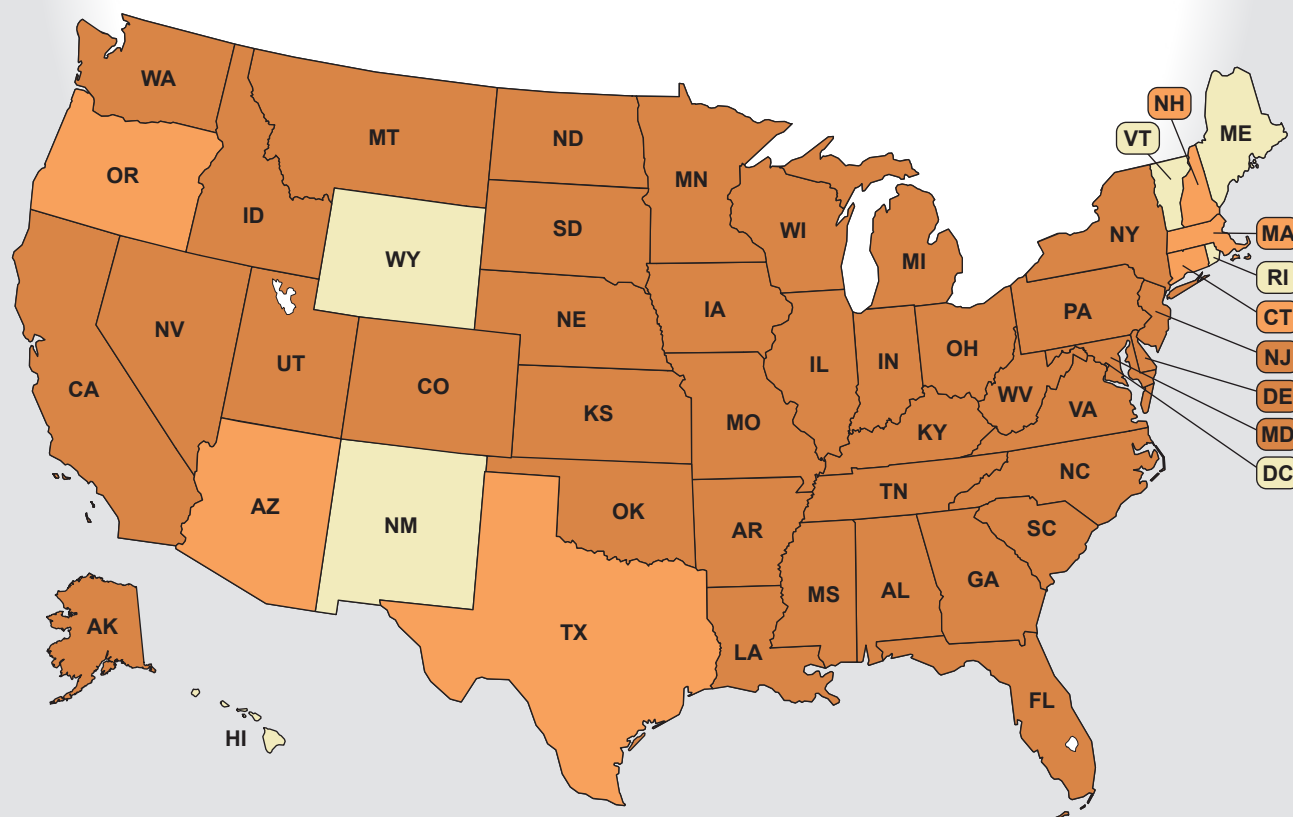


LGBT POLICY SPOTLIGHT: HIV CRIMINALIZATION LAWS



81%

of the LGBT population

State has HIV-specific criminal law or broader criminal law related to perceived or potential exposure or transmission of HIV (38 states)

18%

of the LGBT population

State does not have HIV-specific law, but individuals with HIV have been prosecuted under state criminal law for a crime related to their HIV status (e.g., aggravated assault) (6 states)

3%

of the LGBT population

No known prosecutions or HIV-specific statutes (6 states + D.C.)



movement advancement project ▶

HIV CRIMINALIZATION LAWS ARE NOT BASED ON FACTS

CRIMINALIZE BEHAVIORS WITH 0% RISK OF TRANSMISSION

Contrary to beliefs in the 1980s, CDC confirms saliva (biting, spitting), urine and sweat do not transmit HIV.



IGNORE MODERN PREVENTION METHODS

Other factors reduce risk of transmission:

- ART*, 99-100%
- PrEP**, 92%
- Condoms, 62-80%



IGNORE MODERN MEDICAL TREATMENT

Life expectancy for 20-year-old with HIV and on ART is now until 71 years vs. 32 years in the 1980s



DON'T REQUIRE INTENT

Criminal laws take into consideration whether or not someone intended to cause harm. These laws don't.



RESULT?

BEHAVIORS WITH 0% RISK OF HARM CAN LEAD TO:



- 35+ year prison terms
- Registration as a sex offender

*Antiretroviral Therapy

**Pre-Exposure Prophylaxis

OVERVIEW

The first known cases of HIV in the United States appeared in 1981.¹ Through much of the 1980s, public concern and fear about the growing number of people diagnosed with HIV and AIDS increased. State legislatures reacted to the public's fear by passing laws based on the limited knowledge about HIV available at the time. In 1986, four states had passed laws that not only criminalized the transmission of HIV, but also criminalized behaviors that potentially or actually exposed others to the virus, including a host of behaviors that carry no risk of transmission.² Over the past 35 years, nearly 40 states across the country have passed similar laws, which are frequently called "HIV criminalization laws."

