

RESEARCH THAT MATTERS

ENFORCEMENT OF HIV CRIMINALIZATION IN MISSISSPPI

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Nathan Cisneros
Brad Sears
Moriah L. Macklin

OVERVIEW

The Williams Institute analyzed data from the state of Mississippi about individuals arrested for an allegation of an HIV-related offense under Section 92-27-14 of the Mississippi Criminal Code. The data were obtained from the Mississippi Department of Public Safety. While previous comprehensive attempts to analyze the level of enforcement of Mississippi's HIV criminal law identified approximately 15 people charged with an HIV-related crime in the state, our analysis revealed at least 43 people arrested between 2004 and 2021. Given the limited data available, we estimate this to be an absolute minimum number of people arrested for an HIV-related crime in the state.

FINDINGS

- In total, there were at least 47 arrests and at least 52 separate alleged HIV-related criminal offenses between 2004 and 2021.
- In total, at least 43 people were arrested for an allegation of an HIV-related offense between 2004 and 2021.
- Arrests for HIV-related offenses in Mississippi continue to the present, with the latest filing date in these records in 2021 and media reports of arrests continuing through 2023. In fact, half of all arrests in the data received from the state occurred during the five years between 2017 and 2021.
- Enforcement of HIV-related crimes appears to be concentrated around the state's capital and most populous city, Jackson, and near the Gulf Coast. Almost 40% of arrests were from three counties: Harrison (15%), Hinds (13%), and Lamar (11%).
- The youngest person arrested was 20 years old at time of arrest, and the oldest person was 60 years old. The median age at arrest was 34 years old.
- Almost three-fourths of people arrested for an HIV-related offense in Mississippi were men. Men were 49% of the state's population in 2021 but 71% of people living with HIV (PLWH) and 72% of HIV-related arrests.
 - In all, 28% of those arrested for HIV offenses in the state were women.
 - As with that observed in other states' record-keeping practices, the Mississippi data do not indicate if the person arrested was cisgender, transgender, or gender non-binary.
- Most people arrested for an HIV-related offense in Mississippi were Black. Black Mississippians were 37% of the state's population in 2021 and 73% of PLWH but 63% of all HIV-related arrests.
 - In contrast, white Mississippians were 56% of the state's population, 19% of PLWH, and 37% of HIV-related arrests.
 - In a pattern observed with many other states' records, no one in the data was reported to be Hispanic/Latino or of any other racial group.
- Looking at the interaction of race and sex, Black men comprised nearly half (47%) of all HIV-related arrests. Black men were also 50% of PLWH in the state, even though they accounted for only 18% of the state's population overall.
 - White women were over-represented in arrests at 12%. Although they are 28% of the state's population, they are only 4% of PLWH.

BACKGROUND

HIV criminalization is a term to describe laws that criminalize people living with HIV (PLWH) by making otherwise legal conduct illegal or by increasing the penalties for illegal conduct based upon a person's HIV-positive status.¹ While there is only one federal HIV criminalization law,² about half of all states and territories across the United States have HIV criminal laws. Most HIV criminal laws do not require actual transmission of HIV or an intent to transmit HIV. Often, these laws criminalize conduct that poses no risk of transmission, such as spitting or biting.³ Many of these HIV criminal laws were created in the early years of the HIV/AIDS epidemic,⁴ long before there were effective tests for the virus,⁵ before treatments became available that allow PLWH to live normal lifespans in good health,⁶ and before extremely effective methods for preventing transmission of the virus became widely available.⁷

MISSISSIPPI'S HIV CRIMINALIZATION LAW

Mississippi has two HIV-specific crimes. Both are in Section 97-27-14 of the Mississippi Criminal Code, entitled, "Contagious diseases; causing exposure to human immunodeficiency virus (HIV), hepatitis B or hepatitis C" and "crime of endangerment by bodily substance."⁸

Knowing Exposure

Under Mississippi's *knowing exposure* crime, it is a felony to knowingly expose another person to HIV, hepatitis B, or hepatitis C. Violation of this law is punishable by up to 10 years in prison and/or a \$10,000 fine.⁹ However, Mississippi's knowing exposure crime does not require actual transmission, nor does it require that the person accused intend to expose or transmit HIV to another person.¹⁰ For example, in 2015, a man living with HIV was charged after having sex with a woman, even though

¹ Dini Harsono et al., *Criminalization of HIV Exposure: A Review of Empirical Studies in the United States*, 21 AIDS & Behav. 27 (2017), <https://doi.org/10.1007/s10461-016-1540-5>.

² See 18 U.S.C. § 1122 (2015) (pertaining to the donation or sale of blood or other potentially infectious fluids or tissues).

³ Françoise Barré-Sinoussi et al., *Expert consensus statement on the science of HIV in the context of criminal law*, 21 J. of the Int'l AIDS Soc'y 251 (2018), <https://doi.org/10.1002/jia2.25161>; J. Stan Lehman et al., *Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States*, 18 AIDS & Behav. 997 (2014), <https://doi.org/10.1007/s10461-014-0724-0>.

⁴ Harsono, *supra* note 1; Lehman, *supra* note 3.

⁵ A Timeline of HIV/AIDS, AIDS.gov (2023), <https://files.hiv.gov/s3fs-public/aidsgov-timeline.pdf>.

⁶ Adam Trickey et al., *Survival of HIV-Positive Patients Starting Antiretroviral Therapy Between 1996 and 2013: A Collaborative Analysis of Cohort Studies*, 4 Lancet HIV 349 (2017), [https://doi.org/10.1016/s2352-3018\(17\)30066-8](https://doi.org/10.1016/s2352-3018(17)30066-8); Barré-Sinoussi, *supra* note 3; Lehman, *supra* note 3.

⁷ Francis Collins, *For HIV, Treatment is Prevention*, NIH Director's Blog (Jan. 22, 2019), <https://directorsblog.nih.gov/2019/01/22/for-hiv-treatment-is-prevention/>; Robert Eisinger, *HIV Viral Load and Transmissibility of HIV Infection: Undetectable Equals Untransmittable*, 321 J. of the Am. Med. Ass'n 451 (2019) <https://doi.org/10.1001/jama.2018.21167>; Susan P. Buchbinder, *Maximizing the Benefits of HIV Preexposure Prophylaxis*, 25 Topics in Antiviral Med. 138 (2018), <https://pubmed.ncbi.nlm.nih.gov/29689539/>.

