INTRODUCTION

The Center for HIV Law and Policy (CHLP) hosts and coordinates the Positive Justice Project, the first national collaborative network of PLHIV, PLVH and allies working to end criminalization of HIV, viral hepatitis, and all stigmatized disabilities and health conditions.

- Support for 19 state coalitions to date: providing legal and policy analysis, legislative drafting assistance, and state-specific advocacy resources.
- Working with defense attorneys representing PLHIV facing criminal charges: assistance on dozens of cases over the past several years.
- PJP Advisory Group: advocates and experts from across the country provide input and feedback on national/local collaboration best practices, guiding principles for law reform, and resources advocates need most.
- PJP Partners Group: unique partnership of major national organizations and grassroots advocates.
- Collaborations with Association of Prosecuting Attorneys:
  - National Prosecutors Roundtable on HIV Criminalization and Policy: led to dismissal or reduction of charges in at least 4 jurisdictions.
THE SCOPE OF HIV CRIMINALIZATION

• 32 states have HIV-specific laws that impose criminal penalties, i.e. laws that impose misdemeanor or felony punishment and explicitly target HIV.
  ➢ These laws can be found in criminal codes or public health codes.
  ➢ Some of these laws define criminal offenses for exposing others to HIV; others outline harsher penalties for PLHIV for acts that are already considered criminal.
• At least 25 states prosecute PLHIV under general criminal laws.
• 6 states require registration as a sex offender.
What is HIV Criminalization?

HIV criminalization is based on the outmoded idea that HIV is a highly transmissible, “deadly weapon,” and that an HIV diagnosis is equivalent to a death sentence.

HIV criminalization is the creation of new criminal laws and increased penalties targeting people diagnosed with HIV for conduct that is either legal or less severely punished for individuals who have not been diagnosed with HIV.
HIV CRIMINALIZATION IN THE UNITED STATES

AN OVERVIEW OF THE VARIETY AND PREVALENCE OF LAWS USED TO PROSECUTE AND PUNISH PLHIV IN THE US.

LEARN MORE AT HIVLAWANDPOLICY.ORG

6 STATES MAY REQUIRE REGISTRATION AS A SEX OFFENDER as part of the punishment under HIV-specific laws

8 STATES HAVE REFORMED OR REPEALED one or more parts of their HIV-specific criminal laws

28 STATES WITH HIV-SPECIFIC CRIMINAL LAWS including laws targeting sex/non-disclosure, exposure to bodily fluids, needle-sharing, sex work, and blood/organ/semen donation

8 STATES WITH SENTENCING ENHANCEMENTS applicable to PLHIV who commit an underlying sexual assault crime.

25 STATES THAT HAVE PROSECUTED PLHIV UNDER NON-HIV-SPECIFIC, GENERAL CRIMINAL LAWS This number represents states with reported charges and/or convictions for non-HIV-specific offenses, where positive HIV status was relevant in establishing a (non-HIV-specific) element of the offense.

32 STATES HAVE HIV-SPECIFIC CRIMINAL LAWS AND/OR SENTENCE ENHANCEMENTS APPLICABLE TO PLHIV (Note: Total reflects overlap among the 28 states with HIV-specific laws and the 8 with sentence enhancements.)

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PUNISHMENT IS NOT A PUBLIC HEALTH STRATEGY
AN OVERVIEW OF STATES CRIMINALIZING VIRAL HEPATITIS

States with laws that criminalize viral hepatitis.
All 12 of these states also criminalize HIV.

States that specifically criminalize:

- **Sex**
- **Needle Sharing**
- **Bodily Fluid Exposure**
- States with laws written broadly enough so that people living with viral hepatitis could be arrested for sex, needle sharing or bodily fluid exposure

States with laws written broadly enough so that people living with viral hepatitis could be arrested for sex, needle sharing or bodily fluid exposure

Learn more at hivlawandpolicy.org/viral-hepatitis

Updated: July 28, 2020. Laws change frequently and this map is only accurate to the best of our knowledge. It is not a substitute for legal advice.

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Each state or territory, in addition to the federal government, that has an HIV-specific misdemeanor or felony law for one or more of the behaviors below qualifies as a state or territory with an HIV law imposing criminal penalties. A law is HIV-specific if it explicitly targets HIV, whether or not it targets other diseases as well. Where not otherwise noted, these laws appear in criminal codes. In some jurisdictions, some or all of these HIV-specific laws imposing criminal penalties appear in public health codes; these 11 jurisdictions are marked with Ω.

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HIV CRIMINALIZATION DOES NOT PROMOTE PUBLIC HEALTH GOALS

- No evidence that these laws or prosecutions deter risky behaviors or actually promote disclosure.
- No evidence that laws have reduced rate of new HIV diagnoses.
- Disincentive to learn HIV status.
- Alienates patients from health care providers.
- Sends one-sided message regarding sexual health and prevention responsibility.
- Disproportionately harms marginalized populations, including people of color, LGBTQ communities, sex workers, and undocumented immigrants.
- Promotes stigma.
WHAT ARE THE PROBLEMS WITH HIV PROSECUTIONS?

• Transmission is not required.
• Risk of transmission is largely irrelevant.
• Intent to harm rarely considered or required.
• Proof of disclosure is often the only defense.
• Severe and disproportionate punishment.
How has the landscape of HIV/HEP criminal laws changed since their inception?

Many states with HIV criminal laws have amended them in each of the last four decades.

