Ending and Defending Against HIV Criminalization

A MANUAL FOR ADVOCATES

VOLUME 2

A Legal Toolkit: Resources for Attorneys Handling HIV-Related Prosecutions

THE CENTER FOR HIV LAW & POLICY

Positive Justice Project
IGNORANCE IS NO DEFENSE: A TOOLKIT FOR LEGAL ADVOCATES

RESOURCES FOR DEFENSE LAWYERS HANDLING HIV-RELATED PROSECUTIONS

THE CENTER FOR HIV LAW AND POLICY IS THE ORGANIZATIONAL HOME OF THE

PositiveJusticeProject
The Positive Justice Project (PJP) is a national coalition of organizations and individuals, including people living with or at greatest risk of HIV, those who have been arrested or prosecuted, medical and public health professionals, community organizers, advocates, attorneys, law enforcement, sex workers, social scientists and others working to end HIV criminalization in the United States. We engage in federal and state policy advocacy, resource creation, support of local advocates and attorneys working on HIV criminal cases, and educating, organizing and mobilizing communities and policy makers in the United States.

A primary goal of the PJP is to improve advocacy for HIV-positive people targeted for criminal prosecution through improved collaboration, strategy, coordination, resource-sharing and support for local advocates.

To join the PJP or become a member of the Center for HIV Law and Policy’s HIV Legal Collaborative (a network of attorneys across the country) contact: rrichardson@hivlawandpolicy.org.

The Center for HIV Law and Policy, provides ongoing coordination of the Positive Justice Project with the active support of PJP’s seven working group chairs and the many individual and organizational members of PJP. The Center for HIV Law and Policy is a national legal and policy resource and strategy center for people with HIV and their advocates. CHLP works to reduce the impact of HIV on vulnerable and marginalized communities and to secure the human rights of people affected by HIV.

To learn more about our organization and access the Resource Bank, visit our website at www.hivlawandpolicy.org.

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This Legal Advocate Toolkit is a resource for lawyers representing people living with HIV (PLWH) who are facing criminal prosecution based on HIV status. The Toolkit includes charts, articles, guidances, case law, legal analysis, scientific data and empirical citations. The Toolkit provides both quick-reference resources (e.g. a Chart on the Relative Risk of HIV and other STIs) and links to longer reference materials (e.g. sample briefs) that are located, along with a summary of each document, in our online Resource Bank.
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HIV Criminalization Fact Sheet

Most States Have Targeted HIV-Positive Individuals for Criminal Liability Based on their HIV Status

- Dozens of states explicitly criminalize HIV exposure through sex, shared needles, or in some states, exposure to “bodily fluids” that can include saliva. Many 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 or intent to transmit HIV, or actual transmission, typically are not elements of these prosecutions.
- Spitting or 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 Positive 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 the 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 lifelong 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.
Guidance for a Legal Advocate Representing an HIV-Positive Client in a Criminal Exposure Case

The elements of criminal HIV exposure statutes vary by jurisdiction. Most penalize defendants when they do not disclose their HIV status before having specific kinds of contact with another person. What defines disclosure, and whether or not it took place, is often at the center of criminal cases.

The risk of actual harm is also at issue in some cases, especially when the defendant is on antiretroviral therapy and has an undetectable viral load. Although it is not impossible for someone with a low viral load to transmit HIV, experts agree that a low viral load significantly reduces the risk of HIV transmission. Use of a condom during sex also greatly reduces the transmission risk. Spitting or biting pose virtually zero risk of HIV transmission, and there has never been a single documented case of HIV transmission via saliva.

After identifying the elements of the offense with which the client is charged, and determining what the prosecution will need to prove, it may be helpful to have some or all of the following information about the client:

- When was s/he diagnosed as being HIV-positive?
- After diagnosis, was s/he counseled about the modes of HIV transmission and prevention methods?
- Is s/he on antiretroviral therapy?
- Was s/he on antiretroviral therapy at the time of the alleged contact?
- Did s/he tell the other person that s/he was HIV-positive?
- If not, why not?
- Would the other person have some other way of knowing about her/his HIV status?
- What type of contact was involved (sex, spitting, biting, etc.)?
- Did the other person consent to the contact?
- Did the other person consent to the contact after knowing that s/he was HIV-positive?
- If the contact involved sex, was a condom used?
- What kind of sex was involved (vaginal, anal, oral)?
- If state law criminalizes exposing others to HIV in any way, did s/he know about the law?

