

# **Women & Criminal HIV Exposure and Transmission Laws: Origins, Effects & Alternatives**

**Testimony for the American Bar Association AIDS Coordinating Committee on  
Criminal HIV Exposure and Transmission Laws**

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**Women & Criminal HIV Exposure and Transmission Laws: Origins, Effects & Alternatives is based primarily on the oral testimonies delivered before the ABA AIDS Coordinating Committee by Aziza Ahmed who presented *Alternatives to Criminalization* and Brook Kelly who presented *Criminal HIV Exposure and Transmission Laws: women surviving the diagnosis but living with fear and shame*, with additional contributions from Alison Yager.**

## **ORIGINS OF HIV TRANSMISSION & EXPOSURE LAWS**

Over half of states in the U.S. have HIV exposure and transmission criminalization laws. The widespread nature of these laws is ironically, a direct result of The Ryan White Care Act of 1990, which as amended, still serves as the broadest federal safety net program for people living with HIV. The original Ryan White Care Act (1990) required states to provide a legal mechanism to prosecute the exposure and transmission of HIV.<sup>i</sup>

Although states have non-HIV specific tort and criminal laws that provide legal recourse for the intentional infliction of harm by one person on another, the majority of state legislatures passed HIV specific criminal laws. Although the current Ryan White Care Act no longer includes this requirement, the transmission and exposure laws remain on the books. Additionally, U.S. HIV exposure and criminalization laws have been exported internationally to countries highly impacted by HIV resulting in the unintended consequence of disproportionate accusations against and prosecution of women living with HIV.<sup>ii</sup>

## **CURRENT LEGAL REGIME**

Generally HIV exposure and transmission criminalization laws criminalize an HIV-positive person who does not disclose their HIV status to a sexual partner before engaging in sexual contact. In many states these HIV-specific laws extend beyond the criminalization of sexual contact to encompass the criminalization of spitting at, or biting another person while HIV-positive despite the lack of evidence of biting or spitting as modes of transmission.<sup>iii</sup> Other elements of some HIV criminalization laws include: non-disclosure of HIV status when sharing needles for drug use; donating organs, tissue, or blood while HIV-positive; prostitution, or paying for sex while HIV-positive; and exposing public employees to HIV.

The laws vary greatly from state to state. In some states, but not most, an intent to infect is required. In California, for example, the HIV exposure and transmission law requires proof of intent to infect another person with HIV through sexual contact – sexual contact without disclosure is not enough.<sup>iv</sup> Whereas, in other states, the defendant's knowledge of his or her own serostatus is enough. Montana's criminalization law requires only knowing exposure to infection..<sup>v</sup> A common thread, however, in a majority of the laws is that no proof of actual transmission, or physical harm is required to successfully charge someone under the law<sup>vi</sup> - only one's knowledge of their HIV status.

## **POOR WOMEN OF COLOR MAY BE DISPROPORTIONATELY IMPACTED BY LAWS**

As we have seen in the war on drugs, criminalizing behavior in response to a public health crisis does not alleviate an epidemic. Rather, it can further disenfranchise already marginalized communities. Over one quarter of U.S. HIV/AIDS diagnoses are among women. The vast majority of HIV-positive women (83%)<sup>vii</sup> are women of color who disproportionately live in poverty, care for children and families, lack access to quality health care and comprise a disproportionate percentage of HIV-positive people out of regular health care. In fact, nearly two-thirds of HIV-positive women (64%) are living on less than \$10,000 per year.<sup>viii</sup>

HIV and poverty are inextricably linked. Factors associated with poverty increase HIV/AIDS risk, including lack of access to health care services, unemployment and inability to pay for medication or care, homelessness, increased drug use, and the need to engage in potentially unprotected sexual acts for money or other necessities. Women are particularly vulnerable as they may experience financial or other pressures that keep them tied to an abusive partner and unable to implement safe practices in their sexual relationships. And for those women who are infected, when getting food on the table and maintaining a roof over one's head is the primary concern, medical care and treatment may be inconsistent. When HIV transmission and exposure are criminalized, poor women, and poor women of color are among those likely to be targeted if we look to incarceration statistics across the board that show the disproportionate arrest and incarceration of poor people of color. The impact of these prosecutions extends far beyond the women themselves, to the children and others who rely on them.

