



POSITIVE WOMEN'S NETWORK
USA

FACTSHEET:

CRIMINALIZATION AS VIOLENCE AGAINST WOMEN LIVING WITH HIV

Women living with HIV (WLHIV) are likely to have experienced intimate partner violence (IPV), sexual assault, physical and emotional abuse, and trauma at rates much higher than the general population in the U.S. A majority of WLHIV in the U.S. are women of color and low-income women, and consequently also live with the compounding effects of trauma resulting from HIV-related, gender, and racial discrimination, along with institutional violence entrenched in discriminatory practices and policies of public institutions such as the criminal justice system.

Specifically, the criminalization, policing, and incarceration of communities impacted by HIV are structural factors that contribute to high rates of interpersonal violence (IPV), sexual assault, and trauma among WLHIV. This structural violence must also be accounted for as a form of violence against WLHIV, on its own.

These different forms of violence and trauma lead to poorer mental and physical health outcomes, negatively impacting the ability to engage in healthcare and to maintain adherence to lifesaving medications. **Ending violence against WLHIV means ending all forms of violence, including state-sanctioned brutality and institutional violence.**

HIV CRIMINALIZATION

Thirty-four U.S. states and territories have criminal statutes that allow prosecutions for allegations of non-disclosure, exposure and/or transmission of the HIV virus. Frequently making HIV exposure a felony offense, these laws can carry sentences of 30 years or more. Prosecutions related to HIV status under HIV-specific or general criminal laws have occurred in at least 39 states.¹

Laws that criminalize people living with HIV disproportionately impact women, especially women of color and women of trans experience, placing them at greater risk of violence from both partners and law enforcement:

- While women may face violence if they disclose their HIV status², they risk arrest and prosecution if they do not disclose.³
- Laws that criminalize HIV exposure do not protect women. In fact, many women have been arrested or sent to prison based on accusations by former partners who used HIV criminal laws as a tool of harassment or control, often after the woman attempted to end the relationship.⁴
- Arrests and convictions related to HIV fall most heavily on the communities that already face disproportionate levels of policing and incarceration. A recent report on HIV criminalization in California found that from 1988-2014, 95% of people who came into contact with the criminal justice system based on their HIV status were engaging or suspected of engaging in sex work. The same report found that although Black women comprise only 4% of the population of those diagnosed with HIV in the state, they represented 21% of the people who had contact with the criminal justice system related to HIV-positive status in California.⁵

LAW ENFORCEMENT PRACTICES

Law enforcement practices target communities disproportionately impacted by HIV, including people of trans and gender nonconforming experience (TGNC), sex workers, people who use drugs, immigrants, people who are unstably housed, people with mental illness, and communities of color.

- **People perceived to be doing sex work are often harassed by police and could have the fact that they have condoms used as evidence against them in a criminal prosecution.⁶ This limits sex workers' ability to negotiate safer sex practices with their partners due to the risk of being turned into the police.⁷**
- At least half of all people living with HIV/AIDS experience homelessness or housing instability⁸ at some point. The criminalization of homelessness,

through bans on essential activities such as sleeping, eating, and sitting in public, exposes homeless people to police harassment, arrest, and unwarranted searches and seizures in cities across the country.⁹

- Immigrants who are living with HIV, particularly those who also people of color, are at heightened risk of profiling by police because of their presumed undocumented immigration status or ethnic background. An arrest for even a minor offense can result in detention and ultimately deportation, in some cases regardless of immigration status.¹⁰
- It is well documented that the “War on Drugs” has resulted in mass criminalization, surveillance, and incarceration of communities of color. Drug laws are disproportionately used against women, especially Black women, who are more than twice as likely to be incarcerated than white women, and Latina women, who are 25% more likely to be incarcerated than white women.¹¹

POLICE VIOLENCE, HARASSMENT & BRUTALITY

Interacting with the police itself may be a source of violence and trauma for women of color and TGNC people living with HIV, and police hostility may be a barrier to WLHIV and TGNC people accessing support when they experience interpersonal violence.

