

Judge to Rule if Bite
from HIV-positive Man
Counts as Bioterrorism

Equestrian Rider Charged with Hiding HIV

*The Charge is Murder,
The Weapon, AIDS*

Man Charged
with Using Spit as
Deadly Weapon

HIV Predator Served
Time for Crime but
May be Confined for Life

Authorities say Man remains Danger to Society

Positive Woman Charged with Prostitution

Ending and Defending Against HIV Criminalization

A MANUAL FOR ADVOCATES

VOLUME 3

**This is How We Win:
A Toolkit for Community Advocates**



PositiveJusticeProject



THIS IS HOW WE WIN: A TOOLKIT FOR COMMUNITY ADVOCATES

**A STEP-BY-STEP GUIDE WITH RESOURCES
FOR STATE CAMPAIGNS TO END
HIV CRIMINAL LAWS AND PROSECUTIONS**

THE CENTER FOR HIV LAW AND POLICY IS THE ORGANIZATIONAL HOME OF THE



The **Center for HIV Law and Policy** (CHLP) is a national legal and policy resource and strategy center for people with HIV and their advocates. CHLP works to reduce the impact of HIV on vulnerable and marginalized communities and to secure the human rights of people affected by HIV. CHLP provides ongoing coordination of the Positive Justice Project (PJP) with the active support of PJP's six working group chairs and the many individual and organizational members of PJP. To learn more about CHLP and access our free comprehensive online Resource Bank, please visit www.hivlawandpolicy.org.

The **Positive Justice Project** (PJP) is a national coalition of organizations and individuals, including people living with or at greatest risk of HIV, those who have been arrested or prosecuted, medical and public health professionals, community organizers, advocates, attorneys, law enforcement, sex workers, social scientists and others working to end HIV criminalization in the United States. We engage in federal and state policy advocacy, resource creation, support of local advocates and attorneys working on HIV criminal cases, and educating, organizing and mobilizing communities and policy makers in the United States.

PJP improves advocacy for HIV positive people targeted for criminal prosecution through improved collaboration, strategy, coordination, resource sharing and support for local advocates. To join PJP or work with one of the state advocacy groups contact: programassociate@hivlawandpolicy.org.

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Advocacy is a broad range of activities that can influence public debate and policy decisions. This toolkit is a resource for advocates working on state-level HIV criminalization modernization efforts. It provides quick-reference resources (e.g., HIV criminalization talking points and references), links to longer reference materials (including, links to HIV criminalization resources by issue/subject), and guidance on the legislative process and advocacy strategy prepared by The Center for HIV Law and Policy.

The Center for HIV Law and Policy encourages the broad use of this publication and other materials in our free online [Resource Bank](#). We ask only that you 1) credit the source when using these materials or their content; and that you 2) do not alter or adapt these resources as your own without prior permission from The Center for HIV Law and Policy. We also appreciate your feedback on our resources, and suggestions for new or revised ones.

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TEN THINGS ANYONE CAN DO TO HELP END HIV CRIMINALIZATION

1. Get connected. Stay informed. Take action.

Join the Positive Justice Project (PJP) to receive regular updates, action alerts, new resources, and to participate in membership strategy calls. To join, email programassociate@hivlawandpolicy.org. You can also follow us on [Twitter](#) and [Facebook](#). Once you sign up, you can e-mail your friends, family, and colleagues to invite them to sign up, too. Tell them why you are involved, and ask them to join you.

2. Connect with PJP State Advocacy Groups

PJP works with advocates around the country on state and local issues. You can participate in your state's modernization efforts, community outreach, community education, coalition building, and other advocacy work. PJP's State Advocacy Working Group works with local advocates to develop strategies to modernize criminal laws and prosecution policies that target people with HIV. If you are interested in joining the State Advocacy Working Group or your state's HIV criminalization advocacy group, email programassociate@hivlawandpolicy.org.

3. Build relationships with elected representatives and other policy makers

Call or meet with your state elected representatives well before the legislative session starts and discuss your concerns. It is usually a good idea to bring them something short and in writing with your key points and contact information. By simply introducing yourself to your legislators and their staff before the session starts, and providing a brief overview of HIV criminalization policy concerns, you can establish useful relationships with them. You will then be in a better place to help legislators see the value of supporting bills to end or "modernize" HIV criminalization laws. When the session starts, they may reach out to you because they know you are actively involved in this issue.

4. Reach out to the media

Call or email reporters, editors, producers, and others in the media to help them understand HIV criminalization and how inaccurate or sensationalized reporting perpetuates stigma and erroneous beliefs about HIV and HIV-specific prosecutions. Keep it short, accurate and to the point. Refer them to resources that support your points.

5. Become more knowledgeable about HIV criminalization – and spread the word

The Center for HIV Law and Policy's online [Resource Bank](#) is a free and large collection of memos, research, fact sheets, legal guides, cases, court decisions, policy analysis and other materials on dozens of topics that matter to people living with HIV. We have hundreds of materials on HIV criminalization and the Positive Justice Project. [In The Life Media](#) also made several short videos on [HIV criminalization](#), including one focused on women. Spend some time learning more about the issues, and then share resources or video links with your friends, family, and community members.

6. Engage allies in addressing HIV-specific laws and prosecutions

HIV criminalization is not just an HIV issue. It has a unjust effect on people of color and immigrants in particular, including women, and triggers a host of other problems for those who are targeted and their families. However, we still have to reach out to local and national LGBT, civil rights, racial justice, immigration, religious, reproductive rights, women, and people of color groups to show them why HIV criminalization is an issue that affects their members or communities. Educate your family, friends, colleagues, and community organizations about the legal, housing, immigration, public health, family, and community disruption caused by HIV criminalization. Tell them why you are involved, and ask them to join you.

7. Educate local police and law enforcement

A substantial number of HIV-specific criminal charges arise from incidents involving law enforcement professionals, including biting or spitting an officer during an arrest. Urge your local police department to distribute The Center for HIV Law and Policy's resources, including [Spit Does Not Transmit](#), to help educate officers on HIV. Think about partnering with other advocates and health care providers to offer trainings on HIV-related issues for your local police department.

8. Educate local prosecutors

Most HIV-specific prosecutions involve conduct that poses little to no risk of transmission, and few cases involve actual transmission. Despite these facts, prosecutors continue to use a suspect's HIV status for criminal charges, sentence enhancements, or leverage in plea-bargaining.

Prosecutors have broad discretion on whether to charge a suspect and in selecting specific charges. Therefore, prosecutors should be educated on the basic science of HIV to avoid unfounded fears and prosecutions, and the terrible impact on individuals, families, and communities caused by criminalization. Offer to work with your local district attorney's office to train its staff on the basic science, transmission risks, and current day realities of life with HIV, and be sure to bring along people whom prosecutors will respect – especially medical professionals and religious leaders. Also urge your local district attorney's office to use The Center for HIV Law and Policy's resources, including [Transmission Routes, Viral Loads and Relative Risks: The Science of HIV for Lawyers and Advocates](#).

9. Share Resources

In addition to using The Center for HIV Law and Policy's [Resource Bank](#) to educate yourself and others about HIV criminalization, you should also make sure that the [charts](#), [fact sheets](#), [toolkits](#), [palm cards](#) and other resources are shared with health care providers, social workers, case managers, community leaders, and community organizations. Getting copies of these useful resources to as many individuals and organizations as possible will help with your advocacy and outreach effort. Organizations and community advocates may be able to share these resources with larger networks and individuals who are at risk of prosecution.

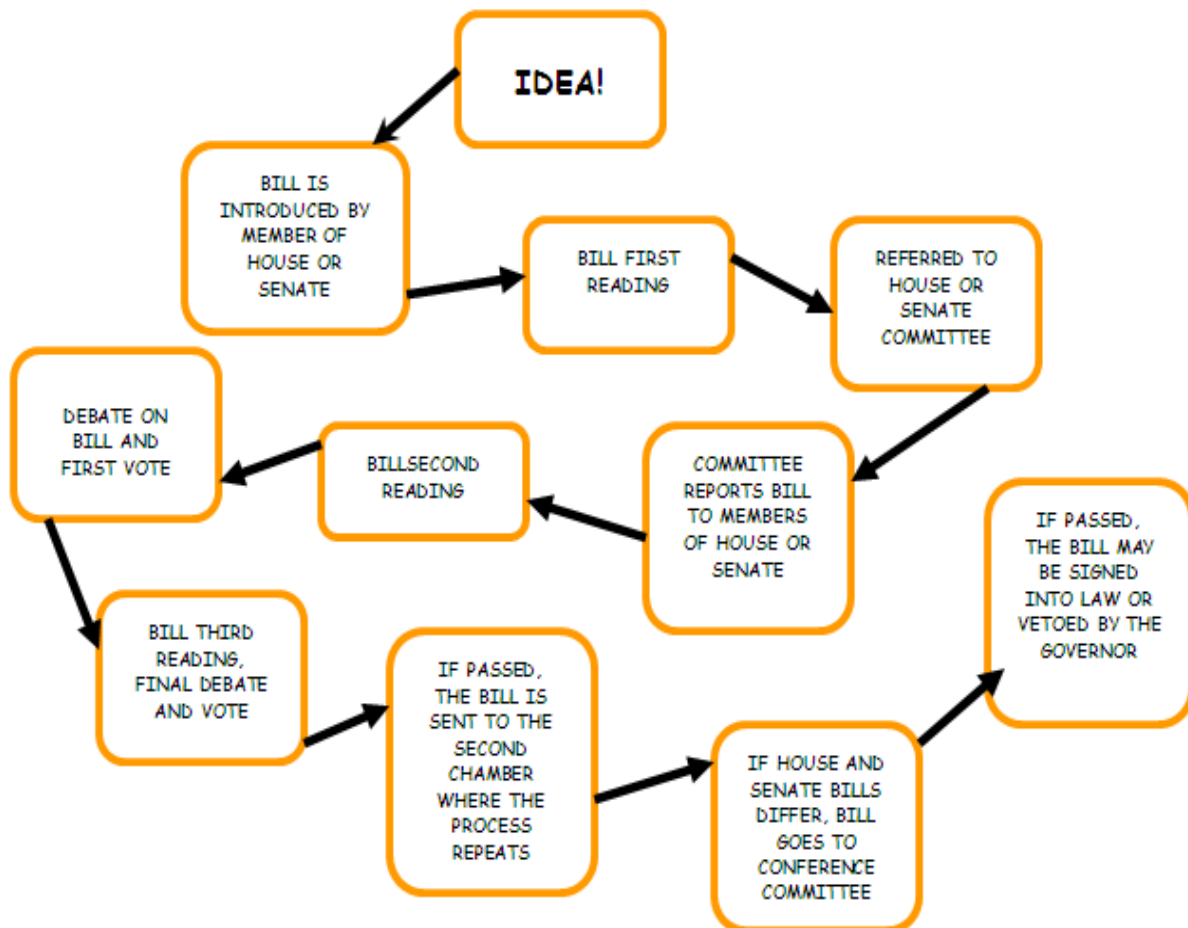
10. Host a community educational event

You, your friends or a group you belong to can host an event to educate people about HIV criminalization in your state. PJP's State Advocacy Working Group has helped organize educational community forums in many states, and can assist with much of what you need to get a group started in your area. If you would like to collaborate with PJP on a community event, email programassociate@hivlawandpolicy.org.