It will also be helpful in most cases to prepare or obtain the following (in addition to relevant case law, statutes, and regulations):

- Information from a reliable source, such as a federal, state, or local health department, about the relative HIV transmission risks of various conduct.
- Testimony or affidavit from a medical expert about HIV transmission, including language indicating that HIV is not transmitted via casual contact, HIV is not transmitted via spitting or biting, and HIV is less likely to be transmitted when a condom is used or when a person’s viral load is undetectable.
Guidance for People Living with HIV Who Are Threatened with, or Are Facing, Criminal Prosecution for HIV Nondisclosure or Exposure

Dozens of states and territories have laws that criminalize HIV exposure and/or nondisclosure of HIV status for sexual contact, needle-sharing, and/or contact with “body fluids” such as saliva. Even where there are no laws specifically addressing HIV exposure or nondisclosure of status, individuals living with HIV have been prosecuted under general criminal laws, such as assault or attempted murder. Although these laws criminalize conduct that is either consensual (both people agree to it) or involves no significant risk of HIV transmission, these laws make people with HIV vulnerable to prosecution simply for being HIV positive.

If you think you might be in danger of being arrested and charged with a crime for nondisclosure or exposing another person to HIV, there are some things you can do as “damage control:”

- **DO try to have proof that you told your partner your HIV status BEFORE SEX**– for example, a diary entry, having your partner agree to video or write an agreement that he/she knows your HIV status. Regularly document how you have complied with the law. The impact that disclosure can have on intimacy, or the “heat of the moment” may make this step unrealistic. However, it is one important way that you may be able to fight a conviction, depending on the law in your state. If you are using condoms, it also can be helpful to keep a record of that (for instance in a diary). Remember, for proof of your HIV status disclosure to be useful, it has to happen BEFORE sex. An email that confirms this, if you are comfortable with the risk that emails can be widely circulated, can also serve as proof. Be aware that even if you disclosed your status on your profile or in chats on a website such as Adam4Adam or Match there may not be a permanent record of that disclosure. Make sure that if you are disclosing your status to people online that you get a screenshot of that conversation (with the date and time) of your disclosure.

- **DO NOT EMAIL anything that ever could be used against you** or that shows a desire to keep your HIV status secret, or about any worries you have about revealing your HIV status to a partner.

- **DO discuss and confirm with your health care provider that you disclose your status to partners before sex,** and make sure that your provider documents this in your medical records. If you actually can take a potential partner to your doctor or case manager to document HIV status disclosure and counseling before sex, that is ideal, but may not be practical in most instances. Taking your partner with you to a doctor or counselor after sex will not protect you from accusations that you had sex with a partner without disclosing your HIV, or even from criminal exposure charges in states where condom use in not a defense, although it may help if the law in your state only makes it a crime to not use protection, such as condoms.

- **DO tell your doctor and other health care providers to NOT disclose or discuss your medical information to the police** without a court order (different from a subpoena), and only after you and/or your health care provider have had the opportunity to oppose the court order for your records. Let them know that they should tell you immediately if they are contacted by the police or other law enforcement.
Ending and Defending Against HIV Criminalization

personnel, and that you expect them to defend against the disclosure of your personal records to the police or a prosecutor.

☐ **KNOW the law in your state.** Find out what the laws are in your state. Talk to staff at an HIV legal organization in your state that understands criminal law, or look at the information online at The Center for HIV Law and Policy, which has a guide on every state and U.S. territory’s HIV-specific laws and other laws that have been used to prosecute people with HIV, as well as what has happened in each state with respect to HIV-specific prosecutions. Go to: [http://www.hivlawandpolicy.org/resources/view/564](http://www.hivlawandpolicy.org/resources/view/564).

☐ **CONSIDER lining up a lawyer.** If you have the money, you can try to identify an experienced criminal defense lawyer. Talking to a lawyer can help you understand your rights in your state and what you can do if you think you might be in danger of being arrested. However, if you have not been arrested or charged and do not have money for a private attorney, you generally will not be able to get advice from a criminal defense attorney at this stage.

You can find a lawyer by going to the resources listed below, or in some instances by asking a case manager or social worker at an AIDS Service Organization (ASO) for help.

☐ **DO NOT TALK** to the police or answer questions about your situation without a lawyer. If you are questioned or approached before being arrested, do not say anything other than politely asking if you are being charged with a crime.

