Unlawful Acts

State legislation that criminalizes people living with HIV drives stigma.

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Despite advances in HIV science that have expanded the definition of safer sex beyond the use of condoms, outdated laws still prosecute people living with HIV for failing to disclose their status to partners before sex—regardless of whether the virus has been transmitted.

According to the Centers for Disease Control and Prevention, 24 states have statutes that criminalize nondisclosure of one's HIV status. Such laws were enacted when little was known about how HIV was spread and do not reflect the fact that an HIV-positive individual with an undetectable viral load poses effectively zero risk of transmitting the virus to a sex partner.

Nor do these laws take into account the fact that the daily pill Truvada as pre-exposure prophylaxis (PrEP) reduces the risk of contracting HIV by 99 percent among men and at least 90 percent among women. In addition, individuals who might have been exposed to the virus can take post-exposure prophylaxis (PEP) after sex to prevent infection.

Edwin Bernard, of the HIV Justice Network, has reported that between 2015 and June 2018, 143 U.S. residents were prosecuted under HIV criminalization laws, rendering the United States the leader in such prosecutions.

Proponents of HIV-specific legislation maintain that these laws deter individuals from exposing others to risk, despite a lack of conclusive evidence to back such claims. Advocates, meanwhile, point out that these laws not only fail to avert certain behaviors but also further stigmatize already marginalized communities and discourage folks from getting tested for HIV. After all, if one doesn't know his or her HIV status, one can't be held to account for nondisclosure.

The good news is that the anti–HIV criminalization movement is gaining momentum. In addition to Bernard's HIV Justice Network, groups such as The Center for HIV Law & Policy and the Sero Project, among many others, are raising awareness of the issue and have signed the "Expert Consensus Statement on the Science of HIV in the Context of Criminal Law" to urge governments worldwide to consider the latest research findings when enforcing HIV nondisclosure laws.

Science has evolved; now legislation must do the same.

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