



# The Criminalization of HIV, Approaches to Reform & Consequences



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## INTRODUCTION

**The Center for HIV Law and Policy (CHLP) hosts and coordinates the Positive Justice Project, the first national collaborative network of PLHIV, PLVH and allies working to end criminalization of HIV, viral hepatitis, and all stigmatized disabilities and health conditions.**

- + Support for 19 state coalitions to date: providing legal and policy analysis, legislative drafting assistance, and state-specific advocacy resources
- + Working with defense attorneys representing PLHIV facing criminal charges: assistance on dozens of cases over the past several years (e.g. helped to secure release of Michael Johnson)
- + PJP Advisory Group: advocates and experts from across the country provide input and feedback on national/local collaboration best practices, guiding principles for law reform, and resources advocates need most
- + PJP Partners Group: unique partnership of major national organizations and grassroots advocates
- + Collaborations with Association of Prosecuting Attorneys
  - National Prosecutors Roundtable on HIV Criminalization and Policy: led to dismissal or reduction of charges in at least 4 jurisdictions
  - Recently authored Public Health and Public Safety Pathways for Criminal Justice System Response to COVID-19

## THE STATE OF HIV CRIMINALIZATION

***HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, The Center for HIV Law and Policy (updated July 2020), <https://www.hivlawandpolicy.org/sourcebook>**

- + Sourcebook is the only comprehensive source of US laws, policies, cases, and related analysis on the criminalization of HIV, viral hepatitis, and other infectious diseases; commonly relied on (e.g., see Sidley memo prepared for this task force)
- + 32 states have HIV-specific laws that impose criminal penalties, i.e. laws that impose misdemeanor or felony punishment and explicitly target HIV.
  - These laws can be found in criminal codes or public health codes.
  - Some of these laws define criminal offenses for exposing others to HIV; others outline harsher penalties for PLHIV for acts that are already considered criminal.
- + At least 25 states prosecute PLHIV under general criminal laws, i.e. laws that do not mention HIV in their text but are used against PLHIV specifically due to HIV status.
  - For instance, someone may be prosecuted for assault with a deadly weapon, when a prosecutor argues that their saliva is a “deadly weapon” due to positive status.
  - PLHIV have been prosecuted for offenses as serious as attempted murder.

# HIV CRIMINALIZATION IN THE UNITED STATES

AN OVERVIEW OF THE VARIETY AND PREVALENCE OF LAWS USED TO PROSECUTE AND PUNISH PLHIV IN THE US.

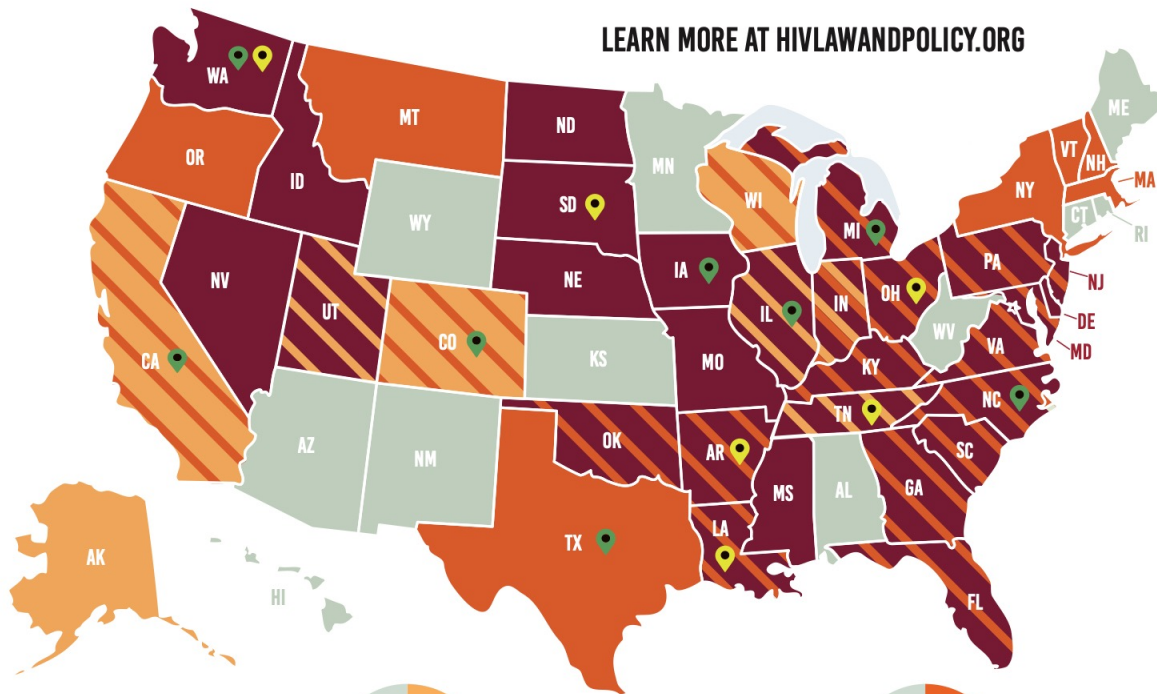
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**6 STATES MAY REQUIRE REGISTRATION AS A SEX OFFENDER**  
as part of the punishment under HIV-specific laws