⁸ Miss. CODE ANN. § 97-27-14 (2023).

⁹ Miss. CODE ANN. § 97-27-14(1) (2023).

¹⁰ Miss. CODE ANN. § 97-27-14 (2023).

there was no HIV transmission.¹¹ Indeed, the law does not even require conduct that can transmit HIV—for example, through spitting and biting, neither of which are transmission routes. In 2014, a person was charged for spitting (saliva) at a police officer.¹²

Mississippi's knowing exposure crime also does not take into consideration mitigation strategies, such as condom use. Moreover, medication treatments have been widely available since 1996 that can completely eliminate the risk of transmission through sex. For example, if a person living with HIV is in medication treatment so that HIV cannot be detected in their blood, they cannot pass on HIV through sexual contact.¹³ Likewise, if a person does not have HIV, they can take medication that eliminates the risk of HIV transmission through sex.¹⁴

Disclosing one's HIV status and receiving consent beforehand is a defense under this crime.¹⁵ However, it is often difficult to prove disclosure and consent when there is conflicting testimony. In *McCoy v. State*, the Court of Appeals of Mississippi affirmed the knowing exposure conviction of the defendant despite the defendant's testimony that his sexual partner was aware of his HIV status and consented to sex.¹⁶ The defendant's testimony was weighed against that of the complainant, who claimed the defendant did not disclose his HIV-positive status.

Endangerment by Bodily Substance

Under Mississippi's *endangerment by bodily substance* crime, it is a misdemeanor to attempt to cause or knowingly cause "a corrections employee, a visitor to a correctional facility or another prisoner or offender to come into contact with blood, seminal fluid, urine, feces or saliva."¹⁷ The punishment for this misdemeanor is up to one year of imprisonment in county jail and/or a fine of \$1,000.¹⁸ However, if the person who caused or attempted to cause exposure to bodily fluids did so knowing that they have HIV, hepatitis B, or hepatitis C, the crime is upgraded to a felony punishable by three to ten years in prison and/or a \$10,000 fine.¹⁹

This offense also does not require the actual transmission of HIV, the intent to transmit, or even conduct that can actually lead to the transmission of HIV.²⁰ Bodily fluids such as urine, feces, and saliva cannot transmit HIV through exposure.²¹ Blood also cannot transmit HIV if it touches the

¹¹ *Mississippi man charged for knowingly exposing woman to HIV*, wdam.com (Jan. 20, 2015), <http://www.wdam.com/story/27896131/mississippi-man-charged-for-knowingly-exposing-woman-to-hiv>.

¹² *Gulfport man charged with exposing officer to HIV*, wlox.com (Feb. 6, 2014), <http://www.wlox.com/story/24656007/gulfport-man-charged-with-exposing-officer-to-hiv>; *Bodily Fluids That Transmit HIV*, Centers for Disease Control and Prevention (April 21, 2021), <https://www.cdc.gov/hiv/basics/hiv-transmission/body-fluids.html>.

¹³ *Supra* note 7.

¹⁴ *Supra* note 7.

¹⁵ MISS. CODE ANN. § 97-27-14(1) (2023).

¹⁶ *McCoy v. State*, NO. 2013-KA-02126-COA (Miss. Ct. App. April 19, 2016).

¹⁷ MISS. CODE ANN. § 97-27-14 (2)(c) (2023).

¹⁸ MISS. CODE ANN. § 97-27-14 (2)(c) and (4) (2023).

¹⁹ MISS. CODE ANN. § 97-27-14(2)(c) and (3) (2023).

²⁰ MISS. CODE ANN. § 97-27-14 (2023).

²¹ *Bodily Fluids*, *supra* note 12.

surface of unbroken skin and is eventually inactivated upon exposure to air.²² In addition, unlike Mississippi's knowing exposure HIV crime, disclosure and consent are not a defense to this crime.²³

Mississippi Public Health Code

The Mississippi Public Health Code gives the State Board of Health and the State Department of Health broad authority to define and regulate people living with communicable diseases, such as HIV, including the power to “isolate, quarantine, or otherwise confine, intern, and treat such people afflicted with such infectious sexually transmitted disease,” and to require people to notify others of their infectious disease status.²⁴ In general, violations of Department of Health rules, regulations, or public health orders are a misdemeanor punishable by fine and/or imprisonment.²⁵ However, a person who willfully violates a public health order and who has “a life-threatening communicable disease” is guilty of a felony punishable by a fine up to \$5,000 and/or by imprisonment up to five years.²⁶

Although these public health laws are not limited to HIV, they have been used to prosecute people living with HIV in Mississippi. In *Carter v. State*, the defendant was charged with and convicted of violating an order by the Department of Health.²⁷ The order required that the individual involved 1) disclose his HIV status to sexual partners and 2) abstain from activities that would mix his blood with the blood of another person.²⁸ The individual in the case was convicted and sentenced to five years in prison for violating this order after having sex without disclosing his HIV status.²⁹ A news report also indicates that a Mississippi woman was sentenced to 15 years for violating a Mississippi Department of Health quarantine order by having unprotected sex with a partner.³⁰

²² *Id.*; J Van Buren et al., *Survival of human immunodeficiency virus in suspension and dried onto surfaces*, 32 *Journal of Clinical Microbiology* (1994), <https://doi.org/10.1128/jcm.32.2.571-574.1994>.

²³ MISS. CODE ANN. § 97-27-14 (2023).

²⁴ MISS. CODE ANN. § 41-23-1 (2023), § 41-23-27 (2023); MISS. CODE ANN. § 41-23-5 (2023).

²⁵ MISS. CODE ANN. § 41-23-27 (2023).

²⁶ MISS. CODE ANN. § 41-23-2 (2023).

²⁷ *Carter v. State*, 803 So. 2d 1191 (Miss. Ct. App. 1999).

²⁸ *Id.* at 1192-93.

