

Alabama

Analysis

People living with HIV (PLHIV) and other communicable diseases face enhanced felony penalties for exposing others to bodily fluids.

People living with a “communicable disease” face a Class C felony, punishable by up to ten years imprisonment, and/or a \$15,000 fine¹ for “knowingly caus[ing] or attempt[ing] to cause another person to come into contact with a bodily fluid” unless such contact is consented to or is necessary for medical care.² The statute defines “bodily fluid” to include blood, saliva, mucous, seminal fluid, urine, or feces.³ However, “communicable disease” is not defined, meaning a variety of casually transmitted conditions—such as measles, influenza, or tuberculosis—fall within the plain meaning of the statute, in addition to HIV and other STIs. “Contact” is also not defined for the purposes of the statute, meaning a whole range of behaviors posing no or negligible risk are criminalized. For instance, urine exposure is not a known means of transmitting most types of communicable disease. Urine, feces, and saliva are not known transmitters of HIV. Neither the intent to transmit disease nor disease transmission are required for prosecution. “Assault with bodily fluids” is otherwise only punishable as a Class A misdemeanor for someone who does not have a communicable disease, punishable by a maximum of one year.⁴

- In 2018, a 36-year-old PLHIV was charged with felony “assault with bodily fluids” after he allegedly sprayed a police deputy with feces.⁵ Feces is not a known route of HIV transmission.
- In 2018, a 32-year-old woman was charged with felony assault after she allegedly spat at a police officer during the course of an arrest knowing that she had a communicable disease.⁶

Alabama has prosecuted incidents of HIV exposure under general criminal laws.

Under Alabama’s communicable disease exposure statute, any person with a sexually transmitted disease, including HIV, may be imprisoned for up to three months and/or fined up to \$500 if they “knowingly” transmit the disease, assume the risk of transmitting disease, or perform any act that will

¹ ALA. CODE §§ 13A-6-242(c), 13A-5-6(a)(3), 13A-5-11(a)(3) (2018).

² ALA. CODE § 13A-6-242(a) (2018); Under Alabama law, “[a] person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of that nature or that the circumstance exists.” ALA. CODE § 13A-2-2(2) (2018).

³ ALA. CODE § 13A-6-242(b) (2018).

⁴ ALA. CODE §§ 13A-6-242(c), 13A-5-7(a)(1) (2018).

⁵ Carol Robinson, *Gadsden drug suspect stomps bag of feces, splashes deputy, records state*, AL.COM, June 12, 2018, available at <https://www.al.com/news/birmingham/index.ssf/2018/06/gadsden-drug-suspect-stomps-ba.html>

⁶ Marty Roney, *Woman charged with assault after spitting at police*, MONTGOMERY ADVERTISER, May 8, 2018, available at <https://www.montgomeryadvertiser.com/story/news/crime/2018/05/08/casie-jane-ellis-charged-bodily-fluid-assault/589978002/>

probably or likely transmit such disease to another person.⁷ Neither the intent to transmit the disease nor transmission is required for prosecution.

Though HIV is classified as a sexually transmitted disease for the purpose of Alabama's statute, the authors are not aware of the law being used to prosecute someone on that basis.

In *Brock v. State*, an inmate living with HIV who was in the AIDS unit of an Alabama prison⁸ was charged with attempted murder and two counts of assault when he allegedly became belligerent and bit a police officer.⁹ The police officer did not test positive for HIV.¹⁰ At trial, the jury acquitted Brock of the attempted murder charge but convicted him of first-degree assault, a crime which requires that the defendant both intend to cause and actually cause "serious physical injury" with a "deadly weapon or dangerous instrument."¹¹ The prosecution argued that because the defendant was living with HIV, his mouth and teeth were "highly capable of causing death or serious physical injury" and should be considered dangerous weapons or instruments for the purposes of the assault charges.¹²

