

# HIV CRIMINALIZATION IN GEORGIA

Penal Implications for People Living with HIV/AIDS

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# EXECUTIVE SUMMARY

## A. INTRODUCTION

HIV criminalization is a term used to describe statutes that either criminalize otherwise legal conduct or that increase the penalties for illegal conduct based upon a person's HIV-positive status. While only one HIV criminalization law can be found in federal law, more than two-thirds of states and territories across the United States have enacted their own HIV criminal laws. Some HIV criminal laws do not require transmission of HIV, and in some states, these laws criminalize conduct that poses a negligible risk of transmission, such as spitting or biting.

Georgia has one statute that outlines the seven HIV-related criminal offenses under state law. It is divided into two subsections: (1) GA. CODE ANN. § 16-5-60(c): reckless conduct by a person living with HIV—this includes offenses related to sex work, needle sharing, sexual exposure, and blood and tissue donation—and (2) GA. CODE ANN. § 16-5-60(d): assault on a law enforcement or corrections officer with intent to transmit HIV or hepatitis. The purpose of this study was to provide an overall understanding of the enforcement of HIV criminalization laws in Georgia and assess any preliminary findings indicating disparities between subpopulations. Given the movement across the United States, including in Georgia, to modernize HIV-specific criminal laws to bring them in line with current medical science, analysis of the enforcement of the laws helps to inform policy and legislative decision-making with data and a deeper understanding of how the laws have been used in the real world.

## B. CRIMINAL HISTORY RECORD INFORMATION DATA

Given the lack of comprehensive data on the use of HIV criminal laws in Georgia, Williams Institute researchers contacted the Georgia Crime Information Center at the Georgia Bureau of Investigation and requested access to criminal history record information (CHRI) data from the time of the laws' enactment through the third quarter of 2017. CHRI data document all interactions an individual may have with the criminal justice system, from every event beginning at arrest through conviction, so these data provide a full chronological record of how these laws are being utilized.

## C. MAIN FINDINGS

- There may be disparities in enforcement of HIV criminalization laws related to geography, race/ethnicity, sex at birth, or sex worker (or suspected sex worker) status.
- HIV-positive Georgians in rural areas were more likely to be arrested for an HIV-related crime than those living in urban areas.
- Black men were more likely to be convicted of an HIV-related offense than White men.
- When considering the demographics of people living with HIV in Georgia, White women were more likely to be arrested for an HIV-criminal offense than other groups.
- Convictions for HIV arrests were three times as likely when there was a concurrent sex work arrest.
  - Sex work offenses were more likely to involve women and particularly Black women.

## D. HIGHLIGHTED DATA

- Overall, there were 571 HIV-related arrests in Georgia from 1988 to September 2017.
- There appeared to be almost no enforcement before 1997, after which, on average, there were 27 HIV-related arrests annually. In 2000, arrests reached a record high, with 63 arrests occurring that year.
- Individuals were arrested under HIV-related statutes in 79 out of the 159 counties in Georgia.
  - Fulton and DeKalb Counties have the highest prevalence of HIV in the state, yet the proportion of HIV-related arrests was lower than expected. Fulton and DeKalb Counties represented 32% and 17%, respectively, of the people living with HIV in the state during that time, but only 17% and 3%, respectively, of the HIV-related arrests throughout the state.
  - People living with HIV outside of metropolitan Atlanta were three times as likely to be arrested for an HIV-related offense as those within the metropolitan Atlanta area: 0.4% of all people living with HIV in the metropolitan Atlanta area experienced an HIV-related arrest, while 1.3% of all people living with HIV outside the metropolitan Atlanta area had an HIV-related arrest.
  - However, in some smaller counties, as many as 10% of the residents living with HIV had experienced an HIV-related arrest. The counties with the highest arrest rates among people living with HIV were mostly rural counties clustered in the northern part of the state.

## CONCURRENT OFFENSES

- In 31% of all reckless conduct incidents, the reckless conduct offense was the only crime that the person was arrested for or convicted of.
- Forty-four percent of all reckless conduct incidents also involved a seemingly unrelated arrest or conviction under a different statute (e.g., battery, resisting arrest, etc.).
- Among the remaining 25% of reckless conduct incidents, nearly half (49%) had some sort of concurrent drug offense in the same incident, indicating that the arrest may have been related to the needle sharing subsection of the code, 29% had a concurrent sex offense, indicating that they may have been related to the sexual exposure subsection of the code and 29% had a concurrent sex work offense, indicating that they may have been related to the sex work subsections of the code.

## DEMOGRAPHICS

- More than six in ten people arrested under an HIV-related offense were Black (63%), and none of the people arrested were recorded as Latino/a.
- Black men and Black women were more likely to be arrested for HIV-related offenses than their White counterparts: 26% of HIV-related arrests were of White males, while 46% of HIV-related arrests were of Black males; additionally, 11% of those arrested were White females, while 16% were Black females.
  - However, this disproportionality may have been reflective of disparate HIV rates among Black people in Georgia. When comparing the numbers directly to the underlying population of people living with HIV, White women appeared to be the group most disproportionately arrested under HIV-related laws: they made up only 3% of the population of people diagnosed with HIV in Georgia, but they were 11% of HIV-related arrests in the state.

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## OUTCOMES

- Overall, 13% of HIV-related arrests resulted in a conviction for an HIV-related crime. (Sixty-seven percent of incidents did not result in any conviction, and 19% had convictions for non-HIV-related offenses.)
- When analyzing case outcomes by race/ethnicity and sex, most groups appeared to have fairly similar results.
  - The one exception was among men. When White men and Black men were compared directly, Black men were nearly twice as likely to be convicted of the HIV-related offense as White men (16% versus 9%, respectively).
  - On the other hand, when men were arrested for an HIV-related offense plus other crimes, White men were more likely than Black men to be convicted of the non-HIV-related offenses and not the HIV-related offense (24% versus 15%, respectively).
- The data were also analyzed to determine whether conviction outcomes varied based on the types of other concurrent offenses that occurred in the same incident. The incidents that showed the most divergent outcome pattern were those that also had concurrent sex work offenses.
  - Incidents involving sex work and HIV-related reckless conduct were the most likely to involve a conviction overall, whether that was for HIV-related reckless conduct or for some other offense (usually sex work).
  - Incidents that did not involve sex work were more than twice as likely to result in no conviction compared to incidents that had concurrent sex work offenses (71% versus 26%, respectively). Concurrent sex work incidents were more likely to involve women, particularly Black women, than non-sex work incidents.

## E. FUTURE RESEARCH

- Data point to some race-, sex-<sup>1</sup>, and geographic-based disparities in the application of these laws. However, they do not provide an explanation of the root causes of these disparities. Future research is needed to pinpoint factors leading to these differences.
  - At the structural level, this includes assessing whether the disparities are a function of direct law enforcement targeting of White women, disparate prosecution of Black men, or higher HIV stigma in rural areas. Future research could also explore whether awareness of HIV criminalization laws has an impact on individual or community level norms regarding disclosure and risk behaviors.
- Future research should explore HIV-related criminalization in the context of an individual's broader criminal history and whether a charge of an HIV crime impacts pleas, convictions, or sentences for other crimes.
- Future research could move beyond enforcement data to more accurately capture the impact and consequences of HIV criminalization from the perspective of affected individuals. For example: Are there differences in how HIV status is discussed or treated between law enforcement officers and various subgroups of people in contact under these statutes? How did contact under these laws affect future HIV status disclosure behavior?
- Utilizing additional methods to study this population may have the added benefit of gaining representation of the distinct experiences of gender and sexual minorities living with HIV.

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## F. CONCLUSION

This report provides an overview of the use and enforcement of HIV-related laws in Georgia. Preliminary analyses show some disparities based on race, sex, geography, and underlying related offenses. This is the second state in which the Williams Institute has provided comprehensive data analysis on the enforcement of HIV criminalization laws.



# INTRODUCTION

HIV criminalization is a term used to describe statutes that either criminalize otherwise legal conduct or that increase the penalties for illegal conduct based upon a person’s HIV-positive status. While only one HIV criminalization law can be found in federal law,<sup>2</sup> approximately two-thirds of states and territories across the United States have enacted their own HIV criminal laws. Some HIV criminal laws do not require transmission of HIV, and in some states, these laws criminalize conduct that poses a negligible risk of transmission, such as spitting or biting.

