

Maryland

Analysis

Maryland¹

People with STIs or other communicable diseases may face misdemeanor penalties for engaging in various activities.

Maryland’s health code prohibits a number of activities for any person “who has an infectious disease that endangers public health,” such as willfully being in a public place “without taking proper precautions against exposing other individuals to the disease,” or transferring to another person “any article that has been exposed to the disease without thoroughly disinfecting the article.”² Penalty for conviction under these provisions can be up to one year of imprisonment and a \$500 fine.³

The scope of application for this statute is unclear because the term “infectious disease that endangers public health” is defined neither by the Public Health Code nor any public health regulation. Instead, the Maryland Code of Regulations merely defines “infectious” as “capable of being transmitted in a manner that can cause a disease or abnormal condition in an individual,”⁴ and lists reportable diseases and conditions to include HIV/“AIDS,” chancroid, chlamydia, hepatitis, and syphilis.⁵ However, the second provision, regarding articles exposed to the disease, may be conceivably applied to shared syringes, sex toys, or other shared objects. At the time of publication, the authors have not identified any cases providing clarification of the issue.

An analogous third-party statute using the same term, “infectious disease that endangers public health,” may provide some guidance. The statute prohibits “(1) willfully or knowingly taking a person with an infectious disease that endangers public health to the home of another person, (2) carelessly exposing an individual to a person with an infectious disease that endangers public health, or (3) permitting a child with an infectious disease that endangers public health to be in a public place while in charge of the child.”⁶

¹ The enactment of [H.B.39](#) repealed Md. CODE ANN., HEALTH–GEN. § 18-601.1, Maryland’s HIV-specific offense. Previously, it was a misdemeanor punishable by up to three years in prison and a \$2,500 fine for PLHIV to knowingly transfer or attempt to transfer HIV to another person. Any type of HIV exposure, including consensual sex, blood and tissue donation, breastfeeding, and/or needle sharing, was subject to prosecution.

² MD. CODE ANN., HEALTH–GEN. § 18-601(a).

³ § 18-601(b).

⁴ MD. CODE REGS. 10.06.01.02(B)(14).

⁵ MD. CODE REGS. 10.06.01.03(C).

⁶ MD. CODE ANN., HEALTH–GEN. § 18-602(a).

Case law suggests HIV may fall within the scope of “infectious disease that endangers public health.” In *Lemon v. Stewart*, plaintiffs allegedly exposed to HIV after caring for a patient living with HIV appealed the dismissal of their complaint against the patient’s physician, among others, for failing to disclose his HIV status to them.⁷ The Maryland Court of Special Appeals affirmed the dismissal, holding the defendants owed no duty to the people who brought suit.⁸ However, there was no inquiry as to whether HIV fell within the “infectious disease that endangers public health” classification.⁹ Rather, the court held the defendants owed no duty of HIV status disclosure to anyone besides the patient; the particular parties in the case, rather than HIV itself, were at issue.¹⁰

Other STIs and communicable diseases might also fit that classification of “infectious disease that endangers public health.” Moreover, while the authors have found no reported cases under MD. CODE ANN., HEALTH-GEN. § 18-601 at the time of publication, there may nevertheless be unreported prosecutions and charges dropped as part of plea bargains, as well as the possibility of future prosecutions.

PLHIV may face criminal prosecution under general criminal statutes.

General criminal laws can be used to prosecute PLHIV. For example, in Maryland, reckless endangerment, which has been used in multiple prosecutions, is defined as recklessly engaging in “conduct that creates a substantial risk of death or serious physical injury to another.”¹¹ Under the reckless endangerment statute, PLHIV can be charged even when there is no risk of HIV transmission or where means to prevent transmission, such as a condom or pre-exposure prophylaxis (PrEP), were used. Moreover, even if a PLHIV disclosed their status to a partner, prosecutors can still argue that their conduct recklessly endangered the partner if the risk of transmission is deemed “substantial.”

