



National Consensus Statement Against the Criminalization of HIV in the United States
Congressman Hansen Clarke affirms the need to modernize current laws

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New York, July 24, 2012 – The Positive Justice Project (PJP), a diverse national alliance of people living with HIV and their advocates, today issued a joint statement on the urgent need to modernize HIV criminal laws and prosecution policies, and to end the use of special laws and rules for handling criminal complaints that a person with HIV “exposed” another person to their bodily fluids.

Thirty-four U.S states and territories have laws criminalizing HIV “exposure” (including through risk-free conduct such as spitting and biting) or nondisclosure of an individual’s HIV status. Hundreds of Americans with HIV across the country are serving multi-decade sentences for so-called exposure of another to HIV--in many cases, even when no transmission has occurred.

United States Representative Hansen Clarke of Michigan’s 13th district issued a statement last Friday endorsing the PJP Consensus Statement. He observed that “[t]he Consensus Statement clearly identifies the serious failures of our current law to prevent injustices in the prosecution of HIV-positive people and charts a way forward based on reasonable criteria...The criminalization of HIV adds a fear of legal bias to the daily struggles faced by the growing number of people living with HIV/AIDS in the United States. We must also take action to address stigma, fear, and other forms of overt and covert discrimination against people living with HIV/AIDS.”

The PJP Consensus Statement on HIV Criminalization calls on federal and state officials to modernize criminal laws and policies and to eliminate HIV-specific statutes. The statement also calls on officials to ensure that any prosecution based on exposure to a sexually transmitted disease, including HIV, requires 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 alleged harm and punishment that is proportionate to the actual harm caused by the defendant’s conduct.

“Our members have grown increasingly concerned that, in many of their states, low-risk or no-risk sexual activity has resulted in serious charges and long sentences,” said Oscar Mairena of the National Alliance of State and Territorial AIDS Directors. “In 2011, we released a statement expressing our members’ commitment to providing public health leadership on the relative risks of transmission and the dangers of a punitive response in sound public health practice. NASTAD continues to support efforts to end HIV-specific criminal laws and policies that perpetuate stigma and discrimination against people living with HIV.”

David Plunkett, an HIV-positive man, had served nearly five years in prison on an aggravated assault charge on the grounds that Plunkett used his saliva as a “dangerous instrument” when he allegedly bit a police officer during an altercation. Mr. Plunkett’s sentence for aggravated assault was vacated on June 7th, 2012, by New York’s highest court, and he was released from Sing Sing prison on July 19, 2012, after repeated calls from New York officials and advocates asking parole officials to expedite his release. In vacating the aggravated assault conviction, the Court “sought not simply to reach a textually and historically correct understanding of what the Legislature meant” the law to include, but also to avoid the injustices that “would result if criminal liability varied with the corporeal attributes of assailants and their victims.”

Medical and public health experts have long dismissed the risk of HIV transmission through spitting or biting as near zero--too small to be measured. Yet the Plunkett case is one of hundreds across the country in which HIV-positive individuals have been convicted of felony charges and long sentences on the basis of their HIV status for no-risk conduct or consensual adult sex.

The Consensus Statement highlights injustice caused by HIV criminalization and includes clear rationales, both scientific and legal, for why change is overdue. "People living with HIV have faced unfairly severe penalties simply because the justice system allows treatment of their bodily fluids as inherently dangerous, as deadly weapons," said Rashida Richardson, a staff attorney at the Center for HIV Law and Policy (CHLP), which staffs and coordinates the PJP.

"Putting a judicial seal of approval on wildly inaccurate characterizations of HIV is at direct odds with the goal of normalizing HIV and getting people tested and into health care," added Catherine Hanssens, Executive Director of CHLP.

Scott Schoettes of Lambda Legal noted: "Singling people out for extra punishment based on HIV status is plain bad policy. What we really need to do is create an environment in which people with HIV feel safe to disclose this information voluntarily to their sexual partners."

The Statement speaks in particular to the effects of HIV criminalization on vulnerable or marginalized communities. "We've seen that HIV criminalization disproportionately affects Black men and women," said Lisa Fager Bediako of the Congressional Black Caucus Foundation. "So it's become yet another way of targeting people of color for arrest and incarceration."

In addition to Representative Clarke and the Center for HIV Law and Policy, original endorsers of the Consensus Statement on HIV Criminalization in the United States are: the AIDS Foundation of Chicago, AIDS Legal Assistance Project, Public Law Center, Orange County, CA, AIDS United, Community HIV/Hepatitis Advocates of Iowa Network (CHAIN), Congressional Black Caucus Foundation, Housing Works, Lambda Legal, National Alliance of State and Territorial AIDS Directors (NASTAD), National Minority AIDS Council, OLB (Online Buddies, Inc.) Research Institute, Positive Iowans Taking Charge (PITCH) Project, U.S. Positive Women's Network, Unique & Unified, and individuals including Anna Forbes (consultant), Bronwen Lichtenstein (University of Alabama), John Earl (activist), and Iowan activist Tami Haught.

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The PJP is the first coordinated national effort to address HIV criminalization in the United States. For more information on the PJP and HIV criminalization, visit <http://hivlawandpolicy.org/public/initiatives/positivejusticeproject>.

To view the Positive Justice Project Consensus Statement on the Criminalization of HIV in the United States, go to: <http://hivlawandpolicy.org/resources/view/768>. To endorse the statement, email Rrichardson@hivlawandpolicy.org

The work of the PJP is made possible by generous support from the M.A.C. AIDS Fund, the Elton John AIDS Foundation, the John M. Lloyd Foundation, Broadway Cares/Equity Fights AIDS and the Henry van Ameringen Foundation.