

Mississippi

Analysis

A broad range of HIV exposures may result in imprisonment.

Knowingly exposing another person to HIV, hepatitis B, or hepatitis C is a felony punishable by up to ten years in prison and/or a \$10,000 fine.¹ Neither the intent to transmit HIV nor actual transmission is required for conviction.

It is a defense to prosecution if the complainant (1) was aware of the defendant's HIV status and (2) willingly consented to HIV exposure.² However, proving disclosure of HIV status during private sexual encounters is difficult without witnesses or documentation. Whether or not disclosure actually occurred is often open to interpretation and almost always depends on the word of one person against another.

In *McCoy v. State*, the Court of Appeals of Mississippi affirmed the conviction and sentencing of a 41-year-old person living with HIV (PLHIV) for four counts of sexual battery and one count of exposing another to HIV after he met the 15-year-old complainant on a social networking site for gay men and they subsequently had sex.³ The Court affirmed the exposure conviction even though McCoy testified that he had disclosed his HIV status, and the complainant consented to the sexual activity with condoms.⁴ This was weighed against the complainant's testimony, which stated there was no disclosure and condoms were not used, and that of two law enforcement officers, who testified that the defendant admitted to not using condoms.⁵ McCoy's HIV status was also an aggravating factor in sentencing for his sexual battery convictions.⁶

McCoy highlights the difficulties involved in proving a defendant disclosed their HIV status since, "where the verdict turns on the credibility of conflicting testimony and the credibility of the witnesses, it is the jury's duty to resolve the conflict."⁷ It also illustrates that HIV status may affect sentencing for separate convictions even when there is also a conviction for HIV exposure as a standalone offense.

Other prosecutions under Mississippi's exposure statute include:

¹ MISS. CODE ANN. § 97-27-14(1), (3) (2016).

² *Id.*

³ *McCoy v. State*, No. 2013-KA-02126-COA LEXIS 228, *2 (Miss. Ct. App. April 19, 2016).

⁴ *Id.* at *15.

⁵ *Id.* (finding a reasonable jury could have found defendant guilty beyond reasonable doubt).

⁶ *Id.* at *9 (Other factors considered include the complainant's age compared to McCoy's; complainant's testimony that he told McCoy his age; and McCoy's admission that he drove in the middle of the night to meet complainant, waited in his car outside complainant's father's house, and drove complainant to a secluded spot where the sexual activity occurred.).

⁷ *Id.* at *15.

- In January 2015 a 41-year-old PLHIV was charged with exposing another to HIV after posting an ad on Craigslist and not disclosing his HIV status to the woman who responded and became his sexual partner.⁸ The woman tested negative for HIV.⁹
- In February 2014, a 51-year-old PLHIV was charged with exposing another to HIV after spitting in the face of a police officer during an arrest.¹⁰
- In July 2013, a 29-year-old PLHIV was charged with knowingly exposing a minor to HIV after having sexual relations with a 15-year-old girl.¹¹ The man had been released from prison three months earlier, where he had served a three-year sentence for similar charges.¹²

Exposing prisoners, prison guards, or prison visitors to bodily fluids is prohibited.¹³

Attempting to cause or knowingly causing a corrections employee, visitor to a correctional facility, or another inmate or offender to come into contact with blood, seminal fluid, urine, feces, or saliva is a misdemeanor punishable by imprisonment for up to one year and/or a fine up to \$1,000.¹⁴ However, if the person violating the section knows they have HIV, hepatitis B, or hepatitis C, the same act becomes a felony, punishable by up to ten years in prison and/or a \$10,000 fine.¹⁵ Again, neither the intent to transmit, nor actual transmission, is required. Of the enumerated bodily fluids, the Centers for Disease Control (CDC) identifies only blood and seminal fluid as capable of transmitting HIV, hepatitis B, and hepatitis C, and only through sexual or intravenous contact.¹⁶

Under the terms of this statute, “offenders” include anyone in the custody of the department of corrections and “prisoners” include anyone confined in a city or county jail.¹⁷ “Corrections employees” include any employee of an agency or department responsible for operating a jail, prison, or correctional facility, or anyone working in these facilities.¹⁸

Furthermore, because merely attempting to expose others to bodily substances is punishable, it is not a defense that these substances did not actually come into contact with another person or that HIV, hepatitis B, or hepatitis C transmission was impossible under the circumstances.

