

January 12, 2021

Dear Legislators,

The ACLU of North Dakota supports House Bill 1106, legislation that would finally end the criminalization of HIV in North Dakota.

We oppose HIV criminalization for three main reasons:

1) Stigma and harm to people living with HIV.

Simply put, it's wrong to punish people for something they wouldn't be punished for, or would be punished for more lightly, if they were HIV negative.

HIV criminalization contributes to stigma against people living with HIV by assigning them moral blame for the virus. It also contributes to fearmongering, portraying the possibility of becoming HIV positive as a uniquely horrible fate and people living with HIV as dangerous and deceptive.

Finally, HIV criminalization undermines the message of antidiscrimination laws. When the government overtly discriminates against people living with HIV in criminal law, it's not surprising that private actors also discriminate against people living with HIV in employment, housing, education, and healthcare settings.

2) Risks to public health.

Public health research and theory doesn't support HIV criminalization.

First, studies have shown that these laws don't reduce the spread of HIV, which undermines the justification for criminalization. Second, major medical organizations, including the American Medical Association, support decriminalizing HIV. Finally, HIV criminalization can actually lead to the spread of HIV in some ways.

This is because criminalization discourages testing and treatment. Because one must "know" one's status before being convicted under current law, some people who merely suspect they are living with HIV may put off testing to avoid the risk of criminalization.

Consistent HIV treatment prevents the spread of the virus. This is jeopardized by criminalizing the virus, which is why it must end.



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3) Disparate impact on marginalized communities and contribution to mass incarceration.

HIV criminalization contributes to larger problems within the criminal legal system.

The U.S. incarcerates Black, Latinx, indigenous, low-income, and disabled people at much higher rates than white people, wealthy people, and non-disabled people. HIV criminalization, unsurprisingly, is also enforced against these marginalized communities at a higher rate. In California, for example, Black women made up 4% of people living with HIV in the state, but 21% of those arrested in relation to their HIV status.

The U.S. also incarcerates more people per capita than any other country in the world. HIV criminalization is another way to send more people to prison for longer. In addition to convictions directly related to HIV, the threat of HIV-related prosecution can pressure people into accepting plea bargains for other charges.

By passing House Bill 1106 and decriminalizing HIV in North Dakota, the legislature can rectify serious flaws in state law and finally treat people living with HIV the dignity and respect they deserve.

We often hear about “North Dakota nice.” HIV criminalization is the opposite and should be eliminated.

Sincerely,

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