Georgia has one statute that outlines all of the HIV-related criminal offenses under state law. None of these offenses requires actual transmission of HIV. See Table 1 for a summary of HIV Criminalization Laws in Georgia.

**Table 1. HIV Criminalization Laws in Georgia (2017)**

Code Section	Criminalized Conduct	Transmission Required?	Statutory Sentence
<b>Reckless Conduct by a Person Living with HIV</b>			
GA. CODE ANN. § 16-5-60(c)(1) (2017)	Engaging in vaginal, oral or anal sex without prior disclosure of one’s HIV-positive status	No	Felony, imprisonment for not more than 10 years
GA. CODE ANN. § 16-5-60(c)(2) (2017)	Sharing needles or syringes without prior disclosure of one’s HIV-positive status	No	Felony, imprisonment for not more than 10 years
GA. CODE ANN. § 16-5-60(c)(3) (2017)	Offering or agreeing to engage in sexual intercourse in exchange for money without first disclosing one’s HIV-positive status	No	Felony, imprisonment for not more than 10 years
GA. CODE ANN. § 16-5-60(c)(4) (2017)	Soliciting another person for sodomy (defined as oral or anal sex) <sup>3</sup> in exchange for money without first disclosing one’s HIV-positive status	No	Felony, imprisonment for not more than 10 years
GA. CODE ANN. § 16-5-60(c)(5) (2017)	Donating blood, blood products, other body fluids, or any body organ or body part without first disclosing HIV-positive status	No	Felony, imprisonment for not more than 10 years
<b>Assault by a Person living with HIV or Hepatitis Upon Police or Correctional Officer with Intent to Transmit</b>			
GA. CODE ANN. § 16-5-60(d)(1) (2017)	Committing an assault with the intent to transmit HIV or hepatitis upon a peace officer while performing their duties (or because they are a peace officer), using blood, semen, vaginal secretions, saliva, urine, or feces	No	Felony, imprisonment for not less than 5 nor more than 10 years
GA. CODE ANN. § 16-5-60(d)(2) (2017)	Committing an assault with the intent to transmit HIV or hepatitis upon a correctional officer while performing their duties (or because they are a correctional officer), using blood, semen, vaginal secretions, saliva, urine, or feces	No	Felony, imprisonment for not less than 5 nor more than 10 years

Aside from previous research by the Williams Institute in the state of California,<sup>4</sup> there is very little empirical evidence of how HIV criminal laws are being enforced and who the individuals are who are most impacted by HIV criminalization. Previous efforts to collect empirical data from media reports, law enforcement agencies through Freedom of Information Act requests and traditional legal research<sup>5</sup> have led to several compilations of data documenting the number of individuals who may have been convicted under HIV criminalization laws.<sup>6</sup> However, these efforts have been limited as they do not reflect statewide population-level data and do not include comprehensive data across the spectrum from arrest through post-conviction events, including sentencing.<sup>7</sup>



# STUDY OVERVIEW

## A. DATA SOURCE

Given the lack of comprehensive data on the use of HIV criminal laws in Georgia, Williams Institute researchers contacted the Georgia Crime Information Center at the Georgia Bureau of Investigation and requested access to criminal history record information (CHRI) data.<sup>8</sup> CHRI data record any contacts an individual may have with the criminal justice system, from every event beginning at arrest through conviction, so these data provide a full chronological record of how these laws are being utilized.<sup>9</sup> After obtaining necessary security clearances from the Georgia Bureau of Investigation, Williams Institute researchers were able to access the de-identified criminal histories of all individuals who had had contact with the criminal justice system under GA. CODE. ANN. § 16-5-60(c) (reckless conduct by a person living with HIV, hereinafter “reckless conduct”) and GA. CODE. ANN. § 16-5-60(d) (assault by a person living with HIV or Hepatitis upon a police or correctional officer with intent to transmit, hereinafter, “assault with intent”) from the time of the laws’ enactment through the third quarter of 2017. Because GA. CODE. ANN. § 16-5-60(d) applies to both people living with HIV and people living with hepatitis, the offense codes for that section do not distinguish between the underlying disease involved. The analyses that follow only included the assault with intent code section when it applied to a person who had a previous or concurrent arrest under the HIV-related reckless conduct statute. Therefore, there may have been some people living with HIV under the assault with intent statute that were excluded from these analyses to ensure that the data analyses that follow are HIV-related. All of the data related to GA. CODE. ANN. § 16-5-60(c) were specific to people living with HIV.

## B. OBJECTIVES

In an effort to address the gap in research about enforcement of HIV criminal laws, the current project sought to understand the following objectives.

Of the individuals who had HIV-related contact with the Georgia criminal justice system:

1. How many had such contact and how many separate incidents did these contacts represent?
2. What were their demographic characteristics and geographic locations?
3. What were the characteristics of each contact, including case outcomes?
4. Is there any preliminary evidence of disproportionate representation of some subgroups?

## C. ANALYSIS APPROACH

The data were cleaned and coded in order to answer this set of exploratory research questions. All data were analyzed using Stata version 13.1. When appropriate, inferential statistics were used to test differences between sample subgroups; however, most data are presented descriptively. The analyses that follow include all individuals and incidents that were HIV-related at the time of data.



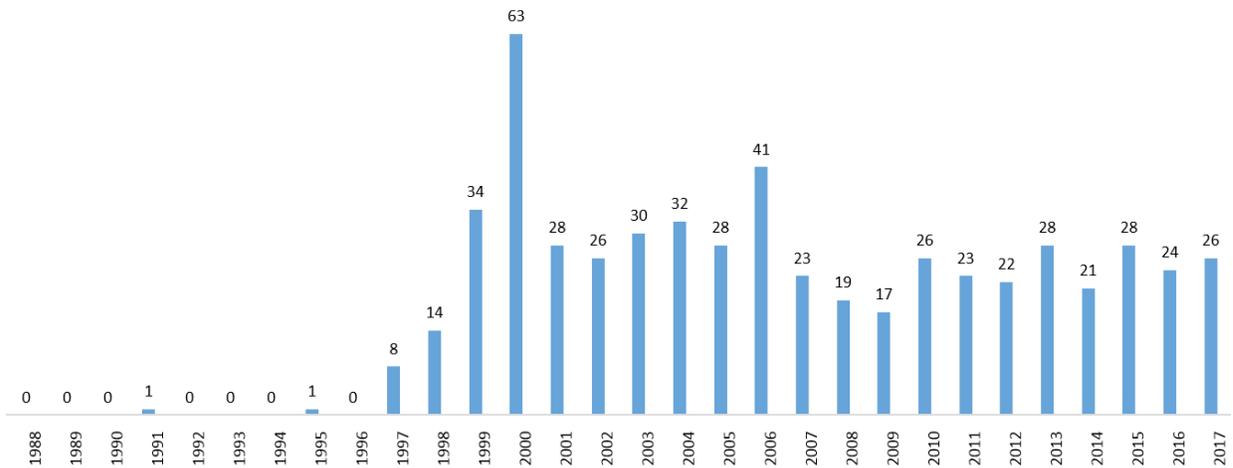
# FINDINGS

## A. INDIVIDUALS WHO HAD HIV-RELATED CONTACT AND THE NUMBER OF SEPARATE HIV-RELATED INCIDENTS

Overall, 543<sup>10</sup> people were arrested in Georgia from 1988 through the third quarter of 2017 either under the reckless conduct or assault with intent laws as it related to a person’s HIV status.<sup>11</sup> These individuals were involved in 571 separate HIV-related incidents. An incident can be defined as one set of circumstances that may give rise to a series of contacts with law enforcement during arrest, charge, conviction and post-conviction proceedings. Only two incidents included in this analysis involved arrests under the assault with intent statute.<sup>12</sup> Additionally, the vast majority of individuals—95%—had only one disease-specific arrest. The remaining five percent of people had experienced two separate disease-specific arrests.

The frequency of enforcement of HIV-related criminal laws has varied since the laws’ passage in 1988. There appeared to be almost no enforcement before 1997, after which, on average, there were 27 HIV-related arrests annually. In 2000, arrests reached a record high, with 63 arrests occurring that year. It should be noted, however, that the data were extracted in November 2017, when only the first three quarters of the year’s arrest data were available, so 2017 data do not include the full year of arrests. See Figure 1 for the number of people who were arrested under Georgia HIV-related criminal laws since their enactment.

