

Mapping HIV Criminalization Laws in the U.S.

A USER GUIDE TO CHLP'S UPDATED HIV CRIMINALIZATION MAPS

More than a decade ago, CHLP published the HIV Criminalization in the United States map.

Starting in 2024, CHLP substantially updated the map methodology to more comprehensively meet the needs of people living with and deeply impacted by HIV, people advocating for reform of these laws and policies, and legal and policy decision-makers implementing these laws and policies.¹

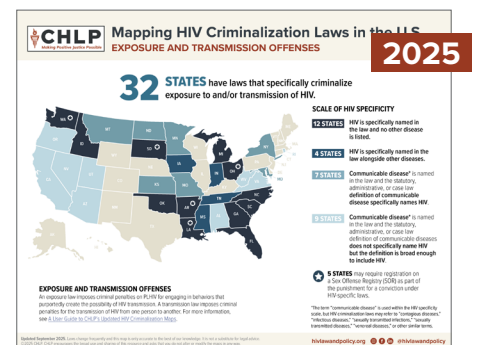
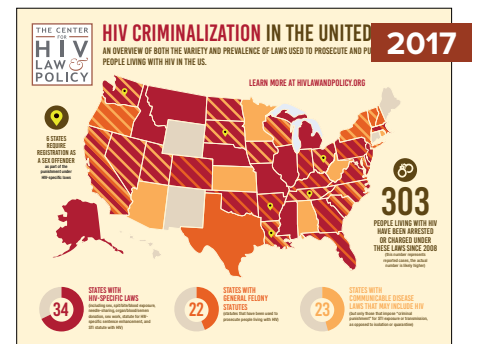
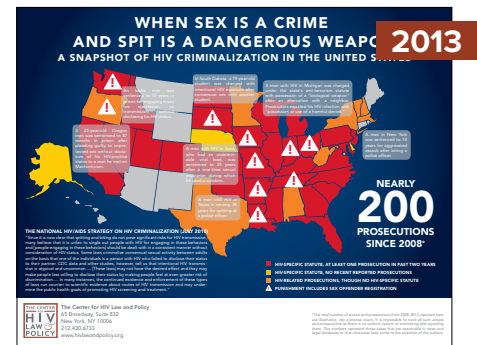
With these changes, CHLP aims to convey the threat of HIV criminalization in an accessible manner, while maintaining the accuracy of the information provided. This guide offers an overview of these updates, an explanation of the update process, and terms and concepts that are essential for understanding the new HIV criminalization maps.

WHAT WAS THE PROCESS FOR UPDATING THE MAPS?

The [new maps](#) are the result of a comprehensive research process, in which Positive Justice Project (PJP) staff and interns researched, analyzed, and coded laws related to the criminalization of people living with HIV (PLHIV). PJP staff initially met to discuss challenges with the existing map and develop an intended structure for the maps. Focusing on HIV-specific offenses and enhancements, the PJP team then divided each state, territory, and the District of Columbia for review. Staff first independently examined [HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice](#).

Staff then searched for relevant laws in legal databases Lexis Nexis and WestLaw, as well as separately reviewed select state codes for additional relevant laws. Next, each PJP team member independently analyzed state laws and classified them using the HIV specificity shading scale.

Coding was reviewed through a collaborative gathering of PJP staff, who confirmed the categorization and resolved any discrepancies. Following each meeting, coding criteria were assessed and any changes were incorporated within the existing dataset. The final coded data were compared to the prior map and other existing HIV criminalization maps.²



¹ CHLP gratefully acknowledges the work of summer interns Ebony Upshaw and Lauren Kranzlin, who assisted with the development of the new maps by researching and coding several HIV criminalization laws.

² These other HIV criminalization maps are published by the Centers for Disease Control and Prevention (CDC) and the Policy Surveillance Program at Temple University Beasley School of Law. Although the CDC previously created and disseminated these HIV criminalization resources, many of these tools are no longer available online.

WHAT HAS CHANGED? WHY DID IT CHANGE?

The amount of information included in each map has been **significantly streamlined**. For example, in shading only 25 states with documented cases of the use of general criminal laws to target PLHIV, the old map implied that HIV criminalization through general criminal laws was only possible in these states. However, general criminal laws can be used to prosecute PLHIV in any state that has not expressly limited when and how HIV criminalization prosecutions can occur.

