk of HIV transmission.⁴³ Although not part of the criminal laws described here, even conduct that previously posed a risk of HIV transmission, such as needle sharing and penetrative sexual activity, now have no or insignificant risk of HIV transmission when precautions such as HIV treatment, HIV preventive medications, or condoms are used. Today, effective treatments allow PLWH to live long and healthy lives and not transmit HIV to their sexual partners.⁴⁴ For many years, blood, plasma, and semen supplies have been safe.⁴⁵

Given these tremendous HIV advances, in 2022, a group of Indiana lawmakers on the bipartisan Interim Study Committee on Corrections and Criminal Code unanimously recommended modernizing the Indiana Code to account for advances in HIV treatment and prevention since the laws were enacted and to “develop legislation lessening criminal penalties specific to HIV.”⁴⁶ Yet most of Indiana’s HIV criminal laws have yet to account for these advances, and none have done so with enough specificity to prevent arrests and prosecutions for behaviors that have no risk of transmitting HIV.⁴⁷

PLWH continue to be treated differently under Indiana’s criminal law, regardless of the fact that the behaviors criminalized pose no additional risk of harm than if they were committed by a person who is not living with HIV. This report found that people who faced HIV penalty enhancement charges under the battery code were all charged for acts—such as spitting—that cannot transmit HIV. Indiana’s code already criminalizes the underlying acts for everyone. However, PLWH were at risk of harsher punishment for the same acts simply because they were living with HIV.

We also found that arrests related to BBF HIV enhancements have increased over the past decade.⁴⁸

⁴² HIV.GoV (2023). *A Timeline of HIV and AIDS*. <https://www.hiv.gov/hiv-basics/overview/history/hiv-and-aids-timeline>.

⁴³ Cisneros, N., Foote, C., Schlebecker, P., and Sears, B. (2024). *HIV Criminalization in Indiana: Evaluation of Transmission Risk*. Los Angeles, CA: Williams Institute. <https://williamsinstitute.law.ucla.edu/publications/hiv-transmission-risk-in/>

⁴⁴ CDC.gov. (2024, April 24). *Clinical Care of HIV*. https://www.cdc.gov/hiv/nexus/hcp/clinical-care/?CDC_AAref_Val=https://www.cdc.gov/hiv/clinicians/treatment-care/treatment-as-prevention.html

⁴⁵ Cisneros et al Cisneros, N., Foote, C., Schlebecker, P., and Sears, B. (2024). *Enforcement of HIV Criminalization in Indiana: Donation Laws*. <https://williamsinstitute.law.ucla.edu/publications/hiv-crim-in-donation-laws/>

⁴⁶ Muniz, L. B. (2022, Oct 5). Lawmakers recommend lessening HIV Criminal Penalties. *Indiana Capital Chronicle*. <https://indianacapitalchronicle.com/2022/10/05/lawmakers-recommend-lessening-hiv-criminal-penalties/>

⁴⁷ Cisneros, N., Foote, C., Schlebecker, P., and Sears, B. (2024). *HIV Criminalization in Indiana: Evaluation of Transmission Risk*. Los Angeles, CA: Williams Institute. <https://williamsinstitute.law.ucla.edu/publications/hiv-transmission-risk-in/>

⁴⁸ In contrast, enforcement of Indiana’s HIV-related donation law has decreased in recent years. See Cisneros, N., Foote, C., Schlebecker, P., Sears, B. 2024. *Enforcement of HIV Criminalization in Indiana: Donation Laws*. Los Angeles, CA: Williams Institute.

