

Georgia

Analysis

HIV status must be disclosed to sexual partners to avoid criminal penalties.

Georgia's HIV exposure statute targets people living with HIV (PLHIV) who do not disclose their HIV status prior to engaging in anal, oral, and/or penile-vaginal sex with another person.¹ A violation of this statute results in felony penalties of up to ten years' imprisonment.² Neither the intent to transmit HIV nor the actual transmission of HIV is required for prosecution.

Disclosure of one's HIV status is the only affirmative defense to prosecution. A defendant's viral load is not a consideration, and it is no defense if protection, such as a condom, was used during sexual activity. Despite the, at most, remote risk of HIV transmission from oral sex, such sexual activity falls within the statute's scope of liability.³

Disclosure, the only defense to prosecution, can be difficult to prove because it normally involves reliance on the conflicting testimony of one person versus another. In a 2008 case, a woman living with HIV was convicted of reckless conduct when she allegedly engaged in unprotected sexual intercourse without disclosing her HIV status.⁴ Two witnesses testified that the defendant's sexual partner was aware of her HIV status, and the defendant herself testified that her sexual partner knew her HIV status because it had been published on the front page of a local newspaper.⁵ Nevertheless, the defendant was found guilty and sentenced to eight years' imprisonment and two years probation.⁶

In a January 2009 case, a 38-year-old man living with HIV was sentenced to two years' imprisonment and eight years' probation after pleading guilty to reckless conduct by an HIV-infected person for having sex with a woman without disclosing his status.⁷ The first day they met and had sex, the man and his partner—who later tested negative for HIV—went to the defendant's home at a housing center for PLHIV.⁸ Nonetheless, the fact that the defendant was staying at a home solely for PLHIV was not enough to constitute disclosure for the purpose of the reckless conduct statute.

¹ GA. CODE ANN. § 16-5-60(c) (2016).

² *Id.*

³ See CTR. FOR DISEASE CONTROL & PREVENTION, *Oral Sex and HIV Risk*, (July 8, 2016) available at <http://www.cdc.gov/hiv/risk/oralsex.html> (last visited Aug. 1, 2016) ("There is little to no risk of getting or transmitting HIV from oral sex. . . Oral sex involves using the mouth to stimulate the penis (fellatio), vagina (cunnilingus), or anus (anilingus).").

⁴ *Ginn v. State*, 667 S.E.2d 712, 713-14 (Ga. Ct. App. 2008).

⁵ *Id.*

⁶ *Id.* at 713.

⁷ Amy Leigh Womack, *HIV-positive man sentenced for not disclosing his status to sexual partner*, THE TELEGRAPH, Jan. 13, 2009, available at <http://www.macon.com/news/article28559197.html>.

⁸ *Id.*

Engaging in sex work without disclosing HIV status is a felony.

Georgia's reckless conduct statute imposes criminal penalties on PLHIV who do not disclose their status before engaging in "solicitation or acts of prostitution."⁹ A maximum sentence of ten years' imprisonment can be imposed if a PLHIV is aware of their HIV status and fails to disclose it before (1) offering or consenting to engage in sexual intercourse for money, or (2) soliciting another to submit to or perform oral or anal sex for money.¹⁰ Neither the intent to transmit HIV nor actual transmission is required. A conviction for prostitution is normally a misdemeanor,¹¹ but it is prosecuted as a felony if the defendant is a PLHIV, knows their status, and does not inform the other person.

This statute penalizes an individual for living with HIV, regardless of whether they exposed another person to a significant, or even theoretical, risk of HIV transmission. It is not a defense if protection was used during alleged acts of prostitution because *offering* or *soliciting* to engage in sexual intercourse, without actual sexual conduct, is sufficient for prosecution.¹²

HIV status must be disclosed before sharing needles.

