

## Sex Offenders No More? Iowa Reconsiders Tough Law on HIV Exposure

By Miranda Leitsinger



In 2006, a few years after Leslie Flaggs learned she had contracted HIV, she made a new friend at her church in Sioux City, Iowa. As her relationship with the man turned from Bible study to intimacy, Flaggs said, she revealed to him that she had the disease.

But the man went to police in May 2007 and said she hadn't disclosed her HIV status until after they'd slept together. Flaggs says that because she feared the man – who was convicted of domestic abuse-assault for hitting her two weeks before he filed his complaint, according to court documents – she didn't challenge his story to police.

Flaggs agreed to a plea bargain rather than face the alternative: up to a quarter century in prison as mandated by a state law targeting criminal exposure to HIV. She received a 25-year suspended sentence, four years of probation and a decade on the sex offender registry. Prosecutors at the time said her accuser did not acquire HIV; the law applies whether or not victims are infected. NBC News could not reach him recently for comment.

For Flaggs, 53, living with the disease and being on the sex offender registry has been so hard that she has contemplated suicide. "This has taken my life," she said. "I feel like I'm in prison."



Leslie Flagg (at left, in black shirt) with her family before dinner in Jackson, Miss.

But things may soon change for people living with HIV in Iowa: Lawmakers are debating whether to repeal the state law on criminal exposure and replace it with one that would impose more moderate sentences and would better reflect current medical understanding of how the disease is transmitted. If the legislation is approved, Iowa would be one of the first states to revise its decades-old statute that imposes criminal sentences for HIV exposure. HIV/AIDS advocates have long been fighting for such changes to the [more than 30 state laws nationwide](#), but they've often met resistance.

"We've got to get this done this year," said Tami Haight, of an Iowa nonprofit, Community HIV/Hepatitis Advocates of Iowa Network. She last month watched another Iowan [receive a sentence similar](#) to Flagg's, and yet another state resident recently [challenged his conviction](#) for not disclosing his status to a partner even though he used a condom. "We can't open up any other Iowan to this kind of prosecution when it is so unjust."

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Iowa's current law imposes a maximum 25-year prison term regardless of whether the victim contracts the disease or whether there was intent to transmit it. The new legislation would create a tiered-sentencing system: the 25-year sentence still applies for those who aim to infect and whose victims acquire HIV, but those who did not intend to transmit the disease yet still exposed someone to it can get up to five or ten years in prison depending on whether or not their doctor told them that risk of transmission was high or low. And for the first time, those

accused can seek acquittal if their doctor testifies that there was little to no chance of them passing the disease to others.

Like many other states, Iowa passed its HIV criminal transmission law after Congress approved the federal Ryan White Comprehensive AIDS Resources Emergency (CARE) Act in 1990. A provision of that law, which funds essential medical and support services to people with HIV, required every state to certify that its criminal laws were sufficient to prosecute any HIV-infected individual who knowingly exposed another person to the disease – even if they didn't transmit it -- at the height of the epidemic.

But with more understanding of HIV and improved drugs and care management options, the disease is no longer the death sentence it once was. And often, there is less risk of exposure. An HIV-positive person with undetectable levels of the virus in their blood -- common these days thanks to treatment that was in its early stages of use and was unproven when Iowa's law was passed -- isn't likely to transmit it to anyone else. Criminal exposure statutes should be changed to take the modern realities of living with HIV into account, advocates say.

"These laws reflect a severe misunderstanding about the roots, the risks and the consequences of HIV infection that are stuck in the 1980s despite the fact that treatment of HIV has changed dramatically," said Catherine Hanssens, executive director of The Center for HIV Law and Policy, an advocacy group.

