



CONSENSUS STATEMENT ON THE CRIMINALIZATION OF HIV IN THE UNITED STATES

We the undersigned agree:

- The criminal law has been unjustly used in the United States to target people with HIV.
- HIV-specific criminal laws, the use of felony laws such as attempted murder and aggravated assault, and the use of sentence enhancements to prosecute HIV positive individuals are based on outdated and erroneous beliefs about the routes, risks, and consequences of HIV transmission.
- Legal standards applied in HIV criminalization cases regarding intent, harm, and proportionality deviate from generally accepted criminal law principles and reflect stigma toward HIV and HIV-positive individuals.
- Prosecutions involving allegations of non-disclosure, exposure, or transmission of HIV conflict with public health priorities and violate basic principles of justice.
- Punishments imposed for non-disclosure of HIV status, exposure, or HIV transmission are grossly out of proportion to the actual harm inflicted and reinforce the fear and stigma associated with HIV.

Public health leaders and global policy makers agree that HIV criminalization is unjust, bad public health policy and is fueling the epidemic rather than reducing it.

Therefore, to ensure a just application of the criminal law to transmission of sexually transmitted infections, we demand that Federal and State officials modernize criminal laws to eliminate HIV-specific statutes and ensure that any prosecution on the basis of HIV or any other STIs requires:

1. proof of an intent to harm;
2. conduct that is likely to result in that harm;
3. proof that the conduct of the accused in fact resulted in the alleged harm; and
4. punishment that is proportionate to the actual harm caused by the defendant's conduct.

The Positive Justice Project (PJP) is a movement of people with HIV, their health care providers, attorneys, community advocates, public health officials, law enforcement professionals, service providers and others devoted to ending the abuse of the criminal law against HIV-positive people. PJP includes HIV advocates, researchers, health and social service providers, media representatives, policy analysts, law enforcement and people living with HIV. We engage in federal and state policy advocacy, legal resource creation and support, and on educating and mobilizing communities and policy makers in the United States.

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RATIONALE FOR CONSENSUS STATEMENT ON THE CRIMINALIZATION OF HIV IN THE UNITED STATES

THE CRIMINAL LAW HAS BEEN UNJUSTLY USED IN THE UNITED STATES TO TARGET PEOPLE WITH HIV

Thirty-four U.S. states and territories have criminal statutes based on perceived exposure to HIV; most of these laws were adopted before the availability of effective antiretroviral treatment for HIV and at a time when data about the limited routes and risks of HIV transmission were not widely available.

1. Prosecutions for allegations of non-disclosure, exposure, or transmission of HIV have occurred in at least thirty-nine (39) states under HIV-specific laws or under general criminal laws.
2. People living with HIV have been charged under aggravated assault, attempted murder and even bioterrorism statutes, and face more severe penalties because law enforcement, prosecutors, courts, and legislators continue to view and characterize people living with HIV and their bodily fluids as inherently dangerous, even as “deadly weapons”.

HIV-SPECIFIC CRIMINAL LAWS, THE USE OF FELONY LAWS SUCH AS ATTEMPTED MURDER AND AGGRAVATED ASSAULT, AND THE USE OF SENTENCE ENHANCEMENTS TO PROSECUTE HIV-POSITIVE INDIVIDUALS ARE BASED ON OUTDATED AND ERRONEOUS BELIEFS ABOUT THE ROUTES, RISKS, AND CONSEQUENCES OF HIV TRANSMISSION

3. Despite the fact that correct and consistent condom use and effective antiretroviral therapy reduce the risk of HIV transmission to near-zero, most state HIV-specific laws and prosecutions do not treat condom use or an undetectable viral load and the extreme unlikelihood that transmission will occur as evidence of a lack of intent to harm.
4. Saliva does not transmit HIV, yet many states criminalize spitting and biting, with prison sentences as long as 35 years.
5. HIV disease is today a chronic, manageable illness for those with access to appropriate care and treatment. Those who discover their infection in a timely fashion and have access to quality health care can expect a near-normal life span.
6. The relative risk of HIV transmission varies widely based on the type of sexual activity, the viral load of the person with HIV and whether or not the person at risk has other sexually transmitted infections (STIs); for instance, oral sex in general poses an extremely low to zero risk of transmission.