☐ **DO NOT TELL** the police or detective that you are HIV positive and DO NOT consent to an HIV test. Be polite, but do not talk!

*If you are arrested and charged with an HIV-related crime:*

☐ **DO NOT TALK TO THE POLICE. DO NOT VOLUNTEER ANY INFORMATION, OR ANSWER ANY QUESTIONS.** If you are on medications that you must have, try to have a friend or relative contact your doctor to get confirmation to the jail medical staff that you have a health condition that requires regular medication, along with the needed medications. ALL YOU SHOULD SAY TO A POLICE OFFICER OR DETECTIVE WHEN ASKED QUESTIONS IS THAT YOU WOULD FIRST LIKE TO SPEAK WITH AN ATTORNEY. Do not believe anything you are told about how things will go more easily if you talk, or more harshly if you do not – this is virtually never the case. Providing information about your situation without getting a lawyer’s advice first is NEVER to your advantage. It is the prosecutor’s job to prove that you are guilty of a crime -- do not help them.

☐ **KNOW YOUR RIGHTS.** You have the right not to say anything to the police or anyone else. You also have the right to speak with a lawyer. If you cannot afford to hire a lawyer, the state must provide one for you. A lawyer can explain your rights to you and help advise you on how to defend yourself. Remember, be polite, but be quiet.

☐ **UNDERSTAND THE CHARGES AGAINST YOU.** If you are arrested, make sure you ask what you are being accused of doing. The best person you can ask to explain the charges against you is a lawyer, but always ask for any available written information about the complaint or charges against you. If you will be assigned a public defender, it may take several days after your arrest for a lawyer to be assigned to you.

☐ **TAKE THE CHARGES SERIOUSLY.** Being charged with a crime can have many negative consequences. Do not delay in finding help and support from organizations or individuals who may be
able to counsel and support you without charge, such as the Center for HIV Law and Policy, www.hivlawandpolicy.org, and others (see list below for additional examples).

- **DO NOT ASSUME THAT A PRIVATE ATTORNEY IS BETTER THAN A PUBLIC DEFENDER.** One of the most frequent mistakes that people make is assuming that a private attorney is better than a public defender. The fact that you are paying for a lawyer does not mean that you are getting better representation. The best lawyer is one that has experience in the county or area where you have been arrested, who knows and has worked with the local law enforcement officials where your case is, and who is familiar with HIV and/or willing to work with other professionals who are. The most important thing here is to have a smart, EXPERIENCED CRIMINAL DEFENSE ATTORNEY who will take your case seriously.

- **AVOID PEOPLE WHO SAY THEY CAN HELP YOU BECAUSE HIV DOES NOT CAUSE AIDS.** You may be approached by people who claim they want to help you because an HIV test does not prove that you have HIV or AIDS, or because HIV is not harmful to others. AIDS “denialists” -- people who do not believe that HIV is the cause of AIDS and that all AIDS treatments are toxic -- frequently approach defendants in cases that have received press coverage, and may be interested in using your case to advance their cause. These people should be avoided because they likely will hurt rather than help your case.

- **DO NOT SPEAK TO THE PRESS.** Refer all questions to your lawyer. If you don’t yet have a lawyer, say you will have your lawyer get in touch when possible. A surprising number of people in the media are not careful about getting the facts correct. It is not at all unusual to be misquoted. Many press people are more interested in a sensational story than in getting the story right. IT IS VERY RARE THAT A PERSON IN THE PRESS WILL PUT YOUR INTERESTS FIRST AND A GREAT STORY SECOND.
Resources

For lists of public defender offices, legal aid programs, and legal research resources, visit the web site of the National Legal Aid and Defender Association (NLADA) at www.nlada.org and click on “Links” at the bottom of the page. For information about HIV specific laws and prosecutions, please see the Center for HIV Law and Policy website at www.hivlawandpolicy.org.

DIRECT LINKS

List of state public defender offices:
http://www.nlada.org/Links/Links_Home#links_IndigentDefense

List of legal aid programs:
http://www.nlada.org/Links/Links_Home#links_LegalAidPrograms

List of legal research resources:
http://www.nlada.org/Links/Links_Home#links_LegalResearch

Manual on HIV criminal laws and prosecutions:
http://www.hivlawandpolicy.org/resources/view/564

Some other organizations that can advise you before, or when, you are charged with a criminal HIV nondisclosure or HIV exposure crime:
ACLU AIDS Project, www.aclu.org/hiv-aids (national)
Center for HIV Law and Policy (CHLP), www.hivlawandpolicy.org
GLAD, www.glad.org (New England area)
Lambda Legal, www.lambdalegal.org (national)
Whitman-Walker Legal Services Clinic, www.wwc.org/hiv_aids_services/legal_services.html (Washington, DC metropolitan area)
CASE LAW INDEX

Federal – Military

Federal– Other
• Boyer v. Belleque, 659 F.3d 957 (9th Cir. 2011).