Georgia imposes criminal penalties on PLHIV for sharing needles or syringes.¹³ Up to ten years of imprisonment may follow if a PLHIV is (1) aware of their HIV status, (2) uses a needle or syringe for the injection of drugs or withdrawal of bodily fluids, and (3) shares that needle with another without disclosing their HIV status.¹⁴ It is a complete defense if HIV status is disclosed before needle-sharing. Neither the intent to transmit HIV nor actual transmission is required for prosecution.

HIV status must be disclosed before donating blood or body tissues.

It is a felony punishable by up to ten years' imprisonment if a PLHIV is aware of their HIV status and fails to disclose this information before donating blood, blood products (i.e., plasma, platelets), other bodily fluids, or any other body organ or body part.¹⁵ Neither the intent to transmit HIV nor actual transmission is required for prosecution.

Assaulting a peace or correctional officer using bodily fluids with intent to transmit HIV is a felony.

Georgia's reckless conduct/endangerment statute includes a provision tailored to cases involving peace officers and correctional officers. It is a felony, punishable by five to 20 years in prison, for a PLHIV who knows their HIV status to use their blood, semen, vaginal secretions, saliva, urine, or feces to commit an assault, with the intent to transmit HIV, against a peace or correctional officer engaged in their duties.¹⁶ This statute punishes conduct that poses only a remote possibility of HIV exposure, and, though intent is considered an element of the prosecution, many of the bodily fluids listed cannot

⁹ GA. CODE ANN. §§ 16-5-60(c)(3)-(4) (2016).

¹⁰ *Id.*

¹¹ GA. CODE ANN. §§ 16-6-9, 16-6-13(a) (2016).

¹² GA. CODE ANN. §§ 16-5-60(c)(3)-(4) (2016).

¹³ GA. CODE ANN. § 16-5-60(c)(2) (2016).

¹⁴ *Id.*

¹⁵ GA. CODE ANN. § 16-5-60(c)(5) (2016).

¹⁶ GA. CODE ANN. § 16-5-60(d) (2016).

transmit HIV.

In *Burk v. State*, a man living with HIV who allegedly threatened to transmit HIV to a corrections officer was originally charged with aggravated assault with intent to murder after he struck the officer, grabbed his arm, and attempted to bite him.¹⁷ The inmate was later convicted of reckless conduct, what was then referred to as “reckless endangerment,” an offense that required the defendant to consciously disregard a substantial risk of harming or endangering the safety of another person.¹⁸ Despite the fact that the CDC has stated there exists only a “negligible” possibility that HIV can be transmitted through a bite,¹⁹ the Court of Appeals of Georgia found Burk’s alleged attempt to bite the officer sufficient to uphold his conviction for reckless conduct.²⁰ Contrary to the CDC’s position, a physician testified at trial that HIV transmission from a human bite was “very strongly probable” and that he “did not see why” HIV could not be transmitted through saliva.²¹ Based on this testimony, the court affirmed the defendant’s conviction, stating that “the evidence authorized the jury to find that by attempting to bite [the officer], knowing that he was HIV-infected and had AIDS, Burk consciously disregarded a substantial and unjustifiable risk that his act would harm [the officer] or endanger his safety.”²² The court further stated that “[t]he fact that Burk did not engage in any act proscribed by [Georgia Code] § 16-5-60(c) does not insulate him from criminal liability under subsection (b) for attempting to transmit the AIDS virus through saliva.”²³

The conviction in Burk reflects the issues associated with “expert” testimony on HIV transmission and exposure. When expert testimony fails to provide scientifically supported facts on HIV, PLHIV can be convicted for conduct that presents a remote possibility, at most, of HIV exposure or transmission.

PLHIV have also been prosecuted under aggravated assault charges.