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HOW A BILL BECOMES A LAW

1. A bill may be introduced in either the Senate or House of Representatives by a member.
2. It is referred to a committee for a hearing. The committee studies the bill and may hold public hearings. It can then pass, reject, or take no action on the bill.
3. If the bill is voted favorably out of committee, a report from the committee is read in open session of the House or Senate, and the bill is referred to the Rules Committee.
4. The Rules Committee can either place the bill on the second reading calendar for debate before the entire body or take no action.
5. At the second reading, the bill is subject to debate and amendment before being placed on the third reading calendar for final passage. The number of readings may vary by state.
6. After passing one house, the bill goes through the same procedure in the other house.
7. If amendments are made in the other house, the first house must approve the changes.
8. When the bill is passed in both houses, it is sent to the governor.
9. The governor signs the bill into law or may veto all or part of it. If the governor fails to act on the bill, it may become law without a signature.



Source: Vermont Secretary of State, *How A Bill Becomes A Law* (2005), available at: http://www.sec.state.vt.us/kids/bill_becomes_law.html



STATE-LEVEL LEGISLATIVE ADVOCACY CHEAT SHEET

This cheat sheet contains highlights from our General Rules for Organizing State-Level Legislative Advocacy on HIV Criminalization (see appendix), and includes additional suggestions for advocates. This is a quick reference tool for discussions, strategy development, meetings, and presentations. CHLP encourages the broad use of this material. Please credit the source.

1. Determine your ultimate goal

- For conservative legislatures and states, seeking a legislative commission or task force may be a great way to start a conversation about HIV criminalization in the legislature.
- If your goal is to repeal an HIV-specific law, you should consider replacing the current statute(s) with a modernized bill. You can use the PJP Model Law or another modified version of the law as your proposed legislation. Samples are attached in the appendix.

2. Get organized

- Create a coordinating structure and communication network to facilitate communications, decision-making, and group mobilization.
- Gather or create resources for members to use, such as a shareable presentation for community forums and educational events. Contact Kate Boulton (kboulton@hivlawandpolicy.org) for help in developing a state specific shareable presentation.

3. Engage allies/coalition building

- Engage allies because broad based support increases advocacy capacity. Allies may bring valuable experience, skills, and resources that enhance the advocacy strategy.
- Organize continuous community forums and educational events throughout your state to ensure you are reaching different demographics. You do not want to keep talking to the same people that already agree with you.
- Work with allies to develop outreach strategies for communities or groups that may be difficult to reach.

4. Know your issue

- All advocates should be familiar with HIV criminalization issues. Advocates should also be prepared to answer questions, and respond to comments and criticisms they may receive during presentations, meetings, or one-on-one discussions.
- Modify the Frequently Asked Questions and Answers sheet to include state specific questions and issues.

5. Define your message

- Provide examples to make sure that your audience understands your point.

6. Targeted education

- Target specific stakeholders and policymakers whose support may influence legislators such as law enforcement professionals, prosecutors, judges, and medical professionals.
- Target media professionals to ensure accurate and responsible reporting of HIV-related criminal incidents. Since the media can influence public opinion, you should use the media to disseminate your message to broader audiences, and influence public debate in a way that will advance your advocacy strategy.

7. Approach legislators and other policymakers

- Develop a relationship with your individual state representative(s) and other allies in the legislature. Educate legislators and their staff on HIV criminalization and the need for modernized legislation. Use legislators to identify potential sponsors or co-sponsors.

8. Introducing legislation

- Carefully vet any proposed bill with a legislator and his/her legislative aides. Use this process to discuss potential obstacles the bill may face once it enters the legislative process, and explore solutions that may help advance the bill.
- Be sure to coordinate with local and national advocates working on legislative change in other jurisdictions, take advantage of others' experiences, and make sure you have at least one person in your group who is an experienced legislative advocate and knows the "players." What happens in your state can help – or hurt – the efforts of other advocates in other states.
- Develop a bi-partisan outreach strategy for each step of the legislative process.

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RYAN WHITE PLANNING COUNCILS

The [Ryan White HIV/AIDS Program](#) works with cities, states, and local community-based organization to provide HIV-related services. The program serves those who do not have sufficient health care coverage or financial resources for coping with HIV, and fills gaps in care not covered by other sources, including Medicaid and Medicare. Local and state planning councils determine how resources are allocated and used. Because of the planning councils' mission and make-up, they can be a good target for advocacy to broaden support for you HIV criminalization modernization campaign.

- **Ryan White Planning Council Make-up:** Under federal law, areas that have reported at least 2,000 HIV cases in the most recent five years and have a population of at least 50,000 are considered Eligible Metropolitan Areas (EMA), which may create bylaws that govern their own planning council.

Each EMA's planning council is different, but all planning councils must reflect local demographics, and include consumers – that is, people living with HIV who use Ryan White-funded services – and providers with expertise in serving consumers. At a minimum, 33% of planning council members must be consumers, but an EMA's bylaws may increase this percentage.

- **Ryan White Planning Council Tasks:** Each planning council's tasks are determined by its bylaws. In general, a planning council is charged with setting priorities for services to fund and allocating specific dollar amounts to particular services. This work is informed by local demographics and needs.

A planning council jointly develops a plan for the provision of services with grantees (this is usually an elected official and the agency providing health care services; for example, in New York City, the grantee is the mayor, and the agency is the New York City Department of Health and Mental Hygiene).

- **Ryan White Planning Councils and PJP State Advocacy:** Generally, planning councils may not engage in lobbying or take a position on specific legislation. Planning councils interpret lobbying restrictions differently. Since planning councils may take different positions, endorsements and support for measures may vary. For example, in New York City, the planning council endorsed the [Positive Justice Project's Consensus Statement on HIV Criminalization in the United States](#), but would not endorse a similar statement condemning a New York State HIV-specific bill.

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RYAN WHITE PLANNING COUNCIL ADVOCACY MODEL

This advocacy model is designed to help advocates approach Ryan White planning councils that may be interested in supporting the [Positive Justice Project's Consensus Statement on HIV Criminalization in the United States](#). This plan may not work in every city but it has proven to be effective in New York City.

- As you engage in advocacy with your local Ryan White planning council, please remember that planning councils may interpret lobbying restrictions differently. Each planning council may, therefore, have different positions on legislative advocacy. A particular planning council's position on legislative advocacy may also vary as membership changes.
- Visit your local planning council's website to review its bylaws.
- Contact planning council staff to determine which committee is most relevant to discuss HIV criminalization. Most planning councils have a policy committee, which keeps members abreast of current law and policy issues related to HIV.
- Contact the policy committee, and request to present on HIV criminalization.
- Present on HIV criminalization. Make sure to include a particular "ask" or a list of specific requests. For example, your can ask for:
 - the planning council's formal endorsement of the PJP [Consensus Statement](#);
 - the release of a planning council-specific statement or resolution on HIV criminalization; and/or
 - a letter to the mayor's office and the health department recommending HIV-specific local or state legislation, etc.
- Research the planning council's procedures for presenting an issue for planning council approval by majority vote. For example, in New York City, a quorum of the policy committee must have a majority vote to send a recommendation to the executive committee, which, in turn, must do the same to allow an issue to be presented for full planning council vote.
- If a resolution is passed, make sure the planning council carries out the approved action as promised.

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HOW TO TALK ABOUT HIV CRIMINALIZATION WITH ELECTED OFFICIALS, MEDIA AND OTHERS

1. Know your subject

Ignorance is one of the main drivers of HIV criminalization. Make sure that you not only understand the legal aspects of HIV criminalization, but also the basic facts about HIV. You should understand the basic science “punchlines” on the routes and risks of HIV transmission, as well as relevant information on prevention and treatment. You should also have a basic understanding of the legal aspects of HIV criminalization, including your state’s law and how it has been used against people living with HIV. The Center for HIV Law and Policy’s [Resource Bank](#) has helpful factsheets, charts, and toolkits, including a summary of the law in every U.S. state and territory, for your use.

2. Know your audience

It can be a challenge to find a balance between providing too much or too little information to your audience. Effective advocacy depends on knowing your audience and tailoring your presentation or outreach to their knowledge, level of awareness, and likely concerns. Providing too much information may overwhelm your audience or make a well-informed audience lose interest. Similarly, if you do not provide enough information, or if you end without a clear “ask” or “next step,” your audience may become confused or disengaged. It’s useful to have short fact sheets explaining the problem and what your audience can do.

3. Put the issue in a context that will matter to the person in front of you

It can be hard even for our friends to understand why HIV criminalization is an important issue when there are many other problems that need to be addressed. For better or worse, self-interest is a very reliable motivator. To get people onboard with ending HIV criminalization, you need to explain why this issue is at least as important to them and the people they care about as other urgent issues. Different audiences need different pitches. For instance, if you are talking to a legislator who is a known advocate for women’s rights, you could frame your presentation or discussion around [how HIV criminalization affects women](#). Since many, if not most, policymakers think these laws are needed to protect “innocent women” *it very helpful to explain how, in fact, these laws hurt women.*

4. Balance information on the problem with ideas for solutions

Though the realities of HIV criminalization can be disconcerting, your presentation or meeting should ultimately convince people that change is possible and that they have a role to play in making it happen. You do not need to outline your whole advocacy strategy, but you should identify at least one or two specific action items that an individual or group can do. You should identify these action items prior to your meeting or presentation, and tailor them to your audience.

5. Stay on message

When individuals first hear about advocacy seeking to end the misuse of criminal laws against people with HIV, they usually don't have a clear picture of what that means. Legislators often (and accurately) worry that taking leadership on this issue will make them look "soft on crime" since it involves modifying the criminal law. This is just one reason why word choice and message are important. Rather than talk in terms of repeal, which means taking a law entirely off the books, we use the term **modernization** of existing law.

