

# HIV Is Not A Crime, Criminalizing It Is

*A community forum on HIV criminalization in California*



# Californians for HIV Criminalization Reform

**MISSION STATEMENT:** To mobilize a broad coalition, including individuals and communities who are disproportionately impacted by HIV, to replace fear-based, stigmatizing laws criminalizing HIV-status with evidence-based laws which protect public health.



# Overview of HIV Criminalization

- What is HIV criminalization?
- How are PLWH targeted for criminal prosecution in the U.S.?
- What is the movement at the national level to reform these laws?
- What are the laws in California?



# HIV Criminalization

- Use of HIV-specific and general criminal laws to specifically target PLWH.
- Use of criminal laws in addition to public health laws.
- Prosecution of PLWH based on outdated and erroneous beliefs or understanding about HIV.



# Prosecution in the U.S.

- As of 2011, 67 HIV criminalization laws were identified in 33 states.
- Of these, 25 out of 33 states (75%) criminalize one or more behaviors that pose a low or negligible risk of HIV transmission.
- Nearly 2/3 criminalize *potential* HIV exposure.
- Many laws were passed prior to understanding that ART significantly reduces HIV transmission risk.

See Lehman, Carr, Nichol, Ruisanchez, Knight, Langford, Gray and Mermin. Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States available online at <http://link.springer.com/article/10.1007/s10461-014-0724-0/fulltext.html>.



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# National Reform Efforts

- U.S. Department of Justice guidance
- National HIV/AIDS Strategy
- Impact litigation (state and federal)
- State-based law reform
- Education for prosecutors
- Research on HIV criminalization



# California HIV Criminalization Laws

Code Section	Law	Information
HS CODE § 1621.5	Blood/organ/semen/breast milk donation	Knowledge of status; Felony (2,4, or 6 years)
HS CODE § 120291	HIV-specific exposure	Knowledge of status, non-disclosure, unprotected sex, and with intent; Felony (3, 5, or 8 years)
PC § 647f	Solicitation while HIV-positive	Knowledge of status but no sexual contact required; Felony

\*This table does not include the use of general criminal law statutes such as assault with a deadly weapon.



# California HIV Criminalization Laws

Code Section	Law	Information
PC § 12022.85	Sentence enhancement for forcible sex offenses while HIV-positive	Knowledge of status required; Felony (additional 3 years for each violation)
PC § 12022.8	Sentence enhancement for infliction of great bodily injury	No knowledge of status required; Felony (additional 5 years for each violation)

Note: None of these laws require actual transmission of HIV.





# Californians for HIV Criminalization Reform

## *Legislative Proposal*



# Guiding Principles

- Repeal or modify laws that single out people living with HIV
- Align laws with modern medical science
- Continue to criminalize the behavior of people who intend to harm or infect others
- Ensure that penalties are proportionate to the harm
- A misdemeanor is a sufficient consequence for intentional transmission of a treatable infectious disease

# Discussion