Alabama

Georgia

Idaho
• State v. Mubita, 188 P.3d 867 (Idaho 2008).

Illinois
• People v. Russell, 630 N.E. 2d 794 (Ill. 1994).

Iowa
• State v. Musser, 721 N.W.2d 734, 741 (Iowa 2006).
• **State v. Musser, No. 04-0719 (Iowa 2006).**
• **State v. Tabor, No. 0-906 / 10-0475 (Iowa Ct. App. 2011)**

**Kansas**
• **State v. Richardson, 209 P.3d 696 (Kan. 2009)**

**Louisiana**
• **State v. Caine, 652 So.2d 611 (La. Ct. App. 1995)**

**Maryland**
• **Smallwood v. State, 680 A.2d 512 (Md. 1996)**

**Michigan**

**Minnesota**
• **State v. Rick, 821 N.W.2d 610 (2012)**

**Missouri**
• **Sykes v. Missouri, WD7356 (W.D. Mo., Apr. 17, 2012).**
• **Doe v. Quest Diagnostics, Inc., ED96516, 2012 WL 2393684 (2012).**

**New Mexico**

**New York**
• **People v. Plunkett, New York Court of Appeals, June 7, 2012.**

**Ohio**
• **State v. Eversole, __ N.E.2d __, 2009 WL 1264295 (Ohio Ct. App. 2009)**

**Oregon**
• **State v. Guayante, 783 P.2d 1030 (Or. Ct. App. 1989)**

**Texas**

**Washington**
• **State v. Ferguson, 15 P.3d 1271 (Wash. 2001)**
• **State v. Whitfield, 134 P.3d 1203 (Wash. Ct. App. 2006)**
LEGAL DRAFTING RESOURCES

Sample Briefs

• **Michigan v. D.A., Amicus Brief, Michigan Circuit Court, The American Civil Liberties Union Fund of Michigan**
  
  This amicus brief argued that a Michigan bioterrorism statute should not be applied to an HIV-positive individual who allegedly bit another individual while the two were fighting. The case was the first time a bioterrorism statute has been used to prosecute a person living with HIV.

• **People v. Allen - Amicus Brief, Macomb County Circuit Court, Lambda Legal, Community AIDS Resource and Education Services, Michigan Positive Action Coalition and Michigan Protection and Advocacy Service, Inc.**

  This amicus curiae brief was submitted on behalf of an HIV-positive man in Michigan charged with bioterrorism after biting his neighbor.

• **Rhoades v. State of Iowa, Amicus Brief, Supreme Court of Iowa, National Alliance of State and Territorial AIDS Directors, The Center for HIV Law and Policy, HIV Law Project**

  National Alliance of State and Territorial AIDS Directors, The Center for HIV Law and Policy, and HIV Law Project submitted this amicus brief in support of Nick Rhoades in his appeal of the denial of his petition for post-conviction relief. Rhoades was convicted of criminal transmission of HIV under Iowa Code § 701C.1 after a one-time consensual sexual encounter that occurred prior to disclosure of his HIV status.

• **Rhoades v. State of Iowa, Opening Brief of Applicant/ Appellant and Request for Oral Argument, Supreme Court of Iowa, Glazebrook & Moe, LLP; Lambda Legal**

  This is an opening brief and request for oral argument to the Supreme Court of Iowa in a 2012 appeal of the denial of an application for post-conviction relief. The defendant was convicted of criminal transmission of HIV under Iowa Code § 701C.1 after a one-time consensual sexual encounter that occurred prior to disclosure of his HIV status.

• **Rhoades v. State of Iowa, Reply Brief of Appellant Nick Rhoades, Supreme Court of Iowa, Glazebrook & Moe, LLP; Lambda Legal**

  This is a reply brief to a 2012 appeal of the denial of an application for post-conviction relief. The defendant was convicted of criminal transmission of HIV under Iowa Code § 701C.1 after a one-time consensual sexual encounter that occurred prior to disclosure of his HIV status.

