

New Hampshire

Analysis

No criminal statutes explicitly address HIV exposure, but people living with HIV (PLHIV) faced prosecution under general criminal laws.

Although there are no statutes explicitly criminalizing HIV transmission or exposure in New Hampshire, there has been at least one prosecution for HIV exposure under general criminal laws.

In *State v. C.J.*, a Superior Court of New Hampshire denied a PLHIV's motion to dismiss criminal charges of second degree assault with a deadly weapon and reckless conduct with a deadly weapon after he had unprotected sex without disclosing his HIV status.¹ The court held that a reasonable jury could find the defendant's conduct met each of the elements of the crimes, since (1) having sex without disclosing one's HIV status could be considered, "acting in 'gross deviation' from how a law-abiding citizen in the same circumstances would act;"² (2) the "serious psychological injury" to the defendant's sexual partner when she learned of his HIV status was sufficient injury, even if no transmission occurred;³ and (3) "a reasonable juror [could] find that a [PLHIV] who engages in unprotected sex is using his sexual organs as a dangerous weapon. . . [because] HIV is commonly transmitted through unprotected sex [and] constitutes serious bodily injury because it is a serious impairment to one's health that often results in death."⁴ Thus the court denied the defendant's motion to dismiss, although it is unclear whether the defendant was convicted at trial.⁵

¹ *State v. C.J.*, No. 01-S-726, 2002 LEXIS 11 (N.H. Super. Ct. May 23, 2002). Second degree assault with a deadly weapon requires, "(1) a reckless mental state, (2) causing bodily injury, and (3) by using a deadly weapon." *Id.* at *5. N.H. Rev. Stat. Ann. § 631:2(I)(b) (2016). Reckless conduct with a deadly weapon requires, "(1) a reckless mental state, (2) conduct placing another person in danger of serious bodily injury, and (3) use of a deadly weapon." *C.J.*, at *8. N.H. Rev. Stat. Ann. § 631:3 (2016).

² *C.J.*, at *6.

³ *Id.* It is unclear if there was HIV transmission.

⁴ *Id.*

⁵ *Id.* at *5. *C.J.* is still good law, but the court's analysis of the third prong, use of a deadly weapon, is legally questionable and may be vulnerable to challenge based on medical developments, since it is no longer true that HIV "often results in death." *Id.* at *8. Although the court also noted a deadly weapon is not required to be "actually capable of causing death or serious bodily injury," the Supreme Court of New Hampshire case it cited for that assertion is distinguishable. *Id.* at *12. In *State v. Hatt*, the Supreme Court of New Hampshire affirmed the conviction of a man for robbery with a deadly weapon after he robbed a store with an unloaded firearm. The Court held it did not matter that the firearm was unloaded because, "the legislature clearly intended to limit the definition of deadly weapon to those instruments which are *objectively* understood to be capable of causing death or serious bodily injury in the manner in which they are used, intended to be used, or threatened to be used." *State v. Hatt*, 740 A.2d 1037, 1038 (N.H. 1999). In that case, a firearm is objectively understood to be capable of causing death or serious bodily injury in the manner in which it was threatened to be used. However, in the case of PLHIV having sexual relationships, there are no such threats. Moreover, while the general public, misinformed about popular misconceptions regarding the modern routes, risks, and realities of HIV treatment and transmission, may believe HIV "often results in death," it is in fact *objectively understood*, among medical and public health experts, that (1) HIV is not easily transmitted through sexual

PLHIV and persons with other STDs may be subject to mandatory testing, treatment, quarantine, and isolation.

The Department of Health and Human Services, “may request the examination, and order isolation, quarantine, and treatment of any person reasonably suspected of having been exposed to or of exposing another person or persons to a sexually transmitted disease.”⁶ Isolation and quarantine must be “by the least restrictive means necessary” to limit the spread of disease.⁷ Any person who violates, disobeys, refuses, omits or neglects to comply with any order made pursuant to that purpose is guilty of a misdemeanor, though the penalty is unspecified.⁸

In 2008, a 24-year-old man of unknown HIV status was ordered to pay over \$500 for an HIV test and write a letter of apology to a police officer after spitting in the officer’s eye during an arrest.⁹ The extent to which the alleged exposure led to other measures, such as treatment, quarantine, or prosecution, is unclear. However, this example illustrates what may be considered a “reasonable suspicion of exposure,” at least as applied to mandated testing or treatment.