²⁹ *Id.*

³⁰ Sarah Fowler, *Police Say This Man Did Not Tell His Sexual Partner He Had HIV. He Could Go to Prison*, Clarion Ledger (Oct. 25, 2019), <https://www.clarionledger.com/story/news/local/2019/10/25/hiv-man-arrested-after-exposing-sexual-partner-mississippi/2454221001/>.

History of Mississippi's HIV Criminal Laws

Mississippi's HIV criminal laws were enacted relatively late in the AIDS epidemic: the knowing exposure crime was passed in 2004,³¹ and the endangerment by bodily substance crime was passed in 2007.³² Only three states have passed their first HIV criminal law more recently than 2004.³³

Prior to 2004, bills were introduced every year, at least as far back as the 1997 legislative session, to criminalize people living with HIV. Most of these bills differed from the 2004 knowing exposure law by, for example, articulating specific types of conduct that were criminalized,³⁴ requiring conduct that posed a significant risk of transmitting HIV, having a higher *mens rea* requirement, requiring actual harm, having less severe penalties, and/or by not solely applying to HIV. A number of bills specified the types of conduct that were believed to result in transmission, including "intimate sexual contact with another," blood, organ, or semen donation, and transferring "nonsterile intravenous or intramuscular drug paraphernalia" to others.³⁵ "Intimate sexual contact with another" was defined as "the exposure of the body of one (1) person to a bodily fluid of another person in any manner that presents a significant risk of HIV transmission."³⁶ Other versions also included behavior that "injures another person" or "any other action either with malicious intent to expose the person to HIV or in reckless disregard of the possibility of exposure."³⁷ While still a felony, the maximum sentence under these bills was six years, not ten. These bills also specified that transmission of HIV was not required.³⁸ All of these bills died in committee.³⁹

Other bills preceding the 2004 enactment of the knowing exposure crime created a general crime of exposing another to a sexually transmissible disease.⁴⁰ These bills made such exposure a misdemeanor punishable by not more than one year of incarceration or a fine of \$1,000 if a vaccine

³¹ An Act to Prohibit Knowingly Exposing Another Person to a Human Immunodeficiency Virus (HIV); To Provide Penalties for Violations of This Act; and For Related Purposes, 2004 Miss. Laws 503, 504 (Ch. 468 § 1) (codified at Miss. CODE ANN. § 97-27-14).

³² An Act to Amend Section 97-27-14, Mississippi Code of 1972, to Create the Crime of Endangering Certain Persons by a Knowing Attempt or Cause the Person to Come in Contact With Body Fluids Infected With Certain Diseases; and for Related Purposes, 2007 Miss. Laws 1098 (Ch. 490 § 1) (amending Miss. CODE ANN. § 97-27-14).

³³ Anastasia Walrod, *When Saliva Is a Crime: Reforming Mississippi's HIV Criminalization Law Utilizing the Center for Disease Control and Prevention's Policy Analytical Framework 11* (2019) (Honors Thesis, University of Southern Mississippi) (online at the Aquila Digital Community), https://aquila.usm.edu/cgi/viewcontent.cgi?article=1659&context=honors_theses.

³⁴ See, e.g., An Act to Create the Offense of Criminal Exposure of Another to HIV, S.B. 2124, 1997 Leg., Reg. Sess. (Miss. 1997) [hereinafter "S.B. 2124 (1997)"].

³⁵ *Id.*

³⁶ *Id.*

³⁷ See, e.g., An Act to Create the Offense of Criminal Exposure of Another to HIV, S.B. 2542, 1997 Leg., Reg. Sess. (Miss. 1997).

³⁸ See, e.g., S.B. 2124 (1997), *supra* note 32.

³⁹ See, e.g., *Id.*; S.B. 2545, 1997 Leg., Reg. Sess. (Miss. 1997); S.B. 2657, 1997 Leg., Reg. Sess. (Miss. 1997); S.B. 2206, 1999 Leg., Reg. Sess. (Miss. 1999); S.B. 2450, 1990 Leg., Reg. Sess. (Miss. 1999); S.B. 2044, 2000 Leg., Reg. Sess. (Miss. 2000); S.B. 2249, 2000 Leg., Reg. Sess. (Miss. 2000); S.B. 2080, 2001 Leg., Reg. Sess. (Miss. 2001); S.B. 2065, 2001 Leg., Reg. Sess. (Miss. 2001); S.B. 2010, 2002 Leg., Reg. Sess. (Miss. 2002); S.B. 2082, 2003 Leg., Reg. Sess. (Miss. 2003).

⁴⁰ See, e.g., An Act to Prohibit Knowingly Exposing Another Person to a Sexually Transmitted Disease, H.B. 1119, 1998 Leg., Reg. Sess. (Miss. 1998).

was available, but a felony punishable by up to ten years and a fine of \$10,000 if no vaccine was available. These bills were similar to the 2004 HIV knowing exposure crime in not providing any specificity to the type of conduct that was to be criminalized and for having a maximum sentence of ten years. These bills also died in committee prior to 2004.⁴¹

Mississippi passed its knowing exposure crime in 2004, a year after a case in which a man in the state was accused of having sex with several women without disclosing his HIV-positive status; at least one partner contracted HIV and subsequently died.⁴² While some media reports indicated that charges of murder and aggravated assault were dropped due to lack of evidence, including evidence related to proving intent,⁴³ at least one commentator online indicated that the defendant received a life sentence.⁴⁴

In the same 2004 legislative session, a bill that was similar to prior bills with lower sentences and that specified types of conduct that could transmit HIV was rejected,⁴⁵ as well as language that applied more broadly to all sexually transmitted diseases and not just HIV, similar to the content of previous bills.⁴⁶ Instead, the initial bill language was amended to apply only to HIV, not to specify any types of prohibited conduct, and to impose a felony with a maximum ten-year sentence for any disease “where there is no cure.” However, HIV was the only disease specified in the law as passed.⁴⁷ The defense of disclosure and consent was also added to the initial bill language and included in the statute as enacted.⁴⁸

In 2005, 2006, and 2007, the more narrowly defined bill that had been previously introduced—with specific forms of conduct prohibited and a lower maximum sentence length of six years—continued to be reintroduced in the Mississippi legislature but died in committee.⁴⁹

In 2007, the Mississippi legislature passed HB 432, adding the state’s endangerment by bodily substance HIV crime that applied in corrections facilities and expanding the scope of the knowing exposure crime to also include hepatitis B and C.⁵⁰ While the bill, as introduced, had a lower maximum punishment of five years for the endangerment by bodily substance felony,⁵¹ that increased to a

⁴¹ See, e.g., H.B. 1119, 1998 Leg., Reg. Sess. (Miss. 1998).

