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Author

Hasenbush, Amira

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HIV CRIMINALIZATION IN FLORIDA

Penal Implications for People Living with HIV/AIDS

Amira Hasenbush

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EXECUTIVE SUMMARY

A. INTRODUCTION

HIV criminalization is a term used to describe statutes that either criminalize otherwise legal conduct or that increase the penalties for illegal conduct based upon a person's HIV-positive status. While only one HIV criminalization law can be found in federal law, more than two-thirds of states and territories across the United States have enacted their own HIV criminal laws. Some HIV criminal laws do not require transmission of HIV, and in some states, these laws criminalize conduct that poses a negligible risk of transmission, such as spitting or biting.

Florida criminalizes people living with HIV and other sexually transmitted diseases (STDs) in the contexts of sex work, nonconsensual sex offenses, donation of blood and other bodily products, and consensual sex without disclosure.

The purpose of this study is to provide an overall understanding of the enforcement of HIV criminalization laws in Florida and assess any preliminary findings indicating disparities between subpopulations. Given the movement across the United States, including in Florida, to modernize HIV-specific criminal laws to bring them in line with current medical science, analysis of the enforcement of the laws helps to inform policy and legislative decision-making with data and a deeper understanding of how the laws have been used in the real world. This is the third state in which the Williams Institute has provided comprehensive data analysis on the enforcement of HIV criminalization laws.

In Florida, "criminal transmission of HIV" does not require any actual transmission to trigger criminal penalties. Additionally, the laws have not been updated to take into account use of preventive methods of reducing transmission risk, such as use of barrier protections or reducing viral load to an untransmittable level.

B. CRIMINAL HISTORY RECORD INFORMATION DATA

Given the lack of comprehensive data on the use of HIV criminal laws in Florida, Williams Institute researchers contacted Criminal Justice Information Services at the Florida Department of Law Enforcement and requested access to criminal history record information (CHRI) data from 1986 through the end of 2017. CHRI data document all interactions an individual may have with the criminal justice system, from every event beginning at arrest through conviction and sentencing, so these data provide a full chronological record of how these laws are being utilized.

C. KEY FINDINGS

- There is evidence of disparities in enforcement of HIV criminalization laws related to geography, race/ethnicity, sex at birth, or sex worker (or suspected sex worker) status.
- When considering the demographics of people living with HIV in Florida, White women were more likely to be arrested for an HIV-criminal offense than other groups.
- In HIV and STD offenses involving sex work, Black women were significantly more likely to be convicted for the disease-specific offense and significantly less likely to be released without a conviction than all other groups.

- Black men were more likely to be convicted of an HIV-related offense than White men and White women.
- Convictions for HIV arrests were twice as likely when there was a concurrent sex work arrest than when the HIV offense occurred outside of the context of sex work.

D. HIGHLIGHTED DATA

- Overall, there were 874 HIV-related arrests in Florida from 1986 to 2017.
- There appeared to be almost no enforcement before 1993, after which, on average, there were 36 HIV-related arrests annually. In 2003, arrests reached a record high, with 52 arrests occurring that year.
- Individuals were arrested under HIV-related statutes in 47 out of the 67 counties in Florida.
 - Miami-Dade and Broward Counties have the highest prevalence of HIV in the state, yet the proportion of HIV-related arrests was lower than expected. Miami-Dade and Broward Counties represented 24% and 18%, respectively, of the people living with HIV in the state, but only 4% and 3%, respectively, of the HIV-related arrests throughout the state.
 - On the other hand, Duval County is home to only 6% of the people living with HIV in Florida, but 23% of all HIV-related arrests in the state.

DEMOGRAPHICS

- More than four in ten people arrested under an HIV-related offense were Black (43%), and none of the people arrested were recorded as Latino/a.
- Over half (56%) of all individuals arrested under an HIV-related offense were women. As a point of comparison, 27% of people living with HIV in Florida in 2017 were women.¹
- Black men were more likely to be arrested for HIV-related offenses than their White counterparts: 17% of HIV-related arrests were of White males, while 22% of HIV-related arrests were of Black males.
 - However, when comparing the numbers directly to the underlying population of people living with HIV, White women appeared to be the group most disproportionately arrested under HIV-related laws: they made up only 4% of the population of people diagnosed with HIV in Florida, but they were 39% of HIV-related arrests in the state.
 - Black women were also overrepresented among HIV-related arrests when compared to the underlying population of people living with HIV: Black women were 18% of the people living with HIV in Florida, but made up 23% of the HIV-specific arrests.
- The disproportionalities in arrest rates across the state appeared differently for some groups when viewed at the county level. The extreme overrepresentation of White women occurred in each of the eight counties with the highest number of arrests. On the other hand, Black women were overrepresented among arrests in Duval and Orange Counties. Black men were overrepresented among arrests in Miami-Dade and Broward Counties. White men were underrepresented among arrests in every large county except for Miami-Dade.

OUTCOMES

- Overall, 35% of HIV-related arrests resulted in a conviction for an HIV-related crime. (Forty-four percent of incidents did not result in any conviction, and 20% had convictions for non-HIV-related offenses.)

- Sentence lengths varied by the underlying offense. People convicted of HIV exposure were sentenced to a median of three years. People convicted of HIV sex work incidents were sentenced to a median of a year. Those convicted of other STD exposures were sentenced to a median of 10 months, and those convicted of STD sex work offenses were sentenced to a median of three months.
- When analyzing case outcomes by race/ethnicity and sex, clear disparities emerged in the context of sex work. White men were the least likely to be convicted of an HIV offense in the context of sex work (in 18% of cases), followed by White women (36%) and Black men (42%). Black women (60%) were the most likely to be convicted of an HIV-specific offense in sex work offenses. This same pattern held true in sex work offenses related to STDs other than HIV.
- In HIV exposure incidents that did not involve sex work, Black women were the least likely to be convicted of an HIV offense (in only 3% of all cases), and Black men were the most likely to be convicted (in 30% of all cases).
- Overall, conviction rates for HIV and other STD-related offenses were fairly similar.
- Large differences were observed between sex work incidents and exposure incidents unrelated to sex work. Sex work incidents were twice as likely as other exposure incidents to result in a conviction for an HIV or STD offense and half as likely to result in individuals being released without a conviction.

E. FUTURE RESEARCH

- Data point to some race-, sex-, and geographic-based disparities in the application of these laws. However, they do not provide an explanation of the root causes of these disparities. Future research is needed to pinpoint factors leading to these differences.
 - At the structural level, this includes assessing whether the disparities are a function of direct law enforcement targeting of White women, disparate prosecution of Black men and women, or higher HIV stigma in counties with disproportionately high arrest rates, like Duval. Future research could also explore whether awareness of HIV criminalization laws has an impact on individual or community level norms regarding disclosure and risk behaviors.
- Future research should explore HIV-related criminalization in the context of an individual's broader criminal history and whether a charge of an HIV crime impacts pleas, convictions, or sentences for other crimes.
- Future research could move beyond enforcement data to more accurately capture the impact and consequences of HIV criminalization from the perspective of affected individuals. For example: are there differences in how HIV status is discussed or treated between law enforcement officers and various subgroups of people in contact with the criminal system under these statutes? How did contact under these laws affect future HIV status disclosure behavior?
- Utilizing additional methods to study this population may have the added benefit of gaining representation of the distinct experiences of gender and sexual minorities living with HIV.

F. CONCLUSION

This report provides an overview of the use and enforcement of HIV-related laws in Florida. Preliminary analyses show some disparities based on race, sex, geography, and underlying related offenses.



INTRODUCTION

HIV criminalization is a term used to describe statutes that either criminalize otherwise legal conduct or that increase the penalties for illegal conduct based upon a person's HIV-positive status. While only one HIV criminalization law can be found in federal law,² approximately two-thirds of states and territories across the United States have enacted their own HIV criminal laws. Some HIV criminal laws do not require transmission of HIV, and in some states, these laws criminalize conduct that poses a negligible risk of transmission, such as spitting or biting.

Florida criminalizes people living with HIV and other sexually transmitted diseases in the contexts of sex work, nonconsensual sex offenses, donation of blood and other bodily products, and consensual sex without disclosure. See Table 1 for a summary of HIV Criminalization Laws in Florida.

