

UCLA

School of Law

Williams Institute

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HIV CRIMINALIZATION: ENFORCEMENT PATTERNS

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WILLIAMS INSTITUTE

Williams Institute Mission

The Williams Institute is dedicated to conducting rigorous, independent research on law and public policy of sexual orientation and gender identity. The Institute disseminates its research to policymakers, judges, the media, and other stakeholders to ensure that decisions impacting the lives of millions of LGBT people and families are based on data and facts.

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BIG TAKEAWAYS

1. Weak geographic and time trends
2. Black people and women are over-represented in enforcement actions
3. People are arrested and convicted for conduct that could never be a transmission route

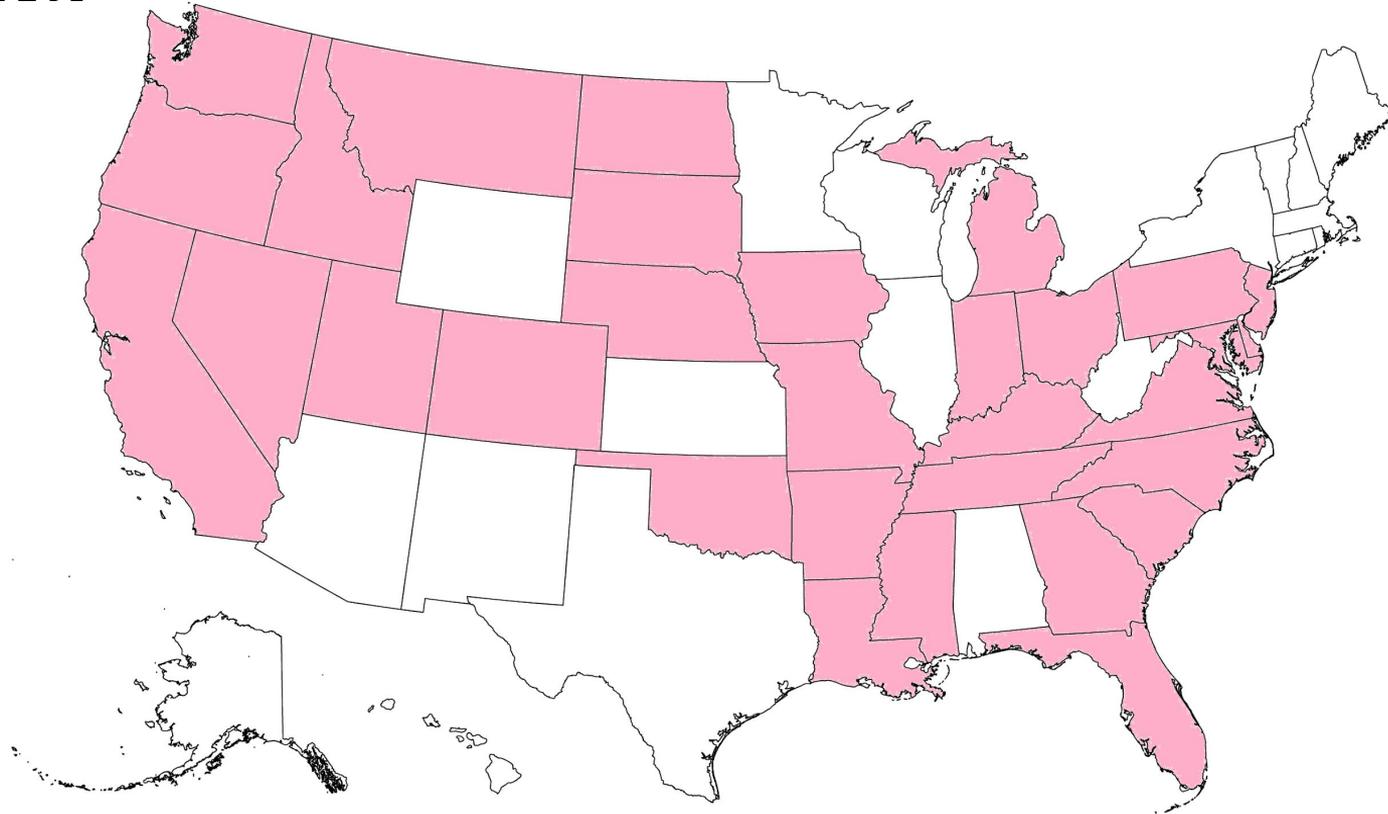


BIG TAKEAWAYS (1)

- Weak geographic and time trends
 - HIV criminalization isn't a red state or blue state issue
 - HIV criminalization didn't end after the 1990s



