

Cases and Resources on Criminal HIV Exposure/Transmission

The following list is representative, not exhaustive.

Constitutional cases:

People v. Russell, 630 N.E.2d 794 (Ill.), *cert. denied*, 513 U.S. 828 (1994) (rejecting constitutional challenges based on freedom of speech, freedom of association and vagueness);

People v. Jensen (On Remand), 231 Mich. App 439 (1998) (rejecting constitutional challenges based on speech, privacy, overbreadth)

State v. Keene, 629 N.W.2d 360 (Iowa 2001) (rejecting constitutional challenge based on vagueness)

State v. Serrano, 715 So.2d 602 (La. Ct. App. 1998) (rejecting vagueness challenge)

State v. Gamberella, 633 So.2d 595 (La. Ct. App. 1993) (rejecting vagueness & overbreadth challenge)

State v. Stark, 832 P.2d 109 (Wash. Ct. App. 1992) (rejecting vagueness challenge)

State v. Mahan, 971 S.W.2d 307 (Mo.1998) (rejecting vagueness challenge)

People v. Dempsey, 610 N.E.2d 208 (1993) (rejecting vagueness challenge)

Other cases:

Brock v. State, 555 So.2d 285, 287-88 (Ala.Crim.App.1989) (reversing first degree assault conviction when no evidence about HIV transmission was presented and "the role of saliva in the transmission of [HIV] is unclear")

Weeks v. State, 834 S.W.2d 559, 562-65 (Tx.Ct.App.1992) (sustaining attempted murder conviction of HIV-infected inmate who spat into face of guard)

Commonwealth v. Brown, 413 Pa.Super. 421, 605 A.2d 429 430-31 (1992) (sustaining aggravated assault conviction against inmate with HIV and hepatitis who flung fecal material into guard's mouth).

Smallwood v. State of Maryland 343 Md. 97, 680 A.2d 512 (Md. 1996) (no specific intent to kill)

State v Hinkhouse, 912 P. 2d 921, mod. 915 P.2d 489 (Or. Ct. App. 1996)

State v. Bird, 81 Ohio St.3d 582, 692 N.E.2d 1013, 1016 (1998) (affirming no contest plea of HIV-infected defendant who spat in police officer's face because plea made it unnecessary to decide whether HIV could be transmitted by saliva).

State v. Jones, 3 P.3d 142 (Ct. App. NM 2000).

Military cases:

US v. Barrows, 48 MJ 783 (1998),

US v. Klauk, 47 MJ 24 (1997),

US v. Bygrave, 46 MJ 491 (1997)

Shriver, "State Approaches to Criminalizing the Exposure of HIV: Problems in Statutory Construction, Constitutionality and Implications," 21 N. Ill. U. L. Rev. 319 (2001).

Lazarini, et al, "Evaluating the Impact of Criminal Laws on HIV Risk Behavior," 30 J. L., Med. & Ethics 239 (2002)

[This is an expanded version of a case list originally provided by Lambda Legal]