

RESEARCH THAT MATTERS

ENFORCEMENT OF HIV CRIMINALIZATION IN MARYLAND

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OVERVIEW

The Williams Institute analyzed data from the state of Maryland about individuals who have been prosecuted for an HIV-related offense under Section 18-601.1 of the Maryland Health Code. These data were obtained from the Maryland State Administrative Office of the Courts. While previous comprehensive attempts to analyze the level of enforcement of Maryland's HIV crime have identified less than six cases, our analysis revealed at least 104 prosecutions in the state because of an allegation of an HIV-related crime from 2000 to 2020.

FINDINGS

- In total, there have been at least 104 cases and at least 148 separate charges for “knowingly transferring HIV to another” in Maryland from 2000 to 2020. Among these 104 cases, three alleged only attempted “knowingly transferring HIV to another.”
- We estimate that, from 2000 to 2020, between 82 and 104 people were charged with HIV-related offenses in Maryland.
- Arrests continue to the present, with the latest filing date in 2020. In fact, there were more cases from 2010 to 2020 than from 2000 to 2010.
- Enforcement is highly concentrated by geography: Baltimore City alone accounted for nearly a third (32%) of all HIV-related cases in the state, followed by Montgomery County (19%) and Prince George's County (18%). These three counties combined accounted for over two-thirds (69%) of all HIV-related cases.
- The youngest person with an HIV-related conviction was 21 years old, and the oldest was 59 years old. The median age was 35 years old.
- Men made up the overwhelming majority (86%) of people with an HIV-related charge. Men were over-represented in these cases as compared to the state population (49%), and the population of PLWH in Maryland (66%). We were not able to identify people who are transgender among these individuals.
- Likewise, Black people made up the overwhelming majority of people with HIV-related criminal cases in Maryland. Black people were 82% of all HIV-related cases, but only 30% of the state's population, and 71% of people living with HIV in the state. People were identified only as Black or white; we are not able to confirm whether people also identify as Hispanic/Latino or multiple races.
 - Black men, in particular, are overrepresented—14% of the state's population and 44% of people living with HIV, but 68% of HIV-related arrests.
- Among cases with an HIV-related criminal charge where we have clear case outcomes, only 10% resulted in a guilty outcome on at least one HIV-related charge.
 - However, when looking at outcomes for any charge, HIV-related or not, 41% of these cases resulted in at least one guilty outcome. Media accounts from Maryland indicated that in some instances plea deals for defendants include dropping the HIV-related charge for a guilty plea on other charges.

- While we only have complete demographic information for seven people with HIV-related convictions in Maryland, all seven were Black men.
- We have sentencing information for convictions on 16 HIV-related charges; only 1 of those sentences was for less than 3 years, the maximum allowed under the statute. The mean sentence length was 2.9 years.

BACKGROUND

HIV criminalization is a term used to describe statutes that criminalize otherwise legal conduct, or that increase the penalties for illegal conduct based upon a person's HIV-positive status.¹ While there is only one federal HIV criminalization law,² more than half of states and territories across the United States have HIV criminal laws. Most HIV criminal laws do not require actual transmission of HIV or an intent to transmit HIV. Often, these laws criminalize conduct that poses no actual risk of transmission, such as spitting or biting.³ Most laws criminalizing HIV were created in the early years of the HIV/AIDS epidemic,⁴ long before there were effective tests for the virus,⁵ before treatments became available that allow people living with HIV (PLWH) to live normal lifespans in good health,⁶ and before extremely effective methods for preventing transmission of the virus became widely available.⁷

¹ Dini Harsono, Carol L. Galletly, Elaine O'Keffe, and Zita Lazzarini, "Criminalization of HIV Exposure: A Review of Empirical Studies in the United States," *AIDS and Behavior* 21, no. 1 (2017): 27-50, doi: 10.1007/s10461-016-1540-5.

² See 18 U.S.C. § 1122 (2015) (pertaining to the donation or sale of blood or other potentially infectious fluids or tissues).

³ Barré-Sinoussi, Françoise, Salim S. Abdool Karim, Jan Albert, Linda-Gail Bekker, Chris Beyrer, Pedro Cahn, Alexandra Calmy et al., "Expert consensus statement on the science of HIV in the context of criminal law," *Journal of the International AIDS Society* 21, no. 7 (2018): e25161, doi: 10.1002/jia2.25161; Lehman, J. Stan, Meredith H. Carr, Allison J. Nichol, Alberto Ruisanchez, David W. Knight, Anne E. Langford, Simone C. Gray, and Jonathan H. Mermin, "Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States," *AIDS and Behavior* 18 (2014): 997-1006, doi: 10.1007/s10461-014-0724-0; Dini Harsono, Carol L. Galletly, Elaine O'Keffe, and Zita Lazzarini, "Criminalization of HIV Exposure: A Review of Empirical Studies in the United States," *AIDS and Behavior* 21, no. 1 (2017): 27-50, doi: 10.1007/s10461-016-1540-5; HIV.gov, "A Timeline of HIV/AIDS," 2023, <https://files.hiv.gov/s3fs-public/aidsgov-timeline.pdf> (last visited August 30, 2022).

⁴ Dini Harsono, Carol L. Galletly, Elaine O'Keffe, and Zita Lazzarini, "Criminalization of HIV Exposure: A Review of Empirical Studies in the United States," *AIDS and Behavior* 21, no. 1 (2017): 27-50, doi: 10.1007/s10461-016-1540-5; Lehman, J. Stan, Meredith H. Carr, Allison J. Nichol, Alberto Ruisanchez, David W. Knight, Anne E. Langford, Simone C. Gray, and Jonathan H. Mermin. "Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States," *AIDS and Behavior* 18 (2014): 997-1006, doi: 10.1007/s10461-014-0724-0.

⁵ HIV.gov, "A Timeline of HIV/AIDS," 2023, <https://files.hiv.gov/s3fs-public/aidsgov-timeline.pdf> (last visited August 30, 2022).

⁶ Trickey, Adam, Margaret T. May, Jorg-Janne Vehreschild, Niels Obel, M. John Gill, Heidi M. Crane, Christoph Boesecke et al., "Survival of HIV-positive patients starting antiretroviral therapy between 1996 and 2013: a collaborative analysis of cohort studies." *The Lancet HIV* 4, no. 8 (2017): e349-e356, doi: 10.1016/S2352-3018(17)30066-8; Barré-Sinoussi, Françoise, Salim S. Abdool Karim, Jan Albert, Linda-Gail Bekker, Chris Beyrer, Pedro Cahn, Alexandra Calmy et al. "Expert consensus statement on the science of HIV in the context of criminal law." *Journal of the International AIDS Society* 21, no. 7 (2018): e25161, doi: 10.1002/jia2.25161; Lehman, J. Stan, Meredith H. Carr, Allison J. Nichol, Alberto Ruisanchez, David W. Knight, Anne E. Langford, Simone C. Gray, and Jonathan H. Mermin. "Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States," *AIDS and Behavior* 18 (2014): 997-1006, doi: 10.1007/s10461-014-0724-0.

⁷ Francis Collins, "For HIV, Treatment is Prevention." NIH Director's Blog, January 22, 2019, <https://directorsblog.nih.gov>.

MARYLAND'S HIV CRIMINALIZATION LAW

Maryland has one criminal law related to HIV, Section 18-601.1 of the Maryland Health Code, titled “Exposure of other individuals - By individual with human immunodeficiency virus.”⁸ This section makes it a misdemeanor for a person living with HIV and who is aware of their HIV-positive status to “knowingly transfer or attempt to transfer” HIV to another person. A conviction under Section 18-601.1 carries a punishment of up to three years in prison, a fine of up to \$2,500, or both.⁹

Maryland’s HIV criminal statute does not require actual transmission of HIV and does not require any specific forms of conduct that are likely to transfer the HIV virus. The statute also does not have any affirmative defenses, such as first disclosing one’s HIV status or receiving consent from the other person. Notably, the U.S. Supreme Court in *Bragdon v. Abbott* characterized Section 18-601.1 as one of many laws that “forbid persons infected with HIV from having sex with others, regardless of consent.”¹⁰ The law also does not address HIV-positive individuals who cannot transmit HIV through sexual contact because they are in effective treatment and virally suppressed so that HIV is non-detectable in their blood. For such people there is no HIV transmission risk from sex.