⁴² HIV Just. Network, [Update]US: Mississippi Woman Gets 10 Years, Nine Suspended, for HIV Exposure (Oct. 7, 2008), <https://www.hivjustice.net/cases/us-mississippi-woman-gets-10-years-nine-suspended-for-hiv-exposure/>; Staff Reports, Man Charged With Murder After AIDS Death, The Natchez Democrat (Nov. 17, 2003), <https://www.natchezdemocrat.com/2003/11/17/man-charged-with-murder-after-aids-death/>; see also Lora Hines, HIV Murder Charge Might Be 1st for Mississippi, HBCU Sports Forums (Nov. 11, 2003), <https://www.hbcusports.com/forums/threads/hiv-murder-charge-might-be-1st-for-mississippi.23136/>.

⁴³ Hines, *supra* note 40.

⁴⁴ *Id.*

⁴⁵ S.B. 2810, 2004 Leg., Reg. Sess. (Miss. 2004).

⁴⁶ H.B. 1298, 2004 Leg., Reg. Sess. (Miss. 2004) (Bill as Introduced).

⁴⁷ H.B. 1298, 2004 Leg., Reg. Sess. (Miss. 2004) (Bill sent to Governor; Enacted).

⁴⁸ H.B. 1298, 2004 Leg., Reg. Sess. (Miss. 2004) (Amendment No. 2 Comte Sub).

⁴⁹ S.B. 2034, 2005 Leg., Reg. Sess. (Miss. 2005); S.B. 2253, 2006 Leg., Reg. Sess. (Miss. 2006); S.B. 2023, 2007 Leg., Reg. Sess. (Miss. 2007).

⁵⁰ H.B. 432, 2007 Leg., Reg. Sess. (Miss. 2007).

⁵¹ H.B. 432, 2007 Leg., Reg. Sess. (Miss. 2007) (Introduced).

maximum of 10 years for those with HIV, hepatitis B, and hepatitis C in the version of the bill that ultimately passed.⁵² (A vaccine for hepatitis B and a cure for hepatitis C currently exist.)⁵³

Since the enactment of Mississippi's knowing exposure and endangerment by bodily substance crimes, there have been a number of proposed amendments to both strengthen and weaken these laws—all of which have died in committee. These include efforts to add the crimes to the state's sex offender registry for only those living with HIV (excluding viral hepatitis)⁵⁴ and efforts through 2022 to limit the endangerment by bodily exposure crime felony to only those who expose others in corrections facilities to blood and semen (not urine, feces, and saliva).⁵⁵

Case Law

There are few cases documenting the enforcement of Section 97-27-14. Of the two criminal cases that were identified, one indicated that a man was charged with eight parole violations, including violation of Section 97-27-14 by exposing another man to HIV through sexual activity, as well as violation of Section 97-3-82 by extorting sexual favors and money from him.⁵⁶ Another case discussed the conviction of a man under Section 97-27-14 for having sex with a male minor where the man disputed that they had sex while the victim was still a minor and contended that he disclosed his HIV status, used a condom, and that they only had oral sex.⁵⁷ These cases contrast with media accounts related to the enforcement of Mississippi's HIV criminal laws, discussed below, in that both cases involve same-sex sexual contact by men that includes coercion (blackmailing and sex with a minor). Put differently, the criminal cases that generate highly visible litigation appear to be substantially different in content to those that receive press coverage.

⁵² H.B. 432, 2007 Leg., Reg. Sess. (Miss. 2007) (Amendment Report for H.B. 432; as Enacted).

⁵³ *Overview of Viral Hepatitis for Health Care Professionals*, Centers for Disease Control and Prevention (October 31, 2023), <https://www.cdc.gov/hepatitis/resources/healthprofessionaltools/ABCofViralHepatitis.htm>.

⁵⁴ S.B. 2718, 2013 Leg., Reg. Sess. (Miss. 2013) (adding to state's sex offender registry convictions for knowing exposure for only those who are HIV-positive, and the exposure involved sex); S.B. 2650, 2016 Reg. Sess. (Miss. 2016) (adding to state's sex offender registry convictions for endangerment by bodily substance for only those who are HIV-positive).

⁵⁵ H.B. 1132, 2015 Leg., Reg. Sess. (Miss. 2015); H.B. 1281, 2016 Leg., Reg. Sess. (Miss. 2016); H.B. 1348, 2017 Leg., Reg. Sess. (Miss. 2017); H.B. 946, 2018 Leg., Reg. Sess. (Miss. 2018); H.B. 121, 2019 Leg., Reg. Sess. (Miss. 2019); H.B. 179, 2020 Leg., Reg. Sess. (Miss. 2020); H.B. 19, 2021 Leg., Reg. Sess. (Miss. 2021); H.B. 334, 2022 Leg., Reg. Sess. (Miss. 2022).

⁵⁶ *United States v. Smith-Garcia*, 802 Fed. Appx. 822 (5th Cir. 2020).

⁵⁷ *McCoy v. State*, 205 So. 3d 687 (Miss. Ct. App. 2017).

Previous studies of HIV criminal enforcement

This report builds on a series of studies analyzing the enforcement of HIV criminal laws using state-level data. Since 2015, the Williams Institute has published similar studies for California,⁵⁸ Georgia,⁵⁹ Florida,⁶⁰ Missouri,⁶¹ Nevada,⁶² Kentucky,⁶³ Virginia,⁶⁴ Tennessee,⁶⁵ Louisiana,⁶⁶ Arkansas,⁶⁷ and Maryland.⁶⁸ These studies show that

- Thousands of people have been prosecuted for HIV crimes.
- The number of HIV-related arrests and prosecutions has not decreased in recent years.
- The vast majority of arrests, prosecutions, and convictions are pursuant to state laws that do not require actual transmission of HIV, the intent to transmit, or even conduct that can transmit HIV.
- Black people and women are disproportionately affected by HIV criminal laws.
- Sex workers are often disproportionately affected by HIV criminal enforcement.
- In most states, arrests are concentrated in just a few counties and appear to be driven by local law enforcement practices.
- Convictions for HIV crimes can carry long sentences and create lifelong collateral consequences from a felony conviction. Some states also require registration on the state's sex offender registry.