⁸ *Mississippi man charged for knowingly exposing woman to HIV*, WDAM.COM, Jan. 20 2015, available at <http://www.wdam.com/story/27896131/mississippi-man-charged-for-knowingly-exposing-woman-to-hiv>.

⁹ *Id.*

¹⁰ *Gulfport man charged with exposing officer to HIV*, WLOX.COM, Feb. 6, 2014, available at <http://www.wlox.com/story/24656007/gulfport-man-charged-with-exposing-officer-to-hiv>.

¹¹ JB Clark, *Tupelo man charged with exposing HIV again*, DJOURNAL.COM, July 13, 2013, available at <http://djournal.com/news/tupelo-man-charged-with-exposing-hiv-again/>.

¹² *Id.*

¹³ MISS. CODE ANN. § 97-27-14(2) (2016).

¹⁴ MISS. CODE ANN. § 97-27-14(2)(a), (2)(c), (4) (2016).

¹⁵ MISS. CODE ANN. § 97-27-14(2)(c), (3) (2016).

¹⁶ CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission* (Dec. 21, 2016), available at <http://www.cdc.gov/hiv/basics/transmission.html> (last accessed Dec. 29, 2016); CTR. FOR DISEASE CONTROL & PREVENTION, *Viral Hepatitis – Hepatitis B Information* (Aug. 4, 2016), available at <http://www.cdc.gov/hepatitis/hbv/hbvfaq.htm#treatment> (last accessed Dec. 29, 2016); CTR. FOR DISEASE CONTROL & PREVENTION, *Viral Hepatitis – Hepatitis C Information* (July 21, 2016), available at <http://www.cdc.gov/hepatitis/hcv/hcvfaq.htm#section2> (last accessed Dec. 29, 2016).

¹⁷ MISS. CODE ANN. § 97-27-14(2)(b)(ii)-(iii) (2016).

¹⁸ MISS. CODE ANN. § 97-27-14(2)(b)(i) (2016).

The State Board of Health (BOH) and State Department of Health (DOH) have broad authority to regulate PLHIV or people with other sexually transmitted infections (STIs).

The BOH has the authority to create regulations defining communicable diseases posing a danger to public health and monitoring or otherwise regulating those suspected of being infected with such diseases, including exceptions to confidentiality laws of the state.¹⁹ Thus, for example, the BOH has “full power to isolate, quarantine, or otherwise confine, intern, and treat such person afflicted with such infectious sexually transmitted disease for such time and under such restrictions as may seem proper.”²⁰ Moreover, anyone violating a BOH regulation is guilty of a misdemeanor and may be punished by fine, imprisonment, or both.²¹

The DOH is authorized to “investigate and control the causes of epidemic, infectious and other disease affecting the public health.”²² Part of this authority includes the power to “establish, maintain and enforce isolation and quarantine,” and “to exercise such physical control over property and individuals as the department may find necessary for the protection of the public health.”²³ It is a felony, punishable by up to five years in prison and/or a \$5,000 fine, for an individual afflicted with a “life-threatening communicable disease” to willfully violate a DOH order issued under this authority.²⁴ However, there are some procedural safeguards in place for quarantine or isolation, such as the rights to notice of hearing, to legal representation, and to cross-examine witnesses.²⁵

This public health law has been used to prosecute at least one PLHIV for failing to disclose his HIV status to sexual partners.²⁶ In 1992, the Mississippi State Department of Health issued a quarantine order against a PLHIV.²⁷ The order stated that, due to his HIV status, the man “posed a risk of harm to the public health.”²⁸ The order further required the man to (1) disclose his HIV status to sexual partners and (2) abstain from engaging in activities involving the mixture of his blood with the blood of another (i.e., intravenous drug use).²⁹ The following year, the man was arrested for violating the quarantine order after having sex without disclosing his HIV status.³⁰ The man was convicted and sentenced to five years in prison.³¹

¹⁹ Miss. CODE ANN. § 41-23-1(1), (9) (2016). For a complete list of STIs, see 15-002-001 Miss. Code R. § 1.2.1, Appendix A (2016).

