

Alaska

Analysis

A person’s HIV status may lead to higher prison sentences for felony sexual offenses.

Alaska has no statute explicitly criminalizing HIV transmission or exposure, but enhanced sentencing may be applied based on a defendant’s HIV status if they are found guilty of one of several specified sex offenses.¹ If a PLHIV is found guilty of a sexually-based assault, they may receive an enhanced term of imprisonment if (1) the offense involved penetration or (2) the defendant exposed the victim to a risk or fear that HIV transmission could result.² Neither the intent to transmit HIV nor actual transmission is required. Nor is there a requirement that a person’s “fear that the offense could result in the transmission of HIV or AIDS” be based on accurate medical science.

Alaska defines “sexual penetration” as “genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person’s body into the genital or anal opening of another person’s body”³ An enhanced sentence can be imposed even if the defendant’s viral load is low or non-detectable, if protection, such as a condom was used, or if the crime involved penetration with a body part or object that cannot transmit HIV.

In 1996, the HIV status of a defendant was considered an “aggravating factor,” leading the court to sentence him to ten years’ imprisonment for sexual abuse of a minor.⁴ On appeal, the court affirmed the finding of the defendant’s HIV status as an aggravating factor because the defendant knew he had HIV at the time of the sexual conduct with the minor, did not disclose his status, and did not take any measures to protect her from infection.⁵ The court found that although the minor provided a condom that was used for the second sexual encounter, and that she had thus far tested negative for HIV, it was “reasonable to infer that [the minor] [would] be very fearful for some time to come that she may have contracted [HIV]”⁶ The court determined that such considerations supported an enhanced sentence.⁷

¹ ALASKA STAT. § 12.55.155 (2016).

² § 12.55.155(c)(33) (2016).

³ § 11.81.900(b)(60)(A) (2016).

⁴ *Wans v. State*, No. A-6188, 1996 WL 671355 at *2 (Alaska Ct. App. 1996).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

The Alaska Department of Health and Social Services (“Department”) may quarantine or isolate people living with HIV or an STI.

The State Department of Health and Social Services is given authority to quarantine or isolate persons in order to prevent spread of communicable diseases, among them HIV/AIDS and a number of sexually transmitted infections (STI).⁸ Some procedural safeguards are in place, such as the requirement that quarantine or isolation be the least restrictive means necessary to prevent transmission, as well as the provision of a hearing and certain other rights for a restricted individual; however, other basic protections, such as the right to legal representation, are notably absent.⁹ Moreover, it is unclear how much and what kind of evidence is sufficient to establish “that the individual is unable or unwilling to behave so as not to expose other individuals to danger of infection.”¹⁰ For example, successful antiretroviral therapy or condom use, as in *Wans*, might not be sufficient to demonstrate the absence of any behavior posing actual risk of exposure to HIV or other STI before a court.¹¹

The Alaska Department of Health and Social Services may disclose an individual’s identifiable health information during the course of a legal proceeding.

Despite baseline confidentiality protections, there are two notable exceptions in which the Department may disclose an individual’s ordinarily protected health information: (1) orders for quarantine and isolation, and (2) under court order, during any other legal proceeding.¹²

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.*

⁸ ALASKA STAT. §§ 18.15.370, 18.15.385 (2016). The statutes specifically authorizing isolation and quarantine refer to “contagious” diseases. Contagious disease is defined as “an infectious disease that can be transmitted from individual to individual.” ALASKA STAT. §§ 18.15.395(3) (2016). This broad definition clearly encompasses HIV and other reportable STIs, including chancroid, chlamydia, gonorrhea, viral hepatitis, and syphilis. ALASKA ADMIN. CODE tit. 7, § 27.005 (2016).

⁹ ALASKA STAT. § 18.15.385 (2016).

¹⁰ *Id.*

¹¹ *Id.*; *Wans v. State*, No. A-6188, 1996 WL 671355 at *2 (Alaska Ct. App. 1996).

