

2024 Regular Session

HOUSE BILL NO. 436

BY REPRESENTATIVE FREEMAN

CRIME: Provides relative to intentional exposure to HIV

1 AN ACT

2 To amend and reenact R.S. 14:43.5, relative to sex offenses; to provide relative to the
3 intentional exposure of HIV; to provide for the renaming of the offense to the
4 intentional transmission of HIV; to provide for definitions; to provide for elements;
5 to provide for exceptions; to provide for penalties; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 14:43.5 is hereby amended and reenacted to read as follows:

8 §43.5. Intentional ~~exposure to~~ transmission of HIV

9 A. For the purposes of this Section, the following definitions shall apply:

10 (1) "Contact that poses a substantial risk of transmission" means an activity
11 that results in the exchange of blood, semen, or vaginal fluid and has a reasonable
12 probability of disease transmission as proven by a competent medical or
13 epidemiological evidence. Conduct posing a low or negligible risk of transmission
14 as proven by competent medical or epidemiological evidence does not meet the
15 definition of conduct posing a substantial risk of transmission.

16 (2) "HIV" means human immunodeficiency virus.

17 (3) "Intent" or "intentionally" shall only mean "specific criminal intent" as
18 defined in R.S. 14:10(1). A person acts with the specific intent to transmit when the
19 circumstances indicate that the person actively desired HIV transmission to follow
20 the act.

1 (4) "Means to prevent transmission" is any method, device, behavior, or
2 activity scientifically demonstrated to measurably limit, reduce, or eliminate the risk
3 of transmitting HIV including but not limited to the use of a condom, barrier
4 protection, or prophylactic device or the use of pre-exposure prophylaxis.

5 (5) "Transmit" is the act of transferring HIV to another person, resulting in
6 the actual infection of another person.

7 B. No person shall intentionally expose another to the human
8 immunodeficiency virus (HIV) transmit HIV to another person through sexual
9 contact without the knowing and lawful consent of the victim, if at the time of the
10 exposure the infected person knew he was HIV positive that poses a substantial risk
11 of transmission.

12 ~~B. No person shall intentionally expose another to HIV through any means~~
13 ~~or contact without the knowing and lawful consent of the victim, if at the time of the~~
14 ~~exposure the infected person knew he was HIV positive.~~

15 ~~C. No person shall intentionally expose a first responder to HIV through any~~
16 ~~means or contact without the knowing and lawful consent of the first responder when~~
17 ~~the offender knows at the time of the offense that he is HIV positive, and has~~
18 ~~reasonable grounds to believe the victim is a first responder acting in the~~
19 ~~performance of his duty.~~

20 ~~D. For purposes of this Section, "first responder" includes a commissioned~~
21 ~~police officer, sheriff, deputy sheriff, marshal, deputy marshal, correctional officer,~~
22 ~~constable, wildlife enforcement agent, and probation and parole officer, any licensed~~
23 ~~emergency medical services practitioner as defined by R.S. 40:1131, and any~~
24 ~~firefighter regularly employed by a fire department of any municipality, parish, or~~
25 ~~fire protection district of the state or any volunteer firefighter of the state.~~

26 C. The provisions of this Section shall not apply if any of the following have
27 occurred:

1 (1) The person asserting a violation of this Section knew the person being
2 accused of violating this Section was living with HIV and knew the action could
3 result in transmission.

4 (2) The transmission occurred after advice from a licensed physician that the
5 person being accused of violating this Section was noninfectious.

6 (3) The person asserting a violation of this Section or the person being
7 accused of violating this Section employed means to prevent transmission.

8 E.~~(1)~~ D. Whoever commits the crime of intentional ~~exposure to~~ transmission
9 of HIV shall be fined not more than ~~five~~ one thousand dollars, imprisoned with or
10 without hard labor for not more than ~~ten years~~ one year, or both.

11 ~~(2) Whoever commits the crime of intentional exposure to HHV against a first~~
12 ~~responder shall be fined not more than six thousand dollars, imprisoned with or~~
13 ~~without hard labor for not more than eleven years, or both.~~

14 F.~~(1)~~ ~~It is an affirmative defense, if proven by a preponderance of the~~
15 ~~evidence, that the person exposed to HHV knew the infected person was infected with~~
16 ~~HHV, knew the action could result in infection with HHV, and gave consent to the~~
17 ~~action with that knowledge.~~

18 ~~(2) It is also an affirmative defense that the transfer of bodily fluid, tissue,~~
19 ~~or organs occurred after advice from a licensed physician that the accused was~~
20 ~~noninfectious, and the accused disclosed his HHV-positive status to the victim.~~

21 ~~(3) It is also an affirmative defense that the HHV-positive person disclosed~~
22 ~~his HHV-positive status to the victim, and took practical means to prevent~~
23 ~~transmission as advised by a physician or other healthcare provider or is a healthcare~~
24 ~~provider who was following professionally accepted infection control procedures.~~

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 436 Original

2024 Regular Session

Freeman

Abstract: Changes the crime of intentional exposure to HIV to the intentional transmission of HIV.

Present law provides for the crime of intentional exposure to HIV and provides for penalties.

Proposed law renames this offense to the intentional transmission of HIV.

Proposed law defines the phrases "contact that poses a substantial risk of transmission" and "means to prevent transmission".

Proposed law defines the terms "HIV", "intent" or "intentionally", and "transmit".

Proposed law amends the elements of present law to provide that no person shall intentionally transmit HIV to another person through contact that poses a substantial risk of transmission.

Proposed law removes the definition of "first responder" and removes provisions that provide for the intentional exposure of HIV to another person or to a first responder.

Proposed law shall not apply to the following:

- (1) The person asserting a violation of proposed law knew the person being accused of violating proposed law was living with HIV and knew the action could result in transmission.
- (2) The transmission occurred after advice from a licensed physician that the person being accused of violating proposed law was noninfectious.
- (3) The person asserting a violation of proposed law or the person being accused of violating proposed law employed means to prevent transmission.

Proposed law reduces the penalties for this offense from a fine of not more than \$5,000 dollars to \$1,000 and changes the imprisonment term from not more than 10 years with or without hard labor to not more than one year imprisonment with or without hard labor. Retains present law in regards to the imposition of both penalties.

Present law provides for affirmative defenses.

Proposed law removes the affirmative defenses.

(Amends R.S. 14:43.5)