

HIV Criminalization and Ending the HIV Epidemic in the U.S.

Ending the HIV Epidemic in the U.S. requires addressing structural barriers to HIV prevention and care. Current scientific and medical evidence should inform state laws and practices that criminalize behaviors by people with HIV. States should consider updating or repealing outdated laws and practices.

After more than 30 years of HIV research and significant biomedical advancements to treat and prevent HIV, most HIV criminalization laws do not reflect current scientific and medical evidence.

- Many of these laws were passed at a time when very little was known about HIV, including how HIV is transmitted and should be treated.
- These laws have not increased disclosure and may discourage HIV testing, increase stigma against people with HIV, and exacerbate disparities.

HIV criminalization laws were enacted before:

- **The availability of antiretroviral therapy (ART).**
A person who takes ART as prescribed, and gets and stays virally suppressed, not only can live a long and healthy life but also has effectively no risk of sexually transmitting HIV to sexual partners.
- **Pre-exposure Prophylaxis (PrEP),** a pill taken by HIV-negative people to prevent HIV infection. PrEP reduces the risk of acquiring HIV sexually by 99% when taken daily.



Under existing laws in most states, the behavior of people with HIV can be criminalized for potentially exposing others to HIV. Actual transmission or intent to transmit HIV is not usually required.

35 states criminalize the behavior of people with HIV through HIV- or STD-specific laws.

12 states require people with HIV who are aware of their status to disclose their status to sex partners.

4 states require people with HIV who are aware of their status to disclose their status to needle-sharing partners.

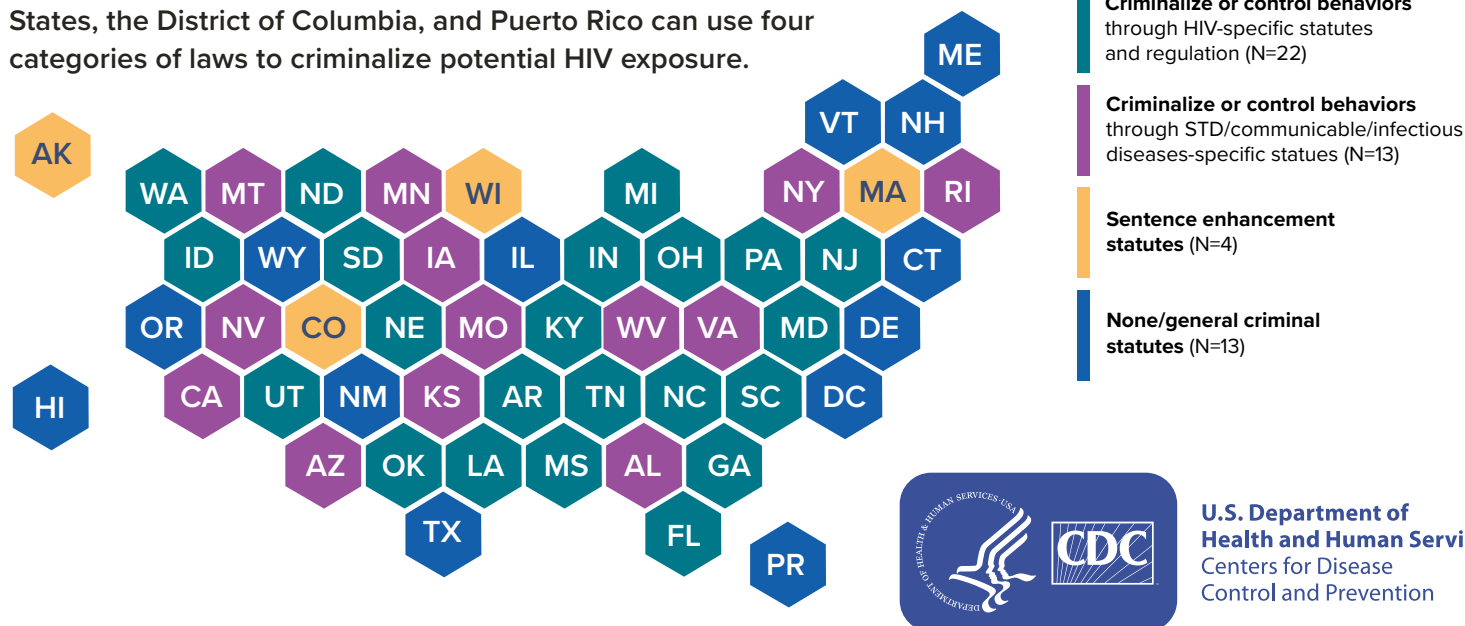
14 states criminalize behavior that has a negligible or low risk of transmitting HIV, such as spitting, biting, and oral sex.

