

Pre-Exposure Prophylaxis (PrEP) and Criminal Liability Under State HIV Laws

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Nick Rhoades was diagnosed with HIV at the age of 23. In 2005, he began anti-retroviral therapy (ART), an increasingly effective form of treatment that can reduce the amount of HIV in blood to undetectable levels.¹ Three years later, the treatment had done just that. Rhoades's risk of transmitting the virus to a sexual partner had been reduced by 93%, nearly the same reduction of risk associated with condom usage.² Shortly thereafter, Rhoades engaged in consensual sexual activity with a man he met on a social networking site. The two men used additional protection. But Rhoades did not disclose his HIV-positive status until several days after their encounter. Rhoades's sexual partner did not contract the virus. He pressed charges anyway under Iowa's HIV criminal statute, which makes it a felony to expose another person to HIV. A jury convicted Rhoades in 2008. He was sentenced to twenty-five years in prison.³

Every state imposes criminal penalties for HIV exposure. Some states prosecute offenders under general criminal provisions like reckless

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1. See U.S. Dep't of Health & Human Servs., *Viral Load*, AIDS.GOV (Sept. 3, 2015), <http://www.aids.gov/hiv-aids-basics/just-diagnosed-with-hiv-aids/understand-your-test-results/viral-load/> [<http://perma.cc/2CUS-8QM8>].
 2. Compare Myron S. Cohen et al., *Prevention of HIV-1 Infection with Early Antiretroviral Therapy*, 365 NEW ENGLAND J. MED. 493, 503 (2011) (“[T]here was a relative reduction of 96% in the number of linked HIV-1 transmissions resulting from the early initiation of antiretroviral therapy”), with *Condom Effectiveness*, AIDS FOUND. CHI. 1, http://www.aidschicago.org/resources/legacy/condoms/ltoyw_fact.pdf [<http://perma.cc/RV4Z-W42A>] (“Latex condoms, used consistently and correctly, are 98-99% effective in preventing HIV transmission.”).
 3. *Rhoades v. State*, 848 N.W. 2d 22, 25-26 (Iowa 2014). In 2014, the Iowa Supreme Court vacated Rhoades's conviction in a landmark decision. The court held that the record “did not contain a factual basis” to support a conviction for HIV exposure. *Id.* at 25.

endangerment.⁴ Others consider HIV exposure an aggravating factor for sentencing purposes.⁵ The majority, however, have enacted criminal laws that specifically address HIV exposure and carry severe penalties.⁶ These laws, under which states bring hundreds of new criminal charges every year, have been widely criticized.⁷ State HIV laws disproportionately impact the LGBT community and people of color.⁸ They provide an incentive to at-risk individuals to avoid HIV testing due to fear of prosecution.⁹ They criminalize behaviors that pose little to no risk of transmitting the virus.¹⁰ And, as Rhoades's prosecution illustrates, states have failed to adjust their laws in response to breakthroughs in treatment and prevention.

One notable breakthrough is Pre-Exposure Prophylaxis (PrEP). PrEP is a pill taken daily that, when used correctly, allows HIV-negative individuals to nearly eliminate their risk of acquiring the virus.¹¹ Truvada, a highly publicized