In 2009, a 29-year-old man living with HIV was charged with 12 counts of reckless endangerment, 12 counts of knowingly attempting to transfer HIV, and one count of theft for, among other things, allegedly having consensual sex with a woman without disclosing his HIV status.¹² He pled guilty to one charge of reckless endangerment and was sentenced to 18 months’ imprisonment and two years of supervised probation.¹³ He was previously charged under Maryland’s HIV exposure law in 2005 after he engaged in consensual unprotected sex with a different woman without disclosing his HIV status.¹⁴ He pled guilty

⁷ *Lemon v. Stewart*, 682 A.2d 1177, 1178–80 (Md. Ct. Spec. App. 1996).

⁸ *Id.* at 1183–86.

⁹ *Id.* at 1181–82.

¹⁰ *Id.*

¹¹ MD. CODE ANN., CRIM. LAW § 3-204, MD. CODE ANN., CRIM. LAW § 3-201 (Maryland defines “serious physical injury to another” as an injury that “creates a substantial risk of death,” or an injury that causes permanent or long-lasting “disfigurement, loss of the function of any bodily member or organ, or impairment of the function of any bodily member or organ”).

¹² Patricia M. Murret, *Man Sentenced for Exposing Woman He Met Online to HIV*, GAZETTE.NET (Mar. 10, 2010). See also *Maryland Judiciary Case Search and Record Portal*, MD. JUDICIARY, available at <http://casesearch.courts.state.md.us/casesearch/> (search name “Perrera, Thomas James”; search type “Criminal”; search County “Montgomery”; Case Nos. 113320C, 112743C).

¹³ Murret, *supra* note 14.

¹⁴ *Id.*

to reckless endangerment in that case and was sentenced to five years' imprisonment, with all but one year suspended, and three years of probation.¹⁵

Other notable prosecutions include:

- In March 2015, a PLHIV pled guilty to two counts of reckless endangerment after having unprotected sex with two women.¹⁶ He reportedly had an undetectable viral load.¹⁷
- In July 2010, a 44-year-old PLHIV was sentenced to five years in prison for a conviction of assault in the second degree after spitting on a police officer.¹⁸ Because the defendant had no teeth and often spat unintentionally, it is not clear whether the man intended to spit on the police officer.¹⁹ Moreover, saliva is not a viable route of HIV transmission.²⁰
- In 1999, a 20-year-old PLHIV was charged with assault in the first degree for biting a security guard in the arm during a struggle.²¹ Assault in the first degree, a felony carrying a maximum penalty of 25 years' imprisonment, prohibits intentionally causing or attempting to cause serious physical injury to another.²²

At least one court ruling in Maryland has found that attempted murder cannot be used to prosecute HIV exposure without the specific intent to murder via HIV transmission.

In *Smallwood v. State*, a man living with HIV appealed his convictions of assault with intent to murder and three counts of attempted second-degree murder, amounting to a sentence of 30 years in prison.²³ The convictions stemmed from his raping and robbing three women at gunpoint, for which he had pled guilty to attempted first-degree rape and robbery.²⁴ He argued that sexually assaulting the women with knowledge of his HIV status was not sufficient to find intent to kill.²⁵ The prosecution countered that a PLHIV engaging in unprotected sex while knowing their HIV status is equivalent to their firing a loaded firearm at an individual, an act from which a jury could infer the intent to kill.²⁶

The Maryland Court of Appeals determined the State did not provide evidence that the defendant intended to kill the victims—only that he intended to rob and rape them.²⁷ The court reasoned that,

¹⁵ *Id.* See also *Maryland Judiciary Case Search and Record Portal*, MD. JUDICIARY, available at <http://casesearch.courts.state.md.us/casesearch/> (search name “Perrera, Thomas James”; search type “Criminal”; search County “Montgomery”; Case No. 105317C).

¹⁶ Debra Alfarone, *Man with HIV Admits to Knowingly Having Unprotected Sex*, WUSA 9 NEWS (March 10, 2015), available at <https://www.wusa9.com/article/news/man-with-hiv-admits-to-knowingly-having-unprotected-sex/65-203526761>.