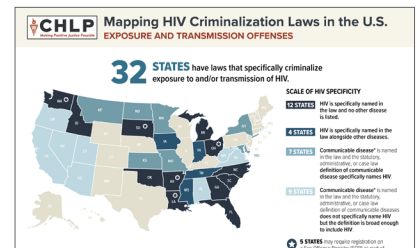
ACROSS THE UNITED STATES, HIV CRIMINALIZATION OCCURS THROUGH THE APPLICATION OF GENERAL CRIMINAL LAWS AND ENFORCEMENT OF PUBLIC HEALTH ORDERS.

Although the old and new maps only describe laws that specifically target PLHIV, PLHIV may also face criminalization through the use of general criminal laws that do not specifically mention HIV or communicable diseases. Prosecutors across the United States have leveraged general criminal laws, including aggravated assault, reckless endangerment, and attempted murder offenses, to impose criminal penalties on PLHIV for conduct that is not criminalized or criminalized less severely for people not living with HIV. It is exceedingly difficult to comprehensively track prosecutions of PLHIV through the use of general criminal laws. CHLP has relied on legal research (namely case law), coalition contacts, news reports, and social media to conclude that general criminal laws have been applied to perpetuate HIV criminalization in virtually every state.

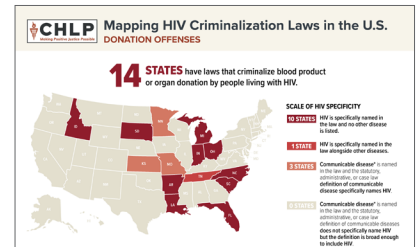
PLHIV may also be criminalized through laws related to public health authority, which allow for forced quarantine, isolation, examination, or treatment. While these laws do not immediately result in criminal charges, people who are ordered by a public health department or official to follow certain actions and who do not comply may face criminal punishment for noncompliance. These penalties may be specifically described by statute or administrative rule but also may be broadly applicable to any violation of a public health order.

To improve readability, the new map no longer includes shading that notes criminalization through general criminal laws and markers for reform of HIV criminalization laws. Moreover, the map is now divided into multiple maps: an HIV criminalization offenses map (offenses map) and several HIV criminalization enhancement maps (enhancement maps).³ In differentiating the maps and reducing the information, these changes allow for improved accessibility and a more accurate depiction of the scope and severity of HIV criminalization.

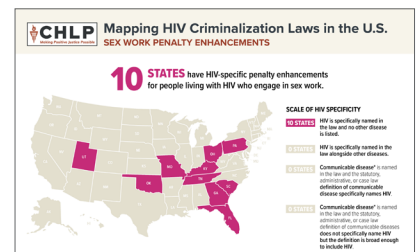
The maps adopt a new definition of HIV-specific and apply a novel HIV specificity shading scale. The old map did not uniformly recognize the criminalization of PLHIV through laws that broadly targeted people living with stigmatized conditions, such as laws that use the terms



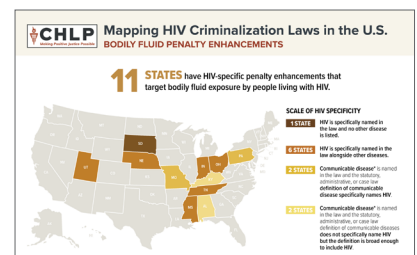
Exposure Transmission Offenses Map



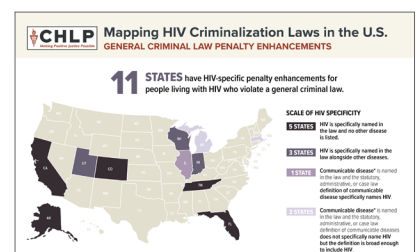
Donation Offenses Map



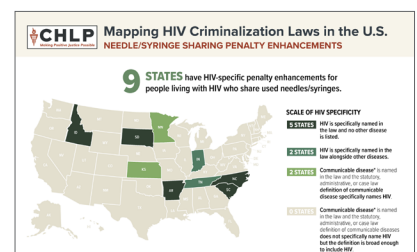
Sex Work Penalty Enhancements Map



Bodily Fluid Penalty Enhancements Map



General Criminal Law Penalty Enhancements Map



Needle/Syringe Sharing Penalty Enhancements Map

³ These terms are defined on page 3.

“communicable diseases,” “infectious diseases,” or “sexually transmitted infections.” Although laws that specifically and only name HIV are especially stigmatizing and dangerous, solely identifying these statutes, without also including other laws that target PLHIV through less direct means, does not provide a complete picture of the threat of HIV criminalization. The new maps use an HIV specificity scale to identify laws that specifically target PLHIV and other stigmatized health conditions by explicitly listing HIV or using these broad definitions. The classification better describes the threat of HIV criminalization to PLHIV, while acknowledging the distinct ways these laws single out PLHIV.