Table 1. HIV Criminalization Laws in Florida (2018)

Code Section	Criminalized Conduct	Transmission Required	Statutory Sentence for a First Offense	Misdemeanor/ Felony and Degree
FLA. STAT. ANN. § 381.0041(11)(b)	Donation of blood, plasma, organs, skin, or other human tissue by a person who knows they have HIV and has been informed that they could transmit via donation	No	A term of imprisonment not exceeding 5 years and a fine of up to \$5,000	Third degree felony
FLA. STAT. ANN. § 384.24(1)	Sexual intercourse without disclosure of an STD ³ (not HIV) when the person knows they have it and has been informed that it is communicable through sexual intercourse	No	A definite term of imprisonment not exceeding 1 year and a fine of up to \$1,000	First degree misdemeanor
FLA. STAT. ANN. § 384.24(2)	Sexual intercourse without disclosure of HIV when the person knows they have it and has been informed that it is communicable through sexual intercourse	No	A term of imprisonment not exceeding 5 years and a fine of up to \$5,000	Third degree felony
FLA. STAT. ANN. § 775.0877	Transmission of body fluids during any of the following (or an attempt): sexual battery, incest, lewd & lascivious conduct on a person younger than 16, assault, aggravated assault, battery, aggravated battery, abuse of a child, elderly or disabled person, aggravated abuse of a child, elderly or disabled person, sex work, donation of blood, plasma, organs, skin, or other human tissue, human trafficking, or sexual performance by a person under the age of 18 ...after a previous HIV positive test was in the criminal record from a first offense of the actions listed above	No – explicitly excluded: "Nothing in this section requires that an HIV infection have occurred in order for an offender to have committed criminal transmission of HIV."	A term of imprisonment not exceeding 5 years and a fine of up to \$5,000	Third degree felony
FLA. STAT. ANN. § 796.08(4)	Prostitution or procuring another for prostitution after a previous positive STD ⁴ test (not HIV) and the person had been informed that they could transmit the STD through sexual activity	No	A definite term of imprisonment not exceeding 1 year and a fine of up to \$1,000	First degree misdemeanor
FLA. STAT. ANN. § 796.08(5)	Prostitution or offering to commit prostitution or procuring another for prostitution by engaging in sexual activity in a manner likely to transmit HIV after a previous positive HIV test and the person had been informed that they could transmit HIV through sexual activity	No	A term of imprisonment not exceeding 5 years and a fine of up to \$5,000	Third degree felony

Aside from previous research by the Williams Institute in the states of California⁵ and Georgia⁶, there is very little empirical evidence of how HIV criminal laws are being enforced and who the individuals are who are most impacted by HIV criminalization. Previous efforts to collect empirical data from media reports, law enforcement agencies through Freedom of Information Act requests, and traditional legal research⁷ have led to several compilations of data documenting the number of individuals who may have been convicted under HIV criminalization laws.⁸ However, these efforts have been limited as they do not reflect statewide population-level data and do not include comprehensive data across the spectrum from arrest through post-conviction events, including sentencing.⁹



STUDY OVERVIEW

A. DATA SOURCE

Given the lack of comprehensive data on the use of HIV criminal laws in Florida, Williams Institute researchers contacted Criminal Justice Information Services at the Florida Department of Law Enforcement and requested access to criminal history record information (CHRI) data.¹⁰ CHRI data are full data for the entire state that record any contacts an individual may have with the criminal system, from every event beginning at arrest through conviction and sentencing, so these data provide a full chronological record of how these laws are being utilized. After obtaining necessary security clearances from the Florida Department of Law Enforcement, Williams Institute researchers were able to access the de-identified criminal histories of all individuals who had had contact with the criminal justice system under all of the HIV- and STD-specific code sections enumerated in Table 1 from the time of the laws' enactment through 2017.¹¹ Because of the way the data were coded and stored, they could not easily be categorized under the statutes as delineated in Table 1. Instead, incidents were divided into four categories: (1) those involving sex work and HIV, (2) those involving sex work and other STDs, (3) those involving some other non-sex work related exposure or potential exposure to HIV, and (4) those involving some other non-sex work related exposure or potential exposure to other STDs.¹² For the purposes of simplicity and clarity throughout this report, these categories will be described as (1) sex work HIV incidents, (2) sex work STD incidents, (3) exposure HIV incidents, and (4) exposure STD incidents.

B. OBJECTIVES

In an effort to address the gap in research about enforcement of HIV criminal laws, the current project sought to understand the following:

Of the individuals who had HIV-related contact with the Florida criminal system:

1. How many people had such contact and how many separate incidents did these contacts represent?
2. What were their demographic characteristics and geographic locations?
3. What were the characteristics of each contact, including case outcomes?
4. Is there any preliminary evidence of disproportionate representation of some subgroups?

C. ANALYSIS APPROACH

The data were cleaned and coded in order to answer this set of exploratory research questions. All data were analyzed using Stata version 13.1. When appropriate, inferential statistics were used to test differences between sample subgroups; however, most data are presented descriptively. The analyses that follow include all individuals and incidents that were HIV- or STD-related at the time of the data retrieval.



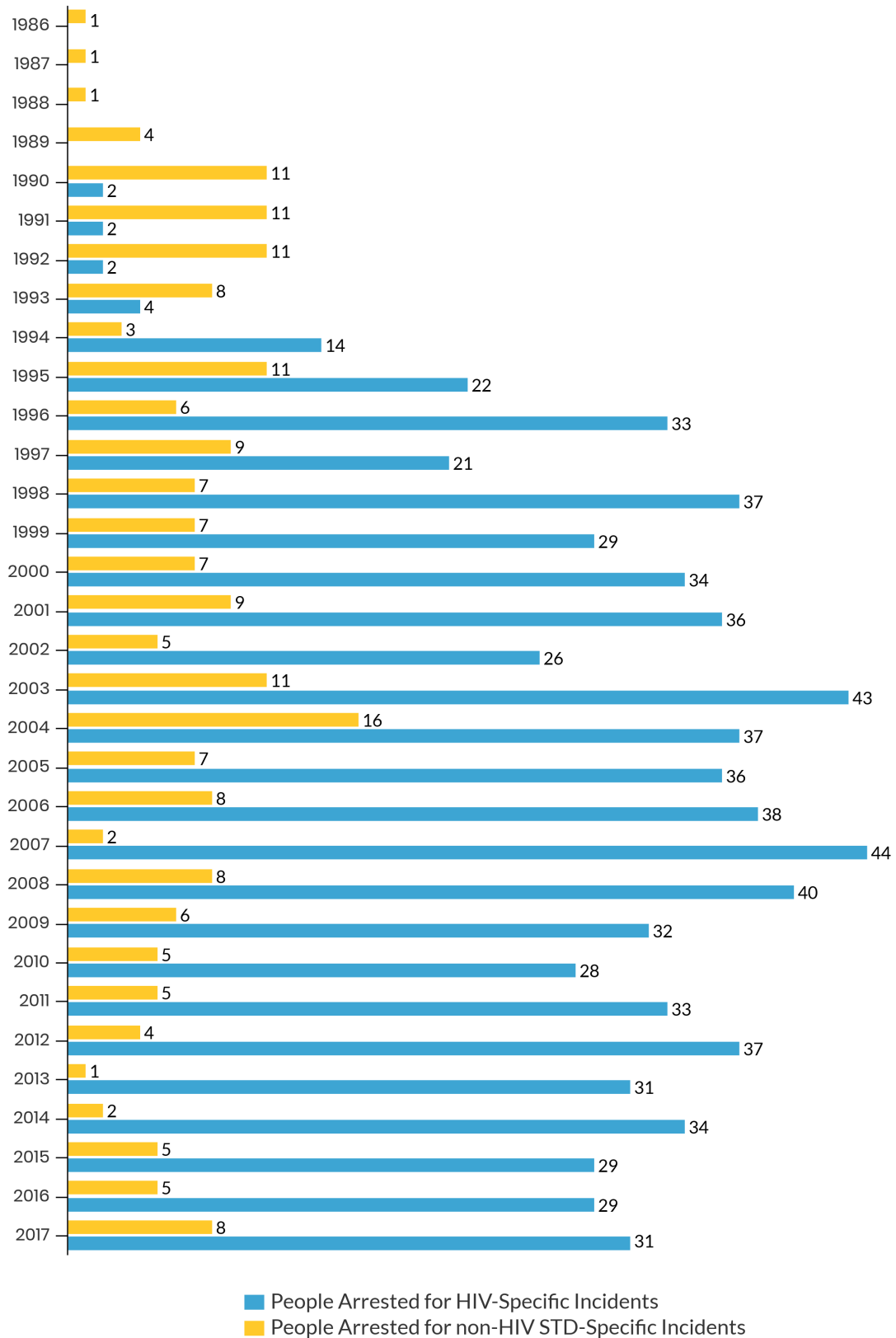
FINDINGS

A. INDIVIDUALS WHO HAD HIV-RELATED CONTACT AND THE NUMBER OF SEPARATE HIV-RELATED INCIDENTS

Overall, 756 people were arrested in Florida from 1986 through 2017 for an HIV- or other STD-specific incident. Of those, 614 people were arrested specifically for an HIV-related offense.¹³ These individuals were involved in 874 separate HIV-related incidents. An incident can be defined as one set of circumstances that may give rise to a series of contacts with law enforcement during arrest, charge, conviction and post-conviction proceedings. An additional 210 incidents from 1986 to 2017 involved STDs other than HIV. As a point of comparison, in 2017, Florida had just under 5,000 new cases of HIV in 2017, and over 140,000 new cases of gonorrhea, chlamydia and infectious syphilis that same year.¹⁴

The frequency of enforcement of HIV-related criminal laws has varied since the laws' passage in 1986. There appeared to be almost no enforcement before 1993, after which, on average, there were 36 HIV-related arrests involving an average of 32 people annually. In 2003, HIV-specific arrests reached a record high, with 52 arrests involving 43 people that year. STD-specific arrests peaked in 2004 with 16 arrests that year. See Figure 1 for the number of people who were arrested under Florida HIV- and STD-related criminal laws since their enactment.