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4. See Carol L. Galletly & Zita Lazzarini, *Charges for Criminal Exposure to HIV and Aggravated Prostitution Filed in the Nashville, Tennessee Prosecutorial Region 2000-2010*, 17 AIDS & BEHAV. 2624, 2624 (2013).
 5. See, e.g., *Campbell v. State*, No. 05-08-00736-CR, 2009 WL 2025344 (Tex. App. July 14, 2009) (affirming the conviction of an HIV-positive defendant for aggravated harassment for spitting in the face of a police officer).
 6. As of 2011, thirty-three states had HIV-specific criminal statutes. See *HIV-Specific Criminal Laws*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 18, 2015), <http://www.cdc.gov/hiv/policies/law/states/exposure.html> [<http://perma.cc/2SR9-HY9C>].
 7. A 2013 study found at least 1,352 state HIV charges in the ten-year period between 2003 and 2013. Sergio Hernandez, *How We Built Our HIV Crime Data Set*, PROPUBLICA (Dec. 1, 2013, 11:55 PM), <http://www.propublica.org/article/how-we-built-our-hiv-crime-data-set> [<http://perma.cc/4NT8-J5SG>]. For academic criticism of these laws, see, for example, Catherine Hanssens et al., *A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV*, CTR. FOR GENDER & SEXUALITY L., COLUM. L. SCH. (May 2014), http://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf [<http://perma.cc/PXQ2-VTRT>].
 8. See Galletly & Lazzarini, *supra* note 4, at 2629 (“[I]ndividuals who were black received significantly longer sentences than those who were white Persons who were black were more likely to be convicted of criminal HIV exposure . . . than persons who were white.”).
 9. *The Sero Project: National Criminalization Survey Preliminary Results*, THE SERO PROJECT 1 (July 25, 2012), http://seroproject.com/wp-content/uploads/2012/07/Sero-Preliminary-Data-Report_Final.pdf [<http://perma.cc/C89Y-EEUS>] (“The fear of prosecutions related to HIV-status creates concerns about testing One quarter of respondents knew someone (or multiple people) who told them that they did not want to get an HIV test because of fears of prosecution. . . . 40% felt it could be reasonable for someone to avoid accessing care . . . because of fear of prosecutions.”).
 10. *HIV-Specific Criminal Laws*, *supra* note 6 (“Twenty-five states criminalize one or more behaviors that pose a low or negligible risk for HIV transmission.”).
 11. See U.S. Dep’t of Health & Human Servs., *Pre-Exposure Prophylaxis (PrEP)*, AIDS.GOV (Jan. 29, 2016), <http://www.aids.gov/hiv-aids-basics/prevention/reduce-your-risk/pre-exposure-prophylaxis/> [<http://perma.cc/K9LL-7ERG>] (“When taken every day, PrEP has

brand of PrEP, claims to reduce the risk of transmission by 99%.¹² The World Health Organization, in late 2015, recommended PrEP for “all population groups at substantial risk of HIV infection.”¹³ And in 2016, a *Washington Post* contributor urged more at-risk individuals to take the “miracle” drug.¹⁴ As the first drug ever to be approved by the FDA to prevent HIV infection, PrEP “has the potential to dramatically alter the sexual behavior—and psychology—of a generation.”¹⁵ Experts warn that PrEP could make its users feel “invincible”¹⁶—a feeling that has already increased risky behavior and the number of sexual encounters between HIV-positive and negative individuals.¹⁷

This Essay assesses PrEP’s implications for state HIV laws. While scientists believe that the new “miracle drug” is just as effective as a condom (if not more so), PrEP is not a defense to a violation of most HIV criminal statutes (whereas condoms sometimes are). The advent of PrEP has not reduced the scope of criminal liability for HIV-positive individuals. In other words, an HIV-positive person who has sex with a PrEP-using partner commits a felony in most states, unless the partner is informed of that person’s HIV-positive status. To be sure, HIV-positive individuals should always disclose their status to sexual partners. But the punishment here—a felony conviction and possibly decades in prison—is grievously disproportionate given the negligible risk of transmission. This

been shown to reduce the risk of HIV infection in people who are at high risk by more than 90 percent.”). A 2014 study published in *Lancet Infectious Diseases* found a 100 percent reduction of risk for participants who took PrEP 4 or more times per week. Robert M. Grant et al., *Uptake of Pre-Exposure Prophylaxis, Sexual Practices, and HIV Incidence in Men and Transgender Women Who Have Sex with Men: A Cohort Study*, 14 *LANCET INFECTIOUS DISEASES* 820 (2014). *But see* Les Fabian Brathwaite, *Gay Man on PrEP Tests Positive for HIV*, *OUT MAG.* (Feb. 25, 2016, 5:05 PM), <http://www.out.com/news-opinion/2016/2/25/gay-man-prep-tests-positive-hiv> [<http://perma.cc/L8AY-5H5K>] (noting that rare strains of HIV can still infect PrEP users).