Disability advocates have raised concerns in recent years regarding such differential treatment based on HIV status under the criminal law. For example, Indiana Disability Rights leadership noted:

Laws criminalizing people living with HIV without basis in current objective scientific evidence risk violating the Americans with Disabilities Act (ADA)... Indiana's HIV criminalization laws based on... outdated science may constitute disability discrimination because the laws expressly treat people living with HIV differently from others engaging in the same behaviors. Continuing to arrest and prosecute people living with HIV under these statutes could expose state and local governments to significant civil rights litigation.⁴⁹

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 a growing consensus among public health and medical experts that ending the HIV epidemic requires modernizing the state's HIV criminal laws to reflect what is known about HIV science today.⁵⁰ For example,

- 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."⁵¹
- 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."⁵²

Both 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.⁵³

<https://williamsinstitute.law.ucla.edu/publications/hiv-crim-in-donation-laws/>

⁴⁹ Keyes, Melissa. (2022, Aug 24). Indiana Disability Rights Letter regarding the Indiana 2022 Interim Study Committee on Corrections and Criminal Code - HIV Criminalization 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_4651.pdf

⁵⁰ 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).

⁵¹ Indiana State Medical Association 2023 Policy Manual Resolution 22-53. https://www.ismanet.org/ISMA/About_Us/Public_Policy/ISMA/About_Us/public_policy.aspx?hkey=d6c00f60-4a01-4e8b-81ed-4ce8949601f2

⁵² 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/>

⁵³ 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>

DATA LIMITATIONS

Although the HIV-related BBF penalty enhancement was created in 1995, we were not able to access data prior to 2012 for this offense. Additionally, our data do not include police interactions that did not lead to an HIV-related BBF or MM criminal case. Our sample also excluded cases for which we were not able to obtain a Probable Cause Affidavit (PCA), which provides a narrative account of the alleged criminal conduct. Finally, our data excluded about 37 cases charged under the disease enhancement section of the BBF code, but for which there was no identifiable mention of HIV, hepatitis, or tuberculosis in the PCA. In those cases, it's uncertain whether the person had any health condition, was suspected of having one that is criminalized, or otherwise known but not included in the PCA. Due to these limitations, the actual use of the HIV-related BBF penalty enhancement may be more prevalent than the findings presented in this report show. (See Appendix 3 for a detailed description of each data source, the sample, and data analysis methods used.) The analysis presented here should, therefore, be viewed as the minimum number of people who have come into contact with the criminal legal system in Indiana because of an allegation of an HIV-related fluid exposure crime.

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RESEARCH THAT MATTERS



APPENDIX

A1. SUMMARY OF HIV CRIMINALIZATION LAWS IN INDIANA AND YEAR ENACTED

YEAR	CODE SECTION	WHAT IS CRIMINALIZED AND PENALTY
TRANSFERRING CONTAMINATED BODY FLUIDS		
1988	§ 35-45-21-1 Pre-2014 § 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 Felony 5. If transmission occurs to another person, it is a Felony 3. Penalties do not apply for research or autologous blood donor.
DONATION, SALE, OR TRANSFER OF HIV INFECTED SEMEN; PENALTIES		
1989	§ 16-41-14-17 Pre-2014 § 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 Felony 5. If transmission occurs to another person, it is a Felony 4. Does not apply for research.
INDIVIDUAL WITH A COMMUNICABLE DISEASE'S DUTY TO INFORM PERSONS AT RISK AND VIOLATIONS*		
1989	§ 16-41-7-1 § 16-41-7-5 Pre-2014 § 16-1-10.5-8.5 § 16-1-35-1	A person who knows of their HIV positive status has a duty to warn 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 in § 35-45-21-3.
FAILURE OF INDIVIDUALS WITH SERIOUS COMMUNICABLE DISEASES TO INFORM PERSONS AT RISK*		
1998	§ 35-45-21-3 Pre-2014 § 35-42-1-9	A person who recklessly violates or fails to comply with § 16-41-7-1 commits a class <i>B misdemeanor</i> . If knowingly or intentionally, then the charge enhances to a Felony 6. Each day a violation continues is a separate offense.
BATTERY BY BODILY FLUID OR WASTE ON ANOTHER PERSON WITH HIV PENALTY ENHANCEMENT**		
1995	§ 35-42-2-1(c2)(f)(h) 2014-2016 § 35-42-2-1(b2)(e)(g) Pre-2014 ⁵⁴ § 35-42-2-6	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, is liable for a Felony 6. If the victim is a public safety official, it enhances to a Felony 5.
MALICIOUS MISCHIEF BY BODY FLUID OR WASTE WITH HIV PENALTY ENHANCEMENT**		
2002	§ 35-45-16-2(c-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 Felony 6. If transmission occurs, it enhances to a Felony 4.