### **WOMEN PENALIZED AT ALL PHASES OF THE REPRODUCTIVE LIFECYCLE**

Criminal HIV exposure and transmission laws have the potential to reach far beyond their intended purpose and infringe on a woman's reproductive rights as well as her right to make decisions about her own medical care. Regardless of HIV status, women's reproductive and parental rights have historically been subject to state intervention, rationing and constriction.<sup>ix</sup> Women living with HIV have experienced extreme forms of governmental and medical meddling with their reproductive rights. Women living with HIV were counseled not to get pregnant and were offered hysterectomies or tubal ligations if diagnosed during their reproductive years. If and when they did become pregnant, they were advised to have abortions, regardless of whether they desired to be mothers.<sup>x</sup>

Regardless of medical advances in the reduction of mother to child transmission, in some parts of the country these practices continue and are sanctioned by the state. In Mississippi, individuals testing positive for HIV must complete a State Department of Health questionnaire with their health provider. This form, last updated in August of 2009, requires that the signer attest to receiving an explanation of the "necessity of not causing pregnancy or becoming pregnant"<sup>xi</sup>. In other words, HIV-positive women are being told by their medical provider, as required by the state, that they *must not* become pregnant. From the moment of diagnosis, then, they are denied that most fundamental of rights-- the right to reproductive privacy and freedom, and more specifically the right to bear children. The criminalization of transmission and exposure must be considered against this background.

Courts and other state actors have demonstrated their willingness to sacrifice the liberty and privacy interests of the mother in the name of protecting fetal health. Courts have, on occasion, become involved in the battle between a woman and her doctor or hospital over the decision to perform a C-section.<sup>xii</sup> These women's experiences raise concern about the possible use of criminalization statutes to charge women who elect not to take anti-retrovirals during pregnancy, or not to undergo a C-section after hearing her doctor's medical advice. A court order in the first instance or a criminal prosecution in the second are both dangerous intrusions on the privacy and liberty interests of the mother.

In 2009, a federal judge in Maine heard the case of Ms. T., a pregnant, HIV-positive woman who was charged with possession of false documents. The judge sentenced the woman

to 238 days in jail, an upward departure from the federal sentencing guidelines, and sentencing recommendations of both the prosecution and defense. The judge reasoned that it was his “obligation . . . to protect the public from further crimes of the defendant, and that public... should likely include that child she's carrying.” He went on to explain, “I don't think that the transfer of HIV to an unborn child is a crime technically under the law, but it is as direct and as likely as an ongoing assault... I think I have the obligation to do what I can to protect that person, when that person is born, from permanent and ongoing harm.”<sup>xiii</sup> In this case Ms. T’s liberty was sacrificed, and her freedom to make medical decisions was dispensed with, all in the name of preventing vertical transmission; Ms. T. was criminalized for being HIV-positive and pregnant.<sup>xiv</sup>

While criminalization laws originated in part to protect women survivors of sexual violence, the laws are, in some cases, written broadly enough that transmission from mother to child could be covered, and HIV-positive women would be criminalized for having children. The Maryland criminalization statute, for instance, reads simply: “A person with HIV who knowingly transfers or attempts to transfer the virus to another individual is guilty of a misdemeanor”, punishable by a fine and/or imprisonment not exceeding three years.<sup>xv</sup> This statute is shockingly broad, and a zealous prosecutor could argue that a mother who chose not to follow all of her doctor’s recommendations while pregnant should be found guilty under the statute.

Compelled intervention or the threat of criminalization may well run counter to the state’s interest in promotion of public health. A woman who is forced to undergo medical treatment or surgical interventions against her wishes may end up alienated from her medical provider, and turn in fear and anger from the system that would maintain and monitor her health. Similarly, a woman who fears the threat of criminal prosecution for her medical decisions, and/or for giving birth to an HIV-positive child may abandon the health care system altogether in hopes of protecting her family structure. To do so would have devastating health consequences for both mother and child.