12. Some dispute this claim. *See, e.g.,* Josh Barro, *Is Truvada, the Pill To Prevent H.I.V., 99 Percent Effective? Don’t Be So Sure*, *N.Y. TIMES* (July 16, 2014), <http://www.nytimes.com/2014/07/17/upshot/is-truvada-the-pill-to-prevent-hiv-99-percent-effective-dont-be-so-sure.html> [<http://perma.cc/8SF5-8M2X>].
13. *WHO Expands Recommendation on Oral Pre-Exposure Prophylaxis of HIV Infection (PrEP)*, *WORLD HEALTH ORG.* 1 (Nov. 2015), http://apps.who.int/iris/bitstream/10665/197906/1/WHO_HIV_2015.48_eng.pdf [<http://perma.cc/AT7A-QTDS>].
14. Richard Morgan, Opinion, *The Miracle AIDS Drug that People Refuse To Take*, *WASH. POST* (Jan. 29, 2016), http://www.washingtonpost.com/opinions/the-miracle-aids-drug-that-people-refust-to-take/2016/01/29/ba2b9460-b88a-11e5-b682-4bb4dd403c7d_story.html [<http://perma.cc/WP22-QRSF>].
15. Tim Murphy, *Sex Without Fear*, *N.Y. MAG.* (July 13, 2014), <http://nymag.com/news/features/truvada-hiv-2014-7/> [<http://perma.cc/BV22-NELX>].
16. *Would A Pill To Protect Teens from HIV Make Them Feel Invincible?*, *NPR* (Mar. 11, 2015, 5:32 PM), <http://www.npr.org/sections/health-shots/2015/03/11/392362374/would-a-pill-to-protect-teens-from-hiv-make-them-feel-invincible> [<http://perma.cc/7GB5-3QET>].
17. *See* Murphy, *supra* note 15.

Essay then urges state legislators to reform their HIV criminal statutes, and suggests several state laws that can serve as models for nationwide reform.

I. THE CURRENT STATUS OF HIV EXPOSURE LAWS

America's patchwork of state HIV laws has existed since the AIDS epidemic began in the 1980s.¹⁸ The rise of these laws and the severe penalties they impose were fueled by a cocktail of ignorance and hysteria: ignorance of the virus and how it is transmitted, and hysteria generated by homophobia and the prospect of a deadly epidemic.¹⁹ In 1990, the federal government incentivized these laws by requiring each state to have adequate legal mechanisms for prosecuting HIV exposure as a condition of receiving funds for AIDS treatment.²⁰ The laws that followed were severe and imprecise. While some states use general and conventional elements of criminal law (such as reckless endangerment) to criminalize HIV exposure, thirty-three jurisdictions have HIV-specific laws.²¹ In most of those jurisdictions, a violation is a felony.²²

These laws impose exorbitant penalties on those who put others at risk, but rely on flawed factors for determining whether a person is really put "at risk." Twenty-five states criminalize behavior among HIV-positive individuals that

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18. *HIV-Specific Criminal Laws*, *supra* note 6; see also Michael Kirby, *AIDS Hysteria: Outbreaks of Bad Law and the Bagging of Bodies*, L.A. TIMES (July 9, 1989), http://articles.latimes.com/1989-07-09/opinion/op-5130_1_criminal-law [<http://perma.cc/4HDV-RKZY>].
 19. See *HIV/AIDS and Discrimination*, ACLU (2016), <http://www.aclu.org/issues/hiv/hivaids-and-discrimination> [<http://perma.cc/FDK2-V28B>]. For contemporary sources reflecting public hysteria in response to the epidemic, see, for example, John Phair, *The Antidote for Aids Hysteria*, CHI. TRIBUNE (Apr. 2, 1986), http://articles.chicagotribune.com/1986-04-02/news/8601240358_1_aids-patients-aids-crisis-virus-that-causes-aids [<http://perma.cc/3Z6S-E4T6>], which discusses a public opinion poll in which 50 percent of respondents believed HIV patients should be quarantined, 48 percent believed HIV patients should carry ID cards, and 15 percent believed HIV patients should be tattooed); and Evan Thomas, *The New Untouchables*, TIME MAGAZINE (Sept. 23, 1985), <http://content.time.com/time/magazine/article/0,9171,959944,00.html> [<http://perma.cc/JKB4-DRGF>], which discusses protests by parents and local political leaders after one public school student was diagnosed with HIV, and their fears of transmission via the water fountain.
 20. See Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Pub. L. No. 101-381, § 2647, 104 Stat. 576, 603 ("The Secretary [of Health and Human Services] may not make a grant . . . to a State unless the chief executive officer determines that the criminal laws of the State are adequate to prosecute any HIV infected individual . . . who . . . expose[s] another to HIV . . ."); *HIV-Specific Criminal Laws*, *supra* note 6.
 21. *HIV-Specific Criminal Laws*, *supra* note 6.
 22. See *id.*; see also *HIV Criminalization: State Laws Criminalizing Conduct Based on HIV Status*, LAMBDA LEGAL (2010), http://www.lambdalegal.org/sites/default/files/publications/downloads/fs_hiv-criminalization_1.pdf [<http://perma.cc/A2TC-F6FB>] (providing a compilation of state HIV laws).

