

the**well**project

# HIV Criminalization and Women

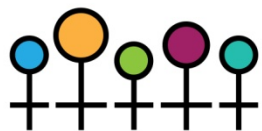
*Last updated: March 5, 2020*

*Together, we can change the course of the HIV epidemic...one woman at a time.*

#onewomanatathetime

[www.thewellproject.org](http://www.thewellproject.org)

#thewellproject

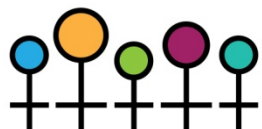


thewellproject

# What Is HIV Criminalization?

- ***No one should be punished simply because they have a health condition***
  - But many areas of the world have laws and practices that *unfairly punish people living with HIV*
- This is often called **HIV criminalization**





thewellproject

# What Is HIV Criminalization?

- 75 countries (103 jurisdictions including Nigerian and US states) have HIV-specific criminal laws (as of May 2019)
- Some areas do not have HIV criminalization laws
  - At least 39 countries and 26 US states have used general criminal laws to punish people, or increase charges, due to HIV-positive status
- People with HIV can face criminal charges for engaging in acts not considered criminal if done by someone not living with HIV
  - Eg: consensual sex with another adult



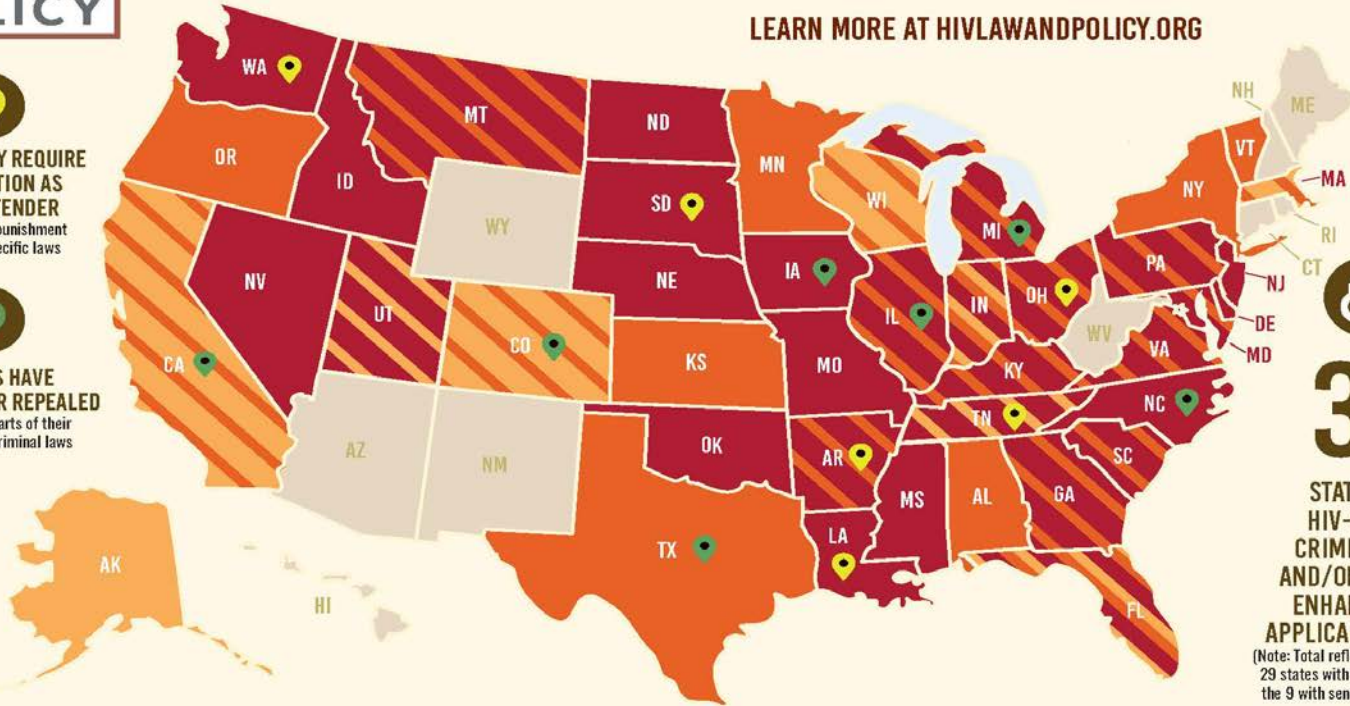
# HIV CRIMINALIZATION IN THE UNITED STATES

AN OVERVIEW OF THE VARIETY AND PREVALENCE OF LAWS USED TO PROSECUTE AND PUNISH PEOPLE LIVING WITH HIV (PLHIV) IN THE US.