## **NEGATIVE CONSEQUENCES OF HIV TRANSMISSION AND EXPOSURE LAWS**

The original intent of HIV exposure and transmission laws may have been based on protecting people’s right to health and life saving information, but as they have been put to use, they have resulted in the perpetration of unintended human rights violations. Criminalizing HIV exposure and transmission is often justified as retribution, or as a form of HIV prevention by deterring HIV-positive people from engaging in risk-taking behavior without disclosing their status. But like with so many criminal responses to behavior modification, HIV exposure and transmission laws have not been shown to achieve the stated goals.

In the U.S., 27 out of 32 states attach felony sentences to their criminal HIV exposure and transmission laws, or assign sentence or penalty enhancement to certain crimes committed by HIV-positive people.<sup>xvi</sup> The consequences of being charged with a felony crime in the U.S. can have dire consequences including losing the right to vote in elections, losing eligibility for life-saving benefits like government-subsidized housing, and endangering one’s immigration status. Consequences for women can be especially severe as their role as caretakers for children and dependents becomes compromised. As convicted felons, women can lose custody of their children, and as for all ex-offenders, they are virtually guaranteed to face difficulties finding work upon reentry. Job applicants must not only disclose that they have a criminal record but

list what the offense is, thereby forcing people convicted under HIV transmission and exposure laws to disclose their HIV status to putative employers.

In some states a conviction under the HIV exposure and transmission law triggers the added punishment of sex offender registration. Again for women, this can be a devastating blow to both them and their family's cohesion and wellbeing. Because most sex offender laws were developed to monitor people convicted of child molestation and rape, registered sex offenders can rarely maintain custody of their children and in many cases cannot live near or enter schools, playgrounds and other locations frequented by children making parenting virtually impossible. Finding employment is also made more difficult for women once they are registered sex offenders because many jobs traditionally held by women are off limits to registered sex offenders like child day care, or teaching.

The perpetuation of stigma and misinformation is chief among the negative consequences resulting from the creation and enforcement of HIV-specific criminalization laws and is contrary to international human rights norms. One woman explained the stigma she fears facing if she discloses her HIV status. "I refuse to be judged by this disease for I am much, much more than the disease. So, I keep this a secret. As a teacher I could lose my job. Not disclosing could get me jail time. Therefore, I no longer date. It's difficult being a leper of the 21st century."<sup>xvii</sup> The criminalization of HIV exposure and transmission dilutes the public health message of shared responsibility for sexual health between sexual partners and places the responsibility for HIV prevention exclusively on those already living with HIV. The laws also result in a de facto "choice" between involuntary disclosure of one's HIV-status, or risking prosecution at anytime under the law. According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), people have an ethical obligation to disclose their HIV-status to sexual partners, but at the same time, "everyone has the right to privacy about their health and should not be required by law to reveal such information, especially where it might lead to serious stigma, discrimination and possibly violence, as in the case of HIV status."<sup>xviii</sup>

Many criminalization laws rely on the defendant's knowledge of their serostatus as the predicate to prosecution. Results of a survey of HIV-positive women, conducted by the U.S. Positive Women's Network (PWN) indicate that fear of criminal charges and incarceration can reduce incentives to get tested and know one's HIV status; prevent HIV-positive individuals from accessing regular medical care; and impede HIV medical research because people may fear information gathered during the course of research regarding their HIV status could be used against them in a criminal case. As one woman stated, "I think it makes people just go underground with their status and avoid testing or treatment when they suspect they may be infected."<sup>xix</sup>

This phenomenon has a unique impact on women. If men choose against testing as a way to shield themselves from criminal liability for exposure, they put their sexual partners at heightened risk for HIV infection. By avoiding a possible diagnosis, they are unable to benefit from medication, and in doing so, may be maintaining an unnecessarily high viral load. A high viral load in turn increases infectivity. Consequently, an abusive male partner who may be positive but undiagnosed, and who controls the terms of sex and condom use puts his partner(s) at an elevated risk for infection. Criminalization laws play a role in this dynamic.

