

HIV-positive man's prison sentence shines light on Iowa law

By [Lynda Waddington](#) | 06.29.09 | 10:14 am

A faint [national drumbeat](#) has begun for individual states to revisit criminal codes passed in the wake of what was known in the 1980s as “the AIDS epidemic.” While Iowa, a state with a relatively low percentage of residents living with AIDS and the virus that causes it, HIV, may not have initially been on the national radar for such reform, a recent legal decision in Black Hawk County has pushed the Hawkeye State into the developing national discussion.

Nick Rhoades

An examination of the state's HIV transmission law and related court cases by the Iowa Independent has found that certain provisions may have unintended consequences, for instance, that despite its name, actual transmission of the virus is not required for a person to be subject to prosecution under it. And some say it may be time for Iowa to make changes to the law, now more than a decade old.

The People v. Nick Clayton Rhoades

On May 1, Nick Clayton Rhoades, 34, of Plainfield, entered the courtroom of Judge Bradley J. Harris and pleaded guilty to criminal transmission of HIV, a Class B felony. Rhoades, whose only previous offense had been a 2006 operating-while-intoxicated conviction, was sentenced to 25 years in prison and a lifetime of parole.

On June 26, 2008, Rhoades met a man, unidentified in court records, while in an Internet chat room. Rhoades and the man agreed to meet that same day at the unidentified man's Cedar Falls home. While available court records do not indicate exactly what activities occurred between the two men, a police report states that the two “did engage in intimate contact with each other.”

Three days later, according to a report filed by the Cedar Falls Police Department, an investigation into the incident was opened when the unidentified man notified law enforcement officials that he had learned from friends that Rhoades was HIV positive. The following month the man was instructed to contact Rhoades by phone and, according to the report, Rhoades provided his HIV status to the man during that phone call.

For reasons not disclosed in available court records, Rhoades was a patient at the University of Iowa Hospitals and Clinics at the time a warrant had been issued for his arrest. Hospital officials were ordered to notify Cedar Falls law enforcement prior to his discharge, so that an arrest could be made at that time. Rhoades was arrested as requested on Sept. 28, 2008, and transported to the Black Hawk County Jail. He initially pleaded not guilty.

Rhoades was given a pre-trial evaluation shortly after his arrest by a probation/parole officer who concluded that the defendant had “possible substance abuse” problems as well as “mental and physical health issues.” The evaluating officer also determined that Rhoades was a danger to the community and posed a flight risk. The recommendation was for the court to deny Rhoades release with supervision under the Pre-Trial Services Intensive Supervision Program.

The Black Hawk County Jail remained Rhoades' home until shortly after his sentencing date in May, when he was transferred to a state correctional facility in Johnson County that serves as both a classification center for all new inmates and a psychiatric hospital. In sentencing documents, Judge Harris indicated the 25-year sentence was appropriate due to Rhoades' age, history, family and employment situation, nature of the offense, plea agreement and "consequences of offense, defendant's mental health condition [and] remorse."

The Iowa Independent asked James Metcalf, attorney representing Rhoades, to clarify references within the case file related to mental health. Metcalf stated that his client suffered from depression, but did not elaborate. Metcalf also indicated that, because the judge had provided a 12-month window for re-evaluation, he intended to ask the court to reconsider the sentence.

Mary Stegmeir, reporting for the Waterloo-Cedar Falls Courier, [quoted](#) Rhoades as saying during the sentencing hearing that living with HIV is like "carrying a concealed weapon," and that he "always wanted to be part of the solution, and not part of the problem." Rhoades, who participated in AIDS education efforts, said: "Clearly, I've fallen short in this case."

Intimate contact between the two men was described as consensual, although enhanced by pharmaceuticals and alcohol, and the unidentified man has since tested negative for HIV. Ironically enough, in 1998 when Rhoades first learned that he was HIV positive, state lawmakers nearly unanimously passed the portion of the criminal code that led to his prosecution and prison sentence.

Iowa's criminal transmission law: A lesson in history

The criminal transmission law was drafted and adopted in Iowa in much the same way it was in other states. That is, criminal penalties related to transmission were required if states were to receive federal monies related to AIDS care and education.

In 1987 — years after HIV and AIDS had begun to claim lives not only within the gay community, but among intravenous drug users and blood recipients — then-President Ronald Reagan ordered the creation of the President's Commission on the Human Immunodeficiency Virus Epidemic. The commission, which issued its final report with nearly 600 recommendations the following year, was the first to encourage states to pass criminal statutes that imposed an "affirmative" duty on those who tested positive to disclose their status with intimate partners.

Iowa initially resisted this recommendation, which did not have a monetary attachment, and did not move to criminalize transmission until a decade later, eight years after the federal government passed the 1990 [Ryan White Care Act](#). Only two years after Iowa passed its law, the Ryan White Act was reauthorized without the criminal transmission law mandate, but by that time 32 states had already passed laws specific to HIV, and all 50 certified they had laws to address such transmission.

If a person in Iowa knows that he/she is HIV positive, [Iowa's law](#) makes it a felony if that person:

- a) engages in intimate contact with another person,
- b) transfers, donates or provides blood, tissue, semen, organs or other potentially infectious body fluids for transfusion, transplantation, insemination or other administration to another person, or
- c) dispenses, delivers, exchanges, sells or in any other way transfers to another person any non-sterile intravenous or intramuscular drug paraphernalia previously used

The law also very specifically notes, in direct contradiction to its formal title, that actual transmission is

not required for a person to be prosecuted. Engaging in activity that results in intimate contact, defined as intentional exposure of body fluid, could result in prosecution.

Under this definition, activities recognized by the federal Centers for Disease Control and Prevention as holding a minuscule risk of transmission — such as kissing — could still be subject to prosecution under Iowa law.

In addition, there is only one affirmative defense that can be offered by an HIV-positive person accused of engaging in the suspect activities: Informed consent. What Iowa law doesn't offer, however, is a specific definition or outline of what informed consent is.

Further, Iowa law not only mandates informed consent of the specific act, but for the person consenting to have knowledge “that the action of exposure could result in transmission.” While this particular phrase could have been added as a protection for individuals with mental deficiencies, could it also be used to prosecute someone who engaged in a low-risk intimate activity without realizing that the activity could potentially result in transmission?

Since state archives from more than a decade ago are limited, the only way to determine intent is to query lawmakers who took part in the now 11-year-old process.

“I wish I could remember specifics,” said Ed Fallon, who formerly served in the Iowa House and was one of the unanimous votes to pass this portion of the law. “I have a vague memory of discussion regarding this legislation being connected to federal funds, but I can't remember any specific conversations that might have been held at that point.

“I've been arguing for a long time that there needs to be a better and more detailed archive of these types of records. It's important, especially when questions like this are posed, that we have something to fall back on other than often sketchy memories from those involved.”

Senate and House journals, which do exist for the time period, offer an extremely narrow view of what happened. What is known is that the criminal transmission law was passed alongside a mandate for all convicted or alleged sexual offenders be tested for HIV. Although the original bill called for only convicted sex offenders to be tested, a bipartisan amendment broadened the scope to include alleged offenders. All lawmakers at the time save one — the late Sen. Mary Lundby, who was not present in the chamber — voted to approve the amended bill.

It was signed by Gov. Terry Bradstad on April 13, 1998.

COMING WEDNESDAY: Despite questions and apparent inconsistencies in the law, Iowa courts have held firm, upholding long prison sentences against defendants convicted under the HIV transmission law.

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