

Georgia

Analysis¹

People living with HIV (PLHIV) may be prosecuted for specific intent to transmit disease.

Georgia’s reckless conduct statute criminalizes PLHIV for causing harm to or endangering the bodily safety of another.² It is a felony for a PLHIV to engage in a sexual act with the intent to transmit HIV without first disclosing their HIV status, when such an act has a “significant risk of transmission.” “Significant risk of transmission” is based on current scientifically supported levels of risk at the time the act occurs.³ If a PLHIV is found guilty of reckless conduct it is a felony punishable by not more than five years’ imprisonment.⁴

Consenting to engage in sex work with the intent to transmit HIV status is a felony.

Georgia’s reckless conduct statute imposes criminal penalties on PLHIV who offer or consent to perform a sexual act for money with the intent to transmit HIV without disclosing their HIV status, when such an act has a significant risk of transmission.⁵ A violation of this statute results in felony penalties of up to five years’ imprisonment.⁶

Prosecution under this statute now entails proving that persons accused of criminal conduct under the statute consented to perform a sexual act with another person without disclosing their HIV status, had intent to transmit HIV via such an act and that there was a significant risk of transmission of HIV to that sexual partner.⁷ Disclosure of one’s HIV status continues to serve as a possible affirmative defense, as

¹ Effective July 1, 2022, several of Georgia’s HIV criminal exposure laws were amended. Before the repeal, it was a felony, punishable by imprisonment for up to 10 years, for a PLHIV with knowledge of their HIV status to engage in anal, oral, and/or penile-vaginal sex with another person without first disclosing their HIV status. GA. CODE ANN. § 16-5-60 (2015), repealed by 2021 Ga. S.B. 164 (Ga. 2022). Also repealed under the same bill were penalties for PLHIV sharing hypodermic needles or syringes without disclosure of their HIV status, PLHIV donating blood, other bodily fluids or organs without disclosure of their HIV status, and heightened penalties for PLHIV assaulting a peace or correctional officer using bodily fluids with intent to transmit HIV. GA. CODE ANN. § 16-5-60 (2022).

² GA. CODE ANN. § 16-5-60 (2022).

³ GA. CODE ANN. § 16-5-60(c)(1) (2022).

⁴ GA. CODE ANN. § 16-5-60(c)(2) (2022)

⁵ *Id.*

⁶ GA. CODE ANN. § 16-5-60 (2022).

⁷ *Id.*

it has previously, and it continues to be difficult to prove when it involves reliance on conflicting testimony between two parties.⁸

PLHIV have also been prosecuted under aggravated assault charges.

In *Scroggins v. State*, the defendant, while struggling with a police officer, sucked extra saliva into his mouth and then bit the officer.⁹ When the defendant was treated at the hospital he “told a nurse he was HIV positive” and laughed when the officer who was bit asked the defendant about his HIV status.¹⁰ He was convicted of aggravated assault with intent to murder.¹¹ On appeal, the Court of Appeals of Georgia found that the impossibility of transmitting HIV via a bite and/or saliva was not a defense as long as Scroggins believed HIV could be transmitted in such a manner.¹² The court ruled that a wanton and reckless state of mind could be the equivalent of a specific intent to kill for the purposes of the charges, and that Scroggins’ biting the officer while knowing that his HIV status was sufficient evidence to establish a wanton and reckless disregard for whether HIV was transmitted.¹³

A person commits aggravated assault when there is intent to murder, rape, or rob someone using a deadly weapon that does or is likely to result in serious bodily injury.¹⁴ Georgia’s application of its aggravated assault statute continues to prosecute PLHIV for acts that, at best, have only a remote possibility of transmitting HIV. For example, the CDC maintains there exists only a “negligible” possibility that HIV could be transmitted through a bite,¹⁵ and it unequivocally states that “HIV isn’t spread through saliva.”¹⁶

Other prosecutions under Georgia’s HIV reckless conduct statute include:

- In November 2013, a 52-year-old man living with HIV was charged with reckless conduct after allegedly not disclosing his HIV status to a sexual partner.¹⁷

⁸ Prior to the amendment, disclosure was the *only* defense to prosecution. Even in cases where there existed evidence outside of the testimony of the defendant and the defendant’s sexual partner, such as a 2008 case in which two witnesses testified that defendant’s sexual partner was aware of her HIV status and the defendant testified that her partner knew her HIV status because it had been published on the front page of a local newspaper, defendants were often found guilty based on that evidence. *Ginn v. State*, 667 S.E.2d 712, 713-714 (Ga. Ct. App. 2008). In a January 2009 case, a 38-year-old man living with HIV was sentenced to two years’ imprisonment and eight years’ probation after pleading guilty to reckless conduct by an HIV-infected person for having sex with a woman without disclosing his status. The first day they met and had sex, the man and his partner—who later tested negative for HIV—went to the defendant’s home at a housing center for PLHIV; the fact that the defendant was living at a home solely for PLHIV was not adequate to constitute disclosure for the purpose of the statute. It is unclear exactly how these applications will change under the new statute and what will constitute evidence of intent.

