

Montana

Analysis

Exposing another to a sexually transmitted infection (STIs) is punishable via a communicable disease control statute and a general criminal law.

It is a misdemeanor, punishable by up to six months' imprisonment and a \$500 fine, for a person with an STI to "knowingly" expose another to that disease.¹ HIV, syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are considered STIs for the purposes of this exposure law.² Moreover, STIs are considered by law to be "contagious, infectious, communicable, and dangerous to public health." At the time of publication the authors are not aware of any recorded prosecution of HIV exposure under this statute.³

However, there has been at least one prosecution of HIV exposure under general criminal laws in Montana. In November 2012, a 52-year-old HIV man living with HIV was charged with criminal endangerment for allegedly not disclosing his HIV status to a partner with whom he had a three-year sexual relationship.⁴ The partner later tested positive for HIV.⁵ A person may be charged with criminal endangerment if they create a substantial risk of death or serious bodily injury to another person, and, if convicted, may be imprisoned for no more than ten years and fined no more than \$50,000.⁶

All persons confined or imprisoned in Montana are subject to examination for STDs and, if infected, must submit to treatment.⁷

The Department of Public Health and Human Services (the department) may play a role in prosecutions under the state exposure law.

Although confidentiality of medical records is generally protected,⁸ health care providers may nevertheless disclose a person's medical information without their consent to federal, state, or local

¹ MONT. CODE ANN. §§ 50-18-112, 50-18-113, 46-18-212 (2015).

² MONT. CODE ANN. § 50-18-101 (2015).

³ *Id.*

⁴ Greg Tuttle, *Joliet man charged with felony for HIV infection*, BILLINGS GAZETTE, Nov. 2, 2012, available at http://billingsgazette.com/news/state-and-regional/montana/joliet-man-charged-with-felony-for-hiv-infection/article_ddfd0ad4-b336-5e56-9b94-b9f904a80152.html; Greg Tuttle, *Joliet man denies felony charge for HIV infection*, BILLINGS GAZETTE, Dec. 5, 2012, available at http://billingsgazette.com/news/local/crime-and-courts/man-denies-felony-charge-for-hiv-infection/article_3d9d1455-a205-5501-b85c-ce31036a7e94.html.

⁵ *Id.*

⁶ MONT. CODE ANN. § 45-5-207 (2015).

⁷ MONT. CODE ANN. § 50-18-108 (2015).

⁸ MONT. CODE ANN. § 50-16-525 (2015).

public health or law enforcement authorities;⁹ or pursuant to a compulsory process as part of a person's civil commitment proceeding, upon a court's determination that a compelling state interest outweighs the person's privacy interest, or pursuant to an investigative subpoena.¹⁰

Moreover, the department may require persons to undergo testing for STIs if it "reasonably suspects" they are infected with same.¹¹ The department may require those persons for whom a test is positive to undergo treatment, or otherwise be subject to quarantine or isolation.¹² Those who do not comply with quarantine measures are subject to a \$100 fine.¹³ Only the state or local health officer may terminate the quarantine or isolation, and examinations may be made repeatedly "as deemed advisable or desirable."¹⁴

At the time of publication, no recent cases have been identified to clarify what amounts to "reasonable suspicion" sufficient to mandate testing, treatment, or quarantine or isolation. However, the Supreme Court of Montana explained in *In re Caselli* that, "[t]he detention of persons affected with or suspected of contagious disease in quarantine presents one of the cases where the police power is literally the law of self-defense—a paramount necessity,"¹⁵ and that by requiring a judicial hearing prior to effecting quarantine, "this law of self defense—necessity—would be rendered entirely inoperative."¹⁶ Moreover, regarding federal and state constitutional protections, the Court reasoned it could not, "conclude that the makers of the two Constitutions ever contemplated a situation where a state would be rendered powerless to protect itself by prompt and speedy action from the spread of a contagion which by neglect might reach to and affect any considerable number of people in a community."¹⁷ This case, involving a sex worker who tested positive for gonorrhea, is still good law, and gonorrhea, like other STIs, is still statutorily considered "contagious, infectious, communicable, and dangerous to public health."¹⁸

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.*

Montana Code

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.*

⁹ MONT. CODE ANN. § 50-16-530(2), (3) (2015).

¹⁰ MONT. CODE ANN. § 50-16-535(1)(f), (j), (k) (2015). See also § 46-4-301(3) (2015) (explaining that the "compelling state interest" required for issuance of a subpoena merely requires a prosecutor to "state facts and circumstances sufficient to support probable cause to believe that an offense has been committed and the information relative to the commission of that offense is in the possession of the person or institution to whom the subpoena is directed.").

