



SERO+

Prevention vs. Prosecution

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**HIV IS NOT A CRIME.
CRIMINALIZING IT IS.**



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What is HIV Criminalization?

- ❑ HIV criminalization is the inappropriate use of one's HIV status in a criminal proceeding
- ❑ “HIV-specific” statutes that punish the failure to disclose one's HIV+ status prior to sex
- ❑ “HIV-specific” statutes enhance sentencing for HIV+ people charged with certain crimes
- ❑ About 2/3 of U.S. States and Territories have such “HIV-specific” statutes

UNJUST, UNJUSTIFIED AND JUST UNACCEPTABLE: HIV CRIMINALIZATION'S IMPACT ON HUMAN RIGHTS AND PUBLIC HEALTH



**OVER
80***

HIV-Related Criminal Prosecutions in the Past Two Years Alone

THE NATIONAL HIV/AIDS STRATEGY ON HIV CRIMINALIZATION (JULY 2010)

"Since it is now clear that spitting and biting do not pose significant risks for HIV transmission, many believe that it is unfair to single out people with HIV for engaging in these behaviors and [people engaging in these behaviors] should be dealt with in a consistent manner without consideration of HIV status. Some laws criminalize consensual sexual activity between adults on the basis that one of the individuals is a person with HIV who failed to disclose their status to their partner. CDC data and other studies, however, tell us that intentional HIV transmission is atypical and uncommon... [These laws] may not have the desired effect and they may make people less willing to disclose their status by making people feel at even greater risk of discrimination... In many instances, the continued existence and enforcement of these types of laws run counter to scientific evidence about routes of HIV transmission and may undermine the public health goal of promoting HIV screening and treatment."¹⁴

KEY

- 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



But Geography is No Protection

- ❑ Even in states without an “HIV-specific” statute, PLWHA can face heightened charges or penalties simply because they have HIV
- ❑ TX and NY do not have HIV specific statutes, but Willy Campbell is serving 35 years in TX for spitting at a cop and David Plunkett served more than 6 years for spitting in NY



How Did This Happen?

- ❑ Grew out of early quarantine, mandatory testing, occupational and travel restrictions and control efforts in the 1980s
- ❑ American Legislative Exchange Council
- ❑ President Reagan's AIDS Commission
- ❑ Initial Ryan White Care Act Requirement



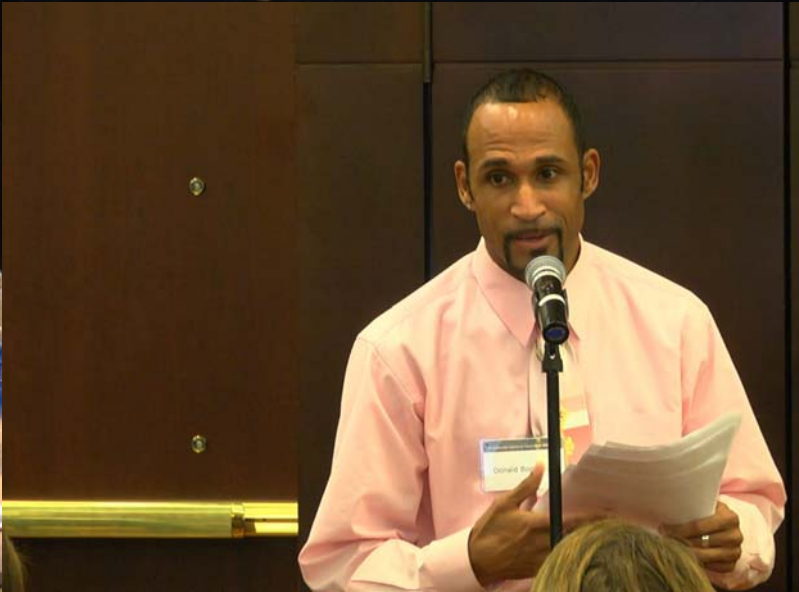
Result?