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.*

contact, especially with the use of condoms and/or ART, and (2) HIV is a chronic, manageable disease. See, e.g., CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (Dec. 4, 2015) available at <https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html> (last visited Dec. 18, 2016) (Listing transmission risk for oral intercourse as “low”; for insertive penile-vaginal intercourse as 4 per 10,000 exposures; for receptive penile-vaginal intercourse as 8 per 10,000 exposures; for insertive anal intercourse as 11 per 10,000 exposures; and for receptive anal intercourse as 138 per 10,000 exposures); CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Effectiveness of Prevention Strategies to Reduce the Risk of Acquiring or Transmitting HIV*, (Jan. 7, 2016) available at <https://www.cdc.gov/hiv/risk/estimates/preventionstrategies.html> (last visited Dec. 18, 2016) (ART reduces the risk of transmission by 96%. Condom use reduces the risk of transmission by 63-80%). See also U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, *HIV Basics: Overview: About HIV & AIDS: What Are HIV and AIDS?*, available at <https://www.hiv.gov/hiv-basics/overview/about-hiv-and-aids/what-are-hiv-and-aids> (last visited July 13, 2017) (“Today, someone diagnosed with HIV and treated before the disease is far advanced can live nearly as long as someone who does not have HIV.”); U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, *HIV Basics: HIV Testing: Just Diagnosed: What’s Next?: Living with HIV*, available at <https://www.hiv.gov/hiv-basics/hiv-testing/just-diagnosed-whats-next/living-with-hiv> (last visited July 13, 2017) (“Taking [ART] to treat HIV slows the progression of HIV and helps protect your immune system [and] can keep you healthy for many years and greatly reduces your chance of transmitting HIV to sex partner(s) if taken the right way, every day.”)

⁶ N.H. REV. STAT. ANN. § 141-C:18 (2016). See also N.H. REV. STAT. ANN. §§ 141-C:6, 141-C:12, 141-C:15, 141-C:8 (2016); N.H. CODE ADMIN. R. ANN. HE-P 301.02, 04-05 (2016).

⁷ N.H. REV. STAT. ANN. § 141-C:11 (2016).

⁸ N.H. REV. STAT. ANN. § 141-C:21 (2016).

⁹ *New Hampshire Man Forced to Pay for Cop’s HIV Test After Spitting*, HIV JUSTICE NETWORK, Aug. 18, 2008, available at <http://www.hivjustice.net/case/us-new-hampshire-man-forced-to-pay-for-cops-hiv-test-after-spitting/>.

New Hampshire Revised Statutes

*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 X. PUBLIC HEALTH

N.H. REV. STAT. ANN. § 141-C:6 (2016)

Rulemaking

The commissioner shall adopt rules, pursuant to RS 541-A, relative to:

(I) Identifying communicable diseases to be reported under RSA 141-C:8

(V) Establishing, maintaining, and lifting the isolation and quarantine of cases, carriers, or suspected cases or carriers of communicable diseases under RSA 141-C:11.

(VIII) Issuing and carrying out orders for the treatment and care and for the restriction and control of diseases under RSA 141-C:15.

N.H. REV. STAT. ANN. § 141-C:18 (2016)

Sexually Transmitted Diseases

I. The commissioner may request the examination, and order isolation, quarantine, and treatment of any person reasonably suspected of having been exposed to or of exposing another person or persons to a sexually transmitted disease. Any order of treatment issued under this paragraph shall be in accordance with RSA 141-C:11, RSA 141-C:12, and RSA 141-C:15.

N.H. REV. STAT. ANN. § 141-C:21 (2016) **

Penalty

Any person who shall violate, disobey, refuse, omit or neglect to comply with any of the provisions of RSA 141-C, or of the rules adopted pursuant to it, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

N.H. REV. STAT. ANN. § 141-C:11 (2016)

Isolation and Quarantine

I. Whenever it is necessary to prevent the introduction or spread of communicable diseases within this state or from another state, or to restrict such diseases if introduced, and when such communicable diseases pose a substantial threat to the health and life of the citizenry, the commissioner shall establish isolation or quarantine for persons who are cases or carriers, or suspected cases or carriers of communicable diseases, and establish quarantine for commodities, conveyances, baggage and cargo that are carriers or suspected carriers of the communicable diseases by written order prepared in accordance with RSA 141-C:12. Such isolation or quarantine shall be by the least restrictive means necessary to protect the citizenry which, in the case of an individual, shall be at a place of his or her choosing unless the commissioner determines such place to be impractical or unlikely to adequately protect the public health. The commissioner shall adopt such rules regarding the establishment,

maintenance and lifting of isolation and quarantine as the commissioner may deem best for protecting the health of the public.