Few of these laws take into consideration what we know about the risk, likelihood, and modes of transmission of HIV. Consequently, many of these state laws criminalize behaviors that the Centers for Disease Control and Prevention (CDC) now regard as posing either no or negligible risk for HIV transmission, like spitting or biting.³ Furthermore, most HIV criminalization laws do not account for HIV prevention measures that reduce transmission risk, such as condom use, antiretroviral therapy (ART), or pre-exposure prophylaxis (PrEP). Some HIV criminalization laws also impose additional penalties for individuals living with HIV who engage in commercial sex, regardless of whether they use condoms and/or other forms of protection. Finally, while the stated goal of these laws was to prevent HIV transmission, emerging research suggests these laws may result in the opposite effect if they discourage HIV testing and disclosure of HIV status.⁴

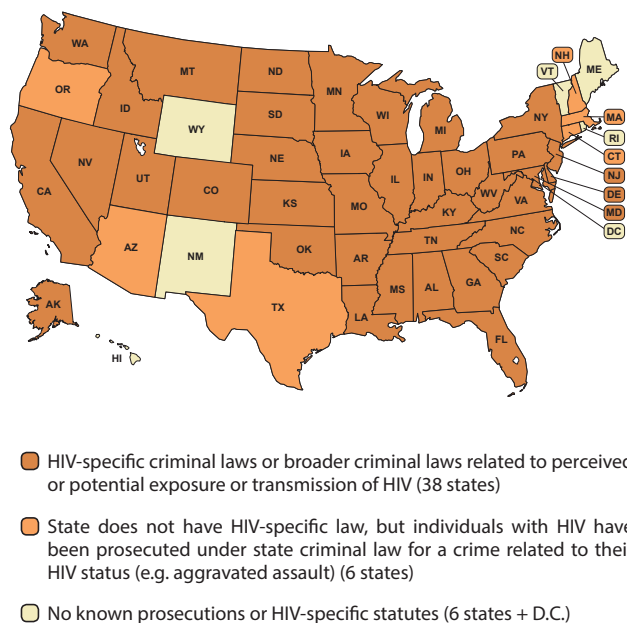
As a result of HIV criminalization laws, people living with HIV, the majority of whom are gay, bisexual, and/or transgender, face a patchwork of laws that rely on misinformation about HIV transmission.⁵ These laws have devastating consequences. People living with HIV are put at increased risk of being charged with a crime. Some individuals have been sentenced to more than 30 years in prison when transmission did not occur.⁶ Others have been convicted even when they took steps to protect their sexual partners. In 2008, an African American man living with HIV was sentenced to 35 years in prison for spitting, even though there has never been a documented transmission of HIV through saliva.⁷

States with HIV-specific criminal laws should re-examine those laws; assess the laws' alignment with current evidence regarding HIV transmission risk and recent developments in HIV prevention and treatment, and criminal legal principles of intent; and consider whether the laws are the best vehicle to achieve their intended public health purposes, which include reducing HIV transmission and improving the health, safety, and wellbeing of those living with HIV.

National Landscape

HIV criminalization laws criminalize actual or perceived exposure to HIV. There are 38 states that have HIV-specific criminal laws or broader criminal laws related to perceived or potential exposure or transmission of HIV, as shown in *Figure 1*, where 81% of LGBT people live. Thirty-two of these states have HIV-specific criminal laws that criminalize actual or perceived exposure to HIV. Another six states have laws that criminalize certain behaviors by individuals with sexually transmitted infections, which either explicitly or implicitly include HIV. In six other states, general criminal laws have been used to prosecute people living with HIV for a crime related to perceived or actual exposure to HIV. In these states, prosecutions have been brought under general criminal codes such as reckless endangerment,

Figure 1: HIV-Specific Statutes and Prosecutions



Source: Movement Advancement Project, Equality Maps, current as of December 1, 2016. For updates see http://www.lgbtmap.org/equality-maps/hiv_criminalization_laws.



Any individual who knows themselves to have HIV can be criminally charged under the statute if they have sexual intercourse or intimate physical contact, which could include oral sex, which has a very low risk of transmission. The law does not take into consideration whether an individual takes steps to reduce the risk of transmission, such as using a condom or adhering to an antiretroviral regimen.



Legislation passed in 2008 added required registration as sex offender to the penalties for conviction of criminal exposure to HIV, which is already designed as a Class 3 felony in South Dakota, which carries a maximum sentence of 15 years in prison.



While informed consent of the person exposed can be used as a defense under such a prosecution, this situation can create a situation in which one person's account of knowledge and consent can be contested by another person; the proverbial "he said, (s)he said."



The statute explicitly notes that no transmission of HIV is required, so if an individual took precautions to prevent the potential transmission of HIV, without clear evidence of the knowledge and consent of the other person, an individual could be found guilty.

State Example: South Dakota's HIV Criminalization Law

22-18-31. Intentional exposure to HIV infection a felony. Any person who, knowing himself or herself to be infected with HIV, intentionally exposes another person to infection by:

(1) Engaging in sexual intercourse or other intimate physical contact with another person;

(2) Transferring, donating, or providing blood, tissue, semen, organs, or other potentially infectious body fluids or parts for transfusion, transplantation, insemination, or other administration to another in any manner that presents a significant risk of HIV transmission;

(3) Dispensing, delivering, exchanging, selling, or in any other way transferring to another person any nonsterile intravenous or intramuscular drug paraphernalia that has been contaminated by himself or herself; or

(4) Throwing, smearing, or otherwise causing blood or semen, to come in contact with another person for the purpose of exposing that person to HIV infection; is guilty of criminal exposure to HIV.