• **Rhoades v. State of Iowa, Appellee’s Brief and Conditional Notice of Oral Argument, Supreme Court of Iowa, State of Iowa**

  The State of Iowa’s response brief to the Supreme Court of Iowa in Nick Rhoades's 2012 appeal of the denial of his application for post-conviction relief. In 2008, Rhoades was convicted of criminal transmission of HIV under Iowa Code § 701C.1 after a one-time consensual sexual encounter that occurred prior to disclosure of his HIV status.
• **State v. Bird, Amicus Brief, Supreme Court of Ohio, Lambda Legal**
  This amicus brief was submitted on behalf of an HIV-positive defendant in an appeal of a criminal conviction for assault with a deadly weapon for spitting in a police officer's face.

• **United States v. Ms. T (anonym), Amicus Brief, U.S. District Court for the District of Maine, National Advocates for Pregnant Women, Center for HIV Law and Policy, Verrill Dana, LLP on behalf of Medical, Public Health and HIV Experts and Advocates**
  This amicus brief argued that a federal judge improperly relied on a woman’s HIV positive status and pregnancy to determine the length of her jail sentence.

• **X v. The People of New York State (N.Y. App. Div.) - Amicus Brief, New York Court of Appeals, Lambda Legal, American Academy of HIV Medicine, Association of Nurses in AIDS Care and HIV Medicine Association**
  This amicus curiae brief supports the dismissal of an aggravated assault criminal charge against an HIV-positive man who allegedly bit a police officer.
SECONDARY RESOURCES

  A resource for lawyers and community advocates on the laws, cases, and trends that define HIV criminalization in the United States.

- **Transmission Routes, Viral Loads and Relative Risks: The Science of HIV for Lawyers and Advocates, Center for HIV Law and Policy, 2011.**
  This document summarizes key scientific sources and selected quotations on the nature of HIV in ways that are accessible and useful for legal briefs and other advocacy work. The publication includes sections on HIV as a chronic disease, HIV as an impairment of the immune system and a covered disability under the ADA/ADAAA, the routes and risk of HIV transmission, and the use and limits of phylogenetic analysis in proving the source of an individual's HIV infection.

- **Selected Policy Statements and Support for Decriminalization in the United States, Center for HIV Law and Policy, 2011.**
  This document, a supplement to *Transmission Routes, Viral Loads and Relative Risks: The Science of HIV for Lawyers and Advocates* identifies select policy statements and law journal articles that support arguments against HIV criminalization.

- **Criminalization of HIV Non-Disclosure, Exposure, and Transmission: Working Annotated Bibliography, Center for Interdisciplinary Research on AIDS, Yale University (2012)**
  This annotated bibliography is a compilation of select literature focusing on the ethical, public health, and legal issues related to criminalization of HIV non-disclosure, exposure, and transmission published in the last decade (2000-present).

- **Chart: State-by-State Criminal Laws Used to Prosecute People with HIV, Center for HIV Law and Policy (2012)**
  This chart catalogues by state the laws used to prosecute individuals with HIV. The chart includes which states and territories have HIV-specific criminal statutes, what type of behavior is criminalized, whether there are general STI criminal statutes, whether there is sex offender registration, and whether general felony statutes have been used to prosecute individuals with HIV.
SAMPLE MEDICAL EXPERT AFFIDAVIT ON HIV TRANSMISSION

STATE OF ______________________________________________________
COUNTY OF ____________________________________________________

_________________________________________ personally came and appeared before me, the undersigned Notary, the within named _________________________________________, who is a resident of _____________________ County, State of _________________________, and makes this his/her statement and Medical Expert Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his/her knowledge.

Affidavit of _________________________________________

1. HIV is spread by sexual contact with an infected person, by sharing needles and/or syringes (primarily for drug injection) with someone who is infected, or, less commonly (and now very rarely in countries where blood is screened for HIV antibodies), through transfusions of infected blood or blood clotting factors. Babies born to HIV-infected women may become infected before or during birth or through breast-feeding after birth.

2. The HIV virus is fragile and transmission is extremely difficult and occurs only through limited paths: through sexual intercourse, most typically male to female vaginal intercourse or through anal intercourse; through transmission from a woman with HIV to her fetus; or through intravenous drug use. A relatively small number of health care workers also have been infected in the workplace through significant exposure to the blood of HIV-positive patients, most typically through needlestick injuries.