**8 STATES HAVE REFORMED OR REPEALED**  
one or more parts of their HIV-specific criminal laws



**32**

**STATES HAVE HIV-SPECIFIC CRIMINAL LAWS AND/OR SENTENCE ENHANCEMENTS APPLICABLE TO PLHIV**

(Note: Total reflects overlap among the 28 states with HIV-specific laws and the 8 with sentence enhancements.)



**STATES WITH HIV-SPECIFIC CRIMINAL LAWS**  
including laws targeting sex/non-disclosure, exposure to bodily fluids, needle-sharing, sex work, and blood/organ/semen donation



**STATES WITH SENTENCING ENHANCEMENTS**  
applicable to PLHIV who commit an underlying sexual assault crime.



**STATES THAT HAVE PROSECUTED PLHIV UNDER NON-HIV-SPECIFIC, GENERAL CRIMINAL LAWS**  
This number represents states with reported charges and/or convictions for non-HIV-specific offenses, where positive HIV status was relevant in establishing a (non-HIV-specific) element of the offense.



# U.S. HIV LAWS AND PROSECUTORIAL TOOLS

32 States, 2 Territories, and the Federal Government (35 total) Have HIV Laws Imposing Criminal Penalties

Updated July 2020

## HIV LAWS IMPOSING CRIMINAL PENALTIES (35 total)

Each state or territory, in addition to the federal government, that has an HIV-specific misdemeanor or felony law for one or more of the behaviors below qualifies as a state or territory with an HIV law imposing criminal penalties. A law is HIV-specific if it explicitly targets HIV, whether or not it targets other diseases as well. Where not otherwise noted, these laws appear in criminal codes. In some jurisdictions, some or all of these HIV-specific laws imposing criminal penalties appear in public health codes; these 11 jurisdictions are marked with Ω.

## STI EXPOSURE OR TRANSMISSION LAWS IMPOSING CRIMINAL PENALTIES (28 total)

## SEX OFFENDER REGISTRATION

## GENERAL FELONY LAWS

## NOTES

EXPOSURE	DONATION	SEX WORK	SENTENCING	CHARGE	VIRAL HEPATITIS	PUBLIC HEALTH CODE †	CRIMINAL CODE	Sex Offender Registration May Be Required if Convicted of HIV-Specific Criminal Law (6 total)	General Felony Laws Used to Prosecute People Living with HIV (26 total) ‡			
Sexual Exposure (24 total)	Spit, Sharing Blood, Exposure (17 total)	Needle Sharing (22 total)	Organ, Tissue, Blood, Semen (22 total)	Sex Work/Solicitation (12 total)	Sentence Enhancement or Aggravating Factor for Sex Offenses While Living with HIV (8 total)	Felony and/or Misdemeanor (33 jurisdictions have felonies)	Hepatitis Also Specifically Included in HIV Laws Imposing Criminal Penalties (12 total)	STI Law with HIV in Public Health Code (2 total)	General STI Law in Public Health Code (21 total)	STI Law in Criminal Code (5 total)	Sex Offender Registration May Be Required if Convicted of HIV-Specific Criminal Law (6 total)	General Felony Laws Used to Prosecute People Living with HIV (26 total) ‡

