

Disability Justice: Novel Approaches to Using the American Disabilities Act to Protect the Rights of People Living with Disabilities and Promote Public Health

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Session agenda

- Introduce the history and theory of the Americans with Disabilities Act (ADA) and explain the necessity of the Disability Justice movement.
- Describe the application of the ADA to protect the rights of people living with substance use disorders.
- Explain the application of the ADA to challenge HIV criminalization.
- Explore remaining questions related to the novel uses of the ADA to protect the rights of marginalized communities and promote justice.



The Center for HIV Law and Policy

CHLP is an abolitionist legal and policy organization fighting to end stigma, discrimination, and violence at the intersection of HIV, race, health status, disability, class, sexuality and gender identity and expression, with a focus on criminal and public health systems.

In 2025, CHLP is celebrating 20 years of advocacy, innovation, and unwavering commitment to HIV justice.



PositiveJusticeProject

Scan the QR to sign up for the PJP email list.
For more info about our HIV decriminalization
work, email us at pjp@hivlawandpolicy.org



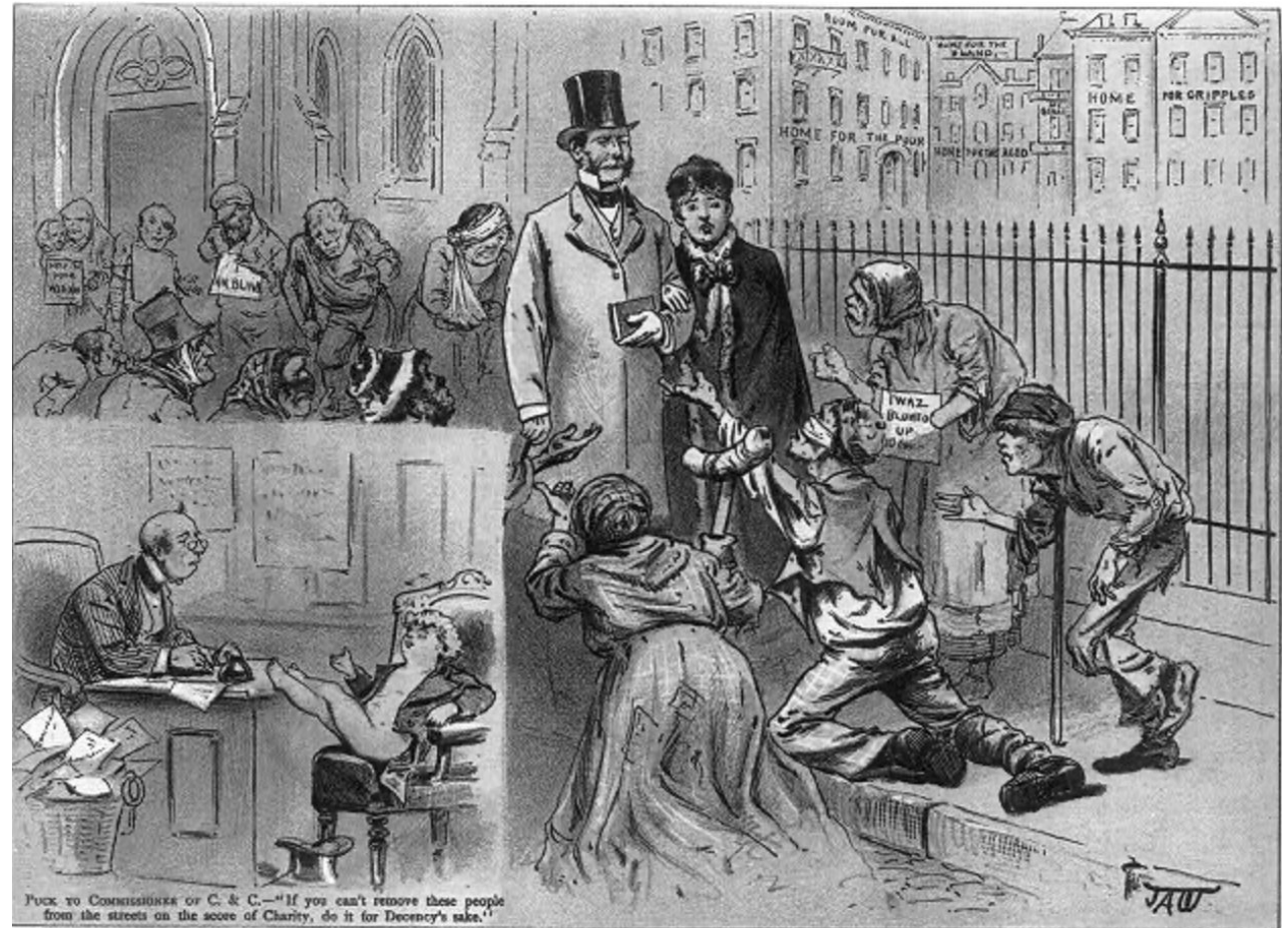
ADA History

Bianca I. Laureano, PhD, CSES, MA
ANTE UP!

Why do we need the ADA?

Ugly Laws: 1867-1974
criminalized disability and
non-normative bodies aka
disfigurement from being
in public life, public places,
and to limit begging.

Image: The streets of New York - running the gauntlet of horrors 1879 Wealthy man and woman walking from church between lines of beggars - blind, crippled, and destitute.



Puck to Commissioner of C. & C.—"If you can't remove these people from the streets on the score of Charity, do it for Decency's sake."

THE STREETS OF NEW YORK—RUNNING THE GAUNTLET OF HORRORS.

Why do we need the ADA?

Ugly Laws targeted the poor and identified them as “lazy” and “ugly” especially when attempting to solicit money.

- “Unsightly” and “disgusting”
- Quality of life crimes
- Ohio had ugly laws until 1972



Jack Delano, 1941, September. Outside a freak show at the Rutland Fair. Vermont

Disability Rights Movement

- Provides a shift in framework around possibilities
- Focuses on rights to access public spaces
- Supports independent living
- Focuses on disabled people organizing, resisting, and changing laws