WHAT ARE THE ESSENTIAL DEFINITIONS FOR THE NEW MAPS?

HIV criminalization: HIV criminalization refers to laws, policies, and practices that result in increased criminal penalties for people diagnosed with HIV for conduct that is either legal or less severely punished for people not diagnosed with HIV. Typically, HIV criminalization laws, policies, and practices only apply to people who have been tested and diagnosed with HIV. In other words, an individual living with HIV, unaware of their status, would not usually be held criminally liable.



While most states do not exclude HIV from the list of criminalized communicable diseases, the exposure offense in Vermont

imposes up to two years imprisonment and \$500 in fines on people living with gonorrhea and syphilis for having sex while aware of their status but does not apply to PLHIV.⁴

HIV-specific: A law is “HIV-specific” when it solely names HIV or uses an expansive definition of “communicable disease” that includes HIV because it imposes criminal penalties or heightened criminal penalties on the behavior of an individual by explicitly singling them out based on their positive status. The terms used to single out PLHIV

are diverse, including “communicable disease,” “contagious disease,” “infectious disease,” “sexually transmitted infection,” “sexually transmitted disease,” or “venereal disease.” Each law is sorted using the following scale of HIV specificity:

SCALE OF HIV SPECIFICITY

STATES

HIV is specifically named in the law and no other disease is listed.

STATES

HIV is specifically named in the law alongside other diseases.

STATES

Communicable disease⁵ is named in the law and the statutory, administrative, or case law definition of communicable disease specifically names HIV.

STATES

Communicable disease⁵ is named in the law and the statutory, administrative, or case law definition of communicable diseases does not specifically name HIV but the definition is broad enough to include HIV.

The HIV-specificity scale measures how clearly a law targets PLHIV. It does not measure how strict or severe the law is, just how targeted the language is. While the level of specificity may be important in understanding the law’s impact, particularly its stigmatizing effect, the HIV-specificity scale itself provides an objective assessment of the legal language used.

Offense: These are laws that impose criminal penalties on people for engaging in illegal activity.

- **Donation offense:** A donation offense criminally punishes PLHIV for attempting to donate or sell or actually donating or selling blood, blood products (such as plasma or platelets), semen, tissue, organs, or other bodily fluids. While some exposure offenses could be interpreted to criminalize donations by PLHIV,

⁴ VT. STAT. ANN. tit. 18, § 1106.

⁵ The term “communicable disease” is used within the HIV specificity scale, but HIV criminalization laws may refer to “contagious diseases,” “infectious diseases,” “sexually transmitted infections,” “sexually transmitted diseases,” “venereal diseases,” or other similar terms.

donation offenses explicitly name these acts. They may appear within exposure laws or as separate provisions.



Although Delaware does not criminalize donors who are living with HIV, it does impose felony-level punishment on anyone who uses “the semen, corneas, bones, organs or other human tissue of a donor” living with HIV.⁶ Thus, the law criminalizes a different aspect of the donation: the use of the donation by a healthcare professional.



Iowa does not criminalize bodily fluid donation by people living with HIV, but it does punish people who are living with a “communicable disease” and who give false information regarding their status on a blood plasma sale application.⁷

Enhancement: These are laws that impose harsher criminal penalties for engaging in activities that are already criminalized. In the HIV criminalization context, these enhancements usually apply automatically: if a person living with HIV is accused of a criminal offense, their charge is elevated solely based on their knowledge of their HIV status. These enhancements are associated with certain criminalized behaviors:

- **Sex work enhancement:** Almost every state criminalizes engaging in sex work, which is typically a misdemeanor offense. Sex work enhancements impose heightened criminal penalties on PLHIV for engaging in sex work. They criminalize a broad array of behaviors related to sex work, including engaging in sex work, asking to engage in sex work, agreeing to engage in sex work, or loitering to

engage in sex work. Thus, these statutes often criminalize behaviors that pose absolutely no risk of HIV transmission. These laws may be a part of exposure or transmission offenses or separate offenses.