poses a negligible risk of spreading the virus.²³ These laws have produced absurd and unjust results. The aforementioned case of Nick Rhoades sparked outrage, as did the 2008 conviction of Willie Campbell, an HIV-positive homeless man who spit in the eye of a police officer and was sentenced to thirty-five years in prison.²⁴ (HIV is not spread through saliva.²⁵)

Condom use can be a defense to prosecution under some of these laws. Four states –

California, Minnesota, North Carolina, and North Dakota – explicitly allow condom use as an affirmative defense.²⁶ In five other states – Illinois, Indiana, Nevada, Oklahoma, and Pennsylvania – condom use is an implied defense. (The defense is implied because these five states only criminalize behavior that results in an exchange of bodily fluid or is “likely” to result in transmission.)²⁷ In thirteen states, the wording of the statute makes a condom defense impossible.²⁸ These statutes, which are actively enforced, criminalize all sexual intercourse among HIV-positive individuals who fail to disclose their status. In Florida, for example, “[i]t is unlawful for any person who has [HIV] . . . to have sexual intercourse with any other person, unless such other person has been informed of the presence of [HIV] and has consented to the sexual intercourse.”²⁹ Prosecutors continue to enforce these statutes against HIV-positive individuals who use protection and reduce their transmission risk to

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23. J. Stan Lehman et al., *Prevalence and Public Health Implications of State Laws That Criminalize Potential HIV Exposure in the United States*, 18 AIDS & BEHAV. 997, 997 (2014) (“Twenty-five states criminalize one or more behaviors that pose a low or negligible risk for HIV transmission.”).
 24. *Campbell v. State*, No. 05-08-00736-CR, 2009 WL 2025344 (Tex. App. July 14, 2009). As of this writing, Campbell is still incarcerated.
 25. U.S. Dep’t of Health & Human Servs., *How Do You Get HIV or AIDS?*, AIDS.GOV (2015), <http://www.aids.gov/hiv-aids-basics/hiv-aids-101/how-you-get-hiv-aids/> [<http://perma.cc/TL8A-YA2Z>].
 26. CAL. HEALTH & SAFETY CODE § 120291 (West 2016); MINN. STAT. § 609.2241 (1995); 10A N.C. ADMIN. CODE 41A.0202 (2016); N.D. ADMIN. CODE 12.1-20-17 (2015).
 27. 720 ILL. COMP. STAT. § 5/12-5.01 (2012); IND. CODE ANN. § 16-41-7- 1 (2016); NEV. REV. STAT. § 201.205 (West 2015); OKLA. STAT. tit. 21, § 1192.1 (West 2016); 18 PA. STAT. AND CONS. STAT. ANN. § 2704 (West 2016) (applying to incarcerated individuals only).
 28. See ARK. CODE ANN. § 5-14-123 (West 2015); FLA. STAT. ANN. § 384.24 (West 2016); GA. CODE ANN. § 16-5-60(c) (West 2016); KAN. STAT. ANN. § 21-5424 (West 2015); LA. STAT. ANN. § 14:43-5 (2016); MICH. COMP. LAWS ANN. § 333.5210 (West 2016); MO. ANN. STAT. § 191.677 (West 2016); N.J. STAT. ANN. § 2C:34-5 (West 2015); OHIO REV. CODE ANN. § 2903.11 (West 2016); S.C. CODE ANN. § 44-29-145 (2016); TENN. CODE ANN. § 39-13-109 (West 2016); VA CODE ANN. § 18.2-67.4:1 (West 2015); see also ALASKA STAT. ANN. § 12.55.155(c)(33) (West 2016) (providing for a sentencing enhancement for HIV exposure, as opposed to a standalone statute)
 29. FLA. STAT. ANN. § 384.24 (West 2016).

negligible levels: Florida officials recently charged a 52-year-old man who wore a condom during a sexual encounter. He now faces 30 years in prison.³⁰