## JURISDICTION

Alabama								Misdemeanor				PLHIV have been prosecuted under a criminal law for "assault with bodily fluids," which carries a felony enhancement if the defendant has any "communicable disease."
Alaska					Yes	Felony						
Arizona								Misdemeanor				
Arkansas	Yes	Yes	Yes				Felony		Yes	Yes		It is also a misdemeanor for PLHIV to receive medical or dental care without disclosing positive status.
California					Yes	Felony		Misdemeanor	Misdemeanor		Yes	
Colorado					Yes	Felony					Yes	
Connecticut												A person housed in a correctional facility may be barred from release based on infection with a venereal disease.
Delaware Ω				Yes			Felony					
District of Columbia												
Florida Ω	Yes			Yes	Yes		Felony				Yes	
Georgia	Yes	Yes	Yes ★	Yes	Yes		Felony	Yes			Yes	
Hawaii												
Idaho Ω	Yes	Yes	Yes ★	Yes			Felony					While Idaho does not include hepatitis alongside HIV in its exposure law, the state does have a statute indicating it is unlawful for anyone infected with hepatitis B virus (HBV) to "knowingly expose another person." HIV, syphilis, gonorrhea, and chlamydia are also included in this same law. Subsequent code sections specify, first, misdemeanor penalties for syphilis and gonorrhea, and, secondly, felony penalties for HIV. Thus, penalties for HBV are not specified, making it unclear how exactly exposure to HBV is treated under the law.
Illinois	Yes		Yes ★	Yes		Yes	Felony					
Indiana Ω	Yes	Yes	Yes ★	Yes		Yes	Felony/Misdemeanor	Yes			Yes	



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<b>JURISDICTION</b>													
Nevada	Yes	Yes	Yes	Yes	Yes		Felony		Misdemeanor				Nevada has a broad HIV exposure statute that can be applied to exposure by any means. Additionally, while certain regulated forms of sex work are legal, sex work remains categorically unlawful for PLHIV.
New Hampshire												Yes	
New Jersey	Yes						Felony			Felony		Yes	New Jersey's "diseased person committing an act of sexual penetration" criminal statute outlines a "crime of the fourth degree" for penetration without "informed consent" when someone has one of several STIs, not including HIV, and a higher "crime of the third degree" for the same conduct for PLHIV. Both offenses are equivalent to felonies in other states: a crime in the fourth degree carries a maximum of 18 months in jail, while a crime in the third degree carries a maximum of 5 years.
New Mexico									Misdemeanor			Yes	
New York									Misdemeanor			Yes	
North Carolina Ω	Yes		Yes ★	Yes			Misdemeanor	Yes	Misdemeanor			Yes	Although North Carolina's HIV-specific law is a misdemeanor, the punishment is up to two years, which is greater than the maximum for a misdemeanor offense in most states.
North Dakota	Yes		Yes ★				Felony		Infraction				
Ohio	Yes	Yes		Yes	Yes		Felony	Yes	Misdemeanor		Yes	Yes	
Oklahoma	Yes	Yes		Yes	Yes		Felony			Felony, Misdemeanor		Yes	
Oregon									Felony			Yes	
Pennsylvania		Yes			Yes		Felony	Yes				Yes	The HIV-specific law criminalizing spit/bite/blood exposure targets people who are incarcerated.
Rhode Island									Misdemeanor				
South Carolina Ω	Yes		Yes ★	Yes	Yes		Felony		Misdemeanor			Yes	South Carolina does not include viral hepatitis in its HIV exposure law, which is HIV-exclusive. The state's STI law, however, specifically names hepatitis B and C, in addition to HIV.



# HIV Criminalization in Nevada

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- Sex work categorically unlawful for PLHIV, who cannot work in licensed houses of prostitution
  - Class B felony for PLHIV
  - Otherwise a misdemeanor to engage in sex work outside of licensed house of prostitution
  - HIV testing required
    - If arrested for misdemeanor offense
    - Monthly for licensed sex workers
- Class B felony, max. 10 years imprisonment, for PLHIV to engage in conduct “likely” to transmit
  - Transmission not required
  - Intent not required; offense established if merely acting “knowingly”
  - Likelihood of transmission, while required, is not defined
  - Broad enough to apply to any type of exposure - sex, needle sharing, etc.

