



Getting Involved in Criminalization Reform & Advocacy for Providers: What You Need to Know

December 4, 2018

What We'll Cover

- Why are HIV providers important in these efforts?
- Introduction to HIV criminal law, civil cases, and reform efforts at the state level
- HIVMA member testimonials
- What providers can do and how to get involved
- Q&A

Why This Work Is Important



W. David Hardy, MD

*Chair, HIV Medicine Association
2018-2019*

Introduction to HIV Criminalization



Scott A. Schoettes

*Counsel & HIV Project Director,
Lambda Legal*

Getting Involved in HIV Criminalization Reform and Advocacy: What You Need to Know.

HIV Medicine Association Webinar
December 4, 2018

Scott A. Schoettes
HIV Project Director/Counsel
Lambda Legal

Our Mission

Lambda Legal is a national organization committed to achieving the full recognition of civil rights of lesbians, gay men, bisexuals, transgender people and people living with HIV through impact litigation, education and public policy work.



HIV Project

Lambda Legal brought the first HIV discrimination lawsuit in 1983, when we successfully prevented a New York co-op from evicting a doctor who was treating people with HIV.

Since then, achieving significant victories in the areas of privacy/confidentiality, employment, foster care/adoption, parenting and access to health care, housing and public accommodations.



What's Happening Out There

- A 10-year sentence for a Georgia woman alleged not to have disclosed her HIV Status
- A 25-year sentence in Iowa after a one-time encounter involving protected sex
- A 35-year sentence for a Texas man who spit at a police officer while living with HIV

Questions to Think About

What drives these prosecutions and extremely harsh sentences?

What are the aims of these laws and are they advancing those goals?

Are these laws fairly distributing the obligations, burdens, benefits and responsibility for maintaining sexual health?

Is this an appropriate context for regulation by the state? If so, is the criminal law the right tool to use in this context?

Overview

- Describe the landscape of HIV criminalization in the United States
- Explain why HIV criminalization is doing more harm than good
- Discuss what is being done / what you can do to help fix the problem

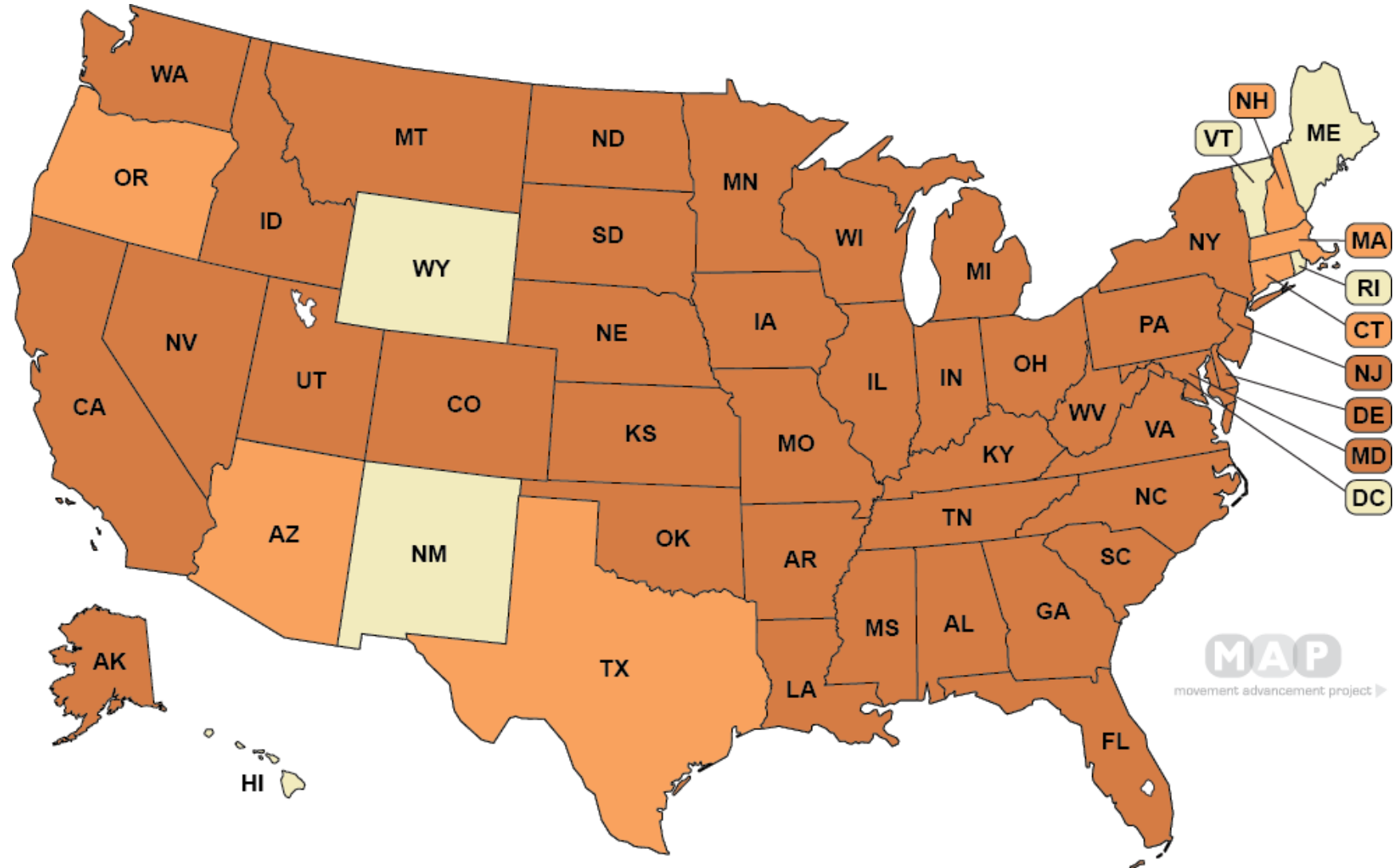
What does an “HIV-specific statute” look like:

In *Florida*:

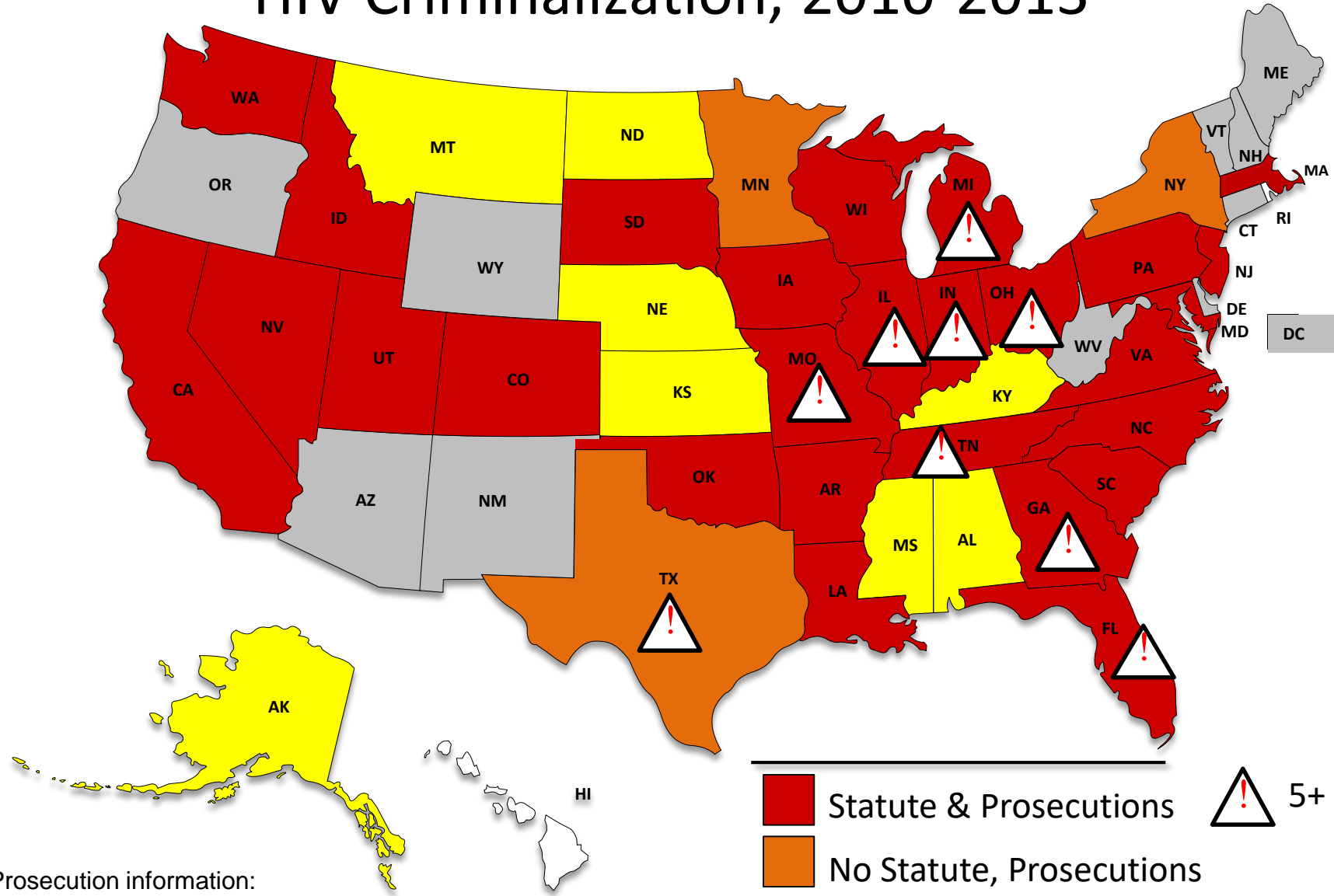
It is a felony, punishable by up to five years in prison and/or a \$5,000 fine, if an HIV-positive person:

1. Knows that she/he is HIV positive;
2. Has been informed that HIV may be transmitted during sexual intercourse; and
3. Has sexual intercourse with any other person without disclosing his/her HIV status.