We decided to use the term modernization because it accurately and more strategically describes the need to make sure that HIV-related policies reflect a 2013 (rather than a 1983) understanding of HIV. Effective "modernization" that limits the circumstances under which HIV exposure or transmission is a crime can produce the same or a better outcome than repeal. One reason this is true is that a number of states without an HIV-specific law still prosecute people with HIV, so it would be very helpful to have a law that limits when the general criminal law can be used in that way. "Modernization" is a much easier thing to sell than "repeal" when you are talking about criminal law. The appendix contains sample "modernization" proposals.

6. Stick with known facts, and avoid exaggerations

You want your audience to view you as a credible source. You need to reassure your audience that you are a reliable source of information, particularly if you are asking them to take a specific action. Reliable data exists about the negative effects of HIV criminalization, and you can rely on [specific cases](#) to help demonstrate how criminal laws are applied to people living with HIV. Therefore, it is not necessary to exaggerate or potentially mislead your audience. For effective advocacy, you should focus on broad themes tailored to your audience (e.g. HIV criminalization wastes money and makes criminals of people with HIV who follow CDC guidance on voluntary disclosure and using condoms), and support your points with specific examples or [data](#).

7. Ask your audience to take a specific action

Remember: the meeting is a step in the process, not the end point. Education is essential, but it is not the end goal. Awareness is of little value if it doesn't get people to *do* something. Every meeting, no matter what kind, requires a follow-up plan. Whenever possible, you should always end any meeting or presentation with a specific ask or action task for your audience.

For community presentations, consider asking participants, community groups, and community organizations to:

- endorse the [Positive Justice Project Consensus Statement](#);
- support the Consensus Statement using PJP's outreach model;
- contact local legislators about HIV criminalization, or go with you to meet a legislator;
- actively participate in a state or local advocacy group;
- write an op-ed or letter to the editor for a newspaper; *and/or*
- sign on to a letter or submit testimony at legislative or governmental hearings relating to HIV criminalization.

For elected officials, consider asking them to:

- endorse the [Positive Justice Project Consensus Statement](#);
- meet with other legislators;
- attend a conference about criminalization;
- consider PJP's ideas for how the law could be improved;
- sponsor, co-sponsor, or support legislation; *and/or*
- lead a legislative commission or taskforce on HIV criminalization.

For prosecutors, public health officials, law enforcement officers, and other influential policymakers, consider asking the office to:

- adopt an official or unofficial policy on HIV criminalization;
- sign on to an advocacy letter; *and/or*
- testify at legislative committee hearings on HIV criminalization.

8. Follow-up after the meeting or presentation

Follow-up by providing additional information or materials in response to questions raised during your meeting or presentation. Make sure contact information is shared to make follow-up easy. If there are no lingering questions or information requests, you should stay in touch by sharing updates on your advocacy efforts. When meeting with a legislator or legislative staff, give them a packet of short resources that will help them understand HIV criminalization, and make specific plans (with set dates) for follow-up.

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HIV CRIMINALIZATION TALKING POINTS AND REFERENCES

Advocates should use these talking points when educating people or groups about HIV criminalization. These talking points highlight many of the legal, public health, human rights, and social justice issues that HIV criminalization raises. Each point has a list of supporting resources and links. CHLP encourages the broad use of this material. Please credit the source.

- **HIV criminalization punishes individuals for getting tested and knowing their status because a person can only be prosecuted if he or she has a positive HIV test result. It also sends the inaccurate message that attempting to avoid sexual partners with HIV is an adequate prevention strategy. This is dangerously counterproductive because most new cases of HIV result from unprotected intercourse with an HIV positive person who has not been tested.**
 - [Centers for Disease Control and Prevention, New Hope for Stopping HIV \(2011\).](#)
 - [CDC Fact Sheet: New HIV Infections in the United States, Centers for Disease Control and Prevention, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention \(2012\).](#)
 - [Patrick O'Byrne, Alyssa Bryan, Cory Woodyatt, Nondisclosure Prosecutions and HIV Prevention: Results From an Ottawa-Based Gay Men's Sex Survey, 13 BMC Public Health 94 \(2012\).](#)
 - [Steven P. Kurtz, Mance E. Buttram, Hilary L. Surratt, and Ronald D. Stall, Resilience, Syndemic Factors, and Serosorting Behaviors Among HIV Positive and HIV Negative Substance-Using MSM, AIDS Education and Prevention \(2012\).](#)
 - [What HIV Criminalization Means to Women in the U.S., Center for HIV Law and Policy \(2011\)](#)

- **Women and their experiences have been a central part of the debate over whether HIV criminalization laws are an effective way to protect people. Since women may be vulnerable or may have less power in their relationships than men, some people argue that HIV criminalization laws are needed to keep men from exposing women to HIV. However, HIV criminalization laws particularly harm women.**
 - [What HIV Criminalization Means to Women in the U.S., Center for HIV Law and Policy \(2011\).](#)
 - [10 Reasons Why Criminalization of HIV Exposure or Transmission Harms Women, Athena Network \(2009\).](#)
 - [Written Statement on HIV Criminalization and Women for the 57th Session of the UN Commission on the Status of Women, UN NGO Committee on HIV/AIDS, \(2013\).](#)

- **HIV criminalization increases stigma by reinforcing inaccurate beliefs about the routes, actual risks, and consequences of HIV transmission. Stigma discourages people at risk from doing anything that might associate them with being HIV positive, and makes it even harder for people to disclose their HIV status to sexual partners and others.**
 - [Patrick O'Byrne, Alyssa Bryan, Cory Woodyatt, Nondisclosure Prosecutions and HIV Prevention: Results From an Ottawa-Based Gay Men's Sex Survey, 13 BMC Public Health 94 \(2012\).](#)
 - [World Health Organization, Gender Dimensions of HIV Status Disclosure to Sexual Partners: Rates, Barriers, and Outcomes \(2004\).](#)
 - [Carol L. Galletly and Zita Lazzarini, Charges for Criminal Exposure to HIV and Aggravated Prostitution Filed in the Nashville, Tennessee Prosecutorial Region 2000-2010, AIDS and Behavior \(2013\).](#)
 - [Carol Galletly & Steven Pinkerton, Conflicting messages: how criminal HIV disclosure laws undermine public health efforts to control the spread of HIV, AIDS and Behavior \(2006\).](#)

- **There is no evidence that HIV criminalization laws deter risky behavior or reduce the number of new HIV infections.**
 - [Patrick O'Byrne, Alyssa Bryan, Cory Woodyatt, Nondisclosure Prosecutions and HIV Prevention: Results From an Ottawa-Based Gay Men's Sex Survey, 13 BMC Public Health 94 \(2012\).](#)
 - [Zita Lazzarini et al., Evaluating the Impact of Criminal Laws on HIV Risk Behavior, 30 J.L. Med. & Ethics 239, 239-253\(2002\).](#)
 - [Scott Burris, Do Criminal Laws Influence HIV Risk Behavior? An Empirical Trial. et al., 39 Ariz. St. L.J. 467 \(2007\).](#)

- **Studies have found no differences in risky sexual behavior between people living in a state with a specific HIV disclosure law compared to people living in a state without such a law.**
 - [K.J. Horvath, R. Weinmayer, S. Rosser, Should it be illegal for HIV-positive persons to have unprotected sex without disclosure? An examination of attitudes among US men who have sex with men and the impact of state law, 22 AIDS Care 1221 \(2010\).](#)
 - [Scott Burris, Do Criminal Laws Influence HIV Risk Behavior? An Empirical Trial. et al., 39 Ariz. St. L.J. 467 \(2007\).](#)

- **Even when people are aware that an HIV-specific law exists in a particular state, they usually do not understand what type of conduct is or isn't punishable under the law (e.g., types of sexual behavior/activity requiring disclosure, penalty for non-disclosure, etc.).**
 - [Carol Galletly & Steven Pinkerton, Conflicting Messages: how criminal HIV disclosure laws undermine public health efforts to control the spread of HIV, AIDS and Behavior \(2006\).](#)
 - [Carol Galletly et al., New Jersey's HIV Exposure Law and the HIV-Related Attitudes, Beliefs, and Sexual and Seropositive Status Disclosure Behaviors of Persons Living with HIV, Amer. J. Pub. Health, e1-e6 \(September 2012\).](#)

- **HIV criminalization laws are at odds with state health department prevention campaigns that promote sexual health as the responsibility of both sexual partners, and increase stigma by strengthening the culture of blame surrounding HIV transmission.**
 - [C. Dodds & P. Keogh, Criminal prosecutions for HIV transmission: People living with HIV respond, 17 International Journal of STD & AIDS 315 \(2006\).](#)
 - [Carol Galletly & Steven Pinkerton, Conflicting messages: how criminal HIV disclosure laws undermine public health efforts to control the spread of HIV, AIDS and Behavior \(2006\).](#)

- **Effective medical care and treatment reduces HIV transmission risk through all routes to near-zero.**
 - [Samuel Broder, The development of antiretroviral therapy and its impact on the HIV-1 AIDS pandemic, Antiviral Research \(2010\).](#)
 - [A. Anglemeyer et al., Antiretroviral therapy for prevention of HIV transmission in HIV-discordant couples \(Review\), Cochrane Database of Systematic Reviews \(2011\).](#)
 - [T.C. Quinn, M.J. Wawer, N. Sewankambo, et al. Viral load and heterosexual transmission of human immunodeficiency virus type 1. 342 N. Eng. J. Med. 921 \(2001\).](#)

- **HIV criminalization harms communities that already are hit hardest by the HIV epidemic. HIV criminalization reinforces demeaning stereotypes that associate sex with people living with HIV as inherently dangerous, predatory, or deviant. Criminalization of HIV creates another basis for targeting and singling out people of color for arrest, prosecution, and imprisonment.**
 - [The Center for HIV Law and Policy and Positive Justice Project, Prosecutions for HIV Exposure in the United States, 2008–2013.](#)
 - [Ginny Shubert, National Minority AIDS Council \(NMAC\) and Housing Works, Mass Incarceration, Housing Instability and HIV/AIDS: Research Findings and Policy Recommendations \(2013\).](#)

- **Offenders face employment, housing, immigration, education, and voting restrictions or prohibitions, all of which can negatively affect health outcomes for people living with HIV. These collateral consequences impact individuals, families, and communities.**
 - [The Center for HIV Law and Policy, Chart: Limitations of Eligibility for Federal Housing by Program Type \(2012\).](#)
 - [The Center for HIV Law and Policy, Chart: Comparative Sentencing on HIV Criminalization in the United States \(2012\).](#)

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HIV CRIMINALIZATION FREQUENTLY ASKED QUESTIONS

- 1. Are you saying that a person who intentional infects someone else with HIV should not be punished?**
 - 2. How often do HIV-specific arrest or prosecutions happen?**
 - 3. Why are infections still happening despite HIV criminalization laws and prosecutions?**
 - 4. How often do HIV prosecutions involve transmission?**
 - 5. Is there a statute of limitations? If I had sex with someone 5 or 10 years ago, can they come back and try to prosecute me now for not disclosing my status?**
 - 6. Shouldn't people living with HIV have to tell everyone their status?**
 - 7. How can I protect myself from being prosecuted?**
 - 8. What about men who lie to women and say they are faithful and get them to not use a condom and then infect them- shouldn't they be prosecuted?**
-

1. Are you saying that a person who intentional infects someone else with HIV should not be punished?

No. We are saying that a criminal statute seeking to address this type of behavior should reflect generally accepted criminal law principles and not conflict with public health priorities. Any prosecution on the basis of HIV (or any other sexually transmitted infection) should require:

- proof of an intent to harm;
- conduct that is likely to result in that harm;
- proof that the conduct of the accused, in fact, resulted in the intended harm; *and*
- punishment that is proportionate to the actual harm caused by the accused person's conduct.

