HIV Criminalization:
What’s so bad about laws that criminalize people living with HIV?

Dr. Carrie Foote
(Tested HIV+1988)
Do you agree, disagree or are you unsure?

• People living with HIV who **lie** to their sexual partners about their HIV status, but don’t intend any harm, should be charged with a crime.

• People who **intentionally** try to transmit HIV to others should be prosecuted under HIV-specific laws.

• It should be a crime for people who know they are HIV-positive to attempt to donate blood products.

• An HIV+ person who physically assaults someone with bodily fluids or waste (e.g., spit, blood, feces) should face harsher sentences than the initial crime because of their HIV status (AKA sentence enhancement).

• Disclosing one’s HIV status to a sexual partner should **NOT** be mandated by law.

• HIV-specific laws serve public health goals (i.e., help prevent HIV) in some cases.
HIV criminalization is the unjust use of one’s HIV positive status in a criminal prosecution, either under HIV-specific laws that apply to people living with HIV, or under general criminal laws where charges or punishments are initiated or heightened solely because of the person’s HIV status.

What is HIV Criminalization?
Why cover the basics?
• To assess if the laws are consistent with basic current knowledge around HIV

Treatment:
• With treatment, PLHIV can have a near normal life expectancy; HIV is a CHRONIC MANAGEABLE DISEASE

Transmission:
• HIV is spread through penetrative sex, syringe sharing, mother to child transmission, blood transfusion prior to FDA screening
• Saliva, urine, and tears do not spread HIV.
• Blood outside the body is NOT “dangerous” for contracting HIV. HIV cannot live outside of the human body. In fact, the virus will die within 30 seconds when exposed to air.
Highly Effective HIV Prevention Measures that dramatically DECREASE this transmission risk even further include:

- **Condoms**
- **PrEP**
- **ART**
- **U=U**

<table>
<thead>
<tr>
<th>Type of Exposure</th>
<th>Risk per 10,000 Exposures</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Parenteral³</strong></td>
<td></td>
</tr>
<tr>
<td>Blood Transfusion</td>
<td>9,250</td>
</tr>
<tr>
<td>Needle-sharing during injection drug use</td>
<td>63</td>
</tr>
<tr>
<td>Percutaneous (needle-stick)</td>
<td>23</td>
</tr>
<tr>
<td><strong>Sexual³</strong></td>
<td></td>
</tr>
<tr>
<td>Receptive anal intercourse</td>
<td>138</td>
</tr>
<tr>
<td>Insertive anal intercourse</td>
<td>11</td>
</tr>
<tr>
<td>Receptive penile-vaginal intercourse</td>
<td>8</td>
</tr>
<tr>
<td>Insertive penile-vaginal intercourse</td>
<td>4</td>
</tr>
<tr>
<td>Receptive oral intercourse</td>
<td>low</td>
</tr>
<tr>
<td>Insertive oral intercourse</td>
<td>low</td>
</tr>
<tr>
<td><strong>Other¹</strong></td>
<td></td>
</tr>
<tr>
<td>Biting</td>
<td>negligible⁴</td>
</tr>
<tr>
<td>Spitting</td>
<td>negligible</td>
</tr>
<tr>
<td>Throwing body fluids (including semen or saliva)</td>
<td>negligible</td>
</tr>
<tr>
<td>Sharing sex toys</td>
<td>negligible</td>
</tr>
</tbody>
</table>

*Highly Effective HIV Prevention Measures of Acquiring HIV by Exposure Act* (HIV is NOT easily transmitted!)

PrEP: 99% EFFECTIVE
IF TAKEN DAILY & CONSISTENTLY
WE PLAY SURE

PrEP

PrEP:
HIV PREVENTION
WITH JUST
1 PILL A DAY

#PrEPForHer
DOMINATE
your sex life

PrEP is a safe, daily pill that helps prevent HIV.

Latest HIV Prevention & Treatment Science
"The scientific evidence is clear. Someone whose HIV is undetectable does not pose an infection risk to their sexual partners."