⁵⁴ The original battery by bodily fluid/waste code has been amended several times since enactment. A detailed description of those changes can be found in Appendix 2.

A2. HISTORY OF CHANGES TO INDIANA'S HIV ENHANCEMENT LAWS

Battery by Bodily Fluid/Waste

Indiana's Battery by Bodily Fluid/Waste law has been amended several times since its enactment in 1995. Some changes resulted in a more expansive application of the law, whereas other changes lessened the types of situations in which the law applied.

Box A2.1 shows the original statute in which the crime only applied if the victim was a "law enforcement" or "correctional officer." The statute made intentional exposure to bodily fluids or wastes "in a rude, insolent, or angry manner" a crime for anyone, but singled out people with certain health conditions for harsher punishment. The penalty for the base crime that applied to anyone was a Class D felony and enhanced to a Class C felony if a person was living with hepatitis B, HIV, or tuberculosis. The statute originally included sections that further enhanced the penalty to a Class B felony if the offense resulted in the transmission of hepatitis B or tuberculosis to another person, and a Class A felony if it resulted in the transmission of HIV to another person.

Box A2.1. Battery by Bodily Waste IC § 35-42-2-6 (1995 – original language)

Sec. 6. (a) As used in this section, "correctional officers" includes a person employed by: (1) the department of correction; (2) a law enforcement agency; or (3) a county jail.

(b) As used in this section, "human immunodeficiency virus (HIV)" includes acquired immune deficiency syndrome (AIDS) and AIDS related complex.

(c) A person who knowingly or intentionally in a rude, insolent, or angry manner places blood or another body fluid or waste on a law enforcement officer or a corrections officer identified as such and while engaged in the performance of official duties or coerces another person to place blood or another body fluid or waste on the law enforcement officer or corrections officer commits battery by bodily waste, a Class D felony.

However, the offense is:

(1) a Class C felony if the person knew or recklessly failed to know that the person was infected with:

- (A) hepatitis B;
- (B) HIV; or
- (C) tuberculosis;

(2) a Class B felony if:

- (A) the person knew or recklessly failed to know that the person was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or
- (B) the person knew or recklessly failed to know that the person was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class A felony if:

- (A) the person knew or recklessly failed to know that the person was infected with HIV; and
- (B) the offense results in the transmission of HIV to the other person.

The first substantive change occurred in 2002 and created a section with an identical crime for civilians, with disease enhancement sections that mirrored those for “law enforcement and correctional officers.”⁵⁵ The penalty for the base crime of the civilian section was less than that for the officers—a Class A misdemeanor (versus a Class D felony for officers) and enhanced to a Class D felony (versus a Class C for officers) if a person was living with hepatitis B, HIV, or tuberculosis. Similarly, a civilian section was added that further enhanced the penalty if transmission occurred (a Class C felony for hepatitis B or tuberculosis transmission and a Class B felony for HIV transmission).

Box A2.2 summarizes all the changes since the battery by bodily fluid law enactment. From 2004 to 2009, the list of positions that would sustain the enhanced penalty for “correctional officer” victims expanded to encompass individuals employed by the courts, the probation department, and the department of child services. The same enhancements were added for “firefighters” and “first responders.” In 2013, all the previous positions listed were added to a new definition of “public safety official.” The list has since expanded to 13 distinct positions employed in law enforcement, corrections, courts, and medical services.