Figure 1. Number of People Arrested under Florida HIV/STD Criminal Laws, by Year



B. THE DEMOGRAPHIC CHARACTERISTICS AND GEOGRAPHIC LOCATIONS OF INDIVIDUALS WHO HAD HIV-RELATED ARRESTS

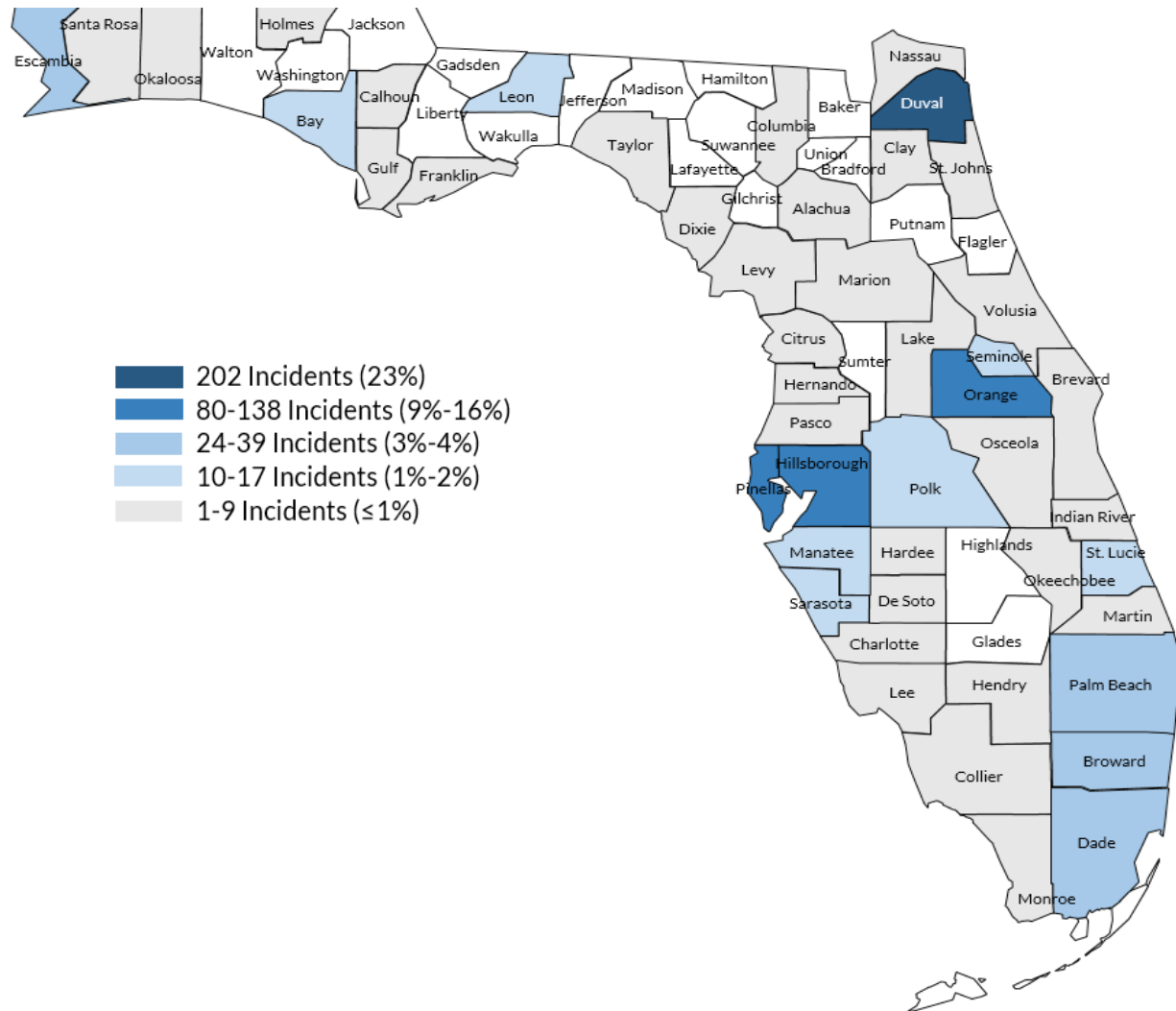
While the average age at the time of arrest for the first HIV-related incident was 36, the range of age of arrestees under HIV-specific offenses was from 16 to 65 years of age. Looking more broadly at the ages at which individuals with HIV-related arrests first came into contact with the criminal system, 41% had their first contact with the criminal system before the age of 21, and 11% had their first arrest for any offense before the age of 18. Three percent had their earliest HIV-related arrest before the age of 21. Over four in ten people arrested under an HIV-related offense were Black, and none of the people arrested were recorded as Latino/a. However, given that nearly a quarter (23%) of the people living with HIV in Florida are Latino,¹⁵ it is possible that the exclusive use Black and White racial categories is more a product of a lack of attention to detail in record keeping, and not a perfectly accurate reflection of the racial/ethnic makeup of those who had contact with the criminal system related to their HIV. The largest demographic group arrested for HIV-specific offenses in Florida were White women, who were 36% of the people arrested. These arrests occurred more frequently in the context of sex work than not. Overall, 96% of the individuals arrested for HIV or STD offenses were born in the United States, including Puerto Rico and the U.S. Virgin Islands. As a point of comparison, 80% of Florida's population is native born.¹⁶ See Table 2 for further demographic information of the individuals who had HIV- and STD-related contact with the Florida criminal justice system.

Table 2. Number of Incidents and Demographics of People Arrested Under HIV- and STD-Related Criminal Laws in Florida (1986-2017)

	Overall	HIV Exposure	HIV Sex Work	All HIV Events	Other STD Exposure	Other STD Sex work
Number of Incidents	1084	346	528	874	46	164
Number of People	756	293	360	614	44	146
Age at time of first HIV-related event¹⁷						
Oldest	77	65	60	65	61	77
Youngest	16	16	17	16	18	18
Mean	35.9	37.6	35.9	36.7	33.2	33.8
Standard Deviation	9.6	10.9	8.1	9.6	10.3	8.6
Sex¹⁸						
Female	55%	27%	81%	56%	23%	71%
Male	45%	73%	19%	44%	77%	29%
Race/Ethnicity						
Black	42%	46%	41%	43%	36%	44%
White	58%	54%	59%	57%	64%	56%
Race/Ethnicity and Sex						
Black Female	19%	11%	28%	19%	7%	29%
Black Male	23%	36%	13%	24%	30%	15%
White Female	36%	16%	53%	36%	16%	42%
White Male	22%	37%	6%	21%	48%	14%
Place of Birth¹⁹						
United States	96%	94%	98%	96%	97%	93%
Mexico, Central or South America	3%	4%	1%	2%	3%	5%
Africa, Asia or Europe	1%	2%	1%	2%	0%	2%

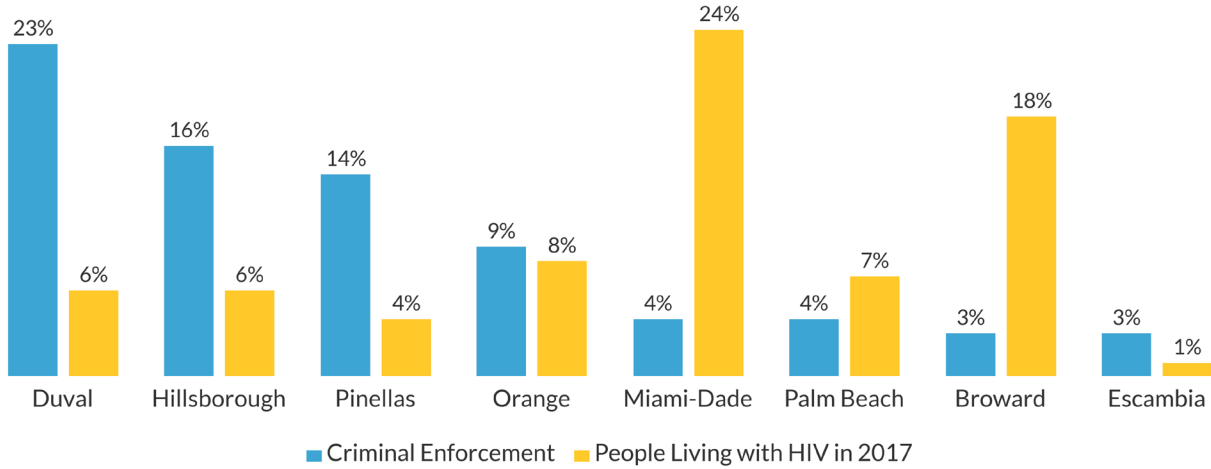
Individuals had HIV-related arrests in 47 out of the 67 counties in Florida. Duval County had the highest number of incidents (202 arrests of 120 individuals). Over three-quarters (76%) of the HIV-specific incidents occurred in eight counties: Duval (23%), Hillsborough (16%), Pinellas (14%), Orange (9%), Miami-Dade (4%), Palm Beach (4%), Broward (3%), and Escambia (3%). Every other county had two percent or fewer of the overall arrests in the state. See Figure 2 indicating counties where HIV criminalization laws have been enforced.