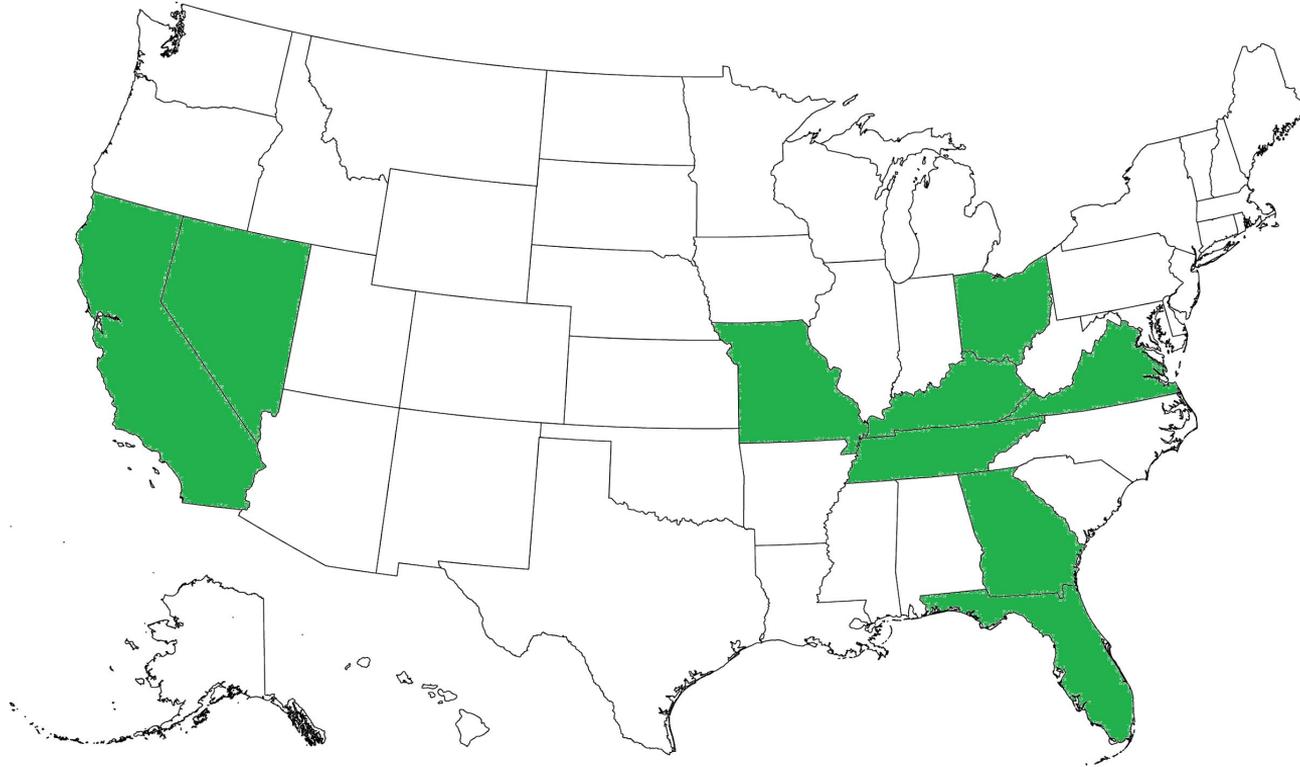
BIG TAKEAWAYS (1): STATES WITH HIV CRIM LAWS