2. How often do HIV-related arrest or prosecutions happen?

There is no way to get an accurate number of HIV-specific arrests and prosecutions. Official data on arrests and prosecution of HIV-related offenses is not maintained or compiled. Even if prosecution offices and police departments collected this information, it would be impossible to get an accurate count because the type of data typically collected by these offices would not

reflect situations where a person's HIV status was used for a general criminal charge such as aggravated assault or attempted murder, or where an HIV positive person is charged under an HIV-specific statute or greater general criminal offense as a way to pressure him/her to plea guilty to a lesser offense.

However, there are some resources with arrest and prosecution data that can help illustrate the frequency and types of HIV-related arrests and prosecutions:

- [Chart: Prosecutions for HIV Exposure in the United States, 2008–2017](#) (This regularly updated chart from the The Center for HIV Law and Policy provides a snapshot of the type of HIV-related arrests and prosecutions in the United State from 2008 to present).
- [Zita Lazzarini et al., Evaluating the Impact of Criminal Laws on HIV Risk Behavior, 30 J.L. Med. & Ethics 239, 239-253\(2002\)](#). (This study used case decisions and newspaper articles to identify and analyze prosecutions of persons for exposure or transmission of HIV between 1986 and 2001).
- [HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice, The Center for HIV Law and Policy \(2017\)](#) (This resource provides in-depth discussion of prosecutions by state or territory).
- [Carol L. Galletly and Zita Lazzarini, Charges for Criminal Exposure to HIV and Aggravated Prostitution Filed in the Nashville, Tennessee Prosecutorial Region 2000-2010, AIDS and Behavior \(2013\)](#). (This study reviewed and analyzed arrested data for HIV-specific charges in the Nashville, Tennessee region from 2000 to 2010).

3. Why are infections still happening despite HIV criminalization laws and prosecutions?

HIV-related arrests and prosecutions do not address what is essentially the driver of the epidemic: transmission by individuals who do not know their HIV status. According to the [Centers for Disease Control and Prevention](#), “nearly 1 in 5 people with HIV don’t know they are infected, don’t get HIV medical care and can pass the virus on to others without knowing it.” Yet, HIV-specific laws and prosecutions only apply when an individual know his or her status. So in addition to serving as a deterrent to testing, HIV-specific laws and prosecutions also reinforce misconceptions about HIV transmission.

4. How often do HIV prosecutions involve transmission?

Transmission in HIV-related prosecution is rare. Although these incidents are sensationalized in the media, they are not common. In every case, there was no proof that the accused was the source of the accuser’s infection. In fact, transmission is not required under any HIV-related criminal law or in most prosecutions, and the actual risk of transmission in a particular case—including use of condoms or effective medical treatment – is often not considered.

5. Is there a statute of limitations? If I had sex with someone 5 years ago, can they come back and try to prosecute me now for not disclosing my status?

Statutes of limitations for criminal offenses vary by state. You should consult your state’s criminal code for the statute of limitations for HIV-specific criminal offenses as well as general criminal offenses that may be used to target people living with HIV, such as reckless endangerment or assault.

6. Shouldn't people living with HIV have to tell everyone their status?

No. When a sexual act is about to take place both partners should be responsible for discussing HIV status and sexually transmitted infections (STI), as well as negotiating safe sex practices. This is not only the most ethical approach, it is the most practical. People with HIV are at their most infectious shortly after they become infected – and at a time when in almost all cases the newly-infected person does not yet know that HIV transmission has occurred. Mutual responsibility is important especially because the presence of an STI makes a person more susceptible to HIV and other more prevalent and easily transmitted STIs, such as chlamydia, human papillomavirus (HPV), herpes, and syphilis – diseases that can be especially harmful for a person with HIV. Therefore, thinking that only an HIV positive person should be responsible for discussing his/her status and protecting a partner's health actually places both partners at greater risk. It also ignores the fact that there are many other STIs – including HPV and treatment-resistant gonorrhea – that have equal or greater negative effects on health outcomes.

7. How can I protect myself from being prosecuted?

There is no single thing that you can do to avoid prosecution, although there are steps you can take to reduce that risk. The Center for HIV Law and Policy has resources that provide tips and guidance that can be helpful. For more information on ways to protect yourself from arrest, or on what to do if you are arrested, refer to the [*HIV Criminalization: Are You At Risk?, Palm Card*](#) and [*Guidance for People Living with HIV Who Are At Risk of, or Are Facing, Criminal Prosecution for HIV Nondisclosure or Exposure*](#).

8. What about men who lie to women and say they are faithful and get them to not use a condom and then infect them, shouldn't they be prosecuted?

There are a number of ways people deceive their partners in their relationships that causes emotional, physical, economic, and other serious harms. However, the criminal justice system is not used to remedy these situations. Therefore, criminal laws should not be used to negate the fact that both partners share responsibility for safe sex practices in a relationship, even when there is deceit.

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APPENDIX



SUGGESTIONS FOR MODERNIZING NEW YORK'S PUBLIC HEALTH/STI LAW

New York does not have an HIV-specific criminal statute, but people living with HIV have been charged under general criminal laws – such as aggravated assault or reckless endangerment – for consensual sex and conduct that poses no risk of infection. Notably, New York has a criminal statute that applies to transmission of venereal diseases (Public Health Law § 2307). This document provides suggestions for modernizing this public health law so that complaints involving HIV exposure or transmission can be addressed in a more balanced, scientifically sound and ethical way. The proposed changes reflect the Positive Justice Project's Consensus Statement on HIV Criminalization in the United States. CHLP encourages the broad use of this material. Please credit the source.

New York's Current Law: Public Health Law § 2307 "Venereal disease; person knowing himself to be infected"

"Any person who, knowing himself or herself to be infected with an infectious venereal disease, has sexual intercourse with another shall be guilty of a misdemeanor.

Modernized Version of New York Public Health Law § 2307

Section 1: Intent to Harm

"Any person who, knowing himself or herself to be infected with an infectious **sexually-transmissible** [venereal] disease, has sexual intercourse with **the specific intent to transmit that disease for the purpose of causing another serious bodily harm** shall be guilty of a misdemeanor."

Section 2: Actual Harm

"Any person who, knowing himself or herself to be infected with an infectious **sexually-transmissible** [venereal] disease, has sexual intercourse with **the specific intent to transmit that disease for the purpose of causing another serious bodily harm and actually causes serious bodily harm to another** shall be guilty of **an aggravated** misdemeanor."

Section 3: Parameters for determining intent to transmit for the purpose of causing seriously bodily harm.

"A person who knows himself or herself to be infected with an infectious sexually-transmissible disease does not act with the intent to *transmit for the purpose of causing seriously bodily harm* if the person undertook or attempted to undertake practical means to prevent transmission."

Section 4: Defenses

- *Practical means to prevent transmission* shall mean any method, device, behavior, or activity that is demonstrated epidemiologically to limit or reduce the risk of transmission

of an infectious sexually-transmissible disease including, but not limited to the use of a barrier protection or prophylactic device, or adherence to a medical treatment regimen.

○ *Consent.* Consent shall mean:

(1) the conduct did not pose a statistically significant threat of, or in fact inflict, serious bodily harm; or

(2) the victim knew or reasonably should have known that the threat or occurrence of harm was a risk of:

(A) his/her occupation; and/or

(B) his/her voluntary conduct.



SUGGESTIONS FOR MODERNIZING CALIFORNIA'S HIV-SPECIFIC AND STI CRIMINAL LAWS

California has an HIV-specific criminal statute (Cal. Health & Safety Code § 120291) that targets people living with HIV who engage in consensual sex without disclosure. Although the statute is more nuanced than the HIV criminalization laws that exist in other states, the statute still reflects HIV stigma. This document provides suggestions for modernizing California's law. The proposed changes reflect the Positive Justice Project's Consensus Statement on HIV Criminalization in the United States. CHLP encourages the broad use of this material. Please credit the source.

California's Current Law: Cal. Health & Safety Code § 120291

“Unprotected sexual activity by one who knows self to be infected by HIV; offense; evidence of knowledge; charging document”

(a) Any person who exposes another to the human immunodeficiency virus (HIV) by engaging in unprotected sexual activity when the infected person knows at the time of the unprotected sex that he or she is infected with HIV, has not disclosed his or her HIV-positive status, and acts with the specific intent to infect the other person with HIV, is guilty of a felony punishable by imprisonment in the state prison for three, five, or eight years. Evidence that the person had knowledge of his or her HIV-positive status, without additional evidence, shall not be sufficient to prove specific intent.

(b) As used in this section, the following definitions shall apply:

(1) “Sexual activity” means insertive vaginal or anal intercourse on the part of an infected male, receptive consensual vaginal intercourse on the part of an infected woman with a male partner, or receptive consensual anal intercourse on the part of an infected man or woman with a male partner.

(2) “Unprotected sexual activity” means sexual activity without the use of a condom.

(c)(1) When alleging a violation of subdivision (a), the prosecuting attorney or grand jury shall substitute a pseudonym for the true name of the victim involved. The actual name and other identifying characteristics of the victim shall be revealed to the court only in camera, and the court shall seal that information from further revelation, except to defense counsel as part of discovery.