The chorus of calls for reform has grown louder in recent years, but has yielded little progress. In July 2010, the Obama Administration announced a national strategy for fighting HIV/AIDS, and recommended that states reform their criminal laws accordingly.³¹ In December 2015, the White House put forward an updated plan in which the Department of Justice would disseminate strategies for reform to all state attorneys general.³² States have, however, resisted or ignored these recommendations. Only Iowa has taken steps toward reform. In May 2014, it reformed its criminal statute by reducing the applicable punishment and expanding it to include other infectious diseases, not just HIV.³³ The following month, the Iowa Supreme Court reversed Nick Rhoades's conviction, noting that his use of protection and antiretroviral therapy eliminated the factual basis for his conviction.³⁴ It remains to be seen, however, if the rest of the country will follow Iowa's lead.

II. PRE-EXPOSURE PROPHYLAXIS AND CURRENT STATE LAWS

PrEP may be more effective than condoms at preventing the spread of HIV, but it is less amenable to a defense under state HIV statutes. PrEP is a pill. And while it contains two powerful drugs—tenofovir and emtricitabine—that work in tandem in the bloodstream to prevent infection, PrEP does not stop the exchange of bodily fluid.³⁵ Consequently, nearly every state law that allows

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30. *Prosecutions and Arrests for HIV Exposure in the United States, 2008-2015*, CTR. FOR HIV L. & POL'Y (2015), <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/ArrestsandProsecutionsforHIVExposureintheU.S.2008-2015revised6.30.15.pdf> [http://perma.cc/X8NY-9BBQ].
31. *National HIV/AIDS Strategy for the United States*, WHITE HOUSE 36 (2010), <http://www.whitehouse.gov/sites/default/files/uploads/NHAS.pdf> [http://perma.cc/9WBH-S6LR] (“An important step we can take is to ensure that laws and policies support our current understanding of best public health practices for preventing and treating HIV.”).
32. *National HIV/AIDS Strategy for the United States, Updated to 2020: Federal Action Plan*, WHITE HOUSE 6 (2015), http://www.whitehouse.gov/sites/default/files/docs/nhas_2020_federal_action_plan_2016-2020.pdf [http://perma.cc/954W-PG3X].
33. Miranda Leitsinger, *Iowa Scraps Harsh HIV Law in Historic Vote*, NBC NEWS (May 1, 2014, 3:40 PM), <http://www.nbcnews.com/news/us-news/iowa-scraps-harsh-hiv-criminalization-law-historic-vote-n94946> [http://perma.cc/6HXR-7N7H]. *But see* Mark Joseph Stern, *Iowa's Reformed HIV Criminalization Law Is Still Pretty Terrible*, SLATE (June 16, 2014, 4:17 PM), http://www.slate.com/blogs/outward/2014/06/16/iowa_reformed_its_hiv_criminalization_law_but_it_s_still_bad.html [http://perma.cc/25WC-A6Z5].
34. See *supra* note 3 and accompanying text.
35. U.S. Dep't of Health & Human Servs., *Pre-Exposure Prophylaxis (PrEP)*, AIDS.GOV (2016), <http://www.aids.gov/hiv-aids-basics/prevention/reduce-your-risk/pre-exposure-prophylaxis/> [http://perma.cc/DL72-PE7Z].

condom use as a defense would not permit PrEP as a defense. The nine states that unambiguously permit a condom defense, either explicitly or implicitly, are California, Illinois, Indiana, Minnesota, Nevada, North Carolina, North Dakota, Oklahoma, and Pennsylvania. California and North Carolina's HIV criminal statutes only provide exceptions for condoms, and no other forms of protection.³⁶ North Dakota's statute only provides an exception for an "appropriate prophylactic device."³⁷ Illinois, Indiana, Oklahoma, and Pennsylvania impose criminal liability if bodily fluids are exchanged.