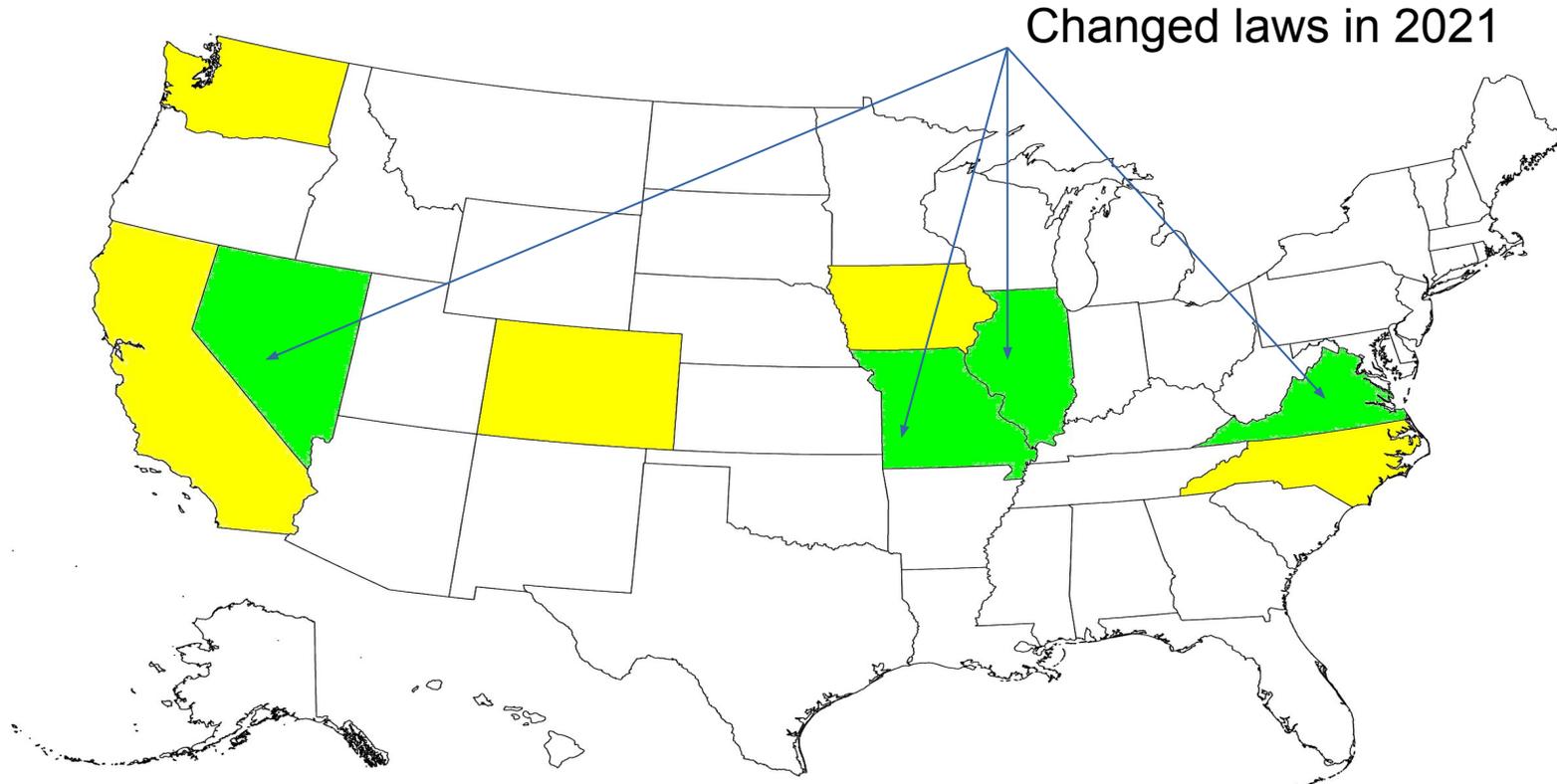
30 states had HIV criminal laws in 2022

Cf. Center for HIV Law and Policy: <https://www.hivlawandpolicy.org/resources/map-hiv-criminalization-united-states-chlp-2022>

