



# Women, HIV, and Criminal Law: What you can do!

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# HIV Criminalization in the United States

- ⌘ Dozens of states and territories have HIV-specific criminal statutes, including sentence enhancement.
- ⌘ Nondisclosure is frequently an element of the crime.
- ⌘ 2 types of behavior targeted:
  - ⌘ **Spitting and biting** (usually specific to law enforcement and corrections officers)
  - ⌘ **Sexual contact** (types are rarely specified; may include anal sex, oral sex, vaginal sex, etc. – even sex toys).

# HIV Criminalization in the United States

⌘ In most cases:

- ⌘ **Transmission** is unnecessary; “exposure” without prior disclosure of status is enough.
- ⌘ **Disclosure** is often the only defense to prosecution, but is difficult to prove.
- ⌘ **Risk of transmission** (e.g., condom use, low viral load), which is relevant to intent, is rarely considered.
- ⌘ **Proof of intent to harm** is rarely considered
- ⌘ **Actual harm** of HIV is assumed, not addressed.
- ⌘ **Disproportionate punishment** for actual or assumed harm



# WHEN SEX IS A CRIME AND SPIT IS A DANGEROUS WEAPON

## A SNAPSHOT OF HIV CRIMINALIZATION IN THE UNITED STATES



A 23-year-old Oregon man was sentenced to 87 months in prison after pleading guilty to unprotected sex without disclosure of his HIV-positive status to a man he met on Manhunt.com.

A man with HIV in Michigan was charged under the state's anti-terrorism statute with possession of a "biological weapon" after an altercation with a neighbor. Prosecutors equated his HIV infection with "possession or use of a harmful device."

A man in New York was sentenced to 10 years for aggravated assault after biting a police officer.

A man with HIV in Iowa, who had an undetectable viral load, was sentenced to 25 years after a one-time sexual encounter during which he used a condom.

A man in Ohio is serving 40 years for failing to disclose to a girlfriend that he was positive. He claims she knew he was positive and only went to a prosecutor after he stopped dating her and moved in with another woman.

A man with HIV in Texas is serving 35 years for spitting at a police officer.

A woman in Georgia was sentenced to eight years for failing to disclose her HIV status, despite publication of her status on the front page of the local newspaper and testimony from two witnesses that her sexual partner was aware of her HIV-positive status.

**MORE THAN  
160  
PROSECUTIONS  
SINCE 2008\***

- HIV-SPECIFIC STATUTE, AT LEAST ONE PROSECUTION IN PAST TWO YEARS
- HIV-SPECIFIC STATUTE, NO RECENT REPORTED PROSECUTIONS
- HIV-RELATED PROSECUTIONS, THOUGH NO HIV-SPECIFIC STATUTE
- ▲ FIVE OR MORE PROSECUTIONS IN THE LAST TWO YEARS

# Comparison of Prosecutions in Two Time Periods (1986-2001 & 2008-2013)

Mode of Exposure	1986-2001*	Percent	2008- Jan. 2013**	Percent
Consensual Sex	84	27%	99	60%
Prostitution	41	13%	16	8%
Spitting/ Biting	75	23%	37	18%
		}		
<b>Total</b>	<b>316</b>		<b>156</b>	

\* Source: Lazzarini *et al.*, 2002

\*\* Source: Positive Justice Project, 2013

# What does this mean for women?

- ⌘ Women frequently know their status first, and therefore, can be at greater risk of prosecutions
- ⌘ Women may face domestic violence for disclosing their HIV status to their partners or family. But they also risk arrest if they do not.
- ⌘ When a woman's status is known it can be used as a coercive tool by her partner.
- ⌘ Women may be told that they are not allowed to have unprotected sex or that getting pregnant is against the law.
- ⌘ The laws force disclosure but do not provide any protections for secondary exposure.
- ⌘ Depending on the state, women may face employment, housing and voting restrictions or prohibitions.



# Public Health Implications

- ⌘ Laws/Prosecutions do NOT deter targeted behaviors
- ⌘ May actually encourage non-disclosure
- ⌘ Disincentive to HIV Testing
- ⌘ Alienates Patients from Health Care providers
- ⌘ Sends Inaccurate message regarding prevention responsibility
- ⌘ Disproportionately affected marginalized populations which can negatively affect their health outcomes.

# Contact Information

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