(2) All court decisions, orders, petitions, and other documents, including motions and papers filed by the parties, shall be worded so as to protect the name or other identifying characteristics of the victim from public revelation.

(3) Unless the victim requests otherwise, a court in which a violation of this section is filed shall, at the first opportunity, issue an order that the parties, their counsel and other agents,

court staff, and all other persons subject to the jurisdiction of the court shall make no public revelation of the name or any other identifying characteristics of the victim.

(4) As used in this subdivision, "identifying characteristics" includes, but is not limited to, name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background.

Modernized Version of Cal. Health & Safety Code § 120291

(a) Any person who ~~exposes another to the human immunodeficiency virus (HIV) by engaging in unprotected sexual~~ **activity that poses a substantial risk of transmitting a serious infectious or sexually transmitted disease** when the infected person knows at the time of the ~~unprotected sex activity~~ that he or she is infected with HIV **a serious infectious or sexually transmitted disease**, has not disclosed his or her HIV-positive status, and acts with the specific intent to infect the other person with HIV, is guilty of a felony punishable by imprisonment in the state prison for three, five, or eight years. ~~Evidence that the person had knowledge of his or her HIV positive status, without additional evidence, shall not be sufficient to prove specific intent.~~

(b) As used in this section, the following definitions shall apply:

(1) ~~"Sexual activity" means insertive vaginal or anal intercourse on the part of an infected male, receptive consensual vaginal intercourse on the part of an infected woman with a male partner, or receptive consensual anal intercourse on the part of an infected man or woman with a male partner.~~

(2) ~~"Unprotected sexual activity" means sexual activity without the use of a condom.~~

(c)(1) When alleging a violation of subdivision (a), the prosecuting attorney or grand jury shall substitute a pseudonym for the true name of the victim involved. The actual name and other identifying characteristics of the victim shall be revealed to the court only in camera, and the court shall seal that information from further revelation, except to defense counsel as part of discovery.

(2) All court decisions, orders, petitions, and other documents, including motions and papers filed by the parties, shall be worded so as to protect the name or other identifying characteristics of the victim from public revelation.

(3) Unless the victim requests otherwise, a court in which a violation of this section is filed shall, at the first opportunity, issue an order that the parties, their counsel and other agents, court staff, and all other persons subject to the jurisdiction of the court shall make no public revelation of the name or any other identifying characteristics of the victim.

(4) As used in this subdivision, "identifying characteristics" includes, but is not limited to, name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background.

(c) Consent as defense. The complainant's effective consent or the actor's reasonable belief that the complainant consented to the actor's conduct is a defense to prosecution under this act if:

- a. the conduct did not pose a statistically significant threat of, or in fact inflict, serious bodily injury; or***
- b. the complainant knew or reasonably should have known that the threat or occurrence of harm was a risk of his/her voluntary conduct or occupation."***



THE LEGISLATIVE PROCESS: A MORE DETAILED OVERVIEW

I. Legislative Composition and Cycles

Most state legislatures are made up of two chambers, the Senate and the House of Representatives (or, in some states, called the Assembly). The state legislature meets in session to create new laws, change existing laws, and enact budgets for the state.

Generally, there are two types of legislative sessions: *regular* and *special*.

- A regular session is the gathering of legislators; the starting time (and sometimes length) is set by the state constitution or statute. The [National Conference of State Legislatures \(NCSL\)](#) provides a current listing of each state legislative session.
- A special session may be called by the governor or the legislature to address a specific issue.

II. Bill Sponsorship, Co-Sponsorship, and Limits on Bills

The idea for a new law or legislative reform may be suggested by anyone, including constituents, state agencies or advocacy groups. Most state legislatures require that a bill be introduced to the legislative process by a legislator, called the sponsor. Often, the sponsor of a bill will seek additional supporters, or co-sponsors,¹ because it can help increase the chances of passing the legislation.

III. Introduction and Referral of Bills

The legislative process begins when a bill is introduced in either the senate or the house/assembly of the legislature. Next, the bill is referred to a legislative committee of the chamber (the senate or the house) where it was first introduced for review and recommendations. In most states, leadership of the legislative chamber (e.g., Speaker of the Assembly or House, President of the Senate) determines bill assignments. This determination is usually based on the subject matter of the bill and each committee's jurisdiction. Since HIV-specific laws are part of the state's criminal code, a modernized bill will likely be referred to the judiciary committee for the chamber where the bill was introduced. You should identify the members of the judiciary committee in both the senate and the house, as well as any other legislative committee the bill is likely to be referred to (e.g., the health and welfare committee). You should target these members for multiple educational and advocacy meetings before the bill or resolution is introduced, and throughout the bill's review by that legislative chamber.

¹ "Eleven chambers, however, restrict the number of signatures (including the main author's); they are: Indiana House (4); Minnesota Senate and House (5); New Hampshire Senate (10); New Hampshire House (5); North Dakota Senate and House (6); West Virginia House (7); Wyoming Senate House (15); New Mexico Senate (5)." NCSL, *INSIDE THE LEGISLATIVE PROCESS* 3-13 (1996).

IV. Committee Action

Each state has its own sets of rules and procedures for how an idea becomes a bill and how a bill becomes a law. Although the process may not be identical from state to state, the process we describe here will generally apply to most, if not all, state legislatures.

A committee's main job is to review and make a recommendation regarding a proposed bill or resolution. During the committee review process, committee members will want to hear from supporters and opponents of the bill; examine the details and merits of the bill; consider proposed amendments; request information about the subject of the bill; and eventually vote on the bill.²

As the bill goes through the review process, committee staffers will prepare a report, which will get updated at different stages of the process. When the committee completes its work on the bill, it can make one of a number of different recommendations, including:

- that the rest of the legislative chamber pass the bill as is;
- pass the bill as amended by the committee;
- that the bill be referred to a different committee for review;
- to postpone the bill indefinitely (i.e., indefinitely usually means permanently, and the bill will have to be re-introduced down the road).

Not all bills get scheduled for a hearing, so a good number of bills never get any further than committee. Once a committee issues its report, the legislative chamber will vote on whether to adopt the committee's report and recommendations, and refer the bill to the legislative Rules Committee.

V. Rules Committee

The rules committee makes decisions on questions of procedure, and in some states, it decides which bills will be placed on the legislative calendar for debate and vote.

VI. The Calendaring Process

The legislative calendar is a published list of proposals and bills to be considered for debate and vote by each chamber of the legislature. Procedures for prioritizing proposed legislation on the calendar vary by state and legislative chamber. Proposed legislation may be removed from the calendar by majority vote or, in some chambers, by one legislator's objection.

VII. Floor Action

Once on the calendar of either chamber, a bill will be read to the members of that legislative chamber. Some legislative chambers require a bill to be read in full at some point in the legislative process.³ In most states, the bill must be read a set number of times. Legislators have an opportunity to discuss and debate the proposed bill, and can offer amendments. Once an amendment is proposed, the legislative chamber will vote on whether to adopt the amendment. If floor amendments are adopted, the changes will be incorporated and the bill

² NCSL, INSIDE THE LEGISLATIVE PROCESS 4-1 (1996).

³ NCSL, INSIDE THE LEGISLATIVE PROCESS 5-223 (2008).

VIII. Voting

A bill must be voted on and passed in both legislative chambers before it is sent to the governor for review.

1. If a bill is introduced in the House, it will go through the review process described above and then the members will vote. If the bill receives enough votes to pass it will move to the Senate.
2. The bill will go through the same review process in the Senate. If any amendments are made in the Senate, then the bill with the amendment(s) will be sent back to the house for a vote. If the amended bill does not pass in both legislative chambers, then a conference committee made up of representatives of both chambers will be appointed to help resolve the differences in the two versions of the bill.
3. Once a bill has passed through both chambers, it is sent to the governor for review.

IX. Governor's Action

Once a bill has passed through both legislative chambers, a governor may: (1) sign the bill, (2) reject the bill ("veto"), or (3) do nothing.

- Sign the bill- When a governor signs a bill, it is enacted and becomes a law.
- Veto the bill - When a governor rejects a bill it is vetoed. In all states – except Indiana, Nevada, New Hampshire, North Carolina, Rhode Island and Vermont – the governor may also line item veto-- reject parts of the bill and approve the remainder.⁵ If the governor vetoes a bill or line item vetoes part of a bill, both chambers of the legislature may vote to override the veto or let the bill fail.
- Do Nothing- In some states, if the governor fails to act within a certain time frame,⁶ the bill may be enacted as if it was signed, but in other states, the bill will fail by the governor's inaction.⁷

⁴ "Only eight chambers – the Alabama Senate, Arkansas House, Hawaii House, Oklahoma Senate, Tennessee Senate and House, Utah Senate and Wisconsin Senate – reported that they do not publish engrossments." NCSL, INSIDE THE LEGISLATIVE PROCESS 5-180 (2006).

⁵ NCSL, INSIDE THE LEGISLATIVE PROCESS 6-29 (1998).

⁶ In Iowa, inaction is not an option for the governor, every bill delivered to the governor must be signed or vetoed. NCSL, INSIDE THE LEGISLATIVE PROCESS 6-31 (1998).

⁷ The governors in 11 states and Puerto Rico have the ability to end a bill by inaction. NCSL, INSIDE THE LEGISLATIVE PROCESS 6-31 (1998).



GENERAL RULES FOR ORGANIZING STATE-LEVEL LEGISLATIVE ADVOCACY ON HIV CRIMINALIZATION

1. Determine your short-term and ultimate goals

In order to develop an effective strategy you must know your ultimate goal. “Ending criminalization” is a very general statement of our goal, and once you get into legislative advocacy you will quickly discover that the devil is in the details.

If a law punishes a person for criminal conduct that involves that person’s HIV infection, there are certain elements that law must have if it is going to be just. By just, we mean that:

- The law is a response to a major problem than requires use of the criminal law to address it rather than a reaction to an isolated or small number of cases;
- The law is consistent with current knowledge about the real risk of danger the conduct poses to another person; and
- The law itself and the punishment it imposes are consistent with and proportionate to the informed treatment of similar types of conduct and risks of harm.

In the case of HIV criminalization, there is very broad, even international, agreement that there is no legal, medical or public health support for the existence of HIV-specific criminal laws because:

- The conduct that the laws target – intentionally trying to harm another through infection with HIV – is too rare to justify a special law to address it;
- The conduct involved – primarily – is the identical conduct through with a number of other existing or potential diseases are spread, some of which can be equally or more serious but none of which are singled out for their own separate law and punishment;
- HIV is a difficult disease to transmit, and with effective treatment the risk of transmission is reduced to near-zero.