⁵⁸ Amira Hasenbush, Ayako Miyashita, Bianca D.M. Wilson, Williams Inst., HIV Criminalization in California: Penal implications for People Living with HIV/AIDS (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-CA-Dec-2015.pdf>.

⁵⁹ Amira Hasenbush, Williams Inst., HIV Criminalization in Georgia: Penal Implications for People Living with HIV/AIDS, (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-GA-Jan-2018.pdf>.

⁶⁰ Nathan Cisneros & Brad Sears, Williams Inst., HIV Criminalization in Florida: Length of Incarceration and Fiscal Implications (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Incarceration-FL-Jul-2021.pdf>.

⁶¹ Brad Sears, Shoshana Goldberg, Christy Mallory, Williams Inst., Criminalization of HIV and Hepatitis B and C in Missouri: An Analysis of Enforcement Data From 1990 to 2019 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MO-Feb-2020.pdf>.

⁶² Nathan Cisneros & Brad Sears, Williams Inst., Enforcement of HIV Criminalization in Nevada (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-NV-May-2021.pdf>.

⁶³ Nathan Cisneros & Brad Sears, Williams Inst., Enforcement of HIV Criminalization in Kentucky (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-KY-Dec-2021.pdf>.

⁶⁴ Nathan Cisneros & Brad Sears, Williams Inst., Enforcement of HIV criminalization in Virginia (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-VA-Dec-2021.pdf>.

⁶⁵ Nathan Cisneros, Brad Sears, Robin Lennon-Dearing, Williams Inst., Enforcement of HIV Criminalization in Tennessee (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-TN-Jun-2022.pdf>.

⁶⁶ Nathan Cisneros & Brad Sears, Williams Inst., Enforcement of HIV Criminalization in Louisiana (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-LA-Sep-2022.pdf>.

⁶⁷ Nathan Cisneros, Moriah Macklin, Will Tentindino, Brad Sears, Williams Inst., Enforcement of HIV Criminalization in Arkansas (2023), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-ar/>.

⁶⁸ Nathan Cisneros, Will Tentindino, Moriah Macklin, Brad Sears, Williams Inst., Enforcement of HIV Criminalization in Maryland (2023), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MD-Dec-2023.pdf>. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-LA-Sep-2022.pdf>.

- Enforcement of HIV criminal laws has cost states tens of millions of dollars in incarceration costs alone.
- These enforcement trends described above occur across regions of the United States—from Georgia to California.

The Williams Institute reports follow several earlier studies analyzing the enforcement of HIV criminal laws in other states.⁶⁹ For example, Trevor Hoppe, analyzing 431 HIV-related criminal convictions in six states (Arkansas, Florida, Louisiana, Michigan, Missouri, and Tennessee), concluded that victim characteristics drive uneven patterns of enforcement and sentencing.⁷⁰ Hoppe found that there are disproportionately high rates of convictions among heterosexual white male defendants, yet at sentencing, Black defendants were punished more severely, and women were treated more leniently.⁷¹ Men accused of not disclosing to women were punished more harshly than those accused by men.⁷²

Prior attempts to analyze the enforcement of Mississippi's HIV criminal law, primarily based on media reports, state data, and court cases, have identified approximately 15 people who have been charged with violating Section 97-27-14. In 2013, ProPublica—relying on data from the Mississippi Department of Corrections—identified 17 charges and convictions under Mississippi's Causing Exposure to HIV Crime between 2004 and 2013 among 10 defendants.⁷³ Among those defendants, there were seven black men, one black woman, and two white men. Sentences were reported for nine cases, ranging from one to 75 years and with a median sentence of five years.

Comprehensive attempts by the HIV Justice Network to identify prosecutions of HIV crimes globally did not find any cases from Mississippi from 2013 to 2015,⁷⁴ at least one case from 2015 to 2018,⁷⁵

⁶⁹ See Harsono, *supra* note 1; Carol Galletly and Zita Lazzarini, *Charges for Criminal Exposure to HIV and Aggravated Prostitution Filed in the Nashville, Tennessee Prosecutorial Region 2000-2010*, 17 *AIDS & Behav.* 2624 (2013), <https://doi.org/10.1007%2Fs10461-013-0408-1>; Deanna Cann et al., *Historical and Current Trends in HIV Criminalization in South Carolina: Implications for Southern HIV Epidemic*, 23 *AIDS & Behav.* 233. (2019), <https://doi.org/10.1007%2Fs10461-019-02599-1>; Trevor Hoppe, *From Sickness to Badness: The Criminalization of HIV in Michigan*, 101 *Soc. Sci. and Med.* 139 (2014), <https://doi.org/10.1016/j.socscimed.2013.11.007>; Trevor Hoppe, *Disparate Risks of Conviction under Michigan's Felony HIV Disclosure Law: An Observational Analysis of Convictions and HIV Diagnoses, 1992-2010*, 17 *Punishment & Soc'y* 73 (2015), <https://doi.org/10.1177/1462474514561711>; Trevor Hoppe, *Punishing Disease: HIV and the Criminalization of Sickness* (2018); Trevor Hoppe et al., *Beyond Criminalization: Reconsidering HIV Criminalization in an Era of Reform*, 17 *Current Op. in HIV & AIDS* 100 (2022), <https://doi.org/10.1097/coh.0000000000000715>.

⁷⁰ Trevor Hoppe, *Punishing Disease: HIV and the Criminalization of Sickness* (2018).

⁷¹ *Id.*

⁷² *Id.*

⁷³ Sergio Hernandez, *About the HIV Criminalization Data*, ProPublica (Dec 1. 2013), <https://www.propublica.org/article/about-the-hiv-criminalization-data>.

