

Study reveals who is being affected by state laws that criminalize people with HIV

December 2 2015, by Lauren Jow

California laws that criminalize people living with HIV have directly affected 800 people from 1988 to June 2014, according to state-level criminal offender record information from the California Department of Justice obtained by the Williams Institute. The state outcomes suggest that national HIV criminalization rates may be much higher than currently estimated.

The study, titled "HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS," analyzes data obtained from the California Department of Justice on the criminal history of all individuals who have had contact with the [criminal justice](#) system under four of the state's HIV-related criminal laws. These data record any contacts an individual may have had with the criminal [justice system](#) to provide a full chronological record of how these laws are being used.

The laws were originally intended to control the spread of HIV by prosecuting individuals who knowingly expose others. However, these data show that in 95 percent of incidents, no proof of exposure or transmission was required for prosecution.

Key findings from the report include:

- Nearly every incident in which charges were brought resulted in a conviction (389 out of 390 incidents). Among those with known sentences at the time of conviction, 91 percent were sent to prison or jail for an average of 27 months.

- The vast majority of these incidents (95 percent) involved sex work. The law that criminalizes sex workers living with HIV does not require intent to transmit HIV or exposure to HIV.
- Women made up 43 percent of those who came into contact with the criminal justice system based on their HIV-positive status.
- Black people and Latino/as make up two-thirds (67 percent) of those who came into contact based on charges of these crimes.
- Across all HIV-related crimes, white men were significantly more likely to be released and not charged (in 60 percent of their HIV-specific criminal incidents) than expected. Black men (36 percent), black women (43 percent) and white women (39 percent) were significantly less likely to be released and not charged.
- While the average age at the time of arrest for the first HIV-related incident was 37, the arrestees ranged from 14 to 71 years old.
- Nearly half (48 percent) of these incidents occurred in Los Angeles County. By contrast, 37 percent of people living with HIV/AIDS in California have lived in Los Angeles County.

"Like the rest of the criminal justice system, we are seeing certain communities bearing more of the weight of the penal code than others," said Amira Hasenbush, Jim Kepner Law and Policy Fellow at the Williams Institute.

"For too long, federal and state laws have discriminated against people living with HIV. These laws serve only to breed fear, distrust and misunderstanding. I applaud the Williams Institute for their hard work in drafting this report that shows the real impact of these discriminatory laws on Californians," said Congresswoman Barbara Lee, co-chair and co-founder of the bipartisan Congressional HIV/AIDS Caucus. "As a member of the UN Commission on HIV and the Law, I ensured that the Commission held a hearing in Oakland, California to highlight these

discriminatory laws in the United States. This effort led to the introduction the bipartisan REPEAL Act (H.R. 1586), which seeks to modernize these laws and we continue to build support for this important legislation. It also led to the Justice Department issuing best practice guidance for states to reform these laws, using the most up-to-date scientific and medically-accurate information, to ensure that no person is discriminated against."

More information: The full report is available online:
[williamsinstitute.law.ucla.edu ... living-with-hivaids/](http://williamsinstitute.law.ucla.edu.../living-with-hivaids/)

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