Criminal exposure to HIV is a Class 3 felony.

22-18-33. Informed consent of person exposed to HIV an affirmative defense.

It is an affirmative defense to prosecution pursuant to § 22-18-31, if it is proven by a preponderance of the evidence, that the person exposed to HIV knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and gave advance consent to the action with that knowledge.

22-18-34. Actual transmission of HIV not required for criminal exposure.

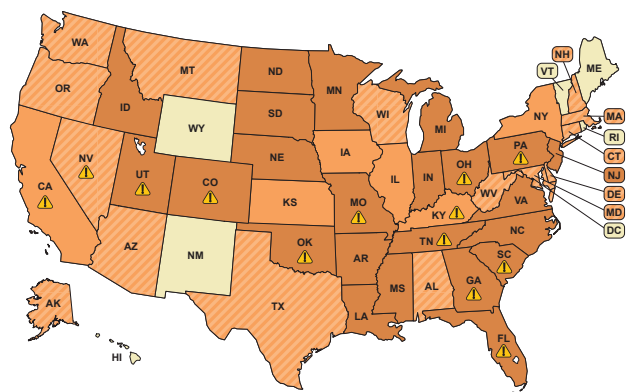
Nothing in §§ 22-18-31 to 22-18-34, inclusive, may be construed to require the actual transmission of HIV in order for a person to have committed the offense of criminal exposure to HIV.

22-24B-1. Sex crimes defined. For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of the following crimes regardless of the date of the commission of the offense or the date of conviction:

(20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31

Source: South Dakota § 22-24B-1(20), accessed November 1, 2016, http://www.sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=22-24B-1.

Figure 2: Criminalized Behaviors



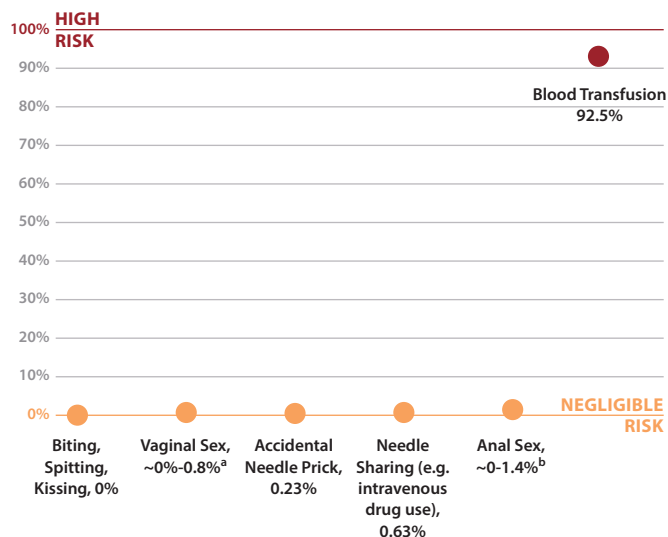
- State law criminalizes one or more behaviors that pose either no risk of HIV transmission or a “low or negligible risk” of HIV transmission as defined by the CDC (23 states)
- Statute only criminalizes behaviors that pose an “actual risk” of HIV transmission (7 states)
- State law criminalizes perceived or potential exposure to HIV but includes no specific defining language or the definitions of transmission behaviors are unclear or the general criminal statutes used to prosecute contains no defined legal standard for criminalized behavior by PLHIV (14 states)
- No known prosecutions or HIV-specific statutes (6 states + D.C.)
- ▲ State law includes enhanced penalties for individuals living with HIV if prosecuted for sex work (13 states)

Source: Movement Advancement Project, Equality Maps, current as of December 1, 2016. For updates see http://www.lgbtmap.org/equality-maps/hiv_criminalization_laws.

assault, terroristic threats, or homicide and attempted homicide.⁸ Sixteen percent of LGBT people live in one of these states. Only 3% of LGBT people live in one of the six states without HIV-specific criminal laws or broader laws related to sexually transmitted infections or where general criminal laws have not been used to prosecute people living with HIV for actions related to actual or perceived exposure to HIV.

In general, HIV-specific criminal laws have several key components. They typically apply only to people who know they have HIV; they describe the specific behaviors that are criminalized; they make disclosure of HIV status the only affirmative defense (or make non-disclosure an element of the crime); and they outline the applicable criminal penalties, such as classification as a misdemeanor or felony, and minimum or maximum sentence lengths. Generally, these laws do not require transmission or the intent to transmit HIV. Together, these laws create a strong disincentive for individuals to find out their HIV status and result in adverse public health outcomes.

Figure 3: Per-Act Risk of Acquiring HIV Vary Greatly



^a The greatest risk for transmission through vaginal sex is for the receptive partner without prevention measures such as a condom, ART, or PrEP (0.8%), but with these measures, the risk is reduced to nearly 0%.