HIV criminalization laws can be used to harass or intimidate the HIV-positive person in a relationship. One woman who took the PWN survey suggested, "Someone could know [your HIV

status] because you told them and get angry with you or want to take revenge and lie and say they never knew [your status] and you could be charged.”<sup>xx</sup>

A woman in South Carolina faced precisely this situation. After experiencing escalating abuse by an ex-boyfriend she ended their relationship. This led to continued harassment and ultimately a charge against her under the South Carolina HIV exposure and transmission law. During the time of their relationship she had disclosed her HIV status and the couple had decided that they would like to have a child together. He took her to medical appointments where they discussed strategies for reducing the risk of HIV infection for serodiscordant couples hoping to conceive a child. She became pregnant and gave birth to a healthy baby. After she left the abusive boyfriend he began to harass her, disclosing her HIV status to her family and friends. This harassment culminated in his filing charges against her under South Carolina’s HIV exposure and transmission law. She should have been innocent under the law-- he knew her status when they were together. But rather than face a humiliating trial, she decided to take a plea, and accepted jail time. Since her release she has been unable to regain custody of their child and has found it difficult to find work because she must disclose her felony crime, and thus her HIV status, to all future employers in a state where HIV stigma is rampant.

Criminalization may be rationalized in part to protect women from the transmission of HIV as a willful act of aggression or harm, but HIV specific criminal laws are neither effective nor necessary for protecting vulnerable populations from coercive or violent sexual behavior.<sup>xxi</sup> Criminal law already covers crimes of physical and sexual violence. Meanwhile the specter of criminalization of HIV transmission or exposure likely causes women to suffer in unique and unanticipated ways. HIV-positive women in abusive relationships may be reluctant to disclose their status for fear of heightened abuse, as HIV is often used as a source of humiliation, isolation, and aggression in physically or emotionally violent relationships. In a jurisdiction that criminalizes HIV exposure or transmission, a woman who chooses not to disclose in order to protect her own safety, or that of her children, risks being charged and tried as a criminal. No woman should have to make this choice between safety and prosecution.

Like the application of many criminal laws in the U.S., prosecutions and convictions are disproportionately applied to members of marginalized groups including sex workers, men who have sex with men, women, people who use drugs, immigrants, and people of color. As one woman noted, “women, and especially women of color and economically disadvantaged women so often receive the burden of blame for HIV transmission.”<sup>xxii</sup> These marginalized groups are already “blamed” and stigmatized for transmitting HIV. Julie Auer Gautreau, a public defender in Tennessee, noted recently that penal laws that single out HIV-positive people are “just another way of hurting the true victims of abuse.” Tennessee has a law that accelerates misdemeanor prostitution charges to felony charges if the sex worker is HIV-positive. Gautreau went on to explain that “I understand there is a public policy to control the spread of HIV, but I’m not sure that accelerating prostitution to a felony charge and meting out more severe punishment is the way to deal with the crisis . . . It may be that they, in effect, present a kind of public danger, but in the case of every prostitute I’ve ever represented, you are dealing with somebody who is deeply troubled, who has suffered for years, and whose addiction . . . is the result of some kind of abuse or mental illness....”<sup>xxiii</sup>

Finally, criminalization as a practice is ineffective and misguided, and does not achieve the intended public health goals. While there may be widespread support for imposing criminal

liability on those who knowingly infect others, these cases are extremely rare. And by criminalizing exposure without regard to intent, all responsibility for protection against HIV transmission is borne by individuals living with HIV. Criminalization of HIV transmission not only infringes on privacy by regulating sex, but also lacks credible evidence that it protects individuals or society.<sup>xxiv</sup> Criminalization does nothing to raise awareness of HIV/AIDS, promote testing, to encourage victims of rape or sexual violence to seek justice, or advance fair, unbiased trials. It does far too little to punish purposeful sex offenders to be considered sound policy. HIV specific criminal exposure and transmission laws do not meet public health goals and should be reformed.