Figure 2. Florida Counties Where HIV Criminal Laws Have Been Enforced



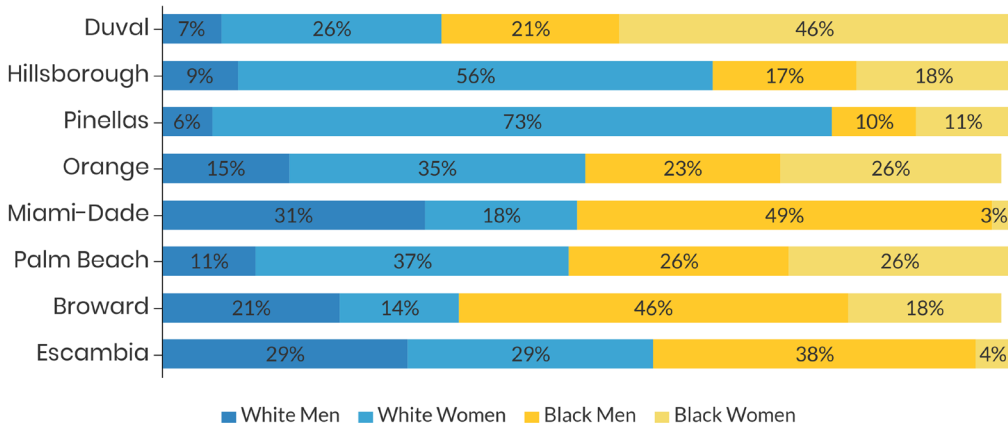
When comparing the arrests rates by county to the 2017 numbers of people living with HIV within those counties, it is apparent that some counties were overrepresented in the enforcement of HIV criminal laws, while others were underrepresented. For example, Miami-Dade and Broward Counties represented 24% and 18% of the people living with HIV in the state, respectively, but only 4% and 3% respectively of the HIV-related arrests throughout the state. On the other hand, Duval, Hillsborough, and Pinellas Counties each represented approximately 23%, 16% and 14%, respectively of the statewide HIV-related arrests, but had only 6%, 6% and 4%, respectively of the number of people living with HIV for the state. See Figure 3 for a comparison of HIV prevalence and HIV-related criminal enforcement by counties.

Figure 3. Top Florida Counties Where HIV Criminal Laws Have Been Enforced Compared with 2017 HIV Prevalence Rates by County



The demographics of enforcement also appeared to vary drastically by county. For example, among the top eight counties, White women ranged between making up 14% of HIV-specific arrests in Broward County to 73% of the HIV-specific incidents in Pinellas County. On the other hand, Black women were only 3% of HIV-specific arrests in Miami-Dade County but were as high as 46% of such arrests in Duval County. Black men ranged from 10% of arrests in Pinellas County to 46% of arrests in Broward County. White men never exceeded 31% of HIV-specific arrests in any of the top eight counties.

Figure 4. Demographic Breakdown of HIV Arrests, by County

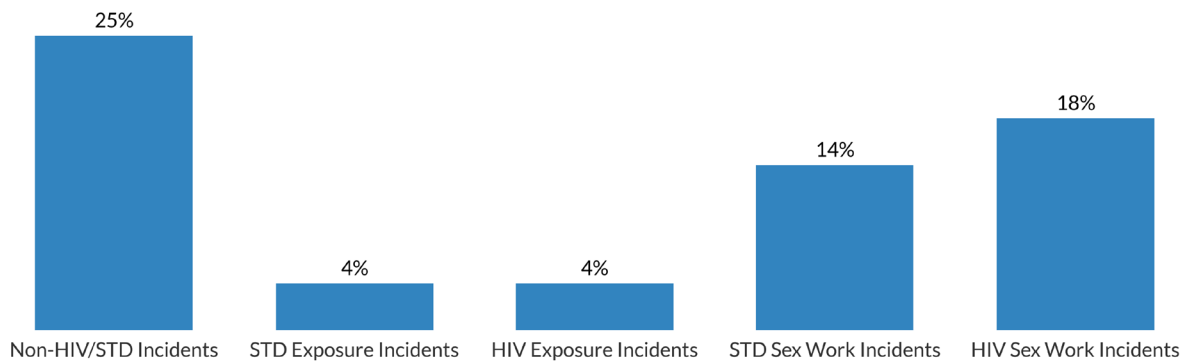


C. CONCURRENT OFFENSES

Some state statutes include specific code sections related to HIV exposure and needle sharing through intravenous drug use. Florida does not include such explicit prohibitions, and this was reflected in the limited number of HIV and STD exposure incidents that had concurrent drug offenses (4% for both groups). (See Figure 5.) Nevertheless, 14% of STD sex work incidents and 18% of HIV sex work incidents had concurrent drug offenses. When viewing the full criminal records of those who had contact with the

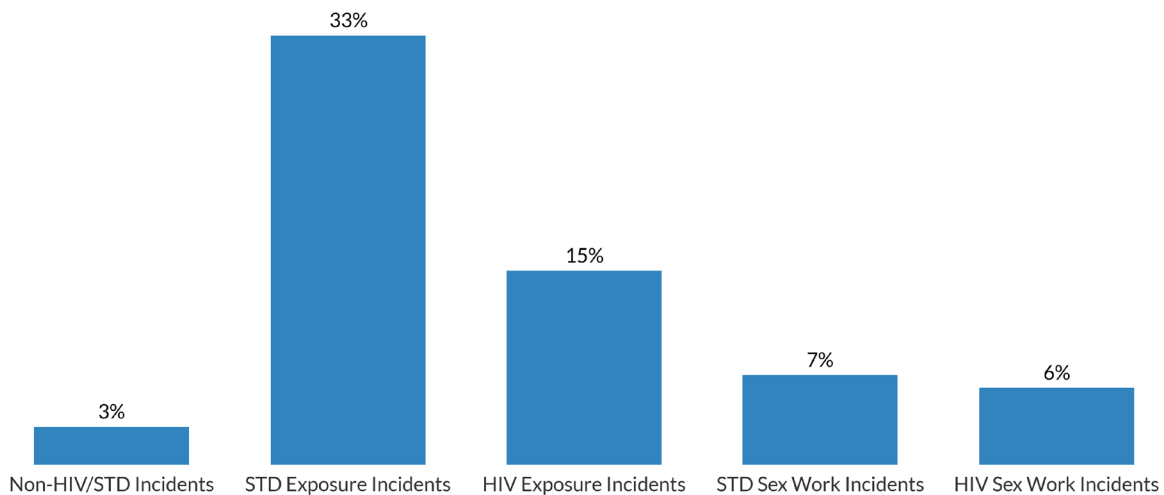
criminal system related to HIV or another STD, drug offenses were much more likely to appear in the incidents that were not related to HIV or other STDs. Twenty-five percent of the non-HIV/STD arrests in the records of people who had HIV/STD arrests at other times included drug offenses.

Figure 5. Concurrent Drug Offenses Among People who Had HIV/STD-Related Criminal Contact



Despite HIV- and STD-related offenses being indirectly related to sexual contact, relatively few incidents involved concurrent arrests, charges or prosecutions for sex offenses other than sex work. (See Figure 6.) Sex offenses were most likely to be found in the context of incidents that involved criminal liability for STD exposure, in one-third of those incidents. On the other hand, HIV exposure arrests and prosecutions appeared to occur much more frequently in the absence of any evidence of behavior related to other sex crimes – only 15% of HIV exposure incidents had concurrent sex offenses. While STD and HIV sex work offenses showed some low level of concurrent sex offenses, those included “lewd and lascivious conduct,” and “indecent exposure,” which may have been related to the sex work itself and not some other unrelated sexual assault.