Figure 1. Number of People Arrested under Georgia HIV Criminal Laws, by Year



## B. THE DEMOGRAPHIC CHARACTERISTICS AND GEOGRAPHIC LOCATIONS OF INDIVIDUALS WHO HAD HIV-RELATED ARRESTS

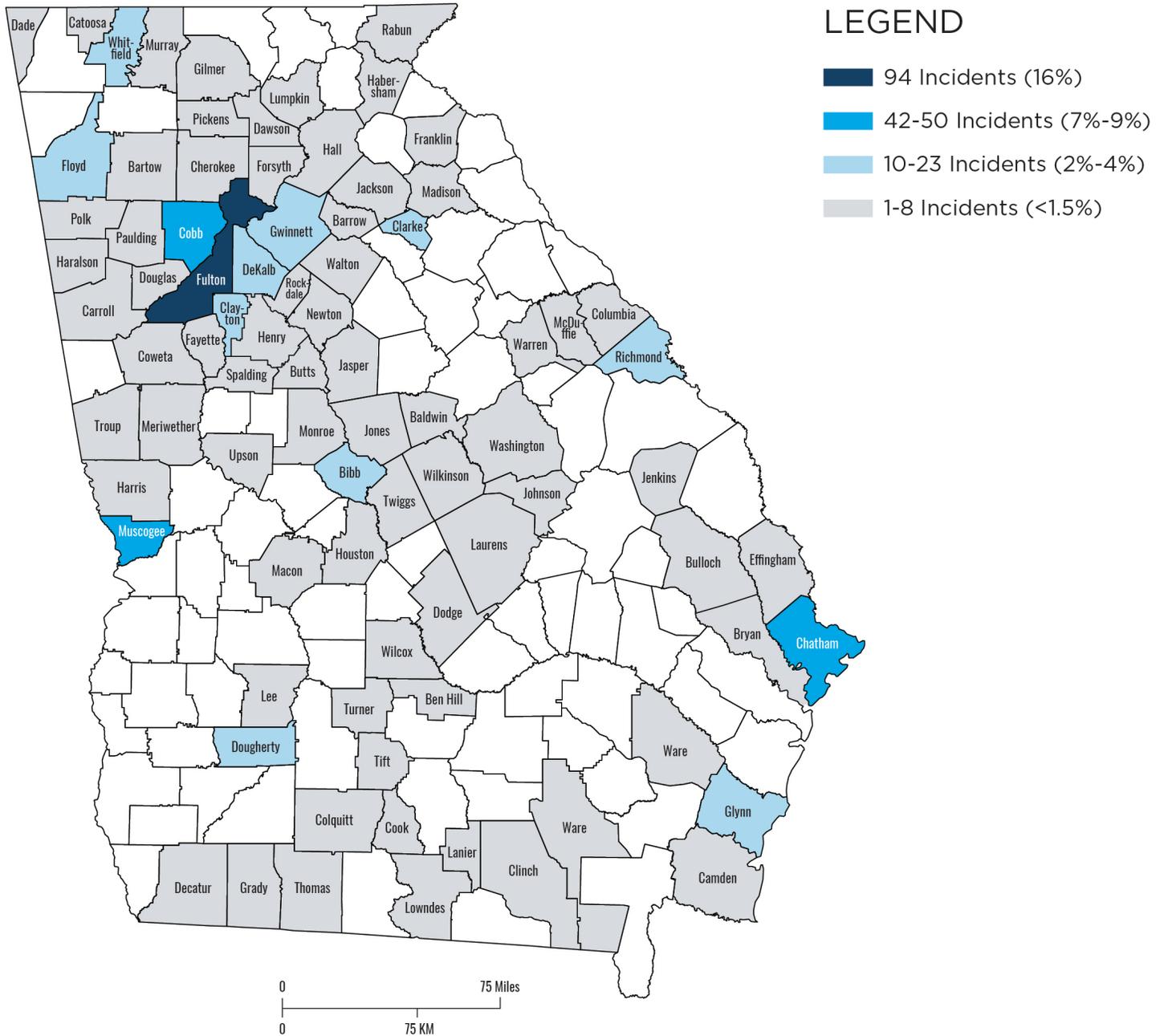
While the average age at the time of arrest for the first HIV-related incident was 35, the range of arrestees was from 14 to 73 years of age. Looking more broadly at the ages at which individuals with HIV-related arrests first came into contact with the criminal justice system, nearly half (49%) had their first contact with the criminal justice system before the age of 21, and 22% had their first arrest before the age of 18. Eleven percent had their earliest (and often only) HIV-related arrest before the age of 21, and 2.5% had their first HIV-related arrest before the age of 18. More than six in ten people arrested under an HIV-related offense were Black, and none of the people arrested were recorded as Latino/a. There were only two people arrested under the assault with intent statute; they were both identified in the system as Black and each had one arrest. See Table 2 for further demographic information of the individuals who had HIV-related contact with the Georgia criminal justice system.

**Table 2. Number of Incidents and Demographics of People Arrested Under HIV-Related Criminal Laws in Georgia (1988 - September 2017)**

Number of incidents	571 <sup>13</sup>
Number of people	543
<b>Age at time of first HIV-specific event<sup>14</sup></b>	
Oldest	73
Youngest	14
Mean	35.2
Standard Deviation	11.3
<b>Sex<sup>15</sup></b>	
Female	27%
Male	73%
<b>Race/Ethnicity</b>	
Asian/Pacific Islander	0.4%
Black	63%
White	37%
<b>Race/Ethnicity and Sex</b>	
Black Female	16%
Black Male	46%
White Female	11%
Black Female	26%
Other Male	0.4%

Individuals had HIV-related arrests in 79 out of the 159 counties in Georgia.<sup>16</sup> Fulton County had the highest number of arrests (17% or 94 arrests). Nine, eight and seven percent of the HIV-related arrests took place in Muscogee, Cobb and Chatham Counties, respectively. Every other county had four percent or fewer of the overall arrests in the state. See Figure 2 indicating counties where HIV criminalization laws have been enforced.

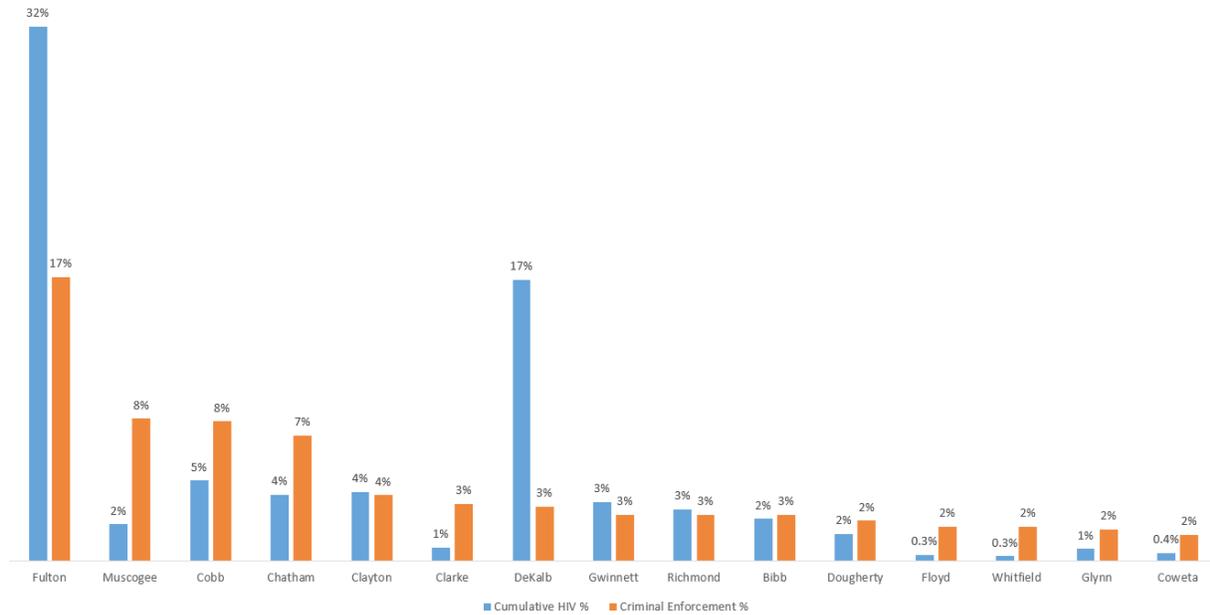
Figure 2. Georgia Counties Where HIV Criminal Laws Have Been Enforced



When comparing the arrests rates by county to the cumulative rates of people living with HIV within those counties, it is apparent that some counties were overrepresented among the enforcement of HIV criminal laws, while others were underrepresented. For example, Fulton and DeKalb Counties represented 32% and 17% of the cumulative people living with HIV in the state,<sup>17</sup> respectively, but only 16% and 3% respectively of the HIV-related arrests throughout the state. On the other hand, Muscogee, Cobb and Chatham Counties each represented approximately 9%, 8% and 7%, respectively of the statewide HIV-

related arrests, but had only 2%, 5% and 4%, respectively of the cumulative number of people living with HIV for the state. See Figure 3 for a comparison of cumulative HIV prevalence and HIV-related criminal enforcement by counties.