## **ALTERNATIVES TO CRIMINALIZATION OF HIV TRANSMISSION AND EXPOSURE<sup>1</sup>**

With the adoption of the United States National HIV/AIDS Strategy, the U.S. Department of Justice has been tasked with providing technical assistance to states seeking to amend or eliminate their HIV exposure and transmission laws.<sup>xxv</sup> This begs the question – what are viable alternatives to HIV criminal exposure and transmission laws? It is important to consider the objectives and proposed outcomes of possible alternatives to criminalization, and whether those objectives further criminal justice, public health, and/or human rights goals. This is particularly important given that these goals often conflict when thinking about the best interest of the HIV positive individual. The goals of criminal law include: incapacitation, retribution, rehabilitation, and deterrence. The goals of the HIV and human rights framework are different and include (but are not limited to) improving the quality of life of people living with HIV/AIDS through access to treatment, services, and support; stopping the spread of HIV/AIDS through access to prevention education; providing access to knowledge of one’s HIV status through voluntary counseling and testing; providing access to treatment; and providing access to a full range of sexual and reproductive health services. It is important to consider both which set of goals are driving alternative approaches to criminalization of HIV transmission, and also to consider how a human rights based approach can underpin the proposed alternative(s).

### **Human Rights Framework**

The human rights framework offers a way to keep the rights of the HIV positive individual central. The human rights approach is grounded in international agreements and provides a framework for thinking about the legal response to HIV.<sup>xxvi</sup>

In 2006, governments agreed upon a Political Declaration on HIV/AIDS that outlined some of the principles that should drive a human rights based response with specific regard to HIV. Laws that criminalize HIV transmission and exposure undermine progress towards these commitments. These include (as summarized by the UNAIDS Reference Group on HIV and Human Rights):

- Ending the criminalization of HIV transmission and exposure

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<sup>1</sup> Many thanks to Fazeela Siddiqui for her assistance in preparing this section of the presentation.

- Promoting a social and legal environment that is supportive of and safe for voluntary disclosure of HIV status;
- Removing any legal barriers to provision of HIV prevention measures, including comprehensive age- appropriate sex education and harm reduction services, such as needle-exchange programs and opioid substitution treatment;
- Enacting and enforcing comprehensive anti-discrimination laws that protect people living with HIV or at risk of infection;
- reviewing and repealing laws that criminalize or further marginalize vulnerable groups such as sex workers, people who use drugs, and men who have sex with men, driving them away from the prevention, treatment, care and support services they need;<sup>xxvii</sup>

The United Nations Joint Programme on HIV/AIDS, many non-governmental organizations, and advocates for HIV positive people often utilize core human rights principles to define a set of alternative areas to focus on instead of criminalization of HIV transmission including but not limited to:

- Utilizing human rights principles in the response: participation, transparency, accessibility, availability, affordability, quality
- Involving people living with HIV/AIDS in the law making process
- Investing in prevention education programs
- Ensuring access to voluntary HIV testing and pre- and post- test counseling
- Making treatment and care accessible, affordable, available, and of high quality
- Working to end sexual violence
- Investing in programs that help individuals get out of abusive relationships
- Ensuring access to post-exposure prophylaxis
- Investing in programs that are demonstrated to reduce sexual violence in communities (inclusive of MSM, LGBT)
- Strengthening anti-discrimination laws to ensure protection of people living with HIV
- Building privacy and confidentiality laws around testing
- Building systems of support around disclosure
- Promoting informed public debate and dialogue

### **The Criminal Justice Framework**

Alternatives to criminalization within the criminal justice system include: alternative dispute resolution, restorative justice and mediation. These approaches may move away from the most punitive elements of the criminal justice system, but they do little to address the negative consequences of criminalization that include stigmatizing PLWHA, perpetuating myths and misunderstandings about HIV transmission, and putting all responsibility for HIV prevention on HIV-positive individuals. For women who have been infected by their partners, an alternative criminal justice framing could help to address the sense of injury suffered by infection, and may help to facilitate or mediate an apology and decrease the need for retribution through

incarceration. These guiding principles of restorative justice offered by the U.S. Office of Justice Programs reinforce this:

- Crime is an offense against human relationships.
- Victims and the community are central to justice processes.
- The first priority of justice processes is to assist victims.
- The second priority is to restore the community, to the degree possible.
- The offender has personal responsibility to victims and to the community for crimes committed.
- Stakeholders share responsibilities for restorative justice through partnerships for action.
- The offender will develop improved competency and understanding as a result of the restorative justice experience.<sup>xxviii</sup>

The programs for alternative dispute resolution, restorative justice, or mediation are varied and can be introduced at different times during an individual's experience with their HIV diagnosis and potential desire to utilize the criminal justice system. For example during prevention education, when one is receiving knowledge of their HIV status, during testing and disclosure, before prosecution, or during a prosecution. These programs can be varied and include mediation, facilitating apologies, working with prosecutors and judges to ensure sensitivity in dealing with issues of HIV, and engaging with the criminal justice system to find alternative sentencing arrangements.

## **Next Steps**

Alternatives to criminalization of HIV transmission and exposure must be grounded in human rights principles, and must further broader efforts to end stigmatization of HIV-positive people. In the short term there are several steps that can be taken to construct clear alternatives to criminalization of HIV transmission. These include:

- Supporting the new White House National AIDS Strategy that acknowledges that criminalization of HIV transmission undermines HIV programs.
- Promote research on the effect of criminal transmission laws particularly on women and people of color.
- Advocate for a shift in focus (financially and otherwise) from criminalization to prevention and treatment.
- Educate actors in the criminal justice system including judges, defense attorney's, and prosecutors.
  - Judges and attorneys must be apprised of the most up-to-date medical breakthroughs in HIV treatment and prevention and the social drivers of the HIV epidemic.
  - Judges and attorneys must be apprised of the consequences of being charged under HIV criminalization laws as well as the consequences of plea agreements for people living with HIV.
  - Alternatives to criminal sentencing should be available through state bar associations or local courts.

- Advocating for the use of alternative models of criminal justice for those individuals currently being prosecuted.
- Educate the media on the stigmatizing and often false information being spread through reporting on HIV criminalization cases.
- Continue to support prevention, treatment, and care initiatives based on human rights principles.
- Work toward repealing HIV specific criminal exposure and transmission laws.

This discussion on alternatives is meant to be a starting point in a much larger discussion around advocacy to end the criminalization of HIV transmission and exposure. As advocates it is necessary to clarify what is meant by “alternatives to criminalization” and how to simultaneously work towards ending the practice of criminalization as well as finding alternatives in our existing criminal justice system for people who continue to be prosecuted under HIV criminalization provisions.

## ENDNOTES

<sup>i</sup> See Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Title XXVI—Preventive Health Services with respect to Acquired Immune Deficiency Syndrome, § 2609.

<sup>ii</sup> See, e.g. “Verdict on a Virus: Public Health, Human Rights and Criminal Law,” International Planned Parenthood Federation (IPPF), Global Network of People Living with HIV/AIDS (GNP+), and International Community of People living with HIV/AIDS (ICW), 2008. See also J Csete et al, *Vertical HIV Transmission Should be Excluded from Criminal Prosecution*, 17(34) REPRODUCTIVE HEALTH MATTERS 154(2009), at 156. (“The focus of HIV-specific criminal laws is predominately on sexual transmission, and they are being used to prosecute people living with HIV who engage in consensual sex . . . Some of these criminal laws have been passed with the express intent of protecting women from male sex partners who know that they have HIV but fail to disclose their HIV status before having sex. As has been noted by UNAIDS, however, women may in fact be at greater risk of prosecution because they are more likely to be tested for HIV and know their status than are their male Partners . . . A ‘model’ HIV law that has had particular currency in Africa has been aggressively promoted by Action for West Africa Region-HIV/AIDS (AWARE-HIV/AIDS), a US Agency for International Development (USAID)-funded NGO that ended its work in 2008.”)

