

Iowa

Analysis

Intentional or reckless exposure to HIV may result in prosecution.¹

The intentional or reckless exposure of another to HIV, hepatitis, meningococcal disease, or tuberculosis, may result in prosecution and imprisonment under Iowa's criminal transmission of a contagious or infectious disease statute.² Under this statute there are several levels of crime and punishment, based on the defendant's intent and whether disease was actually transmitted.

If a person living with HIV (PLHIV) exposes another to HIV with the intent to transmit the virus and the act results in transmission, it is a Class B felony, punishable by up to 25 years' imprisonment.³ If a PLHIV exposes another to HIV with the intent to transmit the virus and the act does not result in transmission it is a Class D felony, punishable by up to five years imprisonment and a \$7,500 fine.⁴

If a PLHIV exposes another to HIV acting with a reckless disregard as to whether transmission occurs and the act results in transmission, it is a Class D felony, punishable by up to five years' imprisonment and a \$7,500 fine.⁵ If a PLHIV exposes another to HIV acting with a reckless disregard as to whether transmission occurs and the act does not result in transmission, it is a serious misdemeanor, punishable by up to one year of imprisonment and a \$1,875 fine.⁶

Evidence that a PLHIV was aware of their HIV status and engaged in conduct that exposed another, regardless of how often this conduct occurred, is insufficient on its own to prove the individual had the intent to transmit HIV within the meaning of the statute.⁷ Further, if a PLHIV takes practical measures to prevent transmission or discloses their status to a partner and offers to take such practical measures,

¹ Effective May 30, 2014, Iowa's HIV criminal transmission law was revised. Before the revision, it was a Class B felony, punishable by up to 25 years in prison, for a PLHIV who knew their HIV status to engage in intimate contact with another. §§ 709C.1(1)(a), (3), repealed by Acts 2014 (85 G.A.) S.F. 2297, § 9, eff. May 30, 2014, § 902.9(1)(b). "Intimate contact" was defined as the intentional exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV. § 709C.1(2)(b), repealed by Acts 2014 (85 G.A.) S.F. 2297, § 9, eff. May 30, 2014. The use of condoms or other protection during sexual activity was not a defense to prosecution without prior disclosure of one's HIV status. Unlike the current law, neither the intent to transmit HIV nor actual transmission was required for prosecution. Defendants convicted under the law were also required to register as sex offenders. § 692A.102(1)(c)(23), subsection deleted by Acts 2014 (85 G.A.) S.F. 2297, § 9, eff. May 30, 2014. Under the 2014 revision, those who were previously required to register as sex offenders pursuant to the prior law will have their records expunged and their names removed from the registry. § 692A.102(1)(c)(23), subsection deleted by Acts 2014 (85 G.A.) S.F. 2297, § 9, eff. May 30, 2014.

² IOWA CODE § 709D.3 (2016).

³ *Id.* §§ 709D.3(1), 902.9(1)(b) (2016).

⁴ §§ 709D.3(2), 902.9(1)(e) (2016).

⁵ §§ 709D.3(3), 902.9(1)(e) (2016).

⁶ §§ 709D.3(4), 903.1(1)(b) (2016).

⁷ § 709D.3(6) (2016).

then they have not acted with the mental state required for prosecution.⁸ It is an affirmative defense if the exposed individual knew of the other's HIV status and consented to the exposure.⁹

PLHIV who become pregnant, choose to continue a pregnancy, or decline treatment for HIV while pregnant, are not subject to prosecution under this law.¹⁰

Only one prosecution has been identified under the revised statute:

- In October 2016, a 34-year-old PLHIV pled guilty to two counts of reckless exposure of a contagious disease not resulting in transmission.¹¹ In exchange for the plea, prosecutors agreed to recommend that the defendant be sentenced to a year in jail and receive credit for time served,¹² which appears to have occurred.¹³ The defendant had been convicted previously of "knowingly spreading HIV."¹⁴

Knowingly exposing another to a communicable disease may result in prosecution.

A person who knowingly exposes another to a communicable disease may be found guilty of a simple misdemeanor, punishable by up to 30 days' imprisonment and a \$625 fine.¹⁵ Communicable diseases include sexually transmitted diseases, including but not limited to, chlamydia, gonorrhea, hepatitis B, hepatitis C, HIV/AIDS, HPV, and syphilis.¹⁶

It is a serious misdemeanor to knowingly give false information regarding the person's infected state on a blood plasma sale application, punishable by up to one year imprisonment and a \$1,875 fine.¹⁷

A person with a sexually transmitted disease (STD) may be subject to mandatory treatment and examination.