# HIV Criminalization in Nevada Cont'd

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- **Defense for exposure**
  - Only one affirmative defense, focusing on knowledge of partner, which MAY apply if disclosure occurred
    - Person allegedly exposed knew defendant was HIV positive AND
    - Person allegedly exposed knew act could “result in exposure” AND
    - Consented with this knowledge (assumed the risk)
  - No defense for use of condom or prophylactic defense
- **Nevada’s reform efforts**
  - SB 284 creating Advisory Task Force on HIV Modernization signed by Governor Sisolak in May 2019, members appointed in 2020
  - Prior to passage, bill was amended with input from CHLP and partners
    - Removing stigmatizing language in original bill
    - Importantly, setting task force membership requirements



# Nevada's Reform Efforts Cont'd

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- Governor permitted to appoint up to 15 members to Task Force
- Required to appoint majority of membership to be PLHIV, people affected by HIV, or people “who represent an organization, occupation or community that is more affected or more at risk of being affected than the general population by the current statutes and regulations of this State that criminalize exposure to HIV”
- Data show that women are at high risk of being affected by HIV criminalization, especially in states with enhanced penalties for engaging in sex work while living with HIV
- Under the terms of SB 284, women from the community should be represented on this Advisory Task Force

Looking Back at Past Amendments to Criminal HIV Laws Nationwide

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# How has the landscape of HIV criminal laws changed since their inception?

Many states with HIV criminal laws have amended them, some more than once, in each of the last four decades.

Not all recent changes have “modernized” the law.



# Survey of Amendments to Criminal HIV Exposure-related Statutes

*Preliminary Summary of Results of Survey of HIV Law Amendments, Zita Lazzarini, Carol Galletly, et al. (2018)*



## YEARS IN WHICH STATES ENACTED OR AMENDED ONE OR MORE HIV EXPOSURE-RELATED LAW (OR ADDED HIV TO AN EXISTING LAW – BOLD)

	ENACTED AT LEAST ONE HIV EXPOSURE-RELATED LAW	AMENDED AT LEAST ONE HIV EXPOSURE-RELATED LAW	SUBSTANTIVELY AMENDED AT LEAST ONE HIV EXPOSURE-RELATED LAW
1986-1989	AR, CA (2), FL (2), GA, <b>ID</b> , IL, LA, MD, <b>MI</b> , MO, NV (3), NC, ND, OK, SC, <b>WA</b> , MT	CA, FL, ID, NV	CA, FL, NV
1990-1993	CO (2), FL, IN, KA, KY, NV, <b>OK</b> , SC, TN (2), <b>UT</b>	FL, ID, KA, KY, LA, NC (5), SC	FL, ID, KA, KY, LA, NC (2)
1994-1997	MN, NJ, OH (3), TN, <b>WA</b> , WI	FL (3), MO, MT, NV (2), NC (3), WA	FL (2), MO, NV, WA
1998-2001	CA, IA, <b>OH</b> , <b>PA</b> , SD (4), VA, <b>WI</b>	CA, CO, FL, KA, KY, MN, NC, OH, WI	CO, FL, KA, OH, WI
2002-2005	<b>AL</b> , MS, <b>MO</b> , <b>TN</b>	CO, GA, KY, MO, NC (2), SD (2), VA, WI	GA, MO, NC, VA, WI
2006-2009	<b>AK</b> , MA	MS, NC (2), OH (4), TN (2), WI (2)	MS, OH, WI
2010-2013		CA, CO, FL (2), GA, ID, IL (2), KA, NC (2), OH (2), PA, TN (2), UT, WI (2)	FL (2), GA, ID, IL, OH, TN
2014-2016		IA, MO, OH, TN, WI	IA, OH

# Survey of Amendments to Criminal HIV Exposure-related Statutes

*Preliminary Summary of Results of Survey of HIV Law Amendments, Zita Lazzarini, Carol Galletly, et al. (2018)*



**37** STATES WITH HIV EXPOSURE-RELATED LAWS WERE STUDIED

**25**

STATES WITH HIV EXPOSURE-RELATED LAWS THAT WERE AMENDED

**20**

STATES WITH HIV EXPOSURE-RELATED LAWS THAT WERE SUBSTANTIVELY AMENDED



**103** SUBSTANTIVE AND NON-SUBSTANTIVE AMENDMENTS TO HIV EXPOSURE-RELATED LAWS

**64**

NON-SUBSTANTIVE AMENDMENTS

**39**

SUBSTANTIVE AMENDMENTS

# Timeline of State Reforms and Repeals of HIV Criminal Laws

## States with most significant changes to their HIV laws



The Center for HIV Law and Policy  
[www.hivlawandpolicy.org](http://www.hivlawandpolicy.org)



### 1994: TEXAS

- The first state to repeal its HIV specific law; legislative history indicates one representative included it in an omnibus crime bill.
- Repeal did not end prosecutions. PLHIV in Texas prosecuted for HIV exposure since repeal have been charged with attempted murder, aggravated assault.



