



Published on The Well Project (<https://www.thewellproject.org>)  
<https://www.thewellproject.org/hiv-information/hiv-criminalization-and-women>

## **HIV Criminalization and Women**

Submitted on Apr 4, 2024

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## What Is HIV Criminalization?

No one should be punished simply because they have a health condition. But in many areas of the world, laws and practices unfairly punish people living with HIV because of their HIV-positive status. In other words, people living with HIV can face criminal charges for engaging in acts that would not be considered criminal if a person who is not living with HIV engaged in them, such as having consensual sex (both people agree to have sex) with another adult. This is often called HIV criminalization.

UNAIDS reports that in 2020, 92 countries had laws that criminalized HIV non-disclosure, exposure and transmission. One example is the case of Julie Graham, a young nurse who was arrested in the US

state of Pennsylvania after a man she dated claimed that she had not told him that she was living with HIV. The man who made the complaint against her did not acquire HIV, and there was [no chance of HIV transmission](#) between them because Julie had an undetectable [viral load](#). Pennsylvania does not have HIV-specific laws, but Julie was charged with sexual assault, aggravated assault, reckless endangerment and simple assault, just because she was living with HIV during their consensual relationship.

Julie is not alone: In the majority of known HIV criminalization cases across the globe, HIV transmission is not at issue in the case -- only alleged HIV non-disclosure (a complainant claiming that their partner did not [tell them that they were living with HIV](#)), which pits the word of two partners against one another in court, and is almost impossible to truly prove. Although many criminal justice systems are meant to be based on ideals of due process and "innocent until proven guilty," those values and processes are weakened when people living with HIV are inherently seen as sexual predators and "infectors" just for having a health condition.

Some cases involve acts that pose either zero risk of HIV transmission, or risk that is so low that it is basically nonexistent -- such as spitting, biting, scratching, oral sex, sex with [condoms](#), or sex while the person living with HIV is [taking effective HIV drugs](#). These laws were originally based on [myths](#) and misconceptions about HIV transmission. When they are applied, they reinforce fear, [discrimination and stigma](#) against people living with HIV, as well as dangerous misinformation about [how HIV is transmitted](#) and can be prevented.

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## Where Do These Laws Come From?

The world's first HIV-related prosecutions and laws happened in the mid- to late-1980s, when HIV was truly a death sentence for millions of people around the globe who acquired it. These laws were an attempt to control a raging epidemic that virtually no one understood. But they also served to spread the myth that people living with HIV were dangerous "monsters" and that the threat of people "intentionally infecting" others was high, when cases in which a person actually intends to do harm by transmitting HIV to another person are very rare.

It would seem logical that the use of criminal law against people living with HIV would stop as the world draws closer to controlling the epidemic with the powerful tools we now have. But even though effective HIV drugs can now dramatically extend and improve the lives of people with HIV, while reducing transmission risk from a person taking them to zero, the trend to criminalize HIV status has increased in recent years. This fact makes it even clearer that these laws are based on irrational fears, and not current scientific knowledge about HIV.

## What Is the Impact of These Laws?

There has never been any evidence that these laws serve a purpose to protect the health of any community. Furthermore, as advocates and health professionals try every day to make HIV drugs accessible to everyone living with HIV, to safeguard their health and reduce transmission to their partners, these laws make that work harder by increasing stigma and discrimination.

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Most HIV criminalization laws only require that a person knew they were living with HIV in order to prosecute (sue in criminal court) them. This punishes people for taking the healthful step of being [tested for HIV](#) and knowing their status. This is particularly true of whoever in the relationship knew their HIV status first because the accusing partner can claim they acquired HIV from the other, even if the accusing partner had not been tested previously. Since women are more likely than men to engage with sexual and reproductive healthcare, they tend to find out their HIV status before their male partners.

This was what happened to Samukelisiwe Mlilo of Zimbabwe. Samukelisiwe claimed that she disclosed her HIV status to her husband during their marriage. But in 2012, she was found guilty of "deliberately infecting" her husband with HIV. She may spend up to 20 years in prison, despite no proof that her husband acquired HIV from her. She also said that her husband made the complaint in revenge against her, because she reported him for intimate-partner violence.

## Do These Laws Help Women?

A common argument for HIV criminalization laws is that they protect women from partners who might be dishonest about their HIV status -- or even violent towards their girlfriends or wives, rendering them vulnerable to HIV. But these laws do not promote honesty or heal violence in relationships. Instead, they are more often used as tools of abuse, harassment or coercion, as we see in Samukelisiwe's case. These laws do nothing to address the epidemic of [gender-based violence](#) and uneven power dynamics that can leave women vulnerable to acquiring HIV.

[Women who are prosecuted](#) or even just accused in HIV-specific cases may lose their homes, custody of their children, access to services, standing in their community, and so much more. For example, in the US state of Louisiana, a person convicted under the "intentional exposure" law must register as a sex offender once released from prison. This makes it even more difficult for a person to rebuild their life after being incarcerated.

The same laws or principles you may want to use against the person who you believe harmed you can easily be used against you.