**Figure 3. Top Georgia Counties Where HIV Criminal Laws Have Been Enforced Compared with HIV Cumulative Prevalence Rates by County**

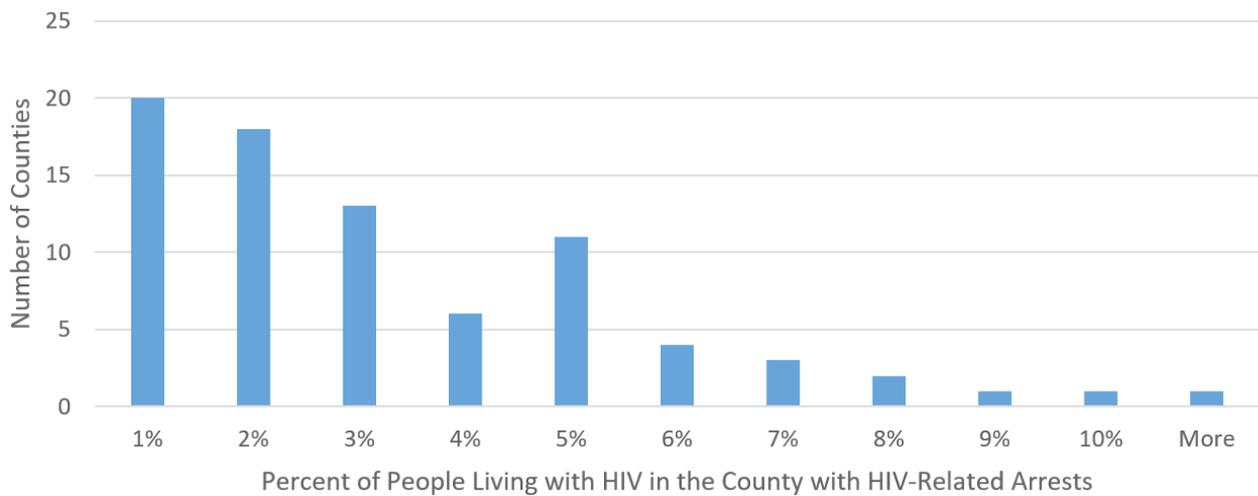


Interestingly, there was still enforcement of HIV criminal laws in counties with as few as 80 and fewer people living with HIV cumulatively over the time period reviewed. The number of people arrested in an HIV-related incident in a county was compared directly with the number of people living with HIV in that county. In two very small counties, as many as ten percent of the people living with HIV had experienced an HIV-related arrest. By comparison, only .1% of people living with HIV in Fulton County had been arrested related to their HIV status. The counties with more than one arrest with the highest arrest rates among people living with HIV were mostly clustered in the northern part of the state. See Table 3 for a list of counties with the highest HIV-related arrest rates among people living with HIV. See Figure 4 for a histogram displaying the distribution of the percentage of people living with HIV in a county who had HIV-related arrests.

**Table 3. Counties with the Highest Percent of People Living with HIV Arrested for an HIV-Related Offense**

County with more than one HIV-related arrest	Percent of people living with HIV arrested for an HIV-related offense
Madison	10.3%
Dawson	9.7%
Murray	8.3%
Franklin	7.5%
Habersham	7.1%
Lanier	6.9%
Pickens	6.7%
Whitfield	6.3%
Upson	5.3%
Monroe	5.1%
Catoosa	5.0%

**Figure 4. Histogram of Percent of People Living with HIV in a County who had HIV-Related Arrests**



While crime in general and HIV criminalization in particular may be presumed to be problems of urban centers, the data reflect a different reality. The number of people arrested was broken down to review concentration in the metropolitan Atlanta area (DeKalb, Cobb, Gwinnett, Clayton and Fulton Counties) compared to the rest of the state. Thirty-six percent of all people with HIV-related arrests were in the metropolitan Atlanta area, and 64% were outside of those counties. However, when compared with the cumulative number of people living with HIV, people living with HIV outside of metropolitan Atlanta were three times as likely to be arrested for an HIV-related offense than those within the metropolitan Atlanta area: .4% of all people living with HIV in the metropolitan Atlanta area experienced an HIV-related arrest, while 1.3% of all people living with HIV outside the metropolitan Atlanta area had an HIV-related arrest.

Though not as stark, the same pattern emerged when comparing the counties with the most populous cities (Fulton, Muscogee, Richmond, Bibb and Chatham)<sup>18</sup> with the rest of the state. Thirty-eight percent of all people with HIV-related arrests were in the counties with the most populous cities, and 68% were outside of those counties. In the counties with the most populous cities, .6% of all people living with HIV experienced an HIV-related arrest, while outside those counties, .9% of all people living with HIV experienced an HIV-related arrest.

### C. CHARACTERISTICS OF ARRESTS

Incidents that involved the reckless conduct statute were analyzed to determine whether there were concurrent arrests under other offenses. Among those incidents that did have other concurrent offenses, the concurrent offenses were grouped into drug offenses, sex offenses, sex work offenses and other offenses. Table 4 lists these categories and their distributions.

**Table 4. Reckless Conduct Incidents and Concurrent Offenses that may Indicate the Context of the Offense**

<b>Total Reckless Conduct Incidents</b>	<b>570</b>	<b>100%</b>
<b>Reckless Conduct Incidents with No Other Offenses</b>	<b>174</b>	<b>31%</b>
<b>Reckless Conduct Incidents with Offenses Unrelated to the Statute</b>	<b>252</b>	<b>44%</b>
<b>Reckless Conduct Incidents with One Other Offense Hinting at the Subdivision</b>	<b>133</b>	<b>23%</b>
Reckless Conduct + Drugs	60	11%
Reckless Conduct + Sex	40	7%
Reckless Conduct + Sex Work <sup>19</sup>	33	6%
<b>Reckless Conduct Incidents with Two Other Offenses Hinting at the Subdivision</b>	<b>11</b>	<b>2%</b>
Reckless Conduct + Drugs + Sex Work	9	2%
Reckless Conduct + Drugs + Sex	2	0.3%
<b>Among Reckless Conduct Incidents with Concurrent Offenses Related to the Statute</b>	<b>144</b>	<b>100%</b>
Drugs	71	49%
Sex	42	29%
Sex Work	42	29%

Thirty-one percent of all reckless conduct incidents showed arrests and/or charges under GA. CODE ANN. §16-5-60(c) without any other arrests or charges under any other crimes. Forty-four percent of incidents did have arrests and/or charges under other criminal offenses in the same incident, but the offenses could not be categorized as related to sex, sex work or drugs. These incidents included arrests/convictions under codes including GA. CODE ANN. §16-11-37 (terroristic threats and acts), GA. CODE ANN. §16-11-39 (disorderly conduct), as well as arrests/convictions related to assault and battery,<sup>20</sup> obstruction of law enforcement officers,<sup>21</sup> theft/property crimes,<sup>22</sup> weapons offenses,<sup>23</sup> and other miscellaneous offenses.<sup>24</sup> As is described in Table 1, the reckless conduct statute is divided into subsections describing different types of potential exposures to HIV, which can be summarized as sex, needle sharing, sex work, and blood/fluid/organ donations. In these incidents, the lack of concurrent offenses or the unrelated concurrent offenses made it impossible to determine whether those incidents were related to sexual activity, needle sharing, sex work, or blood/organ donation.

Among the remaining 144 incidents, nearly half (49%) had some sort of drug offense<sup>25</sup> in the same incident, indicating that they may have been related to the needle sharing subsection of the code, 29% had a concurrent sex offense,<sup>26</sup> indicating that they may have been related to the sexual exposure subsection of the code and 29% had a concurrent sex work offense,<sup>27</sup> indicating that they may have been related to the sex work subsections of the code. These numbers exceed 100%, because 11 incidents had both a drug offense and also either a sex offense or a sex work offense all at the same time.