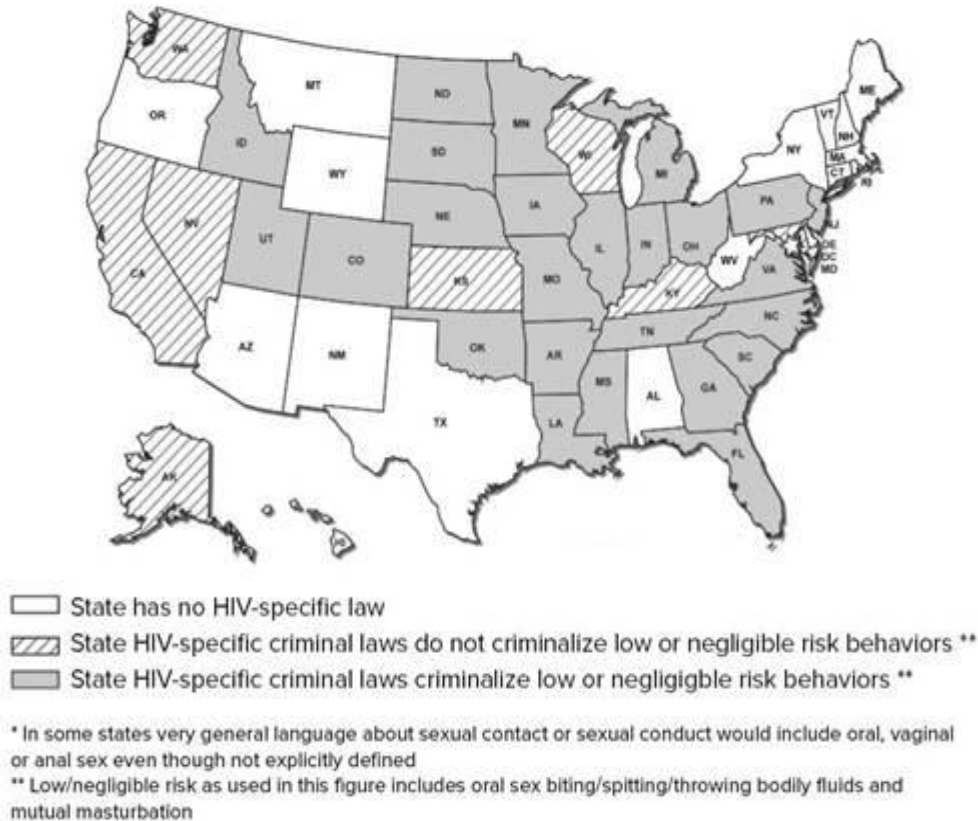
It's not just advocates who say the laws are outdated: The U.S. government's Office of National AIDS Policy said studies show that intentional transmission is "atypical and uncommon" and has called on states to re-consider their statutes. These laws often "run counter to scientific evidence" about how the disease is transmitted and may "undermine" public health efforts to promote HIV screening and treatment, the group [said in 2010](#).

The Presidential Advisory Council on HIV/AIDS, has weighed in, too, [issuing a resolution in 2013](#) calling for an end to the HIV-specific statutes, noting that among the concerns it shared with the national AIDS office was that such laws can lead to the unjust imprisonment of women and young people who don't disclose their HIV status because of fear of violence.

Most of the state laws were passed before studies showed that antiretroviral therapy reduces the risk of HIV transmission, according to a recent [article](#) by the Centers for Disease Control and Prevention and the Justice Department. The laws also don't consider effective prevention measures, such as condoms.

"Many of these laws criminalize behaviors that pose low or negligible risk for HIV transmission," the authors said as they called for the state laws to be re-examined. The statutes could have "wide-ranging social implications," including "the perpetuation of misinformation" regarding how the disease is acquired, said the article published in the AIDS and Behavior journal.

## U.S. States\* with HIV-Specific Criminal Laws 1986-2011



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It's not clear how many people have been charged under any of the state HIV criminal statutes or similar laws in two U.S. territories. Hanssens' center has tallied 180 prosecutions from 2008 to 2013, but she cautioned that the numbers weren't complete since there is no uniform way of counting such cases nationwide. HIV-specific criminal laws are classified as felonies in 28 states and misdemeanors in two others -- Maryland and North Carolina. If convicted, prison terms vary by state: from a few years to decades.

And most of the laws [don't require transmission](#) of HIV – just exposure, which doesn't have to involve sex. In many of the states, district attorneys can pursue charges for spitting, biting or blood exposure, for sharing needles, or for blood, tissue and organ donations. But the Centers for Disease Control and Prevention says [transmissions via most of these routes](#) – except for needle sharing -- are less common than sexual transmissions or are very rare (it's also impossible to get the disease from saliva).

Even some states without such HIV-specific statutes have used their general crime laws to prosecute people with the disease: A man was sentenced to a decade in prison after biting a

police officer in upstate New York ([his conviction was overturned](#) in 2012 after a court ruled his saliva couldn't be considered a "dangerous instrument.")

Officials have warned about the public health fallout of such HIV criminal laws. Randy Mayer, chief of the bureau of HIV, STD, and Hepatitis at Iowa's public health department, who supports updating the existing law, said a key concern is that the statute could be preventing people with HIV from seeking care out of fear "that somebody might use it against them."

"It's very clear that in Iowa, stigma is really a problem," said Mayer, who has observed this issue in his 14 years working with people who have HIV or AIDS. A lot of it, he added, stems from prosecuting HIV sufferers "in a way that we don't do for any other disease."