LEARN MORE AT [HIVLAWANDPOLICY.ORG](http://HIVLAWANDPOLICY.ORG)

  
6 STATES MAY REQUIRE REGISTRATION AS A SEX OFFENDER as part of the punishment under HIV-specific laws

  
7 STATES HAVE REFORMED OR REPEALED one or more parts of their HIV-specific criminal laws



  
**34**  
STATES HAVE HIV-SPECIFIC CRIMINAL LAWS AND/OR SENTENCE ENHANCEMENTS APPLICABLE TO PLHIV

(Note: Total reflects overlap among the 29 states with HIV-specific laws and the 9 with sentence enhancements.)

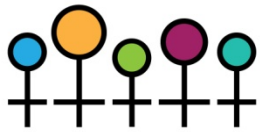
  
**29**  
STATES WITH HIV-SPECIFIC CRIMINAL LAWS including laws targeting sex/non-disclosure, exposure to bodily fluids, needle-sharing, sex work, and blood/organ/semen donation

  
**9**  
STATES WITH SENTENCING ENHANCEMENTS applicable to PLHIV who commit an underlying sexual assault crime.

  
**24**  
STATES THAT HAVE PROSECUTED PLHIV UNDER NON-HIV-SPECIFIC, GENERAL CRIMINAL LAWS (this number represents known prosecutions within the last 10 years)

Updated: March 1, 2019. Laws change frequently and this map is only accurate to the best of our knowledge. It is not a substitute for legal advice.

Source: Center for HIV Law and Policy (<https://www.hivlawandpolicy.org/resources/map-hiv-criminalization-united-states-center-hiv-law-and-policy-2018>)

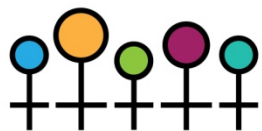


thewellproject

# What Is HIV Criminalization?

Most known HIV criminalization cases ***are not about HIV transmission***

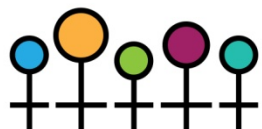
- Focused on alleged HIV non-disclosure (one person claims their partner did not tell that they had HIV)
  - Pits the word of two partners against one another
  - Almost impossible to truly prove
- Some cases involve acts that pose zero risk of HIV transmission or risk so low it is basically zero
  - Ex.: spitting, biting, scratching, oral sex, sex using proven prevention methods



thewellproject

# Where Do These Laws Come From?

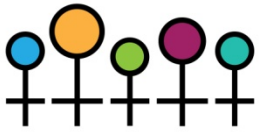
- Laws were originally based on myths and misconceptions about HIV transmission
- When they are applied, they reinforce:
  - ***Fear, discrimination, and stigma*** against people living with HIV
  - ***Dangerous misinformation*** about how HIV is transmitted -- and can be prevented



thewellproject

# Where Do These Laws Come From?

- World's first HIV-related prosecutions and laws happened in the mid-late 1980s
  - At that time, HIV was truly a death sentence for millions
  - Laws were an attempt to control a raging epidemic that virtually no one understood
- Spread the myth that people with HIV were dangerous "monsters," and that risk of "intentional infection" was high

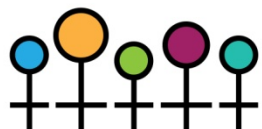


thewellproject

# Where Do These Laws Come From?

- Effective HIV drugs now extend and improve the lives of people living with HIV, reduce transmission risk to effectively zero
- However, ***trend of HIV criminalization has increased in recent years***
- This fact makes it even clearer that these laws are based on irrational fears, not current scientific knowledge about HIV

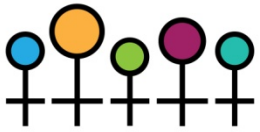




thewellproject

# What Is the Impact of These Laws?

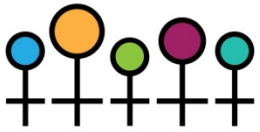
- No evidence of ***any public health benefit***
- Increase stigma and discrimination
- Make it harder for people to be tested, trust health professionals, get treatment if needed
- Most laws only require that a person knew they were living with HIV in order to prosecute them
  - Punishes people for healthful behavior of getting tested
- Especially true of whoever in a relationship knew their HIV status first (most often the woman)



thewellproject

# Do These Laws Help Women?

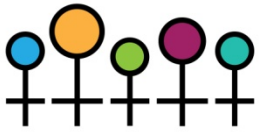
- Common argument for HIV criminalization laws:
  - *“They protect women from partners who might be dishonest about their HIV status -- or violent towards them, increasing their HIV vulnerability”*
- These laws do not promote honesty, heal violence, or address epidemic of gender-based violence and uneven power dynamics
  - More often used as tools of abuse, harassment, or coercion



thewellproject

# Do These Laws Help Women?

- Women who are prosecuted, or even accused, in HIV criminal cases may lose housing, child custody, access to services, and much more
  - E.g. US state of Louisiana, a person must register as a sex offender -- makes it difficult to rebuild her life
- Communities already subject to over-policing and incarceration bear highest burden of HIV charges
  - E.g. sex workers (or those perceived to be engaging in sex work), communities of color

