

# 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 just affects some communities more than others and 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. Until there is a cure, we need sound public health policies to help combat the continuing epidemic.

### **What is an HIV criminalization law?**

An HIV criminalization 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 status. Most of these laws do not require transmission of HIV or even conduct presenting a substantial risk of transmission, and are instead based on the decision not to announce one's medical condition to a potential partner prior to engaging in sexual contact. Other laws call for sentence enhancement for certain crimes solely because of one's HIV status, including some situations where it is scientifically impossible to transmit HIV. Currently, 33 US states and territories have laws that criminalize HIV; 23 of these criminalize HIV nondisclosure to sexual and, in some case needle sharing, partners and at least 20 allow for sentence enhancement of some kind in cases where no HIV transmission is possible.

### **Is 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 Current laws are based on outdated assumptions about HIV and singles out HIV to be handled differently than other sexually-transmitted infections which also, if left untreated, can seriously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, have punishments completely disproportionate to any purported harm, and do not reflect the current science regarding how HIV is (and is not) transmitted. 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 modernization of these laws?**

There are now effective treatments that lengthen and improve the quality of life for PLHIV; successfully treated PLHIV have a near average life expectancy. There are also a number of evidence-based HIV prevention strategies that have been proven to reduce the likelihood of transmission (e.g., condoms, treatment that leads to an undetectable viral load, and medication to prevent HIV transmission prescribed to people at an elevated risk (referred to as Pre-Exposure Prophylaxis or PrEP)). 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 give PLHIV good reason to be less trustful and less willing to cooperate with traditional public health disease prevention strategies, like partner notification 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 the current 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. In fact, they may do the reverse. Many public health experts believe HIV criminalization laws are terrible public health policy, because a growing body of evidence suggests they deter people from testing and treatment, and make them less willing to disclose their HIV 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. Nonetheless, if HIV criminalization laws are modernized, that can be accomplished in a manner that still allows for the prosecution of a person who acts with the intent to transmit HIV to another. And even if HIV criminalization laws were repealed altogether, every state has assault statutes that provide for prosecution of someone with an intent to harm another person, 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).

## **Should the law require disclosure?**

No. While best public health practices encourage disclosure, using the law to punish nondisclosure is not an effective way to motivate people to disclose; rather this is best done 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>