⁹ 401 S.E.2d 13, 15 (Ga. Ct. App. 1990), overruled on other grounds in *Dunagan v. State*, 502 S.E.2d 726 (Ga. 1998).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 16-20.

¹³ *Id.* at 19.

¹⁴ GA. CODE ANN. § 16-5-21 (2016).

¹⁵ CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (December 4, 2015) available at <http://www.cdc.gov/hiv/policies/law/risk.html> (last visited July 26, 2016).

¹⁶ CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?*, (July 12, 2016) available at <http://www.cdc.gov/hiv/basics/transmission.html> (last visited July 27, 2016).

¹⁷ Evan Bleier, *HIV-positive Georgia man arrested for having unprotected sex*, UPI.COM, Nov. 15, 2013, available at http://www.upi.com/Odd_News/Blog/2013/11/15/HIV-positive-Georgia-man-arrested-for-having-unprotected-

- In October 2013, a 23-year-old man living with HIV was charged with statutory rape and reckless conduct after allegedly infecting a teenage girl with the virus.¹⁸
- In March 2013, a 21-year-old man living with HIV was arrested and charged with reckless conduct by an HIV-infected person after allegedly not disclosing his HIV status to sexual partners.¹⁹ At least one partner claimed to have contracted the virus from him.²⁰
- In February 2012, a man living with HIV was sentenced to ten years imprisonment for reckless conduct after allegedly not disclosing his HIV status to multiple sexual partners.²¹
- In August 2011, a man living with HIV was charged with reckless conduct by an HIV-infected person after allegedly not disclosing his HIV status to his girlfriend.²²
- In April 2011, a 32-year-old man living with HIV was charged with contributing to the delinquency of a minor, aggravated child molestation, and reckless conduct after allegedly having sex with his 15-year-old student.²³
- In August 2009, a 42-year-old man living with HIV was charged with aggravated assault after he bit an Atlanta police officer, allegedly shouting “I have full-blown AIDS” and claiming that his bite would infect the officer with HIV.²⁴ He later received 18 months’ imprisonment for aggravated assault.²⁵
- In a July 2008 case, a 43-year-old woman living with HIV was charged with aggravated assault when she spat in the face of another person.²⁶ The woman pled guilty and was sentenced to three years in jail.²⁷

The Georgia Department of Health may quarantine or isolate PLHIV or a venereal disease.

The Department of Health is empowered to make examinations of persons infected or suspected to be infected with HIV and, with the person’s consent, administer a test for HIV.²⁸ If the person refuses to

[sex/3521384541636/](http://www.athensbanner-herald.com/stories/sex/3521384541636/); Joe Johnson, *HIV-infected Athens man arrested for having unprotected sex*, ATHENS BANNER-HERALD, Dec. 5, 2013, available at <http://onlineathens.com/local-news/2013-11-13/hiv-infected-athens-man-arrested-having-unprotected-sex>.

¹⁸ *Police: Savannah man with HIV knowingly infected teenage girl*, SAVANNAH MORNING NEWS, Oct. 21, 2013, available at <http://savannahnow.com/crime/2013-10-21/police-savannah-man-knowingly-infected-teenage-girl-hiv#.Ury1q2RDsqQ>.

¹⁹ *Baldwin Co. Deputies Arrest Man for Spreading HIV Without Telling Sexual Partners*, 41NBC.COM, Mar. 12, 2013, available at <http://www.41nbc.com/2013/03/12/baldwin-co-deputies-arrest-man-for-spreading-hiv-without-telling-sexual-partners/>.

²⁰ *Id.*

²¹ Erica Byfield, *Man knowingly spreads HIV*, WSB-TV2 ATLANTA, Feb. 29, 2012, available at <http://www.wsbtv.com/news/news/local/man-convicted-knowingly-spreading-hiv/nK8Pc/>.

²² *Douglas County man charged with infecting girlfriend with HIV*, THE ATLANTA JOURNAL-CONSTITUTION, Aug. 4, 2011, available at <http://www.ajc.com/news/news/local/douglas-county-man-charged-with-infecting-girlfrie/nQKLL/>.