<sup>iii</sup> The Center for Disease Control (CDC) states on their website that “contact with saliva, tears, or sweat has never been shown to result in transmission of HIV, . . . and . . . [b]iting is not a common way of transmitting HIV. In fact, there are numerous reports of bites that did not result in HIV infection.”

<sup>iv</sup> Cal. Health and Safety Code § 120291, Cal. Health and Safety Code § 1621.5.

<sup>v</sup> Mont. Code Ann. §§ 50-18-112, 50-18-113

<sup>vi</sup> See e.g. UNAIDS Policy Brief, *Criminalization of HIV Transmission*, August 2008; *Ten Reasons Why HIV Exposure and Transmission Criminalization Harms Women*, ATHENA Criminalization and HIV – Implications for Women Working Group, 2009.

<sup>vii</sup> Henry J. Kaiser Family Foundation, “HIV/AIDS Policy Fact Sheet: Women & HIV in the United States.” September 2009.” Available at <http://www.kff.org/hiv/aids/upload/6092-07.pdf>

<sup>viii</sup> *Ibid.*

<sup>ix</sup> See U.S. Positive Women’s Network Human Rights Survey 2010. Release forthcoming, 2011; *Troxel v. Granville* 530 U.S. 57 (2000) (reaffirming that the liberty interest of a parent in the care, custody and control of their children is one of the oldest fundamental liberty interested recognized by the court); See also *New Jersey Division of Youth and Family Services v. L.V.*, 889 A.2d 1153 (N.J. Super. Ct. Ch. Div. 2005) (New Jersey Youth and Family Services (DYFS) filed an action against an HIV-positive mother after her child was born, alleging abuse and neglect of her child because the mother refused to take antiretroviral medication (ARVs) to reduce the risk of transferring HIV to

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her fetus during pregnancy. The court decided that her medical choice did not constitute an act of neglect or abuse under New Jersey law).

<sup>x</sup> U.S. Positive Women's Network Human Rights Survey 2010. Release forthcoming, 2011.

<sup>xi</sup> Mississippi State Department of Health, "HIV Interview Record". August 13, 2009.

<sup>xii</sup> See e.g. *Jefferson v. Griffin Spalding County Hospital Authority*, 274 S.E.2d 457, 458 (Ga. 1981). (Court ordered caesarean section when doctors estimated fetus had a 99% chance of dying in a vaginal birth and a 50% chance of survival for the woman); *In re Madyun Fetus*, 114 Daily Wash.L.Rptr. 2233 (D.C. Super. Ct. 1986) *appended to* *In re A.C.*, 573 A.2d 1235 (D.C. 1990) (court ordered caesarean section where the procedure was in the interest of both the mother and the fetus).

<sup>xiii</sup> Lynn Harris. "Jailed for Her Child's Own Good?" June 3, 2009. Salon.com. Available at [http://www.salon.com/life/broadsheet/feature/2009/06/03/bangor\\_judge](http://www.salon.com/life/broadsheet/feature/2009/06/03/bangor_judge)

<sup>xiv</sup> On appeal, Ms. T.'s case was remanded for resentencing, at which time she was released on bail, pending the appeal.

<sup>xv</sup> Md. Code Ann., Health-General § 18-601.1.

