

HIV

CRIMINALIZATION RESOURCES

This document includes general, academic, and educational materials on HIV criminalization in the United States, as well as emerging issues related to the intersection of data confidentiality and ethics with HIV criminal exposure laws. “HIV criminalization” broadly refers to state HIV criminal exposure laws which criminalize the behavior of people with HIV with the stated goal of discouraging and punishing conduct that can lead to transmission. NASTAD staff and consultants compiled this resource sheet to assist public health professionals in broadening their knowledge about HIV criminalization; the growing body of evidence that these laws are ineffective public health measures that do not reflect our current understanding of HIV science; ongoing efforts to reform these laws across the country; and public health-based alternatives to HIV criminalization that can contribute more effectively to preventing and ending HIV transmission and HIV stigma.

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General Resources ON HIV CRIMINALIZATION

These general resources on HIV criminalization support various activities, including community engagement and community education.

- [Center for HIV Law & Policy](#). These resources include a comprehensive list of [state-specific](#) laws and publications about the negative consequences of HIV criminalization, a [resource bank](#) with publications about various topics, and other tools, including a [quick reference chart](#) comparing state criminal laws and prosecutorial tools.
- [HIV and STD Criminal Laws](#) (CDC). This CDC backgrounder provides the latest aggregate information on HIV and STD criminalization across the country.
- [Health Not Prisons Collective](#). This initiative was launched in 2020 by several organizations with the goal of ending HIV criminalization in the U.S. Their webpage includes background information about the harms of criminalization, and there is an option to sign up for future updates as the project grows.
- [Sero Project](#). These accessible resources cover topics ranging from destigmatizing language around HIV and criminalization and the harms of HIV criminalization, including adverse public health consequences.
- [Drug User Health Policy Map](#) (NASTAD). This interactive resource includes laws criminalizing HIV and hepatitis exposure through the use of drug paraphernalia, jurisdiction-specific Good Samaritan laws related to overdose response, and Medicaid policies expanding services for people who use drugs.
- [Williams Institute, UCLA School of Law](#). These resources include state legislative testimony about HIV criminalization, state-specific reports examining enforcement of HIV criminal laws and the transmission risks of criminalized behaviors, and policy briefs.



Publications and Policy Statements

ON HIV CRIMINALIZATION

These publications provide information about HIV criminalization, its public health impacts, and HIV criminal law reforms many jurisdictions are considering. They may help educate community members, coalition members, and advocacy groups about these potential HIV criminal law reforms.

KEY TAKEAWAY

HIV criminal laws are inconsistent with modern science, undermine public health, and disproportionately target already- marginalized and stigmatized communities.

- [Considerations for Modernized Criminal HIV Laws and Assessment of Legal Protections Against Release of Identified HIV Surveillance Data for Law Enforcement](#) (American Journal of Public Health). This article presents overlooked factors about HIV criminalization that should be considered in statutory assessments.
- [Rethinking Criminalization of HIV Exposure — Lessons from California’s New Legislation](#) (New England Journal of Medicine). This article discusses the intended purpose of HIV criminalization—mainly retribution and deterrence—and emerging evidence that these laws are an ineffective strategy for achieving these goals.
- [Criminalization of HIV Transmission](#) (UNAIDS). This policy brief discusses the harms of HIV criminalization and provides policy recommendations for public health-based alternatives.
- [Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States](#) (ADA.gov). This article provides a framework for states to examine HIV criminal laws, assess how these laws align with current evidence regarding HIV transmission risk, and consider whether these laws support national and local HIV prevention efforts.
- [Prosecution of Non-Disclosure of HIV Status: Potential Impact on HIV Testing and Transmission Among HIV-Negative Men Who Have Sex with Men](#) (PLOS ONE). This study finds that Canadian laws criminalizing HIV non-disclosure reduce willingness to seek HIV testing and can potentially increase HIV transmission in the community significantly.
- [United States Department of Justice Civil Rights Division Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically Supported Factors](#) (ADA.gov). This article suggests approaches to reform laws to remove HIV-specific penalties or, if keeping them, how to align them with current science.