Figure 6. Concurrent (Non-Sex Work) Sex Offenses Among People who Had HIV/STD-Related Criminal Contact



D. CASE OUTCOMES

Outcomes of the HIV- and other STD-related criminal incidents in Florida were divided into four categories: (1) convicted of an HIV-specific offense, (2) convicted of an STD (non-HIV) specific offense, (3) convicted of some other non-HIV/STD-specific offense and (4) not convicted of any crime. In the incidents categorized as convicted of a non-HIV/STD-specific offense, the defendant was convicted of a crime alleged during the incident in question, but not one of the HIV- or STD-related crimes, e.g. for solicitation or drug possession, but not exposure to HIV or an STD. In HIV incidents categorized as having a conviction for an STD-related criminal incident, it is presumed that these convictions were downgraded through a plea deal or other use of prosecutorial discretion.²⁰ In HIV and STD conviction incidents, the defendant may or may not have also been convicted of other non-HIV-related crimes that were alleged in the same incident. See Table 3 for the number and percent of incidents that resulted in each possible outcome for HIV- and STD-related incidents in Florida.

Table 3. Outcomes of HIV- and STD-Related Criminal Incidents in Florida

	Overall	HIV Exposure	HIV Sex Work	All HIV Events	Other STD Exposure	Other STD Sex Work
Number of Incidents						
Not convicted	474	219	162	381	33	60
Convicted of a non-HIV/STD offense	218	45	132	177	9	32
Convicted of an STD (non-HIV) offense	84	2	6	8	4	72
Convicted of an HIV offense	308	80	228	308	0	0
Total	1084	346	528	874	46	164
Percent of Incidents						
Not convicted	44%	63%	31%	44%	72%	37%
Convicted of a non-HIV/STD offense	20%	13%	25%	20%	20%	20%
Convicted of an STD (non-HIV) offense	8%	1%	1%	1%	9%	44%
Convicted of an HIV offense	28%	23%	43%	35%	0%	0%

In 44% of all of the incidents reviewed, the arrests resulted in no conviction. When comparing across disease types, conviction rates were very similar. Thirty-six percent of both HIV-related events and other STD-related events resulted in a disease-specific conviction, 20% resulted in some other conviction and 44% had no conviction. (See Figure 7.) On the other hand, outcomes between sex work events and non-sex work events were starkly different. People arrested for non-sex work HIV/STD exposure incidents were twice as likely to be released with no conviction when compared with those arrested in the context of sex work (64% versus 32%, respectively). Additionally, sex workers were twice as likely to be convicted of a disease-specific offense as their disease exposure counterparts who were not involved in sex work (44% versus 22%, respectively).

Figure 7. Comparison of Outcomes Based on Incident, Disease and Exposure Type



E. SENTENCING

Lengths of incarceration varied with the underlying crime. People convicted of HIV exposure were sentenced to median of three years. People convicted of HIV sex work incidents were sentenced to a median of a year. Those convicted of other STD exposures were sentenced to a median of 10 months, and those convicted of STD sex work offenses were sentenced to a median of three months. Nevertheless, the ranges varied widely. One HIV exposure incident resulted in a 25-year sentence, and an STD sex work incident led to a sentence of over 17 years. See Table 4 for sentence lengths by offense under Florida HIV and STD criminalization laws.

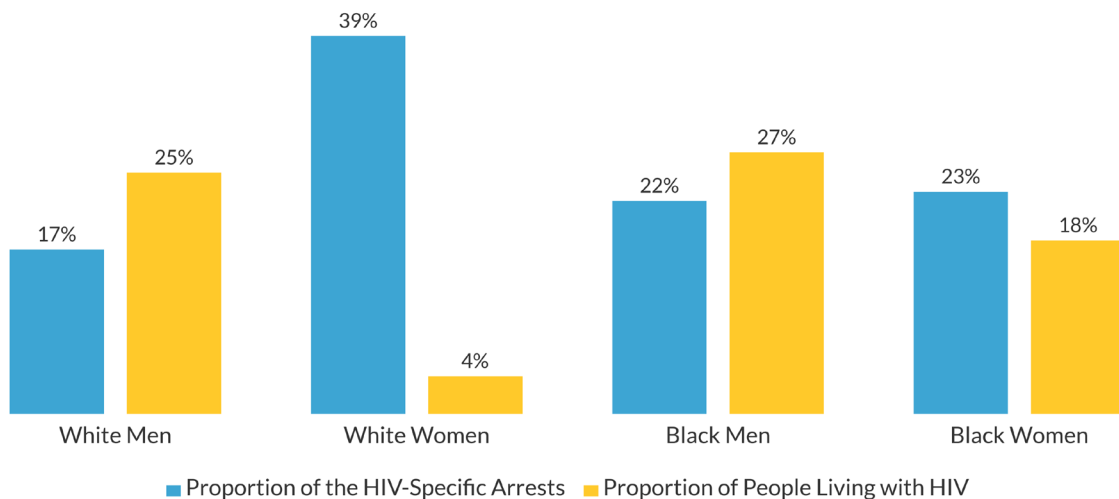
Table 4. Sentence Lengths for HIV- and STD-Related Criminal Convictions in Florida

	Overall	HIV Exposure	Sex Work with HIV	Other STD Exposure	Other STD Sex Work
Median Length of Incarceration	12 months	36 months	12 months	10 months	3 months
Mean Length of Incarceration	22.2 months	46.2 months	15.1 months	7.4 months	17.4 months
Standard Deviation	32.5 months	52.1 months	13.8 months	6.5 months	39.3 months
Shortest Sentence	1 day	2 days	6 days	1 day	1 day
Longest Sentence	300 months	300 months	61 months	12 months	214.8 months
Number of convictions with known sentences	300 ²¹	67	191	3	32

F. EVIDENCE OF DISPROPORTIONATE REPRESENTATION OF SUBGROUPS

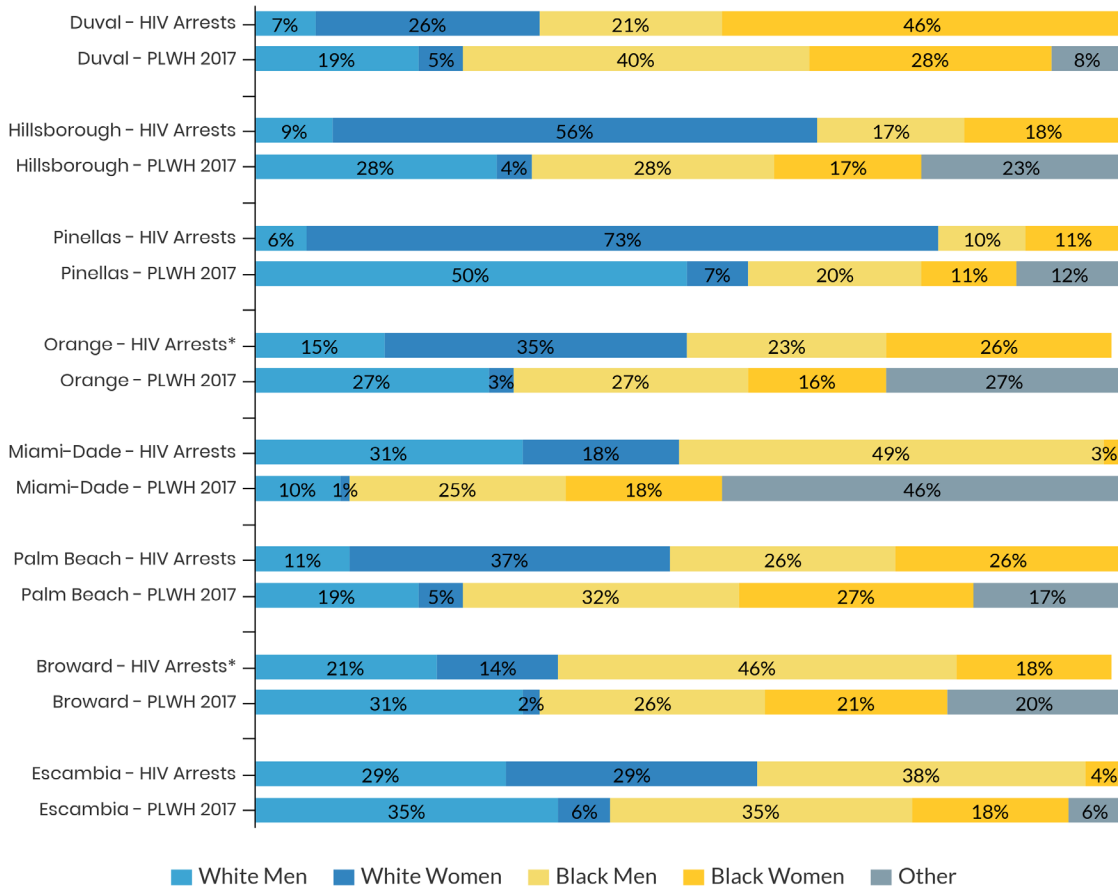
When comparing the overall demographics of the individuals who had HIV-related arrests to those diagnosed with HIV in Florida,²² patterns emerge that indicate that certain groups of individuals have been disproportionately affected by the implementation of these laws. For example, Black men were more likely to be arrested for HIV-related offenses than their White counterparts: 17% of HIV-related arrests were of White males, while 22% of HIV-related arrests were of Black males. When comparing the numbers directly to the underlying population of people living with HIV, White women appeared to be the group most disproportionately arrested under HIV-related laws: they made up only 4% of the population of people diagnosed with HIV in Florida, but they were 39% of HIV-related arrests in the state. While the difference wasn't as extreme, Black women were also overrepresented among HIV-related arrests when compared to the underlying population of people living with HIV: Black women were 18% of the people living with HIV in Florida, but made up 23% of the HIV-specific arrests. See Figure 8 for a comparison between HIV prevalence data in Florida in 2017²³ and individuals who had HIV-related arrests.