There also is broad agreement – from international organizations like UNAIDS to U.S. organizations such as the American Bar Association, The Center for HIV Law and Policy, the HIV Medicine Association, the Association of Nurses in AIDS Care, AIDS United, the National Alliance of State and Territorial AIDS Directors, and more than 700 other US agencies and individuals, that laws that punish people with HIV or any other disease for harm that is risked through sex must require:

- Proof of an intent to harm;
- Conduct that is likely to result in that harm;
- Proof that the conduct of the accused person in fact resulted in that harm; and
- Punishment that is proportionate to the actual harm the person’s conduct caused.

Below are explanations of different ultimate goals:

- **Repeal** is the elimination of a law. A repeal can occur with or without replacement. Repeal without replacement typically occurs when there has been a significant change in society and the law is no longer effective (for example, the 1933 repeal of prohibition, the ban on alcoholic beverages). Repeal without replacement is not an effective strategy for HIV criminalization because the absence of an HIV-specific law does not stop the use of other criminal laws to target people with HIV. This approach may also lead to the enactment of a more harmful and discriminatory law. Repeal with replacement occurs when the law that is repealed is replaced with an updated law. If your state has HIV-specific criminal laws, you can use this approach to repeal the current statute(s) and replace it with the PJP Model Law or another modified version of the law. The Center for HIV Law and Policy or the PJP Legal Working Group can work with advocates on developing proposed legislation for your state.
- **Modernization** is a term we are using to describe the process of amending existing laws so that they conform to current scientific and legal standards. In most cases this would mean taking the existing HIV law, and/or the states criminal STI law (many states also have one of these, although they rarely use them), and changing or adding language so that they reflect the principles we describe above. *Decriminalization*, like repeal, is the abolition of criminal penalties in relation to certain acts, and *modernization* is changing existing laws or implementing new laws that reflect generally accepted criminal law principles and legal standards. The Center for HIV Law and Policy, or the PJP Legal Working Group, can provide you with a sample of what that could look like in your state.
- A **Resolution** is an official expression of the opinion or will of a governmental body. Resolutions are non-binding and can be the first step to successful reform.
- **Commission or Task Force**- A legislative commission or taskforce is a committee authorized by legislative leadership to review and study a particular subject for a specified time period, and provide the legislature with recommendations. Depending on state law, commissions or taskforces may contain lay members. In order to ensure good recommendations, the committee must be evenly composed. Commissions or taskforces have minimal, if any, decision-making authority but they are a great way to start conversations concerning HIV criminalization, particularly in conservative legislatures.

2. Create a coordinating structure and communication network

An organized coordination structure is necessary for a successful, collaborative advocacy effort. Before you gather supporters, you should identify a coordination structure that will facilitate communications, decision-making, and member mobilization. The coordination structure should help maintain and gain momentum. The PJP State Advocacy Working Group can work with local advocate to create a coordination and communication structure for any state group. The PJP State Advocacy Working Group can provide group email capabilities, conference calls, scheduling assistance, advocacy resources, and guidance on developing and implementing a state-level advocacy strategy. These mechanisms make it possible to send

action alerts, mobilize advocates, share resources, share joint press releases, circulate sign on letters, and advance other communications.

3. Engage allies

Legislatures typically respond to contentious social issues when there has been a large change in public opinion. Therefore, it is necessary to have broad support so that your state legislature sees that HIV criminalization is not just an HIV issue, but also a social problem that affects many facets of society. Reach out to local LBGT, civil rights, racial justice, social justice, religious, reproductive rights, women, and people of color groups, and AIDS Service Organizations and let them know why HIV criminalization is an issue that affects their organizational interest, members, or community. Some allies may be hesitant to collaborate because of funding, capacity, and other issues that are irrespective of interest in the issue. In this case, you can explain how your advocacy strategy fits into their current work. You can also propose a creative collaboration that accounts for the allies' constraints. Broad based support increases the capacity of any advocacy effort and can be persuasive when seeking support from legislators for sponsorship or support of a bill or legislative action. Additionally, allies may be able to bring new and different experiences, skills, or resources that can help enhance your advocacy strategy, particularly allies with experience in legislative reform. PJP State Advocacy Working Group members can also provide additional communications support in the form of action alerts to gather an immediate and broad response to legislative activity.

4. Know the issue

All advocates should be familiar with HIV criminalization issues. This includes understanding the science of HIV, your state's laws, prosecution trends, penalties and collateral consequences. You should also be familiar with your opposition's arguments, and develop point-for-point responses. Advocates must be on the same page on the issues. This is imperative. When you get to the point of introducing proposed legislation, your credibility will be at stake and legislators will be critical. Legislators may also want to make concessions on proposed legislation because of the political sensitivity associated with changing criminal statutes. You want to make sure that all advocates understand – and agree on – the proposed legislation and its intent so that all advocates understand how a concession or amendment could be detrimental to your goal. This is especially true in states that have multiple HIV-specific statutes. For instance, it would be counterproductive to reform a state's HIV exposure statute, and to leave an HIV-specific prostitution statute intact.

5. Define your message

You should have a defined and clear message before proceeding with any major advocacy or legislative activity. A defined and clear message will help avoid future impediments to your advocacy efforts, including misunderstandings and inconsistencies. You do not want to appear disorganized or unprofessional. Your message should clearly state why HIV-specific laws are problematic and how the modernization you seek will address these problems. HIV-specific laws unjustly target and discriminate against people living with HIV. The laws are commonly applied to behavior that poses little or no risk of HIV transmission, and where there was no intent to harm. Your audience should understand that modernization will address the misuse of the criminal justice system against people with HIV, but not free anyone that intentionally

engages in harmful behavior from responsibility under the law. Providing examples will help illustrate your point and make the message clear. Many of these talking points can be gathered from [Positive Justice Project's Consensus Statement on the Criminalization of HIV in the United States](#).

6. Targeted education

Broad community education is important for building a larger and stronger movement, but successful reform will also require support from specific stakeholder and policymakers. Since HIV criminalization is part of the criminal justice system it is necessary to educate those who enforce the laws, including police, law enforcement professionals, prosecutors, and judges. You should also target educational efforts towards the media by creating media advisories, submitting opinion editorials or writing letters to the editor. Educating and engaging these key individuals and groups is necessary before any major legislative advocacy. Introducing legislation that will modernize criminal laws is a risky political move for a legislator, and you should ensure legislators that you have laid a foundation for reform with demonstrated support from key allies and stakeholders.

7. Approach legislators and policymakers

Make sure that everyone involved in the advocacy effort knows their state legislator and builds a personal relationship with their state legislator or a legislative aide. You want the legislator's office to recognize your name, answer or return your calls, and respond to your emails. Once you have established a relationship with the legislator or his/her staff, set up a meeting with the legislator's office. You can also invite someone from the legislator's office to a community presentation or event. You should also try to identify and contact legislators who may be potential allies. You can identify potential legislative allies by researching legislators who have supported or have a background in related issues, or who have a personal connection to HIV-affected individuals or communities. Educating many legislators on HIV criminalization is necessary before broaching the subject of introducing or co-sponsoring legislation. You should create a packet of resources and materials to leave with the legislator and have a concrete plan to follow-up, including asking that legislator to make a specific commitment. In addition to establishing relationships with state representatives, advocates should also try to connect with policymakers, including state public health officials or your city's Ryan White planning council. Support from state health department can be very influential in advocacy work, particularly once legislation is introduced.

8. Introducing legislation

Once you have identified a legislator to introduce or co-sponsor a bill, you should approach the legislator's aides to review the PJP Model Law or your adaptation of the law. If you identified other legislators who have expressed interest in supporting proposed legislation you should keep their staff informed. While you are reviewing the bill you should develop a bi-partisan outreach strategy for each step of the legislative process. You should identify potential obstacles the bill may face once it enters the legislative process and explore solutions that may help advance the proposed bill.

If the bill succeeds, then you should continue advocacy efforts to ensure that it is properly implemented and investigate advocacy opportunities on the behalf of individuals convicted for HIV-related offenses. If the bill fails, DON'T GIVE UP. Take time to assess the situation and understand what may have caused the bill to fail. Use this assessment to develop a new strategy that addresses the identified issue(s). Also use this time as another opportunity for educational outreach and coalition building—having a broader and stronger movement will only serve to benefit your strategy. Legislative advocacy is hard and success may look different in every state, so use all experiences as lessons learned that will help in the next legislative session.

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CONSENSUS STATEMENT ON THE CRIMINALIZATION OF HIV IN THE UNITED STATES

We the undersigned agree:

- The criminal law has been unjustly used in the United States to target people with HIV.
- HIV-specific criminal laws, the use of felony laws such as attempted murder and aggravated assault, and the use of sentence enhancements to prosecute HIV positive individuals are based on outdated and erroneous beliefs about the routes, risks, and consequences of HIV transmission.
- Legal standards applied in HIV criminalization cases regarding intent, harm, and proportionality deviate from generally accepted criminal law principles and reflect stigma toward HIV and HIV-positive individuals.
- Prosecutions involving allegations of non-disclosure, exposure, or transmission of HIV conflict with public health priorities and violate basic principles of justice.
- Punishments imposed for non-disclosure of HIV status, exposure, or HIV transmission are grossly out of proportion to the actual harm inflicted and reinforce the fear and stigma associated with HIV.

Public health leaders and global policy makers agree that HIV criminalization is unjust, bad public health policy and is fueling the epidemic rather than reducing it.

Therefore, to ensure a just application of the criminal law to transmission of sexually transmitted infections, we demand that Federal and State officials modernize criminal laws to eliminate HIV-specific statutes and ensure that any prosecution on the basis of HIV or any other STIs requires:

1. proof of an intent to harm;
2. conduct that is likely to result in that harm;
3. proof that the conduct of the accused in fact resulted in the alleged harm; and
4. punishment that is proportionate to the actual harm caused by the defendant's conduct.

Furthermore, we demand that Federal and state officials review the HIV-specific convictions, penalties, sentence enhancements and other restrictions imposed on people living with HIV, such as mandated sex-offender registration and civil commitment or quarantine orders, in their jurisdictions. In the event that such convictions or sentence enhancements fail to conform to the principles outlined above, federal and state officials should take appropriate measures (e.g., through executive clemency, pardon, sentence reconsideration, parole, probation, community work release, etc.) to mitigate the harm caused to individuals through inappropriate application of the criminal law and other civil restrictions to HIV-positive individuals.