14 states have maximum sentence lengths of more than 10 years, and some states up to life, even though people with HIV might have taken measures to prevent transmission.

9 states provide defenses for taking measures to prevent the transmission of HIV, such as condom use, viral suppression, and PrEP.

Presence of laws that criminalize potential HIV exposure • 2021

States, the District of Columbia, and Puerto Rico can use four categories of laws to criminalize potential HIV exposure.



U.S. Department of Health and Human Services
Centers for Disease Control and Prevention

Recommendations

When a law meant to protect the public is not working as intended, is unjust, and may be hurting efforts to keep communities healthy, common solutions must be found to better meet public health and public safety goals.

One step is to educate members of state and local justice systems to ensure they understand the scientific and medical data and public health goals.

HIV Criminalization Reform Options

- **Repeal** outdated HIV criminalization laws, or
 - **Modernize** HIV criminalization laws, or
 - **Deprioritize** HIV criminalization through specific or general criminal statutes, or
- **If the former options are not feasible, use** current scientific and medical evidence when applying existing HIV criminalization laws, or general criminal statutes used to criminalize the behavior of people with HIV.

Since 2014, at least 9 states have either **modernized or repealed*** their HIV criminalization laws to make them align with current scientific evidence. California, Colorado, Iowa, Michigan, Missouri, Nevada, North Carolina, and Virginia have modernized their laws. Illinois repealed its law.

Modernization Examples:

- **Rolled HIV** into statutes about general infectious or communicable diseases
 - **Required intent** to transmit
 - **Provided defenses** for people with HIV who took practical measures to prevent HIV transmission (e.g., viral suppression and condom use)
 - **Eliminated the felony penalty** for people with HIV engaging in sex work who had knowledge of their HIV status
- **Required HIV transmission** in order to apply a sentence enhancement for sex offenses
 - **Decriminalized** oral sex (a low-risk behavior).
 - **Removed provision from criminal code.** Instead, provision is now part of the administrative code as a measure to help control communicable diseases
 - **Repealed provision** that criminalized failing to disclose HIV status before sexual intercourse
 - **Reduced the penalty** from a felony to a misdemeanor

To end the HIV epidemic, public health, criminal justice, and legislative systems must work together to ensure that laws **protect the community, are evidence-based and just, and support public health efforts.**

References:

1. CDC. (2020, December 21). HIV and STD criminalization laws. <https://www.cdc.gov/hiv/policies/law/states/exposure.html>
2. Sweeney, P., Gray, S. C., Purcell, D. W., Sewell, J., Babu, A. S., Tarver, B. A., . . . & Mermin, J. (2017). Association of HIV diagnosis rates and laws criminalizing HIV exposure in the United States. *AIDS*, 31(10), 1483-1488.
3. UCLA School of Law, Williams Institute. (2015, December). *HIV criminalization in California: Penal implications for people living with HIV/AIDS*. <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-ca-penal/>
4. Mermin J., Salvant Valentine S., & McCray E. (2021). HIV criminalization laws and ending the US HIV Epidemic. *The Lancet HIV*, 8(1), e1-e58. [https://doi.org/10.1016/S2352-3018\(20\)30333-7](https://doi.org/10.1016/S2352-3018(20)30333-7)
5. Baugherm A. R., Whiteman A., Jeffries W. L., Finlayson T., Lewis R., Wejnert C. (2017). Black men who have sex with men living in states with HIV Criminalization laws report high stigma. *AIDS*, 35(10), 1637-1645. Retrieved from <https://pubmed.ncbi.nlm.nih.gov/34270489/>
6. Lee SG. Criminal law and HIV testing: empirical analysis of how at-risk individuals respond to the law. *Yale J Health Policy Law Ethics*. 2014 Winter;14(1):194-238. PMID: 25051654. <https://pubmed.ncbi.nlm.nih.gov/25051654/>



U.S. Department of Health and Human Services
Centers for Disease Control and Prevention