#### D. CASE OUTCOMES

Outcomes of the HIV-related criminal incidents in Georgia were divided into three categories: (1) not convicted of any crime, (2) convicted of a non-HIV-related crime and (3) convicted of an HIV-related crime. In the incidents categorized as convicted of a non-HIV-related crime, the defendant was convicted of a crime alleged during the incident in question, but not one of the HIV-related crimes, e.g. for solicitation or drug possession, but not reckless conduct. In the incidents categorized as convicted of an HIV-related crime, the defendant was convicted of either reckless conduct or assault with intent. In those incidents, the defendant may or may not have also been convicted of other non-HIV-related crimes that were alleged in the same incident. See Table 5 for the number and percent of incidents that resulted in each possible outcome for HIV-related incidents in Georgia.

**Table 5. Outcomes of HIV-Related Criminal Incidents in Georgia**

Number of Incidents	
Not convicted	374
Convicted of a non-HIV-related crime	107
Convicted of an HIV-related crime	74
Unknown <sup>28</sup>	16
Total	571
Percent of Incidents (among those with known outcomes)	
Not convicted	67%
Convicted of a non-HIV-related crime	19%
Convicted of an HIV-related crime	13%

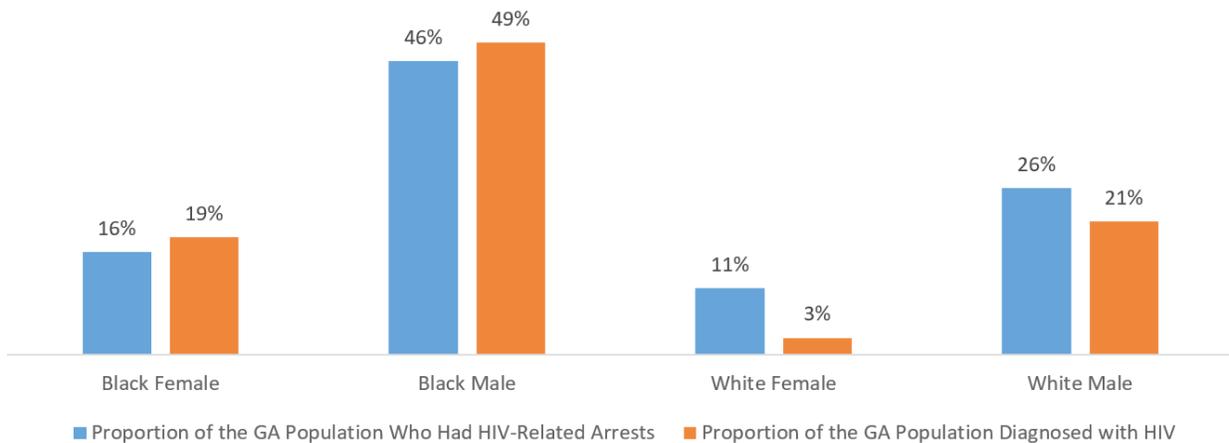
In approximately two-thirds of all of the incidents reviewed, the arrests resulted in no conviction. Thirteen percent of the incidents resulted in a conviction for reckless conduct. Among the two incidents involving the assault with intent statute, neither were convicted of the assault with intent, and one was not convicted of any offense.

#### E. PRELIMINARY EVIDENCE OF DISPROPORTIONATE REPRESENTATION OF SUBGROUPS

When comparing the overall demographics of the individuals who had HIV-related arrests to those diagnosed with HIV in Georgia,<sup>29</sup> patterns emerge that indicate that certain groups of individuals may have been disproportionately affected by the implementation of these laws. For example, Black men and Black women were more likely to be arrested for HIV-related offenses than their White counterparts: 26% of HIV-related arrests were of White males, while 46% of HIV-related arrests were of Black males; additionally, 11% of those arrested were White females, while 16% were Black females. However, this disproportionality may have been reflective of disparate HIV rates among Black people in Georgia. When

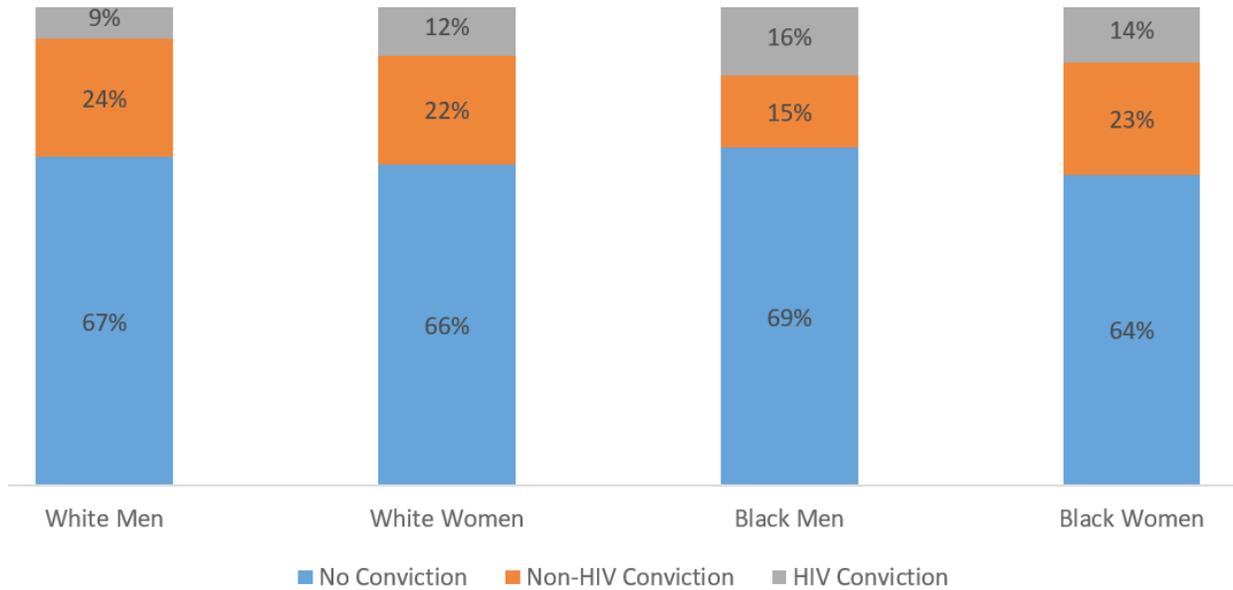
comparing the numbers directly to the underlying population of people living with HIV, White women appeared to be the group most disproportionately arrested under HIV-related laws: they made up only 3% of the population of people diagnosed with HIV in Georgia, but they were 11% of HIV-related arrests in the state. See Figure 5 for a comparison between HIV prevalence data in Georgia and individuals who had HIV-related arrests.

**Figure 5. Comparison of HIV Prevalence in Georgia with People who had HIV-Related Arrests, by Race and Sex**



When analyzing case outcomes by race/ethnicity and sex, most groups appeared to have fairly similar results. The one exception was among men. When White men and Black men were compared directly, Black men had conviction rates under HIV-related offenses that were nearly twice as high as White men (16% versus 9% respectively), and the differences in conviction rates were statistically significant from what was expected using a chi squared test ( $p=.01$ ). Conversely, White men were more likely to be convicted for other concurrent non-HIV specific offenses than Black men. See Figure 6 for a demographic breakdown of charging rates by race/ethnicity and sex.

Figure 6. Conviction Rates in HIV-Related Incidents, by Race/Ethnicity and Sex, 1988 - March 2017



The data were also analyzed to determine whether conviction outcomes were associated with other concurrent offenses that occurred in the same incident. When reviewing incidents that also had sex offenses in the same incident, those incidents with sex offenses were more than twice as likely to result in a conviction under the reckless conduct offense as those incidents without concurrent sex offenses (28% versus 12%, respectively). (See Figure 7.) On the other hand, incidents with concurrent drug offenses were slightly less likely to result in an HIV conviction and slightly more likely to result in a conviction for some other offense than incidents that did not involve drug offenses. (See Figure 8.) However, the incidents that showed the most divergent outcome pattern were those that also had concurrent sex work offenses. Incidents involving sex work were both significantly more likely to result in a conviction for reckless conduct,<sup>30</sup> and were also more likely to result in a conviction for some other offense (usually a sex work offense) if they were not convicted of reckless conduct. Concurrent sex work incidents were also much less likely to result in no conviction than incidents that did not also involve sex work (26% versus 71%, respectively).