²⁰ Miss. CODE ANN. § 41-23-27 (2016). “Sexually transmitted disease” is not defined. However, the Code of Mississippi Rules lists viral hepatitis, chancroid, HIV/AIDS, syphilis, chlamydia, and gonorrhea as reportable diseases. Miss. CODE R. § 1.1.2, app. A (2016).

²¹ *Id.*

²² Miss. CODE ANN. § 41-23-5 (2016).

²³ *Id.*; 15-002-001 Miss. CODE R. §§ 1.4.1, 1.6.1 (2016).

²⁴ Miss. CODE ANN. § 41-23-2 (2016).

²⁵ 15-002-001 Miss. CODE R. § 1.19.2 (2016).

²⁶ *Carter v. State*, 803 So. 2d 1191 (Miss. Ct. App. 1999).

²⁷ *Id.* at 1192-93.

²⁸ *Id.* at 1193.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

The only impetus for the man's quarantine order was the positive test for HIV.³² Under the terms of the order, using protection during sexual intercourse was not a defense.³³

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.*

³² *Id.* at 1192-93; See 15-002-001 Miss. CODE R. § 1.17.15(1) (2016).

³³ *Carter*, 803 So. 2d at 1192-93.

Mississippi 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 97, CRIMES

MISS. CODE ANN. § 97-27-14 (2016) **

Contagious diseases; causing exposure to human immunodeficiency virus (HIV), hepatitis B or hepatitis C; crime of endangerment by bodily substance; violations and penalties

(1) It shall be unlawful for any person to knowingly expose another person to human immunodeficiency virus (HIV), hepatitis B or hepatitis C. Prior knowledge and willing consent to the exposure is a defense to a charge brought under this paragraph. A violation of this subsection shall be a felony.

(2)

(a) A person commits the crime of endangerment by bodily substance if the person attempts to cause or knowingly causes a corrections employee, a visitor to a correctional facility or another prisoner or offender to come into contact with blood, seminal fluid, urine, feces or saliva.

(b) As used in this subsection, the following definitions shall apply unless the context clearly requires otherwise:

(i) "Corrections employee" means a person who is an employee or contracted employee of a subcontractor of a department or agency responsible for operating a jail, prison, correctional facility or a person who is assigned to work in a jail, prison or correctional facility.

(ii) "Offender" means a person who is in the custody of the Department of Corrections.

(iii) "Prisoner" means a person confined in a county or city jail.

(c) A violation of this subsection is a misdemeanor unless the person violating this section knows that he is infected with human immunodeficiency virus (HIV), hepatitis B or hepatitis C, in which case it is a felony.

(3) Any person convicted of a felony violation of this section shall be imprisoned for not less than three (3) years nor more than ten (10) years and a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(4) Any person guilty of a misdemeanor violation of this section shall be punished by imprisonment in the county jail for up to one (1) year and may be fined One Thousand Dollars (\$1,000.00), or both.

(5) The provisions of this section shall be in addition to any other provisions of law for which the actions described in this section may be prosecuted.

TITLE 41, PUBLIC HEALTH

MISS. CODE ANN. § 41-23-1 (2016)

Rules and regulations; physicians, health-care facilities, and correctional facilities to report cases of communicable and other dangerous diseases; penalties

(1) The State Board of Health shall adopt rules and regulations (a) defining and classifying communicable diseases and other diseases that are a danger to health based upon the characteristics of the disease; and (b) establishing reporting, monitoring and preventive procedures for those diseases.

(9) Notwithstanding any law of this state to the contrary, the State Board of Health is authorized to establish the rules by which exceptions may be made to the confidentiality provisions of the laws of this state for the notification of third parties of an individual's infection with any Class 1 or Class 2 disease, as designated by the State Board of Health, when exposure is indicated or there exists a threat to the public health and welfare. All notifications authorized by this section shall be within the rules established according to this subsection. All persons who receive notification of the infectious condition of an individual under this subsection and the rules established under this subsection shall hold such information in the strictest of confidence and privilege, shall not reveal the information to others, and shall take only those actions necessary to protect the health of the infected person or other persons where there is a foreseeable, real or probable risk of transmission of the disease.