¹⁷ *Id.*

¹⁸ Don Aines, *Man with HIV Who Spit on Police Officer Sentenced to Five Years*, HERALD-MAIL (Hagerstown, MD) (July 26, 2010), available at <https://www.hivjustice.net/cases/us-maryland-man-gets-five-years-for-unintentionally-spitting-on-cop/>.

¹⁹ *Id.*

²⁰ CTR. FOR DISEASE CONTROL & PREVENTION, *How HIV Spreads*, (Nov. 25, 2024), available at <https://www.cdc.gov/hiv/causes/index.html>.

²¹ Nancy A. Youssef, *HIV Positive Man Bit Security Guard in Fight, Police Say*, BALTIMORE SUN (June 20, 1999).

²² MD. CODE ANN., CRIM. LAW § 3-202(b).

²³ *Smallwood v. State*, 680 A.2d 512 (Md. 1996).

²⁴ *Id.* at 513–14.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 516.

since death by “AIDS” from a single exposure to HIV was not sufficiently probable to show such intent, the state must provide additional evidence—such as statements suggesting a person wished to spread HIV or actions solely explicable as an attempt to spread HIV, such as splashing blood.²⁸

Public Health requirements for people diagnosed with HIV.

Individuals under medical observation for HIV diagnosis must remain under medical supervision until the diagnostic observation is complete, the diagnosis has been reported to a health officer, and the individual has entered medical care.²⁹ The diagnosing physician must try to identify any past contacts of the patient who may have been exposed to HIV and bring them in for examination and, if needed, preventative treatment.³⁰ The physician may submit a report to the Department of Health and Mental Hygiene if a patient refuses to notify their past sexual and needle-sharing partners of their positive diagnosis.³¹ A person who is notified by a health officer that they may have been exposed to HIV must be medically evaluated within one week to determine whether transmission occurred.³² Finally, the Department of Health and Mental Hygiene health officer has the authority to “[t]ake such measures as may be deemed necessary for the protection of the public health;” potential actions are not mentioned.^{33,34}

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.*

²⁸ *Id.* at 516–18.

²⁹ MD. CODE REGS. 10.06.01.17(A)(2)(b),(d).

³⁰ MD. CODE REGS. 10.06.01.17(B)(1)(a).

³¹ MD. CODE REGS. 10.06.01.17(B)(1)(c).

³² MD. CODE REGS. 10.06.01.17(B)(3)(a).

³³ MD. CODE REGS. 10.06.01.17(A)(4)(c).

³⁴ MD. CODE. ANN., HEALTH–GEN. §§ 18-207(a)(4)(iii), (b)(4) (“The [HIV/AIDS case] report and any proceedings, records or files relating to the reports required under this section are not discoverable and are not admissible in evidence in any *civil* action.”) (emphasis added, noting the possibility of use of records in criminal actions).

Maryland Code 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.

CODE OF HEALTH-GENERAL

MD. CODE ANN., HEALTH-GEN. § 18-601**

Exposure of other individuals – By infected individual generally

(a) An individual who has an infectious disease that endangers public health may not willfully:

- (1) Be in a public place without taking proper precautions against exposing other individuals to the disease; or
- (2) Transfer to another individual any article that has been exposed to the disease without thoroughly disinfecting the article.

(b) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 1 year or both.

MD. CODE ANN., HEALTH-GEN. § 18-602

(a) A person may not:

- (1) Willfully or knowingly take an individual who has an infectious disease that endangers public health to the home of another individual;
- (2) Carelessly expose an individual to another who has an infectious disease that endangers public health; or
- (3) Permit a child who has an infectious disease that endangers public health to be in a public place while in charge of the child.

(b) A person who violates any provision of this section is subject to a fine not exceeding \$100.