Figure 7. Conviction Rates in HIV-Related Incidents, by Concurrent Sex Offenses, 1988 - March 2017

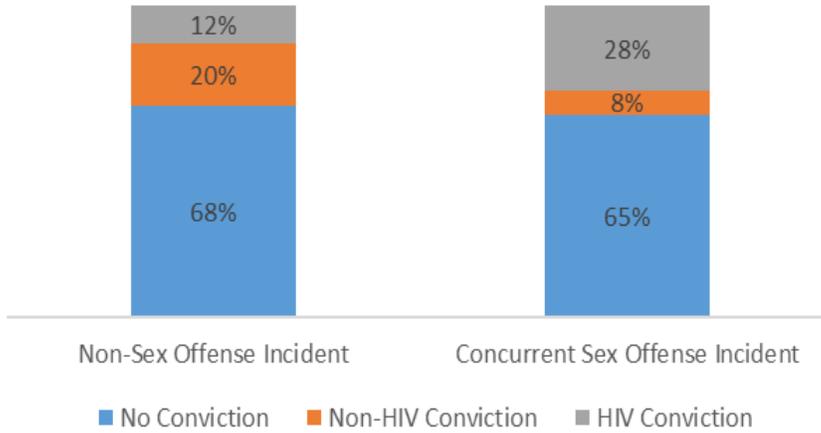


Figure 8. Conviction Rates in HIV-Related Incidents, by Concurrent Drug Offenses, 1988 - March 2017

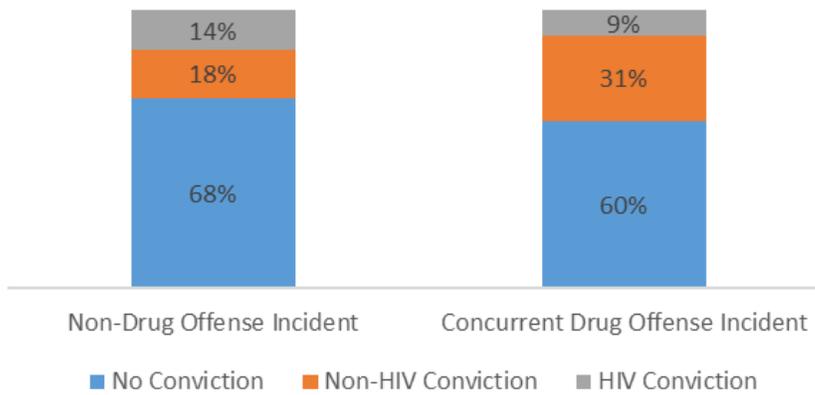
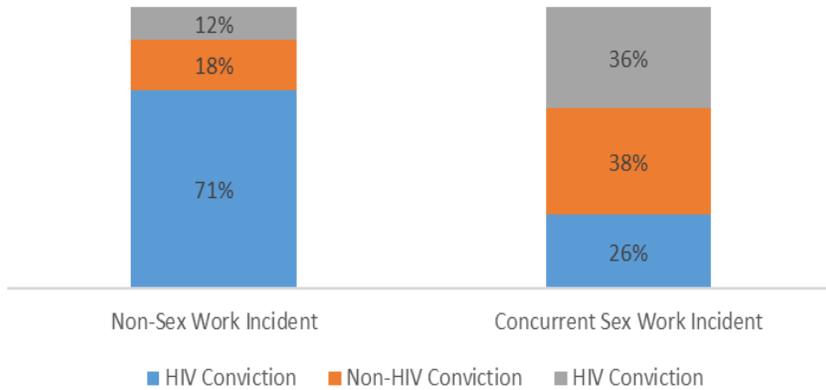
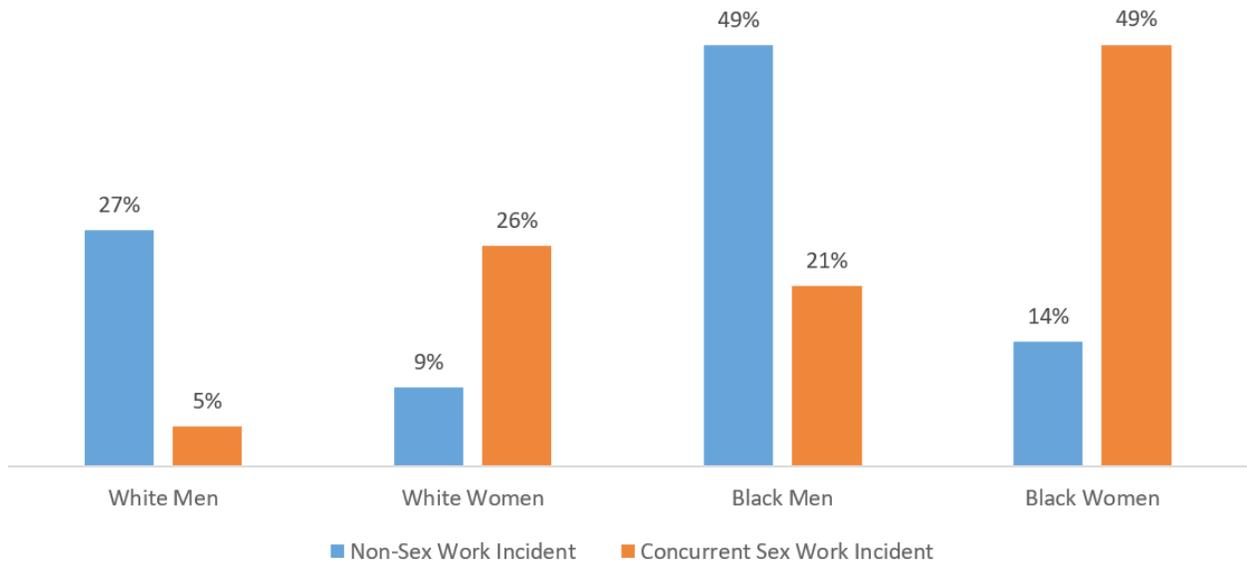


Figure 9. Conviction Rates in HIV-Related Incidents, by Concurrent Sex Work Offenses, 1988 - March 2017



Concurrent sex work incidents also reflected a different demographic makeup than HIV-related incidents that did not involve sex work. Concurrent sex work incidents were more likely to involve women, particularly Black women, than non-sex work incidents. See Figure 10 for a comparison of the demographic distributions of the HIV-related incidents that involved sex work versus those that did not.

Figure 10. Comparison of Race/Ethnicity and Sex Between HIV-Related Incidents with Concurrent Sex Work Offenses and Without





## LIMITATIONS

This research has several limitations related to the nature of CHRI data. CHRI relies upon data entered by law enforcement agencies, prosecuting agencies and criminal courts throughout the state. Because entries are not uniform throughout the records, deciphering the data required a time-intensive process. The review of concurrent arrests for other offenses in HIV-related incidents indicated that there may have been some data entry errors related to the incidents being analyzed.<sup>31</sup> However, because there did not appear to be any systematic errors, no incidents were excluded from the larger analysis. Additionally, because of inconsistency in reporting by the courts, the Georgia CHRI data excluded any information on sentencing.

Another significant limitation to these data was the lack of information regarding sexual orientation and gender minority status. Because sexual orientation and gender identity data are not collected by the Georgia Crime Information Center, these data were not a part of CHRI data. Given the disproportionate impact HIV infection has on gay and bisexual men and transgender women, this gap in the data is significant.

Additionally, the lack of any individuals in the data identified as Latino/a or Hispanic indicates that there is likely some bias in the collection of data on race/ethnicity. It may be that race/ethnicity data are generally collected by what a law enforcement officer presumes that a person's race/ethnicity is when visually assessing them, and that some people who are of Latino/a and/or indigenous descent may be miscategorized as Black or White.

Finally, there are limitations in terms of the level of detail and nuance available through CHRI data. While the data were separated into the categories of reckless conduct and assault with intent, the data were not further separated into the subsections of the statute that are laid out in the law. Therefore, it was impossible to estimate with any exact certainty the proportion of cases that occurred in the context of sex work, needle sharing, or other consensual sex acts. Additionally, the assault with intent statute includes both people living with HIV and people living with hepatitis, so there was no way to determine what underlying disease was being prosecuted under those code sections.