- **Syringe or needle sharing enhancement:** Nearly all states criminalize the possession and distribution of syringes, needles, or other equipment for drug use through “paraphernalia” laws, with some of these states having exceptions for syringe or needle distribution associated with harm reduction programming. Syringe or needle sharing enhancements impose heightened criminal penalties on PLHIV who share used syringes, needles, or other injection-related equipment.⁸ These enhancements impose felony-level criminal penalties, beyond the typical misdemeanor punishment, on PLHIV for sharing used drug use equipment. These enhancements may exist in the exposure or transmission offense or as a separate law.



Maryland criminalizes the transferral of “an article that has been exposed to” an “infectious disease” without sterilizing it.⁹ “Article” likely includes syringes, needles, and other drug use equipment, as well as sex toys. However, the punishment associated with the law is at the misdemeanor level and does not exceed the separate punishment under the “paraphernalia” law, so the law is not considered an enhancement.

- **Bodily fluid enhancement:** It is typically an assault or battery to “expose” someone to a bodily fluid. However, these enhancements impose additional criminal penalties on PLHIV who are accused of exposing another person to HIV by “throwing,”¹⁰ “striking,”¹¹ or otherwise causing someone else to come in contact with

⁶ DEL. CODE ANN. tit. 16, § 2801(c).

⁷ Iowa Code § 139A.24.

⁸ North Carolina also prohibits the sharing of “any other drug-related equipment, paraphernalia, or works that may be contaminated with blood.” 10A N.C.A.C. 41A.0202(1)(b).

⁹ Md. Health-General Code Ann. § 18-601(a)(2).

¹⁰ 18 Pa.C.S. § 2703(a)(2)(i).

¹¹ R.R.S. Neb. § 28-934(3).

their bodily fluids. Often, these enhancements criminalize exposure to bodily fluids that pose no risk of HIV transmission, such as urine, feces, or spit. These enhancements are frequently linked to interactions with the criminal legal system, such as an arrest or a term of incarceration. They frequently only apply if the alleged victim is a law enforcement officer, correctional officer, or other criminal legal system actor.

- **General criminal law enhancement:** These enhancements refer to heightened criminal penalties for PLHIV who are accused of violating a general criminal law, such as assault, sexual assault, or rape. These enhancements can show up as separate offenses that have heightened criminal penalties, such as aggravated rape, and only apply to PLHIV, or sentencing statutes, such as aggravating factor statutes, that result in increased fines or terms of incarceration due to a person's positive HIV status. These enhancements also include criminal penalty enhancements that don't fit into the other categories of enhancements.

Exposure law: An exposure law imposes criminal penalties on PLHIV for engaging in specific behaviors that purportedly create the possibility of HIV transmission, such as having sex or sharing syringes or, more broadly, "expos[ing] another to HIV through any means or contact."¹²

¹² La. R.S. § 14:43.5(B).

¹³ Ind. Code Ann. § 16-41-7-1.

¹⁴ Ind. Code Ann. § 35-45-21-3.

¹⁵ Wash. Rev. Code §9.94A.835.



While many states impose criminal penalties for "exposure" or "transmission," some states additionally impose criminal penalties on PLHIV for "non-disclosure" of HIV status to their sexual, drug use, or other partners. That is, these states criminalize distinct behavior.

For example, Indiana has a duty to inform law;¹³ people who do not fulfill this duty to inform are punished through Indiana's failure to comply law.¹⁴

Transmission law: A transmission law imposes criminal penalties for the "transmission" of HIV from one person to another. That is, the law requires seroconversion.

Sex offense registration requirement: People convicted of an HIV criminalization offense may also be required to register on the sex offense registry. Some states require lifetime registration on the registry. Many states also have broad provisions that allow courts to classify a crime as "sexually motivated" or to decide that the "underlying factual basis" of an offense involves sexual behavior.¹⁵ These catch-all provisions can expand who is required to register as a sex offender, even when the crime itself is not explicitly a sex offense. People registered must comply with extensive reporting requirements and refrain from living, working, and existing in certain spaces.



VIEW CHLP'S HIV CRIMINAL LAW MAPS ONLINE AT [HIVLAWANDPOLICY.ORG/MAPS](https://hivlawandpolicy.org/maps)



CHLP is an abolitionist legal and policy organization fighting to end stigma, discrimination, and violence toward communities that experience racial oppression, patriarchal violence, and/or economic divestment.

We center our work in communities of people living with and deeply affected by HIV and other stigmatized health conditions, especially Black, brown, trans and/or queer, women, femmes, people who engage in sex work, use drugs, are disabled, living with stigmatized diseases, without housing, and/or are currently or formerly incarcerated.

All of our work is firmly located within the larger abolitionist movement for real safety and liberation.