

Kansas

Analysis

People living with HIV (PLHIV) or other communicable diseases may be charged with a felony for having sex with the intent to expose another to disease.

It is a “severity level 7, person felony” for a person who knows they are “infected with a life threatening communicable disease” to have vaginal or anal sex with the intent to expose another person to the disease.¹ “Sexual intercourse” only includes penetration by the penis.² Neither ejaculation nor the emission of bodily fluids is required for prosecution.³ Under the terms of the intentional exposure statute, “sodomy” does not include anal penetration by any object other than the penis.^{4,5} “Life threatening communicable disease” is not defined, but at least one PLHIV has been convicted for HIV exposure under this statute.

In *State v. Richardson (Richardson I)*, a PLHIV appealed his conviction for two counts of exposing another to a life-threatening disease after having sex with two women, even though he had an undetectable viral load.⁶ He argued (1) the intentional exposure law was unconstitutionally vague because it failed to give adequate notice as to what constitutes a “life threatening” disease,⁷ and (2) the State did not show he acted with the required specific intent.⁸ The Supreme Court of Kansas rejected his first argument, reasoning “[a] person of ordinary intelligence would understand what the statute means by the term ‘life threatening’.”⁹ However, the Court reversed the convictions based on the second argument, that the intentional exposure statute required *specific intent* to expose sexual

¹ KAN. STAT. ANN. § 21-5424 (2018). Punishment for a severity level 7, person felony depends on the criminal history of the convicted person. The range of presumptive sentences spans from 22 to 26 months of probation for a person with no prior criminal history, up to 30 to 34 months of imprisonment for a person with two prior convictions under the “exposure law.” *Sentencing Range – Nondrug Offenses*, KAN. SENTENCING COMMISSION available at <http://sentencing.ks.gov/docs/default-source/2015-Forms/2015-nondrug-offenses.pdf?sfvrsn=0>. Severity level 7 felonies also carry a possible fine of up to \$100,000. KAN. STAT. ANN. § 21-6611(a)(3) (2018).

² KAN. STAT. ANN. § 21-5424 (2018).

³ See KAN. STAT. ANN. § 21-5501 (2018) (“Any penetration, however slight, is sufficient to constitute sexual intercourse.”).

⁴ § 21-5424(c)(2) (2018).

⁵ The definition of sodomy in the statute doesn’t appear to include oral sex. However, KAN. STAT. ANN. § 21-5501, which is only applicable to the words and phrases in article 55 of chapter 21, defines sodomy to include oral contact of the female or male genitalia.

⁶ See *State v. Richardson*, 209 P.3d 696, 696-97 (Kan. 2009).

⁷ *Id.* at 702-03.

⁸ *Id.* at 703.

⁹ *Id.*

partners to HIV.¹⁰ Thus, since the State did not show the defendant engaged in the sex acts with the intent to expose the other persons to HIV, there was insufficient evidence to convict.¹¹

However, two subsequent related cases involving the same defendant narrowed the holding in *Richardson I*. In 2009, shortly after the case before the Supreme Court of Kansas, the Court of Appeals of Kansas affirmed the conviction of the same defendant under the intentional exposure statute (*Richardson II*).¹² Addressing similar arguments and facts to those raised in *Richardson I*, the Court in *Richardson II* nevertheless affirmed the conviction because the fact that the defendant knew his HIV status while his sexual partners did not, that he did not use a condom, and that he “falsely represented...that he was free from sexually transmitted diseases,” were sufficient to establish that he acted with the specific intent to expose his sexual partners to HIV.¹³ Notably, the court chose to focus on the lack of condom usage, but not on the fact the defendant had an undetectable viral load.¹⁴ Courts may thus define “specific intent” broadly and find the element is satisfied by limited evidence, even where there is evidence to the contrary.

In yet another related case, the Court of Appeals of Kansas affirmed the defendant’s conviction under the intentional exposure statute in 2012 (*Richardson III*).¹⁵ The defendant’s appeal challenged the trial court’s decision to use the definition of general intent, “conduct that is purposeful and willful and not accidental. . . [T]he terms ‘knowing’, ‘willful’, ‘purposeful’, and ‘on purpose’ are included within the term ‘intentional’,” in response to the jury’s request for a definition of “intent” during their deliberations.¹⁶ The court’s instruction was in addition to the previous jury instruction as to the elements of the crime, which stated, “that the defendant intended to expose [that individual] to a life threatening communicable disease,” the definition for specific intent.¹⁷ The defendant argued the court should have used the definition for specific intent, which “requires a further particular intent that must accompany the prohibited act.”¹⁸ The Court of Appeals dismissed the challenge because (1) the trial court’s response to the jury’s question was legally correct, and (2) the instructions, “when read in total, made it clear that the jury was required to find that Richardson...intended to expose [the individual] to a life-threatening communicable disease.”¹⁹ Notably, this definition of specific intent is based on “intent to expose,” rather than “intent to transmit.” This renders the required element of “specific intent” essentially meaningless in practice, since it could be satisfied by commission of any act, sexual or otherwise, the court deems capable of exposing a person to HIV.