### 2014: IOWA

- Removed sex offender registration requirement, including retroactively.
- Did not affect felony convictions of those already convicted and incarcerated.
- Added defense to prosecution if a person took practical measures to prevent transmission e.g., prophylactic device, viral suppression).
- Still HIV-specific, but added new felonies for people living with TB, hepatitis, and meningococcal disease.
- Exposure with intent to transmit when transmission occurs is still a felony (up to 25 years). Intentional exposure without transmission is a felony (up to 5 years).
- Exposure with "reckless disregard" if transmission occurs is a felony when transmission occurs (up to 5 years), and a misdemeanor (up to one year) if it does not.



### 2017: CALIFORNIA

- Extensive reform reduced penalties for intentional exposure, solicitation, and performing sex work from felonies to misdemeanors.
- It is no longer a felony to donate blood, tissue, semen, or breast milk.
- Prosecution requires specific intent to transmit coupled with conduct likely to transmit and transmission results.
- Provides privacy protections for PLHIV charged under current law.
- Now applies to "infectious or communicable diseases" with "significant public health consequences."
- Prohibits disclosure of defendant's identity prior to a conviction.
- Limits use of medical records; records can't be only source of proof of intent.
- Anyone convicted must be assessed for community placement prior to sentencing.



### 2018: MICHIGAN

- Reform removed types of physical contact likely transmit HIV.
- Anal or vaginal sex without first disclosing status with a "specific intent" to transmit is a felony (up to 4 years). Transmission is not required for prosecution.
- Reckless exposure: sexual activity prior to disclosure resulting in transmission but without intent to transmit is a felony up to 4 years).
- Reckless exposure without transmission is a misdemeanor.
- PLHIV who can show that they have been virally suppressed for at least six months and are following their physician's treatment plan may use that as a defense to prove that they did not act with reckless disregard. Does not apply to acting with intent to transmit provisions of the new law.

1994

2012

2014

2016

2017

2018

2018

2020

### 2012: ILLINOIS

- Narrowed types of prohibited contact to vaginal and anal intercourse.
- PLHIV must have intent to transmit HIV and engage in the acts listed in the statute (anal/vaginal intercourse, organ/blood donation).
- Disclosure of HIV status or using a condom is now a defense to prosecution, but difficult to prove in court.
- Other forms of prevention not considered, although could be evidence of lack of intent.
- Intercourse without disclosure of status and without a condom can still be a felony up to 7 years.



### 2016: COLORADO

- Reduced the maximum authorized sentence enhancement to double the sentence for PLHIV who are charged with an underlying sex offense if transmission occurs.
- Intent to transmit is not required for prosecution.
- Eliminated felony offenses involving sex work and HIV, and mandatory HIV testing for someone accused of engaging in sex work.



### 2018: NORTH CAROLINA

- No HIV-specific criminal statute. PLHIV required to comply with public health administrative regulations and "control measures." Violating these regulations is a misdemeanor (up to 2 years).
- PLHIV must disclose their status and use condoms unless certain exceptions apply: they have been virally suppressed for at least six months, their partner is taking pre-exposure prophylaxis (PrEP), or their partner is also HIV positive.
- Neither intent to transmit nor transmission is required for public health violations.



### 2020: WASHINGTON

- Reform reduces penalty for HIV exposure from a felony to a misdemeanor.
- Specific intent to transmit and transmission must occur for prosecution. Previously, exposure carried a felony conviction (punishable by up to life in prison) and required neither intent to transmit nor transmission.
- Affords affirmative defenses against prosecution, including disclosure of status and the use of a condom or other "practical means to prevent transmission."
- Removes the requirement for sex offender registration.
- Misrepresenting HIV status to a sexual partner, intent to transmit, and transmission carry a higher penalty of gross misdemeanor.
- Retains felony penalty for PLHIV convicted of transmitting HIV to a child or vulnerable adult, and registration as a sex offender; and amends law allowing health authorities to intervene when person with sexually transmitted disease threatens public health.



