

HIV IS NOT A CRIME

Frequently Asked Questions

I thought HIV was no longer a public health issue, why are we even talking about this?

Unfortunately, HIV is still very much a public health issue – it is no longer as visible as it used to be. Current laws criminalizing HIV status undermine public health goals and thereby contribute to the on-going problem. We need sound public health policies to combat the continuing epidemic.

What is HIV criminalization?

HIV criminalization is the wrongful use of one's HIV positive status in a criminal prosecution, either under "HIV-specific" criminal laws or under general criminal statutes, when charges or punishments are heightened simply because the person charged has HIV.

What is an HIV-specific law?

An HIV-specific law is one that specifically targets and punishes people living with HIV (PLHIV) for engaging in conduct that would otherwise be legal if not for the person's HIV positive status. These laws are typically about whether or not one can prove disclosure of their HIV positive status before sexual contact, rather than whether or not there was any harm inflicted (HIV transmission) or even whether or not there was any risk of transmission.

Some HIV-specific laws call for enhanced sentences for certain crimes (typically for assault or sex work), solely because of one's HIV status, including in situations where it is scientifically impossible to transmit HIV. Thirty-two US states and territories have HIV-specific laws.

Is repealing or modernizing these laws necessary?

Yes. Current laws are based on outdated assumptions about HIV and singles out HIV to be handled differently than other sexually-transmitted infections, some of which, if left untreated, can also seriously harm a person. Most of these laws were passed when far less was known about the actual routes and risks of HIV transmission and prior to the introduction of effective HIV treatments. The laws are also:

- Overly broad and subject to different interpretations;
- Do not reflect best criminal law practices;
- Frequently have punishments completely disproportionate to any purported harm; and
- Do not reflect current science regarding how HIV is (and is not) transmitted;
- Discourage people at risk from accessing testing and treatment services, thereby fueling the epidemic rather than slowing it.

Furthermore, research indicates that HIV-specific laws do not change people's behaviors, and criminal prosecution serves only to fuel stigma and discrimination against PLHIV.

Are there scientific advances necessitating repeal or modernization of these laws?

There are now effective treatments that improve the quality of life for PLHIV, resulting in a near average life expectancy for PLHIV on successful treatment. There are also a number of evidence-based HIV prevention strategies that have been proven to reduce the likelihood of transmission (e.g., condoms, anti-retroviral treatment that leads to an undetectable viral load, and pre-exposure prophylaxis, (PrEP), a medication to prevent HIV transmission prescribed to people at an elevated risk. These [scientific advances](#) should inform our laws.

How do the current laws harm public health and PLHIV?

The laws pose several harms including:

- You can't be prosecuted if you haven't been tested for HIV. So the laws punish knowing your HIV status—the responsible action—and encourage not knowing your status.
- The laws also make PLHIV less trustful of public health and less willing to cooperate with traditional public health disease prevention strategies, like partner notification or treatment adherence programs.
- By singling out HIV, the laws add to already high levels of HIV-related stigma, which remains a huge barrier to testing and treatment.
- Most people who receive an HIV-positive diagnosis go into some degree of mild shock, having been given life-altering news. Concerns for their personal safety, housing, custody of their children, employment and other factors may make it difficult or impossible for them to disclose their status immediately. HIV criminalization laws then make it even more difficult to disclose later, when they have accepted the diagnosis and properly prepared

for the potentially difficult consequences of disclosure.
In sum, the laws do much harm for efforts to curb the HIV epidemic.

Don't HIV criminalization laws help prevent the spread of HIV?

No. There is no research indicating the HIV criminalization laws serve their purported goal of reducing HIV transmission, nor are there credentialed public health experts who assert such a claim. Public health experts—including the American Medical Association, American Nursing Association, National Alliance of State and Territorial AIDS Directors and many other professional organizations—believe HIV criminalization laws are terrible public health policy and are making the epidemic worse because a growing body of evidence suggests they deter people from testing and treatment, and make PLHIV less likely, rather than more likely, to disclose their HIV positive status to potential partners.

So what if someone purposely gives or tries to give me HIV? Will modernizing the laws still punish those “intentional transmitters”?

It is a very rare occurrence that someone acts with the intention to transmit HIV to another, but every state has criminal assault statutes that enable prosecution of a person who intends to harm another, whether they use a gun, their fists, a knife or a virus. If we modernize these laws, we can still prosecute those who intentionally transmit or attempt to transmit HIV or any other serious infectious or communicable disease (however rarely that may occur).

Shouldn't disclosure of one's HIV status be required by law?

No. While best public health practices encourage disclosure, using the law to punish nondisclosure is not an effective way to motivate people to disclose. Disclosure is best encouraged in a non-punitive and supportive environment in which people feel safe to disclose – while still promoting use of the effective HIV prevention strategies (e.g., knowing one's status, remaining in treatment, using condoms). Modernizing the laws will lead to more supportive environments around disclosure.

Who supports changing the laws?

Numerous public health experts, policy organizations and federal government groups, including the Presidential Advisory Council on HIV/AIDS, the National HIV/AIDS Plan and the US Department of Justice, have all called for an end to HIV criminalization (click below for expert statements) [Click here](#) for quotes from some of these leading organizations urging HIV criminalization law reform:

1. [NACDL](#) National Association for Criminal Defense Lawyers (2016)
2. [APA](#) American Psychological Association (2016)
3. [NAS 2020](#) White House National AIDS Strategy US Updated 2020 (2015)
4. [IAPAC](#) International Association of Providers of AIDS Care (2015)
5. [US DOJ](#) U.S. Department of Justice, Civil Rights Division (2014)
6. [AMA](#) American Medical Association (2014)
7. [ANA and ANAC](#) American Nurses Association and Association of Nurses in AIDS Care (2015)
8. [ANAC](#) The Association of Nurses in AIDS Care (2014)
9. [UNAIDS](#) (2014, [2008](#))
10. [PACHA](#) Presidential Advisory Council on HIV/AIDS (2013)
11. [U.S. Conference of Mayors](#) (2013)
12. [NACCHO](#) National Association of County and City Health Officials (2013)
13. [IPU](#) Inter-Parliamentary Union & United Nations Development Programme (2013)
14. [IDSA and HIVMA](#) Infectious Disease Society of America and HIV Medicine Association (2012)
15. [PJP](#) Positive Justice Project and the Center for HIV Law and Policy (endorsed by over 1000 US Organizations/individuals (2012)
16. [Global Commission on HIV and the Law](#) (2012)
17. [Oslo Declaration on HIV Criminalisation](#) (2012)
18. [NASTAD](#) National Alliance of State and Territorial AIDS Directors (2011)
19. [Open Society Institute](#) (2008)
20. [Athena Network](#) (2009)

Is there a FAQ for the HIV criminalization laws specific to my state?

As of the writing of this FAQ, (adapted from Indiana's below) three states have developed FAQs.

- **California:** Californians for HIV Criminalization Reform -- <http://www.eqca.org/chcr/faq/>
- **Indiana:** HIV Modernization Movement Indiana -- <http://hivmodernizationmovement.org/faq/>
- **Michigan:** Michigan Coalition for HIV Health and Safety-- <http://www.mchhs.info/#!about-us/c9to>

