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HIV Criminalization and Women

Last updated: October 28, 2021

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

#onewomanatatime

www.thewellproject.org

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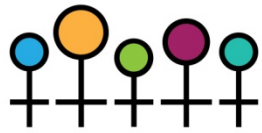


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What Is HIV Criminalization?

- ***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**





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What Is HIV Criminalization?

- 75 countries (as of May 2019) have HIV-specific laws
- Some areas do not have HIV criminalization laws
 - General criminal laws have been used or charges increased because someone is living with HIV
- People with HIV can face criminal charges for engaging in acts not considered criminal if done by an HIV-negative person
 - E.g.: consensual sex with another adult

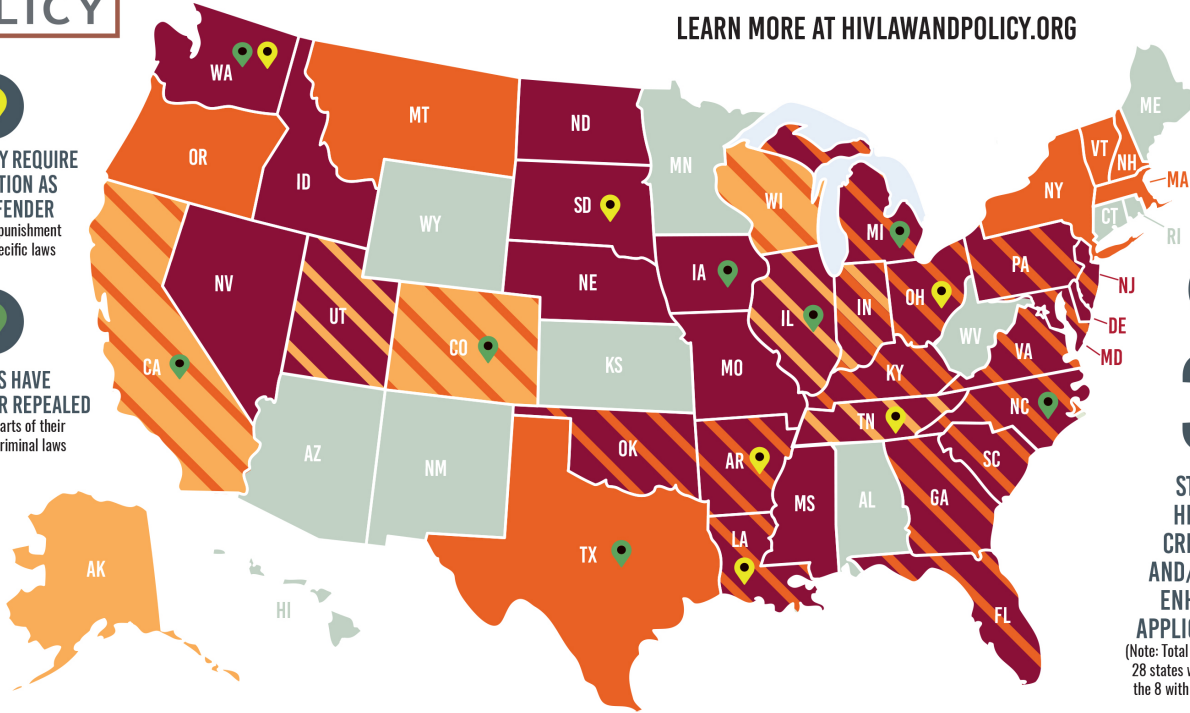
HIV CRIMINALIZATION IN THE UNITED STATES

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](https://www.hivlawandpolicy.org)


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


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REFORMED OR REPEALED**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



32

**STATES HAVE
HIV-SPECIFIC
CRIMINAL LAWS
AND/OR SENTENCE
ENHANCEMENTS
APPLICABLE TO PLHIV**
(Note: Total reflects overlap among the
28 states with HIV-specific laws and
the 8 with sentence enhancements.)



**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

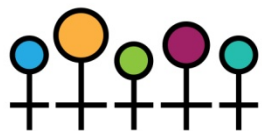


**STATES WITH
SENTENCING
ENHANCEMENTS**
applicable to PLHIV who
commit an underlying sexual
assault crime.



**STATES THAT HAVE PROSECUTED
PLHIV UNDER NON-HIV-SPECIFIC,
GENERAL CRIMINAL LAWS**
This number represents states with reported charges
and/or convictions for non-HIV-specific offenses,
where positive HIV status was relevant in establishing
a (non-HIV-specific) element of the offense.

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

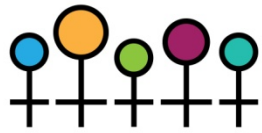


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What Is HIV Criminalization?

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

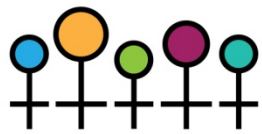
- Focused on alleged HIV non-disclosure (someone claims their partner did not tell them that they were living with HIV)
 - Pits the word of two partners against one another
 - Almost impossible to truly prove
- Sometimes there is no, or an extremely low, risk of HIV transmission



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Where Do These Laws Come From?