⁷⁴ Edwin J Bernard & Sally Cameron, HIV Just. Network, *Advancing HIV Justice 2: Building Momentum in Global Advocacy Against HIV Criminalization* (2016), <https://www.hivjustice.net/publication/advancing2/>.

⁷⁵ Sally Cameron & Edwin J. Bernard, HIV Just. Network, *Advancing HIV Justice 3: Growing the Global Movement Against HIV Criminalization* (2019), <https://www.hivjustice.net/wp-content/uploads/2019/05/AHJ3-Full-Report-English-Final.pdf>.

and one to three cases from 2019 to 2021.⁷⁶ In total, the HIV Justice Network's database indicated at least 12 HIV-specific criminal law cases in Mississippi from 2008 to date.⁷⁷ A compilation of HIV criminal cases by the Center for HIV Law and Policy identified 9 HIV criminal cases in Mississippi between 2008 and 2019.⁷⁸

Our analysis of the media reports underlying the case counts from the HIV Justice Network and the Center for HIV Law and Policy suggested a partial overlap between the two sources. Combined, the media accounts identify 15 people who have been charged or convicted of HIV-related crimes in Mississippi since 2008. Of the 15, nine were Black men, three were white men, one was a Black woman, and two were women of unknown race. While most of the cases involved alleged exposure to HIV through sex, two of the cases involved spitting, and one case involved oral sex (which cannot transmit HIV). Most of the media accounts did not reveal the sex of the victim, but those that did include this information mainly indicated heterosexual sex when the alleged conduct was sexual—only one account clearly indicated that the person accused engaged in same-sex sex activity. Five of the cases clearly indicated that the victim either had not tested positive for HIV or had not taken an HIV test. Only two cases clearly indicated that the victim had tested positive. Few of the media reports indicated whether the defendant was convicted and sentenced. However, several reports that included a sentence indicated that the defendant received the maximum sentence of 10 years. At least one case indicated that the HIV criminal charge was dropped in exchange for the defendant pleading to a sentence of 25 years for other charges.

⁷⁶ Alison Symington & Edwin Bernard et al., HIV Just. Network, *Advancing HIV Justice 4: Understanding Commonalities, Seizing Opportunities* (2022), https://www.hivjustice.net/wp-content/uploads/2022/07/AHJ4_EN.pdf.

⁷⁷ HIV Justice Network, *Global HIV Criminalization Database* (last visited October 22, 2023), <https://www.hivjustice.net/global-hiv-criminalisation-database/>.

⁷⁸ Ctr. for HIV Law & Pol'y, *Arrests and Prosecutions for HIV Exposure in the United States, 2008-2019* (2019), <https://www.hivlawandpolicy.org/resources/arrests-and-prosecutions-hiv-exposure-united-states-2008-2019-center-hiv-law-policy-2019>.

ANALYSIS OF HIV CRIMINAL ENFORCEMENT DATA

We received de-identified arrest data from the Mississippi Department of Public Safety in April 2022. The arrest data come from the state’s criminal history database and offer a partial picture of HIV-related criminal enforcement in the state.⁷⁹

NUMBER AND FREQUENCY OF HIV-RELATED INCIDENTS

In total, we observed 52 allegations of an HIV-related offense across 43 unique individuals and 47 separate arrest incidents in the Mississippi data.⁸⁰ Only a handful of the arrests indicated whether the person was arrested for an allegation under the *knowing exposure* or *endangerment by bodily substance* (in a corrections facility) offense. Of those for which we have information (13), only two were for the endangerment offense—the rest (11) were for the knowing exposure offense.⁸¹ We analyze both offenses together below.

The maximum number of HIV-related allegations per person was three; the median number of HIV-related allegations per person was one. Likewise, the median number of HIV-related allegations per arrest was one; the maximum number of such allegations per arrest was two. In other words, most people arrested for an HIV-related offense had only one HIV-related criminal allegation.

Table 1. Number of HIV-related offenses and people arrested for an HIV-related offense in Mississippi

Number of HIV-related offenses (individual allegations)	52
Number of people	43
Number of arrests involving an HIV-related allegation	47

We observed six non-HIV-related offenses in the data (not included in the totals for Table 1). All of them involved endangerment of some sort: four child endangerment allegations and one each of “child endangerment by DUI” and “endangerment by reckless driving.”

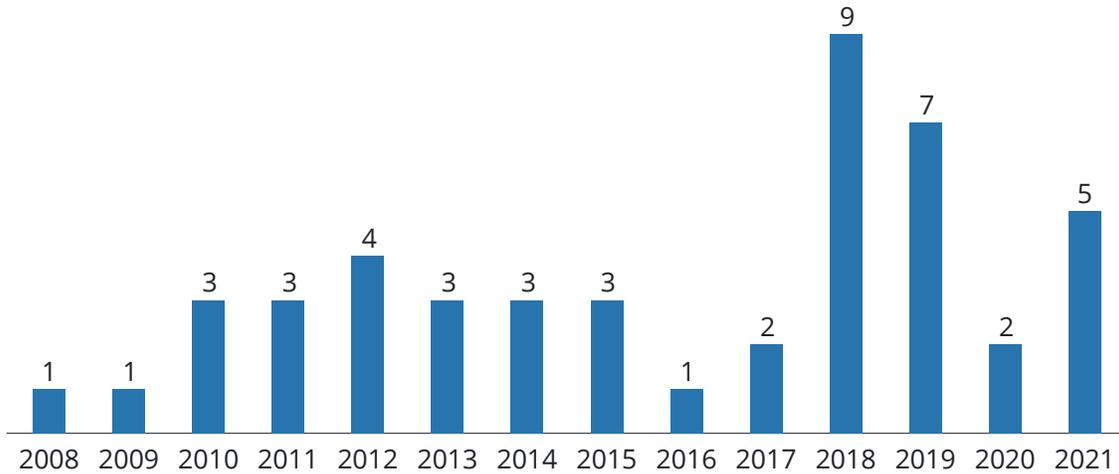
⁷⁹ We originally requested incident-based arrest data from the state, but at the time of the request the state did not yet have a comprehensive incident-based reporting system. We instead received data from the state’s criminal history system, which allows for lookup by offense cited. We separately confirmed with the Department of Public Safety that all arrest incidents in the data provided included at least one HIV-related incident. However, it is possible that not all law enforcement agencies reported all arrests into the state’s electronic criminal history system. Moreover, it is possible that an HIV-related charge was added after arrest data was entered into the state’s criminal history system. The numbers here therefore represent an absolute minimum number of people and allegations of HIV-related offenses in Mississippi.