III. The commissioner may, in ordering isolation or quarantine of persons, require that treatment be obtained in accordance with rules adopted under RSA141-C:15.

N.H. REV. STAT. ANN. § 141-C:12 (2016)

Orders

I. The commissioner, in imposing isolation and quarantine under RSA 141-C:11, in requiring treatment under RSA 141-C:15, or in excluding children under RSA 141-C:20-d, shall do so by written order. The order shall include, as appropriate, the following information:

- (a) The cause of the quarantine or isolation.
- (b) The location of quarantine or isolation.
- (c) When appropriate, that decontamination be performed on commodities, conveyances, baggage and cargo.
- (d) When treatment is required as part of the order, where such treatment is available and, if applicable, what effect the receipt of treatment may have on the conditions of isolation and quarantine.
- (e) The period of duration of isolation or quarantine.
- (f) The commissioner's signature.
- (g) The reason and length of time for the exclusion of children from schools and child care facilities.

II. Orders issued under this section shall be complied with immediately.

III. When an individual subject to an order for isolation or quarantine refuses to cooperate with such order, the commissioner may issue a complaint, which shall be sworn to before a justice of the peace. Such complaint shall set forth the reasons for the order imposing isolation or quarantine and the place or facility where the individual shall be isolated or quarantined. Upon being presented with such an order, any law enforcement officer shall take such individual into custody and transport the individual to the place or facility where the individual is to be isolated or quarantined.

N.H. REV. STAT. ANN. § 141-C:15 (2016)

Treatment, Care of Sick; Costs.

I. Any person infected with a communicable disease, or reasonably suspected of being infected with a communicable disease, and whose continued presence among the citizenry poses a significant threat to health and life, shall be ordered by the commissioner under RSA 141-C:11, to report to a health care provider or health care facility to undergo such treatment and care as the commissioner may deem necessary to eliminate the threat. The commissioner shall adopt rules, pursuant to RSA 541-A, necessary to issue and carry out such orders for treatment and to restrict and control communicable disease through treatment.

VI. When an individual subject to an order for treatment by the commissioner refuses to undergo such ordered treatment, the commissioner may issue a complaint, which shall be sworn to before a justice of the peace. Such complaint shall set forth the reasons for the order imposing treatment, the nature of the treatment to be provided, and the place or facility where the treatment shall be provided. Upon being presented with such an order, any law enforcement officer shall take such individual into custody and transport the individual to the place or facility where the treatment is to be provided.

N.H. REV. STAT. ANN. § 141-C:8 (2016)

List of Diseases; Report Forms.

The commissioner shall compile a list of reportable communicable diseases necessary to protect the citizenry. The commissioner shall develop and provide a form for the reporting of communicable diseases under this section. The form shall include, at a minimum, the name, age, address, occupation, and place of occupation of the person. Reportable information shall not include psychiatric, psychological, or other mental health records or information.

New Hampshire Code of Administrative Rules

AGENCY He-P. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DIVISION OF PUBLIC HEALTH SERVICES

N.H. CODE ADMIN. R. ANN. HE-P 301.05 (2016)

Restriction and Control Measures for Isolation and Quarantine for Specific Diseases.

(a) For AIDS/HIV infection, and other specific infections that occur in AIDS/HIV infected patients, hospitals and other institutional settings shall observe precautions for patients as addressed in He-P 301.04.

(f) For hepatitis, isolation precautions shall be as follows:

(2) For persons with hepatitis B or C, precautions shall be instituted in accordance with He-P 301.04.

N.H. CODE ADMIN. R. ANN. HE-P 301.04 (2016)

Methods of Isolation

Hospitals and other health care institutions shall institute appropriate precautions consistent with the Healthcare Infection Control Practices Advisory Committee 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings, June 2007 and the Healthcare Infection Control Practices Advisory Committee, Management of Multi-drug Resistant Organisms in Healthcare Settings, HICPAC Advisory Committee. October 2006.