

15 Ways HIV Criminalization Laws Harm Us All

Lambda Legal is working to repeal or reform HIV criminalization laws throughout the United States. An HIV criminalization law is one that specifically targets and punishes people living with HIV for engaging in conduct that would otherwise be legal if not for the person's HIV status. Most of these laws do not require transmission of HIV and are based on the mere failure to announce one's medical condition to a potential partner prior to engaging in sexual contact. Below we describe 15 ways these laws **harm public health**, result in **unjust prosecutions**, and serve primarily to **stigmatize and oppress** people living with HIV.

These laws **HARM PUBLIC HEALTH**, because they . . .

1. **Contradict public health messages regarding shared responsibility for safe sex**, and create a false sense of security regarding a partner's HIV status ("if s/he has HIV, s/he has to tell me").
2. **May actually reduce disclosure**: if you might land in jail after telling someone your status, you may be disinclined to share that information, especially on the second (or later) encounter.
3. **Alienate patients from care**: information from healthcare providers is often used to prosecute, creating distrust in the provider-patient relationship and reducing opportunities for counseling.
4. **Don't deter targeted behavior**: no studies have shown they prevent the transmission of HIV.
5. **Create a disincentive to HIV testing**: if you don't know your status, you can't be prosecuted.

These laws result in **UNJUST PROSECUTIONS** because . . .

6. **Intent to transmit is not required to prosecute**, which means people are imprisoned who had no intent to harm anyone and did not, in fact, place their partner at any risk of transmission.
7. It is **extremely difficult to prove disclosure**, because such conversations most often take place in private and are not documented.
8. Convictions may be strongly **influenced not only by jurors' moral disapproval** of casual sexual encounters but also an incorrect assessment of the risks **both** sex partners assume in that circumstance.
9. These laws **ignore the science**: an undetectable viral load is as effective as condoms in preventing transmission, yet neither is incentivized under most of these laws; and in prosecutions involving allegations of transmission, the state need not prove the defendant was the source of infection.
10. The **punishments are completely disproportionate** to any purported harm, with lengthy jail terms imposed even in cases of no real risk of transmission and no actual injury of any kind.

These laws serve primarily to **STIGMATIZE AND OPPRESS** people living with HIV because...

11. Their existence can be **used as a coercive tool** by the HIV-negative partner, who may threaten a false accusation and/or arrest and imprisonment if the HIV-positive person doesn't do as told.
12. They further **oppress already marginalized populations**: sex workers are made felons, and those whose immigration status is dependent on a clean criminal record are subject to deportation.
13. **Confidentiality may be compromised**: nothing prevents a potential partner from telling whoever they want about the person's HIV status, possibly leading to further stigma and illegal discrimination.
14. Convictions **ruin individual lives**: a felony conviction, followed by incarceration and then required registration as a "sex offender," make it difficult to put one's life back together.
15. These laws **stigmatize ALL people with HIV**: sensationalized media reports, which pay little attention to the details of an arrest or prosecution, and the supposed need for HIV-specific laws create the impression that every person living with HIV is a sexual deviant and likely predator.