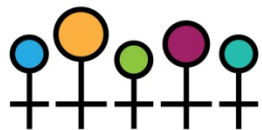
- Laws were originally based on myths and misconceptions about HIV transmission
- When they are applied, they reinforce:
 - ***Fear, discrimination, and stigma*** against people living with HIV
 - ***Dangerous misinformation*** about how HIV is transmitted -- and can be prevented



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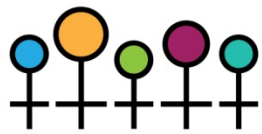
- World's first HIV-related prosecutions and laws happened in the mid-late 1980s
 - At that time, HIV was truly a death sentence for millions
 - Laws were an attempt to control a raging epidemic that virtually no one understood
- Spread the myth that people with HIV were dangerous "monsters," and that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



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Where Do These Laws Come From?

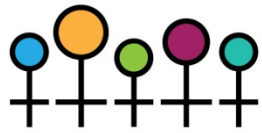
- Effective HIV drugs now extend and improve the lives of people living with HIV, reduce transmission risk to effectively zero
- However, ***trend of HIV criminalization has increased in recent years***
- This fact makes it even clearer that these laws are based on irrational fears, not current scientific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



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What Is the Impact of These Laws?

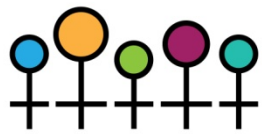
- No evidence of ***any public health benefit***
- Increase stigma and discrimination
- Make it harder for people to be tested, trust health professionals, get treatment if needed
- Most laws only require that a person knew they were living with HIV in order to prosecute them
 - Punishes people for healthful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



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Do These Laws Help Women?

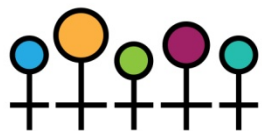
- Common argument for HIV criminalization laws:
 - *“They protect women from partners who might be dishonest about their HIV status -- or violent towards them, increasing their HIV vulnerability”*
- These laws do not promote honesty, heal violence, or address epidemic of gender-based violence and uneven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



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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. U.S. 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

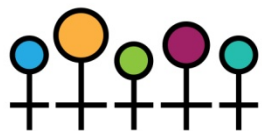


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FAQs About HIV Criminalization

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

- Specific intent to harm by transmitting HIV is very rare
- Not disclosing **does *not* mean** “intentionally infecting”
 - Sex or contact with a person living with HIV does not automatically = transmission
 - Saying "I am living with HIV" is not always a safe option
- Opposing stigmatizing HIV laws helps ***make HIV disclosure safer***
 - Could join advocacy group or educate people in community

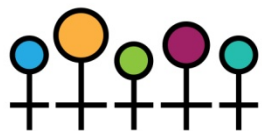


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FAQs About HIV Criminalization

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***

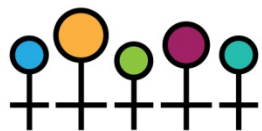


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FAQs About HIV Criminalization

My partner didn't tell me he was living with HIV; now I am living with it. Isn't my only option to send him to jail?

- Understandable that you are angry. **However:**
 - Living with HIV does not have to be a death sentence; prosecuting someone could be
 - Changing your mind after filing a complaint may not stop a prosecution
- Restorative justice and similar approaches may help heal rifts resulting from HIV transmission

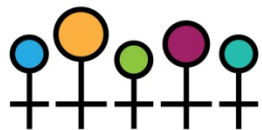


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FAQs About HIV Criminalization

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

- Do share current scientific information about HIV
 - 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 living with HIV is acceptable
 - HIV criminalization is ***harmful*** to public health
 - ***Never appropriate***, no matter the person's viral load

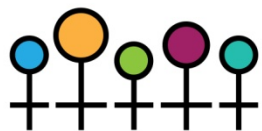


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FAQs About HIV Criminalization

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



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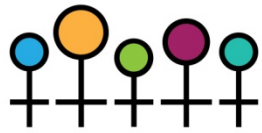
FAQs About HIV Criminalization

What if someone brings charges against me for HIV nondisclosure?

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

Additional Resources

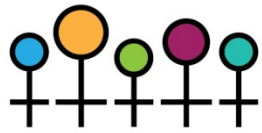
- Sero Project: www.seroproject.com
- Center for HIV Law and Policy:
www.hivlawandpolicy.org
- Lambda Legal Defense: www.lambdalegal.org
- American Civil Liberties Union (to find your local ACLU chapter): www.aclu.org
- HIV Justice Worldwide:
www.hivjusticeworldwide.org



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Additional Resources

- **10 Reasons Why Criminalization of HIV Transmission Harms Women** - *ATHENA Network* (<http://www.athenanetwork.org/our-work/promoting-sexual-and-reproductive-health-and-rights/10-reasons-why-criminalization-harms-women.html>)
- **HIV Criminalization: Know Your Rights** – *Positive Women's Network-USA* (<https://www.pwn-usa.org/issues/know-your-rights-guide/>)
- **Positive Women: Exposing Injustice** (film) - *Canadian HIV/AIDS Legal Network* (<http://www.positivewomenthemovie.org/>)
- **Protect Yourself** - *Sero Project* (<http://www.seroproject.com/protect-yourself/>)
- **Frequently Asked Questions** - *HIV Justice Worldwide* (<http://www.hivjusticeworldwide.org/en/frequently-asked-questions/>)



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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