U=U
Undetectable
Equals Untransmittable

Latest HIV Prevention & Treatment Science
Those who **ARE AWARE** they have HIV are at Risk of **HIV CRIMINALIZATION**

What’s happening out there?
WHEN SEX IS A CRIME
AND SPIT IS A DANGEROUS WEAPON
A SNAPSHOT OF HIV CRIMINALIZATION IN THE UNITED STATES

THE NATIONAL HIV/AIDS STRATEGY FOR THE UNITED STATES: UPDATED TO 2020 (NHAS 2020) JULY 2015: * Laws and policies across the Nation should reflect current public health best practices for preventing and treating HIV. State laws that criminalize behaviors like spitting and biting that are known to pose minimal risk for HIV transmission should be dealt with in a consistent manner. HIV-specific laws do not influence the behavior of people living with HIV in those States where these laws exist. DOJ issued best practice guidance for States that wish to reform their HIV-specific criminal statutes, and legislators should reconsider whether these existing laws continue to further the public interest and public health. In too many instances, the existence and enforcement of these types of laws run counter to scientific evidence about routes of HIV transmission and effective measures of HIV prevention, and undermine the public health goals of promoting HIV screening and treatment. In jurisdictions where HIV-specific laws remain, prosecutors should also execute more discretion in dismissing blatantly stigmatizing and discriminatory cases against people living with HIV.” The recommendations include: “State legislatures should review HIV-specific criminal statutes to ensure that they are consistent with current scientific knowledge of HIV transmission and support public health approaches to preventing and treating HIV.”

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*The total number of arrests and prosecutions from 2006-2016 reported here are illustrative, not a precise count. It is impossible to track all such arrests and prosecutions as there is no uniform system of monitoring and reporting them. The numbers represent those cases that are searchable in news and legal databases or that otherwise have come to the attention of the authors.

AT LEAST
279
REPORTED PROSECUTIONS SINCE 2008*

- 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
- PUNISHMENT INCLUDES SEX OFFENDER REGISTRATION

*Idaho man was sentenced to 15 years in prison for engaging in sex (no ejaculation, no transmission) without disclosing his HIV status.

*In South Dakota, a 19-year-old student was charged with intentional HIV exposure after consensual sex with another student.

*A man with HIV in Michigan was charged under the state’s anti-terrorism statute with possession of a “biological weapon” after an altercation with a neighbor. Prosecutors equated his HIV infection with “possession or use of a harmful device.”

*A man in New York was sentenced to 10 years for aggravated assault after biting a police officer.

*A 23-year-old Oregon man was sentenced to 87 months in prison after pleading guilty to unprotected sex without disclosure of his HIV-positive status to a man he met on Manhunt.com.

*A man with HIV in Iowa, who had an undetectable viral load, was sentenced to 25 years after a one-time sexual encounter during which he used a condom.

*A man with HIV in Texas is serving 35 years for spitting at a police officer.
Disproportionate impact on: African Americans and other racial/ethnic minorities, Transwomen, People with unstable housing, sex workers, and those with unmet mental health needs

https://www.youtube.com/watch?v=iB-6blJbjc
Indiana Laws that Criminalize HIV

- **IC 16-41-7-1/IC 35-45-21-3**
  HIV/HBV Carriers’ “duty to warn” (DTW) [i.e., disclose one’s HIV status prior to unprotected sex and sharing syringes] and failure to warn persons at risk

- **IC 16-41-14-17/IC 35-45-21-1**
  Donation, sale, or transfer of semen/blood/serum when HIV+

- **IC 35-42-2-1(b2)/IC 35-45-16-2**
  Battery/Malicious Mischief by bodily fluid when HIV+/TB/Heps (sentence enhancement)
So what’s so bad about laws that criminalize people living with HIV?
Contrary to Public Health Goals

Do these laws encourage safer sex behaviors? Prevent HIV?

1. Not based on good public health HIV prevention science; does not deter risk behaviors

2. Disincentive to HIV testing

3. May actually encourage non-disclosure

4. Alienates patients from providers; providers “tools” of criminalization

5. Send inaccurate message regarding prevention responsibility

6. Inaccurate messaging around HIV transmission risk [implies risk that don’t exist or pose little risk]

7. Non-disclosure broadly and falsely misunderstood as intent to harm
Raises Due Process Issues

Are these laws fairly applied?