Box A2.2. History of relevant changes to the Battery by Bodily Fluid/Waste law

YEAR & BILL	PUBLIC LAW (PL)	CODE CHANGES
1995 - SB506	Added by PL298 sec 1	<ul style="list-style-type: none"> • Indiana Code § 35-42-2-6(c)1-3 Original statute enacted.
2002 - SB293	Amended by PL88 sec 1	<ul style="list-style-type: none"> • Relevant sections now Indiana Code § 35-42-2-6(c)1-3 (d) 1-3. • Changed “person” to “blood, bodily fluid, or waste.” • Added mirror disease enhancement sections for civilians.
2004 - HB1437	Amended by PL85 sec 53	<ul style="list-style-type: none"> • Added circuit, superior, county, probate, city, or town court employees to the definition of “corrections officer.”
2007 - SB45	Amended by PL178 sec 3	<ul style="list-style-type: none"> • Relevant sections now Indiana Code § 35-42-2-6(e)1-3 (f) 1-3. • Added hepatitis C to the list of diseases. • Added probation department employees to “corrections officer” definition. • Added “firefighter” and “first responder” definitions to the list of victims. • These changes led to a change in sub-section order.
2009 - SB365	Amended by PL131 sec 74	<ul style="list-style-type: none"> • Added department. of child services employees to “corrections officer” definition.
2012 - HB1186	Amended by PL77 sec 62	<ul style="list-style-type: none"> • Changed “first responder” to “emergency medical responder.”

⁵⁵ Notably, this amendment was spurred by the same middle school prank that led to the enactment of the Malicious Mischief by Body Fluid/Waste crime. See: Gelarden, Joseph. (2002, January 5). School prank leads to proposed bill. *The Indianapolis Star*. Retrieved from newspapers.com April 1, 2024. <https://www.newspapers.com/article/the-indianapolis-star-school-prank-leads/134972115/>

YEAR & BILL	PUBLIC LAW (PL)	CODE CHANGES
2013 - HB1006	Repealed by PL158 sec 429 Added by PL158 Sec 420	<ul style="list-style-type: none"> • Relevant sections now IC § 35-42-2-1(b2)(e)(g). • During major revision of the Indiana criminal code, the BBF section was repealed and then a simplified version was amended into the main battery statute, and penalties converted to the felony system used today. • Removed penalty enhancement for “if transmission occurs.” • Removed “hepatitis B and C” and replaced with “hepatitis” more broadly (to include all viral hepatitis types). • Added a new “public safety official” definition, which encompassed all positions, with slight revisions, previously listed under “corrections officer,” “firefighter,” and “emergency medical responder.”
2014 - SB3	Amended by PL147 sec 2	<ul style="list-style-type: none"> • Added “judicial officer” to the definition of “public safety official.”
2016 - HB1069	Amended by PL65 sec 33	<ul style="list-style-type: none"> • Relevant sections now Indiana Code § 35-42-2-1(c2)(f)(h). • Unrelated changes led to a change in order.
2018 - HB1250	Amended by PL80 sec 3	<ul style="list-style-type: none"> • Added “bailiff” and “special deputy” to the definition of “public safety official.”
2023 - HB1021	Amended by PL209 sec 2	<ul style="list-style-type: none"> • Added exception in the public safety official penalty enhancement section for people involuntarily detained or committed under IC § 12-26.

In 2007, Hepatitis C was added to the list of criminalized diseases. In 2013 there was a comprehensive review and revision of the Indiana criminal code. During this process, the battery by bodily fluid crime was repealed and a simplified version integrated into the main battery statute. The criminal code reform also resulted in the removal of the penalty enhancements for “if transmission” occurred.

The most recent amendment occurred in 2023. It specifies that the enhancement for battery committed on a public safety official does not apply if the person who commits the offense is detained or committed under the involuntary commitment statute. That exception was added throughout the battery code for sections involving public safety officials. Box A2.3 shows the current text of the battery by bodily fluid law as of 2024.

