

## Florida HIV Justice Coalition: Criminal Transmission of HIV Fact Sheet

Fla. Stat. Ann. § 384.24(2) summary: A person commits criminal transmission of the human immune-deficiency virus if the person, knowing that his or HIV status is positive, engages in intimate contact with another person. Exposing someone to HIV, whether or not the virus is transmitted, is a class third degree felony with up to 5 years in prison. If there are multiple sexual encounters the charges increase to a first degree felony up to 30 years in prison.

“HIV criminalization” is the wrongful use of HIV status in a criminal prosecution, whether it is under HIV-specific statutes that exist in 32 states, or under general criminal statutes. HIV transmission is seldom a factor in these prosecutions. HIV criminalization has led to PWHA being vilified in the media, and receiving long prison sentences and/or required sex offender registration, even when transmission was extremely unlikely or impossible (i.e., a condom was used, the PLWHA had an undetectable viral load, or the behavior posed no risk of HIV transmission, such as in biting, scratching, or spitting.)

### Principles for modernizing Florida’s statute from a public health perspective:

1. Improve alignment with a constructive public health approach.
2. An updated statute could better support use of personal and public health measures to control contagious diseases, such as use of prophylactic devices, testing, following the guidance of medical professionals and public health officials, and adherence to effective treatment regimens.
3. The National HIV/AIDS Strategy calls for state legislatures to reconsider criminalization statutes that may act as barriers to public health prevention goals and may interfere with public health strategies to reduce transmission of HIV/AIDS.
4. Criminal statutes work against existing public health measures, such as HIV partner services and HIV case management, which require trust of public health officials to keep information about behaviors, partners, and exposures confidential.

### Assure consistency in controls and penalties across comparable contagious diseases

1. The statute should avoid stigmatizing or singling out a specific disease, such as HIV, especially when there is currently very good evidence that the statutes do not change a person’s risk or disclosure behaviors (Burris, 2007).
2. Penalties should reflect the actual risk of causing harm – those behaviors that are unlikely to result in transmission should not be criminalized;
3. Felonies should be reserved for intentional and/or documented transmission;
4. The statute should reflect the fact that new treatment therapies exist that render HIV less dangerous than was the case when the statute was passed (Nakagawa, 2011).

According to CDC reports, Florida leads the nation with the highest number of newly diagnosed HIV infection cases in 2013 with 5,377. In 2014, 6,132 people were newly reported with HIV infection in Florida. In 2013, Florida lead the US with the highest number of newly diagnosed AIDS case rates with 3,225.

[http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/\\_documents/fact-sheet/2014/2014-us-vs-fl-fact-sheet.pdf](http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/_documents/fact-sheet/2014/2014-us-vs-fl-fact-sheet.pdf)