



## **HIV CRIMINALIZATION TALKING POINTS AND REFERENCES**

*Advocates should use these talking points when educating people or groups about HIV criminalization. These talking points highlight many of the legal, public health, human rights, and social justice issues that HIV criminalization raises. Each point has a list of supporting resources and links. CHLP encourages the broad use of this material. Please credit the source.*

- **HIV criminalization punishes individuals for getting tested and knowing their status because a person can only be prosecuted if he or she has a positive HIV test result. It also sends the inaccurate message that attempting to avoid sexual partners with HIV is an adequate prevention strategy. This is dangerously counterproductive because most new cases of HIV result from unprotected intercourse with an HIV positive person who has not been tested.**
  - [Centers for Disease Control and Prevention, New Hope for Stopping HIV \(2011\).](#)
  - [CDC Fact Sheet: New HIV Infections in the United States, Centers for Disease Control and Prevention, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention \(2012\).](#)
  - [Patrick O'Byrne, Alyssa Bryan, Cory Woodyatt, Nondisclosure Prosecutions and HIV Prevention: Results From an Ottawa-Based Gay Men's Sex Survey, 13 BMC Public Health 94 \(2012\).](#)
  - [Steven P. Kurtz, Mance E. Buttram, Hilary L. Surratt, and Ronald D. Stall, Resilience, Syndemic Factors, and Serosorting Behaviors Among HIV Positive and HIV Negative Substance-Using MSM, AIDS Education and Prevention \(2012\).](#)
  - [What HIV Criminalization Means to Women in the U.S., Center for HIV Law and Policy \(2011\)](#)
  
- **Women and their experiences have been a central part of the debate over whether HIV criminalization laws are an effective way to protect people. Since women may be vulnerable or may have less power in their relationships than men, some people argue that HIV criminalization laws are needed to keep men from exposing women to HIV. However, HIV criminalization laws particularly harm women.**
  - [What HIV Criminalization Means to Women in the U.S., Center for HIV Law and Policy \(2011\).](#)
  - [10 Reasons Why Criminalization of HIV Exposure or Transmission Harms Women, Athena Network \(2009\).](#)
  - [Written Statement on HIV Criminalization and Women for the 57th Session of the UN Commission on the Status of Women, UN NGO Committee on HIV/AIDS, \(2013\).](#)

- **HIV criminalization increases stigma by reinforcing inaccurate beliefs about the routes, actual risks, and consequences of HIV transmission. Stigma discourages people at risk from doing anything that might associate them with being HIV positive, and makes it even harder for people to disclose their HIV status to sexual partners and others.**
  - [Patrick O'Byrne, Alyssa Bryan, Cory Woodyatt, Nondisclosure Prosecutions and HIV Prevention: Results From an Ottawa-Based Gay Men's Sex Survey, 13 BMC Public Health 94 \(2012\).](#)
  - [World Health Organization, Gender Dimensions of HIV Status Disclosure to Sexual Partners: Rates, Barriers, and Outcomes \(2004\).](#)
  - [Carol L. Galletly and Zita Lazzarini, Charges for Criminal Exposure to HIV and Aggravated Prostitution Filed in the Nashville, Tennessee Prosecutorial Region 2000-2010, AIDS and Behavior \(2013\).](#)
  - [Carol Galletly & Steven Pinkerton, Conflicting messages: how criminal HIV disclosure laws undermine public health efforts to control the spread of HIV, AIDS and Behavior \(2006\).](#)
  
- **There is no evidence that HIV criminalization laws deter risky behavior or reduce the number of new HIV infections.**
  - [Patrick O'Byrne, Alyssa Bryan, Cory Woodyatt, Nondisclosure Prosecutions and HIV Prevention: Results From an Ottawa-Based Gay Men's Sex Survey, 13 BMC Public Health 94 \(2012\).](#)
  - [Zita Lazzarini et al., Evaluating the Impact of Criminal Laws on HIV Risk Behavior, 30 J.L. Med. & Ethics 239, 239-253\(2002\).](#)
  - [Scott Burris, Do Criminal Laws Influence HIV Risk Behavior? An Empirical Trial. et al., 39 Ariz. St. L.J. 467 \(2007\).](#)
  