Although not specific to HIV, Maryland law also prohibits actions from people who have “an infectious disease that endangers public health.”¹¹ Questions remain over the scope of the law, including whether HIV is considered an “infectious disease that endangers public health.”¹² Similarly, Section 602 of Maryland’s Health Code prohibits exposure to infectious disease by a third party.¹³ This study does not include analysis of enforcement data pursuant to these non-HIV specific code sections, nor does it include prosecutions under general criminal law.

Legislative History

The Maryland legislature enacted Section 18-601.1 during the 1989 legislative session.¹⁴ The law went into effect on July 1, 1989. The statute has not been updated or amended since its original adoption in 1989.

[gov/2019/01/22/for-hiv-treatment-is-prevention/](https://www.hivlawandpolicy.org/2019/01/22/for-hiv-treatment-is-prevention/); Eisinger, Robert W., Carl W. Dieffenbach, and Anthony S. Fauci, “HIV viral load and transmissibility of HIV infection: undetectable equals untransmittable,” *Journal of the American Medical Association* 321, no. 5 (2019): 451-452; Susan Buchbinder, “Maximizing the benefits of HIV preexposure prophylaxis,” *Topics in Antiviral Medicine* 25, no. 4 (2018): 138.

⁸ Md. Code Ann., Health-Gen. § 18-601.1.

⁹ Md. Code Ann., Health-Gen. § 18-601.1.

¹⁰ *Bragdon v. Abbott*, 524 U.S. 624, 641 (1998).

¹¹ Md. Code Ann., Health-Gen § 601.

¹² For further background, see Center for HIV Law and Policy, “Maryland,” HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice (Center for HIV Law and Policy, 2022), <https://www.hivlawandpolicy.org/sites/default/files/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20022722.pdf>.

¹³ Center for HIV Law and Policy, “Maryland,” HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice (Center for HIV Law and Policy, 2022), <https://www.hivlawandpolicy.org/sites/default/files/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20022722.pdf>.

¹⁴ 1989 Md. Sess. Laws 789, *see also* S.B. 719, 1989 Gen. Assemb. (Md. 1989).

The Maryland legislature added the statute in 1989 as part of an omnibus bill, S.B. 719, that addressed multiple policies related to HIV and PLWH.¹⁵ According to records received from the Maryland Department of Legislative Services (see Online Appendix), the authors of the legislation were “The Governor’s Advisory Council on AIDS” and the bill was the result of a “study of the medical, ethical, criminal, social, and emotional issues surrounding AIDS” by the Advisory Council.¹⁶ In reflection of this legislative initiative, “AIDS discrimination” and “health insurance for AIDS patients” were listed among the “significant issues” addressed by the Maryland legislature in the 1989 and 1990 Legislative sessions, respectively.¹⁷

Senate Bill 719 received letters of support from local organizations at the time, chiefly because the omnibus bill dealt with discrimination against PLWH.¹⁸ However, Section 18-601.1, which specifically criminalized HIV, was subsequently introduced as an amendment. The original legislation prohibited an “individual with an infectious disease from knowingly and intentionally transferring the disease to another.”¹⁹ An amendment from the Economic and Environmental Affairs Committee after the First Reading of the Bill added Section 18-601.1 and the current language of the statute, lowering the *mens rea* standard from intent to knowledge.²⁰

Two other bills proposed in 1989 considered criminalizing willful exposure to HIV, with significant differences from the omnibus legislation that passed. One included a statutory defense to a willful exposure charge if the defendant informed their partner of their status and the partner consented to having sex.²¹ Another bill would have prohibited all sexual conduct of a person living with HIV unless their partner was informed of their status.²² The penalties contained in the omnibus legislation that passed were the harshest penalties of the three bills.²³

During consideration of the omnibus bill (S.B. 719) in committee, the Advisory Council and the Department of Health and Mental Hygiene submitted a letter arguing against adding “willful exposure” to the *Criminal Code*, which was a recommendation in the competing bills. The organizations argued that “criminalizing certain behaviors for HIV-infected persons stigmatizes these individuals, alienating them from governmental authorities.”²⁴ Instead, the letter argued that the willful exposure provisions should be placed in the *Health-General Code*, as S.B. 719 did, and where Section 18-601.1 remains.

¹⁵ 1989 Md. Laws 787.

¹⁶ Online Appendix, page 405, available at: <https://www.dropbox.com/scl/fi/uptfd0zaayjbywxfoog0t/MD-HIV-Criminalization-Legislative-History-Docs.pdf?rlkey=rh03rdzerxj6sitg9o78gv0h0&dl=0>.

¹⁷ “Maryland Manual 1991-92,” Archives of Maryland Online, 185, 43. <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000185/html/am185--43.html>.

¹⁸ Online Appendix, page 17.

¹⁹ Online Appendix, page 161.

²⁰ Online Appendix, page 139 and page 184.

²¹ Online Appendix, page 573.

²² Online Appendix, page 577.

²³ Online Appendix, page 505 (“The penalties prescribed in SB 21 and SB 719 are actually identical, and are stronger than those prescribed by SB 177”).

²⁴ Online Appendix, page 513.

Another letter from the Montgomery AIDS Foundation emphasized the need for the nondiscrimination provisions in the omnibus bill but called the legislation “not perfect.”²⁵ The Maryland Disability Law Center specifically criticized the then-proposed Section 18-601.1, arguing that knowingly transmitting or attempting to transmit HIV was already prohibited under the state’s general criminal laws,²⁶ and that further criminalization may discourage PLWH from voluntarily seeking counseling and testing for fear of prosecution.²⁷

Attempts to Change Maryland’s HIV Criminal Law Since 1989

A number of legislative attempts have been made to reform or repeal Maryland’s HIV criminalization law since 1989. Only one of these bills, involving mandatory testing upon a victim’s request for certain crimes, has passed:

Mandatory testing. There have been several attempts to require mandatory HIV testing for those arrested for certain crimes, such as exposing a law enforcement officer to fluids (did not pass),²⁸ charges for sexual offenses that include exposure to bodily fluids (did not pass),²⁹ or upon a victim’s request to a court for a crime that could have resulted in exposure (passed).³⁰

Increased penalties. Other bills have sought to increase the penalties for exposure to HIV by making it a felony instead of a misdemeanor and/or increasing the length of sentences from three to five years up to 25 years. The efforts have all failed.

- In 2006, the Maryland House considered a bill that would have provided for additional penalties if the individual to whom HIV was intentionally transferred dies from complications of the virus.³¹ The legislation did not pass out of committee.³²
- That same legislative session, legislation was introduced that would make it a second-degree, felony assault, if a person intentionally tried to “assault another by use of bodily fluids” and if the person knew or had reason to know that the other was “a law enforcement officer

²⁵ Online Appendix, page 435.

²⁶ The letter referenced murder, attempted murder, manslaughter, and assault.

²⁷ Online Appendix, page 431.

²⁸ S.B. 180, 1996 Gen. Assemb., Reg. Sess. (Md. 1996), <https://mgaleg.maryland.gov/1996rs/bills/sb/sb0180f.PDF>. The bill died in committee after an unfavorable report from committee members. Legislation: Senate Bill 180 (1996 Reg. Sess.), MARYLAND GEN. ASSEMB., <https://mgaleg.maryland.gov/mgawebsite/Search/Legislation?target=/1996rs/billfile/sb0180.htm>.

²⁹ S.B. 7, 2000 Gen. Assemb., Reg. Sess. (Md. 2000), <https://mgaleg.maryland.gov/2000rs/bills/sb/sb0007f.PDF>. The bill was reported as unfavorable in both House and Senate committees and thus was not subject to a floor vote. Legislation: Senate Bill 7 (2000 Reg. Sess.), MARYLAND GEN. ASSEMB., <https://mgaleg.maryland.gov/mgawebsite/Search/Legislation?target=/2000rs/billfile/sb0007.htm>.

³⁰ Legislation: House Bill 944 (2005 Reg. Sess.), MARYLAND GEN. ASSEMB., <https://mgaleg.maryland.gov/mgawebsite/Search/Legislation?target=/2005rs/billfile/hb0944.htm>. The law took effect on October 1, 2005.

³¹ H.B. 1529, 2006 Gen. Assemb., Reg. Sess. (Md. 2006), <https://mgaleg.maryland.gov/2006rs/bills/hb/hb1529f.pdf>.