MISS. CODE ANN. § 41-23-2 (2016) **

Penalties for violating health department orders with respect to life-threatening communicable diseases

Any person who shall knowingly and willfully violate the lawful order of the county, district or state health officer where that person is afflicted with a life-threatening communicable disease or the causative agent thereof shall be guilty of a felony and, upon conviction, shall be punished by a fine not exceeding Five Thousand Dollars (\$ 5,000.00) or by imprisonment in the penitentiary for not more than five (5) years, or by both.

MISS. CODE ANN. § 41-23-5 (2016)

Authority of State Department of Health to investigate diseases; authority to temporarily detain individuals for disease control purposes under certain circumstances.

The State Department of Health shall have the authority to investigate and control the causes of epidemic, infectious and other disease affecting the public health, including the authority to establish, maintain and enforce isolation and quarantine, and in pursuance thereof, to exercise such physical control over property and individuals as the department may find necessary for the protection of the public health. The State Department of Health is further authorized and empowered to require the temporary detainment of individuals for disease control purposes based upon violation of any order of the State Health Officer. For the purpose of enforcing such orders of the State Health Officer, persons employed by the department as investigators shall have general arrest powers. All law enforcement officers are authorized and directed to assist in the enforcement of such orders of the State Health Officer.

Miss. Code Ann. § 41-23-27 (2016) **

Powers of State Board of Health as to persons afflicted with infectious sexually transmitted disease

The State Board of Health shall have full power to isolate, quarantine or otherwise confine, intern, and treat such person afflicted with such infectious sexually transmitted disease for such time and under such restrictions as may seem proper. Said board shall have full power to pass all such rules and regulations as to the isolation, quarantine, confinement, internment and treatment as may be needful.

Any person knowingly violating any rule or regulation promulgated by the state board of health, under the authority of this section, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine or imprisonment or both.

Miss. Code Ann. § 41-23-29 (2016) **

Inspection and examination of person suspected of being afflicted with infectious sexually transmitted disease

Any person suspected of being afflicted with any such infectious sexually transmitted disease shall be subject to physical examination and inspection by any representative of the state board of health. For failure or refusal to allow such inspection or examination, such person may be punished as for a misdemeanor.

Code of Mississippi Rules

AGENCY 15, DEPARTMENT OF HEALTH

15-002-001 Miss. Code R. § 1.4.1 (2016)

Duties of Local Health Officer

The director of the local health department, as the local health officer, shall be responsible for the control of communicable diseases and other conditions within his or her jurisdiction considered prejudicial to the public health. It shall be his or her duty to collect and make reports as required to the Mississippi State Department of Health, to provide consultation services to physicians regarding communicable diseases, to advise and consult with all others in matters relating to public health, and to investigate reports of known or suspected communicable diseases or of conditions which might be prejudicial to the public health. It shall be his or her duty to determine in individual cases or groups of cases whether to impose restrictions on the activities of patients or contacts of persons with a communicable disease and to fix the period of isolation for such diseases. For all the diseases listed in Appendix A, Class 1A and Class 1B, the local health officer shall, on first knowledge or suspicion, conduct an investigation into all the circumstances and prescribe such reasonable methods of control as may be calculated to minimize the danger of further dissemination of the disease process. The measures proposed in the most current edition of the Control of Communicable Diseases Manual, published by the American Public Health Association shall be considered as supplementary. In all matters where there is disagreement as to diagnosis, isolation or in any other situation where the responsibility rests with the health officer, the opinion of the health officer shall prevail. In the discharge of his or her duties, the health officer or designee shall not be denied the right of entry to any premises nor shall he or she be denied pertinent patient health information and patient identifiers.