Only Minnesota and Nevada's HIV statutes are written broadly enough to allow an exception for PrEP. The Minnesota statute provides that "[i]t is an affirmative defense . . . that [the infected person] took practical means to prevent transmission as advised by a physician or other health professional"³⁸ The plain language here is not precise: it requires that the infected person take the requisite precaution, whereas PrEP is taken by the non-infected party. Accordingly, a person who takes PrEP and unknowingly engages in sexual activity with an HIV-positive person may have grounds to press charges under a strict reading of the law. The Minnesota law, nevertheless, could serve as a model for reform nationwide. It does not require that the preventative measure stop the exchange of bodily fluids. Nor does it provide an exhaustive list of acceptable methods of protection at a time when new methods continue to be discovered. Researchers have established that PrEP is a "practical method" of "prevent[ing] transmission" within the plain language of the Minnesota statute.³⁹ And since PrEP requires a prescription from a health care provider, an individual who uses PrEP is doing so "as advised by a physician or other health professional."

Nevada's law is also a potential model for reform. Nevada law imposes what is effectively a "probability test" for transmission. While other states criminalize behavior that could *possibly* lead to infection,⁴⁰ Nevada criminalizes "knowingly or willfully engag[ing] in conduct in a manner that is intended to

36. CAL. HEALTH & SAFETY CODE § 120291 (West 2016) (imposing criminal liability for HIV exposure on "[a]ny person who exposes another to [HIV] by engaging in unprotected sexual activity," defined as "anal or vaginal intercourse . . . without the use of a condom"); 10A N.C. ADMIN. CODE 41A.0202 (2007) ("Infected persons shall refrain from sexual intercourse unless condoms are used . . .").

37. N.D. ADMIN. CODE 12.1-20-17 (2015).

38. MINN. STAT. § 609.2241 (1995).

39. See, e.g., Grant et al., *supra* note 11, at 820 (noting that PrEP "prevents the acquisition of HIV among men and transgender women who have sex with men, heterosexual couples, and heterosexual men and women").

40. E.g., ALASKA STAT. ANN. § 12.55.155(c)(33) (West 2006) (imposing additional sanctions if the conduct either "involved penetration" or "exposed the victim to a risk of fear that the offense could result in the transmission of HIV").

or likely to transmit the disease to another person”⁴¹ As previously noted, infection while taking PrEP is possible but highly unlikely. Thus, a probability test is broad enough to include PrEP, as well as other non-traditional preventative measures like antiretroviral therapy.

Unfortunately, in the remaining states with HIV laws, PrEP could not be a valid defense. In states that impose blanket bans on all sexual intercourse among HIV-positive individuals, no form of protection qualifies as a defense. Other states simply criminalize “exposure.”⁴² But an HIV-negative person on PrEP who has sex with an HIV-positive person is still exposed to the virus, even if the risk of contracting the virus is negligible. The advent of PrEP has led to an increase in the number of sexual encounters in which a participant is “exposed” to HIV.⁴³ The result is that more HIV-positive individuals will be subject to criminal liability. Liability may be generally appropriate: men and women with HIV have a duty to disclose their status to sexual partners. But the potential penalty for failing to disclose—a felony conviction and a lengthy prison term—is draconian in situations where there is virtually no risk of transmission. PrEP will continue to give rise to these situations. State legislatures must respond accordingly.

III. CONCLUSION AND AVENUES FOR REFORM

The enforcement of outdated and misguided HIV statutes is not trivial, particularly when they are over-enforced against the African-American and LGBT communities. With hundreds of new charges brought every year carrying severe penalties, the potential for profound injustice remains. Simply put, these laws are not suitably tailored to the policy objectives they claim to address. They discourage at-risk individuals from getting tested for HIV. By not providing exceptions for the use of protection, they miss a valuable opportunity to create additional incentives to practice safe sex. They impose draconian punishments for behaviors that pose little to no risk of transmitting the virus, and create an undue source of stigma for carriers of a virus that is increasingly preventable and treatable.

Legislators should amend these laws and either preclude liability altogether or drastically reduce punishments if the conduct is not likely to result in transmission. Without legislative reform, more cases like those of Nick Rhoades are bound to arise—cases where there is no serious risk of transmission, but the HIV-negative partner presses charges anyway because of

41. NEV. REV. STAT. § 201.205 (West 2015) (emphasis added).

42. *E.g.*, MISS. CODE ANN. § 97-27- 14(1) (West 2015) (“It shall be a felony for any person to knowingly expose another person to HIV.”).

43. Murphy, *supra* note 15.

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the emotional trauma associated with the possibility of infection, however remote. In the meantime, at-risk individuals must be aware that despite the growing popularity of preventative measures like PrEP, avenues for criminal prosecution remain.

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