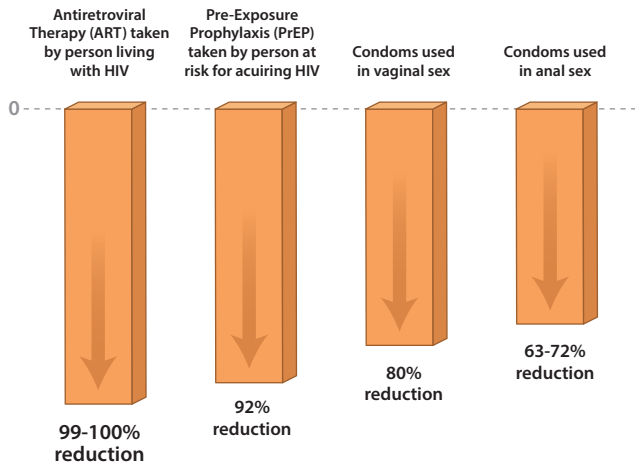
^b The greatest risk for transmission through anal sex is for the receptive partner without prevention measures such as a condom, ART, or PrEP (1.4%), but the risk is reduced through condom usage and is nearly 0% with ART or PrEP are used.

Source: Centers for Disease Control and Prevention, “HIV Risk Behaviors: Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act,” accessed October 25, 2016, <http://www.cdc.gov/hiv/policies/law/risk.html>.

Types of behaviors criminalized. Some state HIV criminalization laws detail specific behaviors that individuals with HIV may not engage in without risking criminal penalty, while others are broader with language such as general “exposure to HIV,” as shown in *Figure 2*. Behaviors that may be criminalized include donating blood, tissues, or fluids; prostitution or solicitation; biting, spitting, or throwing bodily fluids; and a number of sexual behaviors, including anal, vaginal, and oral sex, sharing sex objects, or mutual masturbation.

Many of these laws were passed in the earlier years of the epidemic when less was known about the routes and risks of HIV transmission. Nearly half of states (23) criminalize one or more behaviors that pose either no risk of HIV transmission or a “low or negligible risk” of HIV transmission as defined by the CDC, such as exposing someone to a bodily fluid that is not known to transmit HIV, such as saliva, urine, or tears. As shown in *Figure 3*, these behaviors have a negligible risk of transmitting HIV. By criminalizing these behaviors, HIV criminalization laws in these states perpetuate stigma and misinformation about how HIV is transmitted.

Figure 4: Prevention Measures Drastically Reduce Risk of Transmitting HIV

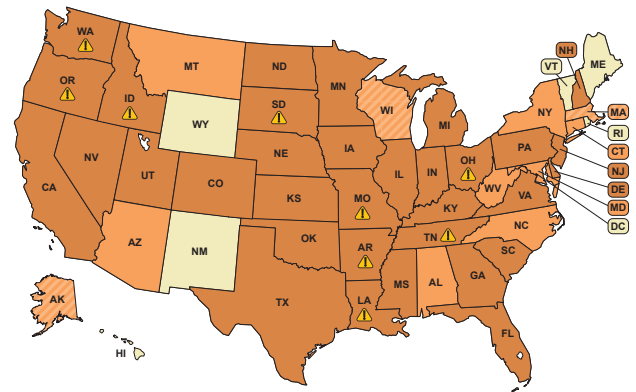


Source: Dawn K. Smith, et al., "Condom Effectiveness for HIV Prevention by Consistency of Use Among Men Who Have Sex With Men in the United States," *Journal of Acquired Immune Deficiency Syndromes*, 68(30:337, 2015, accessed November 1, 2016, http://journals.lww.com/jaids/Fulltext/2015/03010/Condom_Effectiveness_for_HIV_Prevention_by.14.aspx.

HIV criminalization laws also fail to account for proven prevention measures, such as antiretroviral therapy (ART), pre-exposure prophylaxis (PrEP), and condoms, which are proven to reduce, or completely eliminate, the risk of transmission, as shown in *Figure 4*.⁹

- Antiretroviral therapy (ART) reduces the number of copies of HIV in an individual's blood (called "viral load"), which in turn drastically reduces the risk of transmitting the virus. Preliminary findings from a 2011 study found that when used consistently by individuals with HIV, ART reduced the already low per-act risk of HIV transmission to a sexual partner by 96%.¹⁰ In a follow-up study released in 2015 of more than 1,700 couples, ART resulted in a zero percent rate of HIV transmission.¹¹ In a 2016 longitudinal study of gay male couples in which one member of the couple had HIV and was using ART and the couple did not consistently use condoms during sex, there were no documented cases of HIV transmission.¹²
- When individuals who do not have HIV take PrEP regularly, the risk of acquiring HIV has been shown to be reduced by 92%.¹³
- Condom usage also reduces risk of HIV transmission through a variety of sexual behaviors (63% for insertive anal sex among men who have sex with men;¹⁴ 72% for receptive anal sex among men who have sex with men;¹⁵ and 80% for penile-vaginal sex).¹⁶

Figure 5: Degrees of Punishment



- Violations of HIV-specific statute (or HIV-related prosecutions under general criminal code) are charged as felony offenses (33 states)
- Violations of HIV-specific statute (or HIV-related prosecutions under general criminal code) are charged as misdemeanors (8 states)
- State imposes "sentence-enhancement" statute that may increase penalties based on HIV status (3 states)
- No known prosecutions or HIV-specific statutes (6 states + D.C.)
- ⚠ Sentence for HIV-related offense includes registration as a sex offender (9 states)

Source: Movement Advancement Project, Equality Maps, current as of December 1, 2016. For updates see http://www.lgbtmap.org/equality-maps/hiv_criminalization_laws.

Very few HIV criminalization statutes in the United States take into account whether an individual living with HIV is on ART, which drastically reduces the likelihood of transmission, or the inherent conflict between taking medications that make transmission nearly impossible and having the criminal intent to harm another through transmission. Other prevention methods, such as PrEP, or condoms, which proactively reduce the risk of HIV transmission, are also rarely considered as to whether there was intent to transmit HIV. In most states, such as the example law from South Dakota presented on page 3, the use of these methods cannot be used a defense against a prosecution under an HIV criminalization law.