On appeal, Alabama's Court of Criminal Appeals set aside the first-degree assault conviction and reduced the conviction to assault in the third degree.¹³ The court held that the state failed to establish the essential elements of a case of first-degree assault against Brock.¹⁴ The court stated that no evidence was provided that Brock's mouth and teeth were "deadly weapon[s]" as defined by Alabama law.¹⁵ Moreover, the state did not prove that Brock intended to cause serious physical harm to the prison guard.¹⁶ The court further noted that the state provided no evidence that AIDS can be transmitted through a human bite, and that the court did not believe it to be an established scientific fact that AIDS could be transmitted in such a manner.¹⁷ The court's findings were consistent with the CDC's position that there exists only a "negligible" risk that HIV can be transmitted through a bite.¹⁸ The CDC has also maintained that saliva alone does not transmit HIV.¹⁹

⁷ ALA. CODE §§ 22-11A-21(c), 13A-5-7(3), 13A-5-12(a)(3) (2018); ALA. ADMIN. CODE r. 420-4-1-.03, r. 420-4-1, Appendix I (2018).

⁸ It should be noted that the Alabama Department of Corrections' ("ADOC") policy of categorically segregating prisoners living with HIV from the general prison population was challenged through a class action suit in 2012. *Henderson v. Thomas*, 913 F. Supp. 2d 1267, 1276 (M.D. Ala. 2012). The court found that the policy violated the Americans with Disabilities Act. *Id.* at 1306-07. Among other things, the subsequent settlement agreement ended the ADOC's practice of segregating inmates living with HIV within facilities. *Henderson v. Thomas*, Civ. A. 2:11cv224-MHT, 2013 U.S. Dist. LEXIS 140098 at *6-8 (M.D. Ala. Sept. 30, 2013).

⁹ 555 So. 2d 285, 286 (Ala. Crim. App. 1989).

¹⁰ *Id.*

¹¹ *Id.* at 286-87; ALA. CODE §13A-6-20 (2018).

¹² *Brock*, 555 So. 2d at 287-88.

¹³ *Id.* at 288.

¹⁴ *Id.*

¹⁵ *Id.* at 287.

¹⁶ *Id.* at 288.

¹⁷ *Id.*

¹⁸ 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/risk/estimates/riskbehaviors.html> (last visited July 9, 2018)

¹⁹ CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?*, (March 16, 2018) available at <http://www.cdc.gov/hiv/basics/transmission.html> (last visited July 10, 2018)

The Alabama State Board of Health may quarantine, isolate, or civilly commit people living with a sexually transmitted disease (STD), including HIV.

While there appear to be no reported cases in approximately the last 100 years,²⁰ the Alabama State Board of Health has broad discretion to quarantine, isolate, or civilly commit people living with an STD, including HIV.²¹ For example, the State Health Officer can, upon notification that a person is “afflicted with any of the notifiable diseases or health conditions designated,” isolate or quarantine that person.²²

The State Health Officer may also require people to undergo testing and examination whenever there is “reasonable cause to believe” they have a sexually transmitted disease, under threat of isolation or civil commitment, until the State Health Officer considers that person to no longer be dangerous to public health.²³ The State Health Officer may also isolate or civilly commit a person known to be infected with a sexually transmitted disease for compulsory treatment, until the disease “is no longer communicable or a source of danger to public health.”²⁴

There is no case law interpreting what may be considered a “reasonable cause to believe” that a person has a sexually transmitted disease, so mere accusation may suffice. Nor is there guidance as to how the State Health Officer may determine a person is dangerous to public health. Moreover, in the case of HIV, the person may never reach a point at which the disease “is no longer communicable.” The closest analog would be to achieve viral suppression.