Photo ©Kenneth Stein Disability Buttons

Disability Rights Movement Impact

- Identifies disability as primarily a social condition
- Focuses on attitudes and barriers (physical, social, economic) that stop disabled people from fully participating
- Introduces ableism
- Asks: Is it **my body** that is the problem or is it the **social body**? i.e. What is debilitating?

Defining Ableism

The system of discriminatory practices and beliefs that maintain and perpetuate disability oppression, assigning inferior value/worth to people who have developmental, emotional, physical or psychiatric disabilities. Ableism is racialized, gendered, heterosexist, etc. Ableism is utilized at the interpersonal level to the institutional/systemic level.

Skin, Tooth, Bone: The Basis of Movement is Our People A Disability Justice Primer. Page 145

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Americans with Disabilities Act

- ADA 1990 signed, bipartisan
- Equal access to employment, housing, economic self-sufficiency, and full participation in activities
- Excluded HIV+ people until 2008 amendment



Signing of the ADA July 26, 1990 National Archives Catalog

Americans with Disabilities Act

Single issue identity based:

- Centers / favors people who can achieve rights and access through a legal rights based framework
- Political strategy relied on litigation
- Equal Rights Legislation

Americans with Disabilities Act

Excluded:

- Excluded many w/ autoimmune diseases
- Included PLHIV
 - Homophobia, queerphobia, slutshaming, criminalization
 - National harm reduction movement

ADA Amendments Act of 2008

- Amendment expanded to include all disabled people and PLHIV
- We lost entire generations of PLHIV
- Disabled people discriminate too and perpetuate stigma
- Does DRM include HIV?

Is the ADA Enough?

- There is more that must be done!
- Long-COVID
- Marriage for disabled people is NOT equal
- Limited income if receiving public benefits
- Conservatorship and Guardianships
- Census redefining “disability”

Defining Disability from a Justice Lens

Disability Justice understands disability:

- As a lived embodied experience.
- As a political identity framed within ableism.
- As a community location from which to organize
- As a political location which overlaps, intersects and responds to other political locations such as race, gender, class, nation state, etc.
- As an aesthetic, from which we create practice and culture.

