



LAWS IMPACTING INDIVIDUALS LIVING WITH HIV

*Below, we briefly highlight various laws that may apply to programs that serve domestic violence victims who are living with HIV. We mention some laws that may apply to providers who work with clients living with HIV as well as some civil and criminal laws that may be useful for your clients to know about. We do not cover all aspects of the laws mentioned, nor do we discuss any state or local laws that may apply. **Most importantly, please note that this information is not offered as legal advice and should not be used as a substitute for legal counsel.** Please consult with a lawyer who is familiar with federal laws regarding the specific obligations of your program. Your clients should consult with a lawyer familiar with their state's laws regarding their own ability to sue or be sued based on their HIV status.*

There are several national laws that concern those diagnosed with HIV. These laws address everything from discrimination to the negligent spreading of the virus. We've provided summaries of the major legislation that could affect individuals diagnosed with HIV. Be aware that there are many state-specific laws as well; these laws vary and can be found at hivlawandpolicy.org.

I. BRIEF SUMMARY OF THE AMERICANS WITH DISABILITIES ACT, AND SECTION 504 OF THE REHABILITATION ACT OF 1973 AS THEY APPLY TO INDIVIDUALS LIVING WITH HIV

The Americans with Disabilities Act (ADA) is a federal law that protects people with disabilities, along with those perceived as having a disability, from discrimination due to their actual or perceived disability. In addition, the ADA protects family and friends from discrimination on the basis of their association with disabled individuals.

There are five sections (called "Titles") of the ADA, and these titles apply to different entities. Title 1 applies to private employers with 15 or more employees, state and local governments, labor unions, etc., and prohibits employment discrimination. Title 2 concerns discrimination by state and local government entities. Title 3 covers non-government entities (both non-profit and for-profit) that provide goods and services to the public ("public accommodations"). Public accommodations include



establishments that provide social services, such as domestic violence shelters, and homeless shelters. (The other Titles, 4 and 5, are not covered in this summary.)

Title 2 and Title 3 provide, in part, that state and local government entities, *regardless of whether they receive federal funding*, private businesses, and non-profit service providers that are public accommodations may not discriminate on the basis of Human Immunodeficiency Virus (HIV) status. An entity cannot prevent any “qualified individual with a disability,” (HIV-positive status is considered to be a disability), from partaking in or receiving benefits from the entity’s services, programs, or activities. Moreover, an entity usually cannot require that people living with HIV participate in or benefit from a separate or different program, service, or activity than others. An entity usually cannot use HIV-negative status as an eligibility requirement for any of its programs, services, or activities as well, unless the entity can demonstrate a specific need to do so.

(Note: The ADA defines a “qualified individual with a disability” as an “individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.”)

The ADA also protects people, such as friends and family, who may face discrimination due to their association with a person living with HIV.

In addition, Section 504 of the Rehabilitation Act of 1973 forbids discrimination against people living with HIV by health care and human service agencies *that receive federal funding, which could include shelters and domestic violence programs*.

Denial or delay of access to medical treatment and/or social services on the basis of HIV status may also constitute discrimination under Section 504 and/or the ADA.

SOURCES:

The above information was adapted by NNEDV from the Office of Civil Rights of the U.S. Department of Health and Human Services and other sources listed below:

- The U.S. Department of Health and Human Services
<http://archive.hhs.gov/ocr/504ada.pdf>
<http://archive.hhs.gov/ocr/aids.html>
- 42 U.S.C.A. §§ 12131, 12132
- The U.S. Department of Justice
<http://www.ada.gov/cguide.htm>
- The National Law Center on Homelessness and Poverty
http://www.ncdsv.org/images/NLCHP_QA-DVSheltersAndCivilRightsStatues_2009.pdf



II. NEGLIGENT TRANSMISSION OF HIV AND CIVIL LAW OPTIONS

In some states, the negligent transmission of HIV and/or other sexually-transmitted infection could be grounds for a civil lawsuit. In other words, if someone is found liable in a civil court for negligently transmitting HIV to another person, courts may require that individual to pay money damages to the person who contracted HIV.

To avoid civil liability in some states, an individual who knows, or should know, that s/he is infected with HIV must warn sexual partners ahead of time of his/her status or potential positive status if s/he has good reason to believe s/he might be infected. If an individual living with HIV fails to warn his or her partner before engaging in sexual activity, then, in certain instances, s/he may be held liable not only to his/her sexual partner but s/he may even be held liable for the negligent transmission of HIV to anyone that his/her partner later infects.

Please note that the duty to warn may also extend to those with whom an HIV-positive individual foresees sharing needles.

To find out more about the civil HIV transmission laws in your state, it's best to consult with a lawyer who has experience in this area of the law. The local State Bar Association often has a legal referral service that can refer the person living with HIV to lawyers in his/her state who specialize in civil lawsuits.

SOURCES:

The below citations are two examples of cases in which the courts addressed the issue of civil liability for transmission of HIV, however they are not indicative of what the court in your state may decide. Courts may rule differently in different states and based on the specific circumstances of the case before the court.

- Mussivand v. David, 544 N.E.2d 265 (OH 1989)
- John B. v. Superior Ct., 137 P.3d. 153 (CA 2006)

III. TRANSMISSION OF HIV AND THE CRIMINAL LAWS THAT MAY APPLY

In the majority of states, individuals who transmit HIV to another person may be prosecuted criminally. An individual who knows that s/he is living with HIV and intends to infect another as a result of engaging in certain acts, such as failing to use a condom during sexual activity, may be charged with criminal transmission of HIV in certain states. Even if the person living with HIV does not actually infect his/her partner, s/he may still be charged with attempting to commit the crime. Sexually active individuals who clearly communicate their HIV-positive status to an anticipated



partner but the partner willingly participates in sexual relations anyway may avoid risk of prosecution in *some* states.

To find out more about HIV criminalization laws in your state, please consult with a lawyer in your state who is familiar with criminal law issues. In addition, The Center for HIV Law and Policy offers a quick snapshot of the criminal laws in each state related to HIV transmission on their website here: <http://www.hivlawandpolicy.org/> (Please note that NNEDV is not affiliated with this organization and offers the link for your information only.)

SOURCES:

The above information was adapted by NNEDV based on information from the following sources:

- The Center for HIV Law and Policy - <http://www.hivlawandpolicy.org/>
- A review of various states' HIV criminalization laws, including, for example:
 - Arkansas Code § 5-14-123
 - 720 ILCS 5/12-5.01
 - Ga. Code § 16-5-60

IV. PARTNER NOTIFICATION LAWS

Many states have partner notification programs, which lay out specific rules and procedures for notifying people who may have been exposed to HIV. Many states allow for the partner(s) of a person living with HIV to be notified that s/he may have been exposed to the disease without revealing the identity of the HIV-infected person. In some states, however, physicians and/or health officials may be allowed to notify sexual and needle-sharing partners directly about an individual's HIV status while revealing the person's identity. If your client is/was in an abusive relationship and is thinking of getting tested for HIV, you may want to help him/her understand the partner notification laws in the state where s/he is planning to get tested for HIV in order to safety plan around any possible notification to the abusive partner.

SOURCES:

The above information was adapted by NNEDV based on information from the following sources:

- A review of various states' HIV criminalization laws, including, for example:
 - Texas Health & Safety Code § 81.051
 - Conn. Stat. § 19a-584
 - MD Code § 18-337