

## ***CRIMINALIZATION of HIV exposure and transmission***

### **Know the facts:**

As of 2011 36 states and 2 territories have specific laws that criminalize HIV exposure and transmission through consensual sex, needle sharing, or through spitting and biting despite the fact that spitting and biting have not been shown to pose a significant risk of transmitting HIV.

Some states do not have HIV-specific laws, but people have been prosecuted for HIV exposure and transmission under general criminal laws like attempted murder, assault, and in some cases bio-terrorism.

A majority of these laws do not require proving the intent to transmit HIV. Most laws only require that the person knew her/his HIV status for a successful prosecution. This effectively penalizes an HIV-positive person for knowing their HIV status, and results in a "he said - she said" "she said - she said" or "he said - he said" battle, where the person who knows their HIV-positive status usually loses. Women are often the first person in the relationship to know their status.

### **HIV exposure and transmission laws are a problem because they:**

#### **+ Increase stigma and discrimination**

Because HIV criminal exposure and transmission laws single out HIV for criminal prosecution and often prosecute acts like spitting and biting, which are not known to transmit HIV, these laws serve to feed stigma, misinformation, and discrimination against HIV-positive people.

*"I refuse to be judged by this disease for I am much, much more than the disease. So, I keep this a secret. As a teacher I could lose my job. Not disclosing could get me jail time. Therefore, I no longer date. It's difficult being a leper of the 21st century." – HIV+ woman, PWN Human Rights Survey*

#### **+ Hinder HIV prevention efforts**

Since the key to successful prosecution under these laws requires someone to know their HIV status, people may avoid testing for fear of prosecution. People are more likely to transmit HIV when they do not know their status – increasing all people's vulnerability to HIV.

*"People are afraid enough as it is to get tested, and know their status. The criminalization further deters people from getting tested, and actually contributes to the spread of the virus, rather than control it." – HIV+ woman, PWN Human Rights Survey*

#### **+ Contradict public health messages**

Many would agree that there is a responsibility to disclose one's HIV status to intimate partners. But preventing the transmission of HIV is everyone's responsibility, not just the person living with HIV. HIV criminal exposure and transmission laws contradict this public health message by putting the responsibility for HIV prevention solely on the person living with HIV.

*"HIV criminalization laws hurt everyone with HIV because it's hard enough to feel okay about being sexual without feeling like your body is a deadly weapon [. . .] Safe sex should always be both person's responsibility." – HIV+ woman, PWN Human Rights Survey*

## ✚ Can be used as a tool of intimate partner abuse

Criminal HIV exposure and transmission laws do not protect women. In fact, many women have been sent to prison under these laws, often by partners who knew the woman's HIV status but used the laws as a tool of abuse, coercion, or harassment when the woman attempted to end the relationship.

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## ✚ Are not based on current understandings of HIV transmission

Prosecutions for HIV exposure and transmission are often not based on our current understanding of the science of HIV transmission. Many people are prosecuted and convicted for acts that have a low to no probability of HIV exposure or transmission.

### Probability of HIV Transmission

The probability of HIV transmission is not considered in most prosecutions and is often greatly overestimated.

- The probability of HIV transmission during one act of unprotected vaginal intercourse is approximately 0.1%, or 1 in 1,000.
- Unprotected anal intercourse has a risk of transmission 10 to 20 times higher than for unprotected vaginal intercourse.
- Risk of transmission also increases as the number of sex acts increases.

### Risk of Exposure

Recent clinical trials have shown that suppressed HIV viral load can lead to a 96% reduction in HIV transmission in couples where one partner is HIV-positive. To date, courts have not taken into account the varying levels of risk of exposure when prosecuting an individual for HIV exposure.

### Spitting and biting

This act has not been shown to pose a significant risk of transmitting HIV, yet numerous cases have been brought on these grounds resulting in severe sentences for the person living with HIV.

### Condom Use

Condom use has been proven to greatly reduce HIV transmission. Yet, most courts do not allow condom use to serve as evidence of a lack of intent to expose or transmit HIV to another person.

## ✚ Do not address root problems

People may be afraid to disclose their status for a number of reasons including the very real fear of intimate partner violence, fear of discrimination and HIV-related stigma, and lack of information about living with HIV.

## ✚ Result in dire consequences for convicted women

When prosecuted, there are dire consequences that affect individuals as well as their families and communities.

### Government benefit program eligibility

Many criminal HIV exposure and transmission laws have felony sentences. Conviction under these laws can limit a woman's access to benefits such as housing, food assistance, and financial aid for higher education. All of these government supports are proven to be key to preventing HIV and keeping people living with HIV in care.

### The right to parent

Women will have trouble regaining custody of their children upon reentry into the community after a conviction. In some states, conviction requires sex offender registry. This can seriously jeopardize child custody and visitation rights.

### The right to work

Employers often require convicted felons to disclose their conviction on job applications. When looking for work, this forces HIV+ people convicted under HIV exposure and transmission laws to involuntarily disclose their status to potential employers. In some states a conviction requires the individual to register as a sex offender. This can limit job availability, especially in traditionally woman-dominated fields like child daycare or teaching.

## PWN Recommendations

### **Uphold human rights for all**

Support human rights and public health solutions rather than criminal prosecutions.

### **Ensure human rights are upheld when prosecutions occur**

Educate legislators, judges, prosecutors, and criminal defense attorneys on how HIV is and is not transmitted, including up-to-date developments on viral suppression as risk reduction.

Support the expansion of and access to civil and criminal legal representation for people living with HIV.

### **Eliminate HIV exposure and transmission laws**

Support the U.S. National HIV/AIDS Strategy's effort to review and assist in the amendment or elimination of state HIV exposure and transmission laws.

Support states to create laws and policies that address the underlying factors related to fear of HIV disclosure rather than spend resources on criminal prosecutions.

### **Engage the community**

Ensure that civil society, including women's and human rights groups, representatives of people living with HIV and other key populations, are fully engaged in developing and/or reviewing HIV laws and their enforcement.

### **Alleviate barriers to HIV disclosure**

Program efforts should be geared toward alleviating barriers to HIV disclosure and supporting expanded access to proven HIV prevention (including positive prevention) programs, voluntary counseling and testing for couples, safe conception, voluntary disclosure and ethical partner notification.

The private and public sectors should invest in reducing HIV-related stigma, and discrimination with full consultation by people living with HIV.

## Further Resources

**U.S. Positive Women's Network:** For more information on how HIV criminalization laws affect women living with HIV and our right to sexual and reproductive choice please visit PWN's Tools and Resources page. Website: <http://www.pwn-usa.org>.

**Positive Justice Project (PJP):** For more information and resources on HIV criminalization and exposure please visit the PJP's website at the Center for HIV Law & Policy. The U.S. Positive Women's Network is a partnering organization of the PJP. Website: <http://www.hivlawandpolicy.org/public/initiatives/positivejusticeproject>.

**Criminal HIV Transmission Blog:** For an up-to-date collection of published news stories, opinion, and resources on criminal HIV exposure and transmission laws visit Criminal HIV Transmission Blog. Website: <http://criminalhivtransmission.blogspot.com>.