³² Legislation: House Bill 1529 (2006 Reg. Sess.), MARYLAND GEN. ASSEMB., <https://mgaleg.maryland.gov/mgawebsite/Search/Legislation?target=/2006rs/billfile/hb1529.htm>.

engaged in the performance of the officer's official duties."³³ The text of the bill specifically mentioned HIV, along with hepatitis and tuberculosis, as qualifying diseases. The legislation passed the state House but stalled out in the Senate.³⁴

- In 2012, legislation was introduced which would have changed the classification of the crime of knowingly transferring or attempting to transfer HIV from a misdemeanor to a felony.³⁵ The new classification would have brought with it a maximum fine of \$10,000 and/or 25 years of imprisonment. The legislation failed to make it out of committee.
- In 2020, the House considered a bill that would have increased the maximum penalty for someone convicted of knowingly attempting to transfer HIV from three to five years of imprisonment.³⁶ The proposed legislation also provided that any such conviction would be separate and run consecutively to any other sexual crime an individual might be charged with. The legislation died in committee.³⁷

Repeal efforts. Since 2013, there have been several attempts to repeal Maryland's HIV-specific criminal law. As of November 2023, these efforts have not been successful.

- In 2013, Delegate Shirley Nathan-Pulliam and Senator Nathaniel Oaks introduced House Bill 1154 to repeal section 18-601.1.³⁸ The bill was withdrawn.³⁹
- In 2022, Senator Clarence Lam made another attempt to repeal Maryland's HIV criminalization law with Senate Bill 547.⁴⁰ The bill was withdrawn soon after it was introduced.
- In 2023, Delegate Kris Fair's House Bill 287 to repeal the HIV criminal law passed in the Maryland House by 97 to 37.⁴¹ The bill was next referred to the state Senate for consideration, but was not voted on before the legislative session ended.

³³ H.B. 152, 2006 Gen. Assemb., Reg. Sess. (Md. 2006), <https://mgaleg.maryland.gov/2006rs/bills/hb/hb0152t.pdf>.

³⁴ Legislation: House Bill 152 (2006 Reg. Sess.), MARYLAND GEN. ASSEMB., <https://mgaleg.maryland.gov/mgawebsite/Search/Legislation?target=/2006rs/billfile/hb0152.htm>.

³⁵ H.B. 622, 2012 Gen. Assemb., Reg. Sess. (Md. 2012), <https://mgaleg.maryland.gov/2012rs/bills/hb/hb0622f.pdf>.

³⁶ Legislation: House Bill 1497 (2020 Reg. Sess.), MARYLAND GEN. ASSEMB., <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb1497?ys=2020RS&search=True>.

³⁷ H.B. 1497, 2020 Gen. Assemb. Reg. Sess. (Md. 2020), <https://mgaleg.maryland.gov/2020RS/bills/hb/hb1497f.pdf>.

³⁸ H.B. 1154, 2013 Gen. Assemb., Reg. Sess. (Md. 2013), <https://mgaleg.maryland.gov/2013RS/bills/hb/hb1154f.pdf>.

³⁹ "US: Well-Meaning Bill to Repeal Maryland's HIV-Specific Criminal Law May Do More Harm Than Good, Advocates Warn," HIV Justice Network, March 26, 2013, <https://www.hivjustice.net/news-from-other-sources/maryland-lawmaker-cranks-hiv-decriminalization-gears-with-message-bill/#:~:text=Shirley%20Nathan%2DPulliam%20>.

⁴⁰ S.B. 547, 2022 Gen. Assemb., Reg. Sess. (Md. 2022), <https://mgaleg.maryland.gov/2022RS/bills/sb/sb0547f.pdf>.

⁴¹ H.B. 287, 2023 Gen. Assemb., Reg. Sess. (Md. 2023), <https://mgaleg.maryland.gov/2023RS/bills/hb/hb0287t.pdf>.

Case Law

There are few court cases documenting enforcement of section 18-601.1.⁴² At least one instance of a prosecution under Section 18-601.1 was appealed to the U.S. Supreme Court but the petition for certiorari was ultimately denied.⁴³ In that case, *Karanja v. State*, the defendant was convicted in 2004 in the Maryland Circuit Court for Montgomery County of two counts of second-degree rape, two counts of second-degree sexual offense, two counts of knowingly attempting to transfer HIV, and other crimes.⁴⁴ Karanja appealed to both the Appellate Court of Maryland⁴⁵ and the Supreme Court of Maryland.⁴⁶ The defendant-appellant's attorneys argued in their brief that the Circuit court failed to show that defendant actually had HIV. According to their court filing, the prosecutors did not introduce medical evidence and instead only admitted testimony from another party who said that the defendant told her he was diagnosed with HIV. None of these appeals were successful.

Application of Non-HIV Specific Criminal Laws

People in Maryland also have faced criminal charges stemming from general criminal laws if they are living with HIV. These include cases that resulted in convictions of PLWH:⁴⁷

Reckless endangerment. In one instance, a 29-year-old man plead guilty to one charge of reckless endangerment for, in part, not disclosing his HIV status when he had consensual sex with another person.⁴⁸ Another man pled guilty to two counts of reckless endangerment after having unprotected sex with two women without disclosing his HIV status.⁴⁹ In a text message to one of the women, the man

⁴² The statute has been referenced in at least one custody case. In 1994, a Maryland special appeals court overruled a lower court's decision to deny a gay and HIV-positive father and ex-husband overnight visitation with his children. *North v. North*, 648 A.2d 1025, (Md. Ct. Spec. App. Oct. 25, 1994). While the dissent cited the HIV criminalization law to contend that the mother was victimized and endangered by her former spouse's conduct, the majority opinion disagreed. The court ruled that a child's visitation with a noncustodial HIV-positive parent may not be restricted on the basis of that parent's HIV status. Any restriction must prove that, without such restriction, visitation would endanger the child's health or impair the child's emotional development.

⁴³ Docket Search: *Karanja v. Maryland*, SUP. CRT. OF THE U.S., <https://www.supremecourt.gov/search.aspx?filename=/docketfiles/08-5023.htm>.

⁴⁴ Sonia Boin, "Man Convicted in 2 Rape Counts," *The Frederick News-Post*, October 13, 2004, https://www.fredericknews.com/archives/man-convicted-in-2-rape-counts/article_f696eb4f-3ea8-5d9e-b4d5-38c0be44de6a.html.

⁴⁵ See Appellant's Brief and Appendix, *Karanja v. State*, 2006 MD Sp. App. Ct. Briefs LEXIS 552 (Md. Ct. of Special Apps. 2006).

⁴⁶ *Karanja v. State*, 2008 Md. Lexis 55* (Md. Court of App 2008).

⁴⁷ See, for example, Jessica Anderson, "Maryland Man Faces Rarely Used HIV Transmission Charges," *The Baltimore Sun/Washington Post*, September 10, 2012, https://www.washingtonpost.com/local/maryland-man-faces-rarely-used-hivtransmission-charges/2012/09/10/Odb02f58-fb59-11e1-b2af-1f7d12fe907a_story.html; Deb Belt, "HIV Positive Man Pleads Guilty to Reckless Endangerment," *The Patch*, March 10, 2015, <https://patch.com/maryland/bethesda/cheychase/hiv-positive-man-pleads-guilty-reckless-endangerment>.

⁴⁸ Center for HIV Law and Policy, "Maryland," *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice* (Center for HIV Law and Policy, 2022), <https://www.hivlawandpolicy.org/sites/default/files/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20022722.pdf>.

⁴⁹ Debra Alfaroni, "Man With HIV Admits to Knowingly Having Unprotected Sex," *WUSA9*, March 10, 2015, <https://www.wusa9.com/article/news/man-with-hiv-admits-to-knowingly-having-unprotected-sex/65-203526761>.

said he was undetectable. A person with an undetectable viral load cannot transmit HIV through sex.⁵⁰

Assault. At least two people have been convicted under assault statutes for actions that relate to their HIV status.⁵¹ One 44-year-old man living with HIV was convicted of second-degree assault after spitting on a police officer.⁵² The man, who had no teeth, argued that he did not intend to spit on the officer, and that he often unintentionally spat.⁵³ Spitting is not an HIV transmission route.⁵⁴

Attempted murder. In *Smallwood v. State*,⁵⁵ the Maryland Court of Appeals held that, while the defendant knew he had HIV when he raped three women, this fact alone was insufficient to prove that he had the intent to kill for purposes of an attempted murder conviction. The court reasoned that HIV transmission occurs “simultaneously with act of rape, and thus that act alone would not provide evidence of intent to transmit the virus.”⁵⁶ Instead, “some additional evidence, such as an explicit statement, would be necessary to demonstrate the actor’s specific intent.”⁵⁷ As a result, he could be convicted of reckless endangerment, but he could not be guilty of attempted murder. The court did state, in a footnote, that it would “have no trouble concluding that Smallwood intentionally exposed his victims to the risk of HIV-infection.”⁵⁸

⁵⁰ Debra Alfarone, “Man With HIV Admits to Knowingly Having Unprotected Sex,” *WUSA9*, March 10, 2015, <https://www.wusa9.com/article/news/man-with-hiv-admits-to-knowingly-having-unprotected-sex/65-203526761>.

