

THE POSITIVE JUSTICE PROJECT

U.S.- Based Advocacy Against HIV Criminalization

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ELEMENTS OF HIV-SPECIFIC CRIMINAL LAWS

- There are 38 states and territories which have HIV-specific criminal laws, including sentence enhancement.
- Typically:
 - The person being charged knows that s/he is HIV-positive.
 - Actual transmission is unnecessary; exposure without disclosure is enough.
 - Intent to harm, Condom use, viral load have no bearing in almost all states
- And, for some laws:
 - Disclosure/Consent is a defense but is difficult to prove
 - No-risk contact such as spitting, biting is still a felony
 - -Type of sex doesn't matter

ROUTES AND RISKS OF TRANSMISSION

■ Infection rate per sexual exposure to HIV:

- Receptive vaginal intercourse: 0.10%
- Insertive vaginal intercourse: 0.05%
- Receptive oral intercourse: 0.00-0.04%
- Insertive oral intercourse: ~0.00%
- Receptive anal intercourse: 1.40%
- Insertive anal intercourse: 0.065%

Fox J, et al. Quantifying sexual exposure to HIV within an HIV-serodiscordant relationship: development of an algorithm. *AIDS*. 2011;25:1065.

FACTS ON HIV-SPECIFIC CRIMINAL LAWS

- These statutes impose penalties from an era when HIV infection was regarded as “invariably fatal.”
- Arrests coordinate with wildly sensationalized reporting on “AIDS Monsters,” etc.
- Roughly more than half of cases involve consensual adult sex; about 25% involve spitting and biting; all types have produced severe sentences despite the absence of HIV transmission in most cases.

IMPACT: RECENT CRIMINAL PROSECUTION

- Oct 2010: HIV+ man receives a sentence of 7 years for consensual sex without disclosure with man met on internet (Manhunt website).
- Jan. 2011: HIV+ female service member gets 8 years and dishonorable discharge for nondisclosure, no transmission.
- Mar. 2011: HIV+ man was sentenced to 15 years for consensual sex without disclosure under Idaho's "Transfer of Bodily Fluids Which May Contain HIV" law.
- Sex offender registration not uncommon

Lack of Balance in Punishment:
Vehicular Manslaughter
vs.

HIV non-disclosure or exposure

- OH:
 - 6 months for Vehicular Manslaughter vs. 16 years for man who failed to disclose to partner; sex offender; no transmission
- TN:
 - 29 days/varies v. 3-15 yrs, \$10,000 fine, sex offender status for exposure without infection

Comparison of Prosecutions in Two Time Periods (1986-2001 / 2008-2011)

Mode Exposure	1986-2001* Number	Percent	2008-2011* * Number	Percent
Consensual sex	84	27%	63	58%
Prostitution	41	13%	11	10%
Spitting/biting	75	23%	26	24%
* Lazzarini, Bray, Burris, 2002				
** Positive Justice Project, 2010				

IMPACT: PUBLIC HEALTH

- In some states, state health officials require signing of forms in which HIV+ persons acknowledge potential liability.
 - These forms can be used against people with HIV in future prosecutions.
 - Example: written acknowledgment of “necessity to avoid causing pregnancy or becoming pregnant;”
- Weakens the message that sexual health is the responsibility of both partners during sex
- Professional/ethical conflict for health providers
- Increases stigma by strengthening culture of blame concerning infection.
- Perceived legal vulnerability based on HIV+ status.



Modernization is Long Overdue!

- Laws reflect long-outdated misconceptions about the routes, risks and consequences of HIV transmission
 - “High Risk” = < 1% of transmission?
 - Transmission risk per contact, even with receptive anal sex, is pretty low
 - Risk associated with oral sex, insertive vaginal sex very low/near zero
 - Effective ART makes HIV a chronic manageable disease, and further reduces all risk to near-zero
- Laws and prosecutions at direct odds with other government-funded initiatives and prevention priorities, e.g., consistent condom use, mutual responsibility, anti-stigma campaigns

Modernization is Long Overdue!

- Lack of Proportionality in Sentencing Shows Bias
 - No rational correlation between potential harm and sentences imposed when HIV is involved
 - Make this our Mantra: “Treat Like Risks Alike”
- HIV Criminalization is being used as an acceptable proxy for “isms” addressed in race and disability-related anti-discrimination laws

SELECT RESOURCES & CONTACT INFORMATION

- **Guidance for People Living with HIV Who Are At Risk of, or Are Facing, Criminal Prosecution for HIV Nondisclosure or Exposure:** <http://www.hivlawandpolicy.org/resources/view/580>
- **Transmission Routes, Viral Loads and Relative Risks: The Science of HIV for Lawyers and Advocates, Center for HIV Law and Policy, 2011**
<http://www.hivlawandpolicy.org/resources/view/643>
- **What HIV Criminalization Means to Women in the U.S.:**
<http://www.hivlawandpolicy.org/resources/view/584>
- **Ending and Defending Against HIV Criminalization: State and Federal Laws and Prosecutions:** <http://www.hivlawandpolicy.org/resources/view/564>
- **Positive Justice Project: HIV Criminalization Fact Sheet**
<http://www.hivlawandpolicy.org/resources/view/560>

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