²³ Edecio Martinez, *Band Teacher With HIV Allegedly Had Sex with 15-Year-Old Student*, CBSNEWS.COM, Apr. 14, 2011, available at <http://www.cbsnews.com/news/band-teacher-with-hiv-allegedly-had-sex-with-15-year-old-student/>.

²⁴ Edwin J. Bernard, *US: Georgia Judge Branded ‘Too Lenient’ After 18 Month Sentence for Cop Biter*, HIV JUSTICE NETWORK, Sept. 6, 2009, available at <http://www.hivjustice.net/news/us-georgia-judge-branded-too-lenient-after-18-month-sentence-for-cop-biter/>.

²⁵ *Id.*

²⁶ Alan Riquelmy, *HIV positive woman gets 3 years for spitting*, LEDGER-ENQUIRER, July 22, 2008, available at <http://www.ledger-enquirer.com/news/local/article29009494.html>.

²⁷ *Id.*

²⁸ GA CODE ANN. §31-17A-2 (2016).

consent to the administration of an HIV test, the department may petition the court for an order authorizing the test.²⁹ The subject of such a petition has the right to legal counsel, and in the event the person cannot afford counsel, counsel will be appointed by the court. After consideration of the evidence, the court may order the person to submit to an HIV test and require procedures to protect public health consistent with the least restrictive alternative if the result is positive.³⁰

Separately, the Department of Health may require a person infected or suspected of being infected with a venereal disease³¹ to report to a physician for treatment until cured and may also order isolation of any such person.³²

Important note: While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, it should not be used as a substitute for legal advice.

²⁹ *Id.*

³⁰ GA CODE ANN. § 31-17A-3 (2016).

³¹ Including syphilis, gonorrhea or chancroid. GA CODE ANN. § 31-17-1 (2016).

³² GA CODE ANN. § 31-17-3 (2016).

Code of Georgia

*Note: Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

TITLE 16, CRIMES AND OFFENSES

GA. CODE ANN. § 16-5-60 (2022) **

Reckless conduct causing harm to or endangering the bodily safety of another; conduct by HIV infected persons

(a)

(1) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(2) AS USED IN THIS CODE SECTION, THE TERM 'PERSON LIVING WITH HIV' MEANS A PERSON WHO HAS A CONFIRMED POSITIVE HIV TEST, WHETHER OR NOT THAT PERSON HAS AIDS, OR WHO HAS BEEN CLINICIALLY DIAGNOSED AS HAVING AIDS.

(c) A person LIVING WITH HIV who

(1) Knowingly engages in A sexual ACT WITH THE INTENT TO TRANSMIT HIV AND does not disclose HIS OR HER STATUS AS BEING A PERSON LIVING WITH HIV to the other person prior to that sexual act; WHEN SUCH ACT HAS A SIGNIFICANT RISK OF TRANSMISSION BASED ON CURRENT SCIENTIFICALLY SUPPORTED LEVELS OF RISK OF TRANSMISSION; PROVIDED, HOWEVER, THAT THIS PARAGRAPH SHALL NOT APPLY TO A PERSON LIVING WITH HIV WHO IS FORCED INTO A SEXUAL ACT AGAINST HIS OR HER WILL; OR

(2) Offers or consents to perform with another person A sexual ACT for money WITH THE INTENT TO TRANSMIT HIV without disclosing HIS OR HER STATUS AS BEING A PERSON LIVING WITH HIV to that other person prior to offering or consenting to perform THE SEXUAL act WHEN SUCH ACT HAS A SIGNIFICANT RISK OF TRANSMISSION BASED ON CURRENT SCIENTIFICALLY SUPPORTED LEVELS OF RISK OF TRANSMISSION

is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than FIVE years.

TITLE 17, CRIMINAL PROCEDURE

GA. CODE ANN. § 17-10-15 (2016)

AIDS transmitting crimes; requiring defendant to submit to HIV test; report of results

(a) Any term used in this Coder section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1

(b) A victim or the parent or legal guardian of a minor or incompetent victim of a sexual offense as defined in Code Section 31-22-9.1 or other crime which involves significant exposure as defined by

subsection (g) of this Code section may request that the agency responsible for prosecuting the alleged offense request that the person arrested for such offense submit to a test for the human immunodeficiency virus and consent to the release of the test results to the victim. If the person so arrested declines to submit to such a test, the judge of the superior court in which the criminal charge is pending, upon a showing of probable cause that the person arrested for the offense committed the alleged crime and that significant exposure occurred, may order the test to be performed in compliance with the rules adopted by the Department of Public Health. The cost of the test shall be borne by the victim or by the arrested person, in the discretion of the court.