Figure 8. Comparison of HIV Prevalence in Florida with People who had HIV-Related Arrests, by Race and Sex



The disproportionalities in arrest rates across the state appeared to vary by county. (See Figure 9.) The extreme overrepresentation of White women occurred in each of the eight counties with the highest number of arrests. On the other hand, Black women were most overrepresented among arrests in Duval and Orange Counties, while they were highly underrepresented in Miami-Dade and Escambia Counties. Black men were underrepresented among arrests in most counties, but were overrepresented in Miami-Dade and Broward Counties. White men were underrepresented in every county except for Miami-Dade.

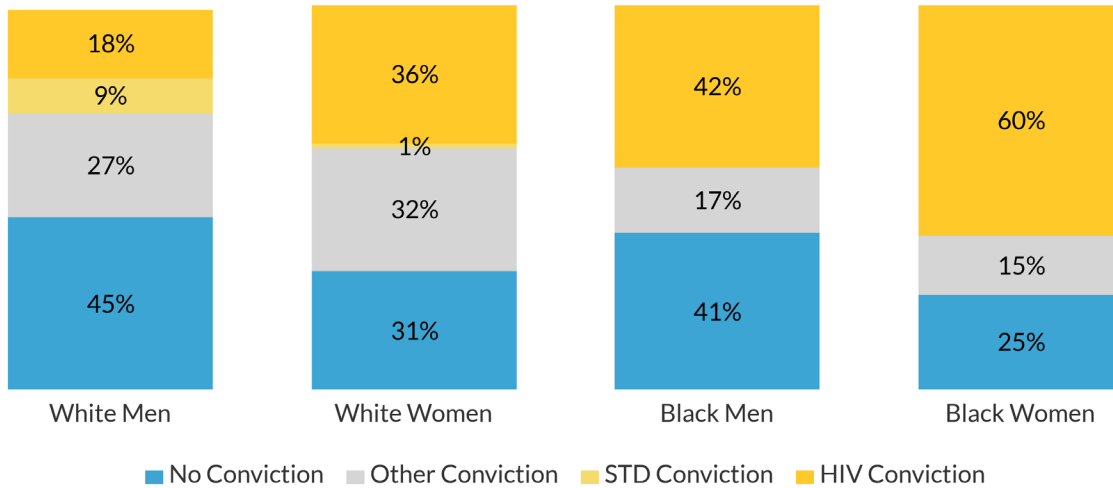
Figure 9. Comparison of HIV Prevalence in Florida with People who had HIV-Related Arrests, by Race, Sex and County



*Numbers do not add up to 100% due to rounding
 PLWH = People living with HIV

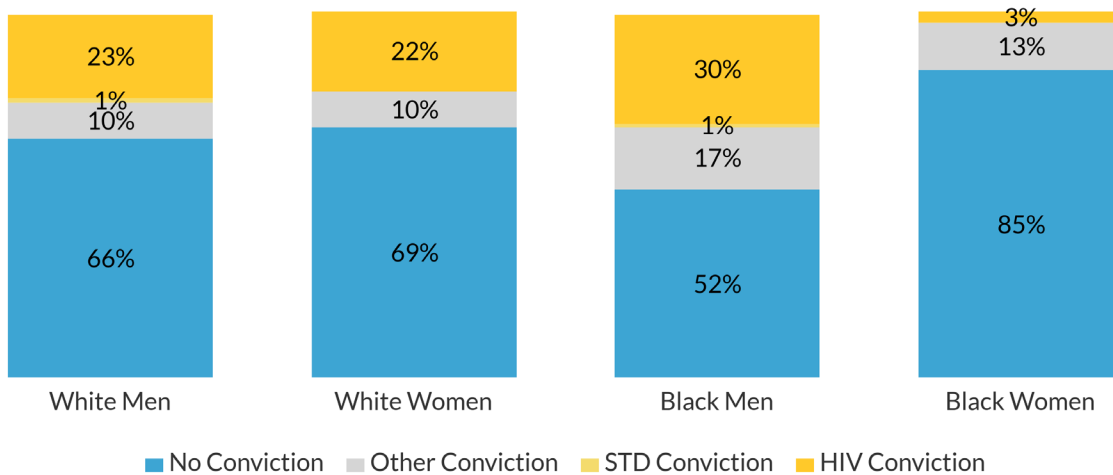
When analyzing case outcomes once people were arrested and in the system by race/ethnicity and sex, the outcomes varied based on demographics and the underlying offense. In HIV sex work incidents, Black men (41%) and White men (45%) were more likely to be released with no conviction than their Black and White female counterparts (25% and 31%, respectively). (See Figure 10.) On the other hand, Black people in general were more likely to be convicted of an HIV offense than White people, and women were worse off than men. Only 18% of White men were convicted of an HIV offense, while 36% of White women, 42% of Black men, and 60% of Black women were convicted of those offenses. In the rare cases where there appeared to be a “downgrade” to an STD conviction instead on an HIV conviction, it only occurred for White people.

Figure 10. Conviction Rates by Race and Sex, Among HIV Sex Work Incidents



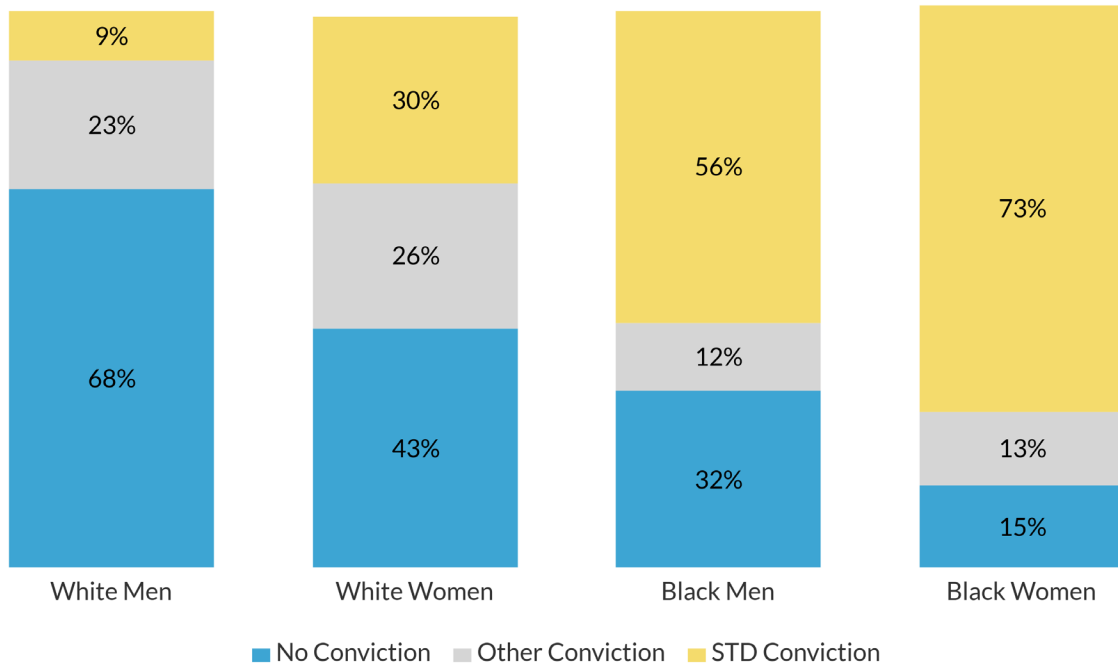
Case outcomes and conviction rates appeared to differ by demographics in the context of HIV exposure incidents. (See Figure 11.) In those cases, Black women were actually the most likely to be released without a conviction (in 85% of incidents), and Black men were the least likely to be released without a conviction (in 52% of cases). In those cases, Black women were extremely rarely convicted of an HIV-specific offense – only 3% of the time, while Black men were convicted 30% of the time. White men and women were both convicted just over 20% of the time.