- PLHIV experience high rates of harassment and abuse from law enforcement. More than 1 in 5 (21%) PLHIV who have had contact with police in the last 5 years reported being verbally assaulted by the police, according to a 2012 survey.¹²

• People of trans experience are particularly vulnerable to police harassment and abuse.

In a 2011 survey of transgender and gender non-conforming people across the country, 22% of those who had interacted with police reported harassment by the police, with even higher rates among people of color. 46% of respondents reported being uncomfortable seeking police assistance.¹³

- WLHIV cannot necessarily count on law enforcement to assist them when they experience violence.

Many WLHIV, TGNC people, and people who are or are perceived to be sex workers report facing arrest themselves for assault or domestic violence rather than their abusers.¹⁴

- In addition to being targeted due to criminalization, sex workers are particularly vulnerable to abuse by police.¹⁵ Sex workers have also reported police officers demanding unprotected sex in exchange for not arresting them, putting them at risk for HIV and other STIs.¹⁶

INCARCERATION & REENTRY

Incarceration has significant economic, social, and health consequences for families and communities. These effects last long after someone is released from prison or jail – and women, immigrants, and communities of color bear the brunt of these burdens:

- Women are increasingly subject to arrest and incarceration, which is a source of violence and trauma.

The number of people in women’s prisons in the U.S. is almost 8 times higher than it was in 1980, and the rate of growth for women’s imprisonment has outpaced the rate of imprisonment of men by over 50% for almost 25 years.¹⁷

- Incarceration has negative impacts both for those who are incarcerated and for their loved ones. A 2014 national survey found that about half of all formerly incarcerated people and their family members experienced negative health impacts related to their own or a loved one’s incarceration, including PTSD symptoms, depression, and anxiety.¹⁸
- In addition to the trauma of incarceration, incarcerated individuals incur thousands of dollars in court-related fines and fees. Family members are often responsible for covering these costs, with women being the ones who pay in the majority of cases.¹⁹ Data from a 2014 national survey revealed that 65% of families with an incarcerated member were unable to meet their basic needs, including housing and food costs, due to the costs associated with incarceration.²⁰
- The effects of incarceration last long after someone is released from prison. A 2014 survey of formerly incarcerated people and their loved ones found that 79% of respondents were ineligible or denied housing because of their own or a loved one’s conviction history; 3 of 4 people said finding employment after release was difficult or nearly impossible; 67% were still unemployed or underemployed five years after release; and 1 in 4 were denied or barred from educational loans because of their conviction.²¹

PWN-USA Recommends:

1. Repeal or reform HIV exposure, non-disclosure, and transmission laws in every state and US territory that has them.

- Pass the REPEAL HIV Discrimination Act requiring the Attorney General, Secretary of Health and Human Services and the Secretary of Defense to work with state stakeholders to review federal and state HIV criminalization laws as well as provide guidance, support and incentives for state based HIV criminalization reform efforts.
- When prosecutions occur, ensure the rights of the accused are upheld by ensuring adequate and competent legal support for the accused and educating legislators, judges, prosecutors, and criminal defense attorneys on how HIV is and is not transmitted, including up-to-date developments on viral suppression as risk reduction.

2. End law enforcement practices that target communities disproportionately impacted by HIV, including people of trans and gender nonconforming experience (TGNC), sex workers, people who use drugs, immigrants, people who are unstably housed, people with mental illness, and communities of color.

- Reform mandatory minimum sentencing guidelines, particularly for nonviolent and nonviolent drug offenses and expand community based alternatives to incarceration.
- Invest in syringe exchanges programs and other harm reduction models that support people who inject drugs and transgender people who may inject hormones that are not prescribed by a doctor.
- Eliminate “condoms as evidence” laws and other laws criminalizing sex workers and those targeted as sex workers.
- Disentangle immigration enforcement and law enforcement at all levels of government to ensure safety regardless of immigration status and to enable all immigrants to report interpersonal violence or seek support services or healthcare without fear of incarceration or deportation.