⁸⁰ Several offense descriptions were missing in the data received from the state of Mississippi. We separately confirmed with the state through email correspondence that the entries with missing offense descriptions were for an HIV-related offense.

⁸¹ One endangerment by bodily substance allegation originated with the Lowndes County Sheriff’s Department in 2008. The person arrested was a Black woman. The other originated with the Pearl River County Sheriff’s Department in 2021. The person arrested was also a Black woman. In total we had clear indication of whether the arrest was for endangerment or exposure for 13 allegations. We did not have this information for 34 alleged offenses. One of the knowing exposure allegations indicated that it was for hepatitis exposure. That offense is included in the analysis here for completeness. The hepatitis offense originated with the Bay St Louis Police Department in 2012. The individual arrested was a white man.

Mississippi adopted its HIV-related criminal offenses relatively recently—in 2004. The first observed arrest for an HIV-related offense occurred four years later, in 2008.⁸² Thereafter, enforcement actions slowly ticked up; by 2018, there were nine HIV-related arrests in the data. On average, between 2008 and 2021 (the last year with complete data), there were 3.6 arrests per year, with a distinct uptick over time moderated by the 2020 COVID-19 pandemic.

Figure 1. Number of HIV-related arrests in Mississippi from 2008 to 2021



GEOGRAPHY OF ARRESTS

In total, 25 law enforcement agencies reported an HIV-related arrest. About one in eight (13%) of all such arrests originated with the Hinds County Sheriff’s jail.⁸³ Gulfport’s police department accounted for the next largest share of arrests (9%). Adams, Lowndes, and Pearl River County Sheriffs, as well as the Tupelo and Hattiesburg Police Departments, each had three HIV-related arrests.

Table 2. Mississippi law enforcement agencies with two or more HIV-related arrests

LAW ENFORCEMENT AGENCY	NUMBER OF HIV-RELATED ARRESTS	PERCENT OF ALL HIV-RELATED ARRESTS
Hinds County Sheriff’s Dept. – Jail	6	13%
Gulfport Police Dept.	4	9%
Adams County Sheriff’s Dept.	3	6%
Hattiesburg Police Dept.	3	6%
Lowndes County Sheriff’s Dept.	3	6%
Pearl River County Sheriff’s Dept.	3	6%
Tupelo Police Dept.	3	6%
Bay St. Louis Police Dept.	2	4%

⁸² We cannot say for certain whether there were no HIV-related arrests happened between 2004 and 2007; arrests during that period may not have been recorded in the state’s criminal history system.

⁸³ We cannot tell based on the data received whether the sheriff’s office in Hinds or other counties was the original arresting agency or simply where the person was booked in and the alleged offense entered.

LAW ENFORCEMENT AGENCY	NUMBER OF HIV-RELATED ARRESTS	PERCENT OF ALL HIV-RELATED ARRESTS
Harrison County Sheriff's Dept.	2	4%
Lamar County Sheriff's Dept.	2	4%
Petal Police Dept.	2	4%

Whether or not the HIV-related arrests in Hinds County originated with the Sheriff or another agency and were simply recorded by the Sheriff's office, there appear to be no other HIV-related arrests other than those reported by the Sheriff's Department. Jackson, the state capital and most populous city, falls primarily in Hinds County, and it is possible that arrests that originated with Jackson Police Department were recorded by the Sheriff.

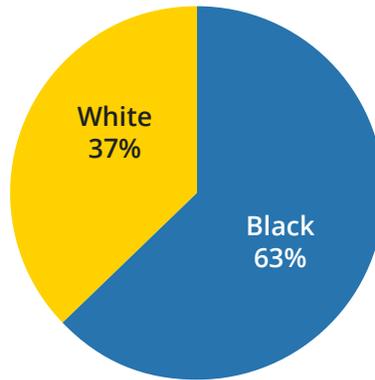
However, Harrison County, home to Gulfport and Biloxi, had more HIV-related arrests than Hinds County in the data. (The two counties are comparable in population, with about 217,000 people living in Hinds and 211,000 in Harrison in 2021.) Together, the two counties accounted for 28% of all HIV-related arrests. Lamar County accounted for an additional 11% of arrests. Indeed, enforcement appears to be concentrated around the Jackson area and in the south of the state near the Gulf of Mexico.

Table 3. Mississippi counties with two or more HIV-related arrests

COUNTY	NUMBER OF HIV-RELATED ARRESTS	PERCENT OF ALL HIV-RELATED ARRESTS
Harrison	7	15%
Hinds	6	13%
Lamar	5	11%
Adams	3	6%
Forrest	3	6%
Lee	3	6%
Lowndes	3	6%
Pearl River	3	6%
Hancock	2	4%
Rankin	2	4%

Race. Racial disparities displayed a more complex pattern. Black Mississippians were 37% of the state population in 2021 but 73% of PLWH.⁸⁵ However, Black people accounted for 63% of all HIV-related arrests in Mississippi. In contrast, white Mississippians were 56% of the state's population, 19% of PLWH, and 37% of HIV-related arrests.⁸⁶ No one in the data was reported to be Hispanic/Latino or any other racial group, although race/ethnicity groups other than Black and white account for about 6% of the state's population and 8% of PLWH.⁸⁷