⁵¹ Center for HIV Law and Policy, “Maryland,” *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice* (Center for HIV Law and Policy, 2022), <https://www.hivlawandpolicy.org/sites/default/files/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20022722.pdf>.

⁵² “US: Maryland Man Gets Five Years for Unintentional Spitting On Cop,” *HIV Justice Network*, July 27, 2010, <https://www.hivjustice.net/cases/us-maryland-man-gets-five-years-for-unintentionally-spitting-on-cop/>.

⁵³ “US: Maryland Man Gets Five Years for Unintentional Spitting On Cop,” *HIV Justice Network*, July 27, 2010, <https://www.hivjustice.net/cases/us-maryland-man-gets-five-years-for-unintentionally-spitting-on-cop/>.

⁵⁴ See, for example, Françoise Barré-Sinoussi et al., “Expert Consensus Statements on the Science of HIV in the Context of Criminal Law,” *Journal of the International AIDS Society* 21 (2018): e215161; J. Stan Lehman et al., “Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States,” *AIDS Behavior* 18 (2014): 997, 1000.

⁵⁵ 680 A.2d 512 (Md. Ct. App. Aug. 1, 1996)

⁵⁶ 680 A.2d 512, 516 (Md. Ct. App. Aug. 1, 1996)

⁵⁷ 680 A.2d 512 (Md. Ct. App. Aug. 1, 1996)

⁵⁸ 680 A.2d 512, 517 (Md. Ct. App. Aug. 1, 1996)

PREVIOUS STUDIES OF HIV CRIMINAL ENFORCEMENT

This report builds on a series of studies analyzing the enforcement of HIV criminal laws using state-level data. Since 2015, the Williams Institute has published similar studies for California,⁵⁹ Georgia,⁶⁰ Florida,⁶¹ Missouri,⁶² Nevada,⁶³ Kentucky,⁶⁴ Virginia,⁶⁵ Tennessee,⁶⁶ Louisiana,⁶⁷ and Arkansas.⁶⁸ These studies show the following:

- Thousands of people have been prosecuted for HIV crimes.
- The number of HIV-related arrests and prosecutions has not decreased in recent years.
- The vast majority of arrests, prosecutions, and convictions are pursuant to state laws that do not require actual transmission of HIV, the intent to transmit, or even conduct that can transmit HIV.
- Black people and women are disproportionately affected by HIV criminal laws.
- Sex workers are often disproportionately affected by HIV criminal enforcement.
- In most states, arrests are concentrated in just a few counties and appear to be driven by local law enforcement practice.
- Convictions for HIV crimes can carry long sentences and create lifelong collateral consequences from a felony conviction. Some states also require registration on the state's sex offender registry.
- Enforcement of HIV criminal laws has cost states tens of millions of dollars in incarceration costs alone.

⁵⁹ Amira Hasenbush, Ayako Miyashita, & Brad Sears, "HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS," The Williams Institute at UCLA School of Law (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-CA-Dec-2015.pdf>.

⁶⁰ Amira Hasenbush, "HIV Criminalization in Georgia: Penal Implications for People Living with HIV/AIDS," The Williams Institute at UCLA School of Law (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-GA-Jan-2018.pdf>.

⁶¹ Nathan Cisneros & Brad Sears, "HIV Criminalization in Florida: Length of Incarceration and Fiscal Implications," The Williams Institute at UCLA School of Law (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Incarceration-FL-Jul-2021.pdf>.

⁶² Brad Sears, Shoshana Goldberg, & Christy Mallory, "Criminalization of HIV and Hepatitis B and B in Missouri: An Analysis of Enforcement Data From 1990 to 2019," The Williams Institute at UCLA School of Law (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MO-Feb-2020.pdf>.

⁶³ Nathan Cisneros & Brad Sears, "Enforcement of HIV Criminalization in Nevada," The Williams Institute at UCLA School of Law (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-NV-May-2021.pdf>.

⁶⁴ Nathan Cisneros & Brad Sears, "Enforcement of HIV Criminalization in Kentucky," The Williams Institute at UCLA School of Law (2021), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-ky/>.

⁶⁵ Nathan Cisneros & Brad Sears, "Enforcement of HIV Criminalization in Virginia," The Williams Institute at UCLA School of Law (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-VA-Dec-2021.pdf>.

⁶⁶ Nathan Cisneros, Brad Sears, & Robin Lennon-Dearing, "Enforcement of HIV Criminalization in Tennessee," The Williams Institute at UCLA School of Law (2022), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-tennessee/>.

⁶⁷ Nathan Cisneros & Brad Sears, "Enforcement of HIV Criminalization in Louisiana," The Williams Institute at UCLA School of Law (2022), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-louisiana/>.

⁶⁸ Nathan Cisneros, Moriah Macklin, Will Tentindo & Brad Sears, "Enforcement of HIV Criminalization in Arkansas," The Williams Institute at UCLA School of Law (2023), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-ar/>.

The Williams Institute reports follow several earlier studies analyzing the enforcement of HIV criminal laws in other states.⁶⁹ For example, Trevor Hoppe, analyzing 431 HIV-related criminal convictions in six states (Arkansas, Florida, Louisiana, Michigan, Missouri, and Tennessee), concluded that victim characteristics drive uneven patterns of enforcement and sentencing.⁷⁰ Hoppe found that there were disproportionately high rates of convictions among heterosexual white male defendants, yet at sentencing, Black defendants were punished more severely, and women were treated more leniently. Men accused of not disclosing to women were punished more harshly than those accused by men.

Prior attempts to analyze the enforcement of Maryland's HIV criminal law, primarily based on media reports, state data, and court cases, have identified only a handful cases charging Section 18-601.1. For example, in 2013, ProPublica relied on earlier case tracking by the Sero Project and others, as well as original research, to identify HIV criminal prosecutions in the United States. Although it documented over 1,300 cases nationwide, it did not find any examples of prosecutions from Maryland.⁷¹

Comprehensive attempts to identify prosecutions of HIV crimes globally only found one case from Maryland from 2013 to 2015,⁷² at least one case from 2015 to 2018,⁷³ and one to three cases from 2019 to 2021.⁷⁴ Overlapping with these three global reports, in total the HIV Justice Network's database identifies seven criminal cases against people for exposing others to HIV in Maryland through February 2023.⁷⁵ News reports of those cases indicate that Section 18-601.1 offenses were charged in at least four of the cases. In five cases, general criminal law cases offenses were charged

⁶⁹ Dini Harsono, Carol L. Galletly, Elaine O'Keffe, and Zita Lazzarini, "Criminalization of HIV Exposure: A Review of Empirical Studies in the United States," *AIDS and Behavior* 21, no. 1 (2017): 27-50, doi: 10.1007/s10461-016-1540-5; Carol Galletly and Zita Lazzarini, "Charges for Criminal Exposure to HIV and Aggravated Prostitution Filed in the Nashville, Tennessee Prosecutorial Region 2000-2010," *AIDS and Behavior* 17 (2013): 26-24, doi: 10.1007/s10461-013-0408-1; Deanna Cann, Sayward E. Harrison, and Shan Qiao, "Historical and Current Trends in HIV Criminalization in South Carolina: Implications for Southern HIV Epidemic," *AIDS and Behavior* 23 (2019): 233, doi: 10.1007/s10461-019-02599-1; Trevor Hoppe, "From Sickness to Badness: The Criminalization of HIV in Michigan," *Social Science and Medicine* 101 (2014): 139-47, doi: 10.1016/j.socscimed.2013.11.007; Trevor Hoppe, "Disparate Risks of Conviction under Michigan's Felony HIV Disclosure Law: An Observational Analysis of Convictions and HIV Diagnoses 1992-2010," *Punishment & Society* 17, no. 1 (2015): 73-93, <https://doi.org/10.1177/1462474514561711>; Trevor Hoppe, *Punishing Disease: HIV and the Criminalization of Sickness* (University of California Press, 2018); Trevor Hoppe, Alexander McClelland, and Kevin Pass, "Beyond Criminalization: Reconsidering HIV Criminalization in an Era of Reform," *Current Opinion in HIV & AIDS* 17, no. 2 (2022): 100-105, doi: 10.1097/COH.0000000000000715.