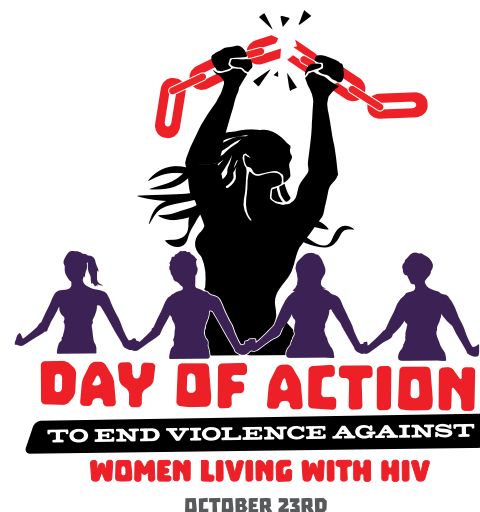
3. End stigmatizing and discriminatory interactions, methods of surveillance and brutalization of PLHIV and communities impacted by HIV at the hands of law enforcement.

- End policing practices that surveil and unjustly profile individuals based on their actual or perceived HIV status, sexual orientation, gender identity, race, immigration or housing status.
- Demilitarize law enforcement and end the mass surveillance of communities of color.[xxii]
- States and counties should mandate HIV sensitivity and anti-stigma trainings for law enforcement officials, health department workers, violence specialists, and child protection services.

4. Policymakers must address the barriers to safe, stable, and meaningful reintegration into the community for those returning home from jail and prison, those with criminal convictions, and the loved ones who support them.

- Access to healthcare in prisons must be improved, including timely and consistent access to HIV medication, comprehensive reproductive healthcare, and transition-related healthcare for transgender people.
- Congress should repeal the federal lifetime ban on Temporary Aid to Needy Families (TANF) cash assistance Supplemental Nutrition Assistance Program (SNAP) food assistance, and limitations on public housing assistance for people with felony convictions.
- States should implement “Ban the Box” legislation that limits employer’s consideration of criminal records in hiring practices.
- Probation, parole and community agencies should assist people returning home in remaining engaged in care and should assist transgender people in obtaining accurate identity documents to access necessary public benefits.

Breaking Our Chains
Ending the Culture of Violence



Additional Reading:

- **What HIV Criminalization Means to Women in the U.S.**, Center for HIV Law and Policy: <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Women%20and%20HIV%20Criminalization.pdf>
- **Sex Workers at Risk: Condoms as Evidence of Prostitution in Four US Cities**, Human Rights Watch: <https://www.hrw.org/report/2012/07/19/sex-workers-risk/condoms-evidence-prostitution-four-us-cities>
- **Injustice at Every Turn: A Report of the National Transgender Discrimination Survey**, National Center for Transgender Equality and the National Gay and Lesbian Task Force: http://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf
- **HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS**, The Williams Institute and California HIV/AIDS Research Program: <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/HIV%20Criminalization%20in%20CA%202015.pdf>
- **The Movement for Black Lives Platform**: <https://policy.m4bl.org/platform/>

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7 National AIDS Housing Coalition, "Breaking the Link Between Homelessness and HIV," 2012, <http://www.nationalaidshousing.org/PDF/FactsheetHomelessness.pdf>.

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9 Center for American Progress, Movement Advancement Project, "Unjust: How the Broken Criminal Justice Systems Fails LGBT People of Color," August 2016.

10 Drug Policy Alliance, "Fact Sheet: Women, Prison, and the Drug War," February 2016, http://www.drugpolicy.org/sites/default/files/DPA_Fact%20Sheet_Women%20Prison%20and%20Drug%20War%20%28Feb.%202016%29.pdf.

11 Lambda Legal. "Protected and Served?" 2014. <http://www.lambdalegal.org/protected-and-served/police>.

12 Jaime M. Grant et al., "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey," 2011, http://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf.

13 INCITE! "Policing Sex Work," http://www.incite-national.org/sites/default/files/incite_files/resource_docs/4668_toolkitrev-sexwork.pdf.

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17 Saneta deVuono-powell et al., Ella Baker Center, Forward Together, Research Action Design, "Who Pays? The True Cost of Incarceration on Families," September 2015, <http://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf>.

18 Id.

19 Id.

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21 The Movement for Black Lives, "End the War on Black People," <https://policy.m4bl.org/end-war-on-black-people/>.

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