HIV Criminalization Laws



HIV Criminalization, 2010-2013



Prosecution information:
Ending and Defending Against HIV Criminalization: State and Federal Laws and Prosecutions, Vol.1, CHLP's Positive Justice Project, First Edition, Fall 2010 (Revised through 2014)

- Statute & Prosecutions
 - No Statute, Prosecutions
 - Statute, No Prosecutions
 - No Statute, No Prosecutions
- !
 5+

Why HIV Criminalization Does More Harm than Good

- Is Contrary to Public Health Goals
- Raises Due Process Issues
- Inflicts Serious Individual & Group Harms

Contrary to Public Health Goals

1. Disincentive to HIV testing
2. May actually encourage non-disclosure
3. Alienate patients from healthcare providers
4. Do not deter targeted behavior
5. Send inaccurate message regarding prevention responsibility

Raise Due Process Issues

6. Intent requirement has disappeared
7. Extremely difficult to prove disclosure
8. Juror moral disapproval and disconnect from other subcultures
9. Scientific details are frequently ignored
10. Results in disproportionate punishment

Inflict Serious Individual and Group Harms

11. May result in secondary disclosure
12. Used as a coercive tool by HIV-negative partner
13. Ruin individual lives
14. Oppress already marginalized populations
15. Stigmatize all people with HIV

Public Health

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15 Ways HIV Criminalization Laws Harms Us All

[www.lambdalegal.org/publications/
15-ways-hiv-criminalization-laws-harm-us-all](http://www.lambdalegal.org/publications/15-ways-hiv-criminalization-laws-harm-us-all)

Advocacy Efforts

- International
- National
- State and Local

A Health Care Provider's Role in Improving the Legal System

- Assisting the Accused
- Legislative Reform Efforts
- Impact Litigation

Member Testimonial



W. David Hardy, MD

*Chair, HIV Medicine Association
2018-2019*

Member Testimonial



Barb Gripshover, MD

*Case Western Reserve University
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Member Testimonial

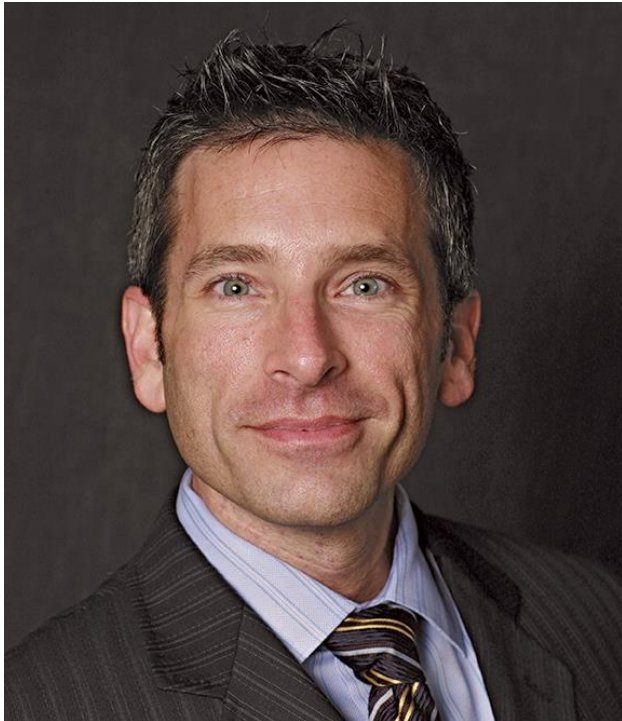


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Provider's Role in Improving Legal System



Scott A. Schoettes

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A Health Care Provider's Role in Improving the Legal System

- Assisting the Accused
- Legislative Reform Efforts
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First Things First

Getting Connected

Know Your Stuff

Recognize Your Role

Never Fudge the Facts

Assisting the Accused

- Fight a subpoena (inform patient)
- Connect with accused's counsel
- Explain actual risks to prosecutor
- Testify at trial for the defense
- Testify as character witness before sentencing (if patient is accused)

Legislative Reform Efforts

- Learn about the law in your state
- Join a state-wide reform effort
- Write a letter to the legislature
- Author an op-ed
- Testify in support of a reform bill

Impact Litigation

- Often civil cases; process a bit more formal than in criminal court
- Providing a declaration
- Authoring an expert report
- Being deposed
- Testifying in court

What You Can Do

- **Become Very Well Informed**
 - <https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html>
 - <https://www.cdc.gov/hiv/risk/index.html>
- **Help Spread the Word**
- **Testify for the Accused**
- **Advocate for Repeal and/or Reform**

Lambda Legal

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Lambda Legal
making the case for equality



Getting Involved in Criminalization Reform & Advocacy for Providers:

Q & A