Why Do Women Make Up 62% of HIV-Related Arrests in Kentucky?

And yet women account for only 17% of Kentucky's HIV population, according to a new report by the Williams Institute.

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Only 17% of the people living with HIV in Kentucky are women, and yet women account for 62% of the HIV-related arrests in the state since 2006, finds a new report on HIV criminalization in Kentucky. The report was issued by the Williams Institute at the University of California, Los Angeles School of Law, a think tank that specializes in sexual orientation and gender identity law and public policy.

The report noted at least 32 HIV-related arrests in Kentucky since 2006. Why the prevalance of women among the arrests? Because all but one of the arrests (97%) were for offenses related to sex work, including four arrests for "procuring" sex work. (The other HIV-related arrest was for donating organs, skin or tissue.)

After looking at data obtained from the Uniform Crime Reporting Section of the Kentucky State Police, researchers at the Williams Institute broke down the numbers and included their findings in a brief titled "Enforcement of HIV Criminalization in Kentucky." The report lists these key data takeaways:

- 32 people in Kentucky have been arrested for HIV-related crimes since 2006.
- 97% of all HIV-related arrests were related to sex work.
- 17% of people living with HIV in the state are women, but 62% of those arrested for HIV-related crimes were women.
- 8% of people living with HIV in the state are white women, but 59% of those arrested for HIV-related crimes were white women.

- 44% of the arrests cited only the HIV-related offense.

“A person can be arrested for sex work in the state without engaging in actual sex acts,” lead author Nathan Cisneros, an HIV criminalization analyst at the Williams Institute, said in a press release for the report. “That means Kentucky law can apply a felony charge—which carries a prison term of up to five years—to people living with HIV without requiring actual transmission or even the possibility of transmission.”

The report also noted that most of the HIV-related arrests were concentrated in Kenton County, which borders Cincinnati. Specifically, Kenton County has eight times more arrests than Jefferson County, the most populous county in Kentucky.

The Williams Institute explains HIV crime laws as follows:

> HIV criminalization is a term used to describe laws that either criminalize otherwise legal conduct or increase the penalties for illegal conduct based upon a person’s HIV-positive status. More than two-thirds of U.S. states and territories have enacted HIV criminal laws.
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> Kentucky has two HIV-specific laws. The first contains misdemeanor and felony provisions for engaging in sex work while knowingly or unknowingly being HIV-positive. The second has a felony charge for people living with HIV who donate blood, tissues, or organs.

Many of the HIV crime laws across the nation stem from the early days of the epidemic, when little was understood about transmission risks and fear and panic motivated lawmakers.

Fast-forward four decades—this summer marked 40 years of AIDS—and we now understand, for example, that people living with HIV who maintain an undetectable viral load cannot transmit the virus through sex, a fact referred to as Undetectable Equals Untransmittable, or U=U.

HIV crime laws, however, do not factor in the latest science. In many states, people with HIV can be sentenced to prison in cases where HIV was not transmitted, simply for allegedly not disclosing their statues.

A movement to repeal HIV-related laws has been gaining ground—and seeing successes. For example, earlier this year, Illinois became the second state (after California) to repeal its discriminatory HIV crime laws. Legislators in Missouri, Nevada and Virginia successfully reformed such laws during their 2021 sessions. For more about this movement, see “Breaking HIV Laws: A Roundup of Efforts to Decriminalize HIV.” And for a collection of related articles on this hot topic, click the hashtag #Criminalization.

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