¹² ALASKA ADMIN. CODE tit. 7 § 27.893(e) (2016).

Code of Alaska

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 12, CODE OF CRIMINAL PROCEDURE

ALASKA STAT. § 12.55.155 (2016) **

Factors in aggravation and mitigation

(c) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence above the presumptive range set out in AS 12.55.125:

(33) the offense was a felony specified in AS 11.41.410--11.41.455, the defendant had been previously diagnosed as having or having tested positive for HIV or AIDS, and the offense either (A) involved penetration, or (B) exposed the victim to a risk or a fear that the offense could result in the transmission of HIV or AIDS; in this paragraph, “HIV” and “AIDS” have the meanings given in AS 18.15.310.

ALASKA STAT. § 12.55.125 (2016) **

Sentences of imprisonment for felonies

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 – 12.55.175:

(2) if the offense is a first felony conviction

(A) and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, firefighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven to 11 years;

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 – 12.55.175:

(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS.12.55.155 – 12.55.175:

(i) A defendant convicted of

(1) sexual assault in the first degree, sexual abuse of a minor in the first degree . . . may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 30 years;

ALASKA STAT. § 12.55.135 (2016) **

Sentences of imprisonment for misdemeanors

(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense.

TITLE 11, CRIMINAL LAW

ALASKA STAT. § 11.41.410 (2016)

Sexual assault in the first degree

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

ALASKA STAT. § 11.41.420 (2016)

Sexual assault in the second degree

(b) Sexual assault in the second degree is a class B felony.

ALASKA STAT. § 11.41.425 (2016)

Sexual assault in the third degree

(c) Sexual assault in the third degree is a class C felony.

ALASKA STAT. § 11.41.427(2016)

Sexual assault in the fourth degree

(c) Sexual assault in the fourth degree is a class A misdemeanor.

ALASKA STAT. § 11.41.434 (2016)

Sexual abuse of a minor in the first degree

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

ALASKA STAT. § 11.41.436 (2016)

Sexual abuse of a minor in the second degree

(b) Sexual abuse of a minor in the second degree is a class B felony.

ALASKA STAT. § 11.41.438(B) (2016)

Sexual abuse of a minor in the third degree

(b) Sexual abuse of a minor in the third degree is a class C felony.

ALASKA STAT. § 11.41.440 (2016)

Sexual abuse of a minor in the fourth degree

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor.

ALASKA STAT. § 11.41.452 (2016)

Online enticement of a minor

(d) Except as provided in (e) of this section, online enticement is a class B felony.

(e) Online enticement is a class A felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

ALASKA STAT. § 11.41.450 (2016)

Incest

(b) Incest is a class C felony.

ALASKA STAT. § 11.41.455 (2016)

Unlawful exploitation of a minor

(c) Unlawful exploitation of a minor is a

(1) class B felony; or

(2) class A felony if the person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction.

ALASKA STAT. § 11.81.900 (2016)

Definitions

(a) For purposes of this title, unless the context requires otherwise,

(1) a person acts “intentionally” with respect to a result described by a provision of law defining an offense when the person’s conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person’s only objective;

(2) a person acts “knowingly” with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(15) “dangerous instrument” means

(A) any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(17) “deadly weapon” means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles, or an explosive;

(57) “serious physical injury” means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

TITLE 18, HEALTH, SAFETY, HOUSING, HUMAN RIGHTS, AND PUBLIC DEFENDER

ALASKA STAT. § 18.15.370 (2016)

Reportable disease list

The department shall maintain a list of reportable diseases or other conditions of public health importance that must be reported to the department. The list may include birth defects, cancers, injuries, and diseases or other conditions caused by exposure to microorganisms; pathogens; or environmental, toxic, or other hazardous substances. The department shall regularly maintain and may revise the list. The department may also establish registries for diseases and conditions that must be reported to the department.