15-002-001 Miss. CODE R. § 1.6.1 (2016)

Suspects or Contacts of Communicable Diseases Required to Submit to Examination

The local health officer is authorized to examine, treat, and/or isolate at his or her discretion or under the direction of the State Health Officer any person who, on credible information, is suspected of suffering from any communicable disease, or who is a contact with a known case of such disease or may be a carrier or have the disease in the incubation or prodromal phase. Said suspect or contact shall be notified in writing to report to a reasonable place at a reasonable time for such examination. Should the suspect or contact refuse to submit to examination satisfactory to the health officer, said suspect or contact shall be prosecuted at law to compel compliance and/or be isolated in a manner prescribed by the health officer until the danger of transmitting the disease in question has passed. In the event that the aforementioned suspect or contact is a minor, the parent or guardian shall be apprised of the facts and requested to deliver said minor for examination. In the event of refusal, the health officer shall maintain action at law to compel compliance of the parent or guardian and/or impose isolation as necessary.

15-002-001 Miss. CODE R. § 1.17.15 (2016)

Sexually Transmitted Diseases – General

(1) Any person known or suspected of having syphilis, gonorrhea, Chlamydia, chancroid, human immunodeficiency virus (HIV) or other sexually transmissible disease (STD) or suspected of having been exposed to syphilis, gonorrhea, Chlamydia, chancroid, HIV or other STD shall submit to examination as provided in Section 105. Any person who, after due notification, fails or refuses to report for examination at the time and place designated by the health officer shall be subject to prosecution and the local health officer or the Mississippi State Department of Health or its representative may make an affidavit of such fact and cause the issuance of a warrant returnable before any court of competent jurisdiction. All records and reports herein required shall be kept in secret files and disclosed only as required before the court (Section 41-23-29, Mississippi Code of 1972 as amended.).

(2) It shall be the duty of the local health officer or his or her representative to conduct effective epidemiological actions including initial and follow up interviews, rapid contact and suspect referral to medical examination, satisfactory determination of the source of patient infection and all subsequent infections, and appropriate administration of prophylactic treatment to all at risk critical period contacts.

15-002-001 Miss. CODE R. § 1.19.2 (2016)

Administrative Rules and Procedures

(1) Assertion of Administrative Appeal Rights. In the case of the Department's enforcement of any of the measures described in these Regulations, if the matter is disputed by the affected party or parties and the Department and the party have been unable to resolve the dispute, the affected party or parties shall petition the Department to appear at an administrative hearing before a hearing officer appointed by the State Health Officer.

(2) Content and Form of Petition. The petition must be in writing and be submitted to the Department within 15 business days of the date upon which the petitioner received notice of the imposition of the enforcement measures. The petitioner must state in the petition the reasons for the appeal, and the petition must describe any facts which may be in dispute and must identify any grievances which are deemed by the petitioner to be genuine and substantial.

(3) Opportunity to Remedy Grievances. If the Department is unable to resolve the disputed facts and remedy the petitioner's grievances within 5 business days of the Department's receipt of the petition, the unresolved matters shall be reviewable by the hearing officer at an administrative hearing conducted in accordance with these Regulations. No unresolved matters shall be reviewable in the event that the Department shall terminate its enforcement action prior to the commencement of the hearing.

(a) General Principles for Administrative Reviews With respect to matters brought before the Department or the State Board of Health for administrative review, whether or not such review is initiated by the Department, a notice of the proceeding shall be prepared by the Department and the petitioner or the affected party or parties shall be afforded an opportunity to appear at such proceeding in accordance with the Regulations set forth in this Part Three. Any party who shall participate in the administrative proceeding shall be entitled to:

(i) Timely scheduling of the hearing if appealed by the petitioner in accordance with Section 201, but in any event no more than 15 business days after the date of the Department's receipt of the petition;

(ii) Representation by legal counsel, chosen in the discretion of such party and at such party's sole cost and expense;

(iii) Submission of testimony and documentary evidence, and presentation of argument and rebuttal with respect to the issues;

(iv) Conduct examination and cross-examination of witnesses to elicit a full and fair disclosure of the facts; and

(v) Demand a timely completion of the proceedings.

(b) Notice of Hearing. Notice of Hearing shall be served upon a petitioner or any other affected party in the same manner as authorized for the service of a Health Officer's Order or in such other manner as may be deemed reasonable and prudent by the hearing officer in order to properly notify the petitioner that a hearing has been scheduled.

