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HIV Criminalization Laws Disproportionately Punish People of Color

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This National Black HIV/AIDS Awareness Day, February 7, BETA explores the controversy surrounding HIV criminalization laws. The stigma and medically-inaccurate fear that these laws propagate have negative consequences for all people with HIV, and men and women of color may be even more affected. BETA explains the issue.

In 2008, Willie Campbell, an African-American man from Dallas, Texas, was sentenced to 35 years in prison for spitting on a police officer. Campbell is HIV-positive, and the “deadly weapon” he was charged with wielding against the officer was his spit. (In the absence of blood, *there is no risk of HIV transmission through saliva.*)

Although this enforcement of an HIV criminalization law seems extreme, there are other more recent examples of times when *people living with HIV were handed lengthy prison sentences* after being accused of exposing, or infecting, another person with HIV knowingly. Many of these people, such as the college student Michael Johnson, are black, and *some have questioned whether racial bias* is adding another layer of unfairness to the enforcement of laws that are already discriminatory, outdated and counterproductive.

According to the *Center for HIV Law and Policy*, 32 states, 2 territories and the federal government have HIV-specific laws that criminalize potential HIV exposure through sex, spit, blood and/or biting.



Marvell Terry, II
(Photo: Positive Justice Project)

“In more than 30 states, people living with HIV can be tried and imprisoned simply because a partner accuses them of hiding their HIV status. It often doesn’t matter if you used a condom or were on protective medications or even if the accusation is false. All that matters is that you’re living with HIV,” said Marvell Terry, II, of the Human Rights Campaign in a *video produced for the*

Positive Justice Project.

Many regions specify that exposure can be charged as felonies. In 2013, *ProPublica* searched law-enforcement records and found that, since 2003, there had been 1,352 HIV-related exposure charges with 541 convictions in the U.S.

“HIV exposure criminalization laws can be incredibly unjust,” said Mayo Schreiber, Jr., the deputy director of The Center for HIV Law and Policy. “Most laws don’t take into account whether someone intended to transmit the virus. Or if they used condoms or had an undetectable viral load, which can prevent transmission. And the sentences that are given can be more severe than, for example, negligent homicide. Or from killing someone while drunk driving. They’re completely inequitable and demonstrate a lack of fairness and justice in our legal system.”

One study, published in *AIDS and Behavior*, suggests that race may play a role in HIV criminalization sentencing. Over an 11 year period, a team of researchers analyzed all of the HIV exposure charges that occurred in the single jurisdiction of Nashville, Tennessee. In the state, it is a Class C felony for a person living with HIV to engage in “intimate contact” with another person, unless the person discloses their status, informs the other person that there is risk of infection and receives consent prior to sex. People accused of neglecting any of these things, even if HIV transmission does not occur, may be charged.

There were 27 arrests made during this time for HIV exposure. Eleven of the arrests were for non-sexual incidents (e.g., scratching, biting or spitting). Sixteen of the arrests were for non-disclosed possible HIV exposure through sex. In three cases, HIV transmission was alleged to have occurred. Nine people (1 for a non-sexual incident; 8 for a sexual incident) were convicted for HIV exposure, with sentences ranging from one month to eight years.

“Analyses did reveal a significant difference in sentencing by race,” the researchers noted. “The sentences of black individuals arrested for HIV exposure were significantly more severe than the sentences of their white counterparts. Black defendants were significantly more likely than white defendants to be prosecuted for sexual (as opposed to nonsexual) exposure, and sexual exposure cases received more severe sentences.”

The increased vulnerability that people of color, and the LGBTQ community, are to discrimination and bias by HIV criminalization laws is *just one of the many reasons* why advocacy groups like The Center for HIV Law and Policy are calling for reform.

“No specific disease or condition should be the focus of a criminal law or sentence enhancement,” specified the *Positive Justice Project* of The Center for HIV Law and Policy.

“A lot of these laws are left over from the eighties, when people were just plain freaked out about HIV. And even experts didn’t have all the answers. Today, we know more,” said Terry.

HIV criminalization laws can even provide an incentive not to get tested for HIV and be aware of your status—further fueling the spread of HIV, explained Schreiber. “There’s a phrase, ‘Take the test, risk arrest,’ which neatly captures this concept. It means—if you’re unaware of your status, you don’t face any criminal liability. I’m not sure how widespread this thinking is, but the message is strictly at odds with the important emphasis by public health authorities on getting tested and knowing your status. Anything that takes away from this message is harmful.”

Schreiber also explained that there is no evidence suggesting that HIV criminalization laws facilitate HIV disclosure conversations between potential sex partners or reduce HIV transmission rates

overall. “These laws have certainly not eliminated HIV infection. Moreover, in some states where the laws are most severe—such as Louisiana, Florida and Georgia—the infection rates are the highest. In states where there are no HIV specific criminal laws concerning sexual activity—such as Massachusetts, Connecticut, New Hampshire and Rhode Island—the rates of infection are much lower. There may not be a clear correlation, because there are many factors at work, but the numbers are at least suggesting that criminal HIV exposure laws have no positive impact on reducing HIV incidence.”

What can we do to promote change?

Join the *Positive Justice Project Facebook page* to keep up to date on the latest news about HIV criminalization. *Know the facts about the actual risk* of HIV transmission and educate others when you hear outdated, sensationalized media reports that promote HIV stigma. *Contact your state representatives* and express your concern about HIV criminalization laws. Read more about *modernizing and eliminating HIV-specific criminal laws* from the Positive Justice Project, and spread the word about the problems associated with HIV criminalization laws by *sharing this video*.