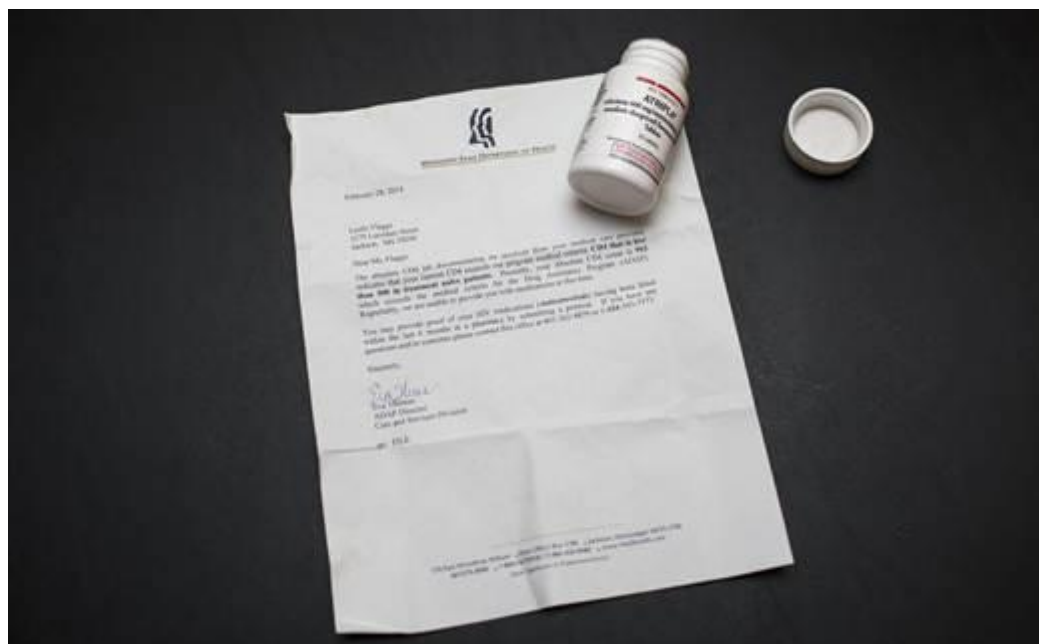
Advocates have been working for years to get the HIV laws off the books. So far, Texas repealed its law in 1994 (though it used a general criminal statute to send a HIV-positive man away for spitting in 2008) and Illinois made some changes in 2012 to its statute that require prosecutors prove intent to transmit the disease and prohibit charges based upon biting, spitting, kissing and oral sex. At the federal level, lawmakers passed [legislation](#) in December requiring the Defense Department to study whether its current HIV and Hepatitis B policies represent medically-accurate understandings of these conditions.

But mostly, advocates say, they've encountered steep opposition to change at the state level. It took activists in Iowa six years to get a bill through a single chamber in the legislature – and what is currently being debated is not exactly what they've hoped for since the [House amended what the Senate approved](#) weeks ago. The House version only allows for felony-level charges, rather than misdemeanors, and would keep those convicted under it on the sex offender registry – unlike the Senate bill (which the state's attorney general helped to draft). If the House version doesn't change before passage, the two chambers will have to work out the differences. Haught, the Iowa activist, said the hurdles are "dealing with the stigma, the stereotype, the fear and the discrimination that just automatically comes with HIV and AIDS."

"Thirty years into the epidemic, we had hoped that we would be past that," said Haught, who has HIV. "If you have cancer, people care. If you have AIDS, people judge."

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Iowa Rep. Chip Baltimore, who chairs the judiciary committee that approved sending the bill to the House floor, said the legislation needed to put more emphasis on the impact to victims. But he said lawmakers were trying to balance that with the culpability of the infected person and the public health concerns regarding testing and treatment.



The Mississippi State Department of Health rejected Leslie Flagg's application for HIV treatment assistance. She has been without her medication for over a week.

“We acknowledge that the science and the medical advancements are rapidly making things much, much better,” he said, adding that the existing law was “draconian” and needed to be revised. Before the House votes on a final version, amendments can be made “and I suspect that we probably will make some,” he added.

Some prosecutors said they support criminal penalties, such as Assistant Woodbury County Attorney James Loomis, who handled Flagg's case. “I think it's pretty serious when you're engaging in that kind of behavior and you don't advise the other person involved that you're HIV positive,” said Loomis. “I think that a 25-year sentence is appropriate.”

The National District Attorneys Association encourages states that are re-visiting these HIV-specific laws to make them consistent with the latest medical advances, said Scott Burns, executive director. But regardless of whether or not the disease is transmitted, “it should be a crime in all 50 states for a person infected with HIV to have sex with another person and not disclose that,” he added.

Iowa's House of Representatives has until April 22 to vote on a final bill. The governor said he will closely review the legislation if it gets to his desk.

For those convicted under the old law, the new legislation as it is written now likely won't help them. Flagg would still have four more years on the sex offender registry, which has made it hard for her to find work since she must stay a certain distance away from places where kids gather, like schools. She recently moved to Mississippi, where her five adult children live,

because of those restrictions – but is having trouble getting her HIV medication since the state public health department deems her too healthy to receive the drugs.

“Sometimes I am just so miserable. I am just so tired of it,” she said of being on the registry. “I am a sex offender because I am HIV positive.”

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