ALASKA STAT. § 18.15.385 (2016) **

Isolation and quarantine

(a) The department may isolate or quarantine an individual or group of individuals if isolation or quarantine is the least restrictive alternative necessary to prevent the spread of a contagious or possibly contagious disease to others in accordance with regulations adopted by the department consistent with the provisions of this section and other law.

(d) Before quarantining or isolating an individual, the department shall obtain a written order from the superior court authorizing the isolation or quarantine, unless the individual consents to the quarantine or isolation. The department shall file a petition for a written order under this subsection. The petition must:

(1) allege

(A) the identity of each individual proposed to be quarantined or isolated:

- (B) the premises subject to isolation or quarantine;
- (C) the date and time the isolation or quarantine is to begin;
- (D) the suspected contagious disease;
- (E) that the individual poses a significant risk to public health;
- (F) whether testing screening, examination, treatment, or related procedures are necessary;
- (G) that the individual is unable or unwilling to behave so as not to expose other individuals to danger of infection; and
- (H) that the department is complying or will comply with (b) of this section; and

(2) be accompanied by an affidavit signed by a state medical officer attesting to the facts asserted in the petition, including specific facts supporting the allegations required by (1)(D) and (G) of this subsection; the petition shall be personally served according to court rules, along with notice of the time and place of the hearing under (f) of this section.

(e) Notwithstanding (d) of this section, when the department has probable cause to believe that the delay involved in seeking a court order imposing isolation or quarantine would pose a clear and immediate threat to the public health and isolation or quarantine is the least restrictive alternative and is necessary to prevent the spread of a contagious or possibly contagious disease, a state medical officer in the department may issue an emergency administrative order to temporarily isolate or quarantine an individual or group of individuals. An emergency administrative order of temporary quarantine or isolation by a state medical officer is enforceable by any peace officer in the state. Within 24 hours after implementation of the emergency administrative order, the department shall notify the superior court by filing a petition under (d) of this section that also alleges that the emergency action was necessary to prevent or limit the transmission of a contagious or possibly contagious disease to others that would pose an immediate threat to the public health. The petition must be signed by a state medical officer.

(g) During the hearing, the individual has the right to

- (1) view and copy all petitions and reports in the court file of the individual's case;
- (2) elect to have the hearing open to the public;
- (3) have the rules of evidence and civil procedure applied so as to provide for the informal but efficient presentation of evidence;
- (4) have an interpreter if the individual does not understand English;
- (5) present evidence on the individual's behalf;
- (6) cross-examine witnesses who testify against the individual;
- (7) call experts and other witnesses to testify on the individual's behalf; and

(8) participate in the hearing; under this paragraph, participation may be by telephone if the individual presents a substantial risk of transmitting a contagious or possibly contagious disease to others.

(n) A person who knowingly violates this section or a regulation adopted under this section is guilty of a class B misdemeanor. In this subsection, “knowingly” has the meaning given in AS 11.81.900(a).

(o) A person who intentionally violates this section or a regulation adopted under this section is guilty of a class A misdemeanor. In this subsection, “intentionally” has the meaning given in AS 11.81.900(a).

ADMINISTRATIVE CODE

TITLE 7, HEALTH AND SOCIAL SERVICES

ALASKA ADMIN. CODE TIT. 7 § 27.893 (2016)

Permitted disclosures

(e) The department will not disclose identifiable health information in the course of legal discovery, subpoena, or compelled testimony of a public health agent, in any civil, criminal, administrative, or other legal proceeding, except

(1) in a legal proceeding initiated by a public health agent for quarantine or isolation of the person who is subject to the health information to be disclosed, whether the proceeding is open or closed to the public; or

(2) when a court orders the disclosure after having been fully advised of

(A) the statutes and regulations limiting disclosure;

(B) the public policy supporting the protection of identifiable health information;

(C) the facts that support the closing of the proceeding or the sealing of the records containing identifiable health information.