The Positive Justice Project (PJP) is a movement of people with HIV, their health care providers, attorneys, community advocates, public health officials, law enforcement professionals, service providers and others devoted to ending the abuse of the criminal law against HIV-positive people. PJP includes HIV advocates, researchers, health and social service providers, media representatives, policy analysts, law enforcement and people living with HIV. We engage in federal and state policy advocacy, legal resource creation and support, and on educating and mobilizing communities and policy makers in the United States.

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RATIONALE FOR CONSENSUS STATEMENT ON THE CRIMINALIZATION OF HIV IN THE UNITED STATES

THE CRIMINAL LAW HAS BEEN UNJUSTLY USED IN THE UNITED STATES TO TARGET PEOPLE WITH HIV

Thirty-four U.S. states and territories have criminal statutes based on perceived exposure to HIV; most of these laws were adopted before the availability of effective antiretroviral treatment for HIV and at a time when data about the limited routes and risks of HIV transmission were not widely available.

1. Prosecutions for allegations of non-disclosure, exposure, or transmission of HIV have occurred in at least thirty-nine (39) states under HIV-specific laws or under general criminal laws.
2. People living with HIV have been charged under aggravated assault, attempted murder and even bioterrorism statutes, and face more severe penalties because law enforcement, prosecutors, courts, and legislators continue to view and characterize people living with HIV and their bodily fluids as inherently dangerous, even as “deadly weapons”.

HIV-SPECIFIC CRIMINAL LAWS, THE USE OF FELONY LAWS SUCH AS ATTEMPTED MURDER AND AGGRAVATED ASSAULT, AND THE USE OF SENTENCE ENHANCEMENTS TO PROSECUTE HIV-POSITIVE INDIVIDUALS ARE BASED ON OUTDATED AND ERRONEOUS BELIEFS ABOUT THE ROUTES, RISKS, AND CONSEQUENCES OF HIV TRANSMISSION

3. Despite the fact that correct and consistent condom use and effective antiretroviral therapy reduce the risk of HIV transmission to near-zero, most state HIV-specific laws and prosecutions do not treat condom use or an undetectable viral load and the extreme unlikelihood that transmission will occur as evidence of a lack of intent to harm.
4. Saliva does not transmit HIV, yet many states criminalize spitting and biting, with prison sentences as long as 35 years.
5. HIV disease is today a chronic, manageable illness for those with access to appropriate care and treatment. Those who discover their infection in a timely fashion and have access to quality health care can expect a near-normal life span.
6. The relative risk of HIV transmission varies widely based on the type of sexual activity, the viral load of the person with HIV and whether or not the person at risk has other sexually transmitted infections (STIs); for instance, oral sex in general poses an extremely low to zero risk of transmission.

LEGAL STANDARDS APPLIED IN HIV CRIMINALIZATION CASES DEVIATE FROM GENERALLY ACCEPTED CRIMINAL LAW PRINCIPLES AND REFLECT STIGMA TOWARD HIV AND HIV-POSITIVE INDIVIDUALS

7. In most jurisdictions, proof of a person’s intent to cause harm or to transmit HIV is neither required for a finding of guilt nor a factor in determining the level of punishment.
8. HIV-specific laws do not include actual HIV transmission as a specific element of the harm or conduct that is prohibited and punished and, in fact, HIV transmission is rarely a factor in HIV criminalization prosecutions.
9. In most states, even extremely low-risk or no-risk sexual activity, without disclosure, is subject to equally serious charges and sentences.

PROSECUTIONS INVOLVING ALLEGATIONS OF NON-DISCLOSURE, EXPOSURE, OR TRANSMISSION OF HIV CONFLICT WITH PUBLIC HEALTH PRIORITIES AND VIOLATE BASIC PRINCIPLES OF JUSTICE

10. The use of the criminal law to try to influence sexual behaviors conflicts with public health principles. Research demonstrates that HIV-specific laws do not reduce transmission, and a growing body of research shows that they may fuel the epidemic because they increase stigma, may discourage testing and make it more difficult for people with HIV to disclose their HIV status.
11. Placing legal responsibility for preventing disease transmission exclusively on people diagnosed with HIV undermines the most basic public health message concerning sexual health -- that all people should practice behaviors that protect themselves and their partners from HIV and other sexually transmitted infections.

PUNISHMENTS IMPOSED FOR NON-DISCLOSURE OF HIV STATUS, EXPOSURE, OR HIV TRANSMISSION ARE GROSSLY OUT OF PROPORTION TO THE ACTUAL HARM INFLICTED AND REINFORCE THE FEAR AND STIGMA ASSOCIATED WITH HIV

12. Many people living with HIV have been sentenced to prison terms of 10-50 years, exceeding punishments sometimes imposed on convicted murderers.
13. Because serious felony charges and imprisonment are reserved for intentional or reckless conduct that causes another person serious harm, the adoption of HIV-specific criminal laws reinforces unfounded beliefs that people living with HIV are inherently dangerous and that "intentional transmission" is a sufficiently common problem to warrant the criminal law's intervention.
14. The use of sex offender registries and related civil commitment laws to impose life-long surveillance and incarceration on individuals for engaging in consensual sex after testing positive for HIV minimizes the seriousness of actual sexual assault and the consequences for survivors, and misdirects resources used for monitoring and surveillance away from actual sexual predators.
15. The very decision to charge an individual with an HIV-specific crime creates a public record of that individual's HIV status. In turn, the identities of people with HIV who are criminalized—and sometimes their personal medical information and forensic reports—are subject to sensationalized media coverage that compounds the harm to individuals and their families through this intrusion on the person's right to medical privacy.

PUBLIC HEALTH AND POLICY LEADERS AROUND THE GLOBE AGREE ON THE NEED TO MODERNIZE CRIMINAL JUSTICE RESPONSES TO HIV

16. The National HIV/AIDS Strategy (NHAS), released in 2010, includes a statement on the problem and public health consequences of HIV criminalization and maintains that many state HIV-specific criminal laws reflect long-outdated misperceptions of HIV's modes and relative risks of transmission. The NHAS recommends that legislators reconsider whether these laws further the public interest and support public health approaches to preventing and treating HIV.
17. The [National Alliance of State and Territorial AIDS Directors \(NASTAD\)](#), an organization that represents public health officials who administer state and territorial HIV/AIDS programs, released a statement in 2011 supporting efforts to end HIV-specific criminal laws and policies that perpetuate stigma and discrimination against HIV-positive persons.
18. There is growing national support for legislation, such as H.R. 3053 the REPEAL ("Repeal Existing Policies that Encourage and Allow Legal") HIV Discrimination Act, to address the harms of HIV criminalization by providing incentives for states to review laws and practices that punish people with HIV for consensual sex and conduct that poses no real risk of HIV transmission, including spitting and biting.
19. The Joint United Nations Programme on HIV/AIDS (UNAIDS), in a 2008 policy brief, urged nations to avoid introducing HIV-specific criminal laws, stating that there are no data to support the application of criminal law to HIV transmission and exposure, either to achieve justice or to prevent HIV transmission.

20. In July, 2012, the Global Commission on HIV and the Law, of the United Nations Development Programme (UNDP) issued a report, *HIV and the Law: Risks, Rights & Health* that catalogs the damage to individuals, communities and public health goals caused by HIV criminalization and calls for the end of all HIV-specific laws and prosecutions based on HIV status.

CRIMINALIZATION HARMS PEOPLE WITH HIV, THEIR COMMUNITIES AND PUBLIC HEALTH

21. Criminalization harms already-marginalized communities affected by HIV by crediting and reinforcing outdated fears and beliefs about HIV and by stripping people living with HIV of the right to sexual intimacy.
22. Criminalization harms women with HIV in several ways (i.e., it creates a tool for control by abusers who threaten prosecution of women who want to leave abusive relationships; complicates custody disputes and pregnancies; imprisons women for non-disclosure without regard for the complex reasons, such as fear of violence, that disclosure may not be advisable; and over-targets sex workers, against whom condom possession may be used as evidence of intent to commit a crime).
23. Criminalization harms young people, for whom negotiating sex and relationships while cultivating acceptance and community is additionally complex. For all young people, but especially for those perinatally infected who have never known a life without HIV, the criminalization of HIV is particularly destructive as it compounds the difficulties of learning how to safely disclose HIV status and maintain safer sexual relationships.
24. Criminalization of HIV, which disproportionately affects Black men and women, creates another basis for singling out people of color for arrest and imprisonment.
25. HIV criminalization harms society, especially people with HIV, gay men, transgender women, black men and others from communities most directly affected by HIV, by reinforcing demeaning stereotypes that define their sexuality as inherently dangerous, predatory or deviant.
26. HIV criminalization can provide an effective proxy for a homophobic, transphobic, and/or racist application of the law that is otherwise legally or politically prohibited.

It is time to modernize existing laws and their application to individuals with HIV to conform them to current scientific, legal and human rights standards.

Therefore, the undersigned agree that:

- All U.S. law should be consistent with current medical and scientific knowledge and accepted human rights-based approaches to disease control and prevention that respect the right to be free of discrimination and the imposition of unwarranted, punitive rules of conduct based on health and disability status.
- Singling out HIV status or any other health condition or disability as an element of a crime or proof of an intent to harm is unjust and unwarranted from legal, ethical, and public health perspectives.
- Incarceration or isolation under either the criminal or civil law should never be based on unsupported beliefs or assumptions about HIV or an individual's HIV or STI status, disability, guilt or dangerousness.
- Cases in which people living with HIV engage in conduct with the specific intent and actual likelihood to inflict harm through transmission of HIV are exceedingly rare and, regardless, can be addressed through existing criminal assault statutes.
- In cases of intended and actual transmission of a sexually transmitted infection, punishment must be proportionate to the nature of the harm and should include diversion program options and alternatives to incarceration, such as restorative justice approaches, that constructively address the needs of the individual who has been harmed.

- Officials considering prosecution of the alleged non-disclosure, exposure, or transmission of HIV or any other STI should exercise restraint and caution and should always consult qualified public health experts before proceeding. In the rare instance where sufficient evidence of intent to harm may warrant prosecution, such prosecutions should never be conducted in a manner that could undermine public health efforts to prevent the spread of STIs, or reinforce societal prejudices, misconceptions, or irrational fears regarding STIs.
- A just application of the criminal law requires that Federal and State officials modernize criminal laws to eliminate HIV-specific statutes and ensure that any prosecution on the basis of HIV or any other STIs must require:
 - a. proof of an intent to harm;
 - b. conduct that is likely to result in that harm;
 - c. proof that the conduct of the accused in fact resulted in the alleged harm; and
 - d. punishment that is proportionate to the actual harm caused by the defendant's conduct.