Disclosure requirements. The majority of states with HIV criminalization laws require that people living with HIV disclose their status to potential sex partners and/or to individuals with whom they may be sharing needles. But providing evidence of disclosure, sometimes months or years after an interaction, can prove difficult.

Degrees of punishment under HIV criminalization laws. The criminal penalties in HIV criminalization laws are frequently unreasonably harsh, often resulting in felony

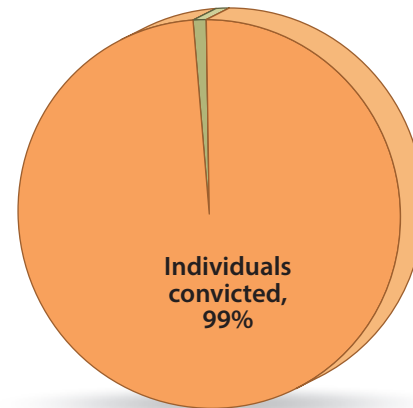
convictions, long sentences, and required registration as a sex offender (see *Figure 5* on the previous page).

The charges shown in *Figure 5* are either explicit guidelines or, in the absence of guidelines, recorded charges applied in known prosecutions. When a state has more than one HIV-specific statute and/or known prosecution, the state is categorized by the most severe charge therein. California, for example, has several HIV-related statutes on the books and more than 380 known prosecutions under these statutes between 1988 and 2014.¹⁷ Felony conviction under California law carries a three, five, or eight year prison sentence, but there are sentence enhancements for individuals with HIV who commit a sex offense, with three years of additional prison time for each sex offense (on top of the sentence for the sex offense). Notably, Iowa's HIV-specific statute was revised in 2014. It is no longer HIV-specific, applies to a more limited range of behaviors (based on risk), and has gradations of charges and penalties, depending on whether the person acted with the intent to transmit or with a "reckless disregard" as to the risk of transmission, and whether or not HIV was transmitted. While not eliminating HIV-based prosecutions altogether, this revision was groundbreaking in its incorporation of current knowledge about HIV and the tiering of prohibited conduct, and gradations of penalties, thereby replacing a blunt, indiscriminate statute with an extreme maximum sentence for all situations.

Nine states add mandatory sex offender classification and registration to those convicted under these laws, meaning defendants suffer additional, irreparable damage to most aspects of their lives: their ability to work, to choose where they live, even to continue relationships with their own children and other minor relatives. In 2009, Nick Rhoades was charged with criminal transmission of HIV in Iowa (under its previous HIV criminalization statute) after failing to disclose his status to a sex partner, with whom he used a condom.¹⁸ Rhoades was on ART and had an undetectable viral load. In addition to being sentenced to 25 years in prison, Rhoades was also sentenced to registration as a sex offender for an indefinite period of time, barred from being around minors without their parents, and a slew of other restrictions ranging from GPS monitoring, curfews, and searches of his computer.¹⁹ With representation from Lambda Legal, in June 2014, the Iowa Supreme Court set aside his conviction, recognizing the evolving science with respect to HIV and its transmission.²⁰

Figure 6: Incredibly High Conviction Rates in HIV Criminalization Cases

Of Individuals Charged Under HIV-criminalization Statutes in California



Source: Amira Hasenbush, Ayako Miyashita, and Bianca D.M. Wilson, "HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS," *The Williams Institute*, December 2015.

The Williams Institute analysis of people coming into contact with the California criminal justice system resulting from an HIV criminalization statute revealed the extent to which these statutes result in high rates of conviction and punishment for people living with HIV. Of individuals charged under a California HIV criminalization statute, 99% are subsequently convicted (see *Figure 6*).²¹ Notably, nearly all (95%) of individuals who came in contact with the California criminal justice system under an HIV criminalization statute had either engaged in sex work or were suspected of engaging in sex work.

The harsh sentences associated with conviction under many states' HIV criminalization laws are out of step with today's understandings of the modes and rates of HIV transmission; they do not accurately reflect the reality of an HIV diagnosis; and they do not adhere to basic fairness principles of criminal justice. First, as mentioned above, these laws criminalize conduct that is unlikely to result in harm and do not require actual harm to have occurred. Second, HIV criminalization laws were passed at a time when HIV was, for many people, a terminal disease with a short life expectancy. Whereas today, with appropriate medical treatment, a person diagnosed at age 20 can expect to live to 71 (compared to the average lifespan in the United States of 79).²² The sentences imposed are frequently greater than those imposed for crimes that result in serious

bodily harm or death, such as assault or manslaughter. Third, HIV criminalization laws often do not require that prosecutors prove intent—that is, that an individual living with HIV intentionally sought to expose or infect another person with HIV. Many criminal laws require a particularly state of mind, or “*mens rea*” (intent), and hinge conviction and/or criminal penalties on the relative culpability of a person acting with a particular state of mind. This is not the case for most HIV criminalization laws.

Harms of HIV Criminalization

Not only are HIV criminalization laws outdated, the use of the criminal justice system to stop or slow HIV transmission is both ineffective and devastating to those targeted, as well as harmful to public health as a whole.

Current Laws Compromise Public Health. Contrary to their intended purpose, by discouraging individuals from knowing their status and accessing medical treatment, HIV criminalization laws undermine the public health goals of reducing new HIV infections.