Box A2.3. Battery by Bodily Fluid/Waste HIV Sections IC 35-42-2-1 (2024)

Sec. 1. (a) As used in this section, "public safety official" means:

- (1) a law enforcement officer, including an alcoholic beverage enforcement officer;
- (2) an employee of a penal facility or a juvenile detention facility (as defined in [IC 31-9-2-71](#));
- (3) an employee of the department of correction;
- (4) a probation officer;
- (5) a parole officer;
- (6) a community corrections worker;
- (7) a home detention officer;
- (8) a department of child services employee;
- (9) a firefighter;
- (10) an emergency medical services provider;
- (11) a judicial officer;
- (12) a bailiff of any court; or
- (13) a special deputy (as described in [IC 36-8-10-10.6](#)).

...

(c) Except as provided in subsections (d) through (k), a person who knowingly or intentionally:

- (1) touches another person in a rude, insolent, or angry manner; or
- (2) in a rude, insolent, or angry manner places any bodily fluid or waste on another person; commits battery, a Class B misdemeanor.

...

(f) The offense described in subsection (c)(2) is a Level 6 felony if the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with hepatitis, tuberculosis, or human immunodeficiency virus.

...

(h) The offense described in subsection (c)(2) is a Level 5 felony if:

- (1) the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with hepatitis, tuberculosis, or human immunodeficiency virus; and
- (2) the person placed the bodily fluid or waste on a public safety official, unless the offense is committed by a person detained or committed under [IC 12-26](#).

Malicious Mischief

Indiana's Malicious Mischief by Body Fluid/Waste Law has only been amended once since enacted in 2002. Box A2.4 shows the current code text as of 2024. The original code only applied to hepatitis B, HIV and tuberculosis, and was restricted to acts involving "blood, semen, urine, or fecal waste." The 2013 comprehensive review and revision of the Indiana criminal code amended the code to include all types of viral hepatitis, and expanded the types of body fluids by adding a new definition of "body fluid" to also include saliva, sputum, vaginal secretions, human milk, sweat, tears, and any other liquid produced (or aerosol from such) by the body.

Box A2.4. Malicious Mischief by Body Fluid/Waste HIV Sections IC § 35-45-16-2 (2024)

Sec. 2. (a) As used in this section, "body fluid" means:

- (1) blood;
- (2) saliva;
- (3) sputum;
- (4) semen;
- (5) vaginal secretions;
- (6) human milk;
- (7) urine;
- (8) sweat;
- (9) tears;
- (10) any other liquid produced by the body; or
- (11) any aerosol generated form of liquids listed in this subsection.

(b) As used in this section, "infectious hepatitis" means:

- (1) hepatitis A;
- (2) hepatitis B;
- (3) hepatitis C;
- (4) hepatitis D;
- (5) hepatitis E; or
- (6) hepatitis G.

(c) 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 the body fluid or fecal waste commits malicious mischief, a Class B misdemeanor.

(d) An offense described in subsection (c) is a:

- (1) Level 6 felony if the person knew or recklessly failed to know that the body fluid or fecal waste was infected with: (A) infectious hepatitis; (B) HIV; or (C) tuberculosis;
- (2) Level 5 felony if: (A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with infectious hepatitis and the offense results in the transmission of infectious hepatitis to the other person; or (B) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and
- (3) Level 4 felony if: (A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with HIV; and (B) the offense results in the transmission of HIV to the other person.

...

...

(e) 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 ingest the body fluid or fecal waste commits malicious mischief with food, a Class A misdemeanor.