LEGAL STANDARDS APPLIED IN HIV CRIMINALIZATION CASES DEVIATE FROM GENERALLY ACCEPTED CRIMINAL LAW PRINCIPLES AND REFLECT STIGMA TOWARD HIV AND HIV-POSITIVE INDIVIDUALS

7. In most jurisdictions, proof of a person’s intent to cause harm or to transmit HIV is neither required for a finding of guilt nor a factor in determining the level of punishment.
8. HIV-specific laws do not include actual HIV transmission as a specific element of the harm or conduct that is prohibited and punished and, in fact, HIV transmission is rarely a factor in HIV criminalization prosecutions.
9. In most states, even extremely low-risk or no-risk sexual activity, without disclosure, is subject to equally serious charges and sentences.

PROSECUTIONS INVOLVING ALLEGATIONS OF NON-DISCLOSURE, EXPOSURE, OR TRANSMISSION OF HIV CONFLICT WITH PUBLIC HEALTH PRIORITIES AND VIOLATE BASIC PRINCIPLES OF JUSTICE

10. The use of the criminal law to try to influence sexual behaviors conflicts with public health principles. Research demonstrates that HIV-specific laws do not reduce transmission, and a growing body of research shows that they may fuel the epidemic because they increase stigma, may discourage testing and make it more difficult for people with HIV to disclose their HIV status.
11. Placing legal responsibility for preventing disease transmission exclusively on people diagnosed with HIV undermines the most basic public health message concerning sexual health -- that all people should practice behaviors that protect themselves and their partners from HIV and other sexually transmitted infections.

PUNISHMENTS IMPOSED FOR NON-DISCLOSURE OF HIV STATUS, EXPOSURE, OR HIV TRANSMISSION ARE GROSSLY OUT OF PROPORTION TO THE ACTUAL HARM INFLICTED AND REINFORCE THE FEAR AND STIGMA ASSOCIATED WITH HIV

12. Many people living with HIV have been sentenced to prison terms of 10-50 years, exceeding punishments sometimes imposed on convicted murderers.
13. Because serious felony charges and imprisonment are reserved for intentional or reckless conduct that causes another person serious harm, the adoption of HIV-specific criminal laws reinforces unfounded beliefs that people living with HIV are inherently dangerous and that "intentional transmission" is a sufficiently common problem to warrant the criminal law's intervention.
14. The use of sex offender registries and related civil commitment laws to impose life-long surveillance and incarceration on individuals for engaging in consensual sex after testing positive for HIV minimizes the seriousness of actual sexual assault and the consequences for survivors, and misdirects resources used for monitoring and surveillance away from actual sexual predators.
15. The very decision to charge an individual with an HIV-specific crime creates a public record of that individual's HIV status. In turn, the identities of people with HIV who are criminalized—and sometimes their personal medical information and forensic reports—are subject to sensationalized media coverage that compounds the harm to individuals and their families through this intrusion on the person's right to medical privacy.

PUBLIC HEALTH AND POLICY LEADERS AROUND THE GLOBE AGREE ON THE NEED TO MODERNIZE CRIMINAL JUSTICE RESPONSES TO HIV

16. The National HIV/AIDS Strategy (NHAS), released in 2010, includes a statement on the problem and public health consequences of HIV criminalization and maintains that many state HIV-specific criminal laws reflect long-outdated misperceptions of HIV's modes and relative risks of transmission. The NHAS recommends that legislators reconsider whether these laws further the public interest and support public health approaches to preventing and treating HIV.
17. The [National Alliance of State and Territorial AIDS Directors \(NASTAD\)](#), an organization that represents public health officials who administer state and territorial HIV/AIDS programs, released a statement in 2011 supporting efforts to end HIV-specific criminal laws and policies that perpetuate stigma and discrimination against HIV-positive persons.
18. There is growing national support for legislation, such as H.R. 3053 the REPEAL ("Repeal Existing Policies that Encourage and Allow Legal") HIV Discrimination Act, to address the harms of HIV criminalization by providing incentives for states to review laws and practices that punish people with HIV for consensual sex and conduct that poses no real risk of HIV transmission, including spitting and biting.
19. The Joint United Nations Programme on HIV/AIDS (UNAIDS), in a 2008 policy brief, urged nations to avoid introducing HIV-specific criminal laws, stating that there are no data to support the application of criminal law to HIV transmission and exposure, either to achieve justice or to prevent HIV transmission.
20. In July, 2012, the Global Commission on HIV and the Law, of the United Nations Development