The civil commitment statute is similarly problematic. To civilly commit a person, the Department of Public Health (DPH) must show by clear and convincing evidence that (1) the person was exposed to a designated disease, (2) the person has refused testing or treatment, (3) the person is dangerous to themselves and the health of the community, (4) the person conducts himself so as to expose others to the disease, (5) treatment is available for the person’s illness or confinement is necessary to prevent further spread of the disease, and (6) commitment is the least restrictive alternative necessary and available for the treatment of the person’s illness and the protection of public health.²⁵

The only limitation on the State Health Officer is that all action must be “consistent with current medical and epidemiologic knowledge about the mode of transmission” of the respective disease.²⁶

The Alabama State Board of Health may be required to testify against people living with HIV (PLHIV) or an STD in a grand jury proceeding or criminal trial.

In criminal trials or grand jury investigations where Alabama seeks to prosecute PLHIV for “murder, attempted murder, or felony assault as a result of having intentionally or recklessly exposed another to HIV infection where the exposed person is later demonstrated to be HIV infected,”²⁷ the State Health

²⁰ See *Dowling v. Harden*, 18 Ala. App. 63, 88 So. 217 (Ala. Ct. of App. 1921) (quarantine enforced in 1921, last reported case).

²¹ See, e.g., ALA. CODE §§ 22-11A-7, 22-11A-14, 22-11A-18(b) (2016).

²² ALA. CODE § 22-11A-3 (2016). Several STIs are notifiable conditions in Alabama, including chancroid, chlamydia, gonorrhea, HIV/AIDS, and syphilis. ALA. ADMIN. CODE r. 420-4-1, Appendix I (2018).

²³ ALA. CODE § 22-11A-18(a) (2018).

²⁴ ALA. CODE § 22-11A-18(b) (2018).

²⁵ ALA. CODE § 22-11A-32 (2018).

²⁶ ALA. ADMIN. CODE r. 420-4-1.05(1) (2018)

²⁷ ALA. CODE § 22-11A-38(h)(1)-(2) (2018).

Officer may be required to assist the prosecution by providing information necessary to establish that the person is currently living with HIV, is aware of their HIV serostatus, and that they have been counseled about “appropriate methods to avoid infecting others with the disease.”²⁸

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.*

²⁸ ALA. CODE § 22-11A-38(h) (2018).

Code of Alabama

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 13A, CRIMINAL CODE

ALA. CODE § 13A-6-242 (2018) **

Assault with bodily fluids

- (a) A person commits the crime of assault with bodily fluids if he or she knowingly causes or attempts to cause another person to come into contact with a bodily fluid unless the other person consented to the contact or the contact was necessary to provide medical care.
- (b) For purposes of this section, a bodily fluid is blood, saliva, seminal fluid, mucous fluid, urine, or feces.
- (c) Assault with bodily fluids is a Class A misdemeanor; provided, however, a violation of this section is a Class C felony if the person commits the crime of assault with bodily fluids knowing that he or she has a communicable disease.

ALA. CODE § 13A-5-7 (2018)**

Prison Terms; misdemeanors and violations

- (a) Sentences for misdemeanors shall be a definite term of imprisonment in the county jail or to hard labor for the county, within the following limitations:
 - (1) For a Class A misdemeanor, not more than one year.
 - (3) For a Class C misdemeanor, not more than three months.

ALA. CODE § 13A-5-11 (2018)**

Fines; felonies

- (a) A sentence to pay a fine for a felony shall be for a definite amount, fixed by the court, within the following limitations:
 - (3) For a Class C felony, not more than \$15,000;

ALA. CODE § 13A-5-12 (2018)**

Fines; misdemeanors and violations

- (a) A sentence to pay a fine for a misdemeanor shall be for a definite amount, fixed by the court, within the following limitations:
 - (3) For a Class C misdemeanor, not more than \$ 500.

TITLE 22, HEALTH

ALA. CODE § 22-11A-21 (2018) **

Sexually transmitted diseases; unauthorized treatment; knowing transmission

(c) Any person afflicted with a sexually transmitted disease who shall knowingly transmit, or assume the risk of transmitting, or do any act which will probably or likely transmit such disease to another person shall be guilty of a Class C misdemeanor.