In *Scroggins v. State*, the defendant, while struggling with a police officer, sucked extra saliva into his mouth and then bit the officer.²⁴ When the defendant was treated at the hospital he “told a nurse he was HIV positive” and laughed when the officer who was bit asked the defendant about his HIV status.²⁵ He was convicted of aggravated assault with intent to murder.²⁶ On appeal, the Court of Appeals of Georgia found that the impossibility of transmitting HIV via a bite and/or saliva was not a defense as long as Scroggins believed HIV could be transmitted in such a manner.²⁷ The court ruled that a wanton and reckless state of mind could be the equivalent of a specific intent to kill for the purposes of the charges, and that Scroggin’s biting the officer while knowing that his HIV status was

¹⁷ 478 S.E.2d 416, 416-17 (Ga. Ct. App. 1996).

¹⁸ *Id.* at 417.

¹⁹ CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (December 4, 2015) available at <http://www.cdc.gov/hiv/policies/law/risk.html> (last visited July 27, 2016).

²⁰ *Burk*, 478 S.E.2d at 417.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ 401 S.E.2d 13, 15 (Ga. Ct. App. 1990), overruled on other grounds in *Dunagan v. State*, 502 S.E.2d 726 (Ga. 1998).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 16-20.

sufficient evidence to establish a wanton and reckless disregard for whether HIV was transmitted.²⁸

A person commits aggravated assault when there is intent to murder, rape, or rob someone using a deadly weapon that does or is likely to result in serious bodily injury.²⁹ Georgia's application of its aggravated assault statute continues to prosecute PLHIV for acts that, at best, have only a remote possibility of transmitting HIV. For example, the CDC maintains there exists only a "negligible" possibility that HIV could be transmitted through a bite,³⁰ and it unequivocally states that "HIV isn't spread through saliva."³¹

Other prosecutions under Georgia's HIV reckless conduct statute include:

- In November 2013, a 52-year-old man living with HIV was charged with reckless conduct after allegedly not disclosing his HIV status to a sexual partner.³²
- In October 2013, a 23-year-old man living with HIV was charged with statutory rape and reckless conduct after allegedly infecting a teenage girl with the virus.³³
- In March 2013, a 21-year-old man living with HIV was arrested and charged with reckless conduct by an HIV-infected person after allegedly not disclosing his HIV status to sexual partners.³⁴ At least one partner claimed to have contracted the virus from him.³⁵
- In February 2012, man living with HIV was sentenced to ten years imprisonment for reckless conduct after allegedly not disclosing his HIV status to multiple sexual partners.³⁶
- In August 2011, man living with HIV was charged with reckless conduct by an HIV-infected person after allegedly not disclosing his HIV status to his girlfriend.³⁷
- In April 2011, a 32-year-old man living with HIV was charged with contributing to the delinquency of a minor, aggravated child molestation, and reckless conduct after allegedly having sex with his 15-year-old student.³⁸

²⁸ *Id.* at 19.

²⁹ GA. CODE ANN. § 16-5-21 (2016).

³⁰ CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Risk Behaviors, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (December 4, 2015) available at <http://www.cdc.gov/hiv/policies/law/risk.html> (last visited July 26, 2016).

³¹ CTR. FOR DISEASE CONTROL & PREVENTION, *HIV Transmission, Can I get HIV from being spit on or scratched by an HIV-infected person?*, (July 12, 2016) available at <http://www.cdc.gov/hiv/basics/transmission.html> (last visited July 27, 2016).

³² Evan Bleier, *HIV-positive Georgia man arrested for having unprotected sex*, UPI.COM, Nov. 15, 2013, available at http://www.upi.com/Odd_News/Blog/2013/11/15/HIV-positive-Georgia-man-arrested-for-having-unprotected-sex/3521384541636/; Joe Johnson, *HIV-infected Athens man arrested for having unprotected sex*, ATHENS BANNER-HERALD, Dec. 5, 2013, available at <http://onlineathens.com/local-news/2013-11-13/hiv-infected-athens-man-arrested-having-unprotected-sex>.

³³ *Police: Savannah man with HIV knowingly infected teenage girl*, SAVANNAH MORNING NEWS, Oct. 21, 2013, available at http://savannahnow.com/crime/2013-10-21/police-savannah-man-knowingly-infected-teenage-girl-hiv#_Ury1q2RDsqQ.

