

Center for Interdisciplinary Research on AIDS at Yale University
Criminalization of HIV Non-Disclosure, Exposure and Transmission Working Group

Resolution: Calling for Research on the Impact of the Criminalization of HIV Exposure on Women

Thirty-four US states and territories now have HIV-specific criminal laws. Sixteen of US states and territories specifically address persons living with HIV (PLH) who engage in sex work.¹ A study of a single metropolitan area revealed that over half of all persons arrested for HIV-related crimes were women. Yet very little research has been conducted on the specific impacts on women of laws and policies that criminalize HIV transmission and exposure. This lack of research continues despite the fact that a majority of sex workers in the US are female and that sex workers are at particular risk for arrest for HIV exposure offenses. Sex workers may also face much more severe consequences when arrested for HIV-related charges than those who are not sex workers. Twenty-four states require mandatory HIV testing for individuals arrested for charges related to sex work and, in twelve states, individuals charged with selling or buying sex or committing sex offenses while HIV positive can receive significantly enhanced penalties. In a number of states, persons living with HIV who are convicted of sex work may also be required to register as sex offenders or “violent” sex offenders on state sex offender registries.

More research is needed to determine the frequency, contexts, and outcomes of HIV-related arrests of women and especially sex workers (whether male, female or transgender), and the nature and impact of ensuing legal and social consequences.

Potential serious but inadvertent consequences on women, especially those involved in sex work, of arrest and possible conviction for HIV-related charges, include the following:

1. Since women living with HIV are more likely than their male counterparts to have and be caring for dependent children^{2,3} they are at greater risk of losing child custody if charged under laws criminalizing HIV exposure and transmission.
2. Since far more women than men are arrested on prostitution-related charges⁴, more women undergo mandatory HIV testing in states requiring it, and face felony (as opposed to misdemeanor) charges in states with enhanced penalties for engaging in sex work while HIV positive. This occurs despite the fact that fellatio, the act most often provided by these sex workers, poses virtually no risk of HIV transmission.
3. In 12 states, persons convicted of sex work are required to register with state sex offender registries (SOR). Some states’ HIV exposure laws also require those convicted to register with SORs.

¹ Center for HIV Law and Policy. Chart: State-by-State Criminal Laws Used to Prosecute People with HIV [Internet]. 2013 [updated 2013 Oct 21; cited 2014 Oct 10]. Available from: <http://hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/State%20By%20State%20HIV%20Laws%20Chart%20updated%2010-21-13.pdf>

² Schuster MA, Kanouse DE, Morton SC, Bozzette SA, Miu A, Scott GB, Shapiro MF. HIV-infected parents and their children in the United States. *American Journal of Public Health*. 2000 July 90(7):1074–1081.

³ Merenstein D, Schneider MF, Cox C, Schwartz R, Weber K, Robison E, Gandhi M, Richardson J, Plankey MW. Association of child care burden and household composition with adherence to highly active antiretroviral therapy in the Women’s Interagency HIV Study. *AIDS Patient Care STDS*. 2009 Apr 23(4):289–96.

⁴ Vandiver D, Krienert J. The assessment of a cross-national sample of men and women arrested for prostitution. *Southwest J. Crim. Justice*. 2007;4(2):89–105.

4. Convictions on HIV-related charges, especially prostitution charges, profoundly affect women's ability to support themselves and their children by restricting future employment chances. Having a felony record and/or being registered on an SOR also limits their access to affordable housing, educational opportunities (e.g., eligibility for certain student loans or grants) and parents' ability to fulfill child care obligations (e.g., SOR laws may prohibit a registrant from living or even going near schools, day care centers or parks).⁵

Almost no data exist regarding the actual frequency with which women are experiencing these foreseeable outcomes. We therefore call for greater effort to collect data in these areas. We specifically urge researchers in our field to design studies that capture the following (among other data):

- The frequency with which HIV non-disclosure, exposure and/or transmission charges are being brought against sex workers, both in states with laws enhancing penalties for engaging in sex work while HIV positive and generally. Research to date assessing the number of HIV criminalization cases has been based on data from news reports and appellate records. These records are inherently incomplete and may underestimate the number of arrests and prosecutions brought that involve sex workers and other groups.
- The frequency with which enhanced penalties are imposed on people convicted under HIV-specific criminalization laws and policies and the justifications used for such enhancement.
- The use of HIV testing data (including pre-natal and neo-natal records) by prosecutors and others in law enforcement to identify women living with HIV. Increased investment in active public health surveillance to keep people living with HIV engaged in medical care, and reduce the risk of onward transmission of the virus, is driving greater integration of medical databases. A potential concomitant effect of this public health initiative, however, is the increased risk that information from confidential HIV registries may be used for non-medical purposes.
- Recent review of empirical evidence of HIV in sex workers emphasized that despite increasing numbers of effective HIV prevention approaches, these efforts have not been investigated in sex workers.⁶ The authors identified an action agenda that calls for research on the effect of decriminalization of sex work on "health outcomes, police, violence prevention and community empowerment interventions."

We strongly recommend that such research be designed and implemented in partnership with sex workers rights organizations, using participatory action research techniques whenever possible. Data on such volatile issues as unreported physical and sexual abuse by the police, for example, cannot be effectively collected without the trust and involvement of the affected communities. Engaging sex workers rights organizations from the outset as important stakeholders in such efforts is essential for both ethical and practical reasons.

For questions or comments, please contact Dini Harsono (dini.harsono@yale.edu).

⁵ Nieto M, Jung D. The Impact of Residency Restrictions on Sex Offenders and Correctional Management Practices: A Literature Review. California Research Bureau of the California State Library, Sacramento, CA, 2006, at: <https://www.library.ca.gov/crb/06/08/06-008.pdf>.

⁶ Beyrer C, Crago AL, Bekker LG, et al. An action agenda for HIV and sex workers. *Lancet*. 2014 Jul 21; S0140-6736(14)60933-8.