TITLE 15, CRIMINAL PROCEDURE

ALA. CODE §15-23-102 (2018)

Definitions

As used in this article, the following words shall have the following meanings:

- (1) Alleged victim. -- A person or persons to whom transmission of body fluids from the perpetrator of the crime occurred or was likely to have occurred in the course of the alleged crime.
- (2) Parent or guardian of the alleged victim. -- A parent or legal guardian of an alleged victim who is a minor or incapacitated person.
- (3) Positive reaction. -- A positive test with a positive confirmatory test result as specified by the Department of Public Health.
- (4) Sexually transmitted disease. -- Those diseases designated by the State Board of Health as sexually transmitted diseases for the purposes of this article.
- (5) Transmission of body fluids. -- The transfer of blood, semen, vaginal secretions, or other body fluids identified by the Department of Public Health, from the alleged perpetrator of a crime to the mucous membranes or potentially broken skin of the victim.

ALA. CODE §15-23-101 (2018)

Testing defendant for sexually transmitted disease

When a person has been charged with the crime of rape, sodomy, or sexual misconduct and it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, upon the request of the alleged victim or the parent or guardian of an alleged victim, the district attorney shall file a motion with the court for an order requiring the person charged to submit to a test for any sexually transmitted disease.

ALA. CODE §15-23-102 (2018)

Court-ordered testing; notification of test results; results counseling

(a) If the district attorney files a motion Section 15-23-101, the court shall order the person charged to submit to testing if the court determines there is probable cause to believe that the person charged committed the crime of rape, sodomy, or sexual misconduct and the transmission of body fluids was involved.

(b) When a test is ordered under Section 15-23-101, the alleged victim of the crime or a parent or guardian of the alleged victim shall designate an attending physician who has agreed in advance to accept the victim as a patient to receive information on behalf of the alleged victim.

(c) If any sexually transmitted disease test results in a negative reaction, the court shall order the person to submit to any follow-up tests at the intervals and in the manner as shall be determined by the State Board of Health.

(d) The result of any test ordered under this section is not a public record and shall be available only to the following:

- (1) The alleged victim.
- (2) The parent or guardian of the alleged victim.
- (3) The attending physician of the alleged victim.
- (4) The person tested.

(e) If any sexually transmitted disease test ordered under this section results in a positive reaction, the individual subject to the test shall receive post-test counseling. Counseling and referral for appropriate health care, testing, and support services as directed by the State Health Officer shall be provided to the alleged victim at the request of the alleged victim or the parent or guardian of the alleged victim.

TITLE 22, HEALTH

ALA. CODE § 22-11A-1 (2018)

Designation

The State Board of Health shall designate the diseases and health conditions which are notifiable. The diseases and health conditions so designated by the Board of Health are declared to be diseases and health conditions of epidemic potential, a threat to the health and welfare of the public, or otherwise of public health importance. The occurrence of cases of notifiable diseases and health conditions shall be reported as provided by the rules adopted by the State Board of Health.

ALA. CODE §22-11A-3 (2018)

Quarantine

Whenever the State Health Officer or his representative, or the county health officer or his representative, is notified of any person or persons afflicted with any of the notifiable diseases or health conditions designated by the State Board of Health, he shall, at his discretion, isolate or quarantine such person or persons as further provided in this article. Such quarantine shall be established and maintained in accordance with the rules adopted by the State Board of Health for the control of the disease with which the person or persons are afflicted.

ALA. CODE §22-11A-7 (2018)

Compliance with boards or officers

Any person reported as having any of the notifiable diseases or health conditions designated by the State Board of Health shall conform to or obey the instructions or directions given or communicated to

him by the county board of health, county health officer or his designee, or State Board of Health, State Health Officer, or his designee, to prevent the spread of the disease.

ALA. CODE §22-11A-13 (2018)

Sexually transmitted diseases; rules

Sexually Transmitted Diseases which are designated by the State Board of Health are recognized and declared to be contagious, infectious and communicable diseases and dangerous to public health. The State Board is authorized and directed to promulgate rules for the testing, reporting, investigation and treatment of sexually transmitted diseases.