³⁴ *Baldwin Co. Deputies Arrest Man for Spreading HIV Without Telling Sexual Partners*, 41NBC.COM, Mar. 12, 2013, available at <http://www.41nbc.com/2013/03/12/baldwin-co-deputies-arrest-man-for-spreading-hiv-without-telling-sexual-partners/>.

³⁵ *Id.*

³⁶ Erica Byfield, *Man knowingly spreads HIV*, WSB-TV2 ATLANTA, Feb. 29, 2012, available at <http://www.wsbtv.com/news/news/local/man-convicted-knowingly-spreading-hiv/nK8Pc/>.

³⁷ *Douglas County man charged with infecting girlfriend with HIV*, THE ATLANTA JOURNAL-CONSTITUTION, Aug. 4, 2011, available at <http://www.ajc.com/news/news/local/douglas-county-man-charged-with-infecting-girlfriend/nQKLL/>.

³⁸ Edecio Martinez, *Band Teacher With HIV Allegedly Had Sex with 15-Year-Old Student*, CBSNEWS.COM, Apr. 14, 2011, available at <http://www.cbsnews.com/news/band-teacher-with-hiv-allegedly-had-sex-with-15-year-old-student/>.

- In August 2009, a 42-year-old man living with HIV was charged with aggravated assault after he bit an Atlanta police officer, allegedly shouting “I have full-blown AIDS” and claiming that his bite would infect the officer with HIV.³⁹ He later received 18 months’ imprisonment for aggravated assault.⁴⁰
- In a July 2008 case, a 43-year-old woman living with HIV was charged with aggravated assault when she spat in the face of another person.⁴¹ The woman pled guilty and was sentenced to three years in jail.⁴²

The Georgia Department of Health may quarantine or isolate PLHIV or a venereal disease.

The Department of Health is empowered to make examinations of persons infected or suspected to be infected with HIV and, with the person’s consent, administer a test for HIV.⁴³ If the person refuses to consent to the administration of an HIV test, the department may petition the court for an order authorizing the test.⁴⁴ The subject of such a petition has the right to legal counsel, and in the event the person cannot afford counsel, counsel will be appointed by the court. After consideration of the evidence, the court may order the person to submit to an HIV test and require procedures to protect public health consistent with the least restrictive alternative if the result is positive.⁴⁵

Separately, the Department of Health may require a person infected or suspected of being infected with a venereal disease⁴⁶ to report to a physician for treatment until cured and may also order isolation of any such person.⁴⁷

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.*

³⁹ Edwin J. Bernard, *US: Georgia Judge Branded ‘Too Lenient’ After 18 Month Sentence for Cop Biter*, HIV JUSTICE NETWORK, Sept. 6, 2009, available at <http://www.hivjustice.net/news/us-georgia-judge-branded-too-lenient-after-18-month-sentence-for-cop-biter/>.

⁴⁰ *Id.*

⁴¹ Alan Riquelmy, *HIV positive woman gets 3 years for spitting*, LEDGER-ENQUIRER, July 22, 2008, available at <http://www.ledger-enquirer.com/news/local/article29009494.html>.

⁴² *Id.*

⁴³ GA CODE ANN. §31-17A-2 (2016).

⁴⁴ *Id.*

⁴⁵ GA CODE ANN. § 31-17A-3 (2016).

⁴⁶ Including syphilis, gonorrhea or chancroid. GA CODE ANN. § 31-17-1 (2016).

⁴⁷ GA CODE ANN. § 31-17-3 (2016).