Figure 11. Conviction Rates by Race and Sex, Among HIV Exposure Incidents



Similar to HIV sex work incidents, there were clear disparities in the way that people were convicted of STD sex work incidents. (See Figure 12.) White men were the least likely to be convicted (in 9% of incidents), followed by White women (30%) and Black men (56%), and Black women were the most likely to be convicted of an STD offense in 73% of their cases. The same pattern in reverse held true for releases without convictions. White men were most likely to be released with no conviction (in 68% of incidents), followed by White women (43%) and Black men (32%), and Black women were the least likely to be released with no convictions in 15% of their cases.²⁴

Figure 12. Conviction Rates by Race and Sex, Among STD Sex Work Incidents





LIMITATIONS

This research has several limitations related to the nature of CHRI data. CHRI relies upon data entered by law enforcement agencies, prosecuting agencies and criminal courts throughout the state. Because entries are not uniform throughout the records, deciphering the data required a time-intensive process. The review of concurrent arrests for other offenses in HIV- and STD-related incidents indicated that there may have been some data entry errors related to the incidents being analyzed. However, because there did not appear to be any systematic errors, no incidents were excluded from the larger analysis.

Another significant limitation to these data was the lack of information regarding sexual orientation and gender minority status. Because sexual orientation and gender identity data are not collected by the Florida Department of Law Enforcement, these data were not a part of CHRI data. Given the disproportionate impact HIV infection has on gay and bisexual men and transgender women, this gap in the data is significant.

Additionally, the lack of any individuals in the data identified as Latino/a or Hispanic indicates that there is possibly some bias in the collection of data on race/ethnicity. Some individuals from Florida have suggested that race/ethnicity data are generally collected by what a law enforcement officer presumes that a person's race/ethnicity is when visually assessing them, and that some people who are of Latino/a and/or indigenous descent may be miscategorized as Black or White.

Finally, there are limitations in terms of the level of detail and nuance available through CHRI data. While there were separate offense codes for different statutes, the actual differences in the underlying contexts (e.g. involvement in sex work, needle sharing, sex offenses, etc.) appeared to be jumbled together within the data, so cleaning was necessary to try to group incidents into sex work and non-sex work incidents. Additionally, the STD offenses did not specify what the underlying STD being prosecuted was, so there was no way to ascertain that information.



RESEARCH, LAW, AND POLICY IMPLICATIONS

These CHRI data provide a snapshot of how HIV criminalization laws have been enforced in Florida and further understanding of the ways that a person's HIV-positive status impacts interactions with law enforcement. Data suggest there may be ways in which specific communities, whether defined by geography, race/ethnicity, sex at birth, or sex worker or suspected sex worker status, may be experiencing a disproportionate impact with regard to these laws.

These data greatly underscore what remains unknown about the enforcement of HIV criminalization laws. One of the original estimates of the impact of HIV criminalization nationally counted a little over 300 cases over a period of 15 years.²⁵ More recently, a journalist compiled a database after identifying 1,352 records covering 19 states' HIV criminalization laws since 2003.²⁶ However, recent analyses from California showing over 1,000 incidents,²⁷ Georgia showing nearly 600 incidents, and now nearly 900 in Florida indicate that existing approximations of national HIV criminalization rates are highly underestimated. It may be worthwhile to evaluate whether other states have similar data sets that would be available for similar research purposes in order to calculate a more precise national estimate.

Enforcement data in Florida also highlight a gap in the body of research examining HIV criminalization laws. The central rationales for HIV criminal laws are to deter "bad actors" who willfully transmit HIV and to aid public health goals of controlling the spread of the disease. In the case of Florida, none of the HIV- or STD-specific laws require any intent to transmit; nor do any require transmission to have occurred .

Laws that criminalize activity by people who know that they are living with HIV disincentivize testing, since knowledge of one's HIV-positive status is an element of the crime. These laws can therefore act against best public health policy, as testing and knowledge of one's HIV status are essential to increased prevention of new transmissions. Those who are living with HIV but undiagnosed are more likely than any other people living with HIV to transmit the virus to others. According to an estimate from 2009 data, the 18% of people living with HIV who were undiagnosed in the United States contributed to just over 30% of all new transmissions.²⁸ In Florida, approximately 16% of all people living with HIV are undiagnosed and do not know their status.²⁹

Additionally, even though the data could not definitively be completely divided by the statutory sections, analyses using concurrent arrest and conviction data indicated that sex workers are being treated much more harshly in the context of HIV criminalization laws in Florida than others engaging in activity that could potentially expose an individual to HIV. This burden fell disproportionately on women in Florida: White women were disproportionately arrested for HIV offenses in Florida, and once in the system, Black women were the most likely group to be convicted for sex work HIV offenses.

These data also indicate that there may be disparities in enforcement occurring based on geographic region. Miami-Dade and Broward Counties, the most populous counties in the state and the counties that are home to over 40% of Florida's population of people living with HIV, were completely outnumbered by Duval County in terms of HIV arrests. Duval County has a population of under a million and houses only five percent of the people living with HIV in Florida. This disparity may point to differential knowledge and attitudes with respect to HIV or higher levels of HIV-related stigma in Duval County as compared to Miami-Dade and Broward Counties.³⁰

Future lines of inquiry could include analysis of offenders' entire criminal history, to better understand incidents involving HIV-related criminalization in the context of other criminal incidents. This will help to gain an understanding of the context in which these observed incidents are occurring. Efforts to identify and evaluate further disparities in lengths of sentences should be contemplated, including analysis which may reveal any existing correlations between known HIV-positive status and the length of sentences after such knowledge is gained by law enforcement officers, prosecutors, or judges and demographic trends, if any.

In order to better understand the impacts of these laws and the population disparities we observed, future research could move beyond law enforcement and sentencing rates. In particular, it would be useful to understand how people who have been arrested under these statutes have experienced the process of law enforcement contact and the mental health, emotional and structural consequences of those experiences. Both quantitative and qualitative studies with those that have had interactions with the Florida criminal system on HIV-related offenses would be useful in exploring these questions.

The use of these additional methods could also offer the added benefit of gaining representation of the distinct experiences of gender and sexual minorities living with HIV who have engaged with Florida's criminal system, since we do not otherwise have sufficient data to determine to what degree LGBT populations are impacted by these laws. We do know that other research and policy organizations have taken note of disparities in the policing of LGBT communities³¹ and the policing of transgender women³² especially. Therefore, this type of research would be useful in adding dimension and depth to our understanding of the unique experiences of LGBT people when in contact with law enforcement and the criminal system.



CONCLUSION

These data provide insight into the enforcement of HIV criminalization laws in Florida. Since the inception of these laws, at least 614 Floridians have been directly affected by them. Because these data are comprehensive and include basic demographic data, we have gained some ability to describe people living with HIV who have had HIV-related contact with the Florida criminal system. Further analysis of the data may explain the context in which these criminal incidents are occurring and disparities may be observed in the length of sentences. Future research, beyond enforcement data, is needed to understand the observed population disparities and what factors may have led to differences based on race, sex and geography. These data do not provide insight into the lived experiences of those individuals who have come into contact with law enforcement on the basis of HIV criminal laws and the impact (i.e. emotional, mental health, and structural consequences) of such interactions. Also, these data do not include information regarding sexual and gender minority status. Thus, utilizing additional methods of research will be useful in advancing research in this field.

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ABOUT THE AUTHOR

Amira Hasenbush, J.D., M.P.H., is the Jim Kepner Law and Policy Fellow at the Williams Institute, UCLA School of Law.

ABOUT THE INSTITUTE

The Williams Institute is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. A think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance and disseminates it to judges, legislators, policymakers, media and the public. These studies can be accessed at the Williams Institute website.

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FOR MORE INFORMATION

The Williams Institute, UCLA School of Law
Box 951476
Los Angeles, CA 90095-1476
(310) 267-4382
williamsinstitute@law.ucla.edu
williamsinstitute.law.ucla.edu



ENDNOTES

1 CHRI data do not record a person's self-reported gender identity and often are recorded based on the contact officer's assumptions about sex assigned at birth. Therefore, this report cannot distinguish between cisgender and transgender people in the dataset and cannot assess the experiences of transgender people with arrests under these laws.

2 See 18 U.S.C. § 1122 (2017)(pertaining to the donation or sale of blood or other potentially infectious fluids or tissues).

3 The STDs included in this statute are: "chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, or syphilis."

4 The statute clarifies: "(a) For the purposes of this section, 'sexually transmissible disease' means a bacterial, viral, fungal, or parasitic disease, determined by rule of the Department of Health to be sexually transmissible, a threat to the public health and welfare, and a disease for which a legitimate public interest is served by providing for regulation and treatment. (b) In considering which diseases are designated as sexually transmissible diseases, the Department of Health shall consider such diseases as chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), pelvic inflammatory disease (PID)/acute salpingitis, syphilis, and human immunodeficiency virus infection for designation and shall consider the recommendations and classifications of the Centers for Disease Control and Prevention and other nationally recognized authorities. Not all diseases that are sexually transmissible need be designated for purposes of this section." FL. STAT. ANN. § 796.08(1).