⁷⁰ Trevor Hoppe, *Punishing Disease: HIV and the Criminalization of Sickness* (University of California Press, 2018).

⁷¹ Sergio Hernandez, "About the HIV Criminalization Data," *ProPublica*, December 1, 2013, <https://www.propublica.org/article/about-the-hiv-criminalization-data>.

⁷² Edwin J. Bernard and Sally Cameron, *Advancing HIV Justice 2: Building Momentum in Global Advocacy Against HIV Criminalisation* (HIV Justice Network and GNP+, Brighton/Amsterdam, April 2016), https://www.hivjustice.net/wp-content/uploads/2016/05/AHJ2.final2_10May2016.pdf.

⁷³ Sally Cameron and Edwin J. Bernard, *Advancing HIV Justice 3: Growing the Global Movement Against HIV Criminalisation* (HIV Justice Network, Amsterdam, May 2019), <https://www.hivjustice.net/wp-content/uploads/2019/05/AHJ3-Full-Report-English-Final.pdf>.

⁷⁴ Alison Symington, Edwin J. Bernard, et al., *Advancing HIV Justice 4: Understanding Commonalities, Seizing Opportunities* (HIV Justice Network, Amsterdam, July 2022), https://www.hivjustice.net/wp-content/uploads/2022/07/AHJ4_EN.pdf.

⁷⁵ Alison Symington, Edwin J. Bernard, et al., *Advancing HIV Justice 4: Understanding Commonalities, Seizing Opportunities* (HIV Justice Network, Amsterdam, July 2022), https://www.hivjustice.net/wp-content/uploads/2022/07/AHJ4_EN.pdf.

including charges against an HIV-positive law enforcement officer for having sex with a person in his custody,⁷⁶ charges of sexual assault against one defendant,⁷⁷ one charge of attempted murder for an HIV-positive man accused of biting a police officer,⁷⁸ an HIV-positive man who plead guilty to two charges of reckless endangerment for having sex with two women,⁷⁹ and a conviction of second-degree assault for an HIV-positive man who unintentionally spat on a police officer.⁸⁰

⁷⁶ Zak Failla, "Officer Who Exposed Suspect To HIV During In-Custody Sex Assault Gets Max Term," Calvert Daily Voice, February 21, 2023, <https://dailyvoice.com/maryland/calvert/police-fire/officer-who-exposed-suspect-to-hiv-during-in-custody-sex-assault-gets-max-term/857254/>.

⁷⁷ NBC12 Newsroom, "Henrico Man Convicted in HIV Case in Maryland Dies," NBC12, September 25, 2017, <https://www.nbc12.com/story/36444386/henrico-man-convicted-in-hiv-case-in-maryland-dies/>.

⁷⁸ "Police: Man Charged with Attempted Murder for Biting Officer in Severn," August 29, 2016, HIV Justice Network, <https://www.hivjustice.net/cases/usa-man-charged-with-attempted-murder-in-maryland-for-biting-policeman-during-a-struggle/>.

⁷⁹ "HIV Positive Man Pleads Guilty of Exposing 2 Women to the Virus," March 11, 2015, HIV Justice Network, <https://www.hivjustice.net/cases/us-man-28-pleads-guilty-to-reckless-endangerment-for-exposing-two-women-to-hiv-despite-undetectable-viral-load/>.

⁸⁰ "Maryland Man Gets Five Years for Unintentionally Spitting on Cop," July 27, 2010, *The Herald-Mail*, <https://www.hivjustice.net/cases/us-maryland-man-gets-five-years-for-unintentionally-spitting-on-cop/>.

ANALYSIS OF HIV CRIMINAL ENFORCEMENT DATA

DATA AND SOURCES

In July 2023, the Williams Institute received data from the Maryland state Administrative Office of the Courts on prosecutions under the state’s HIV-related criminal statute. These data include only cases that have been entered into Maryland’s electronic case management system, and exclude arrests that did not result in prosecution for at least one allegation of an HIV-related crime. The data also exclude paper filings that have not been digitized.

NUMBER OF CASES

In total, there have been at least 104 cases and at least 148 separate charges for “knowingly transferring HIV to another” in Maryland from 2000 to 2020. Among these 104 cases, three included only attempted charges, and one case included both an attempted charge and a charge for actual consummation of the alleged crime. We estimate that between 82 and 104 people have been charged with HIV-related offenses in Maryland during the 2000-2020 time period.⁸¹

Table 1. Number of HIV-related cases and HIV-related charges in Maryland

OFFENSE	NUMBER OF CASES	NUMBER OF CHARGES
Knowingly transferring HIV to another	100	143
Attempted transfer of HIV to another	3	3
Knowingly transferring HIV to another & Attempted transfer of HIV to another	1	2 (one count of each of knowingly transferring and attempted transfer)
Total	104	148

In general, cases were likely to have a single HIV charge that was accompanied by a couple of non-HIV-related charges. The median number of HIV-related charges per case was one; only seven cases (7% of the total) had more than two HIV-related charges. Over one-fifth (22%) of all HIV-related cases had only HIV-related charges—in other words, the allegation of an HIV-related crime was the only reason the case proceeded to the court system. The median number of non-HIV-related charges per case was two. About 15% of all cases had at least 10 non-HIV-related charges. The most common non-HIV-related charge to appear in conjunction with an HIV-related charge was reckless endangerment, followed by assault and sex offenses.⁸²

⁸¹ We received de-identified data from the Maryland Administrative Office of the Courts. We counted 82 unique *birth date x race x sex* combinations across all 104 cases. It is possible that two different people can have the same combination of birth date, race, and sex, therefore we present a range between of between 82 and 104 people.

⁸² Two cases with a combined 325 charges between them—both of which appear related to child sex abuse—were excluded from these counts.

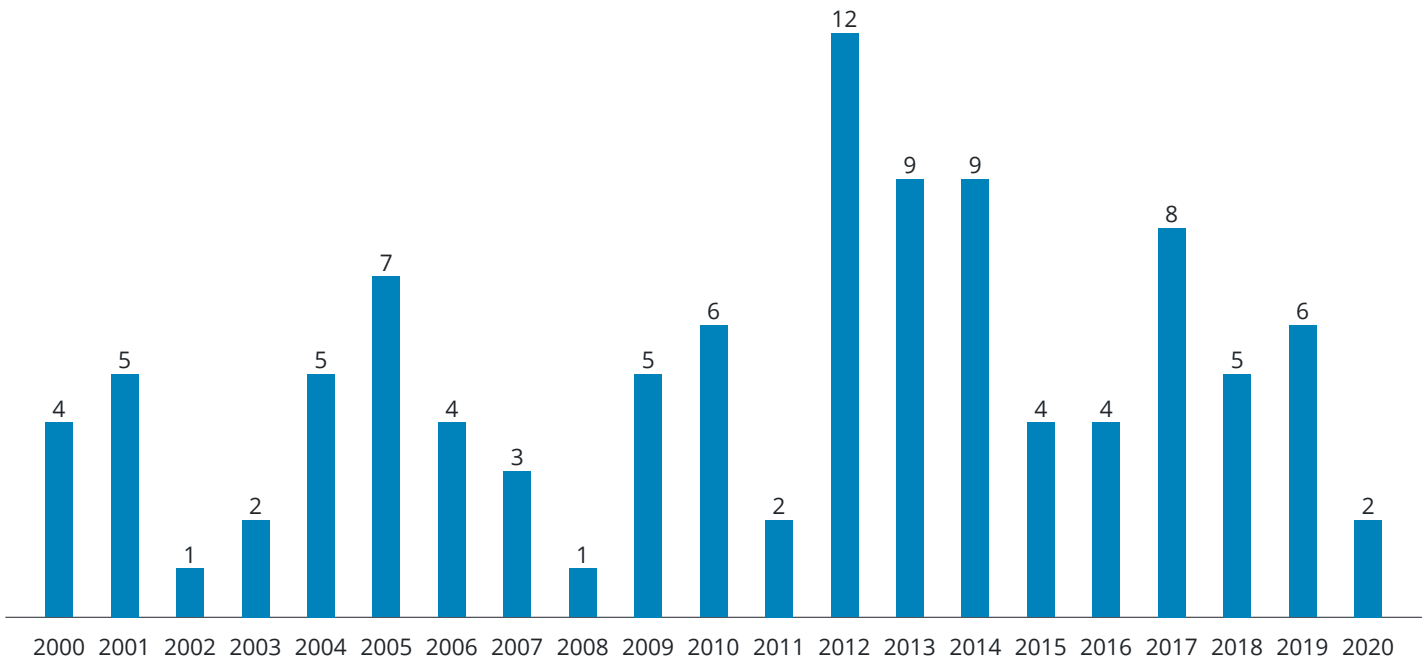
Table 2. Most frequent non-HIV-related charges among cases with an HIV-related charge in Maryland

CHARGE	NUMBER OF CHARGES
Reckless endangerment	73
2 nd degree assault	55
1 st degree assault	34
2 nd degree sex offense	22
3 rd degree sex offense	18
2 nd degree rape	13

Chronology of Cases

We have filing date information going back over two decades. The earliest HIV-related case was filed in March 2000 and the most recent case was filed in March 2020, during the final year for which we have data. There have been an average of five HIV-related cases filed per year during that time period, with a peak filing year in 2012. There also appears to be a meaningful increase in cases over time. In the decade from 2001 to 2010 there were a total of 39 cases filed. In the decade ending in 2020, however, there were 61 cases filed—an increase of over 50%.