Data Privacy, Confidentiality, and Ethics

These publications and resources address ethical considerations in HIV data privacy and confidentiality, and the nexus between HIV data-sharing, HIV criminalization, and community concerns about privacy. This information may be useful for policy-makers, advocacy groups, and other partners as they consider how data privacy and confidentiality laws and practices impact people with HIV and overall public health.

- [Meeting Summary: Responsible Use of HIV Cluster Data for Public Health Action: Amplifying Benefits, Minimizing Harms](#) (CDC). This resource summarizes a series of CDC meetings addressing how to use HIV cluster data ethically amidst community concerns regarding privacy and criminalization.
- [Molecular HIV Surveillance: Balancing Outbreak Detection and Control and the Rights of Persons Living With HIV](#) (American Journal of Public Health). This article examines the balance between maximizing the potential benefits of molecular surveillance and community concerns about safety in the context of stigmatizing and punitive HIV criminalization laws.
- [Reassessing the Ethics of Molecular HIV Surveillance in the Era of Cluster Detection and Response Toward HIV Data Justice](#) (The American Journal of Bioethics). This article outlines challenges and considerations related to ethical HIV data use. This article is one of many in [this issue](#) of the American Journal of Bioethics addressing ethical concerns in HIV cluster detection and response.



Educational Tools, Guidelines, and Talking Points

These resources include strategies, talking points, and guidelines for reforming laws that criminalize people with HIV; educating health department staff and other partners about the harms of HIV criminalization and how these laws undermine public health efforts; and implementing evidence-based alternatives to HIV criminalization that promote voluntary disclosure, prevent HIV transmission, and end HIV stigma.

KEY TAKEAWAYS

Most prosecutions for knowingly and intentionally exposing another person to HIV have been predicated on little evidence of intent, often involving either consensual sex or conduct that posed no significant risk of HIV transmission (such as spitting or biting). However, all types of cases have produced severe sentences, sometimes exceeding 25 years, despite the absence of actual transmission.

Many HIV criminal laws reflect long-outdated misconceptions about how HIV can be transmitted, prevention modalities, the actual risk of transmission, and the consequences of HIV transmission.

- [Public Health and the Criminalization of HIV Transmission, Exposure, and Non-Disclosure](#) (NASTAD). This presentation discusses policy goals for criminal law reform and the harmful public health impacts of HIV criminalization and stigma, including tools for education.
- [Guidelines to end HIV Criminalization in Public Health Practice](#) (NASTAD). These five guidelines provide a framework for health departments to review and modify public health policies related to HIV criminalization that can exacerbate stigma and discrimination and lessen the likelihood that individuals will get tested and learn their HIV status.
- [HIV Criminalization Health Department Talking Points and FAQs](#) (NASTAD). These talking points assist health departments in responding to frequently asked questions about HIV criminalization laws and help guide discussions around reform efforts consistent with NASTAD's [Decriminalization Policy Statement](#).
- [Recommendations for Modernization of Laws to Prevent HIV Criminalization](#) (Council of State and Territorial Epidemiologists (CSTE)). This 2021 position statement from CSTE describes the public health impact of HIV criminalization laws and recommends actions for local, state, and territorial public health officials to support modernization efforts for data-driven and science-based laws and policies.
- [Beyond Blame: Challenging Criminalisation HIV Justice Worldwide](#) (AIDS 2020 Conference). This webinar highlights the global impact of HIV criminalization and efforts to fight it.
- [State Strategic Plan](#) (Sero Project). This resource was adapted from the Coalition Plan to Repeal HIV Criminalization in Iowa and developed by Advocacy Strategies 2012. It provides detailed step-by-step actions for community members to take to educate state legislators and other partners through effective communication strategies, empowered community participation, and visibility in the community and media.
- [HIV Criminalization Commentary – January 11, 2021](#) (CDC). This commentary by CDC authors emphasizes the need to align HIV-specific criminal exposure laws with science and consider reforming, rescinding, or revising these laws and their application for the sake of people with HIV and the public's health. It highlights how HIV criminalization laws may impede efforts to end the HIV epidemic.