- ❑ Initially seldom used except against heterosexual African-American men
- ❑ Started to change mid-90s after introduction of protease inhibitors
- ❑ Mandatory names reporting facilitates prosecutions; test acknowledgement forms have shown up in court
- ❑ People with HIV now seen as viral vectors, potential infectors and inherently dangerous



Today

- ❑ More than 1,000 instances when HIV-specific charges have been filed
- ❑ HIV transmission rarely a factor (<10%)
- ❑ 25% of recent cases are for spitting, scratching and biting
- ❑ Condom or low viral load not a defense
- ❑ Every person with HIV one disgruntled ex-partner away from a courtroom





“Take The Test And Risk Arrest”

- ❑ HIV criminalization punishes desired behavior—getting tested—and privileges ignorance of one’s HIV status
- ❑ Most new HIV transmissions are from those who do not know their status, and therefore can’t be prosecuted for non-disclosure
- ❑ Communities most at risk of HIV and in need of testing (AA MSM, sex workers, immigrants) are often those most fearful or suspicious of the criminal justice system



What We Now Know

- ❑ Undercuts personal responsibility message, tells HIV neg people that HIV prevention isn't their job
- ❑ Creates an illusion of safety for those negative or untested and encourages blame
- ❑ Reinforces stigma and misconceptions about real routes, risks and consequences of HIV transmission



HIV is Uniquely Stigmatized

- ❑ More women in the U.S. die of cervical cancer—from HPV—than die of AIDS
- ❑ There are other dangerous and potentially deadly sexually transmitted pathogens
- ❑ Risk isn't one-dimensional; what about the risk of transmission of flu or other pathogens to people with compromised immune systems?



And Those Testing Positive?

- ❑ Criminalization causes distrust of public health so people less likely to cooperate with partner notification (O'Bryne)
- ❑ Makes it more difficult for them to disclose for fear of past catching up with them and less likely to access care (Sero survey)
- ❑ Creates weapon used in abusive relationships (Kelly at IAS)



Sero Criminalization Survey

- ❑ Survey of 2,000 people with HIV in the U.S.
- ❑ Paints picture of dismally disabling legal environment for people with HIV
- ❑ Don't know if subject to a statute, what behaviors put them in legal jeopardy, no confidence of fair treatment in a courtroom
- ❑ >25% know people afraid to be tested for fear of criminalization

HIV Criminalization is a Public Health Disaster

- ❑ Has not achieved intended purpose to reduce transmission and increase disclosure
- ❑ Growing evidence base points to HIV criminalization as exacerbating, not reducing, HIV transmission
- ❑ HIV criminalization reform is a necessary HIV prevention strategy



Three Stages of Understanding

- ❑ Punishments vastly disproportionate; sometimes more than for rape or manslaughter
- ❑ Different laws for different people based on immutable characteristics is wrong (whether gender, race, sexual orientation, genetic makeup, physical ability, etc.)
- ❑ Question really concerns the role of the criminal law—if any—in the context of sexually transmitted pathogens



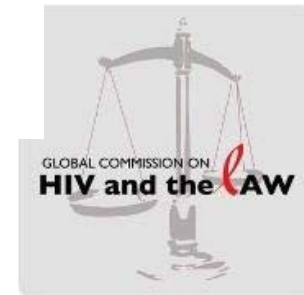
Criminal Law Should Consider

- ❑ Was there genuinely an intent to harm?
- ❑ How much risk was present?
- ❑ Was a harm inflicted? (like transmission)
- ❑ Like harms should be treated alike, can't disproportionate prosecute people with one stigmatized virus

What About Reckless Disregard or “One Man Epidemics”

- ❑ Most salient illness is generally a mental illness, rather than a viral one
- ❑ Best handled within public health system
- ❑ Every state has assault statutes to address those with a malicious intent
- ❑ Every state has public health statutes that allow intervention when someone poses an imminent danger to themselves or others

Policy Leaders Mobilizing



- ❑ National HIV/AIDS Strategy
- ❑ Presidential Advisory Commission on HIV/AIDS



What You Can Do

- ❑ Pass resolution in support of criminalization reform
- ❑ Endorse Oslo Declaration, PACHA resolution, Positive Justice Project consensus statement
- ❑ Educate your communities (forums, conferences, speakers)
- ❑ Encourage viewing of HIV is Not a Crime, “Like” Sero on Facebook and follow our Twitter feed @TheSeroProject
- ❑ Convene stakeholders to develop strategy
- ❑ Work as hard to eliminate factors that drive stigma and are cultural barriers to testing as you do to promote testing and removal of institutional barriers to testing



Sero

- ❑ Created by people with HIV to empower and engage people with HIV to combat HIV-related stigma, discrimination and criminalization
- ❑ Research, Community Education, Training, Speakers
- ❑ Email list for updates and local alerts
- ❑ Discussion listserve





Resources

- ❑ SeroProject.com
- ❑ Nastad.org
- ❑ HIVLawandPolicy.org
- ❑ LambdaLegal.org
- ❑ HIVJustice.net

Scan To Join Sero's E-list





Thank you

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SeroProject.com