



National Consensus Statement on the Criminalization of HIV in the United States

On October 17, 2014, Positive Justice Project (PJP) and The Center for HIV Law & Policy announced that 1,000 individuals and organizations have endorsed the National Consensus Statement on the Criminalization of HIV in the United States. This Consensus Statement calls for the end of criminal laws specifically targeting people living with HIV, and outlines principles that should be followed when prosecuting an individual for criminal charges relating to HIV or STIs. These principles include:

- 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" (PJP,2012).*

Implementing these principles is crucial, as by 2011, 33 states had implemented 67 laws criminalizing potential HIV exposure (Lehman et al., 2014). While Washington, DC currently does not have any HIV-specific criminal laws, such laws are still of concern to women living with HIV in the DC-metro area, as Virginia and Maryland have such laws on the books (Lehman et al., 2014). On a national level, HIV criminalization laws are concerning, because some states criminalize actions of HIV positive individuals, that do not pose a high risk for transmitting HIV to another person. For example, 21 states criminalize oral sex and 11 states criminalize biting, spitting, or throwing bodily fluids (Lehman, 2014).

Additionally, these laws often fail to take into account behaviors that can reduce the risk of HIV transmission, such as use of a condom, anti-retroviral therapy, and/or PrEP. For instance, only four states permit condom use as a defense against HIV exposure under criminal law (Lehman, 2014). Failing to account for these effective mechanisms for prevention, signifies the failure of the law to keep pace with our growing knowledge of HIV and advances in treatment for people living with HIV.

Further, it is important to note that these laws could place an undue burden on women living with HIV. While rare, .05-4% of women report experiencing violence after disclosing their HIV positive status (Koenig & Moore, 2000). If a woman has an abusive partner, she may be placed in a situation where she has to decide between disclosing and facing abuse, or not disclosing and possibly facing criminal prosecution (Lehman, 2014). Outside of the threat of violence, the sexuality of women living with HIV should not be ignored. As heterosexual women make up a significant proportion of people living with HIV, these women should not have to live in fear that their sexuality could put them at risk for criminalization.



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The Women's Collective urges other organizations, as well as individuals, to endorse the National Consensus Statement on the Criminalization of HIV in the United States. Adopting these principles can help to ensure that laws do not spread stigmatizing misinformation about the routes through which HIV can be transmitted and the resources available to prevent and treat HIV. This sort of misinformation has been extremely harmful for people living with HIV, as it has been the basis for alienation and discrimination, such as calls to quarantine those living with HIV by politicians in the late 1980s. Additionally, this sort of law reform could have even further reaching effects. Without the threat of criminalization, more people at risk for HIV infection may get tested and people living with HIV may be more likely to obtain life-saving treatment. You can endorse the Consensus Statement by emailing: programassociate@hivlawandpolicy.org.

Koenig, L., & Moore, J. (2000). Women, violence, and HIV: a critical evaluation with implications for HIV services. *Maternal & Child Health Journal*, 4(2), 103-109.

Lehman, J. S., Carr, M. H., Nichol, A. J., Ruisanchez, A., Knight, D. W., Langford, A. E., Gray, S.C., & Mermin, J. H. (2014). Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States. *AIDS and Behavior*, 18(6), 997-1006. doi:10.1007/s10461-014-0724-0

Positive Justice Project (2012). Consensus Statement on the Criminalization of HIV in the United States.

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