- **Studies have found no differences in risky sexual behavior between people living in a state with a specific HIV disclosure law compared to people living in a state without such a law.**
  - [K.J. Horvath, R. Weinmayer, S. Rosser, Should it be illegal for HIV-positive persons to have unprotected sex without disclosure? An examination of attitudes among US men who have sex with men and the impact of state law, 22 AIDS Care 1221 \(2010\).](#)
  - [Scott Burris, Do Criminal Laws Influence HIV Risk Behavior? An Empirical Trial. et al., 39 Ariz. St. L.J. 467 \(2007\).](#)
  
- **Even when people are aware that an HIV-specific law exists in a particular state, they usually do not understand what type of conduct is or isn't punishable under the law (e.g., types of sexual behavior/activity requiring disclosure, penalty for non-disclosure, etc.).**
  - [Carol Galletly & Steven Pinkerton, Conflicting Messages: how criminal HIV disclosure laws undermine public health efforts to control the spread of HIV, AIDS and Behavior \(2006\).](#)
  - [Carol Galletly et al., New Jersey's HIV Exposure Law and the HIV-Related Attitudes, Beliefs, and Sexual and Seropositive Status Disclosure Behaviors of Persons Living with HIV, Amer. J. Pub. Health, e1-e6 \(September 2012\).](#)

- **HIV criminalization laws are at odds with state health department prevention campaigns that promote sexual health as the responsibility of both sexual partners, and increase stigma by strengthening the culture of blame surrounding HIV transmission.**
  - [C. Dodds & P. Keogh, Criminal prosecutions for HIV transmission: People living with HIV respond, 17 International Journal of STD & AIDS 315 \(2006\).](#)
  - [Carol Galletly & Steven Pinkerton, Conflicting messages: how criminal HIV disclosure laws undermine public health efforts to control the spread of HIV, AIDS and Behavior \(2006\).](#)
  
- **Effective medical care and treatment reduces HIV transmission risk through all routes to near-zero.**
  - [Samuel Broder, The development of antiretroviral therapy and its impact on the HIV-1 AIDS pandemic, Antiviral Research \(2010\).](#)
  - [A. Anglemeyer et al., Antiretroviral therapy for prevention of HIV transmission in HIV-discordant couples \(Review\), Cochrane Database of Systematic Reviews \(2011\).](#)
  - [T.C. Quinn, M.J. Wawer, N. Sewankambo, et al. Viral load and heterosexual transmission of human immunodeficiency virus type 1. 342 N. Eng. J. Med. 921 \(2001\).](#)
  
- **HIV criminalization harms communities that already are hit hardest by the HIV epidemic. HIV criminalization reinforces demeaning stereotypes that associate sex with people living with HIV as inherently dangerous, predatory, or deviant. Criminalization of HIV creates another basis for targeting and singling out people of color for arrest, prosecution, and imprisonment.**
  - [The Center for HIV Law and Policy and Positive Justice Project, Prosecutions and Arrests for HIV Exposure in the United States, 2008–2017.](#)
  - [Ginny Shubert, National Minority AIDS Council \(NMAC\) and Housing Works, Mass Incarceration, Housing Instability and HIV/AIDS: Research Findings and Policy Recommendations \(2013\).](#)
  
- **Offenders face employment, housing, immigration, education, and voting restrictions or prohibitions, all of which can negatively affect health outcomes for people living with HIV. These collateral consequences impact individuals, families, and communities.**
  - [The Center for HIV Law and Policy, Chart: Limitations of Eligibility for Federal Housing by Program Type \(2012\).](#)
  - [The Center for HIV Law and Policy, Chart: Comparative Sentencing on HIV Criminalization in the United States \(2012\).](#)

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## **HIV CRIMINALIZATION FREQUENTLY ASKED QUESTIONS**

- 1. Are you saying that a person who intentional infects someone else with HIV should not be punished?**
  - 2. How often do HIV-specific arrests or prosecutions happen?**
  - 3. Why are infections still happening despite HIV criminalization laws and prosecutions?**
  - 4. How often do HIV prosecutions involve transmission?**
  - 5. Is there a statute of limitations? If I had sex with someone 5 or 10 years ago, can they come back and try to prosecute me now for not disclosing my status?**
  - 6. Shouldn't people living with HIV have to tell everyone their status?**
  - 7. How can I protect myself from being prosecuted?**
  - 8. What about men who lie to women and say they are faithful and get them to not use a condom and then infect them- shouldn't they be prosecuted?**
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*1. Are you saying that a person who intentional infects someone else with HIV should not be punished?*