(c) Upon a verdict or plea of guilty or nolo contendere to any AIDS transmitting crime, the court in which that verdict is returned or plea entered shall require the defendant in such case to submit to an HIV test within 45 days following the date of such verdict or plea. The clerk of the court in such case shall mail, within three days following the date of that verdict or plea, a copy of that verdict or plea to the Department of Public Health.

(f) If a person is required by this Code section to submit to an HIV test and is thereby determined to be infected with HIV, that determination and the name of the person shall be reported to:

(2) The court which ordered the HIV test, which court shall make that report a part of that person's criminal record. That report shall be sealed by the court; and

(3) The officer in charge of any penal institution or other facility in which the person has been confined by order or sentence of the court for purposes of enabling that officer to confine the person separately from those not infected with HIV.

(g) For the purposes of subsection (b) of this Code section, "significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or bodily fluids of the person arrested for such offense, other than tears, saliva, or perspiration of a magnitude that the Centers for Disease Control and Prevention have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

TITLE 15, COURTS

GA. CODE ANN. § 15-11-471 (2022)

Definitions

As used in this article, the term:

(1) "AIDS transmitting crime" shall have the same meaning as set forth in Code Section 31-22-9.1.

(4) "Determined to be infected with HIV" means having a confirmed positive human immunodeficiency virus (HIV) test or having been clinically diagnosed as having AIDS

(7) "HIV test" means any antibody, antigen, viral particle, viral culture, or other test to indicate the presence of HIV in the human body.

GA. CODE ANN. § 15-11-603 (2016)

Disposition of child adjudged to have committed delinquent act constituting AIDS transmitting crime; HIV testing; reports

(a) As part of any order of disposition regarding a child adjudged to have committed a delinquent act constituting an AIDS transmitting crime, the court may in its discretion and after conferring with the director of the health district, order that such child submit to an HIV test within 45 days following the adjudication of delinquency. The court shall mail DJJ a copy of the order within three days following its issuance.

(d) If a child is determined to be infected with HIV, that determination and the name of the child shall be deemed to be AIDS confidential information and shall only be reported to:

(3) Those persons in charge of any facility to which such child has been confined by order of the court. In addition to any other restrictions regarding the confinement of a child, a child determined to be an HIV infected person may be confined separately from any other children in that facility other than those who have been determined to be infected with HIV if:

(A) That child is reasonably believed to be sexually active while confined;

(B) That child is reasonably believed to be sexually predatory either during or prior to detention; or

(C) The commissioner of juvenile justice reasonably determines that other circumstances or conditions exist which indicate that separate confinement would be warranted.

TITLE 31, HEALTH

GA. CODE ANN. § 31-17-1 (2016)

Enumeration of diseases deemed dangerous to public health

Syphilis, gonorrhea, and chancroid, hereinafter referred to as venereal diseases, are declared to be contagious, infectious, communicable, and dangerous to the public health.

GA. CODE ANN. § 31-17-3 (2016)

Examination and treatment by health authorities

The authorized agent or agents of the Department of Public Health and county boards of health are directed and empowered, when in their judgment it is necessary to protect the public health, to make examination of persons infected or suspected of being infected with venereal disease; to require persons infected with venereal disease to report for treatment to a physician licensed to practice medicine under Chapter 34 of Title 43 and to continue treatment until cured, or to submit to treatment provided at public expense; and to isolate persons infected or reasonably suspected of being infected with venereal disease. Law enforcement authorities of the jurisdiction wherein any such person so infected or suspected of being infected is located shall offer such assistance, including restraint and arrest, as shall be necessary to assure examination and treatment in accordance with this chapter.

GA. CODE ANN. § 31-17-8 (2016) **

Penalty

Any person who violates any provision of this chapter or any rule or regulation promulgated under this chapter shall be guilty of a misdemeanor.

GA. CODE ANN. § 31-17A-1 (2016)

HIV deemed dangerous to public health

(a) Any term used in this chapter and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1

(b) HIV and the degenerative diseases associated with it are declared to be contagious, infectious, communicable, and extremely dangerous to the public health.

GA. CODE ANN. § 31-17A-2 (2016)

Examination of infected persons; administration of HIV test

The authorized agent or agents of the Department of Public Health are directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations of persons infected or suspected of being infected with HIV and to administer an HIV test with the consent of the person being tested. In the event the person infected or suspected of being infected with HIV refuses to consent to the administration of an HIV test, the authorized agent or agents of the Department of Public Health are authorized to petition the court for an order authorizing the administration of an HIV test pursuant to the procedure set forth in Code Section 31-17A-3.