First, research finds that these laws create a culture of fear and often discourage people from knowing their HIV status, seeking treatment, or disclosing their HIV status in appropriate circumstances, all of which are counterproductive in terms of halting the transmission of HIV and improving outcomes for people living with HIV. Because HIV-based prosecutions may discourage HIV testing, they can also delay entry into care.²³ Delayed testing and treatment reduces individual health outcomes for individuals living with HIV, and it increases the likelihood of transmission to others. Studies have shown that individuals who receive early healthcare and uninterrupted antiretroviral medications experience long-term health benefits and increased life expectancy, as well as substantially reduced risk of transmission.

Finally, there is no evidence that criminalization has any positive impact on disclosure or risk-taking behavior. In fact, one recent study found that the existence of HIV criminalization statutes is linked to increased sexual risk taking among HIV-negative men.²⁴

HIV Criminalization Laws Impact Gay, Bisexual, and/or Transgender People, Particularly People of Color. LGBT people, particularly gay and bisexual men, transgender women, and LGBT people of color, are disproportionately

Figure 7: LGBT People are Disproportionately Impacted by HIV

Figure 7a: Gay and Bisexual Men and Men Who Have Sex with Men (MSM)

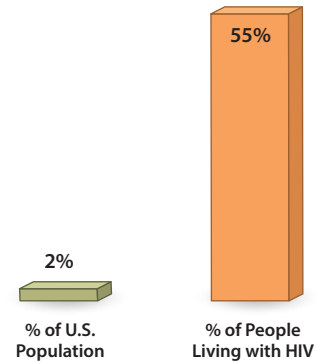
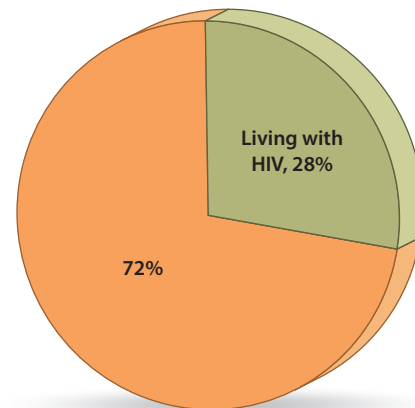


Figure 7b: Among Transgender Women



Sources: Centers for Disease Control and Prevention, “HIV Among Gay and Bisexual Men,” September 30, 2016, accessed October 25, 2016, <https://www.cdc.gov/hiv/group/msm/>; Jeffrey H. Herbst et al., “Estimating HIV Prevalence and Risk Behaviors of Transgender Persons in the United States: A Systematic Review,” *AIDS and Behavior*, 12:1 (2008), accessed October 25, 2016, <http://link.springer.com/article/10.1007%2Fs10461-007-9299-3>.

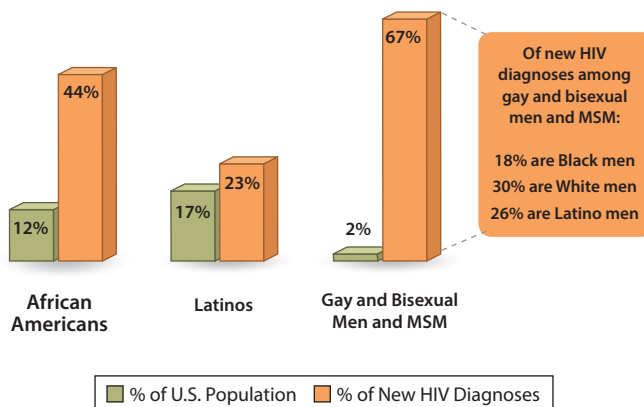
impacted by HIV, as shown in *Figure 7* above and *Figure 8* on the next page. They comprise a large share of people living with HIV and the majority of new diagnoses.

Given the overrepresentation of LGBT people, particularly gay, bisexual, and transgender people and people of color, it is not surprising that HIV criminalization laws disproportionately impact these communities and push LGBT people of color into the criminal justice system. According to a recent study of California by the Williams Institute, people of color were much more likely than white people to come into contact with the criminal justice system for charges related to their HIV status.²⁵

For example, white men comprise 40% of the population of people diagnosed with HIV, but only 16% of those who had contact with the criminal justice system related to their HIV status in California. Black women, black men, and white women all show rates of overrepresentation among HIV status-related criminal justice contact, as shown in *Figure 9*.

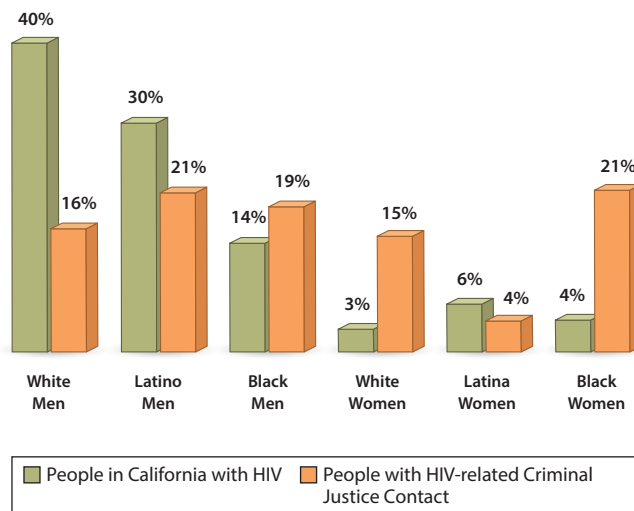
In the same study of individuals brought into contact with the California criminal justice system under HIV-related statutes, significant differences in case outcomes were uncovered by race and ethnicity. For example, white men were significantly more likely to be released and not charged. Black men, black women, white women were significantly less likely to be released and not charged.