Further, communities that are already subject to more than their share of policing and incarceration tend to bear the highest burden of HIV-related charges, such as sex workers (or those thought to be engaging in sex work) and [communities of color](#). For instance, in Australia, CJ Palmer, a [transgender woman](#) who has worked as a sex worker in the past, was convicted of grievous bodily harm in a case of alleged HIV transmission to a past partner. CJ is now serving a harsh sentence -- in a men's prison, even though she is a woman, which makes the punishment even worse.

## Frequently Asked Questions About HIV Criminalization

### **What about people who "intentionally infect" others with HIV? Shouldn't they be punished?**

Cases in which people intend to do harm to others by passing HIV to them on purpose are extraordinarily rare. In the unlikely event that such a case occurs, general laws - not laws that single out HIV as especially dangerous - should be used very carefully and should follow important legal principles: making sure that the standard to prove that a person intended to do harm is very high, and that the degree of punishment is closely related to the level of harm that was caused.

Under current laws and practices, punishments are extremely harsh compared to the supposed harm

caused. For instance, in the US state of Texas, a man received a 35-year sentence for assault with a deadly weapon after spitting at a police officer, when spit does not even transmit HIV. Further, the definition of intent tends to be so broad that it encompasses instances in which no harm whatsoever was intended.

It is important to note that "intentionally infecting" a person with HIV and not disclosing one's HIV status are not the same thing. We know that HIV is difficult to transmit even in the riskiest instances, so sex or contact with a person living with HIV does not equal transmission. Further, there are many complicated reasons why a person may not disclose to a sexual partner, including the potential threat of violence. Simply saying "I am living with HIV" is not always a safe option.

There are a number of steps that people can take to counter HIV stigma and make HIV disclosure safer in communities around the world. For example, you could [join an advocacy group](#) or educate people in your community about HIV and how it is (and is not) transmitted. Getting rid of laws that seek to justify stigma and fear, instead of promoting public health and community safety, is one of those steps.

### **What if someone living with HIV, including a partner, rapes or molests someone else?**

There are laws against sexual violence for such cases. However, these laws are unfortunately often poorly enforced, especially when the rape happens within a marriage. Criminalizing people because of their HIV status does not protect women from sexual assault. It is a crime to rape; it is not a crime to live with HIV.

Further, some experts on sexual assault laws have found that using these laws against people who are accused because they are living with HIV and not of any form of assault can actually weaken the law as a tool to fight gender-based violence.

### **My partner didn't tell me he was living with HIV, and now I'm living with it. I feel that I have been harmed. Isn't my only option to send him to jail?**

It is understandable to be angry if you acquire HIV and believe it is someone else's fault because they didn't tell you they were living with HIV, or they lied when you asked them about their HIV status, or if for whatever reason you felt unable to ask for [condom use](#) during sexual encounters. But living with HIV does not have to be a death sentence and prosecuting (taking legal action against) someone could be. Pressing charges against a past sexual partner might feel like the right thing to do, but it can put that person in jail for decades or require them to register as a sex offender. As the person who brought the charges, you may also have the most personal details about your life exposed in court and in the media -- including your own HIV status.

Sometimes people file a complaint with the police and then change their mind, but it is too late. Once the police open an investigation, changing your mind may not stop an investigation and prosecution. Furthermore, this pattern opens the accuser up to further criminalization if they are also living with HIV. People may begin by pressing charges and leave with a case against *them*. The same laws or principles you may want to use against the person who you believe harmed you can easily be used against you. Think carefully before starting a legal process you might later regret.

Alternative approaches to healing rifts in communities and relationships that may result from instances of HIV transmission need to be further explored. One alternative to criminal law is restorative justice, which focuses on repairing harm by seeking redress for those who feel they were harmed and amends from those who may have caused that harm. This option avoids the brutal consequences of involvement in the criminal justice system for individuals, their families and communities.

Finally, it is widely believed that HIV stigma plays a major role in why living with HIV continues to be so

difficult for so many people. The existence of these laws worsens that stigma and has a negative impact on the lives of people with HIV.

## **I've heard that "Undetectable Equals Untransmittable." How can we use this information to fight these unfair, outdated laws?**

In your advocacy, it is important to be careful not to spread the false idea that, without HIV drugs and an undetectable viral load, legal punishment of people living with HIV is acceptable.

HIV criminalization laws do not consider the realities of living with HIV in the modern era, in which we know that taking HIV drugs and having an undetectable viral load is a powerful and effective form of HIV prevention. This fact, supported by numerous research studies, is often expressed in the community using the simple phrase "[Undetectable Equals Untransmittable,](#)" or U=U. The fact of U=U does not change the status of existing laws.

In fighting to change these stigmatizing laws, it is important to share current scientific information about HIV. When talking with lawmakers and community members as part of your advocacy, the concept of U=U can help show them why removing barriers to HIV care and treatment -- including stigmatizing laws -- is so important to the health and lives of people with HIV.