3. Some people fear that HIV might be transmitted in other ways; however, no scientific evidence to support any of these fears has been found. If HIV were being transmitted through other routes (such as through simple touching, air, water, insects), the pattern of reported AIDS cases would be much different from what has been observed. For example, if mosquitoes could transmit HIV infection, or if parents and children could easily transmit HIV to other family members, many more young children and preadolescents would have been diagnosed with HIV. Instead, the number of young children with HIV has dramatically dropped in recent years as the use of drugs to prevent transmission during pregnancy and childbirth has become routine.

4. All reported cases suggesting new or potentially unknown routes of transmission are thoroughly investigated by state and local health departments with the assistance, guidance, and laboratory support from CDC. No additional routes of transmission have been recorded, despite a national sentinel system designed to detect just such an occurrence.
5. The HIV virus cannot be transmitted through casual contact or day-to-day interactions at home, work, or school. One cannot contract HIV through touching, hugging, kissing, or sharing food, eating utensils, towels, bedding, swimming pools, telephones, or toilet seats.

6. A large number of families in the United States have been affected by the HIV epidemic. Many people living with HIV are raising minor children. Hundreds of thousands of children in the United States have at least one HIV-positive parent, and these families are found in all regions of the country.

7. HIV cannot be transmitted between family members in the normal household setting unless there is contact between an open wound or the mucous membranes of one person and the HIV-infected blood of another. Taking simple precautions in the home can eliminate even this extraordinarily low risk of transmission.

8. A parent with HIV poses no real risk of transmission to children in his or her care. HIV transmission simply is not associated with casual household contact. No one has ever transmitted HIV to a child by changing the child’s diaper or clothes, feeding or caring for the child, kissing or hugging the child, or through any of the other typical interaction between a parent and a child.

9. There is no medical or public health need to separate otherwise healthy HIV-positive children from those who are not infected in the home, in schools, or in other activities.

10. Patients often ask their clinicians about the degree of HIV transmission risk associated with specific sexual activities. Numerous studies have examined the risk for HIV transmission associated with various sex acts. These studies indicate that HIV is not easily transmitted, and that even in unprotected anal sex, the per-act risk of transmission is 2% or less.

11. Oral sex has an even lower per-act risk of HIV transmission than penile-vaginal or penile to anal sexual activity. Oral sex is definitely not a primary means of HIV transmission. Engaging in lower-risk behavior such as oral sex reduces or eliminates the risk that HIV transmission will occur.

12. In the United States, the risk of HIV transmission from an HIV-positive woman to a man is much lower than the risk of transmission from an HIV-positive man to a woman. HIV transmission from women to men is not a major cause of the HIV epidemic in the United States.

13. The risk that a person with HIV will transmit the virus to another individual also is affected by numerous biological factors, such as the person’s overall health and the amount of HIV virus in each person’s system.

14. People with HIV who are taking antiretroviral medication reduce the likelihood of transmitting HIV to another person. The clinical goal of antiretroviral therapy is to reduce the amount of HIV virus in a person’s system to levels approaching commercial laboratory undetectability. These undetectable HIV levels achieved by standard antiretroviral therapy further reduces the risk for HIV transmission to near-zero.
The following chart compares the sentencing schemes for representative HIV exposure, non-disclosure, and/or transmission laws in the United States with laws punishing drinking and driving, reckless endangerment of others, and vehicular homicide. In comparison with HIV exposure, which often carries minimal risk, the danger posed by these crimes is similar if not greater. However, as the chart shows, the punishment for HIV exposure can be much more severe than those for the other crimes listed below.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>HIV Exposure Laws &amp; Prosecutions</th>
<th>Drinking &amp; Driving Laws</th>
<th>Reckless Endangerment Laws</th>
<th>Vehicular Homicide Laws</th>
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<tr>
<td>United States</td>
<td>N/A</td>
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<td>First offense: 120 days-5 years</td>
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<td>Second offense: 90 days-1 year</td>
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<td>Third offense: 3 years</td>
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<td>Actual prosecution: 3 years</td>
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<td>Statute: 3-8 years</td>
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<td>Statute: 3-8 years</td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