Figure 8: LGBT People & People of Color Comprise Large Share of New HIV Diagnoses



Sources: Centers for Disease Control and Prevention, "HIV Surveillance Report, 2014," 2015, accessed November 8, 2016. <http://www.cdc.gov/hiv/pdf/library/reports/surveillance/cdc-hiv-surveillance-report-us.pdf>.

Figure 9: People of Color Disproportionately Impacted by HIV Criminalization Statutes
 Californians Living with HIV Compared to Those in Contact with Justice System Under HIV Criminalization Statutes, by Race



Sources: Amira Hasenbush, Ayako Miyashita, and Bianca D.M. Wilson, "HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS," The Williams Institute, December 2015, accessed November 2, 2016, <http://williamsinstitute.law.ucla.edu/research/health-and-hiv-aids/hiv-criminalization-in-california-penal-implications-for-people-living-with-hiv-aids>.

Federal Effort to Modernize HIV Criminalization Laws

Federal legislation has been introduced recently that would address discrimination in criminal and civil laws against people living with HIV. The REPEAL HIV Discrimination Act, introduced in the House by California Congresswoman Barbara Lee in March 2015²⁶ and in December 2015 in the Senate by Senator Christopher Coons of Delaware²⁷, would encourage states to reform and modernize their laws and update federal laws and policies to be in line with modern science.

Specifically, the legislation articulates that federal and state laws and policies “should not place unique or additional burdens on individuals solely as a result of their HIV status,” and that laws should be modernized to demonstrate an understanding of current science and should “demonstrate a public health-oriented, evidence-based, medically accurate, and contemporary understanding” of HIV transmission, health implications, treatment, and the impact of punitive HIV-specific laws, policies, regulations, and judicial precedents and decisions on public health and on affected people, families, and communities.

The bill directs various federal departments, including the Department of Justice, the Department of Health and Human Services, and the Department of Defense to review federal and state laws, policies, regulations, military codes, and judicial precedents and decisions regarding criminal and related civil commitment cases involving people living with HIV/AIDS. The legislation would also require agencies to develop and publicly release guidance and best practice recommendations for states, and establish an integrated monitoring and evaluation system to measure state progress.

The bill prohibits this Act from being construed to discourage the prosecution of individuals who intentionally transmit or attempt to transmit HIV to another individual.

RECOMMENDATIONS

States should repeal, reform, and/or modernize all laws that criminalize the transmission of HIV and other diseases. Revisions should be guided by the best available science and medical evidence, and they should uphold principles of legal fairness, taking into consideration components such as intent, proportionality, evidentiary obstacles, and appropriate defenses in light of current science.²⁸

When examining existing statutes, lawmakers and advocates should take into consideration “unique or additional burdens”²⁹ these laws place on individuals living with HIV and the extent to which existing laws do not take into account the most recent science and research on the transmission of HIV and the benefits of treatment. The Department of Justice encourages states to use scientific findings to, “re-examine [these] laws, assess the laws’ alignment with current evidence regarding HIV transmission risk, and consider whether the laws are the best vehicle to achieve their intended purposes.”

Absent changes in state laws, attorney generals and law enforcement should deprioritize enforcement of HIV criminalization statutes.

The federal government should pass legislation to update federal laws and policies and the military code to recognize the contemporary understanding of HIV transmission, treatment, and risks. Legislation, like the REPEAL HIV Discrimination Act outlined on the previous page, should also direct federal departments and agencies to collect information about and monitor state laws, policies, and prosecutions.