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Further, the science behind U=U can be one of the tools a legal team uses in an individual person's HIV criminalization case to prove they intended no harm to others. For example, a woman living with HIV named "EI," in Malawi, was imprisoned after accidentally [breastfeeding](#) another woman's baby (she also breastfed her own baby on purpose). She was charged with "carrying out a negligent and reckless act, likely to spread a life-threatening disease." She eventually found an attorney who knew about HIV and was able to show the "infinitesimal risk" of HIV transmission through breastfeeding when a woman is on effective HIV drugs, which EI was.

Individual cases are different from broader reform (change) of HIV criminal laws that can affect thousands of people. It is very important that revised laws not stigmatize or criminalize people who, for whatever reason, may have detectable viral loads. Women, especially, may have a harder time getting their viral loads to undetectable, for reasons including:

- Being more likely to be diagnosed later in life than men
- Prioritizing the health of others over their own
- Higher rates of violence, poverty, and the instability that comes with these social determinants of health, which can make it hard to be consistent with medication

***Criminalizing people based on HIV status is harmful to public health and is never appropriate, no matter what the person's viral load.***

## **What if someone brings charges against me for HIV nondisclosure?**

**Know your rights.** In the US, if you are arrested, you are not required to speak with anyone without a lawyer present. Positive Women's Network - USA has produced a great Know Your Rights guide to protect you if you are facing HIV-related charges; the guide is [available on PWN-USA's website](#).

**Get help.** It is essential that you be represented by people who understand HIV and HIV criminalization or are willing to be guided by people who are knowledgeable in this area. Contact your local HIV organization or legal clinic for support. In the US, the following national organizations can also help you find legal representation:



- American Civil Liberties Union (to find your local ACLU chapter): [aclu.org](http://aclu.org)
- The Center for HIV Law and Policy: [www.hivlawandpolicy.org](http://www.hivlawandpolicy.org)
- Lambda Legal: [lambdalegal.org](http://lambdalegal.org)
- Sero Project: [seroproject.com](http://seroproject.com)

HIV Justice Worldwide is a global consortium that advocates against HIV criminalization; they may be able to help you find local legal representation (though they do not offer individual legal advice or representation). You can contact them via the [form on their website](#).

**Know that you are not alone.** Many people have faced HIV-related charges -- and there is a growing movement across the globe to oppose these unfair practices.

The Sero Project coordinates a network of people living with HIV who have survived HIV criminalization. They can help connect you with a community and, if you are interested, help you [get involved in advocacy](#) to end HIV criminalization in your area.

***Special thanks to S. Mandisa Moore-O'Neal, Esq., of The Moore-O'Neal Law Group, a Louisiana-based Black feminist law and policy practice, for her review of the original edition of this fact sheet.***

## Additional Resources

Select the links below for additional material related to HIV criminalization.

- [HIV Policy Resource Bank: Criminal Law \(The Center for HIV Law and Policy\)](#)
- [Disclosure, Criminalization and Stigma for Women Living with HIV \(HIVE\)](#)
- [Factsheet: Criminalization as Violence Against Women Living with HIV \(Positive ...\)](#)
- [Positive Women: Exposing Injustice \(Canadian HIV Legal Network; includes video\)](#)
- [10 Reasons to Oppose the Criminalization of HIV Exposure or Transmission \(Open ...\)](#)
- [HIV Criminalization Fact Sheet \(The Center for HIV Law and Policy, PDF\)](#)
- [HIV Criminalization \(Canadian HIV Legal Network\)](#)
- [Criminalisation du VIH \(Canadian HIV Legal Network, in French\)](#)
- [What HIV Criminalization Means to Women in the US \(Positive Justice Project, PD...](#)
- [HIV Criminalization: Know Your Rights \(Positive Women's Network - USA\)](#)
- [Fighting HIV and Injustice \(United Nations Development Programme\)](#)
- [Consensus Statement on HIV "Treatment as Prevention" in Criminal Law Reform \(Ce...](#)
- [Positive Transformation \(POZ\)](#)
- [Pioneering Restorative Justice Diversion \(Impact Justice\)](#)
- [HIV and STD Criminalization Laws \(US Centers for Disease Control and Prevention\)](#)
- [HIV Prevention, Criminalization and Sex Work: Where Are We At? \(CATIE, via TheB...](#)
- [Community Accountability \(INCITE!\)](#)
- [All Pain No Gain: HIV Criminalization in Pennsylvania \(AIDS Law Project of Penn...](#)
- [Safe Outside the System \(Audre Lorde Project\)](#)
- [Human Rights Fact Sheet Series: HIV Criminalization \(UNAIDS, PDF\)](#)
- [HIV Criminalization and Ending the HIV Epidemic in the U.S. \(US Centers for Dis...](#)
- [Know Your Rights: HIV Criminalization \(Lambda Legal\)](#)
- [Truthout: People With HIV Are Still Being Criminalized in 25 States \(CHLP\)](#)
- [Deeper Look: HIV Criminalization \(AIDSvu\)](#)
- [What Is HIV Criminalization? \(TheBody\)](#)



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