Figure 1. Number of HIV-related cases filed in Maryland from 2000 to 2020



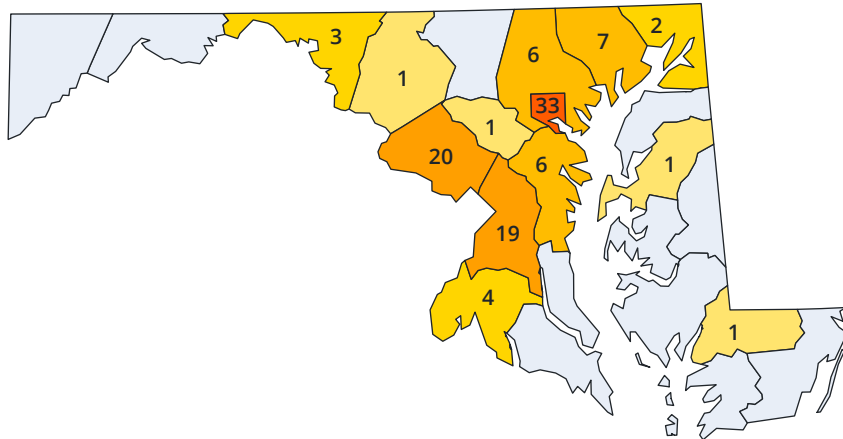
Geography of Cases

Maryland has 23 counties and one county equivalent—the city of Baltimore. Just over half of all counties—12 of the 23 counties—had at least one HIV-related case, as did Baltimore City.⁸³ However, there were substantial geographic differences in enforcement. Baltimore City alone accounted

⁸³ We assume that the county in which a case was filed is also the county in which the arrest occurred.

for nearly a third (32%) of all HIV-related cases, followed by Montgomery County (19%) and Prince George's County (18%), both of which border the District of Columbia. These three counties combined account for over two-thirds (69%) of all HIV-related cases.⁸⁴

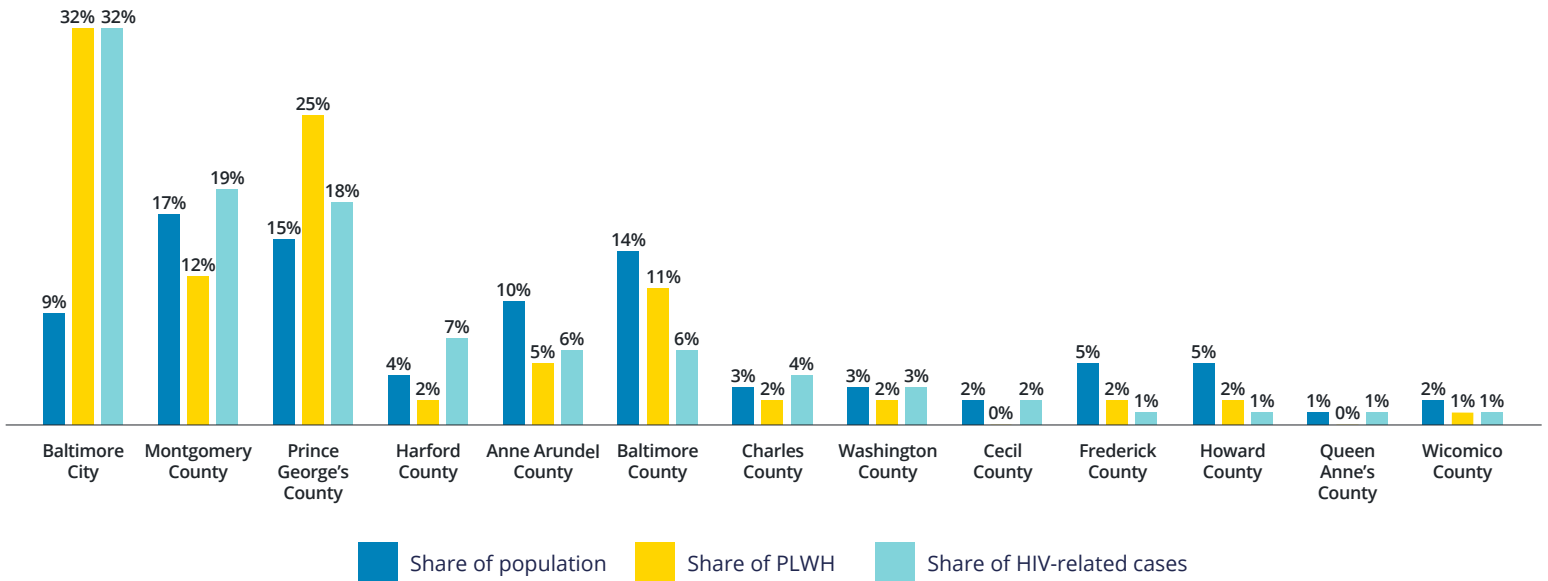
Figure 2. Number of HIV-related cases in Maryland by county



The geographic distribution of cases roughly matches the county-level distribution of PLWH in Maryland in 2021, but there are some disproportionalities. Prince George's County accounted for 25% of PLWH in the state, but only 18% of all HIV-related cases. In contrast, 12% of the state's PLWH resided in Montgomery County, but the county accounted for 19% of HIV-related cases. Harford also appears to have a higher level of enforcement: 2% of the state's PLWH live in Harford but 7% of all HIV-related cases were charged there. In contrast, about one-third (32%) of all PLWH lived in Baltimore in 2021, which is the same as its share of HIV-related cases. Enforcement in the county of Baltimore seems to be disproportionately low: 11% of PLWH but 6% of HIV-related prosecutions.

⁸⁴ The three counties also account for two-thirds (69%) of all HIV-related charges, although the distribution is slightly different: Montgomery County (32%), Baltimore city (24%), then Prince George's (14%).

Figure 3. County share of state population, share of people living with HIV, and share of HIV-related criminal cases in Maryland



Demographics of People Charged

We have information about the age of the of the person charged at the time of filing for 97 of the 104 cases. Ages ranged from 21 years old to 59 years old at the time of filing, with an average age of 36 years old and a median age of 35 years old.

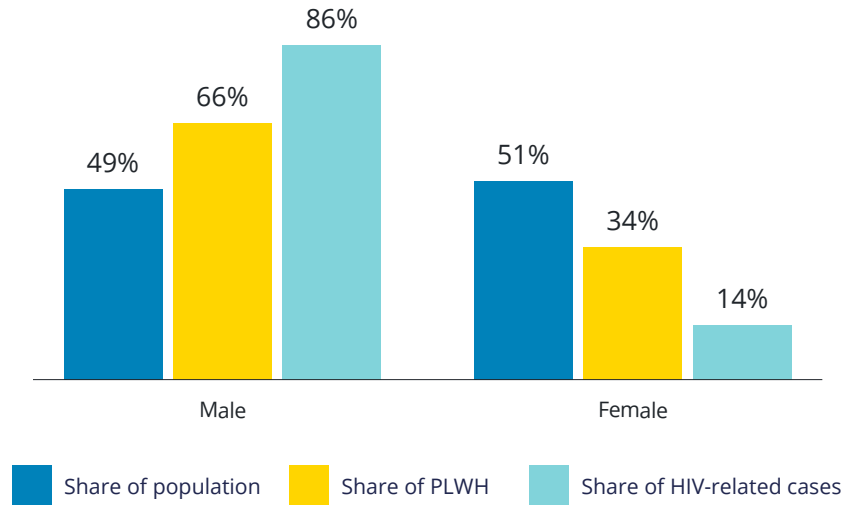
We have information about the sex of the individuals charged for all 104 cases.⁸⁵ Men made up the overwhelming majority (86%) of people in all cases, and were substantially overrepresented among people with HIV-related cases as compared to the state population (49%), or the population of PLWH in Maryland (66%).⁸⁶ We provide results about “sex” because it is the term used by the state of Maryland in their court case management system. We do not have separate information on gender identity or expression, and do not know if the individuals themselves are able to self-report. According to other state data, about 1.2% of PLWH in Maryland are transgender.⁸⁷

⁸⁵ The demographic results presented here do not substantially change whether we use data about the defendants in 104 cases or data based on the 82 unique birth date, race, and sex combinations.

