

WHY ARE WE PUTTING PEOPLE IN JAIL FOR HAVING HIV?



A Grassroots Guide to HIV Criminalization: Facts, Foolishness and Solutions

FIRST: HIV CRIMINALIZATION

HIV Criminalization...

...is the **prosecution and imprisonment of people living with HIV (PLWH)** for things that either are perfectly legal (like consensual sex) or are minor crimes (like fighting with someone) that are treated like **serious felonies when done by people living with HIV**;

...**ignores the medical facts** about the routes, risk and current realities of HIV transmission and care; and

...**ignores well-recognized principles of criminal justice**.

FOR MORE ON WHY HIV CRIMINALIZATION IS WRONG, CHECK OUT THESE RESOURCES:

- [Positive Justice Project Consensus Statement on the Criminalization of HIV in the United States](#)
- [Declaración de Consenso Sobre la Criminalización del VIH](#)
- [The Guiding Principles for Eliminating Disease-Specific Criminal Laws](#)
- [A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV](#)

SECOND: THE MEDICAL FACTS

These laws incorrectly assume an HIV diagnosis is a “death sentence.”

HIV is no picnic, but it is completely manageable. Calling it a “death sentence” or “deadly weapon” is cruel to PLWH who, with a pill a day, can live a relatively normal life. There also are a small number of PLWH who stay healthy their whole lives without medications.

These laws **don’t target conduct likely to result in harm** because HIV is not easy to transmit. We’re talking about an average transmission risk that, *even without prevention methods*, happens less than 1 time out of 100 per single sexual contact!

- Researchers estimate that effective use of ART and condoms can **reduce the already low risk of HIV transmission to near zero**.
- HIV is not transmitted through saliva, urine, vomit or feces. That means spitting, biting and throwing feces, all acts for which people have been prosecuted under HIV criminalization laws, **don’t actually pose any risk of transmission**.

SO JUST HOW LOW ARE HIV TRANSMISSION RATES?

The actual [risk depends on the individual's viral load](#) (the amount of virus in a person's blood) and other factors such as whether the partner already has other sexually transmitted infections (STIs).

In any case, and even without a condom or other preventive measures, courts rarely look at what a person did to further reduce the risk of transmission.


For more in-depth information, check out [Routes, Risks and Realities of HIV Transmission and Care: Current Scientific Knowledge and Medical Treatment](#).

Here are the **average chances of contracting HIV** based on common types of exposure, without factoring in how condoms or medical treatment would reduce the risk even further:


Activity	Risk-per-exposure
Vaginal sex, HIV positive female-to-male	4 in 10,000
Vaginal sex, HIV positive male-to-female	8 in 10,000
Anal sex between men, receptive partner HIV positive	7 in 10,000
Anal sex between men, insertive partner HIV positive	82 in 10,000
Receptive fellatio (giving a man living with HIV a "blow job")	0 to 4 in 10,000
Insertive fellatio (getting a "blow job" from a person living with HIV)	0
Injecting drug use	63 to 240 in 10,000

HIV criminalization spreads HIV stigma because it singles out HIV for wildly unreasonable laws and punishments


Intimate sexual relationships, like many of the best things in life, come with risks. Some of those risks are emotional, some are physical, many if not all are **preventable or manageable**.


 **Example:** You may fall in love and have sex with someone who already has a partner; or who is planning to move out of town; or who has five kids who depend on her; or who has any one of a number of sexually-transmitted diseases; or who lies about having a vasectomy and then gets you pregnant.

By adulthood, most of us have some kind of situation or secret we are reluctant to reveal to someone we want to love us back, at least not on the first or second date.

 **Example:** Sexually transmitted diseases are a good example of this kind of secret. Most of us do not go around saying to someone we just met, "Hey, I have herpes!" "I've had syphilis three times!" "I just found out my ex has gonorrhea, maybe the disease-resistant kind, and I'm afraid to find out if I have it too."

There are incurable sexually transmitted **diseases other than HIV that can pose serious physical risks**.

 **Example:** Herpes makes it too dangerous to the fetus to have a normal vaginal birth, and makes you more likely to get other sexually transmitted diseases, including HIV.

 **Example:** Human Papillomavirus (HPV) causes a number of serious, frequently incurable cancers—such as cervical cancer, vaginal cancer, anal cancer and throat cancer. Any of these cancers are more likely to cause death long before HIV would.

THINK ABOUT IT: There are **no reported cases of someone with herpes or HPV being criminally prosecuted** for having sex without disclosing their disease to their partner, even though both viruses are much easier to transmit than HIV. And there shouldn't be!

So why do we single out undisclosed HIV as the **ONLY** sex-related risk to have a felony criminal law created to track and punish it?

THINK ABOUT IT SOME MORE: Society tends to put responsibility for something “bad” happening on the most marginalized person involved. In much of the public’s mind, HIV is still wrongly associated with “bad behavior” or stigmatized populations—for example, men who have sex with men, transgender women and people of color. **This is what stigma is about:** negative attitudes and assumptions imposed on a group of people on the basis of a feared or misunderstood characteristic or diagnosis.