(f) An offense described in subsection (e) is:

(1) a Level 6 felony if the person knew or recklessly failed to know that the body fluid or fecal waste was infected with: (A) infectious hepatitis; (B) HIV; or (C) tuberculosis;

(2) a Level 5 felony if:

(A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with infectious hepatitis and the offense results in the transmission of infectious hepatitis to the other person;

or (B) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Level 4 felony if: (A) the person knew or recklessly failed to know that the body fluid or fecal waste was infected with HIV; and (B) the offense results in the transmission of HIV to the other person.

A3. DATA AND METHODS

The authors requested administrative court records from Indiana state and local agencies and their data vendors relating to all of Indiana’s six HIV criminalization laws across several requests between January 2022 and March 2024.⁵⁶ State-level data 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;⁵⁷ (2) Doxpop.com (via requests to Indiana Legal Services), an online tool that collates Indiana court documents and dockets online;⁵⁸ and (3) MyCase.IN.gov, the public-facing online courts portal in Indiana for non-confidential case tracking.⁵⁹

Data relating to the alleged crimes themselves came from individual Probable Cause Affidavits (PCAs), which were obtained from county court-clerk requests in the jurisdiction where a criminal case was filed.⁶⁰ 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.⁶¹ These data included the chronological case histories from incident through disposition, socio-demographic data of age, race, and sex; public defender appointment, types and counts of charges, and county where the incident took place. 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 which is a fully integrated, web-based computer system used to manage court cases that was designed specifically for statewide deployment.⁶² Indiana’s 92 courts began using the system in 2007, but the timeline for implementation varied, and the last court came into Odyssey in 2022.⁶³ Because of this uneven uptake, record availability varies by county, and depends on when the court began using Odyssey, and whether or not the court had an online records system before Odyssey came online.⁶⁴ As a result, court data provide a more complete picture in recent years, with gaps in data further back in time. We requested all records relating to the six HIV-related offenses for as far back as were available in the MyCase system.

After narrowing down the cases to only those court cases in which there was at least one charge

⁵⁶ This study received IRB approval in July 2021 — Indiana University IRB#12095.

⁵⁷ Indiana Judicial Services Bulk Data Applications <https://www.in.gov/courts/iocs/statistics/bulk-data/>

⁵⁸ DoxPop: <https://www.doxpop.com/prod/>; Indiana Legal Services <https://www.indianalegalservices.org/>

⁵⁹ Indiana My Case Court record search data base. <https://public.courts.in.gov/mycase/#/vw/Search>

⁶⁰ 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.

⁶¹ 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.

⁶² Odyssey Case Management System <https://www.in.gov/courts/admin/tech/odyssey/>

⁶³ 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/>

⁶⁴ Ind.Gov FAQ: What information is available on the 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>

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 charges associated with multiple diseases other than HIV, which 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.

Our final data set for all HIV-related criminal codes included approximately 300 cases involving at least one of Indiana’s six HIV criminalization laws between the late 1990s and 2023. Some of these cases included people charged for other conditions criminalized under some of Indiana’s HIV criminal laws (e.g., viral hepatitis). We also identified about half a dozen duplicate cases—cases that appeared to have been filed twice for the same alleged offense.

In total, we identified about 200 cases with battery by bodily fluid or malicious mischief charges related to a specified and identifiable disease between 2010 and 2023 for which a PCA was available.⁶⁵ We excluded four such cases, three under the battery statute and one under the malicious mischief statute that also were charged under Indiana’s HIV disclosure law.⁶⁶ Among those cases, we obtained 193 unique PCAs, which allowed us to determine the disease involved. We excluded 37 cases that did not indicate any disease, an additional 104 cases that only involved viral hepatitis, and one case that involved only tuberculosis. The final sample analyzed in this report is restricted to 51 cases, involving 42 unique people, where PCAs confirmed the involvement of an individual’s HIV status. This included

- 41 cases involving 38 people with charges under the HIV disease enhancement portion of the battery by bodily fluid/waste Code (two people also had viral hepatitis).
- 10 cases involving four people with charges under the HIV disease enhancement portion of the malicious mischief by body fluid/waste Code (one person also had viral hepatitis);
- These cases occurred between 2012 and 2023.