BIG TAKEAWAYS (1): WI REPORTS



BIG TAKEAWAYS (1): LEGISLATIVE REFORMS



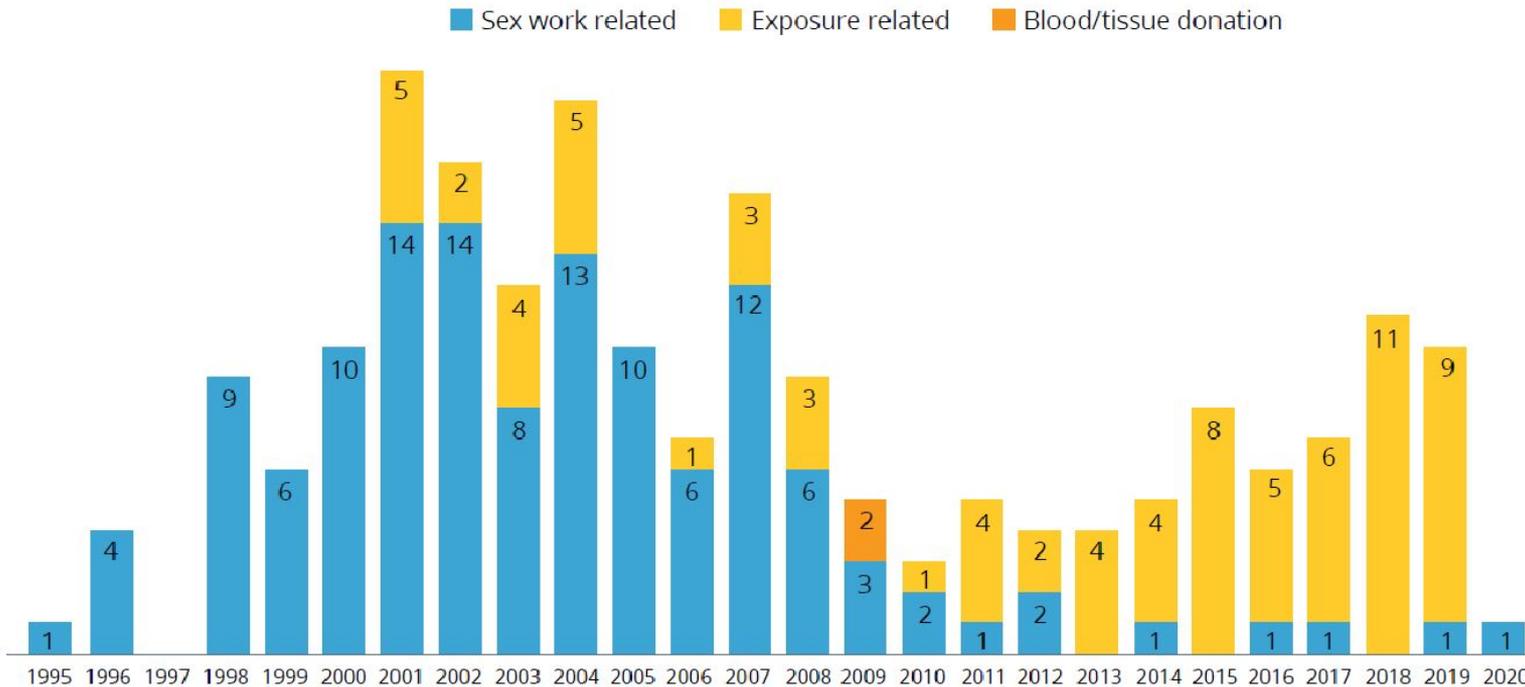
BIG TAKEAWAYS (1): TIME TRENDS

Figure 2. Prison admissions for HIV offenses in Georgia by year



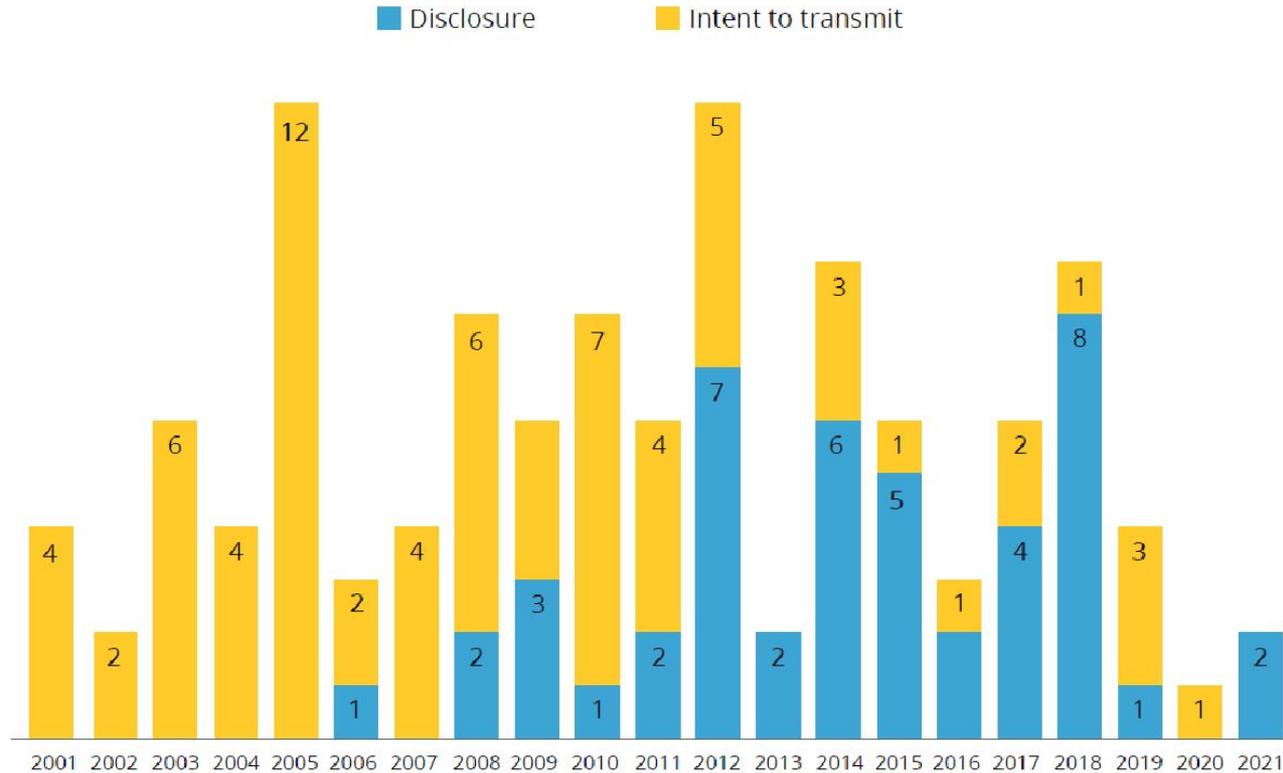
BIG TAKEAWAYS (1): TIME TRENDS

Figure 1. Number of HIV-related prison sentences in Florida by year and offense type



BIG TAKEAWAYS (1): TIME TRENDS

Figure 2. Number of HIV-related arrests with each offense type by year in Virginia