Programme (UNDP) issued a report, *HIV and the Law: Risks, Rights & Health* that catalogs the damage to individuals, communities and public health goals caused by HIV criminalization and calls for the end of all HIV-specific laws and prosecutions based on HIV status.

CRIMINALIZATION HARMS PEOPLE WITH HIV, THEIR COMMUNITIES AND PUBLIC HEALTH

21. Criminalization harms already-marginalized communities affected by HIV by creating and reinforcing outdated fears and beliefs about HIV and by stripping people living with HIV of the right to sexual intimacy.
22. Criminalization harms women with HIV in several ways (i.e., it creates a tool for control by abusers who threaten prosecution of women who want to leave abusive relationships; complicates custody disputes and pregnancies; imprisons women for non-disclosure without regard for the complex reasons, such as fear of violence, that disclosure may not be advisable; and over-targets sex workers, against whom condom possession may be used as evidence of intent to commit a crime).
23. Criminalization harms young people, for whom negotiating sex and relationships while cultivating acceptance and community is additionally complex. For all young people, but especially for those perinatally infected who have never known a life without HIV, the criminalization of HIV is particularly destructive as it compounds the difficulties of learning how to safely disclose HIV status and maintain safer sexual relationships.
24. Criminalization of HIV, which disproportionately affects Black men and women, creates another basis for singling out people of color for arrest and imprisonment.
25. Criminalization harms gay men, transgender women, and people of color by creating special crimes and penalties for otherwise legal conduct involving sexually transmitted infections that are commonly associated with their communities, reinforcing stereotypes regarding the sexuality of gay men, transgender women, and Black men as predatory, dangerous and deviant.
26. HIV criminalization can provide an effective proxy for a homophobic, transphobic, and/or racist application of the law that is otherwise legally or politically prohibited.

It is time to modernize existing laws and their application to individuals with HIV to conform them to current scientific, legal and human rights standards.

Therefore, the undersigned agree that:

- All U.S. law should be consistent with current medical and scientific knowledge and accepted human rights-based approaches to disease control and prevention that respect the right to be free of discrimination and the imposition of unwarranted, punitive rules of conduct based on health and disability status.
- Singling out HIV status or any other health condition or disability as an element of a crime or proof of an intent to harm is unjust and unwarranted from legal, ethical, and public health perspectives.
- Incarceration or isolation under either the criminal or civil law should never be based on unsupported beliefs or assumptions about HIV or an individual's HIV or STI status, disability, guilt or dangerousness.
- Cases in which people living with HIV engage in conduct with the specific intent and actual likelihood to inflict harm through transmission of HIV are exceedingly rare and, regardless, can be addressed through existing criminal assault statutes.
- In cases of intended and actual transmission of a sexually transmitted infection, punishment must be proportionate to the nature of the harm and should include diversion program options and alternatives to incarceration, such as restorative justice approaches, that constructively address the needs of the individual who has been harmed.

- Officials considering prosecution of the alleged non-disclosure, exposure, or transmission of HIV or any other STI should exercise restraint and caution and should always consult qualified public health experts before proceeding. In the rare instance where sufficient evidence of intent to harm may warrant prosecution, such prosecutions should never be conducted in a manner that could undermine public health efforts to prevent the spread of STIs, or reinforce societal prejudices, misconceptions, or irrational fears regarding STIs.
- A just application of the criminal law requires that Federal and State officials modernize criminal laws to eliminate HIV-specific statutes and ensure that any prosecution on the basis of HIV or any other STIs must require:
 - a. proof of an intent to harm;
 - b. conduct that is likely to result in that harm;
 - c. proof that the conduct of the accused in fact resulted in the alleged harm; and
 - d. punishment that is proportionate to the actual harm caused by the defendant's conduct.

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