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The Americans with Disabilities Act: Protecting the Rights of People Living with Substance Use Disorders

Amelia Caramadre, JD, MPH
Kaplan & Grady

Opioid Use Disorder

- Opioid Use Disorder is a chronic, progressive, relapsing disease that alters brain chemistry
- With OUD, you cannot “will or reason” your way away from continued use
- Relapses are a part of the disease, just like any other disease
- Medications for OUD (MOUD) are an FDA approved, effective way to reduce cravings, relapse, and overdose
- MOUD is the standard of care for OUD
 - Methadone – total opioid agonist
 - Buprenorphine (Suboxone) – partial agonist
- Forced withdrawal from MOUD is extremely painful and dangerous

Statistics

- In 2023, **110,037** people died of overdose
- Provisional data for 2024 shows 80,391 overdoses, a decrease of 26.9%
- 2023 is the first year since OD tracking began in 1999 that there has been a decrease
- Disparities by race are widening due to:
 - Inequitable access to treatment
 - Fentanyl expanded faster in Black communities
 - Disproportionate digressions by the carceral system
 - Black individuals represent 5% of people who use drugs, but 29% of those arrested for drug offenses and 33% of those in state prison for drug offenses

Drug overdose deaths per 100,000 in 2023

- 5.1 Non-Hispanic Asian
- 22.8 Hispanic or Latino
- 23.6 Non-Hispanic multiracial
- 26.2 Non-Hispanic Native Hawaiian or other Pacific Islander
- 33.1 Non-Hispanic White
- 48.9 Non-Hispanic Black or African American
- 65.0 Non-Hispanic American Indian or Alaska Native

Why are we seeing a decrease?

- Naloxone availability
- Expanded MOUD access
- Litigation
- 2022 DOJ Guidance clarifying the Americans with Disabilities Act protects people with Substance Use Disorder
- DOJ enforcement against jails, healthcare facilities, other

SUD is a Disability under the **Americans with Disabilities Act**

Pesce v. Coppinger, 2018, D.MA

-Individual on methadone for 2 years, had to serve a short sentence where they wouldn't continue rx; ACLU filed suit under the ADA and Eighth Amendment to stop the forced withdrawal

-Court ordered methadone to be continued as **OD is a disability**, he would be likely to succeed on his ADA and 8A claims, and he **“will be irreparably harmed if denied methadone treatment while incarcerated.”**

- Smith v. Aroostook County, 2019, D.ME (aff'd 1st circ)
 - Same outcome as *Pesce*, but with buprenorphine

Takeaways: Federal courts recognize that OD receives protections of ADA, forced withdrawal can cause irreparable harm, and MOUD is medically necessary

Lots of other successful litigation for both injunctive relief and damages, including successful class actions against counties with blanket policies denying MOUD access in jail, and nursing home chains doing the same

The Department of Justice and the Americans with Disabilities Act

- DOJ has filed multiple lawsuits/settlements/letters of interest across the US
- In 2022, DOJ issued a [guidance](#) making clear that the **ADA applies to people with SUDs**
 - People with SUDs cannot be *discriminated against*

“The ADA guarantees that people with disabilities have the **same opportunities as everyone else** to enjoy employment opportunities, **participate in state and local government programs, and purchase goods and services.** For example, the ADA protects people with disabilities from **discrimination by social services agencies; child welfare agencies; courts; prisons and jails; medical facilities, including hospitals, doctors’ offices, and skilled nursing facilities; homeless shelters; and schools, colleges, and universities.**”

Exception to the exception: people in active use

- **Exception:**
 - ADA protections **do not apply** if an individual is in **active use** or if they pose a danger to others
- **Exception to the exception:**
 - They are protected, even if in active use, **if seeking health services to which they are otherwise entitled**

Taylor v. Wexford, et. al, (SDWVa)
2024

entitled to such services.” There is little evidence that the “covered entity” acted to deny Mr. Taylor access to MOUD “on the basis of” his illegal drug use—and it would be entirely illogical to refuse to treat opioid use disorder in patients who *use opioids*. Further, § 12210(c) expressly

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Case 2:23-cv-00475 Document 239 Filed 06/13/24 Page 27 of 30 PageID #: 5874

provides that health services and drug rehabilitation services, which would include the MOUD Mr. Taylor sought, cannot be denied based on current illegal drug use. Thus, the Court must reject DCR’s argument that it is entitled to summary judgment on the basis that Mr. Taylor is excluded from ADA protection because of his illegal drug use.

