

HIV CRIMINALIZATION

A Challenge to Public Health and Ending AIDS

AIDS Watch
APRIL 28–29, 2014

SUPPORT HR 1843, the Repeal HIV Discrimination Act of 2013, AND SUPPORT S 1790, the Repeal Existing Policies that Encourage and Allow Legal HIV Discrimination Act of 2013

What is HIV Criminalization?

“HIV criminalization” refers to the overly broad use of criminal law to penalize alleged, perceived or potential HIV exposure; alleged nondisclosure of a known HIV-positive status prior to sexual contact (including acts that do not risk HIV transmission); or nonintentional HIV transmission. Sentencing under HIV criminal law sometimes involves decades in prison or required sex offender registration, often in instances where no HIV transmission occurred or was even possible.

More than 1,000 people living with HIV have faced criminal charges in 39 states for allegedly exposing others or not disclosing their HIV-positive status.¹ Thirty-three states (and two U.S. territories) have HIV-specific statutes,² which apply only to people living with HIV—an immutable characteristic. Prosecution is limited to those who know their HIV status, as those unaware of their HIV-status cannot be prosecuted for nondisclosure.

HIV criminal laws often are based on long-outdated and inaccurate beliefs about HIV transmission risks rather than real science. Such laws further perpetuate misperceptions about HIV-risk and transmission and increase stigma against people living with HIV. By placing those who are aware of their HIV-positive status at increased risk of prosecution, HIV criminal laws contradict public health goals seeking to expand HIV testing and engagement in care and treatment.

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Consequences for People with HIV

HIV criminalization creates a disabling legal environment for people living with HIV,³ as well as an additional barrier to testing, treatment and disclosure of their HIV-positive status, putting them at heightened risk of vigilantism and violence.⁴ Even in instances when it has been demonstrated that HIV-positive individuals had an undetectable viral load (which has been shown to virtually eliminate the risk of transmission⁵) and used condoms, long sentences have not been unusual. Examples include sentences of 25 years in Iowa,⁶ 30 years in Idaho⁷ and seven years in Michigan.⁸ What’s more, about 25% of recent criminalization cases were for biting, spitting or scratching.⁹ Despite the fact that those actions do not transmit HIV, the cases still resulted in disproportionately long sentences—for example, a 35-year sentence in Texas¹⁰ and a 10-year sentence in New York.¹¹ In addition, convicted individuals may be required to register as sex offenders.

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pozitively healthy
A National HIV Advocacy Coalition Led by HealthHIV

Consequences for Public Health, Health Care Providers and Legal Services

HIV criminalization undermines public health efforts, challenges care for those living with HIV and puts undue burden on resource-constrained legal systems. Such laws:

- Punish responsible behavior—getting tested—and privilege ignorance regarding HIV status. Yet most new infections are transmitted by people who do not know they have HIV.¹²
- Create mistrust of and lessen cooperation with traditional, effective public health initiatives, such as partner notification, and alienate people living with HIV from their health care providers.¹³

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Reps. Barbara Lee (D-Calif.) and Ileana Ros-Lehtinen (R-Fla.) introduced HR 1843 on May 7, 2013. The bill has 37 co-sponsors and has been referred to the House Committees on Judiciary, Energy and Commerce, and Armed Services. Sen. Chris Coons (D-Del.) introduced similar legislation in the form of S 1790 on December 10, 2013, which has been referred to the Senate Judiciary Committee.

We strongly urge co-sponsorship of these two bills. Congress must send a message that federal and state laws, policies, and regulations regarding people living with HIV should:

- Not place unique or undue burdens on individuals solely as a result of their HIV status.
- Demonstrate a public health-oriented, evidence-based, medically accurate, and up-to-date understanding of HIV transmission, health implications and treatment, as well as the negative impact of punitive HIV-specific laws, policies, regulations, and judicial precedents and decisions on public health and on affected people, families and communities.

In particular, this critical legislation:

- Directs the U.S. Attorney General (AG), as well as the Secretaries of the Department of Health and Human Services (HHS) and the Department of Defense (DOD), to initiate a national review of federal (including military) and state

laws, policies, regulations, and judicial precedents and decisions regarding criminal and related civil commitment cases involving people living with HIV.

- Directs the AG to transmit to Congress and make publicly available the results of such review with related recommendations.
- Requires the AG and HHS Secretary to: 1) develop and publicly release guidance and best practice recommendations for states; and 2) establish an integrated monitoring and evaluation system to measure state progress.
- Directs the AG and HHS and DOD Secretaries to transmit to the President and Congress any proposals necessary to implement adjustments to federal laws, policies or regulations.
- Prohibits this Act from being construed to discourage the prosecution of individuals who intentionally transmit or attempt to transmit HIV to another individual.
- Does not have any fiscal ramifications.

¹ Global Network of People Living with HIV (GNP+) and HIV Justice Network. Advancing HIV justice: a progress report of achievements and challenges in global advocacy against HIV criminalisation. 2013. www.hivjustice.net/advancing/

² Lehman JS, et al. Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States. *AIDS Behav.* March 15, 2014. <http://link.springer.com/article/10.1007%2Fs10461-014-0724-0>

³ Global Commission on HIV and the Law. Risk, rights and health. July 2012. <http://hivlawcommission.org/resources/report/FinalReport-Risks,Rights&Health-EN.pdf>

⁴ The Sero Project. National criminalization survey. July 2012. www.seroproject.com

⁵ Rodger A, et al. HIV transmission risk through condomless sex if HIV+ partner on suppressive ART: PARTNER study. 21st Conference on Retroviruses and Opportunistic Infections, Boston, 2014. Abstract 153LB.

⁶ State vs. Rhoades (Iowa 2010).

⁷ State vs. Thomas (Idaho 2009).

⁸ State vs. Merithew (Michigan 2013).

⁹ The Center for HIV Law and Policy. Spit does not transmit. March 2013. www.hivlawandpolicy.org/resources/spit-does-not-transmit-center-hiv-law-and-policy-national-organization-black-law

¹⁰ State vs. Campbell (Texas 2008).

¹¹ State vs. Plunkett (New York 2006).

¹² The Center for HIV Law and Policy. What HIV Criminalization Means to Women in the U.S. February 2011. www.hivlawandpolicy.org/resources/what-hiv-criminalization-means-women-us-center-hiv-law-and-policy-2011

¹³ O'Byrne P, et al. Nondisclosure prosecutions and population health outcomes: examining HIV testing, HIV diagnoses, and the attitudes of men who have sex with men following nondisclosure prosecution media releases in Ottawa, Canada. *BMC Public Health.* February 2013. <http://www.biomedcentral.com/1471-2458/13/94>