

HIV Criminalization in Wisconsin



HIV CRIMINALIZATION is the prosecution and imprisonment of people living with HIV for things that are perfectly legal or only minor crimes for people who have not tested positive.

THE LAWS ARE NOT BASED ON SCIENCE

- Wisconsin defines low risk transmission acts such as bodily fluids in the eye as “significantly exposing” a person to HIV, even in the event of accidental exposure.¹ This classification directly contradicts what we know about the risks of HIV transmission via the mucous membranes of the eyes given that “the risk of contracting HIV through this type of exposure is estimated to be 0.09%.”²
- The overarching definition of “significant exposure” may put the responsibility of safety solely on a patient with HIV even though clinical staff already have a low transmission risk.³
- In addition to physical safeguards such as gloves, masks, and protective eyewear, medical staff have access to PEP (post-exposure prophylaxis), which is over 80% effective at preventing transmission.⁴

THE LAWS DON'T PROMOTE PUBLIC HEALTH

- There is no evidence that HIV criminal laws promote public health by increasing disclosure, HIV testing, or safer sex. The laws have had **zero** impact on rates of HIV diagnosis.
- In fact, HIV criminalization may discourage testing and knowledge about an individual's status.
- For every 100,000 people in Wisconsin, 134 people are living with HIV. The state resources used to arrest, prosecute and sentence people could be used to educate people on the actual routes, risks and realities of HIV transmission and prevention.⁵

HIV CRIMINAL LAWS HARM MARGINALIZED COMMUNITIES THAT ARE ALREADY DISPROPORTIONATELY AFFECTED BY HIV.

- One Wisconsin court considered an HIV-negative defendant's risk of contracting and transmitting HIV in sentencing. This woman was sentenced to the maximum term in part because of the “high HIV risk, both to herself and others, presented by [her] extensive prostitution record,” even though she was HIV negative.⁶

LAWS ARE UNFAIR AND STIGMATIZING

- Neither the intent to transmit HIV nor actual transmission is required for a person's HIV or STI status to serve as an aggravating factor in sentencing.
- When a person's HIV status is used as an aggravating factor in sentencing, it can increase prison time by several years and even decades depending on the specific offense and other factors considered.

HIV CRIMINAL LAWS ARE COSTLY FOR STATES AND DEFENDANTS AND LACK OF TREATMENT CAN FURTHER CRIMINALIZE INDIVIDUALS

- Wisconsin spends \$66K per prisoner a year.⁷ The average cost for HIV treatment is \$36K per person annually. Instead of imprisoning one PLHIV, Wisconsin could provide treatment for two PLHIV.⁸
- A person with an STI who willfully violates the recommendations of a local health officer may be charged with a misdemeanor. This could penalize low-income citizens who lack access to care.

¹ WIS. STAT. § 973.017(4)(a)(3) (2016)** Bifurcated sentences; use of guidelines; consideration of aggravating and mitigating factors. (4) AGGRAVATING FACTORS; SERIOUS SEX CRIMES COMMITTED WHILE INFECTED WITH CERTAIN DISEASES.

⁴ "Significantly exposed" means sustaining a contact that carries a potential for transmission of a sexually transmitted disease or HIV by one or more of the following: a. Transmission, into a body orifice or onto mucous membrane, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood. b. Exchange, during the accidental or intentional infliction of a penetrating wound, including a needle puncture, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood. c. Exchange, into an eye, an open wound, an oozing lesion, or other place where a significant breakdown in the epidermal barrier has occurred, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial, or amniotic fluid; or other body fluid that is visibly contaminated with blood.

² Robertson, L. and Walters Schmid, S. (2022), *Managing Occupational Exposures to HIV*, available at: <https://www.atranceu.com/content/5-managing-occupational-exposures-hiv>.

³ HIV INFECTION IN HEALTH PROFESSIONALS PEACEHEALTH, <https://www.peacehealth.org/medical-topics/id/hw188323> (last visited Oct 5, 2023).

⁴ ABOUT PEP CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/hiv/basics/pep/about-pep.html> (last visited Oct 5, 2023).

⁵ HEALTH COMPASS MILWAUKEE HEALTH COMPASS MILWAUKEE :: INDICATORS :: HIV PREVALENCE RATE :: STATE : WISCONSIN, <https://www.healthcompassmilwaukee.org/indicators/index/view?indicatorid=267&localeid=52> (last visited Oct 5, 2023).

⁶ WISCONSIN THE CENTER FOR HIV LAW AND POLICY, <https://www.hivlawandpolicy.org/state-profiles/wisconsin> (last visited Oct 5, 2023).

⁷ HOW MUCH DO STATES SPEND ON PRISONS? USAFACTS, <https://usafacts.org/articles/how-much-do-states-spend-on-prisons/> (last visited Oct 5, 2023).

⁸ Nicole C. McCann et al., *HIV antiretroviral therapy costs in the United States, 2012-2018*, 180 JAMA INTERNAL MEDICINE , 601 (2020).