DOJ Rules Against Tennessee's Criminal Laws Targeting People With HIV

Tennessee's aggravated prostitution statute against people with HIV violates the Americans with Disabilities Act, says Justice Department.

December 5, 2023 By Trent Straube

The Department of Justice (DOJ) found that Tennessee's HIV criminalization laws violates the Americans with Disabilities Act (ADA). Specifically, the department found that Tennessee's aggravated prostitution statute singles out people with HIV for harsher punishment simply because of their HIV status. Under that statute, a charge that would otherwise be a misdemeanor is elevated to a felony if the person has HIV, regardless of risk of harm. What's more, if convicted, individuals are mandated to lifetime placement on the sex offender registry.

The DOJ announced its finding on December 1, World AIDS Day. It's the result of a complaint filed January 2022 by the Center for HIV Law and Policy (CHLP).

"The implications of the DOJ's findings are far-reaching. This not only puts the state of Tennessee on notice that this is a serious issue, but it also serves as notice to other states with similar HIV criminal statutes," said CHLP executive director S. Mandisa Moore-O'Neal in a press statement.

"This is also an opportunity for other state coalitions organizing and educating around HIV criminalization to leverage these findings with lawmakers," she continued. "In a moment where many state budgets are already tight, the possibility of new and often costly litigation may be the impetus to change these laws."

In Tennessee, the prostitution charge typically targets disenfranchised people, and Black women, including transgender women, constitute most of the arrests, notes CHLP. You can read more about the data in "Enforcement of HIV Criminalization in Tennessee, The Williams Institute, UCLA School of Law (2022)."

"Tennessee's aggravated prostitution law is outdated, has no basis in science, discourages testing and further marginalizes people living with HIV," said Assistant Attorney General Kristen Clarke of the Justice Department's Civil Rights Division in a related DOJ press release. "People living with HIV should not be treated as violent sex offenders for the rest of their lives solely because of their HIV

status. The Justice Department is committed to ensuring that people with disabilities are protected from discrimination."

The DOJ finding came down as part of CHLP's innovative strategy to challenge HIV criminalization laws using the federal disabilities law several years go. CHLP's Team ATAC (ADA To Attack Criminalization) launched in 2018.

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HIV criminalization refers to the use of unfair laws to target people who have HIV—notably, African-American, Latino and LGBTQ people and women—and to punish them because of their HIV status, not because of their actions. Under outdated laws, people with HIV can be sentenced to prison in cases where HIV was not transmitted and their only crime was allegedly not disclosing their status.

It should be noted that repealing HIV laws does not mean that people can't be held accountable for intentionally transmitting HIV. Other laws may apply in such situations.

Many HIV laws were passed in the early days of the epidemic, when fear and lack of scientific knowledge about the virus reigned. Fast-forward four decades, and today we know, for instance, that people with HIV who take their meds and maintain an undetectable viral load do not transmit the virus sexually, a fact referred to as Undetectable Equals Untransmittable, or U=U.

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