



Positive Justice Project

A Condensed Guide for State Campaigns to End HIV Criminal Laws and Prosecutions

Talking to media, elected officials and others about HIV criminalization.

Be prepared:

- Know the facts about HIV and HIV criminalization.
- Tailor your message to your audience.
- Define the context: Why should this matter to your audience?
- Stay on message: the goal is “modernization” rather than repeal of existing law.
- Direct your audience to specific actions.
- Follow-up with additional materials and contact information.

Talking Points:

Criminalization:

- harms women rather than protecting them
- reinforces stigma and misinformation
- does NOT deter risky behavior or reduce the number of new HIV infections
- does NOT promote safer sex
- does NOT promote understanding of the parameters of the law
- conflicts with prevention programs that promote mutual responsibility
- reinforces stereotypes and targets marginalized communities
- has collateral consequences and leads to post-conviction denial of services vital to health and welfare of PLWH
- treatment can reduce the risk of transmission to almost zero

Modernizing State HIV and STI Laws

Existing HIV criminalization and public health statutes may be vague, detailed or based on misinformation or outdated science. The laws should be modernized to reflect best public health practices and meet basic legal standards for imposing criminal sanctions.

Criminal statutes that punish people for the transmission of disease through sex should require:

- proof of intent to cause harm
- proof of conduct likely to cause harm
- proof that actual harm has occurred.

Laws should also allow defenses against prosecution including:

- consent
- use of means to reduce or eliminate the risk of transmission

Organizing State Legislative Initiatives

- Determine short and long term legislative goals:
 - Repeal of existing law
 - Modernization of existing law
 - Non-binding resolution
 - Appointment of a task force to study the issue and make recommendations
- Work with the PJP State Advocacy Working Group to develop a state communications structure and advocacy strategy.
- Engage potential allies in affected communities.
- Educate your group about all aspects of the issue: HIV science, laws, collateral consequences, etc.
- Define your message: clearly describe the problems with and impacts of HIV criminalization laws.
- Educate stakeholders and policymakers.
- Identify legislative allies.
- Introduce legislation.

Let the Experts Speak: Sample Quotes for Use in Media Outreach

“Identifying HIV or any disease as something that should be the basis of criminal charges, absent any evidence of intent to do harm, is terrible for public health efforts. Persistent ignorance about how HIV is transmitted, and what it means to have HIV [in 2012], is a major cause of these laws; they’re based on stigma, not science.”

Tracy Welsh, Executive Director of HIV Law Project

“It can take a long time for some to believe that they have the right to hold their heads high, because they have a virus, not a character defect or a loaded gun. Telling people to get tested on one hand, and then turning around and treating them like felons? Do they really think that telling people who test positive that they are dangerous will encourage others to get tested, let alone to disclose their status to someone who can get them thrown in jail?”

Susan Rodriguez, Founding Director of SMART

“Suggesting that women don’t need to take charge of their sexual health and take measures to protect themselves and their partners from STIs is not good for women. Forgetting that women living with HIV also often have good reasons for not always disclosing their status – fear of abuse, rejection, loss of housing – and also are the target of HIV-specific criminal prosecutions is not good for women.”

Catherine Hanssens, Executive Director of CHLP