⁸⁶ AIDSvU, “State Prevalence Data 2021,” Excel spreadsheet, last modified August 16, 2023, https://aidsvu.org/wp-content/uploads/2022/11/AIDSvU_State_Prev_2021-20230816.xlsx.

⁸⁷ Center for HIV Surveillance, Epidemiology and Evaluation, Maryland Department of Health, “Maryland Annual HIV Epidemiological Profile 2020,” (Baltimore, MD: Maryland Department of Health, 2021), 43, <https://health.maryland.gov/phpa/OIDEOR/CHSE/SiteAssets/Pages/statistics/Maryland-Annual-HIV-Epidemiological-Profile--2020.pdf>.

Figure 4. Sex distribution of state population, population of people living with HIV, and HIV-related criminal cases in Maryland



We have information about race for 101 of the 104 cases. In 100 cases, the individual was labeled either Black or white, and in the remaining case the person was labeled “Other.” Black people were substantially overrepresented among people with HIV-related cases in Maryland; 82% of cases involved Black people, although they made up only 30% of the state’s population and 71% of PLWH in 2021.⁸⁸ White people were also slightly overrepresented when compared to the population of PLWH (17% versus 12%), but dramatically underrepresented when compared to the state’s population as a whole (49%). While other race/ethnicity groups constitute a substantial proportion of the state’s overall population (21%) and population of PLWH (17%), these demographic groups were dramatically under-represented among HIV-related cases (1%).⁸⁹

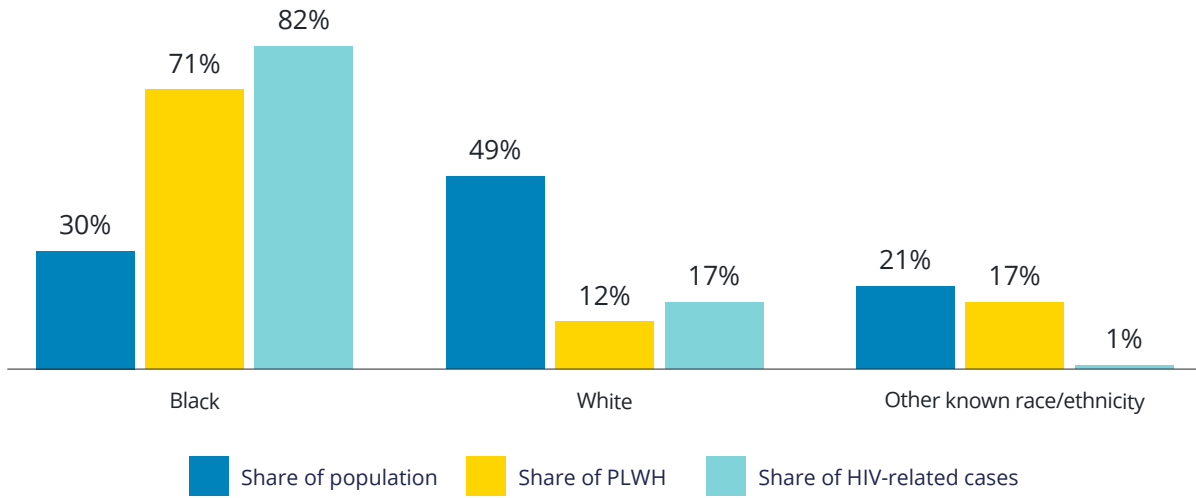
We do not have ethnicity information, including Hispanic/Latino ethnicity, and do not know if Maryland separately collects Hispanic/Latino ethnicity or includes it with information on a person’s race. About 11% of Maryland’s population was Hispanic/Latino in 2021, and about 8% of PLWH were Hispanic/Latino.⁹⁰ All but one person in the data were identified as either Black or white. It is possible that people who would identify as Hispanic/Latino are being recorded as Black or white.

⁸⁸ AIDSvu, “State Prevalence Data 2021,” Excel spreadsheet, last modified August 16, 2023, https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu_State_Prev_2021-20230816.xlsx.

⁸⁹ AIDSvu, “State Prevalence Data 2021,” Excel spreadsheet, last modified August 16, 2023, https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu_State_Prev_2021-20230816.xlsx.

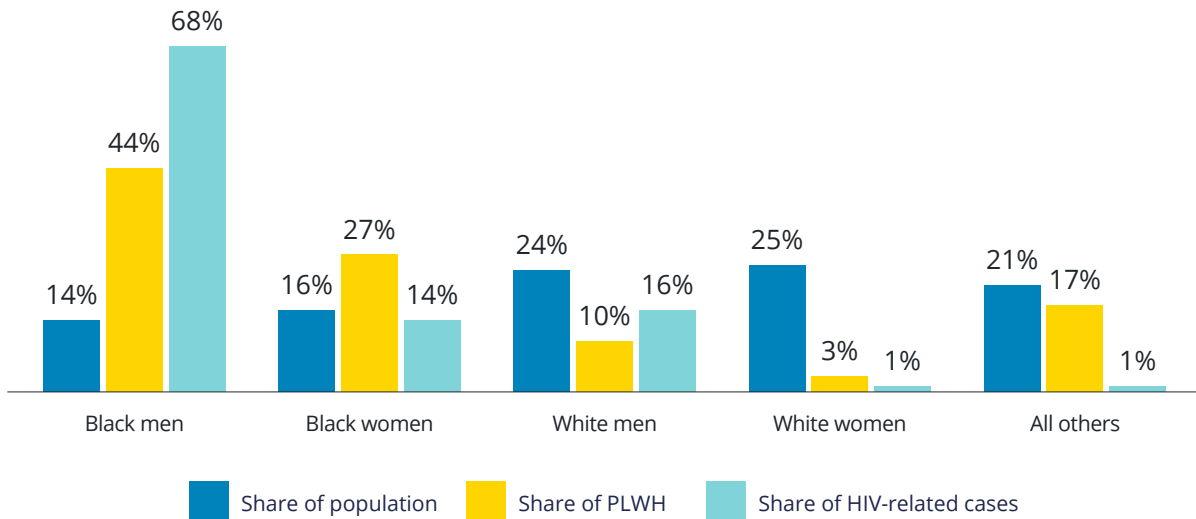
⁹⁰ AIDSvu, “State Prevalence Data 2021,” Excel spreadsheet, last modified August 16, 2023, https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu_State_Prev_2021-20230816.xlsx.

Figure 5. Racial distribution of state population, population of people living with HIV, and HIV-related criminal cases in Maryland



Looking at the interaction of race and sex, Black men experienced the greatest disproportionality in enforcement. Black men were over two-thirds (68%) of all HIV-related cases for which we have complete demographic information, but only 14% of the state’s population, and 44% of PLWH. Likewise, white men were 16% of all HIV-related cases, but only 10% of PLWH in the state. In contrast, Black women were 16% of the state’s population, and 27% of PLWH, but only 14% of HIV-related cases. White women were the least likely to have an HIV-related case and also the least likely to be living with HIV in Maryland.⁹¹

Figure 6. Demographic distribution of state population, population of people living with HIV, and HIV-related criminal cases in Maryland



⁹¹ AIDSvu, “State Prevalence Data 2021,” Excel spreadsheet, last modified August 16, 2023, https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu_State_Prev_2021-20230816.xlsx.