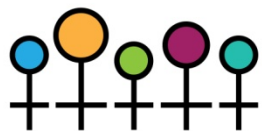


thewellproject

# FAQs About HIV Criminalization

## ***What about people who "intentionally infect" others with HIV? Shouldn't they be punished?***

- Cases of specific intent to harm by transmitting HIV almost never happen
- Not disclosing one's HIV status ***does not*** = "intentionally infecting" someone with HIV
  - Sex or contact with a person with HIV does not automatically = transmission
  - Saying "I have HIV" is not always a safe option
- Opposing stigmatizing HIV laws helps counter stigma and ***make HIV disclosure safer***

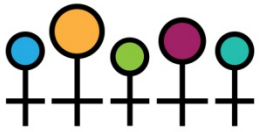


thewellproject

# FAQs About HIV Criminalization

## ***What if someone living with HIV, including a partner, rapes or molests someone else?***

- Laws against sexual violence ought to be enforced in these cases
  - Often poorly enforced, especially when rape happens within marriage
- Criminalizing people because of their HIV status does not protect women from sexual assault
  - ***Rape is a crime; HIV is not a crime***

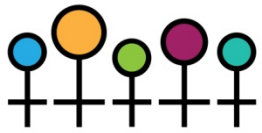


thewellproject

# FAQs About HIV Criminalization

***My partner didn't tell me he had HIV; now I have it. Isn't sending him to jail my only option?***

- Understandable to be angry if dishonesty was part of how you acquired HIV. **However:**
  - Having HIV does not have to be a death sentence; prosecuting someone could be
  - If you file a complaint and then change your mind, that may not stop a prosecution
- Need more non-punitive approaches to healing the perceived harm of HIV transmission

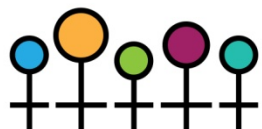


thewellproject

# FAQs About HIV Criminalization

## ***How can we use "Undetectable Equals Untransmittable" to fight these outdated laws?***

- Important to share current scientific information about HIV when fighting these laws
  - U=U helps show why removing barriers to HIV care and treatment – including stigmatizing laws – is key
- Be careful not to spread false idea that, without HIV drugs and an undetectable viral load, legal punishment of people with HIV is acceptable
  - HIV criminalization is ***harmful*** to public health
  - ***Never appropriate***, no matter what the person's viral load



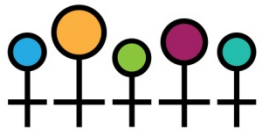
thewellproject

# FAQs About HIV Criminalization

## ***How can we use "Undetectable Equals Untransmittable" to fight these outdated laws?***

- *Worth noting:* Women may have a harder time getting their viral loads to undetectable
  - More likely to be diagnosed later in life than men
  - Prioritize health of others over their own
  - Higher rates of violence, poverty, and the instability that comes with them
    - Can make it hard to be consistent with medication



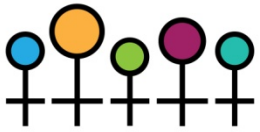


thewellproject

# FAQs About HIV Criminalization

## ***What if someone brings charges against me for HIV nondisclosure?***

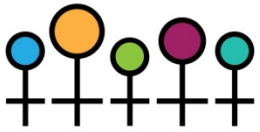
- **Know your rights:** In the U.S., you are not required to speak with anyone without a lawyer present
- **Get help:** You must be represented by people who understand HIV and HIV criminalization
  - Contact your local HIV organization or legal clinic
  - Contact U.S. or international anti-criminalization orgs
- **Know that you are not alone:** Many people have faced these unfair charges; there is a growing global movement to fight them



thewellproject

# Organizations That May Help

- Sero Project: [www.seroproject.com](http://www.seroproject.com)
- Center for HIV Law and Policy:  
[www.hivlawandpolicy.org](http://www.hivlawandpolicy.org)
- Lambda Legal Defense: [www.lambdalegal.org](http://www.lambdalegal.org)
- American Civil Liberties Union (to find your local ACLU chapter): [www.aclu.org](http://www.aclu.org)
- HIV Justice Worldwide:  
[www.hivjusticeworldwide.org](http://www.hivjusticeworldwide.org)



thewellproject

## Learn More!

- To learn more, and for links to articles featuring more details, please read the full fact sheet:
  - [HIV Criminalization and Women](#)
- For more fact sheets and to connect to our community of women living with HIV, visit:
  - [www.thewellproject.org](#)
  - [www.facebook.com/thewellproject](#)
  - [www.twitter.com/thewellproject](#)