Federal and state officials should review the HIV-specific convictions, penalties, sentence enhancements and other restrictions imposed on people living with HIV, such as mandated sex-offender registration and civil commitment or quarantine orders, in their jurisdictions. In the event that such convictions or sentence enhancements fail to conform to the principles outlined above, federal and state officials should take appropriate measures (e.g., through executive clemency, pardon, sentence reconsideration, parole, probation, community work release, etc.) to mitigate the harm caused to individuals through inappropriate application of the criminal law and other civil restrictions to HIV-positive individuals.

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The Positive Justice Project Consensus Statement Outreach Template is a tool for advocates seeking endorsements of the PJP Consensus Statement on HIV Criminalization in the United States. This outreach template provides a brief summary of the PJP Consensus Statement, its purpose and why an individual's or organization's endorsement matters. The outreach template can be used for one on one discussions or email blasts.

Summary: PJP Consensus Statement on the Criminalization of HIV in the United States

The Positive Justice Project (PJP) Consensus Statement on the Criminalization of HIV in the United States calls on federal and state officials to modernize criminal laws and policies and to eliminate HIV-specific statutes. It is the first national consensus statement against HIV criminalization in the United States, endorsed by a diverse group of activists and professionals from a broad range of backgrounds.

The PJP Consensus Statement highlights injustices caused by HIV criminalization and includes clear rationales, both scientific and legal, for why change is overdue.

The PJP Consensus Statement calls for government action to make sure that any prosecution based on exposure to a sexually transmitted disease, including but not limited to HIV, requires:

1. **Proof** that the defendant (the person charged) *intended to do harm*;
2. **Conduct** that is *likely to result in that harm*;
3. **Proof** that the **conduct** of the accused in fact *resulted in that harm*; and
4. Punishment that is *proportionate to the actual harm* the defendant caused.

To view the Positive Justice Project Consensus Statement on the Criminalization of HIV in the United States, go to: <http://hivlawandpolicy.org/resources/view/768> or see attached.

To endorse the statement, email: programassociate@hivlawandpolicy.org

Purpose of the PJP Consensus Statement on the Criminalization of HIV in the US

- Provides a useful tool for explaining the problem of criminalization that also outlines specific steps that would end injustices caused by HIV-specific laws and prosecutions.
- Spreads awareness and support advocacy and organizing to end of HIV-specific criminal laws, policies and prosecutions.
- Demonstrates to state and federal policy makers the broad national, organizational and individual support for ending HIV criminalization in our communities.

Why your endorsement matters

- Hundreds of individual and organizational endorsements of the PJP Consensus Statement from across the county and from many backgrounds show policy makers that there is tremendous opposition to current HIV criminal laws and prosecutions.
- Increasing endorsements of the PJP Consensus Statement makes the movement to end the criminalization of HIV more visible to those that adopt and enforce these policies: our elected state and federal leaders, public health officials, law enforcement and corrections personnel, medical professionals, prosecutors and judges.
- Government officials require visible evidence of very broad community support and outrage to take action on controversial or challenging policy issues. HIV criminalization is that kind of controversial policy issue that is hard for most public officials to take on. A widely endorsed PJP Consensus Statement can be an influential tool for reform.



ELEMENTS OF A JUST CRIMINAL LAW RESPONSE TO ALLEGATIONS OF
NONCONSENSUAL EXPOSURE TO A SERIOUS INFECTIOUS DISEASE:
A GUIDE FOR POLICY MAKERS

The following is excerpted from a proposed report that The Center for HIV Law and Policy prepared for UNAIDS following a series of meetings involving legal and scientific professionals knowledgeable in HIV law, policy and science; and government officials and policy makers from around the globe, in 2011-2012.

1. Policy-makers and criminal justice enforcement personnel should incorporate the following factors in their understanding of and response to harm from allegations of HIV non-disclosure, exposure and transmission:
 - a. HIV infection is a health condition that is not yet curable, but with treatment becomes chronic and manageable, with the result that a person with HIV can now live a near-normal lifespan.
 - b. HIV infection does not prevent a person with HIV from living a full, productive and satisfying life.
 - c. HIV infection does constitute a serious health condition with physical, psychological and social consequences, and thus could be considered a harm under the criminal law in the same way that comparable health conditions would be.
 - d. Because HIV infection is a chronic treatable health condition, it is inappropriate for criminal prosecution of HIV non-disclosure, exposure or transmission to involve charges of “murder/manslaughter”, “attempted murder/manslaughter”, “assault with a deadly weapon” or “reckless homicide”.
 - e. The “harm” related to HIV non-disclosure or exposure (as opposed to HIV transmission) should not be considered significant enough to warrant prosecution under the criminal law.

2. Policy-makers and criminal justice enforcement personnel should understand and incorporate the following aspects of risk relevant to allegations of HIV non-disclosure, exposure and transmission:
 - a. To warrant criminal prosecution, the risks of HIV non-disclosure or exposure should be significant; the fact that the “harm” of HIV infection has been reduced from death to a chronic manageable health condition where treatment is available, argues against considering “any risk” of HIV infection as a “significant risk”.
 - b. Any legal concept of “significant risk” in the context of HIV should be informed by scientific, medical and epidemiological evidence.
 - c. Risk of transmission should *not* be considered “significant”, “substantial”, “unjustifiable”, “serious” or “likely” when there is correct use of condoms, no vaginal or anal penetrative sex, or the person living with HIV has an undetectable or very low viral load.
 - d. As there is no significant scientific or medical risk of HIV transmission from biting (regardless of whether or not there is blood in saliva), from scratching or hitting, or from spitting or throwing bodily fluids or excretions (such as urine and faeces), no court of law should find any legally significant risk of harm from these acts.

3. Policy-makers and criminal justice enforcement personnel should apply the following key points in their understanding and response to state of mind in the context of criminalization of HIV non-disclosure, exposure and transmission:
 - a. To avoid possible miscarriage of justice and unfair application of the criminal law, prosecution of alleged harms that occur in the context of consensual intimate relationships should require that the State prove the intention to cause harm – a culpable mental state.
 - b. Intent to harm and/or to transmit cannot be presumed or solely derived from knowledge of positive HIV status and/or failure to disclose HIV status.
 - c. Public health records are not acceptable methods of proving an individual's knowledge of HIV status; neither these records nor personal medical records are sufficient to prove an individual's intent to harm.
 - d. Intent to transmit cannot be presumed or solely derived from intent to engage in unprotected sex or have a baby without taking steps to prevent mother to child transmission of HIV.
 - e. Proof of intent to cause harm in the context of HIV non-disclosure, exposure or transmission should at the least involve the following elements: (i) knowledge of positive HIV status; (ii) purposeful action that poses a significant risk of transmission; and (iii) knowledge that the alleged action posed a significant risk of transmission.
 - f. Active deception regarding positive HIV status can be considered an element in establishing the required state of mind but is not dispositive on the issue of intent. The context in which the deception occurred, including the mental state of the person living with HIV, should be assessed.
 - g. No prosecution can proceed, for failure to prove the required state of mind, if the defendant:
 - i. did not know his/her positive HIV status;
 - ii. did not know how HIV is transmitted;
 - iii. reasonably believed the other person had consented to the risk;
 - iv. feared violence or other significant harm if s/he disclosed;
 - v. took reasonable measures to reduce risk by practicing safer sex (such as use of condoms for anal or vaginal sex, or by not engaging in anal or vaginal sex); or
 - vi. reasonably believed that his/her treatment rendered him/her non-infectious.
4. Policy makers and law enforcement personnel should understand the relevance and complexities of disclosure and consent, and their documentation, in the context of allegations of HIV non-disclosure, exposure and transmission:
 - a. Because the risk of HIV transmission can be made negligible by many means, including through consistent and correct use of condoms, by non-penetrative sex and by having an undetectable or very low viral load; because privacy is a human right; and because disclosure may place an HIV-positive individual at risk of physical, mental or social harm, the criminal law should not impose a blanket requirement for disclosure of positive HIV status nor should non-disclosure alone be the basis for criminal prosecution.
 - b. Disclosure should be considered evidence of a lack of intent to do harm and as a defense to charges of HIV transmission.
 - c. Reasonable belief that one has reduced risks of transmission to a negligible level or disclosure of positive HIV status (whether explicit or reasonably implicit) should preclude a finding of the necessary intent to cause harm.



HIV CRIMINALIZATION RESOURCES BY SUBJECT

GUIDANCES AND FACT SHEET

- [Guidance for a Legal Advocate Representing an HIV-Positive Client in a Criminal Exposure Case](#)
- [Guidance for People Living with HIV Who Are At Risk of, or Are Facing, Criminal Prosecution for HIV Nondisclosure or Exposure](#)
- [HIV Criminalization: Are You At Risk?, Palm Card, Positive Justice Project](#)
- [Positive Justice Project: HIV Criminalization Fact Sheet](#)

LEGISLATION

- [Fact Sheet on H.R. 1843, REPEAL HIV Discrimination Act](#)
- [H.R. 1843, REPEAL HIV Discrimination Act Outreach Toolkit](#)

STATE LAWS AND PROSECUTION PRACTICES DOCUMENTS

- [Chart: Comparative Sentencing on HIV Criminalization in the United States](#)
- [Chart: State-by-State Criminal Laws Used to Prosecute People with HIV](#)
- [HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice, The Center for HIV Law and Policy \(2017\)](#)
- [Positive Justice Project: HIV Criminalization Fact Sheet](#)
- [When Sex is A Crime and Spit is a Dangerous Weapon: A Snapshot of HIV Criminalization in the United States](#)

STATEMENTS AGAINST HIV CRIMINALIZATION

- [PJP Proposed Resolution Submitted to the President's Advisory Council on HIV/AIDS \(PACHA\) On Ending Federal and State HIV-Specific Criminal Laws, Prosecutions and Civil Commitments](#)
- [US Conference of Mayors, Resolution on HIV Criminalization](#)

TRANSMISSION

- [Chart: HIV, STIs and Relative Risks in the United States](#)
- [Risk of HIV Infection Per Single Sexual Exposure to An Individual Living With HIV, And Other Life Events With Comparable Risk of Occurrence](#)
- [Sample Expert Statement on HIV Transmission Risk](#)
- [Spit Does Not Transmit \(Law Enforcement Factsheet\)](#)
- [Transmission Routes, Viral Loads and Relative Risks: The Science of HIV for Lawyers and Advocates](#)

WOMEN

- [What HIV Criminalization Means to Women in the U.S.](#)

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