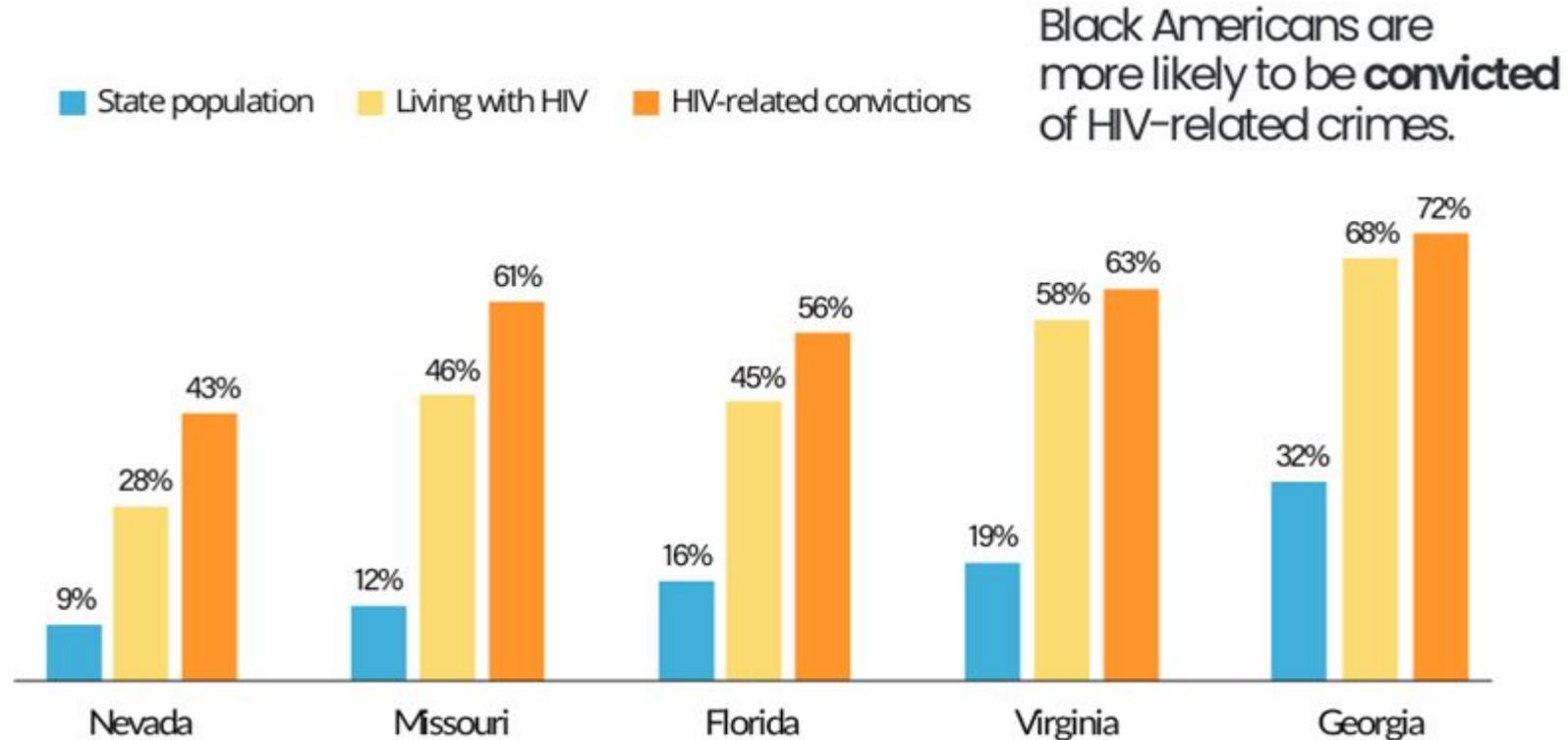


BIG TAKEAWAYS (2)

- Black people and women are disproportionately affected
 - HIV criminalization sits at the intersection of two national epidemics—HIV and over-policing
 - Women—especially Black women—are over-represented in HIV criminal enforcement