¹¹ MONT. CODE ANN. § 50-18-107(1)(a) (2015).

¹² MONT. CODE ANN. §§ 50-18-107(1)(b), (c), 50-1-204 (2015).

¹³ MONT. CODE ANN. § 50-1-204 (2015).

¹⁴ MONT. CODE ANN. § 50-18-107(2) (2015).

¹⁵ *In re Caselli*, 204 P. 364, 364-65 (Mont. 1922).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ MONT. CODE ANN. § 50-18-101 (2015).

TITLE 50. HEALTH AND SAFETY

MONT. CODE ANN. § 50-18-112 (2015) **

Infected person not to expose another to sexually transmitted disease

A person infected with a sexually transmitted disease may not knowingly expose another person to infection.

MONT. CODE ANN. § 50-18-113 (2015) **

Violation a misdemeanor

A person who violates provisions of this chapter or rules adopted by the department of public health and human services concerning a sexually transmitted disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor.

MONT. CODE ANN. § 50-18-101 (2015)

Sexually transmitted diseases defined

Human immunodeficiency virus (HIV), syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are sexually transmitted diseases. Sexually transmitted diseases are contagious, infectious, communicable, and dangerous to public health.

MONT. CODE ANN. § 50-18-109 (2015)

Permissible release of information concerning infected persons.

(1) Information concerning persons infected or reasonably suspected to be infected with a sexually transmitted disease may be released only:

- (a) to personnel of the department of public health and human services;
- (b) to a physician who has written consent of the person whose record is requested;
- (c) to a local health officer; or
- (d) by the department of public health and human services or a local health officer or board under the circumstances allowed by Title 50, chapter 16, part 6.

TITLE 46. CRIMINAL PROCEDURE

MONT. CODE ANN. § 46-18-212 (2016) **

When no penalty is specified.

The court, in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided or if the offense is designated a misdemeanor and no penalty is otherwise provided, may sentence the offender to a term of imprisonment not to exceed 6 months in the county jail or a fine not to exceed \$500, or both.

TITLE 50. HEALTH AND SAFETY

MONT. CODE ANN. § 50-16-525 (2015)

Disclosure by health care provider.

(1) Except as authorized in 50-16-529, 50-16-530, and 50-19-402 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

MONT. CODE ANN. § 50-16-530 (2015)

Disclosure without patient's authorization.

A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

- (2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;
- (3) to federal, state, or local law enforcement authorities to the extent required by law;
- (6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536;

MONT. CODE ANN. § 50-16-535 (2015)

When health care information available by compulsory process.

(1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

- (f) a patient's health care information is to be used in the patient's commitment proceeding;
- (j) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or
- (k) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or a similar federal law.

MONT. CODE ANN. § 50-18-108 (2015)

Examination and treatment of prisoners.

Any person confined or imprisoned in any state, county, or municipal prison within the state may be examined for a sexually transmitted disease. If infected, the person must be treated by health authorities.

MONT. CODE ANN. § 50-18-107 (2015)

Powers and duties of health officers.

(1) If found necessary or desirable to protect public health, state and local health officers or their authorized deputies or agents shall:

- (a) examine or have examined persons reasonably suspected of being infected with a sexually transmitted disease;
- (b) require persons infected to report for treatment to a reputable physician and continue treatment, which may be at public expense, until cured;
- (c) isolate or quarantine persons who refuse examination or treatment;

(2) No one but the state or local health officer may terminate the isolation or quarantine. Examinations may be made repeatedly as deemed advisable or desirable.

MONT. CODE ANN. § 50-1-204 (2015)

Quarantine and isolation measures.

The department may adopt and enforce quarantine or isolation measures to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than \$ 10 or more than \$ 100. Receipts from fines, except justice's court fines, must be deposited in the state general fund

TITLE 46. CRIMINAL PROCEDURE

MONT. CODE ANN. § 46-4-301 (2016)

Issuance of subpoena.

(3) In the case of constitutionally protected material, such as but not limited to medical records or information, a subpoena may be issued only when it appears upon the affidavit of the prosecutor that a compelling state interest requires it to be issued. In order to establish a compelling state interest for the issuance of such a subpoena, the prosecutor shall state facts and circumstances sufficient to support probable cause to believe that:

- (a) an offense has been committed; and
- (b) the information relative to the commission of that offense is in the possession of the person or institution to whom the subpoena is directed.