Code of Georgia

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 16, CRIMES AND OFFENSES

GA. CODE ANN. § 16-5-60 (2016) **

Reckless conduct causing harm to or endangering the bodily safety of another; conduct by HIV infected persons; assault by HIV infected persons or hepatitis infected persons

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(c) A person who is an HIV infected person who, after obtaining knowledge of being infected with HIV

(1) Knowingly engages in sexual intercourse or performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another person and the HIV infected person does not disclose to the other person the fact of that infected person's being an HIV infected person prior to that intercourse or sexual act;

(2) Knowingly allows another person to use a hypodermic needle, syringe, or both for the introduction of drugs or any other substance into or for the withdrawal of body fluids from the other person's body and the needle or syringe so used had been previously used by the HIV infected person for the introduction of drugs or any other substance into or for the withdrawal of body fluids from the HIV infected person's body and where that infected person does not disclose to the other person the fact of that infected person's being an HIV infected person prior to such use;

(3) Offers or consents to perform with another person an act of sexual intercourse for money without disclosing to that other person the fact of that infected person's being an HIV infected person prior to offering or consenting to perform that act of sexual intercourse;

(4) Solicits another person to perform or submit to an act of sodomy for money without disclosing to that other person the fact of that infected person's being an HIV infected person prior to soliciting that act of sodomy; or

(5) Donates blood, blood products, other body fluids, or any body organ or body part without previously disclosing the fact of that infected person's being an HIV infected person to the person drawing the blood or blood products or the person or entity collecting or storing the other body fluids, body organ, or body part,

is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than ten years.

(d) A person who is an HIV infected person or hepatitis infected person and who, after obtaining knowledge of being infected with HIV or hepatitis, commits an assault with the intent to transmit HIV or hepatitis, using his or her body fluids (blood, semen, or vaginal secretions), saliva, urine, or feces upon:

(1) A peace officer while the peace officer is engaged in the performance of his or her official duties or on account of the peace officer's performance of his or her official duties; or

(2) A correctional officer while the correctional officer is engaged in the performance of his or her official duties or on account of the correctional officer's performance of his or her official duties

is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years.

TITLE 17, CRIMINAL PROCEDURE

GA. CODE ANN. § 17-10-15(2016)

AIDS transmitting crimes; requiring defendant to submit to HIV test; report of results

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1

(b) A victim or the parent or legal guardian of a minor or incompetent victim of a sexual offense as defined in Code Section 31-22-9.1 or other crime which involves significant exposure as defined by subsection (g) of this Code section may request that the agency responsible for prosecuting the alleged offense request that the person arrested for such offense submit to a test for the human immunodeficiency virus and consent to the release of the test results to the victim. If the person so arrested declines to submit to such a test, the judge of the superior court in which the criminal charge is pending, upon a showing of probable cause that the person arrested for the offense committed the alleged crime and that significant exposure occurred, may order the test to be performed in compliance with the rules adopted by the Department of Public Health. The cost of the test shall be borne by the victim or by the arrested person, in the discretion of the court.

(c) Upon a verdict or plea of guilty or nolo contendere to any AIDS transmitting crime, the court in which that verdict is returned or plea entered shall require the defendant in such case to submit to an HIV test within 45 days following the date of such verdict or plea. The clerk of the court in such case shall mail, within three days following the date of that verdict or plea, a copy of that verdict or plea to the Department of Public Health.

(f) If a person is required by this Code section to submit to an HIV test and is thereby determined to be infected with HIV, that determination and the name of the person shall be reported to:

(2) The court which ordered the HIV test, which court shall make that report a part of that person's criminal record. That report shall be sealed by the court; and

(3) The officer in charge of any penal institution or other facility in which the person has been confined by order or sentence of the court for purposes of enabling that officer to confine the person separately from those not infected with HIV.

(g) For the purposes of subsection (b) of this Code section, "significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or bodily fluids of the person arrested for such offense, other than tears, saliva, or perspiration of a magnitude that the Centers for

Disease Control and Prevention have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

TITLE 15, COURTS

GA. CODE ANN. § 15-11-471 (2016)

Definitions

As used in this article, the term:

- (1) "AIDS transmitting crime" shall have the same meaning as set forth in Code Section 31-22-9.1.
- (4) "Determined to be infected with HIV" means having a confirmed positive human immunodeficiency virus (HIV) test or having been clinically diagnosed as having AIDS
- (7) "HIV test" means any antibody, antigen, viral particle, viral culture, or other test to indicate the presence of HIV in the human body, and such test has been approved for such purposes by the regulations of the Department of Community Health.