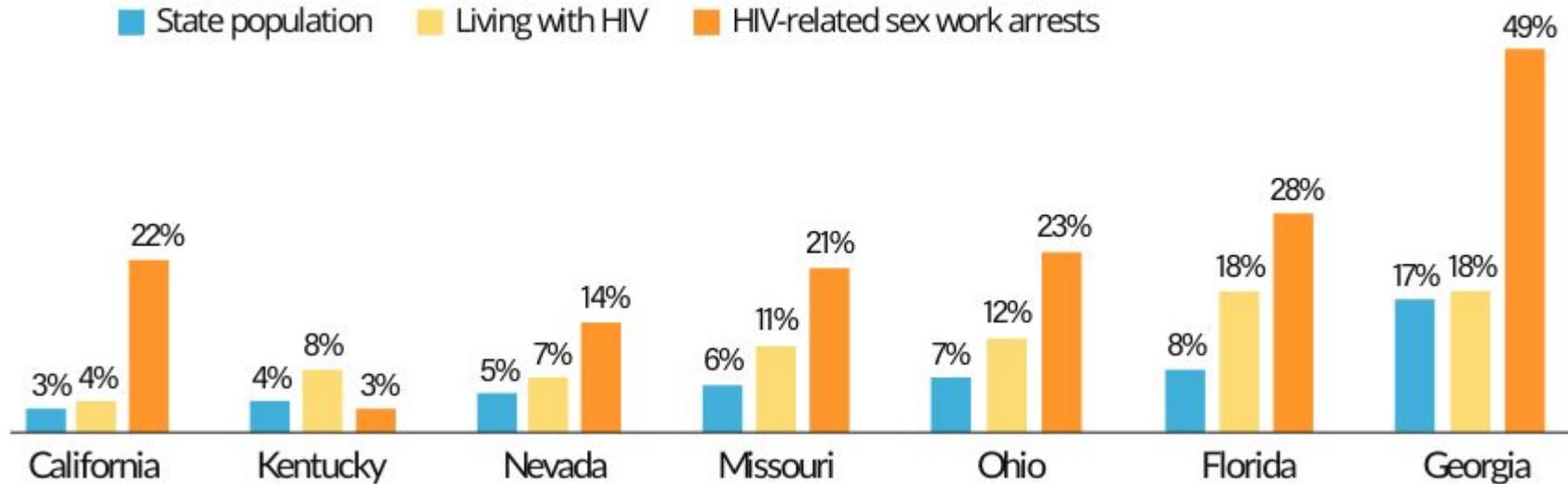


BIG TAKEAWAYS (2)



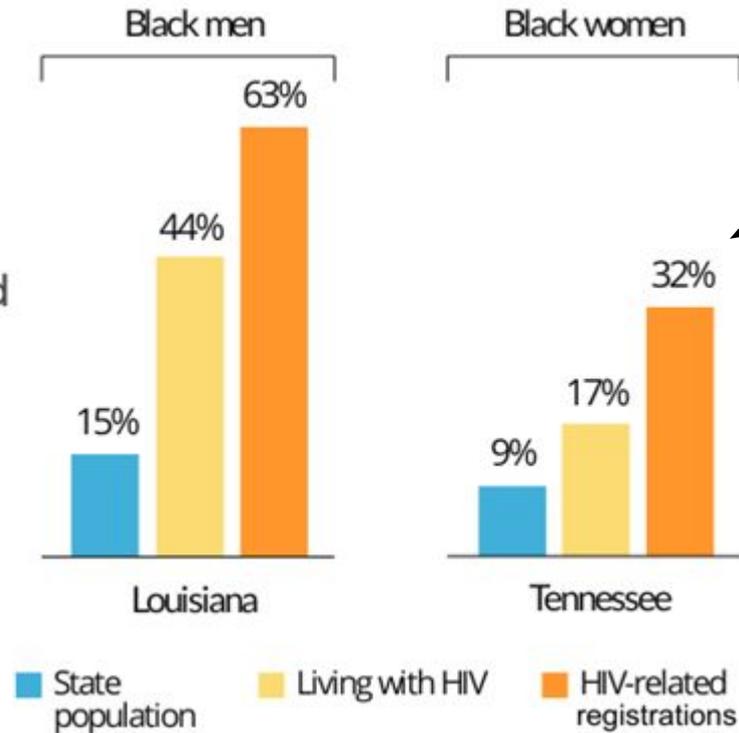
BIG TAKEAWAYS (2)

Many state HIV criminalization laws target **sex workers**, contributing to a disproportionate impact on **Black women**.



BIG TAKEAWAYS (2)

Black people with HIV-related **convictions** are over-represented in state sex offender registries.



Black women are **290 times** more likely to be on TN's sex offender registry HIV conviction than a white man

BIG TAKEAWAYS (3)

- People are arrested for alleged conduct that could never result in transmission
 - Most HIV criminal laws:
 - Don't require transmission or intent to transmit
 - Don't consider mitigation strategies
 - Criminalize behaviors that could never be a transmission route



BIG TAKEAWAYS (3)

LA. REV. STAT. ANN. § 14:43.5: Intentional exposure to HIV [“Intentional exposure to AIDS virus” until 2018]

- A) No person shall intentionally expose another to the human immunodeficiency virus (HIV) through sexual contact without the knowing and lawful consent of the victim, if at the time of the exposure the infected person knew he was HIV positive.
- B) No person shall **intentionally expose another to HIV through any means or contact** without the knowing and lawful consent of the victim, if at the time of the exposure the infected person knew he was HIV positive.

See also: <https://www.hivlawandpolicy.org/states/louisiana>

BIG TAKEAWAYS (3)

In Tennessee, aggravated prostitution occurs when a person who knows of their HIV-positive status does one of the following:

- “engages in sexual activity as a business”
- “is an inmate in a house of prostitution”
- “loiters in a public place for the purpose of being hired to engage in sexual activity.”

Sexual activity is defined to include acts that do not include close contact, such as masturbation and “lascivious exhibition of the female breast,” as well as that which involves close contact, but which could not be a transmission route for HIV, such as oral sex and touching. See Tennessee Code § 39-17-1002 (2020).

Tennessee Code Annotated § 39-13-516(a) (2020).

See also: <https://www.hivlawandpolicy.org/states/tennessee>

BIG TAKEAWAYS (3)

- In Shelby County **Tennessee**
 - **Nearly all** (95%) of sex work **arrests** were done by **vice squad**.
 - **About half** (47%) negotiated **oral sex only**, which is not a transmission route.



