

President's Advisory Council on AIDS (PACHA)
Resolution on Ending Federal and State HIV-Specific
Criminal Laws, Prosecutions, and Civil Commitments

Despite the relatively low risk of transmission and significantly lowered level of harm, thirty-four U.S. states and territories have adopted criminal statutes based on perceived exposure to HIV. Most of these laws were adopted before the availability of effective antiretroviral therapy for HIV, which substantially reduces already low transmission risks and provides a pathway to highly successful HIV treatment. Clearly the use of HIV-specific criminal laws, of felony laws such as attempted murder and aggravated assault, and of sentence enhancements to prosecute HIV-positive individuals are based on outdated and erroneous beliefs about the routes, risks, and consequences of HIV transmission. Legal standards applied in HIV criminalization cases regarding intent, harm, and proportionality deviate from generally accepted criminal law principles and reflect stigma toward HIV and HIV-positive individuals. People living with HIV have been charged under aggravated assault, attempted murder, and even bioterrorism statutes, and they face more severe penalties because law enforcement, prosecutors, courts, and legislators continue to view and characterize people living with HIV and their bodily fluids as inherently dangerous, even as “deadly weapons.” Punishments imposed for non-disclosure of HIV status, exposure, or HIV transmission are grossly out of proportion to the actual harm inflicted and reinforce the fear and stigma associated with HIV. Public health leaders and global policy makers agree that HIV criminalization is unjust, bad public health policy and is fueling the epidemic rather than reducing it.

Whereas the National HIV/AIDS Strategy (NHAS) includes a statement on the problem and public health consequences of HIV criminalization and notes that many state HIV-specific criminal laws reflect long-outdated misperceptions of HIV's modes and relative risks of transmission; that criminal law has been unjustly used in the United States to prosecute and disproportionately sentence people with HIV; and that legislators reconsider whether these laws further the public interest and support public health approaches to preventing and treating HIV;

Whereas nearly all HIV-specific criminal laws do not consider correct and consistent condom use and effective antiretroviral therapy that reduces the risk of HIV transmission to near-zero as evidence of a lack of intent or ability to harm; **and** behaviors that according to the Centers for Disease Control and Prevention (CDC) have negligible risk of transmitting HIV, such as spitting and biting, have resulted in sentences as long as 35 years;

Whereas sound criminal justice and public health policy toward people living with HIV is consistent with an evidence-based approach to disease control and research demonstrates that HIV-specific laws do not reduce transmission or increase disclosure and may discourage HIV testing;

Whereas criminalization harms women and young people, as well as men, with HIV in many ways, because it:

1. Creates a tool for control by abusers who threaten prosecution of partners who want to leave abusive relationships;
2. Complicates custody disputes and pregnancies;
3. Imprisons women and young people for non-disclosure without regard for complex reasons such as fear of violence or other situations when disclosure may not be advisable or safe;
4. Over-targets sex workers, against whom condom possession has been used as evidence of intent to commit a crime;

Whereas punishments imposed for non-disclosure of HIV status, exposure, or HIV transmission, including the use of sex offender registries and indefinite civil commitment, are out of proportion to the actual harm inflicted or intended and reinforce the fear and stigma associated with HIV;

Whereas singling out HIV or any other health condition or disability as a basis for prosecution or sentence enhancement is unjust and unwarranted from legal, ethical, and public health perspectives;

Be it resolved that the PACHA recommends that the Department of Justice (DOJ) and the Department of Health and Human Services (HHS)/CDC complete a written review regarding opportunities for the creation of specific guidance and incentives to state attorneys general and state departments of health for the elimination of HIV-specific criminal laws and to develop recommendations for approaches to HIV within the civil and criminal justice systems that are consistent with the treatment of similar health and safety risks; and supports legislation, such as the REPEAL HIV Discrimination Act, that advances these objectives;

Be it further resolved that current criminal laws require modernization to eliminate HIV-specific statutes or application of general criminal law that treats HIV status, or the use of condoms or other measure to prevent HIV transmission, as the basis for criminal prosecution or sentence enhancement;

Be it further resolved that Federal and state officials should review the HIV-specific convictions and related penalties, sentence enhancements, and other restrictions imposed on people living with HIV, such as mandated sex-offender registration and civil commitment. In the event that such convictions or sentence enhancements fail to conform to the principles outlined above, federal and state officials should take appropriate measures (e.g., executive clemency, pardon, sentence reconsideration, parole, probation) to mitigate the harm caused to individuals;

Be it further resolved that all U.S. law should be consistent with current medical and scientific knowledge and accepted human rights-based approaches to disease control and prevention and avoid imposition of unwarranted punishment based on health and disability status;

Be it further resolved that the CDC should issue a clear statement addressing the growing evidence that HIV criminalization and punishments are counterproductive and undermine current HIV testing and prevention priorities.