# Fact vs. Fiction

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## Contrary to some popular talking points:

- Not all HIV criminal laws were adopted in prior decades when people knew little about HIV
- Many substantive amendments to laws made them MORE punitive, expanding scope or increasing penalties
- Bills to expand scope and/or increase penalties have been introduced in RECENT years
- HIV is not the only infectious disease that is criminalized (although it is criminalized especially widely throughout the U.S. and often singled out for the harshest penalties – e.g. other STI transmission is a misdemeanor but HIV a felony). In some states, however, viral hepatitis is treated equally harshly.

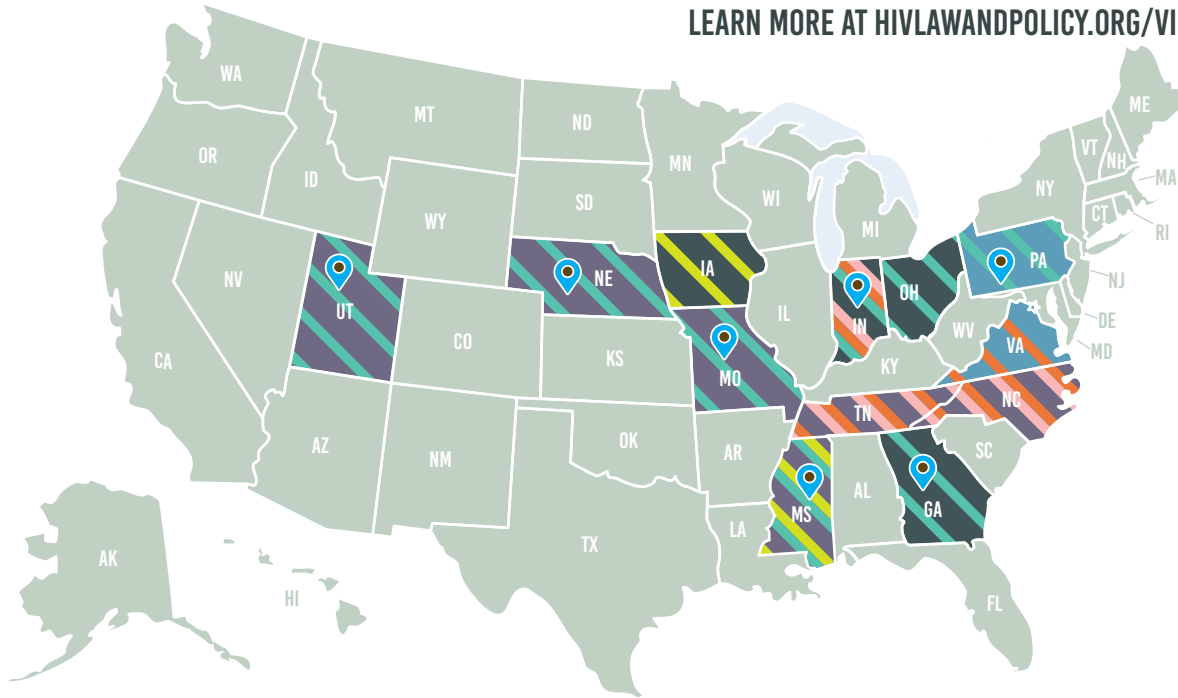
# PUNISHMENT IS NOT A PUBLIC HEALTH STRATEGY

## AN OVERVIEW OF STATES CRIMINALIZING VIRAL HEPATITIS

LEARN MORE AT [HIVLAWANDPOLICY.ORG/VIRAL HEPATITIS](http://HIVLAWANDPOLICY.ORG/VIRAL-HEPATITIS)



STATES WITH LAWS/ ENHANCEMENTS SPECIFIC TO LAW ENFORCEMENT/ CORRECTIONS



12 STATES

have laws that criminalize viral hepatitis.

All 12 of these states also criminalize HIV.

### TYPE OF HEPATITIS CRIMINALIZED:

- Hepatitis B and C
- Hepatitis B
- General/Unspecified

### STATES THAT SPECIFICALLY CRIMINALIZE:

- Sex
- Needle Sharing
- Bodily Fluid Exposure
- States with laws written broadly enough so that people living with viral hepatitis could be arrested for sex, needle sharing or bodily fluid exposure

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# What are the options for reform?

