

# **FACT SHEET: Legal Challenge to Tennessee’s Discriminatory Aggravated Prostitution Law**

## **Background**

Tennessee’s discriminatory, irrational and counterproductive “Aggravated Prostitution” law criminalizes people living with HIV who engage in sex work — unlike Prostitution, it is a felony that requires lifetime registration as a “violent sex offender.” Tennessee is the only state in the nation that requires people living with HIV who have been convicted of prostitution to register as “violent sex offenders” for their entire lives.

The ACLU, ACLU of Tennessee, and Transgender Law Center are challenging Tennessee's Aggravated Prostitution law and the lifetime sex offender registration requirement on behalf of four individuals who’ve been convicted of Aggravated Prostitution and made to register as sex offenders, as well as the organization OUTMemphis, which provides services to LGBTQ+ Tennesseans, including people impacted by this law.

The lawsuit challenges the Aggravated Prostitution law and lifetime sex offender registration requirement on the grounds that they violate the Americans with Disabilities Act by targeting people living with HIV, a protected disability, for harsher punishment than others who are not HIV-positive. The lawsuit also challenges the law and sex offender requirement under the Equal Protection Clause of the 14<sup>th</sup> Amendment, and the 8<sup>th</sup> Amendment’s prohibition against cruel and unusual punishment, among other constitutional protections. We are asking the Court to strike down the Aggravated Prostitution statute and remove the individual plaintiffs and all others with Aggravated Prostitution convictions from the state’s sex offender registry.

## **What is the aggravated prostitution law?**

Tennessee criminalizes Prostitution as a misdemeanor. However, the state passed the Aggravated Prostitution statute in 1991, that only applies to people living with HIV who engage in sex work. Aggravated Prostitution is a felony and, starting in 1994 with the adoption of a Sex Offender Registry, those convicted of Aggravated Prostitution must register as a sex offender for ten years. In 2010, an Aggravated Prostitution conviction became classified as a “violent sexual offense” requiring lifetime registration as a sex offender.

People on the sex offender registry for Aggravated Prostitution are there solely because of their HIV status. This is a clear violation of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of a protected disability.

## **How many people are affected by the law and registration requirement?**

According to analysis by the UCLA Williams Institute, published in 2022, 83 people were on the Tennessee sex offender registry for Aggravated Prostitution. Nearly all of them were arrested in Memphis or Nashville because of interactions with undercover police officers who solicited them in sting operations. In Shelby County (where Memphis is located), **three quarters** of arrests resulting in Aggravated Prostitution convictions were of Black cisgender women.

The UCLA analysis suggests enforcement targets Black transgender and cisgender women who engage in “survival sex” — the practice of people who are unhoused or otherwise disadvantaged trading sex for food, shelter, drugs, or money to meet their basic needs.

### **Do other states criminalize people living with HIV?**

25 states still have laws that criminalize people living with HIV. These laws are relics from when HIV first emerged in the 1980s, and are motivated by fear, misinformation and discrimination — not sound science or evidence. Many states are rolling back punitive HIV criminalization laws, but these laws should all be repealed — as HIV criminalization is counterproductive, undermines effective public health strategies, and does not promote public safety.

Treatment and management of HIV has developed by leaps and bounds since the 1980s and 90s — it is now a manageable, chronic condition for those who are diagnosed early and promptly receive appropriate care and treatment. For people living with HIV who receive antiretroviral medications, they experience few, if any, noticeable effects on their physical health and a life expectancy approaching those who don't have HIV.

Using established, evidence-based public health and medical interventions — including testing and early detection, access to medications and condoms — people living with HIV and those living without HIV can significantly reduce and eliminate HIV transmission and much sexual activity has an exceedingly low risk of transmission.

A person who receives consistent antiretroviral treatment will achieve [an undetectable viral load and cannot transmit the virus](#). Stable housing, access to healthcare, trust in the medical system, and financial security make receiving this critical treatment more attainable. By cutting people off from access to stable housing, employment, and other critical resources, the Aggravated Prostitution law and lifetime sex offender registry requirement deprive people of safety and the resources they need to manage their condition.

### **What are best practices for ending the HIV epidemic?**

HIV criminalization does not reduce HIV transmission. The dominant and successful public health approach to HIV prevention has been to encourage voluntary testing and

treatment for HIV, along with pre- and post-testing counseling. These best practices depend on patient trust that public health officials will maintain their confidences. The threat of criminalization undermines this trust.

The United States [Centers for Disease Control and Prevention](#), the [American Medical Association](#) and the [Joint United Nations Programme on HIV/AIDS](#) (UNAIDS) all agree that HIV criminalization laws are counterproductive and undermine safety and efforts to end the HIV epidemic.

## RESOURCES

- [Undetectable = Untransmittable](#)
- [HIV transmission risk statistics](#)
- [Best practices](#) for journalists writing about HIV