

HIV Criminalization in California: What We Know

HIV Criminalization Laws in California (2017)

Code Section	Criminalized Conduct
CAL. PENAL §647f	Solicitation if the person tested positive for HIV in a prior solicitation or other sex offense that resulted in mandatory HIV testing
CAL H&S §1621.5	Donating blood, tissue, semen or breast milk after becoming aware that one is HIV-positive
CAL. H&S §120291	Anal or vaginal sex without a condom in which an HIV-positive person does not disclose their status and has a specific intent to transmit the disease to their sex partner
CAL. PENAL §12022.85	Having knowledge that one is HIV-positive while engaging in a nonconsensual sex crime ¹

800

Number of people who came into contact with the criminal system under an HIV-specific law from 1988 to mid-2014.

98%

Percentage of convictions that did not require proof of intent to transmit HIV.

93%

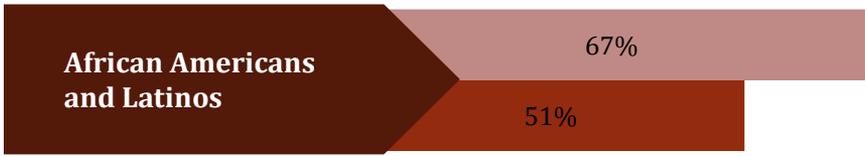
Percentage of convictions that did not require proof of conduct that is likely to transmit the virus.

0

Number of convictions that required actual transmission of HIV as an element of the offense

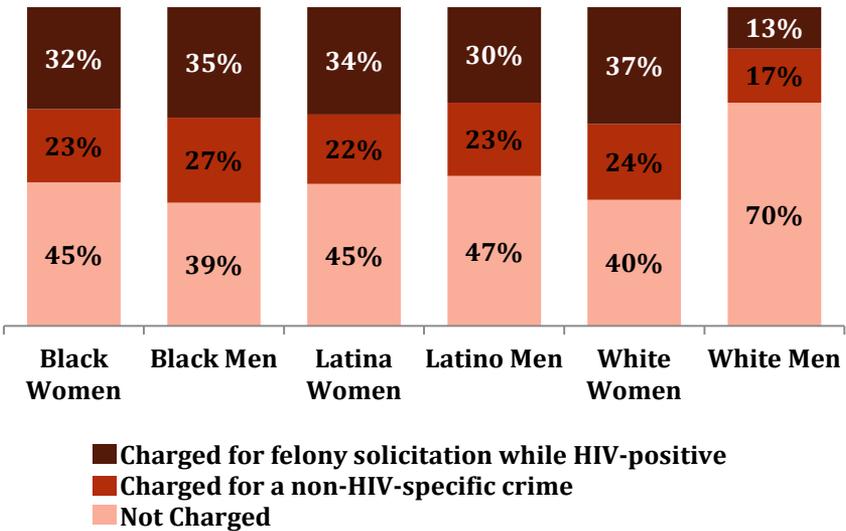
¹ The statute's defined underlying predicate crimes are: oral copulation (CAL. PENAL CODE §288A), statutory rape (CAL. PENAL CODE §261.5), sodomy (CAL. PENAL CODE §286), rape (CAL. PENAL CODE §261) and spousal rape (CAL. PENAL CODE §262).

Women and people of color are disproportionately criminalized under HIV criminal laws when compared to the overall demographics of people living with HIV in California.



■ Californians Criminalized under HIV Laws
■ Californians Living with HIV

Almost all enforcement has been under felony solicitation while HIV-positive. Among those who had contact with the criminal system related to that law, enforcement was applied differently based on race/ethnicity and sex.



HIV criminalization is a term used to describe laws that criminalize otherwise legal behavior or increase penalties for people living with HIV. California currently has four HIV-specific statutes on the books.

Since the enactment of these laws, over **800 people** have come in contact with the criminal system based on their HIV status. While these laws have been enforced in 39 out of the 58 counties in California, more than half of all enforcement (57%) has been in Los Angeles County, and 9% has occurred in Sacramento County.

The vast majority of convictions – 98% – required no proof of intent to transmit HIV, and **none of the HIV criminal laws in California require actual transmission**. Since the passage of these laws, medical science has developed treatments that have turned HIV from a nearly always fatal disease into a medically-manageable chronic condition. Drug therapies have also been developed that HIV-negative individuals use to prevent transmission of the virus both before and after exposure (better known as pre-exposure prophylaxis, PrEP, and post-exposure prophylaxis, PEP).

In California, **95%** of HIV-specific criminal incidents have occurred under the **felony solicitation** law. In those cases, a misdemeanor solicitation charge becomes a felony solicitation charge when a person has a positive HIV test result in their criminal record. The felony solicitation statute has no intent element; nor does it require any activity that can transmit HIV. Therefore, a person can receive a felony charge for engaging in a conversation or exchanging money. **A person can also be convicted of felony solicitation if they are on treatment that prevents transmission, always use condoms, and/or work exclusively with HIV-positive clients.**

HIV criminalization in California **disproportionately impacts women and people of color**: 13% of the people living with HIV in California are women, but 43% of the people criminalized under HIV specific laws are women. Also, 51% of people living with HIV in California are Black or Latino/a, but 67% of people criminalized under HIV specific laws are Black or Latino/a.

HIV criminalization laws are also **disparately enforced based on race/ethnicity and sex**, especially the felony solicitation law. Under the felony solicitation law, in incidents involving white men, charges were brought 13% of the time, while in incidents involving all others, charges were brought 33% of the time.

HIV criminalization is also likely to have **disproportionate impacts on immigrants** living with HIV. Even though foreign born individuals were underrepresented among those criminalized based on their HIV status when compared to the foreign born population in California, for those who do have contact with the system, felony charges can trigger deportation proceedings. Based on the data available, it did appear that there were some individuals who had deportation proceedings brought immediately after an HIV-specific criminal incident.

Felony solicitation enforcement is also likely to **disproportionately impact LGBTQ youth and transgender women of color**. Under the statute, solicitation includes lewd acts exchanged for money "or other consideration," which by definition includes survival sex work in which people work in exchange for housing or food. LGBTQ youth, who are disproportionately in the foster care system and homeless report high levels of subsistence sex work. Transgender women, especially transgender women of color, are particularly vulnerable to employment discrimination, and therefore are also more likely to resort to underground economies and survival sex work to get by.

ABOUT THE INSTITUTE

The Williams Institute is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. A think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance and disseminates it to judges, legislators, policymakers, media and the public.

FOR MORE INFORMATION

Amira Hasenbush, Ayako Miyashita & Bianca D.M. Wilson, The Williams Inst. Uni. of Cal. L.A. Sch. of Law, HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-Updated-June-2016.pdf>.

Amira Hasenbush & Bianca D.M. Wilson, The Williams Inst. Uni. of Cal. L.A. Sch. of Law, HIV Criminalization Against Immigrants in California (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIVCriminalizationAgainstImmigrants.2016.pdf>.

Amira Hasenbush & Brian Zanoni, The Williams Inst. Uni. of Cal. L.A. Sch. of Law, HIV Criminalization in California: Evaluation of Transmission Risk (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIVCriminalization.EvaluationofTransmissionRisk.2016.pdf>.

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