¹⁰ *Id.* at 704-05.

¹¹ *Id.*

¹² *State v. Richardson*, 218 P.3d 1197 (Kan. Ct. App. 2009).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *State v. Richardson*, 269 P.3d 886, 2012 Kan. App. Unpubl. Lexis 105 (Kan. Ct. App. 2012).

¹⁶ *Id.* at *19.

¹⁷ *Id.* at *18.

¹⁸ *Id.*

¹⁹ *Id.* at *20.

PLHIV are prohibited from donating blood, blood products, semen, human tissue, organs, or body fluids; and from sharing needles or syringes.

It is a severity level 7, one person felony, punishable by up to 26 months in prison and a fine of up to \$100,000, for a person who knows they are infected with a “life threatening communicable disease” to (1) sell or donate blood, blood products (plasma, platelets, etc.), semen, tissue, organs, or other body fluids with the intent to expose the recipient to the disease, or (2) share a hypodermic needle or syringe with another for either the introduction of drugs or any other substance or the withdrawal of body fluids from that person’s body with the intent to expose the recipient to disease.²⁰

HIV and other sexually transmitted diseases (STDs) are excluded from mandatory quarantine or isolation.

Although health officials are given broad authority to “take such action as in their judgment may be necessary to control, suppress and prevent the spreading,” of contagious or infectious diseases,²¹ and may issue orders for testing, treatment, isolation, or quarantine of persons afflicted with such diseases,²² certain sexually transmitted or communicable diseases are excluded from isolation or quarantine authority, including chancroid, chlamydia, gonorrhea, HIV, hepatitis, and syphilis.²³

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, should not be used as a substitute for legal advice*

²⁰ KAN. STAT. ANN. §§ 21-5424, 21-6611(a)(3) (2018); KAN. SENTENCING COMMISSION, *supra* note 1.

²¹ KAN. STAT. ANN. § 65-301 (2018).

²² KAN. STAT. ANN. §§ 65-128(b); 65-129b (2018). *See, e.g., Noland v. Gardner*, 136 P.2d 233 (Kan. 1943) (upholding authority of state board of health to isolate and quarantine persons with “dangerous, communicable, venereal diseases”).

²³ KAN. ADMIN. REGS. § 28-1-2 (2018).

Kansas Statutes Annotated

*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.*

CHAPTER 21. CRIMES AND PUNISHMENTS

KAN. STAT. ANN. § 21-5424 (2018) **

Exposing another to a life threatening communicable disease

(a) It is unlawful for an individual, who knows oneself to be infected with a life threatening communicable disease, to:

- (1) Engage in sexual intercourse or sodomy with another individual with the intent to expose that individual to that life threatening communicable disease;
- (2) sell or donate one's own blood, blood products, semen, tissue, organs or other body fluids with the intent to expose the recipient to a life threatening communicable disease; or
- (3) share with another individual a hypodermic needle, syringe, or both, for the introduction of drugs or any other substance into, or for the withdrawal of blood or body fluids from, the other individual's body with the intent to expose another person to a life threatening communicable disease.

(b) Violation of this section is a severity level 7, person felony.

(c) As used in this section:

- (1) "Sexual intercourse" shall not include penetration by any object other than the male sex organ; and
- (2) "sodomy" shall not include the penetration of the anal opening by any object other than the male sex organ.

KAN. STAT. ANN. § 21-6804 (2018) **

Sentencing grid for nondrug crimes; authority and responsibility of sentencing court; presumptive disposition.

(a) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following sentencing guidelines grid shall be applicable to nondrug felony crimes:

<https://www.sentencing.ks.gov/docs/default-source/2017-forms/2017-nondrug-grid.pdf?sfvrsn=0>

(b) Sentences expressed in the sentencing guidelines grid for non-drug crimes represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to the sentencing court's discretion to enter a departure sentence. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e)

(1) The sentencing court has discretion to sentence at any place within the sentencing range. In the usual case it is recommended that the sentencing judge select the center of the range and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the:

(A) Prison sentence;

(B) maximum potential reduction to such sentence as a result of good time; and

(C) period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the:

(A) Prison sentence; and

(B) duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence as provided in subsection (q).

KAN. STAT. ANN. § 21-6602 (2018) **

Classification of misdemeanors and terms of confinement; possible disposition

(a) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

(3) class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one month. . .

KAN. STAT. ANN. § 21-6611 (2018) **

Fines; crimes committed on or after July 1, 1993.

(a) A person who has been convicted of a felony may, in addition to the sentence authorized by law, be ordered to pay a fine which shall be fixed by the court as follows:

(3) for any felony ranked in severity levels 6 through 10 of the nondrug grid as provided in K.S.A. 2013 Supp. 21-6804, and amendments thereto, or in severity level 4 of the drug grid committed prior to July 1, 2012, or in severity level 5 of the drug grid committed on or after July 1, 2012, as provided in K.S.A. 2013 Supp. 21-6805, and amendments thereto, a sum not exceeding \$100,000.