5 AMIRA HASENBUSH, BIANCA D.M. WILSON, AYAKO MIYASHITA & MADELEINE SHARP, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, HIV CRIMINALIZATION AND SEX WORK IN CALIFORNIA (2017), <https://williamsinstitute.law.ucla.edu/research/health-and-hiv-aids/hiv-criminalization-sex-work-ca/>; AMIRA HASENBUSH & BRIAN ZANONI, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, HIV CRIMINALIZATION IN CALIFORNIA: EVALUATION OF TRANSMISSION RISK (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIVCriminalization.EvaluationofTransmissionRisk.2016.pdf>; AMIRA HASENBUSH & BIANCA D.M. WILSON, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, HIV CRIMINALIZATION AGAINST IMMIGRANTS IN CALIFORNIA (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIVCriminalizationAgainstImmigrants.2016.pdf>; AMIRA HASENBUSH, AYAKO MIYASHITA & BIANCA D.M. WILSON, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, HIV CRIMINALIZATION IN CALIFORNIA: PENAL IMPLICATIONS FOR PEOPLE LIVING WITH HIV/AIDS (2015), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-Updated-June-2016.pdf>.

6 AMIRA HASENBUSH, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, HIV CRIMINALIZATION IN GEORGIA: PENAL IMPLICATIONS FOR PEOPLE LIVING WITH HIV/AIDS (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-Georgia-Jan-2018-1.pdf>.

7 Traditional legal research is limited to case law searches, which only provide information on arrests that result in prosecutions which are published or otherwise publicly available cases.

8 See DINI HARSONO, CTR. FOR HIV LAW & POLICY, HIV CRIMINALIZATION IN THE UNITED STATES A SOURCEBOOK ON STATE AND FEDERAL HIV CRIMINAL LAW AND PRACTICE (2017), http://www.hivlawandpolicy.org/sites/default/files/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice_0.pdf; Sergio Hernandez, *Sex, Lies and HIV: When What You Don't Tell Your Partner Is a Crime*, ProPublica Dec. 1, 2013, available at <http://www.propublica.org/article/hiv-criminal-transmission>; Trevor Hoppe, *Disparate Risks of Conviction Under Michigan's Felony HIV Disclosure Law: An Observational Analysis of Convictions and HIV Diagnoses, 1992–2010*, 17 *Punishment & Society* 73 (2015).

9 See Zita Lazzarini, Carol L. Galletly, Eric Mykhalovskiy, Dini Harsono, Elaine O'Keefe, Merrill Singer, & Robert J. Levine, *Criminalization of HIV Transmission and Exposure: Research and Policy Agenda*, 103 *AM J. PUBL. HEALTH* 1350, 1350-51 (2013) (citing need for more projects that provide data on how these laws are actually enforced).

10 IRB exemption was granted under UCLA IRB# 17-000710.

11 The data were delivered in early March 2018. The latest arrest date in the data was in January 2018. However, criminal history records are continuously updated, so there may have been some missing and/or not completed records from 2017 or early 2018.

12 In incidents in which both the offense codes for HIV and offense codes for other STDs were used, the incident was categorized as an HIV incident, with the assumption that the other STD code was a reduced charge for HIV. In incidents that involved offense codes related to sex work and offense codes related to exposure without specifying sex work, those incidents were categorized as sex work incidents, with the assumption that other exposure charges were still put forth in connection to the sex work offenses.

13 The STD-specific offenses have been on the books since at least 1986. All of the HIV-specific offenses were added in 1988 except for FLA. STAT. ANN. § 775.0877, which was passed in 1993.

14 Data retrieved from FL Health Charts, available at <http://www.flhealthcharts.com/charts/CommunicableDiseases/default.aspx>. For HIV, select "HIV/AIDS" under the "Find an indicator" dropdown list; then click on "HIV Cases." Then, to find STDs, select "Change Indicator" at the top left corner of the HIV Cases page; select "Reportable and Infectious Diseases" from the Domain drop down menu and "Sexually Transmitted Diseases (STDs)" from the Topic menu; then click on "Total Gonorrhea, Chlamydia & Infectious Syphilis."

15 Data retrieved from FL Health Charts, available at <http://www.flhealthcharts.com/charts/CommunicableDiseases/default.aspx>.

16 *American Community Survey S0501, 2016 1-Year Estimates Selected Characteristics of the Native and Foreign-Born*, U.S. Census Bureau, American Factfinder, available at https://factfinder.census.gov/faces/tableservices/jsf/pages/product-view.xhtml?pid=ACS_16_5YR_S0501&prodType=table.

17 The age calculations only include the first arrest in a person's history of each of the incidents above. For example, if a person was involved in two disease-specific incidents overall – one HIV sex work incident and one HIV exposure incident – the earliest of the two will be counted in the overall column, the HIV sex work incident will be counted in the HIV sex work column and the HIV exposure incident will be counted in the HIV exposure column. The oldest and youngest ages reported were rounded down to the nearest whole number to reflect the age that the individual would identify as at that time.

18 CHRI data do not record a person's self-reported gender identity and often are recorded based on the contact officer's assumptions about sex assigned at birth. Therefore, this report cannot distinguish between cisgender and transgender people in the dataset and cannot make claims about the experiences of transgender people with contact under these laws.

19 Previous analyses reviewed data for evidence of removal proceedings being initiated after HIV arrests. Florida CHRI data did not include any offense codes related to immigration or deportation, so it appears that such data were not included in state criminal records databases. Therefore, a similar analysis could not be conducted for this report. For more information about the potential immigration-related consequences of HIV criminalization laws, see AMIRA HASENBUSH & BIANCA D.M. WILSON, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, HIV CRIMINALIZATION AGAINST IMMIGRANTS IN CALIFORNIA (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIVCriminalizationAgainstImmigrants.2016.pdf>.

20 Nevertheless, it is possible that in such incidents, the person convicted was not living with HIV and was accidentally overcharged in the first place with an HIV-specific offense, which was later corrected later in the judicial process.

21 This number is greater than the sum of the other convictions combined because it includes 7 known outcomes from incidents in which an HIV offense was "downgraded" to an STD conviction. Since those incidents did not fit cleanly into the other categories, they were excluded from the rest of the table.

22 With Thanks To Lorene Maddox and the Florida Department of Health for provision of county-specific data on the demographics of people living with HIV. Data are on file with the author.

23 Unfortunately, cumulative data on people living with HIV in Florida throughout the entire time period reviewed for these criminal laws were not available, so the comparison is made to the most recent year of data available.

24 In the interest of protecting privacy, the conviction rates in STD exposure incidents is not displayed, as some cell sizes are below 5.

25 Zita Lazzarini, Sarah Bray, & Scott Burris, *Evaluating the Impact of Criminal Laws on HIV Risk Behavior*, 30 J. L. MED. & ETHICS 239, 245 (2002).

26 Sergio Hernandez, *Sex, Lies and HIV: When What You Don't Tell Your Partner is a Crime* (2013), <https://www.propublica.org/article/how-we-built-our-hiv-crime-data-set>.

27 HASENBUSH, MIYASHITA & WILSON, *supra* note 4.

28 Jacek Skarbinski, Eli Rosenberg, Gabriela Paz-Bailey, H. Irene Hall, Charles E. Rose, Abigail H. Viall, Jennifer L. Fagan, Amy Lansky, Jonathan H. Mermin, *Human Immunodeficiency Virus Transmission at Each Step of the Care Continuum in the United States*, 175 JAMA INTERNAL MEDICINE 588 (2015).

29 Anna Satcher Johnson, Ruiguang Song, & H. Irene Hall, *Estimated HIV Incidence, Prevalence, and Undiagnosed Infections in US States and Washington, DC, 2010–2014*, 76 J. AIDS 116 (2017).

30 For a detailed review of experiences and attitudes of LGBT people in Northeast Florida, see TAYLOR N. T. BROWN & KERITH J. CONRON, THE WILLIAMS INST. UNIV. OF CAL. L.A. SCH. OF LAW, JACKSONVILLE-AREA COMMUNITY ASSESSMENT (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Jacksonville-LGBT-Report.pdf>.

31 See Catherine Hanssens, Aisha C. Moodie-Milles, Andrea J. Ritchie, Dean Spade & Urvashi Vaid, *A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV*, New York: Center for Gender & Sexuality Law at Columbia Law School (2014).

32 See FRANK H. GALAVAN, MOHSEN BAZARGAN, INTERACTIONS OF LATINA TRANSGENDER WOMEN WITH LAW ENFORCEMENT (2012) <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Galvan-Bazargan-Interactions-April-2012.pdf>, SANDY E. JAMES, JODY L. HERMAN, SUSAN RANKIN, MARA KEISLING, LISA MOTTET, & MA'AYAN ANAFI, NAT'L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY, CHAPTER 14: POLICE, PRISONS, AND IMMIGRATION DETENTION (2016) <https://www.transgenderquality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.