MD. CODE ANN., HEALTH-GEN. § 18-207

Human immunodeficiency virus; case report; confidentiality

(a) Definitions. –

- (4) “Report” means:
 - (iii) An HIV/AIDS case report.

(b) Case report. –

- (4) The report and any proceedings, records, or files relating to the reports required under this section are not discoverable and are not admissible in evidence in any civil action.

Code of Maryland Regulations

TITLE 10, DEPARTMENT OF HEALTH AND MENTAL HYGIENE

MD. CODE REGS. 10.06.01.02

Definitions

(A) The definitions of terms used in the Control of Communicable Diseases Manual are accepted as official and applicable to the control of diseases within this State under this chapter.

(B) Terms Defined

(14) “Infectious” means capable of being transmitted in a manner that can cause a disease or abnormal condition in an individual.

MD. CODE REGS. 10.06.01.17

A. Control of a Case.

(1) For an individual who appears to have or who has syphilis in a stage which is or may become communicable, or HIV, a physician shall instruct the individual in the use of any measure and render any treatment which may be necessary to prevent the spread of the disease.

(2) An individual under medical observation for diagnosis of syphilis or HIV shall remain under medical supervision until the:

- (a) Observation for diagnosis has been completed;
- (b) Syphilis or HIV, if present, has been reported to a health officer;
- (c) Individual with syphilis has had the treatment that is necessary for the protection of the public health; and
- (d) Individual with HIV has entered into HIV medical care.

(3) A physician shall report to a health officer within 1 working day and in writing the name and address of an individual who is:

- (a) Receiving or has received treatment for syphilis; or
- (b) Under medical observation for diagnosis or treatment of syphilis in an infectious or potentially infectious stage, who fails to return for observation or treatment within 1 week

of the date of a missed appointment, and is not known to the attending physician to be under medical observation or treatment elsewhere for this infection.

(4) A health officer shall:

- (a) Investigate an individual reported to the health officer under the provisions of § A(3) of this regulation or Health-General Article, § 18-201.1, Annotated Code of Maryland, who is within the health officer's territorial jurisdiction;
- (b) Take such measures as may be deemed necessary for the protection of the public health; and
- (c) Forward to the Secretary immediately a report of an individual reported under the provisions of § A(3) of this regulation or Health-General Article, § 18-201.1, Annotated Code of Maryland, who is outside the health officer's territorial jurisdiction for referral to the health officer of the proper jurisdiction.

B. Control of Contacts.

(1) A physician in attendance upon a patient having syphilis or HIV:

- (a) Shall endeavor to bring an individual with whom the patient has had potentially infectious contact to examination and, as appropriate, prophylaxis by:
 - (i) Requesting a health officer to conduct a contact investigation of any case of syphilis or HIV; or
 - (ii) Interviewing the patient in order to ascertain the names, descriptions, addresses, telephone numbers, and email addresses of those with whom the patient has had potentially infectious contact;
- (b) Shall report immediately to a health officer an individual identified as having had potentially infectious contact with a patient having syphilis reported under the provisions of § A(3) of this regulation; and
- (c) May report to a health officer an individual identified as having had potentially infectious contact with a patient having HIV reported under Health-General Article, § 18-201.1, Annotated Code of Maryland, if a patient that has been informed of the patient's HIV positive status refuses to notify the patient's sexual and needle-sharing partners.

(2) A health officer shall:

- (a) Investigate and notify immediately an individual reported under the provisions of § B(1)(b) of this regulation, who is within the health officer's jurisdiction, of the individual's

exposure and advise the individual to undergo a medical examination to ascertain whether the individual is infected with syphilis or HIV; and

(b) Forward immediately to the Secretary all reports of individuals who are outside the health officer's territorial jurisdiction for referral to the health officer of the proper jurisdiction.

(3) A reported individual shall:

(a) Within 1 week of notification, be examined to ascertain whether the individual has been infected with syphilis or HIV; and

(b) Be treated with a regimen appropriate for the stage of syphilis to which the individual has been exposed.