

ENDING CRIMINALIZATION

Our Vision

We envision and work toward a future in which our communities are no longer subject to over-policing, surveillance, and brutality at the hands of law enforcement, and where those with a history of interaction with the criminal justice system have full rights and dignity.

Current State of Play:

In the U.S., policing and criminal justice practices tend to reinforce societal inequity by targeting communities that are already marginalized and oppressed. In particular, Black people, non-Black people of color, queer and trans people, people who use drugs, sex workers and immigrants are disproportionately targeted by law enforcement and too often face violent interactions with police. These same communities are those most affected by the U.S. HIV epidemic. Interactions with the criminal justice system can be especially dangerous for marginalized communities - causing risk of loss of employment, income, parental rights, isolation, dehumanization and interruptions in health care - and too frequently, even death at the hands of the State. Mass incarceration disrupts communities and families.

PLHIV are specifically targeted by HIV criminalization laws, which punish us for behavior that would otherwise be legal were it not for our HIV positive status, including sexual intimacy, spitting and donating organs. Other laws that target communities already vulnerable to violence and HIV include those that prosecute people for sex work or for using drugs. Under these laws, people become criminals for carrying condoms or clean needles, for using drugs or for supporting themselves with survival sex. Rather than protecting anyone, these laws create a deadly climate for sex workers and people who use drugs by directly punishing prevention measures that people may use to reduce risk, and creating barriers to people seeking help when they are in danger.

On top of existing prejudices that may already exist due to racism, homophobia, transphobia, misogyny and HIV-related stigma, the collateral consequences of surviving criminalization may have a lifelong impact. Survivors can be barred from accessing housing, employment, health care, and essential safety net programs, and



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may be separated from their families, loved ones and communities. Immigrant survivors may be vulnerable to revocation of their residency permission, detention and deportation. Criminalization survivors, particularly women, are also vulnerable to abuse, violence, and exploitation. Some states permanently prohibit survivors who have been convicted of felonies from voting, severing them from a fundamental civil right. As criminal justice system survivors are often part of marginalized communities, these policies only serve to silence and disenfranchise them in policy development.

At the Federal Level, We Support:

1. Passing the REPEAL (Repeal Existing Policies that Encourage and Allow Legal) HIV Discrimination Act

Originally introduced by Congresswoman Barbara Lee (D-CA) in 2011, this legislation would incentivize and provide guidance to help over 30 states and U.S. territories follow in the footsteps of Iowa, Colorado and California in modernizing their discriminatory HIV-specific laws, bringing them in line with contemporary understanding of HIV transmission. In addition, we urge the Senate to introduce companion legislation.

2. Passing the Pretrial Integrity and Safety Act

Originally introduced in 2017 by Senators Kamala Harris (D-CA) and Rand Paul (R-KY) and by Representatives Ted Lieu (D-CA) and Carlos Curbelo (R-FL), the Pretrial Integrity and Safety Act would provide grants to states to help them eliminate the use of money bail as a requirement of pre-trial release in criminal cases. Currently, people can be held up to a year without ever being charged of a crime simply because they cannot afford to pay for bail. This practice unjustly punishes low-income individuals, as it prolongs separation from family, community, work, school and other life responsibilities. For PLHIV, pretrial detainment may cause a disruption in critical care and treatment.

3. Removing the U.S. Entry Ban on Sex Workers

Currently, the United States considers “inadmissible” any person who has engaged in sex work for the ten years preceding an application for an visa, admission, or adjustment of status. This policy is grounded in stigma and penalizes people who have bravely come forward as sex worker advocates or publicly disclosed their history of sex work. The entry ban should be lifted.

At the Federal Level, We Oppose:

1. Attempts to Revive the “War on Drugs”

The “War on Drugs” was instigated and sustained to disrupt, destabilize and suppress the political power of communities of color. Nearly half a century of discriminatory and draconian drug policies in the U.S. have resulted in continued mass incarceration and devastation of Black and Latinx communities, who are overpoliced and receive disproportionately harsh sentences for drug-related charges. This reliance on punitive approaches instead of treating addiction as a health issue has stalled adoption of harm reduction measures such as the implementation of syringe exchanges and safe injection sites. Today, in the midst of a nationwide public health opioid overdose crisis that killed 66,000 people in 2017, the administration has encouraged punitive solutions that threaten the lives of people who use drugs. Any attempt to reignite a draconian federal crackdown on drugs to impede the shift toward harm reduction-grounded drug policies reform or to reduce funding for solutions grounded in harm reduction approaches should be opposed.

2. Cooperation, Data Sharing and Resource-Sharing between Local Law Enforcement Agencies and Immigration and Customs Enforcement (ICE)

Immigrants who come into contact with the criminal justice system are often denied essential health care access and legal services. Additionally, they can be detained indefinitely, which means PLHIV may be completely unable to access care and medications.