No. We are saying that a criminal statute seeking to address this type of behavior should reflect generally accepted criminal law principles and not conflict with public health priorities. Any prosecution on the basis of HIV (or any other sexually transmitted infection) should require:

- proof of an intent to harm;
- conduct that is likely to result in that harm;
- proof that the conduct of the accused, in fact, resulted in the intended harm; *and*
- punishment that is proportionate to the actual harm caused by the accused person's conduct.

*2. How often do HIV-related arrests or prosecutions happen?*

There is no way to get an accurate number of HIV-specific arrests and prosecutions. Official data on arrests and prosecution of HIV-related offenses is not maintained or compiled. Even if prosecution offices and police departments collected this information, it would be impossible to get an accurate count because the type of data typically collected by these

offices would not reflect situations where a person's HIV status was used for a general criminal charge such as aggravated assault or attempted murder, or where an HIV positive person is charged under an HIV-specific statute or greater general criminal offense as a way to pressure him/her to plead guilty to a lesser offense.

However, there are some resources with arrest and prosecution data that can help illustrate the frequency and types of HIV-related arrests and prosecutions:

- [Chart: Prosecutions and Arrests for HIV Exposure in the United States, 2008–2017](#) (This regularly updated chart from The Center for HIV Law and Policy provides a snapshot of the type of HIV-related arrests and prosecutions in the United State from 2008 to present).
- [Zita Lazzarini et al., Evaluating the Impact of Criminal Laws on HIV Risk Behavior, 30 J.L. Med. & Ethics 239, 239-253\(2002\).](#) (This study used case decisions and newspaper articles to identify and analyze prosecutions of persons for exposure or transmission of HIV between 1986 and 2001).
- [HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice, The Center for HIV Law and Policy \(2017\)](#) (This resource provides in-depth discussion of prosecutions by state or territory).
- [Carol L. Galletly and Zita Lazzarini, Charges for Criminal Exposure to HIV and Aggravated Prostitution Filed in the Nashville, Tennessee Prosecutorial Region 2000-2010, AIDS and Behavior \(2013\).](#) (This study reviewed and analyzed arrested data for HIV-specific charges in the Nashville, Tennessee region from 2000 to 2010).

### *3. Why are infections still happening despite HIV criminalization laws and prosecutions?*

HIV-related arrests and prosecutions do not address what is essentially the driver of the epidemic: transmission by individuals who do not know their HIV status. According to the [Centers for Disease Control and Prevention](#), “nearly 1 in 5 people with HIV don’t know they are infected, don’t get HIV medical care and can pass the virus on to others without knowing it.” Yet, HIV-specific laws and prosecutions only apply when an individual know his or her status. So in addition to serving as a deterrent to testing, HIV-specific laws and prosecutions also reinforce misconceptions about HIV transmission.

### *4. How often do HIV prosecutions involve transmission?*

Transmission in HIV-related prosecution is rare. Although these incidents are sensationalized in the media, they are not common. In every case, there was no proof that the accused was the source of the accuser’s infection. In fact, transmission is not required under any HIV-related criminal law or in most prosecutions, and the actual risk of transmission in a particular case– including use of condoms or effective medical treatment – is often not considered.

### *5. Is there a statute of limitations? If I had sex with someone 5 years ago, can they come back and try to prosecute me now for not disclosing my status?*

Statutes of limitations for criminal offenses vary by state. You should consult your state’s criminal code for the statute of limitations for HIV-specific criminal offenses as well as

general criminal offenses that may be used to target people living with HIV, such as reckless endangerment or assault.