The following chart compares the sentencing schemes for representative HIV exposure, non-disclosure, and/or transmission laws in the United States with laws punishing drinking and driving, reckless endangerment of others, and vehicular homicide. In comparison with HIV exposure, which often carries minimal risk, the danger posed by these crimes is similar if not greater. However, as the chart shows, the punishment for HIV exposure can be much more severe than those for the other crimes listed below.
<table>
<thead>
<tr>
<th></th>
<th>First offense</th>
<th>Second offense</th>
<th>Third and subsequent offenses</th>
<th>Sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Death by vessel</td>
<td>10 days - 1 year (mandatory minimum of 24 hours) imprisonment; and a fine of $300 - $1,000</td>
<td>90 days - 1 year (mandatory minimum of 72 hours) imprisonment; and a fine of $600 - $1,000</td>
<td>120 days - 1 year (mandatory minimum of 15 days) imprisonment; and a fine of $1,000 - $5,000</td>
<td>3-5 years</td>
</tr>
<tr>
<td>Homicide by vehicle in the first degree</td>
<td>3-15 years</td>
<td>5 years</td>
<td>5 years</td>
<td>5-20 years</td>
</tr>
<tr>
<td>New Jersey</td>
<td>3-5 years</td>
<td>5 years</td>
<td>5 years</td>
<td>5-20 years</td>
</tr>
<tr>
<td>Georgia</td>
<td>N/A</td>
<td>90 days imprisonment (24 hours minimum)</td>
<td>120 days imprisonment (72 hours minimum)</td>
<td>4 years</td>
</tr>
<tr>
<td>Georgia</td>
<td>N/A</td>
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<td>120 days imprisonment (72 hours minimum)</td>
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</tr>
</tbody>
</table>

*Ignorance is No Defense*
<table>
<thead>
<tr>
<th>Offense</th>
<th>Ohio</th>
<th>Oklahoma</th>
</tr>
</thead>
<tbody>
<tr>
<td>First offense</td>
<td>6 months imprisonment; and a fine of $375-$1,750</td>
<td>N/A</td>
</tr>
<tr>
<td>Second offense</td>
<td>10 days-6 months imprisonment; and a fine of $525-$1,625</td>
<td>N/A</td>
</tr>
<tr>
<td>Third offense</td>
<td>30 days-1 year imprisonment; and a fine of $850-$2,750</td>
<td>Up to 5 years imprisonment; and/or fine of at least $1,000</td>
</tr>
<tr>
<td>Fourth and fifth offenses</td>
<td>1-5 years imprisonment; and/or fine of $1,350-$10,500</td>
<td>Up to 5 years imprisonment; and/or fine of at least $1,000</td>
</tr>
<tr>
<td>Vehicular homicide</td>
<td>N/A</td>
<td>Up to 5 years imprisonment; and/or fine of at least $1,000</td>
</tr>
<tr>
<td>Vehicular manslaughter</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Vehicular manslaughter</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Driving while impaired by alcohol or other substances</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>First offense</td>
<td>6 months imprisonment; and a fine of $375-$1,750</td>
<td>N/A</td>
</tr>
<tr>
<td>Second offense</td>
<td>10 days-6 months imprisonment; and a fine of $525-$1,625</td>
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</tr>
<tr>
<td>Offense</td>
<td>First offense</td>
<td>Second offense</td>
</tr>
<tr>
<td>-------------------------------------</td>
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<td>----------------</td>
</tr>
<tr>
<td>Vehicular homicide</td>
<td>3-15 years</td>
<td>6 months to 3 years</td>
</tr>
<tr>
<td>Reckless endangerment</td>
<td>48 hours - 11 months, 29 days</td>
<td>45 days - 11 months, 29 days</td>
</tr>
<tr>
<td>Driving while under the influence of alcohol or other substances (OUI)</td>
<td>$1,000-$10,000</td>
<td>$3,000-$30,000</td>
</tr>
<tr>
<td>Reckless endangerment</td>
<td>48 hours - 11 months, 29 days</td>
<td>45 days - 11 months, 29 days</td>
</tr>
<tr>
<td>Assault &amp; battery with a deadly weapon</td>
<td>3-15 years</td>
<td>10 years</td>
</tr>
<tr>
<td>Felony counts of OUI (&gt;=2)</td>
<td>$10,000-$100,000</td>
<td>$25,000-$250,000</td>
</tr>
<tr>
<td>Felony counts of conviction</td>
<td>$15,000-$150,000</td>
<td>$100,000-$1000,000</td>
</tr>
<tr>
<td>Felony counts of conviction</td>
<td>$10,000-$100,000</td>
<td>$25,000-$250,000</td>
</tr>
</tbody>
</table>

Tennessee Statute: 3-15 years imprisonment; and possible fine of up to $10,000; and mandatory sex offender registration.