CASE OUTCOMES

We have clear case outcomes in 92 of the 104 cases with an HIV-related charge, totaling 135 HIV-specific charges.⁹² Just over 80% of all these HIV-related charges were dropped at some point after the case was filed.⁹³ A further 6% of HIV-related charges had outcomes other than guilty/not guilty.⁹⁴ Only one in seven HIV-related charges (13%) progressed to a final determination of guilty/not guilty on the HIV charge.⁹⁵ However, nearly nine-tenths (89%) of HIV-related charges that made it to this stage resulted in a guilty outcome. Put differently, of all 135 HIV-related *charges* with a clear outcome, only 12% resulted in an outcome of guilty. Of all 92 *cases* with an HIV-related charge and a clear outcome, only 10% resulted in a guilty outcome on at least one HIV-related charge.

However, when looking at outcomes for any charge, HIV-related or not, 41% of cases resulted in at least one guilty outcome.⁹⁶ The most common non-HIV-related convictions were for second degree assault, sexual abuse of a minor, second and third degree sexual offenses, and reckless endangerment. It is impossible to say from the available data how the bundling of HIV-related and non-HIV-related charges influenced the final outcome of the non-HIV-related charges—whether for example, certain charges were dropped in exchange for a guilty plea on other charges as part of a plea bargain. However, media accounts from Maryland indicate that in some cases plea deals include dropping the HIV-related charges for a guilty plea on other charges. For example, in a 2017 case, Section 18-601.1 charges were dropped against one defendant who plead guilty to sexual assault charges.⁹⁷ Similarly, in 2015, Section 18-601.1 charges against another defendant were dropped when he plead guilty to charges of reckless endangerment.⁹⁸

⁹² The data received from the state of Maryland included clear case outcomes for 118 HIV-related charges across 82 cases. Seven additional cases (containing 8 HIV-related charges) listed “Jury Trial Prayed” as the final disposition. An additional 13 cases (containing 20 HIV-related charges) indicated that the case was forwarded to the circuit court, but did include a final disposition. Two cases did not list a final disposition at all. For each of these cases we attempted to collect final dispositions using the Maryland online case lookup system (<https://casesearch.courts.state.md.us/casesearch>). Of these 22 cases, we were able to identify case outcomes in 10 cases (17 HIV-related charges), and included them in the totals here.

⁹³ This includes all charges that ended with nolle prosequi, stet, or that were dropped between filing and final disposition.

⁹⁴ These include: “Not Criminally Responsible – Committed,” “Abated by Death,” “Closed Jeopardy or Other Conviction,” “Conversion Default,” and “Verdict: Merged.”

⁹⁵ Guilty/not guilty includes a finding of guilt, a finding of not guilty, and judgment of acquittal.

⁹⁶ Thirty cases in total had at least one guilty charge.

⁹⁷ NBC12 Newsroom, “Henrico Man Convicted in HIV Case in Maryland Dies,” NBC12, September 25, 2017, <https://www.nbc12.com/story/36444386/henrico-man-convicted-in-hiv-case-in-maryland-dies/>.

⁹⁸ “HIV Positive Man Pleads Guilty of Exposing 2 Women to the Virus,” HIV Justice Network, March 11, 2015, <https://www.hivjustice.net/cases/us-man-28-pleads-guilty-to-reckless-endangerment-for-exposing-two-women-to-hiv-despite-undetectable-viral-load/>.

Figure 7. Final disposition of HIV-related charges with a clear outcome in Maryland

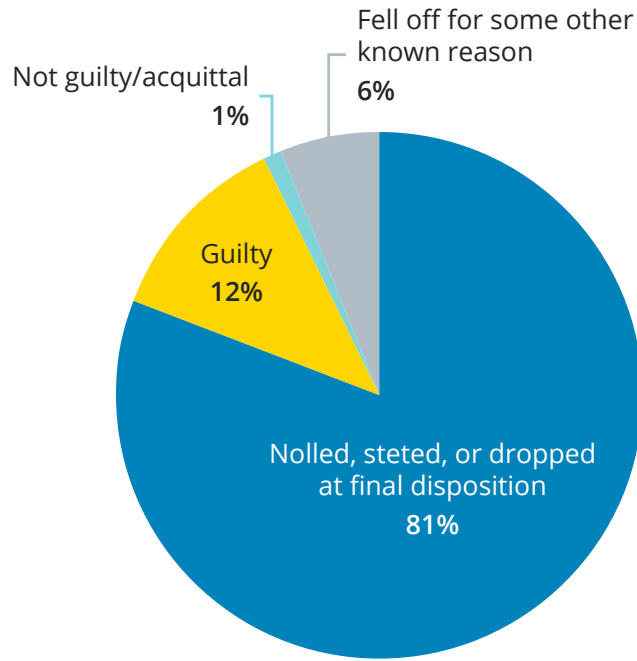
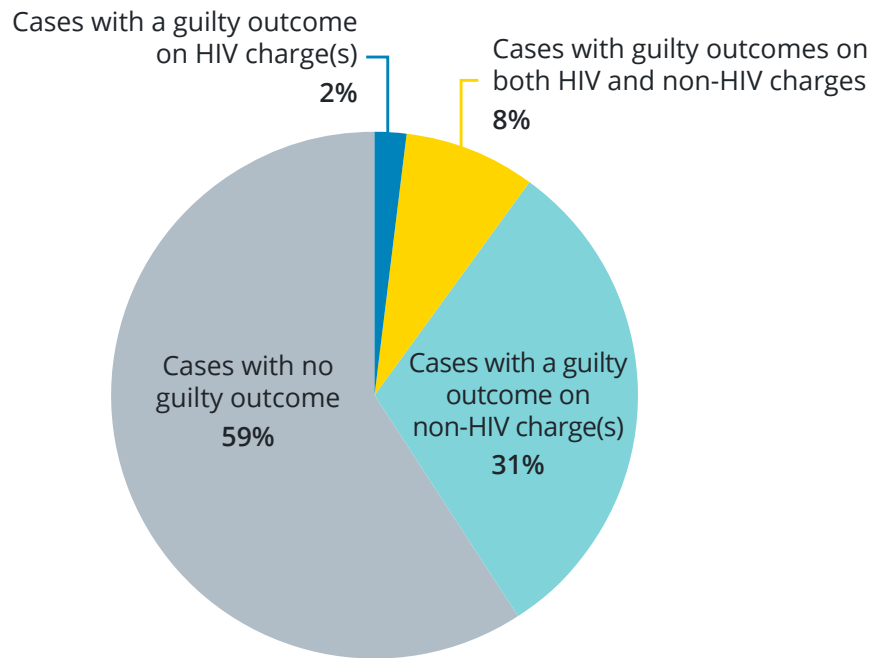


Figure 8. Share of cases that resulted in guilt on at least one charge among cases with a clear outcome in Maryland



The HIV-related guilty outcomes were geographically concentrated. Baltimore City and Montgomery County each accounted for a third of these cases. Cecil, Charles, and Frederick Counties each had one HIV-related case with a guilty outcome. Prince George’s County had no convictions.

Sentencing for HIV-Related Convictions

We only have sentencing information for convictions of 16 HIV-related charges, including one charge for attempted transfer of HIV. The mean sentence length was 2.9 years. Sentences ranged from one year to five years, although only one sentence was for less than the maximum three years.

Demographics of People with HIV-Related Convictions

We have complete demographic information for seven people with HIV-related convictions in the data supplied by the state of Maryland. All seven individuals were Black men. Two additional people with HIV-related convictions were identified as men, but their race/ethnicity was not available.⁹⁹ When looking at those with non-HIV-related convictions, in contrast, only 62% were Black men, while 15% were white men. An additional 11% were Black women. The remainder were men with race/ethnicity data unavailable. It appears, then, that Black men are overrepresented when comparing HIV-related convictions to non-HIV-related convictions, and when comparing Black men to the overall state population or people living with HIV.¹⁰⁰

⁹⁹ Using the Maryland online case lookup system (<https://casesearch.courts.state.md.us/casesearch>) we identified the race of these two individuals in other court proceedings as in one Black person and one white person. We were unable to determine why their race is inconsistently described as “Unavailable” in some court filings, and in the data received from the state.

¹⁰⁰ Black men are also overrepresented when compared to the demographic profile of those in Maryland Department of Public Safety and Correctional Services custody (at 71.5%). “Maryland Department of Public Safety and Correctional Services, ‘Inmate Characteristics Report FY 2022 Q4’ (July 2022), accessed December 4, 2023, <https://dpscs.maryland.gov/publicinfo/publications/pdfs/Inmate%20Characteristics%20Report%20FY%202022%20Q4.pdf>.”

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ABOUT THE WILLIAMS 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. These studies can be accessed at the Williams Institute website.

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