⁶⁵ Based on the bulk data requests, it appears that the the late 2000s is when the state began to consistently digitize court records. 2010 is the earliest date for which an identifiable HIV-related BBF or MM cases was identifiable based on court documents and PCAs. However, media reports indicate prosecutions before the first date analyzed in this report. 2010 is the first year for which we located (1) a digitized court case with a disease-related BBF or MM charge, (2) obtained a corresponding PCA, and (3) affirmatively identified HIV as the/an alleged exposure in the PCA.

⁶⁶ All of these cases involved alleged sexual contact, and also included this charge. They are analyzed along with other non-disclosure cases in a separate analysis. In contrast, malicious mischief cases analyzed in this report that alleged sexual contact did not have an additional non-disclosure charge so they were analyzed here.

A4. HIV ENHANCEMENT PENALTY EQUIVALENTS IN THE CRIMINAL CODE

We also compared Indiana’s HIV-related Battery by Bodily Fluid/Waste HIV enhancement crime to other person crimes involving potential or actual physical harm to determine if the penalties are proportional across Indiana’s Criminal code.⁶⁷ Our study found that the acts committed under Indiana’s HIV-related battery by bodily fluid enhancement posed no more harm to the victims than if they were committed by a person who does not have HIV. Yet, Box A4.1 shows that the HIV-related battery by bodily fluid enhancement sentences are equivalent to crimes with real potential or actual physical harm. For example, battery by bodily fluid with HIV, when the victim is a civilian, is a level 6 felony with up to 2.5 years in prison. Whereas,

- Battery with no “bodily injury” without HIV = 6 months in jail (Misdemeanor B)
- Battery with “bodily injury” without HIV = up to 1 year in jail (Misdemeanor A)
- Battery with “moderate bodily injury” without HIV = up to 2.5 years in prison (F6)

In summary, a battery by fluid/waste act with HIV that poses no harm to a civilian is equivalent to an actual battery case with “moderate bodily injury” and/or equivalent to strangulation. In the case of a Public Safety Official (PSO), the HIV enhancement penalty results in “up to 6 years” in prison which is equivalent to crimes in which the death of a person results (e.g., reckless homicide).

PLWH are singled out for harsher punishment leading to extended sentences and prolonged involvement with the criminal justice system — solely because of their HIV health condition and not because the act involved more serious harm. The enhancements for the BBF laws appear to deviate from other person crimes where we see worse penalties for crimes that involve increasing degrees of bodily harm such as occurs in the case of the battery crime when bodily injury occurs.⁶⁸

Box A4.1 Comparison of HIV-related Battery by Bodily Fluid penalties with other offenses

ADVISORY SENTENCE	BBF HIV CRIME	OTHER CRIMES WITH THIS PENALTY
Misdemeanor B 6 months in jail	N/A	Battery Threat of injury, criminal recklessness
Misdemeanor A 0 to 12 months in jail	N/A	Battery and bodily injury occur Domestic Battery
Felony Level 6 .5 to 2.5 years in prison	HIV-related BBF	Battery and moderate bodily injury occur Strangulation
Felony Level 5 1-6 years in prison	HIV-related BBF against a public safety official	Battery and serious bodily injury occur Involuntary manslaughter, reckless homicide

⁶⁷ The Indiana General Assembly passed House Enrolled Act 1006 in 2013, which restructured the state’s criminal code sentencing scheme. One purpose of the Act was to “maintain proportionality of penalties across the criminal code, with like sentences for like crimes.” The outcomes of the legislation are evaluated every year. See for example: *The 2023 Annual Evaluation of the Criminal Code Reform Report*. <https://www.in.gov/cji/grant-opportunities/files/1006-Report-2023.pdf>

⁶⁸ The same logic holds true for the HIV enhancement in Indiana’s Malicious Mischief Code.