



Take the Test and Risk Arrest?

June 26, 2012 By [Sean Strub](#)

Today (June 27) is National HIV Testing Day and there will be a truckload of press releases encouraging people to get tested for HIV. Getting tested for HIV is a good thing; knowing one's HIV status is important, both to protect one's own health as well as the health of one's partners.

But no one should get tested without also understanding the legal implications. HIV criminalization is real, it is happening all over the country and it is on the increase.

The slogan for National HIV Testing Day is "**Take the Test and Take Control**". That slogan rings hollow when it isn't accompanied by information about the legal risks one undertakes when getting tested. The slogan one hears in some quarters is "**Take the Test and Risk Arrest**"; the fear of prosecution is discouraging HIV testing.

I believe it is unethical to encourage people to get tested without making sure they also understand the legal ramifications of a positive test result. In many parts of the country, once someone tests positive, they are told they must sign an "acknowledgement form" noting that they received their positive test result, were appropriately counseled and citing that state's HIV criminalization statute.

Sometimes that form is given to the person moments after they get the test result, when the person is frequently in a state of semi-shock and in no position to be signing a legal document. Those forms have come back to haunt people in court at a later date, when they are used as proof that the person knew they had HIV and were obligated to disclose.

Even someone who is diligent about disclosing can be caught up in HIV criminalization prosecutions. A survey by POZ a few years ago showed that 28% of respondents had a circumstance where they believed they had disclosed but later found out that a sexual partner did not understand them and thought they had not disclosed. There have been many prosecutions that were revenge cases, a relationship that went bad and someone wanted to get even.

Every person with HIV is one disgruntled ex-partner away from ending up in a courtroom. The chorus of calls to get tested would be more credible and more honest if they also included tips on how and where to get tested anonymously and how to protect against the risk of HIV criminalization.

It discouraging to see all the AIDS organizations and other institutions cranking out press releases celebrating National HIV Testing Day while remaining silent about how HIV criminalization is ruining lives and locking up people with HIV.

If they really wanted people to get tested, they would work a lot harder at making it safe to do so.

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