UCLA School of Law Williams Institute

The Williams Institute
On Sexual Orientation and Gender Identity
Law and Public Policy

Testimony of Nathan Cisneros, MS, in regard to HB 0485

February 2, 2024

Members of the House of Delegates Judiciary Committee, my name is Nathan Cisneros, and I am the HIV Criminalization Project Director at the Williams Institute, a research center at the University of California Los Angeles School of Law that conducts independent, rigorous research on sexual orientation and gender identity law and public policy. I write today to share some key findings from a recent report on the enforcement of Maryland's HIV criminal law published by the Williams Institute.[1] I also offer a few comments on the enforcement of these laws nationally.

HIV Criminalization in Maryland

Maryland first enacted its HIV-specific criminal law in 1989, at the height of the HIV/AIDS crisis. In the decades since, we have made tremendous strides in the science and medicine of HIV. Today, we know exactly how HIV is—and is not—transmitted. We also have effective medications that ensure a person newly diagnosed with HIV can lead a healthy life. Today HIV is a manageable health condition, much like diabetes or hypertension. Moreover, we also have medications that can be taken either by a person living with HIV or a person who does not have HIV to completely eliminate the risk of HIV transmission through sex.[2]

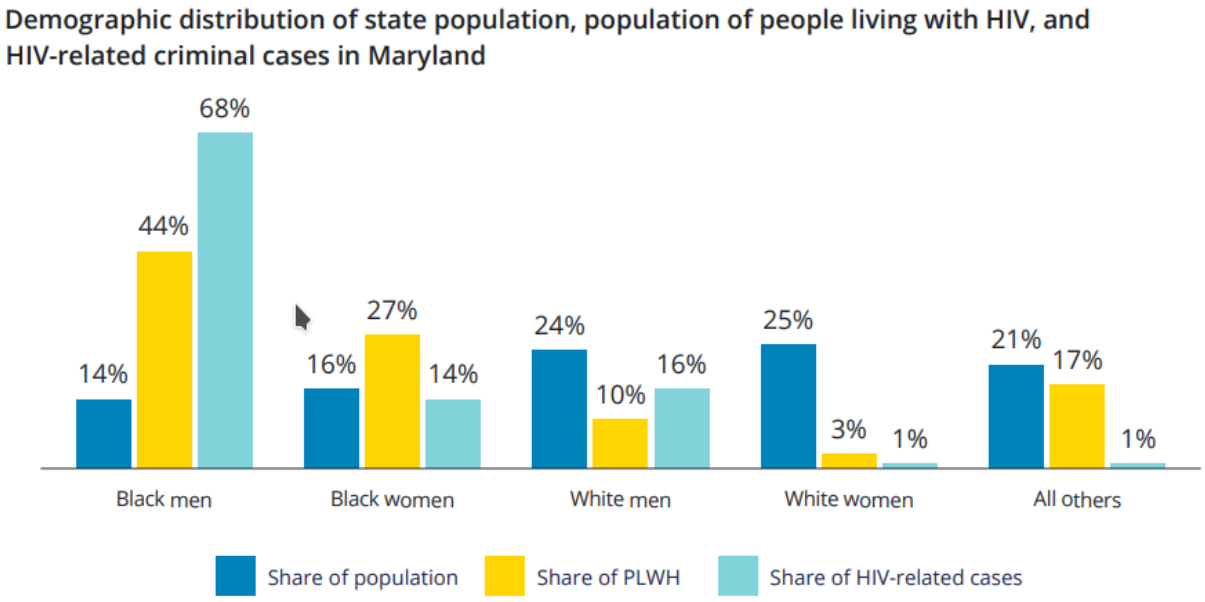
Given these advances, it is reasonable to conclude that Maryland's HIV-related criminal law does not reflect our current understanding of HIV transmission, treatment, and prevention. Maryland makes it a misdemeanor for a person living with HIV and who is aware of their HIV-positive status to "knowingly transfer or attempt to transfer" HIV to another person.[3] Maryland does not require actual transmission, the intent to transmit, or even conduct likely to result in transmission in order to sustain a conviction. Maryland's HIV criminal law also does not address people living with HIV 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.

Williams Institute's Findings

We also know who is most likely to be criminalized because of their HIV status. The Williams Institute analyzed court records provided by the Maryland State Administrative Office of the Courts. Our analysis revealed at least 104 prosecutions in the state because of an allegation of an HIV-related crime from 2000 to 2020:

- 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.
- Arrests continue to the present. 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 criminal cases in the state, followed by Montgomery County (19%) and Prince George's County (18%).
- Men made up the overwhelming majority (86%) of people with an HIV-related charge.
- Black people are disproportionately impacted by HIV criminal laws in Maryland. Black people made up the overwhelming majority (82%) of people with HIV-related criminal cases.
    - Black men, in particular, are overrepresented among those arrested for HIV crimes—14% of the state's population and 44% of people living with HIV, but 68% of HIV-related arrests.
- The average sentence length for people convicted was 2.9 years; the maximum sentence allowed is 3 years.



HIV Criminalization Nationally

The enforcement of Maryland's HIV criminal law fits into a national pattern. Since 2015, the Williams Institute has published similar studies for California,[4] Georgia,[5] Florida,[6] Missouri,[7] Nevada,[8] Kentucky,[9] Virginia,[10] Tennessee,[11] Louisiana,[12] and Arkansas.[13] Together, these studies reveal that

- 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 criminal conviction.
- Enforcement of HIV criminal laws has cost states tens of millions of dollars in incarceration costs alone.

In Maryland, as in over half of the United States, a people living with HIV are subject to criminalization because of their HIV status. Actual transmission, intent to transmit, and even the possibility of transmission are not required to sustain a conviction. Black people, and especially Black men are much more likely to be prosecuted and convicted of an HIV-related offense. Maryland's law does not reflect what we know about HIV prevention and transmission. This, in part is why the Centers for Disease Control and Prevention have called on states to consider updating or repealing their HIV criminal laws as a part of the nation's overall Ending the HIV Epidemic in the U.S.[14]

[1] Md. Code Ann., Health-Gen. § 18-601.1.

[2] 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."

[3] Nathan Cisneros, Will Tentindo, Brad Sears, Moriah Macklin & Donovan Bendana, "Enforcement of HIV Criminalization in Maryland," The Williams Institute at UCLA School of Law (2024), https://williamsinstitute.law.ucla.edu/publications/hiv-crim-md/.

[4] 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/wpcontent/uploads/HIV-Criminalization-CA-Dec-2015.pdf.

[5] 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-CriminalizationGA-Jan-2018.pdf.

[6] 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/HIVIncarceration-FL-Jul-2021.pdf.

[7] 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.

[8] 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.

[9] 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/.

[10] 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.

[11] 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-criminalizationtennessee/.

[12] 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/.

[13] 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-criminalizationar/.

[14] Centers for Disease Control and Prevention, "HIV Criminalization and Ending the HIV Epidemic in the U.S.," Centers for Disease Control and Prevention (Dec. 18, 2023), https://www.cdc.gov/hiv/policies/law/criminalization-ehe.html .