(c) Date of Hearing. Unless otherwise provided by law, the notice of hearing must be given at least ten (10) days prior to the hearing date unless this notice period is waived by the affected parties in the interest of expediting the administrative review. Unless otherwise provided by law, proof of receipt of notice shall not be a required condition for the conduct of the hearing.

(d) Assignment of Hearing Officer. Within ten (10) days of the date on which the Department shall give Notice of Hearing, the State Health Officer or his authorized designee shall appoint the hearing officer assigned to hear the matter, and notice of such appointment shall be provided to all parties.

(e) Conduct of Hearings. The hearing officer shall preside at the hearing, and shall rule on all questions of applicable procedure and submission of evidence in accordance with the policies and procedures approved by the hearing officer. The hearing officer may issue an order using particular provisions of the Mississippi Rules of Civil Procedure and related local rules for guidance; however, formal adherence to said Rules shall not be mandated. The hearing officer may waive the application of any of these rules to further administrative convenience,

expedition, and economy if the waiver does not conflict with law, and the waiver does not cause undue prejudice to any party.

(f) Rules of Evidence. The Mississippi Rules of Evidence shall be used as a general guide for the presentation of evidence. However, any evidence which reasonably appears to be relevant and probative to the issues may be allowed in the discretion of the hearing officer, notwithstanding its inadmissibility under said Rules, unless the evidence offered is clearly of a privileged nature.

(g) Authority of Hearing Officer. The hearing officer shall have authority to do all things conformable to law that may be necessary to enable the officer effectively to discharge the duties of office, including, but not limited to, the authority to make final findings of fact and a written recommendation to the Department as to which enforcement actions or other restrictions, if any, should apply to the party or parties.

(h) Discovery. Discovery shall be limited to non-privileged documents. Depositions and requests for admissions may be directed, issued, and taken on order of the Department for good cause shown. These orders or authorizations may be challenged or enforced in the same manner as subpoenas. All requests for discovery must be timely and in writing. All disputes regarding the privileged nature of a document shall be resolved by the designated hearing officer prior to the commencement of the hearing.

(i) Public Access. Unless otherwise provided by law, all hearings are open to the public.

(j) Failure of Party to Appear for Hearing. If a party fails to appear at a hearing, the hearing officer may proceed with the presentation of the evidence of the appearing party, or vacate the hearing and return the matter to the Department for any further action.

(k) Proof

(a) Standard of proof. Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.

(b) Burden of Proof. Unless otherwise provided by law:

(i) The party asserting a claim, right, or entitlement has the burden of proof;

(ii) A party asserting an affirmative defense has the burden of establishing the affirmative defense; and

(iii) The proponent of a motion shall establish the grounds to support the motion

(l) Ex Parte Communications. A party shall not communicate, either directly or indirectly, with the hearing officer about any substantive issue in a pending matter unless:

(m) All parties are present;

(n) It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or

(o) It is by written motion with copies to all parties.

(4) Conflict Issues. All allegations of conflict or bias on the part of the appointed hearing officer must be filed at least three (3) business days prior to the hearing date. The State Health Officer who appointed

the hearing officer shall then consider the assertion of conflict or bias, and shall issue a written opinion prior to the commencement of the hearing.

(5) Hearing Record. A stenographic record of the hearing shall be made by a reporter chosen by the hearing officer. No transcript or other record of the proceeding shall be required to be maintained by the Department unless (i) required by statute or other rule, (ii) ordered by the hearing officer, or (iii) agreed in writing by all of the parties.

(6) Remedies for Non-compliance with Rules. If a respondent shall fail to fully comply with the requirements of the hearing officer's policies and procedures or other rulings, the hearing officer shall be authorized to impose fines in an amount not to exceed \$ 500 per occurrence and such other remedies as may be deemed appropriate by the hearing officer for the effective administration of those duties and responsibilities assigned to such officer.

(7) Appeals. Any person adversely affected by a decision of the Department shall have a right to appeal the decision through an appropriate and timely court action against the Department and/or its agents, consistent with applicable laws and jurisdictional requirements. Unless applicable law provides a longer period of time in which to assert any appeal, no appeal of a decision of the Department shall be taken unless it is filed with a court having jurisdiction within thirty (30) days of the date of the Department's decision.