

Spitting and biting defence

Defence Toolkit for: Lawyers, paralegals and advocates

The Allegation: HIV exposure or transmission through spitting or biting

Take action! Defend against the charges. Oppose mandatory HIV testing. Inform. Educate.

People living with HIV continue to face criminal charges and/or enhanced sentences following confrontations involving biting or spitting, particularly if police officers or emergency responders (e.g., paramedics, firefighters, nurses) are involved. Spitting or biting may be considered an assault (a minor criminal offence) irrespective of HIV status, but there is no justification for ramping up charges based on HIV-positive status.

Inexperienced with respect to HIV? Start here:

[HIV and AIDS - Basic facts \(UNAIDS\)](#)

[Stigma and HIV \(AVERT\)](#)

[HIV disclosure \(NAM\)](#)

Fact:

HIV is not transmitted via saliva.

ACTION

Action: Fight criminal charges for spitting or biting

Spitting

- HIV cannot be transmitted by spitting, even with blood in the saliva.
- No cases of HIV transmission through spitting have been identified.

Biting

- The risk of HIV transmission through biting is negligible at most.
- Only a few cases of probable transmission through biting have been identified — each involved a person living with HIV who was not on treatment, had blood in their mouth and inflicted a deep wound.
- No cases of police officers or emergency workers being infected through a bite have been identified.

Prosecutions for biting and spitting are driven by stigma and an exaggerated sense of HIV risk. Accessible, accurate information for people who have potentially been exposed could go a long way to redress their fears and curtail punitive reactions.

ACTION 

Action: Present the evidence

[Expert consensus statement on the science of HIV in the context of criminal law \(JIAS, 2019\)](#)

[A systematic review of risk of HIV transmission through biting or spitting: Implications for policy \(HIV Medicine, 2018\)](#)

[The system is broken – Audit of Australia’s mandatory disease testing laws \(HJN/NAPWHA, 2019\)](#)

ACTION 

Action: Oppose mandatory HIV testing

Mandatory testing is authorised in some jurisdictions to establish whether a person has HIV or another blood-borne disease in circumstances where another person has been exposed to their blood or bodily fluids. If your client is accused of spitting or biting, they may face an order to undergo mandatory testing.

In most cases, mandatory testing is a violation of human rights and medical ethics.

- HIV testing is an invasive procedure, requiring the consent of the individual except in rare circumstances.
- The person authorised to order the test may not be a medical expert and may order tests where there is actually no risk of HIV transmission.
- HIV testing should be accompanied by pre- and post-test counselling, and test results should be confidential.
- Mandatory testing orders have been sought in order to further harass and punish, as opposed to for legitimate health reasons.

ACTION 

Action: Advocate for uninterrupted access to HIV treatment

Antiretroviral treatment must be taken consistently in order to be effective. If your client is in prison or another closed setting, advocate for their uninterrupted access to HIV treatment from arrest to release, and for other medical needs such as nutritional supplements, tuberculosis testing and treatment, prevention and treatment of sexually transmitted infections, and opioid substitution therapy.

HIV-related medical needs are another reason to avoid pre-trial detention and custodial sentences, whenever possible.

Important information about post-exposure prophylaxis (PEP)

PEP is a course of HIV medication taken *after* an exposure in order to prevent the exposed person from contracting HIV. PEP is very effective if started within 72 hours of exposure, although some people experience harsh side effects. PEP may be prescribed following a sexual assault, a needle stick injury, an accidental sexual exposure (e.g., condom broke), or a bite that breaks the skin.

Unfortunately, PEP policies and guidance are often out-of-date. PEP may be inaccessible to people who could benefit from it, and it may be prescribed unnecessarily where there is no real risk of transmission.

If a person allegedly exposed to your client's blood or bodily fluids is prescribed PEP, be aware that the side effects of the PEP may be considered as part of the harm of your client's actions, alongside their fear (i.e., psychological harm, even if that fear is based on misinformation and an exaggerated sense of risk).

Feedback

We'd appreciate your feedback on this Action Toolkit! Please take a moment to complete this [short survey](#).