*6. Shouldn't people living with HIV have to tell everyone their status?*

No. When a sexual act is about to take place both partners should be responsible for discussing HIV status and sexually transmitted infections (STI), as well as negotiating safe sex practices. This is not only the most ethical approach, it is the most practical. People with HIV are at their most infectious shortly after they become infected – and at a time when in almost all cases the newly-infected person does not yet know that HIV transmission has occurred. Mutual responsibility is important especially because the presence of an STI makes a person more susceptible to HIV and other more prevalent and easily transmitted STIs, such as chlamydia, human papillomavirus (HPV), herpes, and syphilis – diseases that can be especially harmful for a person with HIV. Therefore, thinking that only an HIV positive person should be responsible for discussing his/her status and protecting a partner's health actually places both partners at greater risk. It also ignores the fact that there are many other STIs – including HPV and treatment-resistant gonorrhea – that have equal or greater negative effects on health outcomes.

*7. How can I protect myself from being prosecuted?*

There is no single thing that you can do to avoid prosecution, although there are steps you can take to reduce that risk. The Center for HIV Law and Policy has resources that provide tips and guidance that can be helpful. For more information on ways to protect yourself from arrest, or on what to do if you are arrested, refer to the [\*HIV Criminalization: Are You At Risk?, Palm Card\*](#) and [\*Guidance for People Living with HIV Who Are At Risk of, or Are Facing, Criminal Prosecution for HIV Nondisclosure or Exposure\*](#).

*8. What about men who lie to women and say they are faithful and get them to not use a condom and then infect them, shouldn't they be prosecuted?*

There are a number of ways people deceive their partners in their relationships that causes emotional, physical, economic, and other serious harms. However, the criminal justice system is not used to remedy these situations. Therefore, criminal laws should not be used to negate the fact that both partners share responsibility for safe sex practices in a relationship, even when there is deceit.

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## **HIV CRIMINALIZATION RESOURCES BY SUBJECT**

### **GUIDANCES AND FACT SHEET**

- [Guidance for a Legal Advocate Representing an HIV-Positive Client in a Criminal Exposure Case](#)
- [Guidance for People Living with HIV Who Are At Risk of, or Are Facing, Criminal Prosecution for HIV Nondisclosure or Exposure](#)
- [HIV Criminalization: Are You At Risk?, Palm Card, Positive Justice Project](#)
- [Positive Justice Project: HIV Criminalization Fact Sheet](#)

### **LEGISLATION**

- [Fact Sheet on H.R. 1843, REPEAL HIV Discrimination Act](#)
- [H.R. 1843, REPEAL HIV Discrimination Act Outreach Toolkit](#)

### **STATE LAWS AND PROSECUTION PRACTICES DOCUMENTS**

- [Chart: Comparative Sentencing on HIV Criminalization in the United States](#)
- [Chart: State-by-State Criminal Laws Used to Prosecute People with HIV](#)
- [HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice, The Center for HIV Law and Policy \(2017\)](#)
- [Positive Justice Project: HIV Criminalization Fact Sheet](#)
- [When Sex is A Crime and Spit is a Dangerous Weapon: A Snapshot of HIV Criminalization in the United States](#)

### **STATEMENTS AGAINST HIV CRIMINALIZATION**

- [PJP Proposed Resolution Submitted to the President's Advisory Council on HIV/AIDS \(PACHA\) On Ending Federal and State HIV-Specific Criminal Laws, Prosecutions and Civil Commitments](#)
- [US Conference of Mayors, Resolution on HIV Criminalization](#)
- [Collection of Statements from Leading Organizations Urging an End to the Criminalization of HIV and Other Diseases](#)
- [Selected Policy Statements and Support for Decriminalization in the United States](#)

### **TRANSMISSION**

- [Chart: HIV, STIs and Relative Risks in the United States](#)
- [Risk of HIV Infection Per Single Sexual Exposure to An Individual Living With HIV, And Other Life Events With Comparable Risk of Occurrence](#)
- [Sample Expert Statement on HIV Transmission Risk](#)

- [Spit Does Not Transmit \(Law Enforcement Factsheet\)](#)
- [Transmission Routes, Viral Loads and Relative Risks: The Science of HIV for Lawyers and Advocates](#)
- [Routes, Risks And Realities Of HIV Transmission And Care: Current Scientific Knowledge And Medical Treatment](#)

## **WOMEN**

- [What HIV Criminalization Means to Women in the U.S.](#)

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