Not all recent changes have “modernized” the law.
Timeline of State Reforms and Repeals of HIV Criminal Laws

States with most significant changes to their HIV laws

1994: Texas
- The first state to repeal its HIV specific law, legislative history indicates one representative included it in an omnibus crime bill.
- Repeal did not end prosecutions. PLHIV in Texas prosecuted for HIV exposure since repeal have been charged with attempted murder, aggravated assault.

1994
- Did not affect felony convictions of those already convicted and incarcerated.
- Added defense to prosecution if a person took practical measures to prevent transmission (e.g., prophylactic device, viral suppression).
- Still HIV-specific, but added new felonies for people living with TB, hepatitis, and meningococcal disease.
- Exposure with intent to transmit when transmission occurs is still a felony (up to 25 years). Intentional exposure without transmission is a felony (up to 5 years).
- Exposure with "reckless disregard" if transmission occurs is a felony when transmission occurs (up to 5 years), and a misdemeanor (up to one year) if it does not.

2014: Iowa
- Removed sex offender registration requirement, including retroactively.
- Did not affect felony convictions of those already convicted and incarcerated.

2012: Illinois
- Narrowed types of prohibited contact to vaginal and anal intercourse.
- PLHIV must have intent to transmit HIV and engage in the acts listed in the statute (anal/vaginal intercourse, organ/blood donation).
- Disclosure of HIV status or using a condom is now a defense to prosecution, but difficult to prove in court.
- Other forms of prevention not considered, although could be evidence of lack of intent.
- Intercourse without disclosure of status and without a condom can still be a felony (up to 7 years).

2014
- Extensive reform reduced penalties for intentional exposure, solicitation, and performing sex work from felonies to misdemeanors.
- It is no longer a felony to donate blood, tissue, semen, or breast milk.
- Prosecution requires specific intent to transmit coupled with conduct likely to transmit and transmission results.
- Provides privacy protections for PLHIV charged under current law.
- Now applies to "infectious or communicable diseases" with "significant public health consequences."
- Prohibits disclosure of defendant's identity prior to a conviction.
- Limits use of medical records; records can't be only source of proof of intent.
- Anyone convicted must be assessed for community placement prior to sentencing.

2016: Colorado
- Reduced the maximum authorized sentence enhancement to double the sentence for PLHIV who are charged with an underlying sex offense if transmission occurs.
- Intent to transmit is not required for prosecution.
- Eliminated felony offenses involving sex work and HIV, and mandatory HIV testing for someone accused of engaging in sex work.

2017: California
- No HIV-specific criminal statute. PLHIV required to comply with public health administrative regulations and "control measures." Violating these regulations is a misdemeanor (up to 2 years).
- PLHIV must disclose their status and use condoms unless certain exceptions apply: they have been virally suppressed for at least six months, their partner is taking pre-exposure prophylaxis (PrEP), or their partner is also HIV positive.
- Neither intent to transmit nor transmission is required for public health violations.

2018: Michigan
- Reform removed types of physical contact likely transmit HIV.
- Anal or vaginal sex without first disclosing status with a "specific intent" to transmit is a felony (up to 4 years). Transmission is not required for prosecution.
- Reckless exposure: sexual activity prior to disclosure resulting in transmission but without intent to transmit is a felony (up to 4 years).
- Reckless exposure without transmission is a misdemeanor.
- PLHIV who can show that they have been virally suppressed for at least six months and are following their physician's treatment plan may use that as a defense to prove that they did not act with reckless disregard. Does not apply to acting with intent to transmit provisions of the new law.

2018
- Reform reduces penalty for HIV exposure from a felony to a misdemeanor.
- Specific intent to transmit and transmission must occur for prosecution. Previously, exposure carried a felony conviction (punishable by up to life in prison) and required neither intent to transmit nor transmission.
- Affords affirmative defenses against prosecution, including disclosure of status and the use of a condom or other "practical means to prevent transmission."
- Removes the requirement for sex offender registration.
- Misrepresenting HIV status to a sexual partner, intent to transmit, and transmission carry a higher penalty of gross misdemeanor.
- Retains felony penalty for PLHIV convicted of transmitting HIV to a child or vulnerable adult, and registration as a sex offender; and amends law allowing health authorities to intervene when person with sexually transmitted disease threatens public health.

2020
- No HIV-specific criminal statute.
- PLHIV required to comply with public health administrative regulations and "control measures." Violating these regulations is a misdemeanor (up to 2 years).
- PLHIV must disclose their status and use condoms unless certain exceptions apply: they have been virally suppressed for at least six months, their partner is taking pre-exposure prophylaxis (PrEP), or their partner is also HIV positive.
- Neither intent to transmit nor transmission is required for public health violations.
What states are currently working actively on growing coalitions and challenging current laws?

- See July 2020 PJP Update for recent news!
- CHLP supporting coalitions in Arkansas, Georgia, Louisiana, Missouri, Ohio, Tennessee and Nevada
- CHLP approach: national organizations support state advocates in creation of their own coalitions while state advocates lead and control —nationals should serve locals, not run the show!
PJP *Guiding Principles for Eliminating Disease-Specific Criminal Laws* (2015):

- No disease specific criminal law or sentence enhancement;
- Must prove specific intent to harm + conduct likely to cause the intended harm;
- Steps to reduce risk = no intent to harm;
- Proportionate penalties = no felony punishment and no sex offender registration.