1. Intent requirement has disappeared
2. Extremely difficult to prove disclosure
3. Juror moral disapproval and disconnect of already marginalized groups
4. Scientific evidentiary details ignored/punishes behaviors with little to no risk
5. Result in disproportionate punishment [sometimes more than rape or manslaughter]
6. Signals out HIV to be treated differently [what about HPV? HCV?]
Inflict Serious Group and Individual Harms

Do these laws hurt people living with HIV?

1. Contributes to stigma
2. May result in secondary disclosure that can cause harm
3. Used as a coercive tool by HIV-negative partner
4. Ruin individual lives [sex offender, felon]
5. Negatively affect marginalized and vulnerable populations [women, racial, survival sex workers, PWID, LGBT, immigrants, impoverished, mentally ill]
6. Stigmatize all people with HIV [sensational media reports]
7. Rape may not be reported/Physical Violence
8. Threat of Prosecution/Control in Abusive relationships
What’s so bad about these laws? RESULT – more harm than good

• CONTRARY TO PUBLIC HEALTH PRACTICES -- Criminalization has not been proven anywhere in the world to be an effective HIV prevention approach.

• IGNORES DUE PROCESS ISSUES and leads to unjust prosecutions

• INFlicts GROUP AND INDIVIDUAL HARMs, especially for already disenfranchised communities as they dangerously feed into the nexus of already existing racial, sexual, gender and economic minority disparities and harms.

Call for Change
Who supports change?

- National Association for Criminal Defense Lawyers (2016)
- American Psychological Association (2016)
- International Association of Providers of AIDS Care (2015)
- U.S. Department of Justice, Civil Rights Division (2014)
- American Medical Association (2014)
- American Nurses Association and Association of Nurses in AIDS Care (2015)
- UNAIDS (2014, 2008)
- U.S. Conference of Mayors (2013)
- National Association of County and City Health Officials (2013)
- Infectious Disease Society of America and HIV Medicine Association (2012)
- **Positive Justice Project and the Center for HIV Law and Policy** (endorsed by over 1000 US Organizations/individuals including SERO and the Positive Women’s Network USA (2012)
- Global Commission on HIV and the Law (2012)
- Oslo Declaration on HIV Criminalization (2012)
- National Alliance of State and Territorial AIDS Directors (2011)
FEDERAL Legislative Solutions -- Support the REPEAL HIV Discrimination Act (Repeal of Existing Policies that Encourage and Allow Legal HIV Discrimination)

We strongly urge introduction and co-sponsorship of bills in the House and Senate to end HIV criminalization. Congress must send a message that federal and state laws, policies, and regulations regarding people living with HIV should:
State Legislative Solutions

• Eliminate HIV-specific criminal laws

• Reform laws to cover only intent to harm (Dept. of Justice guidance)

• Broaden the laws to include other transmittable infections with similar potential harms and reform those laws to reflect actual potential harms for the conduct involved and relative culpability (e.g., Iowa example)
In response, we formed…….(summer 2016)

MISSION
HIV Modernization Movement-Indiana (HMM) is a diverse group of individuals who seek to modernize Indiana’s criminal HIV laws. Deeply outdated and lacking in scientific merit, these harmful laws criminalize and stigmatize “Hoosiers” living with HIV and are counterproductive to ending the HIV epidemic in Indiana.

http://hivmodernizationmovement.org/
Do you agree, disagree or are you unsure?

• People living with HIV who **lie** to their sexual partners about their HIV status, but don’t intend any harm, should be charged with a crime. [NO]

• People who **intentionally** try to transmit HIV to others should be prosecuted under HIV-specific laws. [NO BUT MAY BE THE BEST OPTION]

• It should be a crime for people who know they are HIV-positive to **attempt** to donate blood products. [NO]

• An HIV+ person who physically assaults someone with bodily fluids or waste (e.g., spit, blood, feces) should face harsher sentences than the initial crime because of their HIV status (AKA sentence enhancement). [NO]

• Disclosing one’s HIV status to a sexual partner should **NOT** be mandated by law. [NO]

• HIV-specific laws serve public health goals (i.e., help prevent HIV) in some cases. [NO]
HIV CRIMINALIZATION = STIGMA

“There is no greater form of stigma than that which is enshrined in the law”

(Sean Strub)

Comments or Questions?