# RESEARCH, LAW AND POLICY IMPLICATIONS

These CHRI data provide a snapshot of how HIV criminalization laws have been enforced in Georgia and further understanding of the ways that a person's HIV-positive status impacts interactions with law enforcement. Data suggest there may be ways in which specific communities, whether defined by geography, race/ethnicity, sex at birth, or sex worker or suspected sex worker status, may or may not be experiencing a disproportionate impact with regard to these laws.

These data greatly underscore what remains unknown about the enforcement of HIV criminalization laws. One of the original estimates of the impact of HIV criminalization nationally counted a little over 300 cases over a period of 15 years.<sup>32</sup> More recently, a journalist compiled a database after identifying 1,352 records covering 19 states' HIV criminalization laws since 2003.<sup>33</sup> However, recent analyses from California showing over 1,000 incidents<sup>34</sup> and the result here showing nearly 600 in Georgia indicate that existing estimates of national HIV criminalization rates are highly underestimated. It may be worthwhile to evaluate whether other states have similar data sets that would be available for similar research purposes in order to calculate a more precise national estimate.

Enforcement data in Georgia also highlight a gap in the body of research examining HIV criminalization laws. The central rationales for HIV criminal laws are to deter "bad actors" who willfully transmit HIV and to aid public health goals of controlling the spread of the disease. In the case of Georgia, the majority of individuals who were arrested under HIV criminalization laws were arrested under the reckless conduct statute, which has no specific intent to transmit requirement. Even if the excluded incidents that could not be definitely identified as HIV or hepatitis are counted, only 4% of all arrests under the HIV-related laws had an intent to transmit requirement, and none of the statutes required proof of transmission.

Additionally, even though the data could not definitively be completely divided by subsection of the reckless conduct statute, preliminary analyses using concurrent arrest and conviction data indicated that sex workers are being treated much more harshly in the context of HIV criminalization laws in Georgia than injection drug users, sex offenders, or others engaging in activity that could potentially expose an individual to HIV. Given the disproportionate impact of sex work laws on women, especially Black women, which was reflected even in the small sample in this report, it is likely that at least in the context of sex work, HIV criminalization laws will have a disproportionate effect on women, particularly Black women.

These data also indicate that there may be disparities in enforcement occurring based on geographic region. Despite there being fewer people in general and fewer people living with HIV in rural areas of Georgia, the analyses found that rural Georgians living with HIV were more likely to be arrested under an HIV-related law than those living in urban areas. While it is possible that this is related to differential behavior in rural versus urban areas, this disparity may point to differential knowledge and attitudes with respect to HIV. Higher levels of HIV-related stigma have been documented in rural areas,<sup>35</sup> which may encourage more HIV-related arrests and prosecutions.

Future lines of inquiry could include sentencing data and analysis of offenders' entire criminal history, to better understand incidents involving HIV-related criminalization in the context of other criminal incidents. This will help to gain an understanding of the context in which these observed incidents

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are occurring. Efforts to identify and evaluate further disparities in lengths of sentences should be contemplated, including analysis which may reveal any existing correlations between known HIV-positive status and the length of sentences after such knowledge is gained by players within the criminal justice system and demographic trends, if any.

In order to better understand the impacts of these laws and the population disparities we observed, future research could move beyond law enforcement and sentencing rates. In particular, it would be useful to understand how people who have been arrested under these statutes have experienced that process of law enforcement contact and the mental health, emotional and structural consequences of those experiences. Both quantitative and qualitative studies with those that have had interactions with the Georgia criminal justice system on HIV-related offenses would be useful in exploring these questions.

The use of these additional methods would also offer the added benefit of gaining representation of the distinct experiences of gender and sexual minorities living with HIV who have engaged with Georgia's criminal justice system since we do not otherwise have sufficient data to determine to what degree LGBT populations are impacted by these laws. We do know that other research and policy organizations have taken note of disparities in the policing of LGBT communities<sup>36</sup> and the policing of transgender women<sup>37</sup> especially. Therefore, this type of research would be useful in adding dimension to what we already know.



## CONCLUSION

These data provide insight into the enforcement of HIV criminalization laws in Georgia. Since the inception of these laws, at least 543 Georgians have been directly affected by them. Because these data are comprehensive and include basic demographic data, we have gained some ability to describe people living with HIV who have had HIV-related contact with the Georgia criminal justice system. Further analysis of the data may explain the context in which these criminal incidents are occurring and disparities may be observed in the length of sentences. Future research, beyond enforcement data, is needed to understand the observed population disparities and what factors may have led to differences based on race, sex and geography. These data do not provide insight into the lived experiences of those individuals who have come into contact with law enforcement on the basis of HIV criminal laws and the impact (i.e. emotional, mental health, structural consequences) of such interactions. Also, these data do not include information regarding sexual and gender minority status. Thus, utilizing additional methods of research will be useful in advancing research in this field.

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## ABOUT THE INSTITUTE

The Williams Institute is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. A think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance and disseminates it to judges, legislators, policymakers, media and the public. These studies can be accessed at the Williams Institute website.

## CITATION

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## ENDNOTES

1 CHRI data do not record a person's self-reported gender identity and often are recorded based on the contact officer's assumptions about sex assigned at birth. Therefore, this report cannot distinguish between cisgender and transgender people in the dataset and cannot assess the experiences of transgender people with arrests under these laws.

2 See 18 U.S.C. § 1122 (2017)(pertaining to the donation or sale of blood or other potentially infectious fluids or tissues).

3 GA. CODE ANN. § 16-6-2 (2017).

4 AMIRA HASENBUSH, BIANCA D.M. WILSON, AYAKO MIYASHITA & MADELEINE SHARP, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, HIV CRIMINALIZATION AND SEX WORK IN CALIFORNIA (2017), <https://williamsinstitute.law.ucla.edu/research/health-and-hiv-aids/hiv-criminalization-sex-work-ca/>; AMIRA HASENBUSH & BRIAN ZANONI, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, HIV CRIMINALIZATION IN CALIFORNIA: EVALUATION OF TRANSMISSION RISK (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIVCriminalization.EvaluationofTransmissionRisk.2016.pdf>; AMIRA HASENBUSH & BIANCA D.M. WILSON, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, HIV CRIMINALIZATION AGAINST IMMIGRANTS IN CALIFORNIA (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIVCriminalizationAgainstImmigrants.2016.pdf>; AMIRA HASENBUSH, AYAKO MIYASHITA & BIANCA D.M. WILSON, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, HIV CRIMINALIZATION IN CALIFORNIA: PENAL IMPLICATIONS FOR PEOPLE LIVING WITH HIV/AIDS (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-Updated-June-2016.pdf>.

5 Traditional legal research is limited to case law searches, which only provide information on arrests that result in prosecutions which are published or otherwise publicly available cases.

6 See CTR. FOR HIV LAW & POLICY, HIV CRIMINALIZATION IN THE UNITED STATES A SOURCEBOOK ON STATE AND FEDERAL HIV CRIMINAL LAW AND PRACTICE (2017), [http://www.hivlawandpolicy.org/sites/default/files/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice\\_0.pdf](http://www.hivlawandpolicy.org/sites/default/files/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice_0.pdf); Sergio Hernandez, *Sex, Lies and HIV: When What You Don't Tell Your Partner Is a Crime*, PROPUBLICA Dec. 1, 2013, available at <http://www.propublica.org/article/hiv-criminal-transmission>; 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 & SOCIETY 73 (2015).

7 See Zita Lazzarini, Carol L. Galletly, Eric Mykhalovskiy, Dini Harsono, Elaine O'Keefe, Merrill Singer, & Robert J. Levine, *Criminalization of HIV Transmission and Exposure: Research and Policy Agenda*, 103 AM. J. PUBL. HEALTH 1350, 1350-51 (2013) (citing need for more projects that provide data on how these laws are actually enforced).

8 IRB exemption was granted under UCLA IRB# 17-000711.

9 Sentencing data are not included in CHRI records because it is not consistently reported by the courts.

10 An additional 22 people were arrested under the assault with intent statute, but it could not be determined whether those arrests were related to HIV or hepatitis.

11 The original law passed in 1988 only included the subsection related to reckless conduct. The assault with intent subsection was added to the law in 2003.

12 An additional 24 assault with intent incidents were excluded from this analysis, because it was unclear if they were related to HIV or hepatitis.