GA. CODE ANN. § 15-11-603 (2016)

Disposition of child adjudged to have committed delinquent act constituting AIDS transmitting crime; HIV testing; reports

- (a) As part of any order of disposition regarding a child adjudged to have committed a delinquent act constituting an AIDS transmitting crime, the court may in its discretion and after conferring with the director of the health district, order that such child submit to an HIV test within 45 days following the adjudication of delinquency. The court shall mail DJJ a copy of the order within three days following its issuance.
- (d) If a child is determined to be infected with HIV, that determination and the name of the child shall be deemed to be AIDS confidential information and shall only be reported to:
 - (3) Those persons in charge of any facility to which such child has been confined by order of the court. In addition to any other restrictions regarding the confinement of a child, a child determined to be an HIV infected person may be confined separately from any other children in that facility other than those who have been determined to be infected with HIV if:
 - (A) That child is reasonably believed to be sexually active while confined;
 - (B) That child is reasonably believed to be sexually predatory either during or prior to detention; or
 - (C) The commissioner of juvenile justice reasonably determines that other circumstances or conditions exist which indicate that separate confinement would be warranted.

TITLE 31, HEALTH

GA. CODE ANN. § 31-17-1 (2016)

Enumeration of diseases deemed dangerous to public health

Syphilis, gonorrhea, and chancroid, hereinafter referred to as venereal diseases, are declared to be contagious, infectious, communicable, and dangerous to the public health.

GA. CODE ANN. § 31-17-3 (2016)

Examination and treatment by health authorities

The authorized agent or agents of the Department of Public Health and county boards of health are directed and empowered, when in their judgment it is necessary to protect the public health, to make examination of persons infected or suspected of being infected with venereal disease; to require persons infected with venereal disease to report for treatment to a physician licensed to practice medicine under Chapter 34 of Title 43 and to continue treatment until cured, or to submit to treatment provided at public expense; and to isolate persons infected or reasonably suspected of being infected with venereal disease. Law enforcement authorities of the jurisdiction wherein any such person so infected or suspected of being infected is located shall offer such assistance, including restraint and arrest, as shall be necessary to assure examination and treatment in accordance with this chapter.

GA. CODE ANN. § 31-17-8 (2016) **

Penalty

Any person who violates any provision of this chapter or any rule or regulation promulgated under this chapter shall be guilty of a misdemeanor.

GA. CODE ANN. § 31-17A-1 (2016)

HIV deemed dangerous to public health

(a) Any term used in this chapter and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1

(b) HIV and the degenerative diseases associated with it are declared to be contagious, infectious, communicable, and extremely dangerous to the public health.

GA. CODE ANN. § 31-17A-2 (2016)

Examination of infected persons; administration of HIV test

The authorized agent or agents of the Department of Public Health are directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations of persons infected or suspected of being infected with HIV and to administer an HIV test with the consent of the person being tested. In the event the person infected or suspected of being infected with HIV refuses to consent to the administration of an HIV test, the authorized agent or agents of the Department of Public Health are authorized to petition the court for an order authorizing the administration of an HIV test pursuant to the procedure set forth in Code Section 31-17A-3.

GA. CODE ANN. § 31-17A-3 (2016)

Refusal to consent to test; procedure

(a) If a person refuses to consent to an HIV test, as provided in Code Section 31-17A-2, the Department of Public Health may file a civil complaint with the superior court of the county of the residence of the person refusing the test. The complaint shall allege with specificity the basis for the allegations which the department believes support the conclusion that the person is infected with HIV, as well as the scope, nature, and threat to the public health created thereby, and the proposed plan to be adopted to protect the public health in the event the court orders the administration of the HIV test and the person is found to be an HIV infected person. The person against whom the complaint is filed shall be represented by counsel, and, in the event the person against whom the complaint is filed cannot afford counsel, counsel shall be appointed by the court.