<sup>xvi</sup> See e.g. states with felony sentences for HIV Exposure & Criminalization. Arkansas: Ark. Code Ann. § 5-14-123; California: Cal. Health and Safety Code § 120291, Cal. Health and Safety Code § 1621.5; Colorado: Colo. Rev. Stat. § 18-7-205.7, Colo. Rev. Stat. § 18-7-201.7; Florida: Fla. Stat. Ann. § 381.0041(11)(b), Fla. Stat. Ann. § 796.08(4), Fla. Stat. Ann. § 775.0877; Georgia: Ga. Code Ann. § 16-5-60(c), Ga. Code Ann. § 16-5-60(d); Idaho: Idaho Code § 39-608; Illinois: 720 Ill. Comp. Stat. § 5/12-16.2; Indiana: Ind. Code § 35-42-1-7; Iowa: Iowa Code § 709C.1; Kansas: Kan. Stat. Ann. § 21-3435; Kentucky: Ky. Rev. Stat. Ann. § 529.090(3) & (4); Michigan: Mich. Comp. Laws Ann. § 333.5210; Mississippi: Miss. Code Ann. § 97-27-14(1); Missouri: Mo. Rev. Stat. § 191.677, Mo. Rev. Stat. § 567.020; Nevada: Nev. Rev. Stat. § 201.205, Nev. Rev. Stat. § 201.358; North Dakota: N.D. Cent. Code § 12.1-20-17; Ohio: Ohio Rev. Code Ann. § 2903.11, Ohio Rev. Code Ann. §§ 2907.24, 2907.25; Ohio Rev. Code Ann. § 2907.241, Ohio Rev. Code Ann. § 2921.38; Oklahoma: Okla. Stat. tit. 21, § 1031, Okla. Stat. tit. 21, § 1192.1; Pennsylvania: Pa. Cons. Stat. Ann. § 2704, Pa. Cons. Stat. Ann. § 5902; South Carolina: S.C. Code Ann. § 44-29-145; South Dakota: S.D. Codified Laws §§ 22-18-31, 22-18-33, 22-18-34; Tennessee: Tenn. Code Ann. § 39-13-109, Tenn. Code Ann. § 39-13-516; Utah: Utah Code Ann. § 76-10-1309; Virginia: Va. Code Ann. § 18.2-67.4:1(A); Washington: Wash. Rev. Code Ann. § 9A.36.011. See also e.g. states with sentence or penalty enhancement for HIV Exposure & Criminalization. Alaska: Alaska Stat. § 12.55.155(c)(33); California: Cal. Penal Code § 12022.85, Cal. Pen. Code § 647f; Colorado: Colo. Rev. Stat. § 18-3-415.5; Wisconsin: Wis. Stat. § 973.017.

<sup>xvii</sup> U.S. Positive Women's Network Human Rights Survey 2010. Release forthcoming, 2011.

<sup>xviii</sup> UNAIDS Policy Brief: Criminalization of HIV Transmission, August 2008.

<sup>xix</sup> U.S. Positive Women's Network Human Rights Survey 2010. Release forthcoming, 2011.

<sup>xx</sup> U.S. Positive Women's Network Human Rights Survey 2010. Release forthcoming, 2011.

<sup>xxi</sup> Scott Burris and Edwin Cameron, *The Case Against Criminalization of HIV Transmission*, 300(5) JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 578 (2008), at 580.

<sup>xxii</sup> U.S. Positive Women's Network Human Rights Survey 2010.

<sup>xxiii</sup> *HIV-positive Knoxville woman a walking felony*, Knox News, J.J. Stambaugh, June 30, 2009.

<sup>xxiv</sup> Scott Burris and Edwin Cameron, *The Case Against Criminalization of HIV Transmission*, 300(5) JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 578 (2008), at 579.

<sup>xxv</sup> United States National HIV/AIDS Strategy Federal Implementation Plan, p 26 (July 2010) (DOJ and HHS OS will identify a departmental point of contact and provide technical assistance resources to States considering changes to HIV criminal statutes in order to align laws and policies with public health principles).

<sup>xxvi</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, available at: <http://www.unhcr.org/refworld/docid/4538838d0.html> [accessed 12 November 2010]

<sup>xxvii</sup> UNAIDS Reference Group on HIV and Human Rights, Statement on Criminalization of HIV Transmission and Exposure [http://data.unaids.org/pub/Report/2009/20090303\\_hrrefgroupcrimexposure\\_en.pdf](http://data.unaids.org/pub/Report/2009/20090303_hrrefgroupcrimexposure_en.pdf)

<sup>xxviii</sup> Office of Justice Programs US Government, <http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/welcome.htm>