A person "reasonably suspected, on the basis of epidemiological investigation, of having any sexually transmitted disease or infection in the infectious stages" is subject to examination to determine if they are infected and, if infected, to treatment.¹⁸ There is no case law interpreting what may be considered "reasonable suspicion" that a person has a sexually transmitted disease, so mere accusation may suffice.

⁸ § 709D.3(7) (2016).

⁹ § 709D.3(8) (2016).

¹⁰ § 709D.3(5) (2016).

¹¹ Sarah Tisinger, "Coralville man pleads guilty to lesser counts in HIV Exposure Case," WGAD8, October 29, 2016, available at <http://wqad.com/2016/10/29/coralville-man-pleads-guilty-to-lesser-counts-in-hiv-exposure-case/>.

¹² *Id.*

¹³ *State of Iowa v. Musser*, 06521 FECR 109220, available at <http://www.iowacourts.state.ia.us>.

¹⁴ *Id.*

¹⁵ §§ 139A.20, 139A.25(1); 903.1(1)(a) (2016).

¹⁶ § 139A.2(4), (23); IOWA ADMIN. CODE r. 641-1.1 (2016).

¹⁷ IOWA CODE §§ 139A.24; 903.1(1)(b) (2016).

¹⁸ § 139A.34 (2016).

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.*

Iowa 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.

TITLE XVI, CRIMINAL LAW AND PROCEDURE

IOWA CODE § 709D.3 (2016) **

Criminal transmission of a contagious or infectious disease

1. A person commits a class “B” felony when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease with the intent that the uninfected person contract the contagious or infectious disease, and the conduct results in the uninfected person becoming infected with the contagious or infectious disease.
2. A person commits a class “D” felony when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease with the intent that the uninfected person contract the contagious or infectious disease, but the conduct does not result in the uninfected person becoming infected with the contagious or infectious disease.
3. A person commits a class “D” felony when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease acting with a reckless disregard as to whether the uninfected person contracts the contagious or infectious disease, and the conduct results in the uninfected person becoming infected with the contagious or infectious disease.
4. A person commits a serious misdemeanor when the person knows the person is infected with a contagious or infectious disease and exposes an uninfected person to the contagious or infectious disease acting with a reckless disregard as to whether the uninfected person contracts the contagious or infectious disease, but the conduct does not result in the uninfected person becoming infected with the contagious or infectious disease.
5. The act of becoming pregnant while infected with a contagious or infectious disease, continuing a pregnancy while infected with a contagious or infectious disease, or declining treatment for a contagious or infectious disease during pregnancy shall not constitute a crime under this chapter.
6. Evidence that a person knows the person is infected with a contagious or infectious disease and has engaged in conduct that exposes others to the contagious or infectious disease, regardless of the frequency of the conduct, is insufficient on its own to prove the intent to transmit the contagious or infectious disease.
7. A person does not act with the intent required pursuant to subsection 1 or 2, or with the reckless disregard required pursuant to subsection 3 or 4, if the person takes practical means to prevent transmission, or if the person informs the uninfected person that the person has a contagious or infectious disease and offers to take practical means to prevent transmission but that offer is rejected by the uninfected person subsequently exposed to the infectious or contagious disease.

8. It is an affirmative defense to a charge under this section if the person exposed to the contagious or infectious disease knew that the infected person was infected with the contagious or infectious disease at the time of the exposure and consented to exposure with that knowledge.

IOWA CODE § 709D.2 (2016)

Definitions

As used in this chapter, unless the context otherwise requires:

1. “Contagious or infectious disease” means hepatitis in any form, meningococcal disease, AIDS or HIV as defined in section 141A.1, or tuberculosis.
2. “Exposes” means engaging in conduct that poses a substantial risk of transmission.
3. “Practical means to prevent transmission” means substantial good faith compliance with a treatment regimen prescribed by the person’s health care provider, if applicable, and with behavioral recommendations of the person’s health care provider or public health officials, which may include but are not limited to the use of a medically indicated respiratory mask or a prophylactic device, to measurably limit the risk of transmission of the contagious or infectious disease.

IOWA CODE § 709D.4 (2016)

Additional remedies

This chapter shall not be construed to preclude the use of any other civil or criminal remedy available relating to the transmission of a contagious or infectious disease.