- We oppose any expansion of ICE for the purposes of policing immigrant communities.
- We oppose the sharing of local law enforcement data with any immigration authorities, including ICE and Border Patrol, through programs such as Secure Communities (S-Comm) and the 287g program, which currently supports cooperation between ICE and dozens of local police departments. Any cooperation between ICE and local police departments should be ended immediately, and no further applications under the 287g program should be accepted.

At the State/Local Levels, We Support:

1. Modernization of State HIV Criminalization Laws

State laws criminalizing the alleged non-disclosure, exposure and transmission of HIV perpetuate HIV-related stigma and impede the public health goals of testing, treatment and prevention. They undermine the safety and bodily autonomy of PLHIV, who are often legally required to disclose their HIV status to sexual partners regardless of actual risk of transmission and even when doing so may put them in danger of violence. HIV criminalization laws may increase vulnerability to violence, and when prosecutions occur, PLHIV may endure the loss of privacy, housing and/or child custody as well as facing incarceration and, in some states, even having to register as a sex offender. States should modernize their HIV criminalization laws to bring them in alignment with current scientific understanding of HIV transmission. Reforms should seek to dispel HIV exceptionalism, promote shared responsibility for sexual decision-making, protect all people living with HIV regardless of viral load and support the right to disclose when one feels safe. Laws that impose sentence enhancements for sex workers diagnosed with HIV or people who use drugs living with HIV should also be eliminated.

2. Decriminalization of Sex Work

Sex work is labor and deserves the same legal protections as other forms of employment. Decriminalizing sex work would end the overpolicing and incarceration of people who do sex work, both of which increase vulnerability of sex workers to violence, abuse and exploitation. Last year, a law that would remove criminal penalties for sex work, the Reducing Criminalization to Promote Public Safety and Health Amendment Act of 2017, was introduced in Washington, D.C. Other municipalities should introduce similar legislation.

3. Elimination of “Condoms as Evidence” Policies

Several cities have or had a “condoms as evidence” policy, which allows the possession of condoms to be used as the basis for a solicitation charge or for police harassment. For example, while it’s not illegal in New York city to possess condoms, possession of “too many” can be used as evidence of sex work. Police can also confiscate and destroy condoms that they find. These policies make it impossible for sex workers to protect themselves and deprive people who do sex work agency in their decisions about contraceptive use. A 2012 NYC sex worker survey summary showed 46% of respondents reported not carrying condoms out of fear they would be harassed by police. About half of respondents reported that police had confiscated, damaged or destroyed their condoms. In 2013, San Francisco banned the use of condoms as evidence of sex work completely. In 2014, California became the first state in the country to pass a law (AB 336) that requires a court to state explicitly that the presence of condoms is relevant to the individual case before prosecutors can use them as evidence of sex work.

In a number of states, people who are charged with doing sex work can also be mandatorily tested for HIV, and sex workers with HIV may receive more severe sentences, even in cases where no transmission was possible due to the type of sexual activity, condom use or undetectable viral load. These practices are coercive and rooted neither in protecting people who do sex work nor in advancing public health and should be ended.

4. Adoption of Harm Reduction Policies and Funding for Harm Reduction Services

- States should fund and create more syringe access programs (SAPs) that allow people who inject drugs/ substances with a place to deposit used needles and get new ones. To facilitate this, states should also repeal laws that cap the number of syringes

that can be purchased or that criminalize syringe possession. In 2017, New York introduced legislation (A6258/S1082) that would decriminalize both sale and possession of hypodermic needles. This policy shift will promote public health and the safety of people who use drugs by allowing people to protect themselves from communicable diseases.

- Create safe injection facilities (SIFs) where people who inject drugs have the opportunity to inject drugs under the supervision of trained medical staff, preventing overdoses and reducing sharing of injection equipment. Harm reduction practices produce better health outcomes, protect human rights and help reduce criminalization rates. In 2018, San Francisco will become the first city in the U.S. to open safe injection sites.

5. Eliminate Felony Disenfranchisement Policies

Twenty-one states prohibit people convicted of felonies on parole from voting; 3 states (FL, IA, KY) deny the right to vote to all people convicted of any felonies for the rest of their lives, even after they have served their sentences; and 7 states permanently disenfranchise people for certain felony offenses only. Each state that allows restoration of voting rights implements their own process, but the processes are usually so difficult to navigate that few people attempt them. Felony disenfranchisement laws also have a clear disparate racial impact, affecting 1 in 13 Black voters compared to 1 in 56 non-Black voters. Disenfranchisement policies are a tool of racial injustice, meant to prevent Black people from leveraging their power at the polls.

At the State Level, We Oppose:

Any Attempt to Expand Criminal Penalties for People Based on HIV Status

In 2015, Rhode Island Rep. Robert Nardolillo (R) introduced H5245 that would criminalize PLHIV for not disclosing their status prior to sex. Rhode Island was then one of the few states that did not already have a non-disclosure law. Other state legislatures, including Texas, have contemplated such efforts in recent years. We oppose all such attempts to introduce or reinvigorate policies that target PLHIV for criminal prosecution based on their status. This would be a step back in bringing these laws into alignment with modern science.