Repeal or amend?

What does it mean to “modernize” criminal HIV laws?

Why not get rid of laws that criminalize HIV?



# First, defining terms in use:

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**Repeal** = completely remove HIV-specific law from state's code  
opens the door for prosecutors to use general criminal law against PLHIV

**Modernize** = term adopted strategically from early discussions with health officials  
frames reform as necessary to keep up with modern science BUT  
somewhat of a misnomer when applied to some states' changes to their laws, implies work is done

**Reform/Effective Repeal** = change terms of the law to make prosecution for HIV exposure  
impossible except under a narrow set of circumstances

drafting laws that can only be used to prosecute those who intend to cause harm, intend to transmit, & commit an act that is actually likely to transmit

cabins prosecution of person-to-person disease transmission in a single law – limiting prosecutors' ability to use general criminal laws against PLHIV or other infectious diseases

**In states that have significantly changed their laws, what do those laws now look like?**



## WHY ONLY “EFFECTIVE REPEAL” RATHER THAN OUTRIGHT, TOTAL REPEAL?



# Texas repealed its HIV-specific criminal law in 1994.

However, prosecutors use general laws to target people living with HIV, including:

- Harassment of a public servant
- Aggravated assault:  
assault that causes serious bodily injury or with the use of a “deadly weapon”
- Aggravated sexual assault:  
sex without someone’s consent or with a child that causes serious bodily injury or with the use of a “deadly weapon”
- Attempted murder



## Illinois revised its HIV criminal laws in 2012.

Prosecutors must now prove “specific intent to commit the offense,” as well as knowledge of HIV status.

- Law now only targets anal or vaginal intercourse without a condom
- Disclosure is a defense, BUT
- Not clear whether viral suppression or ART could show lack of “specific intent to commit the offense”
- No transmission required for felony conviction carrying 3 to 7 years punishment
- Prosecutor can subpoena medical records to show knowledge of HIV status
- Intent to commit offense continues to be inferred from intent to have sex while living with HIV
- Former Cook County State’s Attorney, who previously supported reformed law, called it a “relic of debunked notions of HIV infection” following National Prosecutors Roundtable on HIV Criminal Laws

## Iowa revised its HIV criminal laws in 2014.

Some improvements, but expanded the law to target people living with diseases other than HIV, and continued prosecutions show that effective repeal was not achieved.

- Eliminated sex offender registration, including retroactively
- Narrowed definition of intent, BUT
- Created felony liability for new diseases: meningococcal diseases, hepatitis, & TB
- Substantial risk of transmission required – an improvement for HIV, but not for newly added diseases
- Lays out a hierarchy of offenses from a class B felony for intent to transmit with actual transmission, to serious misdemeanor for acting with reckless disregard without transmission
- Under some circumstances penalties reduced; 25-year sentence possible in other circumstances
- In the 6 years since law changed, arrests and convictions continue at a rate similar to under original law; many getting or still serving significant felony sentences



## Colorado reformed its law in 2016.

Repealed sex work enhancements,  
reduced sex offense enhancement



- Eliminated felony enhancements for engaging in sex work or patronizing while living with HIV
- Removed requirement for HIV testing following charge of engaging in sex work
- Sentencing of PLHIV convicted of sex offenses improved
  - Transmission (but not intent) now required to trigger enhancement
  - Enhancement mandatory, but reduced (still a significant departure for sentencing if not living with HIV)
- PLHIV still vulnerable to prosecutions utilizing general criminal laws
- Modernized health code language regarding HIV

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# California reformed its laws in 2018.

Some offenses repealed, and intentional transmission offense reduced from a felony to a misdemeanor

- Law is not HIV-specific, applies to any infectious or communicable disease, but only where there is specific intent to transmit
- Conduct posing substantial risk of transmission and actual transmission also required
- Reduced penalty from a felony to a misdemeanor carrying a maximum of 6 months imprisonment
- Repealed
  - Enhanced penalty for sex work for PLHIV
  - Blood, tissue, semen, or breast milk donation
- Offers privacy to defendant charged with offense
- Pre-existing sentence enhancements for PLHIV convicted of sex offenses still in place



# North Carolina reformed its HIV control law in 2018.

Revised regulatory health “control measures” went into effect

PLHIV must refrain from sexual intercourse (which is not defined in the regulation) without a condom, unless

- They adhere to a treatment plan and have been virally suppressed for at least six months OR
- Their partner is also living with HIV or taking PrEP

PLHIV must notify sexual partners of their status, unless virally suppressed

Violation is a misdemeanor punishable by up to two years imprisonment

Neither transmission nor intent to transmit is required.