GA. CODE ANN. § 31-17A-3 (2016)

Refusal to consent to test; procedure

(a) If a person refuses to consent to an HIV test, as provided in Code Section 31-17A-2, the Department of Public Health may file a civil complaint with the superior court of the county of the residence of the person refusing the test. The complaint shall allege with specificity the basis for the allegations which the department believes support the conclusion that the person is infected with HIV, as well as the scope, nature, and threat to the public health created thereby, and the proposed plan to be adopted to protect the public health in the event the court orders the administration of the HIV test and the person is found to be an HIV infected person. The person against whom the complaint is filed shall be represented by counsel, and, in the event the person against whom the complaint is filed cannot afford counsel, counsel shall be appointed by the court.

(b) The superior court shall hear the complaint on an expedited basis without a jury. All proceedings before the court shall be sealed.

(c) If after consideration of the evidence, the court finds clear and convincing evidence that the person is reasonably likely to be infected with HIV and that there is a compelling need to protect the public health, the court may order the person to submit to an HIV test, shall retain jurisdiction to render such orders as are appropriate to effectuate that order, and, in the event the person so tested is determined to be infected with HIV, to require such procedures to protect the public health consistent with the least restrictive alternative which is available within the limits of state funds specifically appropriated therefor.

GA. CODE ANN. § 31-22-9.1 (2016)

Definition of AIDS and HIV related terms

(a) As used in this Code section, the term:

(3) “AIDS transmitting crime” means any of the following offenses specified in Title 16:

(A) Rape;

(B) Sodomy;

(C) Aggravated sodomy;

(D) Child molestation;

(E) Aggravated child molestation;

(F) Prostitution;

(G) Solicitation of sodomy;

(H) Incest;

(I) Statutory rape; or

(J) Any offense involving a violation of Article 2 of Chapter 13 of Title 16, regarding controlled substances, if that offense involves heroin, cocaine, derivatives of either, or any other controlled substance in Schedule I, II, III, IV, or V and that other substance is commonly intravenously injected, as determined by the regulations of the department.

(11) “HIV infected person” means a person who has been determined to be infected with HIV, whether or not that person has AIDS, or who has been clinically diagnosed as having AIDS.

(14) “Knowledge of being infected with HIV” means actual knowledge of:

(A) A confirmed positive HIV test; or

(B) A clinical diagnosis of AIDS.

TITLE 42, PENAL INSTITUTIONS

GA. CODE ANN. § 42-5-52.1 (2016)

Submission to HIV test; separate housing for HIV infected persons

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for that term in Code Section 31-22-9.1.

(b) Where any person is committed to the custody of the commissioner to serve time in any penal institution of this state on and after July 1, 1988, the department shall require that person to submit to an HIV test within 30 days after the person is so committed unless that person is in such custody because of having committed an AIDS transmitting crime and has already submitted to an HIV test pursuant to Code Section 17-10-15.

(c) No later than December 31, 1991, the department shall require to submit to an HIV test each person who has been committed to the custody of the commissioner to serve time in a penal institution of this state and who remains in such custody, or who would be in such custody but for having been transferred to the custody of the Department of Human Resources (now known as the Department of Behavioral Health and Developmental Disabilities) under Code Section 42-5-52, if that person has not submitted to an HIV test following that person's most recent commitment to the custody of the commissioner and unless that person is in such custody because of having committed an AIDS transmitting crime and has already submitted to an HIV test pursuant to Code Section 17-10-15.

(d) Upon failure of an inmate to cooperate in HIV test procedures under this Code section, the commissioner may apply to the superior court for an order authorizing the use of such measures as are reasonably necessary to require submission to the HIV test. Nothing in this Code section shall be construed to limit the authority of the department to require inmates to submit to an HIV test.

(e) Any person determined by the department to be an HIV infected person, whether or not by the test required by this Code section, should be housed separately at existing institutions from any other persons not infected with HIV if:

- (1) That person is reasonably believed to be sexually active while incarcerated;
- (2) That person is reasonably believed to be sexually predatory either during or prior to incarceration; or
- (3) The commissioner determines that other conditions or circumstances exist indicating that separate confinement would be in the best interest of the department and the inmate population,

but neither the department nor any officials, employees, or agents thereof shall be civilly or criminally liable for failing or refusing to house HIV infected persons separately from any other persons who are not HIV infected persons..