



**Positive Justice Project**

## **HIV CRIMINALIZATION FACT SHEET**

### **MOST STATES HAVE TARGETED HIV-POSITIVE INDIVIDUALS FOR CRIMINAL LIABILITY BASED ON THEIR HIV STATUS**

- Thirty-six (36) states and two (2) U.S. territories explicitly criminalize HIV exposure through sex, shared needles or, in some states, exposure to “bodily fluids” that can include saliva. At least thirty-nine (39) states have singled out people who have tested positive for HIV for criminal prosecution or enhanced sentences, either under HIV-specific criminal laws or under general criminal laws governing crimes such as assault, attempted murder or reckless endangerment.
- Proof of intent to transmit HIV, or actual transmission, typically are not elements of these prosecutions.
- Spitting and biting, which pose no significant risk of HIV transmission, have resulted in criminal convictions and severe sentences despite the absence of HIV transmission in these cases.
- Disclosure is often the only affirmative defense to prosecution, but typically is difficult to prove. Condom use is rarely a defense.
- The common factor in all of these cases is that the criminal defendant knew her/his HIV status.
- Also common to these cases is severe ignorance of the routes and actual risk of HIV transmission in varying circumstances, and grossly exaggerated characterizations of the risk of harm defendants pose.

### **CRIMINALIZATION HAS NO EFFECT ON BEHAVIOR & UNDERMINES PUBLIC HEALTH GOALS**

- Studies show that the criminalization of HIV exposure has no effect on risk behavior.
- HIV criminalization can discourage individuals from seeking testing and treatment because a positive test result subjects a person to criminal liability for otherwise non-criminal conduct.
- Health care providers frequently are forced to disclose HIV-related medical records, including documentation of private communications, as part of a criminal investigation or trial, interfering with the physician-patient relationship and delivery of health services and generating mistrust among patients.
- In some states, health officials actually participate in creation of evidence that can be used against individuals with HIV, by requiring them to sign forms acknowledging criminal liability if they engage in certain otherwise-legal conduct.
- Sex between two consenting adults is a shared decision; the responsibility for protection against disease should not be borne by one partner. Placing exclusive responsibility on the person living with HIV undermines public health messages that everyone should take responsibility for individual sexual health.
- Criminalization further stigmatizes an already marginalized population, and reinforces ignorance and unfounded beliefs about the routes and actual risks of HIV transmission.

### **HIV PROSECUTIONS DISCRIMINATE AGAINST HIV-POSITIVE PERSONS**

- Charges for HIV exposure often are accompanied by sensationalist media coverage, which often includes disclosure of the HIV-positive person’s identity, disclosing the person’s HIV status not only to the individual’s community but also, with the internet, to the world.
- Sentences for people convicted of HIV exposure are typically very harsh and grossly disproportionate to any actual or potential harm, perpetuating the misconception that people with HIV are toxic, highly infectious and dangerous.
- HIV-positive persons increasingly are forced to register as sex offenders after conviction, leading to a host of life-long problems with future employment, living conditions, and the right to privacy.
- HIV exposure laws are applied unfairly and selectively, targeting those who are socially and economically marginalized, such as sex workers, while those with other STIs or infectious diseases are not targeted.

*The goal of the Positive Justice Project is the repeal of HIV criminal statutes and the end of HIV-specific prosecutions, increased punishment, and government-sponsored discrimination against people with HIV in the criminal justice system.*

Learn more at: <http://www.hivlawandpolicy.org/public/initiatives/positivejusticeproject> or email [programassociate@hivlawandpolicy.org](mailto:programassociate@hivlawandpolicy.org)