# Washington reformed its HIV laws in 2020

Reduced exposure offense to a  
misdemeanor

- Exposure offense requires specific intent to transmit and actual transmission, neither of which were previously required
- Simple misdemeanor punishable by 30 days in jail, unless there is misrepresentation to a partner – gross misdemeanor, 364 days in jail
- Either disclosure or use of condom are affirmative defenses
- Sex offender registration requirement removed, except for felony assault offense that now only applies when HIV is transmitted to a child or “vulnerable adult”



# What states are currently working actively on growing coalitions and challenging current laws?

- See July 2020 PJP Update for recent news!
- CHLP supporting coalitions in Arkansas, Georgia, Louisiana, Missouri, Ohio, Tennessee and Nevada
- CHLP approach: national organizations support state advocates in creation of their own coalitions while state advocates lead and control —nationals should serve locals, not run the show!



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- What can we learn from past changes to HIV criminal laws and other states' choices?
  - If the goal is to stop prosecutions of PLHIV, as well as PLVH and other infectious diseases, due to their health status, then what is the best way to do that?

# A Few Proposals

- Follow the research that matters most for reform: data on enforcement. Those who have been most affected by the criminalization of HIV should benefit from a reform. Do not settle for a reform that leaves them behind.
- Promote leadership and meaningful engagement of people living with and at risk of HIV & VH, their communities, and those in other movements with shared concerns.
- HIV literacy campaign directed at all legislators BEFORE a bill is proposed
- Prosecutor engagement BEFORE a bill is proposed, so prosecutors will not oppose
- Do not assume that political realities are set in stone and that compromise is necessary, no matter the makeup of your state legislature.
  - Do not underestimate the influence of a strong and broad-based coalition
  - Reforms HAVE happened in conservative contexts, particularly when policymakers come to understand science and when prosecutors become allies.

# Observations

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- Despite broad agreement among advocates on Guiding Principles for reform, state coalitions + national organizations + policymakers often turn to “pragmatism,” accomplishing some reform rather than necessary holistic reform
- Reforms CENTERED on current HIV treatment, i.e. U=U/viral suppression, leave too many behind
  - Reinforce belief that HIV otherwise is easily transmitted (which it’s not), and the notion that this type of law would be appropriate for other diseases that are more easily transmitted (such as COVID-19!)
  - Central problem with HIV criminal laws is absence of requirement to show intent to harm – treating HIV diagnosis as equivalent to criminal intent
  - U=U is vitally important for PLHIV in so many ways, but its importance for reform comes with a caveat: beware of abandoning those who cannot access treatment and/or who have not achieved viral suppression. These are the same people who may already be the most frequently prosecuted.

# CONCLUSIONS

- ❑ Be very cautious of total repeal; an intentional narrowing of existing law can go further
  - ❑ PLHIV, especially those who have been affected by criminalization, must be involved in decisions
  - ❑ Available data show women make up a significant portion of those actually convicted for HIV/VH crimes, so they should be proportionately represented in all efforts to reform the laws
  - ❑ Reform should not exacerbate socioeconomic disparities or create viral hierarchies
  - ❑ Do not start with or assume a need to compromise, and do NOT compromise if improves the reality for some communities at the expense of others
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## FOR MORE INFORMATION

- **CHLP Sourcebook on Nevada’s Laws:** <http://www.hivlawandpolicy.org/sites/default/files/Nevada%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S..pdf>
- **PJP Guiding Principles:** <http://www.hivlawandpolicy.org/sites/default/files/PJP%20Guiding%20Principles.pdf>
- **Consensus Statement on HIV “Treatment as Prevention” in Criminal Law Reform (2017):**
  - **STATEMENT** - <https://www.hivtasprimlaw.org/the-consensus-statement>
  - **FAQ** - <https://www.hivtasprimlaw.org/faq>
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