(b) The superior court shall hear the complaint on an expedited basis without a jury. All proceedings before the court shall be sealed.

(c) If after consideration of the evidence, the court finds clear and convincing evidence that the person is reasonably likely to be infected with HIV and that there is a compelling need to protect the public health, the court may order the person to submit to an HIV test, shall retain jurisdiction to render such orders as are appropriate to effectuate that order, and, in the event the person so tested is determined to be infected with HIV, to require such procedures to protect the public health consistent with the least restrictive alternative which is available within the limits of state funds specifically appropriated therefor.

GA. CODE ANN. § 31-22-9.1 (2016)

Definition of AIDS and HIV related terms

(a) As used in this Code section, the term:

(3) “AIDS transmitting crime” means any of the following offenses specified in Title 16:

(A) Rape;

(B) Sodomy;

(C) Aggravated sodomy;

(D) Child molestation;

(E) Aggravated child molestation;

(F) Prostitution;

(G) Solicitation of sodomy;

(H) Incest;

(I) Statutory rape; or

(J) Any offense involving a violation of Article 2 of Chapter 13 of Title 16, regarding controlled substances, if that offense involves heroin, cocaine, derivatives of either, or

any other controlled substance in Schedule I, II, III, IV, or V and that other substance is commonly intravenously injected, as determined by the regulations of the department.

(11) “HIV infected person” means a person who has been determined to be infected with HIV, whether or not that person has AIDS, or who has been clinically diagnosed as having AIDS.

(14) “Knowledge of being infected with HIV” means actual knowledge of:

(A) A confirmed positive HIV test; or

(B) A clinical diagnosis of AIDS.

TITLE 42, PENAL INSTITUTIONS

GA. CODE ANN. § 42-5-52.1 (2016)

Submission to HIV test; separate housing for HIV infected persons

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for that term in Code Section 31-22-9.1.

(b) Where any person is committed to the custody of the commissioner to serve time in any penal institution of this state on and after July 1, 1988, the department shall require that person to submit to an HIV test within 30 days after the person is so committed unless that person is in such custody because of having committed an AIDS transmitting crime and has already submitted to an HIV test pursuant to Code Section 17-10-15.

(c) No later than December 31, 1991, the department shall require to submit to an HIV test each person who has been committed to the custody of the commissioner to serve time in a penal institution of this state and who remains in such custody, or who would be in such custody but for having been transferred to the custody of the Department of Human Resources (now known as the Department of Behavioral Health and Developmental Disabilities) under Code Section 42-5-52, if that person has not submitted to an HIV test following that person's most recent commitment to the custody of the commissioner and unless that person is in such custody because of having committed an AIDS transmitting crime and has already submitted to an HIV test pursuant to Code Section 17-10-15.

(d) Upon failure of an inmate to cooperate in HIV test procedures under this Code section, the commissioner may apply to the superior court for an order authorizing the use of such measures as are reasonably necessary to require submission to the HIV test. Nothing in this Code section shall be construed to limit the authority of the department to require inmates to submit to an HIV test.

(e) Any person determined by the department to be an HIV infected person, whether or not by the test required by this Code section, should be housed separately at existing institutions from any other persons not infected with HIV if:

(1) That person is reasonably believed to be sexually active while incarcerated;

(2) That person is reasonably believed to be sexually predatory either during or prior to incarceration; or

(3) The commissioner determines that other conditions or circumstances exist indicating that separate confinement would be in the best interest of the department and the inmate population, but neither the department nor any officials, employees, or agents thereof shall be civilly or criminally liable for failing or refusing to house HIV infected persons separately from any other persons who are not HIV infected persons.