13 The sum of the number of incidents in the statute-specific categories does not equal the number of overall incidents, because there was one incident in which the person was arrested under both offense codes. Therefore, the data presented in the categories of statutes are not mutually exclusive.

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14 The age calculations only include the first arrest in a person's history of each of the incidents above. For example, if a person was involved in two disease-specific incidents overall – one reckless conduct and one assault with intent– the earliest of the two will be counted in the overall column, reckless conduct incident will be counted in the reckless conduct column and the assault with intent incident will be counted in the assault with intent column. The oldest and youngest ages reported were rounded down to the nearest whole number to reflect the age that the individual would identify as at that time. Individuals with ages in their criminal records younger than 13 years old were excluded from the analysis as presumed data entry errors, because only youth ages 13 and older can be tried as adults and therefore could have data in the non-juvenile CHRI data set. GA. CODE ANN. §§ 15-11-560, 15-11-560.

15 CHRI data do not record a person's self-reported gender identity and often are recorded based on the contact officer's assumptions about sex assigned at birth. Therefore, this report cannot distinguish between cisgender and transgender people in the dataset and cannot make claims about the experiences of transgender people with contact under these laws.

16 Three incidents had missing data regarding the county of arrest.

17 With thanks to Brian Huylebroeck and the Georgia Department of Public Health for provision of cumulative data on the demographics of people living with HIV by county. Data are on file with the author. The most recent data available on HIV prevalence rates in Georgia count through the end of 2015, so the time frames for comparison do not overlap perfectly.

18 The populous cities in those counties are: Atlanta (Fulton), Columbus (Muscogee), Augusta (Richmond), Macon (Bibb) and Savannah (Chatham).

19 Though the subsections of the reckless conduct statute distinguish between solicitation and soliciting someone else for sodomy, many of the incidents showed arrests for both types of offenses in the same incident, so they did not appear to clearly delineate between two different kinds of conduct and therefore were combined together in this analysis.

20 The codes categorized under the "assault and battery" designation included: Affray (Fighting), Aggravated Assault, Assault, Battery, Cruelty To Children, False Imprisonment, Family Violence, Kidnapping, Murder, Neglect to a Disabled Adult/Elder, Stalking and Violate Family Violence Order.

21 The codes categorized under the "obstruction of law enforcement officers" designation included: Assault or Battery on an Officer, Obstruction of Law Enforcement, Removal or Attempted Removal of a Weapon from a Public Official, Fleeing or Attempting to Elude a Police Officer, Assailing, Opposing, or Resisting an Officer of the Law in a Penal Institution and Riot in a Penal Institution.

22 The codes categorized under the "theft/property crimes" designation included: Hijacking a Motor Vehicle, Armed Robbery, Burglary, Theft, Entering Automobile or Other Motor Vehicle with Intent to Commit Theft, Forgery, Financial Transaction Card Fraud, Identity Fraud, Deposit Account Fraud (Bad Checks), Criminal Damage to Property, Interference with Government Property, Damaging, Injuring or Interfering with Property of Public Utility Companies and Criminal Trespass. These codes primarily seem unrelated to HIV exposure and may indicate data entry errors in the data. However, since there did not appear to be any systematic data entry issue, the incidents were not excluded from the analysis. Nineteen incidents had a reckless conduct arrest and a theft/property crime offense and no other offense involved in the incident.

23 The codes categorized under the "weapons offenses" designation included: Carrying a Concealed Weapon, Carrying a Pistol without a License, Carrying Deadly Weapons To Or At Public Gatherings, Carrying Weapons Within School Safety Zones, At School Functions, Or On School Property, Discharge Of Firearms on or Near Public Highway or Street, Discharge of Firearms on Property of Another, Discharging Firearm While Under Influence of Alcohol or Drugs, Firearm Use by Convicted Felon in Commission of Crime, Pointing or Aiming Gun or Pistol at Another, Possession of a Firearm by a Convicted Felon, Possession of Firearm or Knife During Commission of or Attempt to Commit Certain Felonies, Possession of Pistol or Revolver by Person Under 18 Years, Receipt, Possession or Transfer of Firearm by Convicted Felon and Unauthorized Possession of Weapon by Inmate.

24 The codes categorized under the "miscellaneous" designation included categories such as: traffic violations, parole violations, probation violations, contempt of court, cruelty to animals, interference with custody, criminal attempts and conspiracies, transmission of false reports, harassing phone calls and endangering/contributing to the delinquency of a minor.

25 The codes categorized under the "drug offense" designation included: Abandonment of Certain Dangerous Drugs, Poisons or Controlled Substances; Crossing State/County Guard Lines with Weapons, Intoxicants, Drugs without Con-

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sent; Drugs/Medicine, etc. Prepared Only by Registered Pharmacist; Drugs not in Original Container; Driving Under the Influence; Manufacture/Possess etc. of Controlled or Counterfeit Substance, or Marijuana, Near Park/Housing Project; Manufacture/Sell/Dispense/Distribute Drugs; Marijuana-Possession Less than 1 Oz; Possession and Use of Drug Related Objects; Possession of a Schedule II Controlled Substance; Possession of Cocaine; Purchase, Possession, Manufacture Distribution, or Sale Of Marijuana; Sale Of Cocaine; Trafficking in Cocaine, Illegal Drugs, Marijuana, or Methamphetamine; Transactions in Drug Related Objects; Use of Communication Facility in Commission of a Felony Involving Controlled Substances; and Violation of the Georgia Controlled Substance Act. Though some of these drug offenses do not require the use of needles, all drug related offenses were grouped together in the possible event that needles were found on the person when they were arrested for a different kind of drug offense.

26 The codes categorized under the “sex offense” designation included: Aggravated Sodomy, Incest, Public Indecency, Rape, Sexual Assault, Sexual Battery, Sodomy, Statutory Rape, Aggravated Child Molestation, Child Molestation and Enticing a Child for Indecent Purposes.

27 The codes categorized under the “sex work offense” designation included: Keeping a Place of Prostitution, Maintaining a Disorderly House, Pandering/Idling/Loitering for Sex, Prostitution and Solicitation of Sodomy.

28 Case outcomes were only available in data through the first quarter of 2017.

29 With Thanks To Brian Huylebroeck and the Georgia Department of Public Health for provision of cumulative data on the demographics of people living with HIV. Data are on file with the author.

30 Of the 15 sex work concurrent incidents that resulted in convictions for reckless conduct, 12 of those incidents also had concurrent convictions for the sex work offense.

31 For example, in two reckless conducts incidents, there were convictions for forgery, which appears unrelated to HIV exposure.

32 Zita Lazzarini, Sarah Bray, & Scott Burris, *Evaluating the Impact of Criminal Laws on HIV Risk Behavior*, 30 J. L. MED. & ETHICS 239, 245 (2002).

33 Sergio Hernandez, *Sex, Lies and HIV: When What You Don't Tell Your Partner is a Crime* (2013), <https://www.propublica.org/article/how-we-built-our-hiv-crime-data-set>.

34 HASENBUSH, MIYASHITA & WILSON, *supra* note 4.

35 Other research has reflected higher levels of HIV-related stigma in rural versus urban areas. Susan Reif, Carol E. Golin, & S.R. Smith, *Barriers to Accessing HIV/AIDS Care in North Carolina: Rural and Urban Differences*, 17 AIDS CARE 558 (2005); T. G. Heckman, A. M. Somlai, J. Peters, J. Walker, L. Otto-Salaj, C. A. Galdabini & J. A. Kelly, *Barriers to Care Among Persons Living with HIV/AIDS in Urban and Rural Areas*, 10 AIDS CARE 365 (1998).

36 See Catherine Hanssens, Aisha C. Moodie-Milles, Andrea J. Ritchie, Dean Spade & Urvashi Vaid, *A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV*, New York: Center for Gender & Sexuality Law at Columbia Law School (2014).

37 See FRANK H. GALAVAN, MOHSEN BAZARGAN, INTERACTIONS OF LATINA TRANSGENDER WOMEN WITH LAW ENFORCEMENT (2012) <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Galvan-Bazargan-Interactions-April-2012.pdf>, SANDY E. JAMES, JODY L. HERMAN, SUSAN RANKIN, MARA KEISLING, LISA MOTTET, & MA'AYAN ANAFI, NAT'L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY, CHAPTER 14: POLICE, PRISONS, AND IMMIGRATION DETENTION (2016) <https://www.transgenderquality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.