ENDNOTES

- ¹ U.S. Department of Health and Human Services, "A Timeline of HIV/AIDS," AIDS.gov, accessed October 25, 2016, <https://www.aids.gov/hiv-aids-basics/hiv-aids-101/aids-timeline>.
- ² J. Stan Lehman et al., "Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States," *AIDS and Behavior*, 18:997, 2014, accessed October 25, 2016, <http://link.springer.com/article/10.1007/s10461-014-0724-0/fulltext.html>.
- ³ Centers for Disease Control and Prevention, "HIV Risk Behaviors: Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act," accessed October 25, 2016, <http://www.cdc.gov/hiv/policies/law/risk.html>.
- ⁴ Research reviewed in Eric Mykhalovskiy et al., "The Public Health Implications of Criminalizing HIV Non-disclosure, Exposure and Transmission: Report of international workshops," January 2014, accessed November 18, 2016, <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Public%20Health%20Implications%20of%20Criminalizing%20HIV%20Non-Disclosure,%20Exposure%20and%20Transmission.pdf>; for example, in Canada, Patrick O'Byrne, Alyssa Bryan, and Cory Woodyatt, "Nondisclosure prosecutions and HIV prevention: Results from an Ottawa-Based Gay Men's Sex Survey," *Journal of the Association of Nurses in AIDS Care*, 24(1):81, 2013, accessed November 3, 2016, [http://www.nursesinaidsjournal.org/article/S1055-3290\(12\)00041-6/fulltext](http://www.nursesinaidsjournal.org/article/S1055-3290(12)00041-6/fulltext).
- ⁵ Movement Advancement Project, "HIV Criminalization Laws," accessed July 22, 2015, http://www.lgbtmap.org/equality-maps/hiv_criminalization_laws.
- ⁶ Rashida Richardson, Shoshana Golden, and Catherine Hanssens. "Ending & Defending Against HIV Criminalization, A Manual for Advocates: Volume 1, State and Federal Laws and Prosecutions," Second Edition (Winter 2015), The Center for HIV Law & Policy, Positive Justice Project, accessed October 25, 2016, <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/HIV%20Crim%20Manual%20%28updated%205.4.15%29.pdf>.
- ⁷ Ashleigh Furlong and Nathan Geffen, "Should you be prosecuted for exposing someone to HIV?," *GroundUp*, August 11, 2016, accessed October 25, 2016, <http://www.groundup.org.za/article/should-people-who-transmit-hiv-be-prosecuted>.
- ⁸ *Ibid.*
- ⁹ Lehman et al., "Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States."
- ¹⁰ Myron S. Cohen, et al., "Prevention of HIV-1 Infection with Early Antiretroviral Therapy," *The New England Journal of Medicine*, 365:493, 2011, accessed November 1, 2016, <http://www.nejm.org/doi/full/10.1056/NEJMoa1105243#t=article>.
- ¹¹ Myron S. Cohen, et al., "Antiretroviral Therapy for the Prevention of HIV-1 Transmission," *The New England Journal of Medicine*, 1:375(9):830, 2016, accessed October 25, 2016, <https://www.ncbi.nlm.nih.gov/pubmed/27424812>.
- ¹² Alison J. Rodger, et al., "Couples When the HIV-Positive Partner Is Using Suppressive Antiretroviral Therapy," *Journal of the American Medical Association*, 316(6):667, 2016, accessed November 1, 2016, <http://jamanetwork.com/journals/jama/article-abstract/2533066>.
- ¹³ Robert M. Grant, "Preexposure Chemoprophylaxis for HIV Prevention in Men Who Have Sex with Men," *The New England Journal of Medicine*, 363:2587, 2010, accessed November 1, 2016, <http://www.nejm.org/doi/full/10.1056/NEJMoa1011205#t=article>.
- ¹⁴ Dawn K. Smith, et al., "Condom Effectiveness for HIV Prevention by Consistency of Use Among Men Who Have Sex With Men in the United States," *Journal of Acquired Immune Deficiency Syndromes*, 68(3):337, 2015, accessed November 1, 2016, http://journals.lww.com/jaids/Fulltext/2015/03010/Condom_Effectiveness_for_HIV_Prevention_by.14.aspx.
- ¹⁵ *Ibid.*
- ¹⁶ Susan C. Weller and Karen Davis-Beatty, "Condom effectiveness in reducing heterosexual HIV transmission (Review)," *The Cochrane Collaboration*, 2007, accessed November 1, 2017, <http://apps.who.int/whl/reviews/langs/CD003255.pdf>.
- ¹⁷ Amira Hasenbush, Ayako Miyashita, and Bianca D.M. Wilson, "HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS," The Williams Institute, December 2015, accessed November 2, 2016, <http://williamsinstitute.law.ucla.edu/research/health-and-hiv-aids/hiv-criminalization-in-california-penal-implications-for-people-living-with-hiv-aids>
- ¹⁸ Lambda Legal, "*Rhoades v. Iowa*," accessed November 2, 2016, <http://www.lambdalegal.org/in-court/cases/rhoades-v-iowa>.
- ¹⁹ *Ibid.*
- ²⁰ *Ibid.*
- ²¹ Hasenbush et al., "HIV Criminalization in California."
- ²² Centers for Disease Control and Prevention, "HIV Care Saves Lives," November 14, 2014, accessed November 1, 2016, <http://www.cdc.gov/VitalSigns/hiv-aids-medical-care/infographic.html>.
- ²³ Brad Barber and Bronwen Lichtenstein, "Support for HIV Testing and HIV Criminalization Among Offenders Under Community Supervision," *Research in the Sociology of Health Care*, 33 (2015), accessed October 25, 2016, <http://www.hivlawandpolicy.org/resources/support-hiv-testing-and-hiv-criminalization-among-offenders-under-community-supervision>.
- ²⁴ Kevin J. Horvath, Craig Meyer, and B.R. Simon Rosser, "Men Who have Sex with Men Who Believe that Their State has a HIV Criminal Law Report Higher Condomless Anal Sex than Those Who are Unsure of the Law in Their State," *AIDS and Behavior*, January 16, 2016, accessed October 25, 2016, <http://www.ncbi.nlm.nih.gov/pubmed/26780329>.
- ²⁵ Hasenbush et al., "HIV Criminalization in California."
- ²⁶ S.2336 – REPEAL HIV Discrimination Act of 2015, <https://www.congress.gov/bill/114th-congress/senate-bill/2336/all-info?resultIndex=2>, accessed November 2, 2016.
- ²⁷ H.R. 1586 – REPEAL HIV Discrimination Act of 2015, <https://www.congress.gov/bill/114th-congress/house-bill/1586/all-info>, accessed November 2, 2016.
- ²⁸ UNAIDS, "Guidance Note: Ending overly broad criminalization of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations," 2013, accessed November 2, 2016, http://www.unaids.org/sites/default/files/media_asset/20130530_Guidance_Ending_Criminalisation_0.pdf.
- ²⁹ U.S. Department of Justice, "Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Supported Factors," accessed October 25, 2016, <https://www.aids.gov/federal-resources/national-hiv-aids-strategy/doj-hiv-criminal-law-best-practices-guide.pdf>.

ABOUT THIS SPOTLIGHT

This report is part of an ongoing series that will provide in-depth analyses of laws and policies tracked at the Movement Advancement Project's "Equality Maps," found at www.lgbtmap.org/equality-maps. The information in this report is current as of the date of publication; but the [online maps](http://www.lgbtmap.org/equality-maps) are updated daily.



movement advancement project ▶

2215 Market St. • Denver, CO 80205
www.lgbtmap.org