THE IMPACT ON DOCTOR-PATIENT RELATIONSHIPS

Doctors are under **pressure to share documentation** of private conversations with patients **and to disclose HIV-related medical records** to support prosecution. There is an erosion of patient trust in the health care system, which has a negative impact on their willingness to remain engaged in care.

THIRD: THE LEGAL FOOLISHNESS

In the United States, we don’t lock people up for accidents or mistakes, and we don’t give out harsh sentences where there is no intent to harm.

But **HIV criminal laws don’t require proof of actual harm**, like whether the defendant actually transmitted HIV or whether getting HIV is the same kind of harm as being seriously wounded or being hit by a drunk driver, instead of a chronic, manageable disease.

PLWH usually serve much harsher sentences for having consensual sex than people convicted of negligent homicide or people who get drunk and kill someone while driving.

[This chart compares some HIV criminalization sentences with sentences for other criminal acts.](#)

So let’s talk about legal liability with HIV criminalization.

- [This chart](#) shows which states have **HIV-specific statutes** like the ones mentioned above. It also shows states that may not have HIV-specific laws, but have prosecuted people living with HIV, sometimes under general criminal assault or attempted murder laws.
- For even more information about **the law in your state**, check out this [guide to every state and federal HIV criminal law](#) and how they’ve been used.
- Usually in criminal trials, the burden is on the prosecutor to show the defendant is guilty beyond a reasonable doubt. However, that is often not the case with HIV criminalization. The **burden usually falls on the accused to prove he or she disclosed their HIV status**.
- Even when PLWH attempt to prove they disclosed their status, **the courts might give greater weight to the accusations against them**. For example, a woman in Georgia received an [eight-year sentence](#) for failing to disclose her HIV status, despite testimony from two witnesses that her sexual partner was aware of her HIV status. Her status had even been published in a local newspaper, which ran a front-page story and a follow-up on her.
- **Bias towards people of color (POC) and LGBTQ people makes these groups more vulnerable to discrimination** in the court system—further marginalizing PLWH who identify or are perceived as POC and/or LGBTQ.

WITH THAT IN MIND, HIV CRIMINAL LAWS AND PUNISHMENTS MAKE NO SENSE

- A man with HIV in Texas is serving **35 years for spitting** at a police officer;
- A college student in Missouri received a **30.5 year sentence for having consensual sex** with other young men he met on hookup apps and social media;
- A man with HIV in Michigan was charged under the **state's anti-terrorism statute** with possession of a "biological weapon" after he allegedly bit his neighbor.

FOURTH: BE PART OF THE SOLUTION

Tell your elected officials to fund proven ways to reduce HIV transmission:

- [Affordable health care](#) based on [best practices](#)
- [Distribution and usage of condoms](#) and [PrEP/PEP](#)
- Routine, affordable and accessible screening and treatment for [sexually transmitted infections](#) (STIs)
- [Syringe exchange programs](#)
- Comprehensive [sexual health literacy programs](#)
- Training programs that include/lead to [employment opportunities](#)
- Affordable [housing](#)

There are many ways to get involved!

- **Join an existing group of people in your state working to change the law**, or find out about starting a group of your own. The [Positive Justice Project](#) is a network of such people. Like the [PJP Facebook](#) page to keep up to date on the latest developments about HIV criminalization. Follow The Center for HIV Law and Policy on Twitter [@CtrHIVLawPolicy](#) and Instagram [@hiv_law_policy](#). Post, RT and Snap using **#DecriminalizeHIV**!
- **Call or meet with your state elected representatives** and [discuss your concerns](#) about HIV criminalization. Tell them the [Department of Justice](#) and the White House Office of National AIDS Policy champion decriminalization.
- **Contact news sources**—TV stations, newspapers, and magazines—to [educate them](#) on HIV criminalization and how inaccurate, sensationalized reporting promotes HIV stigma. Host a community educational event. Speak out when you learn someone is being prosecuted under a HIV criminal law.
- **Finally, put your health in your hands!** Inform yourself on how you can prevent contracting HIV without depending on a person to disclose their HIV status. If you are HIV-negative, you can protect yourself by getting on PreP, using condoms, getting tested and treated for STIs, taking PeP (post-exposure prophylaxis) if you believe you have been exposed to HIV, talking with a community health worker about creating a realistic HIV prevention plan for yourself, and learning what triggers you into having unprotected sex.

This guide is a collaborative product of CHLP and NCLR. It was developed in connection with a joint HIV criminalization video and website project of CHLP, HRC and NCLR.

The [Positive Justice Project \(PJP\)](#) is a national coalition of organizations and individuals working to end HIV criminalization in the United States. It is a project of [The Center for HIV Law and Policy](#), a national legal and policy resource and strategy center working to reduce the impact of HIV on marginalized communities and to secure the human rights of people affected by HIV.