Actual prosecution: 26 years and six months imprisonment; and mandatory sex offender registration.

Reckless endangerment: Up to 11 months, 29 days; and/or fine of up to $2,500.

Reckless endangerment with a deadly weapon: 1-6 years imprisonment; and possible fine of up to $3,000.

Vehicular homicide: 3-15 years; and mandatory sex offender registration.
The Center for HIV Law and Policy

391(a), (c)(1)(A) -
A status, even though two witnesses testified that the "victim" was aware of the defendant's status at


AL C

ENGAGING IN UNPROTECTED ANAL OR VAGINAL INTERCOURSE WITH SPECIFIC INTENT TO ENGAGE IN SEXUAL ACTIVITY WHERE SUCH PERSON KNOWS THAT THE OTHER PERSON IS HIV POSITIVE

§ 120291 (2011). (engaging in unprotected anal or vaginal intercourse without first disclosing status and with specific intent to transmit HIV is a felony)

AL C

See, e.g.

www.nhtsa.gov/staticfiles/nti/pdf/811236.pdf available at

See also

Julie Fox et al


For example, a person with a .08 BAC is almost 3 times more likely to get into an accident compared to a person with no alcohol in their system.

www.hivlawandpolicy.org/resources/vie

Ignorance is no defense

§ 3000-510.000"
HIV after engaging in unprotected sexual relations with someone without first disclosing their status.

On Demand Court Records, (2012).

A man gets 4 years in prison for not telling two sexual partners he had HIV.

Negligence is No Defense
The chart below presents data comparing HIV infection to other sexually transmitted infections. These data illustrate that other sexually transmitted infections can pose similar, and sometimes equally great or greater, risks than HIV. Herpes simplex virus type 2 (HSV-2) and human papilloma virus (HPV) are more prevalent than HIV. Gonorrhoea and HPV are far more easily transmissible than HIV during unprotected sexual activity. Like HIV, HSV-2 is not curable. Potential consequences of HPV, gonorrhoea, and HSV-2 include cancer, pelvic inflammatory disease, infertility, and infant death. Consequences of HPV, gonorrhoea, and HSV-2 include cancer, pelvic inflammatory disease, infertility, and infant death.

<table>
<thead>
<tr>
<th>Disease</th>
<th>Prevalence</th>
<th>Associated Risk of Transmission</th>
</tr>
</thead>
<tbody>
<tr>
<td>HIV</td>
<td>0.6%</td>
<td>Estimated male/male transmission rate: 0.5% Estimated female/female transmission rate: 2.5%</td>
</tr>
<tr>
<td>HSV-2</td>
<td>Low-risk and high-risk types: 26.8%</td>
<td>Transmission rate of the 14 high-risk types of HPV: 43.0%–94.0% per average relationship between discordant heterosexual partners</td>
</tr>
<tr>
<td>Gonorrhoea</td>
<td>105.5 cases in women per 100,000 population</td>
<td>Estimated female to male transmission rate per sexual contact: 25.0% Estimated male to female transmission rate per sexual contact: 50.0%</td>
</tr>
</tbody>
</table>

www.hivlawandpolicy.org
The chart below presents data on the risk of HIV infection in conjunction with data on chronic diseases such as cardiovascular disease, diabetes, and Hepatitis C. This chart allows for the comparison of HIV to other chronic diseases that are common in high-income countries and that require lifelong clinical management. This data is not intended to diminish the personal and societal consequences of HIV infection, but to draw awareness to the equal or greater toll of other chronic diseases. The chart below presents data on the risk of HIV infection in conjunction with data on chronic diseases such as cardiovascular disease and Hepatitis C. This chart allows for the comparison of HIV to other chronic diseases that are common in high-income countries and that require lifelong clinical management. This data is not intended to diminish the personal and societal consequences of HIV infection, but to draw awareness to the equal or greater toll of other chronic diseases.

<table>
<thead>
<tr>
<th>Disease</th>
<th>Prevalence</th>
<th>United States: 6% (overall)</th>
<th>United States: 8.3% (overall)</th>
<th>United States: 33% (adult)</th>
<th>United States: 1.5% (overall)</th>
<th>United States: 0.6%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cardiovascular Disease</td>
<td></td>
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<tr>
<td>Diabetes</td>
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<td></td>
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<tr>
<td>Hepatitis C</td>
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</tbody>
</table>
Igornance Is No Defense