IOWA CODE § 902.9 (2016) **

Maximum sentence for felons

1. The maximum sentence for any person convicted of a felony shall be that prescribed by statute or, if not prescribed by statute, if other than a class “A” felony shall be determined as follows:
 - b. A class “B” felon shall be confined for no more than twenty-five years.
 - c. An habitual offender shall be confined for no more than fifteen years.
 - e. A class “D” felon, not an habitual offender, shall be confined for no more than five years, and in addition shall be sentenced to a fine of at least seven hundred fifty dollars but not more than seven thousand five hundred dollars.

IOWA CODE § 903.1 (2016) **

Maximum sentence for misdemeanants

1. If a person eighteen years of age or older is convicted of a simple or serious misdemeanor and a specific penalty is not provided for or if a person under eighteen years of age has been waived to adult court pursuant to section 232.45 on a felony charge and is subsequently convicted of a simple, serious, or aggravated misdemeanor, the court shall determine the sentence, and shall fix the period of confinement or the amount of fine, which fine shall not be suspended by the court, within the following limits:

a. For a simple misdemeanor, there shall be a fine of at least sixty-five dollars but not to exceed six hundred twenty-five dollars. The court may order imprisonment not to exceed thirty days in lieu of a fine or in addition to a fine.

b. For a serious misdemeanor, there shall be a fine of at least three hundred fifteen dollars but not to exceed one thousand eight hundred seventy-five dollars. In addition, the court may also order imprisonment not to exceed one year.

TITLE IV, PUBLIC HEALTH

IOWA CODE § 139A.2 (2016)

Definitions

4. "Communicable disease" means any disease spread from person to person or animal to person.

5. "Contagious or infectious disease" means hepatitis in any form, meningococcal disease, AIDS or HIV as defined in section 141A.1, tuberculosis, and any other disease determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

20. "Quarantinable disease" means any communicable disease designated by rule adopted by the department as requiring quarantine or isolation to prevent its spread.

23. "Sexually transmitted disease or infection" means a disease or infection as identified by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

24. "Significant exposure" means a situation in which there is a risk of contracting disease through exposure to a person's infectious bodily fluids in a manner capable of transmitting an infectious agent as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

IOWA CODE § 139A.4 (2016)

Type and length of isolation or quarantine

1. The type and length of isolation or quarantine imposed for a specific communicable disease shall be in accordance with rules adopted by the department.

2. The department and the local boards may impose and enforce isolation and quarantine restrictions.

4. The department and local boards may impose and enforce area quarantine restrictions according to rules adopted by the department. Area quarantine shall be imposed by the least restrictive means necessary to prevent or contain the spread of the suspected or confirmed quarantinable disease or suspected or known hazardous toxic agent.

IOWA CODE § 139A.20 (2016) **

Exposing to communicable disease

A person who knowingly exposes another to a communicable disease or who knowingly subjects another to a child or other legally incapacitated person who has contracted a communicable disease, with the intent that another person contract the communicable disease, shall be liable for all resulting damages and shall be punished as provided in this chapter.

IOWA CODE § 139A.24 (2016)

Blood donation or sale – penalty

A person suffering from a communicable disease dangerous to the public health who knowingly gives false information regarding the person's infected state on a blood plasma sale application to a blood plasma-taking personnel commits a serious misdemeanor.

IOWA CODE § 139A.25 (2016) **

Penalties

1. Unless otherwise provided in this chapter, a person who knowingly violates any provision of this chapter, or of the rules of the department or a local board, or any lawful order, written or oral, of the department or board, or of their officers or authorized agents, is guilty of a simple misdemeanor.

IOWA CODE § 139A.34 (2016)

Examination of persons suspected

The local board shall cause an examination to be made of every person reasonably suspected, on the basis of epidemiological investigation, of having any sexually transmitted disease or infection in the infectious stages to ascertain if such person is infected and, if infected, to cause such person to be treated. A person who is under the care and treatment of a health care provider for the suspected condition shall not be subjected to such examination. If a person suspected of having a sexually transmitted disease or infection refuses to submit to an examination voluntarily, application may be made by the local board to the district court for an order compelling the person to submit to examination and, if infected, to treatment. The person shall be treated until certified as no longer infectious to the local board or to the department. If treatment is ordered by the district court, the attending health care provider shall certify that the person is no longer infectious.