ALA. CODE §22-11A-14 (2018)

Sexually transmitted diseases; reports

(a) Any physician who diagnoses or treats a case of sexually transmitted disease as designated by the State Board of Health, or any administrator of any hospital, dispensary, correctional facility or other institution in which a case of sexually transmitted disease occurs shall report it to the State or county Health Officer or his designee in a time and manner prescribed by the State Board of Health.

(e) The reports required by this section shall be confidential and shall not be subject to public inspection or admission into evidence in any court except proceedings brought under this article to compel the examination, testing, commitment or quarantine of any person or upon the written consent of the patient.

(g) Upon receipt of a report of a case of sexually transmitted disease, the county or State Health Officer shall institute such measures as he or she deems necessary or appropriate for the protection of other persons from infection by such diseased person as said health officer is empowered to use to prevent the spread of contagious, infectious or communicable diseases.

ALA. CODE §22-11A-17 (2018)

Convicts; testing for sexually transmitted diseases

(c) At the request of the victim of a sexual offense (as defined in Section 13A-6-60, et seq.), the State Health Department shall release the results of any tests on the defendant convicted of such sexual offense, for the presence of etiologic agent for Acquired Immune Deficiency Syndrome (AIDS or HIV) to the victim of such sexual offense. The State Health Department shall also provide the victim of such sexual offense counsel regarding AIDS disease, AIDS testing, in accordance with applicable law and referral for appropriate health care and support services.

ALA. CODE §22-11A-18 (2018)

Sexually transmitted diseases; isolation upon refusal to test or receive treatment

(a) Any person where there is reasonable cause to believe has a sexually transmitted disease or has been exposed to a sexually transmitted disease shall be tested and examined by the county or State Health Officer or his designee or a licensed physician. Whenever any person so suspected refuses to be examined, such person may be isolated or committed as provided in this article until, in the judgment of the State or county Health Officer, that person is no longer dangerous to public health. . .

(b) The State Health Officer or county health officer shall require all persons infected with a sexually transmitted disease to report for treatment by the health officer or a licensed physician, and continue treatment until such disease, in the judgment of the attending physician, is no long communicable or a source of danger to public health. . . . Whenever, in the judgment of the State or county Health Officer, such a course is necessary to protect public health, a person inflicted with a sexually transmitted disease may be committed or isolated for compulsory treatment and quarantine in accordance with the provisions of this article. . . .

ALA. CODE § 22-11A-32 (2018)

Commitment petitions; burden of proof; findings

(a) If, at the final hearing, upon a petition seeking to commit a person to the custody of the Alabama Department of Public Health or such other facility as the court may order, the probate judge, on the basis of clear and convincing evidence, shall find:

- (1) That the person sought to be committed has been exposed or is afflicted with one of the diseases designated in this article;
- (2) That the person has refused testing or voluntary treatment;
- (3) That, as a consequence of the disease, the person is dangerous to himself and the health of the community;
- (4) That the person conducts himself so as to expose others to the disease;
- (5) That treatment is available for the person's illness if confined or that confinement is necessary to prevent further spread of the disease; and
- (6) That commitment is the least restrictive alternative necessary and available for the treatment of the person's illness and the protection of public health;

Then upon such findings, the probate judge shall enter an order, setting forth his findings, granting the petition and ordering the person committed to the custody of the Alabama Department of Public Health or such other facility as the court may order.

(b) If upon rehearing, the probate judge shall find, from the evidence, that one or more of the elements required for commitment, shall no longer be applicable to the person who is the subject of the rehearing, the probate judge shall discharge the person.

(c) If the probate judge finds that no treatment is presently available for the person's illness, but that confinement is necessary to prevent the person from causing harm to the health of the community, the order committing the person shall provide that, should treatment become available during the person's confinement, such curative treatment will immediately be made available to him.