BIG TAKEAWAYS (3)

- In Ohio
 - Nearly **one-third of all arrests** (31%) were for behaviors that **could not transmit**:
 - solicitation and loitering to engage in solicitation
 - harassment by an inmate
 - “attempted” prostitution
 - arrests for which the victim was identified as “the public”



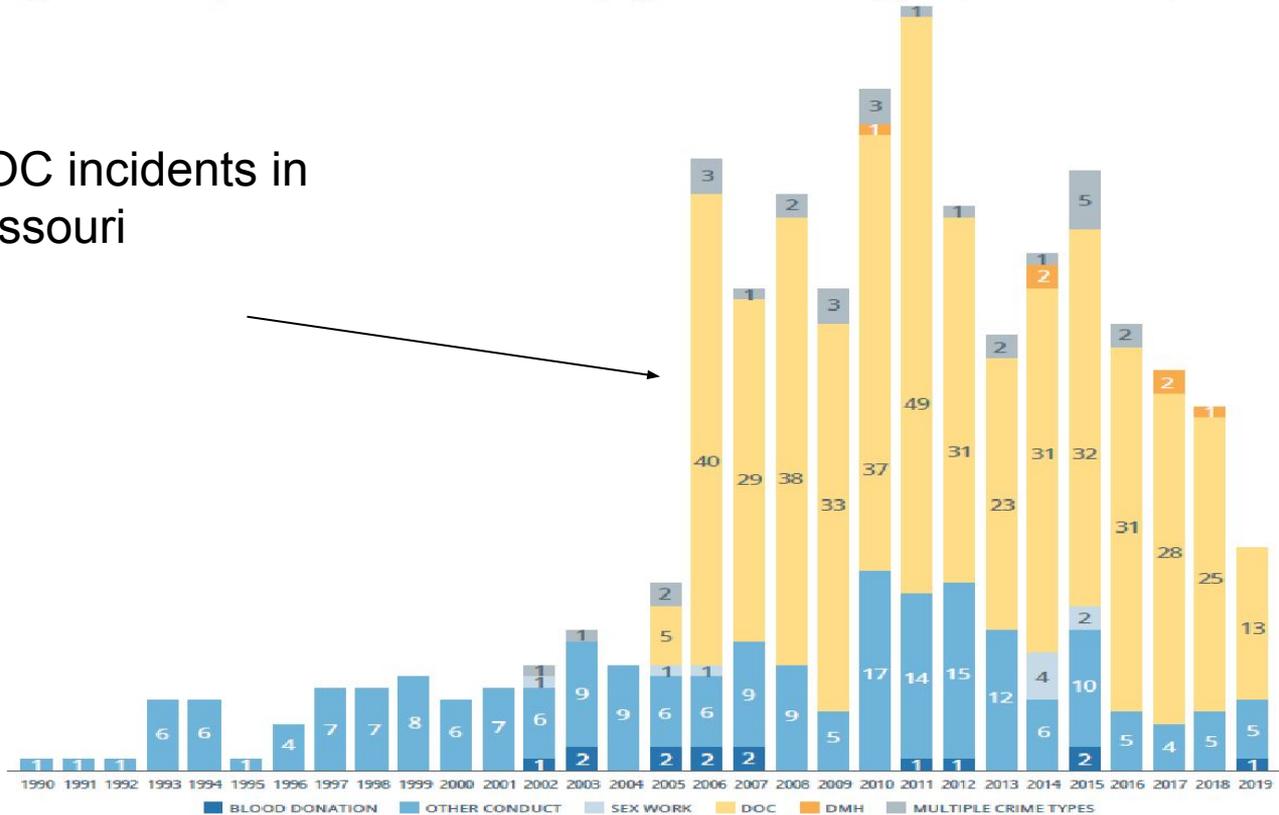
BIG TAKEAWAYS (3)

STATUTE	CRIMINALIZED CONDUCT	TRANSMISSION REQUIRED?	INTENT TO TRANSMIT REQUIRED?	FELONY CLASSIFICATION AND STATUTORY SENTENCE	STUDY LABEL
Mo. Rev. Stat. § 575.155 ¹⁴	Attempting to expose or exposing a corrections employee to blood, seminal fluid, urine, feces, or saliva	No	No	Class D (violent), up to 4 years If offender has HIV or hepatitis B or C, Class C (violent), up to 7 years	DOC Crime or Incident If defendant has HIV or hepatitis B or C, then DOC HIV/hepatitis Crime or Incident.
Mo. Rev. Stat. § 575.157 ¹⁵	Attempting to expose or exposing a mental health employee to blood, seminal fluid, urine, feces, or saliva	No	No	Class D (violent), up to 4 years If offender has HIV or hepatitis B or C, Class C (violent), up to 7 years	DMH Crime or Incident If defendant has HIV or hepatitis B or C, then DMH HIV/hepatitis Crime or Incident.

