

HIV Criminalization Statutes

Housing Works supports evidence-based HIV prevention interventions that encourage community empowerment, safety, and self-determination. HIV criminalization statutes – “laws that create HIV-specific crimes or which increase penalties for persons who are HIV positive and convicted of criminal offenses” – do not fall within such a continuum of prevention.ⁱ They have not been shown to prevent the spread of HIV, and may further drive the epidemic by discouraging HIV testing and status disclosure in order to avoid possible prosecution.ⁱⁱ These outdated statutes deny HIV-positive individuals the empowerment to choose if and when to disclose, can compromise individuals’ safety, fuel stigma, and inappropriately punish HIV-positive individuals for simply engaging in consensual, and often protected, sex. *For these reasons and those outlined below, Housing Works strongly opposes HIV criminalization statutes and calls for their universal repeal.*

Among the 34 states and two territories that have existing HIV criminalization statutes, over 900 people have been prosecuted.ⁱⁱⁱ Yet in many of these cases the true risk of HIV transmission was negligible. HIV-positive defendants have been prosecuted in cases where their viral load is undetectable, for acts during which risk-reducing behavior, such as wearing condoms, were used, and for acts that cannot transmit the virus, such as spitting, scratching, and biting. Prosecutors have also used HIV+ status to significantly extend sentences for other crimes (assault, for example) by arguing – inaccurately – that the virus is a deadly weapon or even a tool of bioterrorism. The fact remains that in a majority of these cases, HIV was never or could never be transmitted, calling into question how these measures promote or protect public safety as supposedly intended.^{iv}

In addition, these statutes were written in a vastly different—and now outdated—scientific landscape. An HIV-positive diagnosis is no longer the “death sentence” it was once thought to be, as HIV-positive individuals live long, productive lives due to pharmacological advances. Research also now demonstrates circumstances that make it virtually impossible to transmit HIV. These advances subsequently make the prosecution of HIV-positive individuals for murder, assault with a deadly weapon, etc., effectively erroneous and outdated. Despite growing scientific advances regarding prevention and living long and healthy lives with HIV/AIDS, these criminalization statutes utilize outdated science to defend their continued use. This is in direct opposition to both the standard of evidence-based prevention and the goals of public health generally.

Finally, there are social implications to consider. To label a category of people as criminal, forcing many to register as sex offenders, disregarding if condoms were used or if there was intent to harm, among other factors, only increases stigma and barriers to testing and access to care. HIV criminalization statutes also ignore the circumstances of women’s lives, in which fear (and greater likelihood) of partner violence, abandonment, and/or coercion or revenge discourages status disclosure and/or condom use with their partners.^v Lastly, the collateral consequences of felony convictions, which are often the result of these prosecutions, only deepen the restrictions people living with HIV/AIDS face when seeking housing, benefits, employment, etc., and further marginalize a population that can cause long-lasting harm to them and their loved ones.

Conclusion:

Knowledge and fear of prosecution under HIV criminalization statutes may actively discourage HIV testing, as ignorance of one's status is the primary defense to prosecution.^{vi} Research shows that most HIV+ individuals already feel a strong sense of personal responsibility to disclose their status to sexual partners regardless of awareness of any existing laws on HIV criminalization.^{vii} HIV criminalization statutes are ineffective for prevention, based on erroneous science, and are in many ways actively harmful to our community. The only cases deserving prosecution are rare and should only include those involving malicious, intentional attempts at transmission in a deliberate effort to cause harm. Indeed, as the Global Commission on HIV and the Law state,^{viii} such cases are extremely rare and can be adequately addressed using existing criminal statutes; there is not a single compelling public safety or public health rationale to single out HIV.

As such, Housing Works supports:

- Passage of H.R. 3053 – the REPEAL (Repeal Existing Policies that Encourage and Allow Legal) HIV Discrimination Act, introduced by Congresswoman Barbara Lee;
- The promotion of programs and initiatives seeking to normalize HIV/AIDS and reduce related stigma;
- The promotion of programs and initiatives supporting healthy relationships, effective communication, and disclosure negotiation.

ⁱ “National HIV/AIDS Strategy Imperative: Fighting Stigma and Discrimination by Repealing HIV-Specific Criminal Statutes.” *National Alliance of State & Territorial AIDS Directors*. Feb. 2011.

ⁱⁱ “Consensus Statement on the Criminalization of HIV in the United States.” *Positive Justice Project*. n.d.

ⁱⁱⁱ “United States of America.” *Global Network of People Living with HIV – Global Criminalization Scan*. 25 Apr. 2012. <http://www.gnpplus.net/criminalisation/country/united-states-america>

^{iv} “National HIV/AIDS Strategy Imperative: Fighting Stigma and Discrimination by Repealing HIV-Specific Criminal Statutes.” *National Alliance of State & Territorial AIDS Directors*. Feb. 2011.

^v Global Commission on HIV and the Law. *HIV and the Law: Risks, Rights, & Health – Chapter 2: Punishing Vulnerability*. Jul. 2012.

^{vi} Mairena, Oscar. “The Public Health Approach to Ending HIV Criminalization.” *National Alliance of State & Territorial AIDS Directors*. 21 December 2012.

^{vii} Galletly, Carol Lynne, Glasman, Laura, Pinkerton, Steven D. and DiFranceisco, Wayne. “New Jersey's HIV Exposure Law and the HIV-Related Attitudes, Beliefs, and Sexual and Seropositive Status Disclosure Behaviors of Persons Living with HIV.” *American Journal of Public Health*. 20 September 2012.

^{viii} Global Commission on HIV and the Law. *HIV and the Law: Risks, Rights, & Health – Chapter 2: Punishing Vulnerability*. Jul. 2012.