ALA. CODE §22-11A-37 (2018)

Convicts; quarantine

When there is reasonable cause to believe that an inmate of any state correctional facility or any municipal or county jail has been exposed to or is afflicted with any of the diseases designated by this

article, the State or county Health Officer may petition the superintendent of the facility to isolate the inmate for compulsory testing, treatment and quarantine.

ALA. CODE §22-11A-38 (2018)

Confidentiality; exceptions

(f) No physician, employee of the health department, hospitals, other health care facilities or organizations, funeral homes or any employee thereof shall incur any civil or criminal liability for revealing or failing to reveal confidential information within the approved rules. This subsection is intended to extend immunity from liability to acts which could constitute a breach of physician/patient privilege but for the protections of this subsection.

(h) Notwithstanding the provisions of this section or any other provisions of law, the State Health Officer or his or her designee shall under the circumstances set forth below disclose such information as is necessary to establish the following: That an individual is seropositive for HIV infection, confirmed by appropriate methodology as determined by the Board of Health; that the individual has been notified of the fact of his or her HIV infection; and that the individual has been counseled about appropriate methods to avoid infecting others with the disease. Such information shall be provided only under either of the following circumstances:

(1) In response to a subpoena from a grand jury convened in any judicial circuit in the state, when such a subpoena is accompanied by a letter from the Attorney General or an Alabama District Attorney attesting that the information is necessary to the grand jury proceedings in connection with an individual who has been charged with or who is being investigated for murder, attempted murder, or felony assault as a result of having intentionally or recklessly exposed another to HIV infection where the exposed person is later demonstrated to be HIV infected. Prior to release of such evidence to the grand jury, such evidence shall be reviewed in camera by a court of competent jurisdiction to determine its probative value, and the court shall fashion a protective order to prevent disclosure of the evidence except as shall be necessary for the grand jury proceedings.

(2) In response to a subpoena from the State of Alabama or the defendant in a criminal trial in which the defendant has been indicted by a grand jury for murder, attempted murder, or felony assault as a result of having intentionally or recklessly exposed another to HIV infection where the exposed person is later demonstrated to be HIV infected, and, if subpoenaed by the State of Alabama, such material has previously been presented to the appropriate grand jury for review pursuant to subdivision (1), above. Prior to the introduction of such evidence in a criminal trial, it shall be reviewed by the court in camera to determine its probative value, and the court shall fashion a protective order to prevent disclosure of the evidence except as shall be necessary to prosecute or defend the criminal matter.

ALA. CODE § 22-11A-50 (2018)

Definitions

As used in this article, the following words and phrases shall have the following meanings respectively ascribed to them, unless the context clearly indicates otherwise:

(1) HIV. -- Human Immunodeficiency Virus.

(2) AIDS. -- Acquired Immune Deficiency Syndrome.

(3) HIV infection. -- Infection with human immunodeficiency virus as determined by antibody tests, culture or other means approved by the State Board of Health.

ADMINISTRATIVE CODE

ALA. ADMIN. CODE R. 420-4-1.05 (2018)

Control Procedures

(1) The State Health Officer may act to prevent the spread of any notifiable disease or health condition in a manner consistent with current medical and epidemiologic knowledge about the mode of transmission of said disease or health condition. Said actions for control of disease include any of the following actions, any combination thereof, or any other lawful action necessary to prevent the spread of disease.

(a) The State Health Officer, or his or her designee, may cause a person or persons to be placed in isolation and order said person or persons to remain in such status until released by said Health Officer designee as provided for in Code of Ala. 1975, § 22-11A-1, et seq.

(b) The State Health Officer, or his or her designee, may order any person or persons to restrict their activities and not engage in certain specified activities or enter certain places while they are potentially capable of transmitting a notifiable disease or health condition.

(c) The State Health Officer, or his or her designee, may order a person or persons to be quarantined in their own dwelling or such other facility as may be deemed appropriate and may order removal of said persons if not in their own home in accordance with Code of Ala. 1975, § 22-11A-8.