Figure 4. Share of HIV-related arrests in Mississippi by race



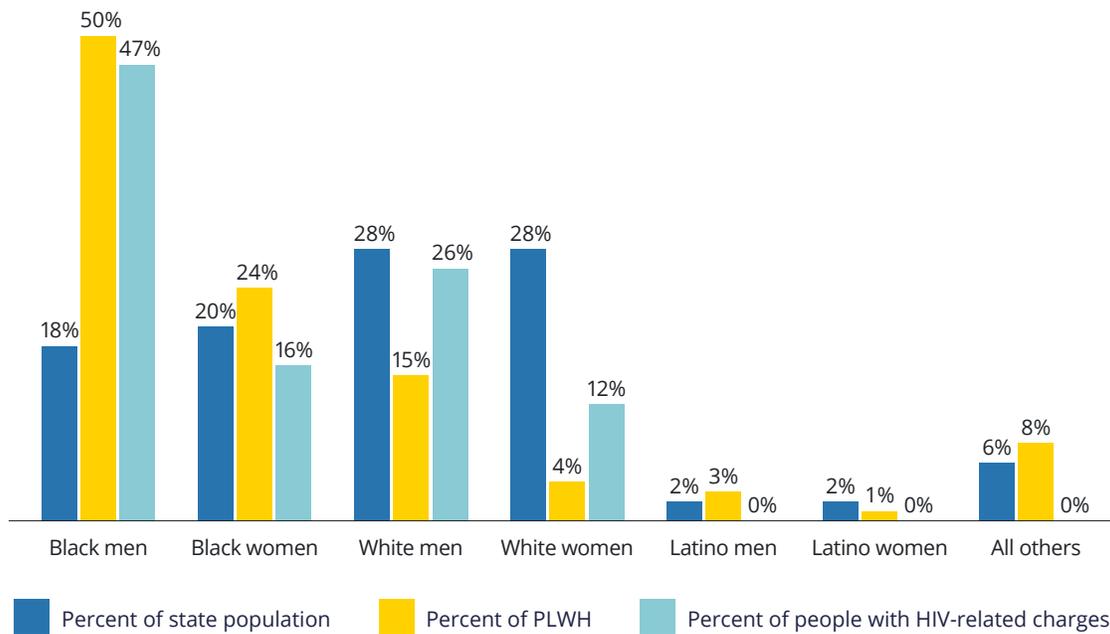
Race and sex. Disaggregating by sex and race, it was observed that Black men comprise nearly half (47%) of all HIV-related arrests. Black men were also 50% of PLWH in the state, even though they accounted for only 18% of the state's population overall. In contrast, Black women were slightly underrepresented in arrests: 20% of the state's population but 24% of PLWH and 16% of HIV-related arrests. White men were a little more than a quarter (28%) of the state's population and just over a quarter (26%) of HIV-related arrests, although only 15% of PLWH in Mississippi were white men. And in contrast to Black women, white women were over-represented in arrests at 12%. Although white women are 28% of the state's population, they are only 4% of PLWH.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

Figure 5. State population, population of people living with HIV, and HIV-related arrests in Mississippi by race and sex



In contrast, an analysis by investigative journalism organization ProPublica of data from 2004 to 2013 supplied by the Mississippi Department of Corrections identified 10 people with an HIV-related conviction.⁸⁸ Of those, 70% were Black men, and an additional 10% were Black women. The remainder were white men. Although the number of people was small, these data suggest that the racial disparity increases as one moves from arrest through to prosecution and conviction—Black men may be more likely to be convicted of an HIV-related offense once charged.⁸⁹

⁸⁸ *Supra* note 74.

⁸⁹ See, for example, *Supra* note 67.

CONCLUSION

This report documents the legal and legislative history of HIV criminalization in Mississippi and analyzes key trends in the enforcement of the state's HIV-related criminal laws. In contrast to previous studies and media reports, we uncovered at least 43 people who have been arrested on suspicion of HIV-related offenses over a 17-year period across the state. Enforcement of HIV crimes in Mississippi continues to the present. Like the HIV epidemic in Mississippi, enforcement of HIV crimes disproportionately impacts Black people in the state, and in particular Black men.

HIV criminalization is not only a criminal justice issue. Mississippi's 2021 Ending the HIV Epidemic Plan⁹⁰ (the Plan), put out by the state Department of Health, calls for the legislature to decriminalize HIV as a key step in preventing the spread of HIV in Mississippi:

Mississippi's current HIV criminal statute presents an enormous barrier to combating stigma in the state and to encouraging individuals to get tested for HIV and entering and staying in routine HIV care. The legislature must update the state's criminal code on HIV so that it is in line with the most current scientific and public health information/innovations. Mississippi must work to eliminate laws that serve as barriers to Ending HIV in Mississippi, such as Code §97-27-14, that perpetuates these issues by including saliva, urine, and feces as a crime of endangerment by bodily substance, even though these substances have zero risk of transmitting HIV.⁹¹

Community input summarized in the Plan included that "many respondents cited Mississippi's HIV criminalization laws as highly stigmatizing and problematic for any efforts to end the HIV epidemic."⁹² The Plan references the work of the Mississippi Center for Justice and the Mississippi Decriminalization Network "to educate, empower various vulnerable populations and work to ensure that HIV decriminalization is a priority"⁹³ and "to educate and empower community members and lawmakers about the importance of HIV decriminalization."⁹⁴

The Plan outlined specific actions towards decriminalization, such as educating the public about the negative role HIV criminalization plays in preventing new HIV infections, linking people to care, and showing the public and policymakers how the state's criminal code should "be updated to be in-line with current science and Department of Justice Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically Supported Factors."⁹⁵

⁹⁰ *Mississippi's Ending the HIV Epidemic Plan*, Miss. State Dep't of Health (Jan. 2021), https://healthys.com/msdhsite/_static/resources/5116.pdf.

⁹¹ *Id.* at 15.

⁹² *Id.* at 61, 57.

⁹³ *Id.* at 10.

⁹⁴ *Id.* at 11.

⁹⁵ *Id.* at 34.

AUTHORS

Nathan Cisneros, M.S., is the HIV Criminalization Project Director at the Williams Institute.

Brad Sears, J.D., is the Roberta A. Conroy Distinguished Scholar of Law and Policy and Founding Executive Director at the Williams Institute. In addition, he is the Associate Dean of Public Interest Law at UCLA Law.

Moriah L. Macklin is a former Research Data Analyst at the Williams Institute at UCLA School of Law.

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FOR MORE INFORMATION

The Williams Institute, UCLA School of Law

(310) 267-4382

williamsinstitute@law.ucla.edu

williamsinstitute.law.ucla.edu

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