



ENDING CRIMINALIZATION
TREAT OUR COMMUNITIES FROM POLICING AND BORDER
SANCTUARY FOR ALL

HIV Criminalization Factsheet

Our vision

We envision a world where our communities are no longer subject to over-policing, surveillance, and brutality at the hands of law enforcement, and where those with a history of interaction with the criminal justice system have full rights and dignity.

What is HIV criminalization?

HIV criminalization refers to the use of laws and policies to target and punish people based on their HIV positive status.

As of January 2019, **34 states and 2 territories have specific laws** that criminalize the **alleged potential exposure, non-disclosure, or potential transmission** of HIV. Most of these misinformed laws were enacted in the 1980s, but are still used regularly against people living with HIV.

They create criminal penalties for oral, anal, or vaginal sex; exposure to saliva or blood; sharing injection equipment; and/or donating organs, semen, blood, or breast milk (including breastfeeding). Many of these acts are **scientifically proven not to transmit HIV**, including sex with an undetectable viral load or with a condom.

Other related laws include harsher sentences for people living with HIV charged under laws criminalizing sex work and drug use. See our 2019 Harm Reduction factsheet (pwn-usa.org/harm-reduction-factsheet) for more detail about this. People living with HIV have also been punished under laws that criminalize exposure or transmission of sexually transmitted infections (STIs).

Even in states without HIV-specific criminal laws, people have been prosecuted for HIV exposure and transmission under general criminal laws, including reckless endangerment, assault, bioterrorism, homicide, and attempted homicide.

These laws are **stigmatizing and discriminatory**, targeting people based on health status for acts that would not otherwise be illegal or so harshly penalized.

Unlike other criminal laws, most HIV criminalization laws **do not require transmission nor proof of an intent to harm**: guilt is assumed just based on the person knowing their HIV positive status. A study by the Williams Institute of HIV criminalization in California revealed that out of 385 incidents of one or more HIV-specific charge being brought against a person living with HIV, every single incident resulted in a conviction for at least one charge.¹

¹ Hasenbush, Amira, et al. "HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS." Williams Institute, 2016, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-Updated-June-2016.pdf>, see page 3

Current State of Play: HIV Criminalization, Policing, Gender

Like other parts of the criminal justice system, enforcement of HIV criminalization laws is rooted deeply in racial biases. The Williams Institute reported that Black and Latinx people made up 67% of those who encountered the California criminal justice system related to HIV laws but made up only 51% of people living with HIV in the state.¹ Immigrants charged under HIV criminalization laws may face police harassment, detention, and deportation.

Studies have shown that HIV criminalization laws disproportionately target and harm women of color, women who do sex work, and women of transgender experience.

HIV criminalization laws can increase vulnerability to law enforcement and from intimate partners, who may threaten prosecution to coerce them into staying in an unhealthy or unsafe relationship. Those in abusive relationships may be faced with a Sophie's choice between violence if they disclose their HIV status or arrest if they do not disclose.

Consequences of being charged under an HIV criminalization law are severe, even if not convicted, and persist long after a person leaves the criminal justice system. People living with HIV can lose privacy, confidentiality, safety, custody of children, and employment. Felony convictions can result in loss of access to benefits, the right to vote, and restricted job opportunities. 6 states require registration as a sex offender as part of the punishment under HIV-specific laws², creating additional concerns related to parenting, employment, privacy and safety.

¹ "HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS." Williams Institute, 2016. See page 17

² HIV Criminalization in the United States: An overview of both the variety and prevalence of laws used to prosecute and punish people living with HIV in the U.S." The Center for HIV Law & Policy, 2017, <http://www.hivlawandpolicy.org/sites/default/files/CHLP%20HIV%20Crim%20Map%20Final.pdf>

Policy recommendations

At the federal level:

1. **Pass the REPEAL (Repeal Existing Policies that Encourage and Allow Legal) HIV Discrimination Act.** Originally introduced by Congresswoman Barbara Lee (D-CA) in 2011, this legislation would incentivize and provide guidance to help over 30 states and U.S. territories follow in the footsteps of Iowa, Colorado and California in modernizing their discriminatory HIV-specific laws, bringing them in line with contemporary understanding of HIV transmission. In addition, we urge the Senate to introduce companion legislation.
2. **Pass the Pretrial Integrity and Safety Act.** Originally introduced in 2017 by Senators Kamala Harris (D-CA) and Rand Paul (R-KY) and by Representatives Ted Lieu (D-CA) and Carlos Curbelo (R-FL), the Pretrial Integrity and Safety Act would provide grants to states to help them eliminate the use of money bail as a requirement of pre-trial release in criminal cases. Currently, people can be held up to a year without ever being charged of a crime simply because they cannot afford to pay for bail. This practice unjustly punishes low-income individuals, as it prolongs separation from family, community, work, school and other life responsibilities. For people with HIV, pretrial detainment may cause a disruption in critical care and treatment.
3. **End and Prevent Cooperation Between Local Law Enforcement Agencies and Immigration and Customs Enforcement (ICE).** Immigrants who come into contact with the criminal justice system are often denied essential health care access and legal services. Additionally, they can be detained indefinitely, which means people living with HIV may be completely unable to access care and medications. We oppose any expansion of ICE for the purposes of policing immigrant communities. We oppose the sharing of local law enforcement data with any immigration authorities, including ICE and Border Patrol, through programs such as Secure Communities (S-Comm) and the 287g program, which currently supports cooperation between ICE and dozens of local police departments.

At the state level:

1. **Repeal state HIV criminalization laws** that punish the alleged non-disclosure, exposure and transmission of HIV, which perpetuate HIV-related stigma and impede the goals of public health of testing, treatment and prevention. States should eliminate laws that impose sentence enhancements for sex workers diagnosed with HIV or people who use drugs living with HIV.
2. **Eliminate “condoms as evidence”** Several cities have a “condoms as evidence” policy, which allows the possession of condoms to be used as the basis for a solicitation charge or for police harassment. For example, while it’s not illegal in New York city to possess condoms, possession of “too many” can be used as evidence of sex work. Police can also confiscate and destroy condoms that they find. These policies make it impossible for sex workers to protect themselves and deprive people who do sex work agency in their decisions about contraceptive use.
3. **Fund re-entry services for people living with HIV leaving prison.**

Find more policy recommendations related to criminalization as it intersects with sex work and drug use at pwn-usa.org/ending-criminalization.

Learn more about HIV criminalization

- **Center for HIV Law and Policy:**
hivlawandpolicy.org
- **Lambda Legal:**
lambdalegal.org/know-your-rights/article/hiv-criminalization
- **Positive Women’s Network - USA:**
pwn-usa.org/ending-criminalization/
- **The Sero Project:**
seroproject.com
- **The Williams Institute:**
williamsinstitute.law.ucla.edu/health-and-hiv-aids