BIG TAKEAWAYS (3)

Figure 7. HIV/Hepatitis Incidents in Missouri by type of crime and by year (n=709 incidents)¹⁵²

DOC incidents in Missouri



LEGISLATIVE OUTLOOK 2022



THANK YOU!

State level reports (2021)

- **Georgia** – Length of Incarceration and Fiscal Implications
- **Florida** – Length of Incarceration and Fiscal Implications
- **Nevada** – Analysis of Enforcement Data
- **Virginia** – Analysis of Enforcement Data
- **Kentucky** – Analysis of Enforcement Data

Planned state level reports (2022)

- **Tennessee** – Analysis of Enforcement Data
- **Louisiana** – Analysis of Enforcement Data
- **Indiana** – Analysis of Enforcement Data





BONUS



BIG TAKEAWAYS (1): COUNTY DISPARITIES

Figure 10. Number of HIV incidents per county, among counties with two or more incidents

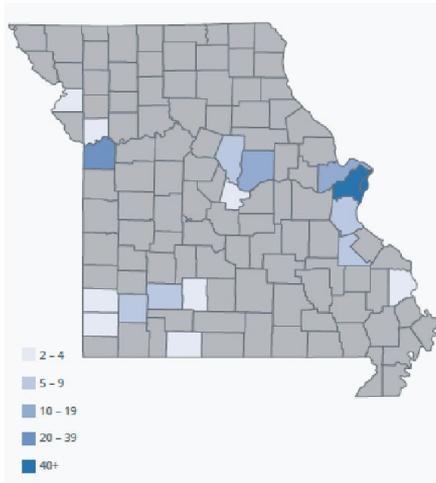
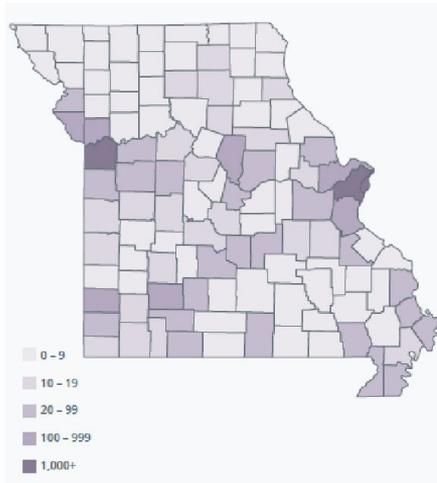
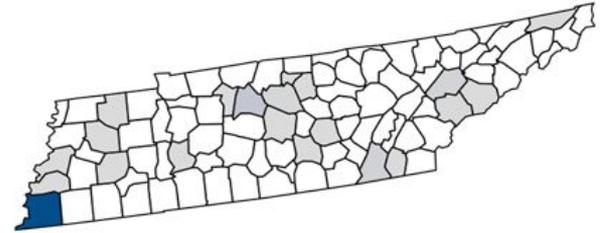
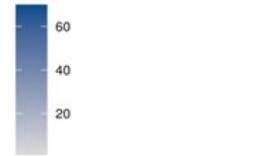


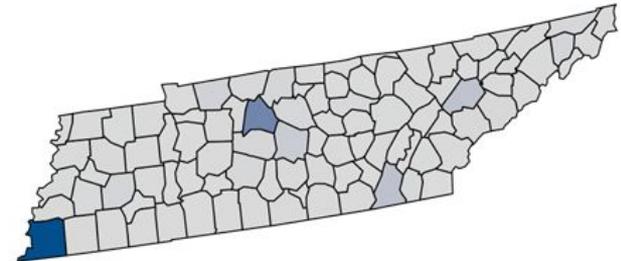
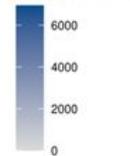
Figure 11. Location of people living with HIV, by county, in Missouri



Number of HIV SOR Registrants



Number of PLWH



WHAT IS HIV CRIMINALIZATION?

- Criminal laws that...
 - ...make conduct illegal based on HIV status
 - ...create harsher penalties based on HIV status



CHALLENGES: DATA ACCESS

- **Objective:** Get HIV criminalization enforcement data from recalcitrant state agencies.
- **Challenge:** Williams Institute data requests are sometimes ignored or declined.



CHALLENGES: DATA ACCESS

- We don't always know if the requested data...
 - ...**DON'T EXIST**.
 - ...do exist, but the state **LACKS DATA INFRASTRUCTURE**.
 - ...do exist, the infrastructure is there, but the state **WON'T SHARE** the data.
- Additionally, available data may be partial (by geography, time, statute, or law enforcement agency).



CHALLENGES: DATA QUALITY

- **Objective:** Identify enforcement patterns by SOGI and by race/ethnicity.
- **Challenge:** No state collects SOGI data; race/ethnicity often collapsed into Black and white.



CHALLENGES: DATA QUALITY

- We believe HIV criminalization enforcement may vary by SOGI...
 - ...but law enforcement agencies do not collect these data.
- We believe that race/ethnicity is not consistently recorded across states...
 - ...which may bias findings about enforcement by race/ethnicity group.