(b) A person who has been convicted of a misdemeanor, in addition to or instead of the imprisonment authorized by law, may be sentenced to pay a fine which shall be fixed by the court as follows:

(3) for a class C misdemeanor, a sum not exceeding \$500.

CHAPTER 65. PUBLIC HEALTH

KAN. STAT. ANN. § 65-301 (2018)

Authority of officers; expenses.

Whenever smallpox or other contagious or infectious diseases exist in a city of the second or third class the governing body of such city and the local health officer and the county commissioner in the district in which is located such cities shall take such action as in their judgment may be necessary to control, suppress and prevent the spreading of the same and to pay all the necessary expenses for such action and purposes.

KAN. STAT. ANN. § 65-116A (2018)

Definitions

As used in K.S.A. 65-116a through K.S.A. 2013 Supp. 65-129f, and amendments thereto:

(c) “Infectious and contagious diseases” means those diseases so designated by the secretary of health and environment pursuant to K.S.A. 65-128, and amendments thereto.

KAN. STAT. ANN. § 65-128 (2018)

Rules and regulations of secretary to prevent spread and dissemination of diseases; testing and quarantine; protection of providers and recipients of services

(a) For the protection of the public health and for the control of infectious or contagious diseases, the secretary of health and environment by rules and regulations shall designate such diseases as are infectious or contagious in their nature.

(b) The secretary of health and environment is authorized to issue such orders and adopt rules and regulations as may be medically necessary and reasonable to prevent the spread and dissemination of diseases injurious to the public health, including, but not limited to, providing for the testing for such diseases and the isolation and quarantine of persons afflicted with or exposed to such diseases.

(c) No later than January 1, 2014, the secretary shall develop and adopt rules and regulations providing for the protection of individuals who provide medical or nursing services, clinical or forensic laboratory services, emergency medical services and firefighting, law enforcement and correctional services, or who provide any other service, or individuals who receive any such services or are in any other employment where the individual may encounter occupational exposure to blood and other potentially infectious materials.

KAN. STAT. ANN. § 65-129 (2018) **

Penalties for unlawful acts

Any person violating, refusing or neglecting to obey any of the rules and regulations adopted by the secretary of health and environment for the prevention, suppression and control of infectious or contagious diseases, or who leaves any isolation area of a hospital or other quarantined area without the consent of the local health officer having jurisdiction, or who evades or breaks quarantine or knowingly conceals a case of infectious or contagious disease shall be guilty of a class C misdemeanor.

KAN. STAT. ANN. § 65-129B (2018)

Infections or contagious diseases; authority of local health officer or secretary; evaluation or treatment orders, isolation or quarantine orders; enforcement.

(a) Notwithstanding the provisions of K.S.A. 65-119, 65-122, 65-123, 65-126 and 65-128, and amendments thereto, and any rules or regulations adopted thereunder, in investigating actual or potential exposures to an infectious or contagious disease that is potentially life-threatening, the local health officer or the secretary:

(1)

(A) May issue an order requiring an individual who the local health officer or the secretary has reason to believe has been exposed to an infectious or contagious disease to seek appropriate and necessary evaluation and treatment;

(B) when the local health officer or the secretary determines that it is medically necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to an infectious or contagious disease, may order an individual or group of individuals to go to and remain in places of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public;

(C) if a competent individual of 18 years of age or older or an emancipated minor refuses vaccination, medical examination, treatment or testing under this section, may require the individual to go to and remain in a place of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public; and

(D) if, on behalf of a minor child or ward, a parent or guardian refuses vaccination, medical examination, treatment or testing under this section, may require the minor child or ward to go to and remain in a place of isolation or quarantine and must allow the parent or guardian to accompany the minor child or ward until the local health officer or the secretary determines that the minor child or ward no longer poses a substantial risk of transmitting the disease or condition to the public; and

(2) may order any sheriff, deputy sheriff or other law enforcement officer of the state or any subdivision to assist in the execution or enforcement of any order issued under this section.

Kansas Administrative Regulations

AGENCY 28, DEPARTMENT OF HEALTH AND ENVIRONMENT

KAN. ADMIN. REGS. § 28-1-1 (2018)

Definitions.

(h) "Infectious or contagious diseases" has the meaning specified for "infectious and contagious diseases" in [K.S.A. 65-116a](#), and amendments thereto.

KAN. ADMIN. REGS. § 28-1-6 (2018)

Requirements for isolation and quarantine of specific infectious or contagious diseases.

(a) The requirements for isolation and quarantine shall be those specified in the department's "requirements for isolation and quarantine of infectious or contagious diseases," dated March 15, 2018, which is hereby adopted by reference.

(b) No isolation or quarantine shall be required for the following infectious or contagious diseases:

- (6) chancroid;
- (7) Chlamydia trachomatis infection;
- (11) gonorrhea;
- (14) hepatitis B, acute, chronic, and perinatal infections;
- (15) hepatitis C, acute and either past or present infections;
- (16) hepatitis D;
- (17) hepatitis E;
- (19) human immunodeficiency virus;
- (28) syphilis . . .