

# ***HIV Criminalization: Law, Policy, and Modernization***

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## **HIV Research and Community Colloquia Series 2015**

Los Angeles County Commission on HIV

UCLA Center for HIV Identification, Prevention, and Treatment Services

**Ayako Miyashita, Esq.**

Brian Belt HIV Law & Policy Fellow

The Williams Institute, UCLA School of Law

miyashita@law.ucla.edu; 310.206.9088



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# Overview

## *Presentation*

- What is HIV criminalization?
- How are people living with HIV (PLWH) targeted for criminal prosecution in California?

## *Discussion*

- What can we do about it?

**What is HIV criminalization?**

# HIV Criminalization in the U.S.

- Use of HIV-specific and general criminal laws to specifically target PLWH.
- Prosecution of PLWH based on outdated and erroneous beliefs or understanding about HIV.
- Used in addition to public health laws.
- Most laws do not require exposure to HIV.
- All do not require actual transmission of HIV.
- Provides harsher penalties for PLWH.

# HIV Criminalization 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.

# Concerns with HIV Criminalization

- Contributes to HIV-related stigma
- Negatively impacts LGBT populations
- Most do not follow standard criminal law principles of requiring intent to harm
- Results in disproportionate penalties
- Defeats public health messages about HIV
- Are unsupported by research

**How are PLWH targeted for criminal prosecution in California?**

# General Criminal Statutes

In reviewing published cases, the earliest criminal case addressing unprotected sexual activity involving an HIV-positive individual was in **1988** (attempted murder).

General criminal statutes were in use until **1991**, and these cases were most often prosecuted under Penal Code section 245 (assault with a deadly weapon).

# CAL. HEALTH AND SAFETY CODE

## § 1621.5

- Knowing donation of blood, body organs, tissue, semen or breast milk by person with AIDS or person who has tested reactive to HIV.
- Enacted in 1988 and no published criminal cases have been found under this provision.
- Punishment: Felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years

# CAL. HEALTH AND SAFETY CODE

## § 120290

- Willful exposure of self or another to a contagious, infectious, or communicable disease.
- Enacted in 1939 and no published criminal cases.
- Cited in civil proceedings (indicating a duty to disclose and liability for negligent transmission of HIV)
- Punishment: Misdemeanor

# CAL. HEALTH AND SAFETY CODE

## § 120291

- Unprotected sexual activity by one who knows self to be infected by HIV; non-disclosure of HIV-positive status; specific intent to infect the other person with HIV.
- Enacted in 1998 with no published criminal cases. Traditional legal research and FOIA requests indicate there have been 2 convictions under this statute.
- Punishment: Felony punishable by imprisonment in the state prison for three, five, or eight years

# CAL. PENAL CODE § 647f

- Sentence enhancement for previous convictions for solicitation and positive HIV test result.
- Enacted in 1988 and 2 published criminal cases.
- Punishment: Felony

# CAL. PENAL CODE § 12022.85

- Sentence enhancement for specified violations while HIV-positive
  - rape
  - unlawful intercourse with a person under 18 years of age
  - rape of a spouse
  - sodomy
  - oral copulation
- Enacted in 1988 and 4 published criminal cases.
- Punishment: Three-year sentence enhancement for each violation in addition to the sentence provided for the violation

**What can we do about it?**

# Discussion

## **Aaron Fox**

Director of State Health Equity and Policy

Los Angeles LGBT Center

[afox@lalgbtcenter.org](mailto:afox@lalgbtcenter.org)

## **Craig Pulsipher**

State Affairs Specialist

AIDS Project Los Angeles

[cpulsipher@apla.org](mailto:cpulsipher@apla.org)

## **Marco Castro-Bojorquez**

Community Educator

Lambda Legal Defense and Education Fund

[mcastro-bojorquez@lambdalegal.org](mailto:mcastro-bojorquez@lambdalegal.org)