What does that mean?

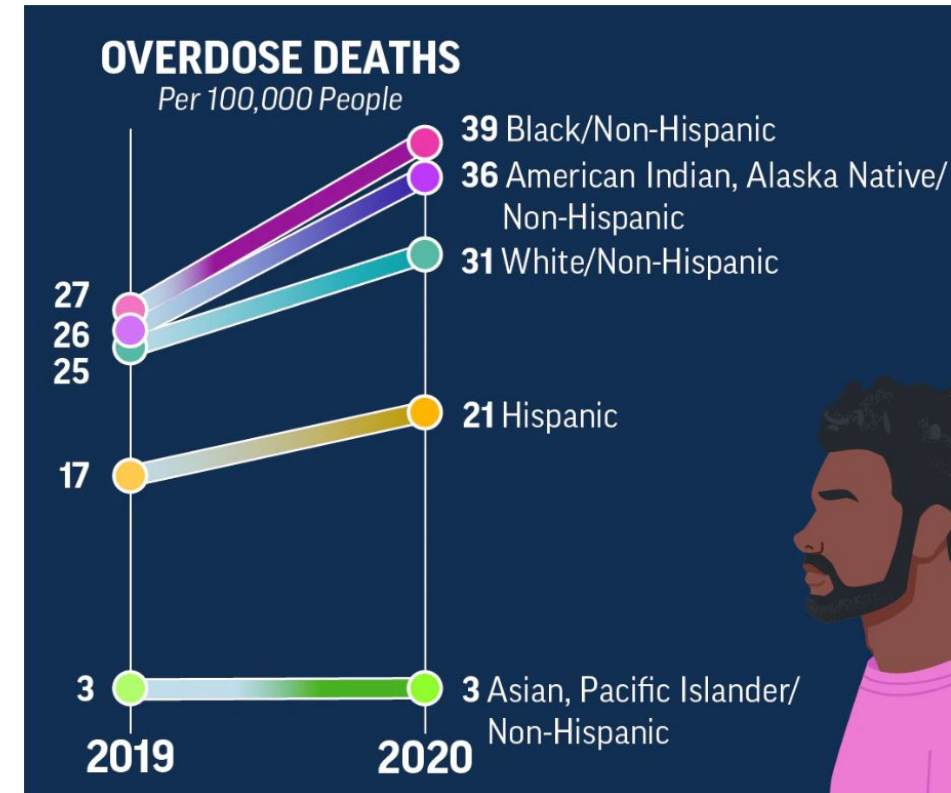
- Carceral
 - can't deny continuation of MOUD
 - can't force one MOUD over another
- Healthcare
 - can't refuse treatment/admission for SUD hx/MOUD status (think SNFs)
 - can't force abstinence before accessing rehab services
- Court Systems
 - can't base legal outcomes on medication status
 - can't punish/reward for medication
 - can't force one MOUD over another
- Employment
 - can't deny employment due to MOUD
- Child Welfare
 - can't prohibit MOUD as condition of child custody or visitation
- Housing
 - Can't deny public housing due to MOUD
- Does this apply to SSPs/Harm Reduction Organizations?
 - Under the exception to the exception, we think so!
 - Zoning out these orgs is facial discrimination
 - Has not yet been litigated

Stigma

- “trading one drug for another”
 - “you’re not really clean”
 - “you just want to get high”
 - “I’m not allowing a drug ring in my jail”
 - “you failed treatment if you had a relapse”
- Result:
 - Failure to ensure access to MOUD in jail/prison, or restrictive access
 - Failure to treat/admit people in healthcare settings, i.e., skilled nursing facilities
 - Deterring people from choosing to engage in treatment
 - Forced withdrawal □ painful withdrawal, increased risk of relapse, OD, and death
 - Increased recidivism
 - Increased exposure to disease

Increased Risk within Carceral System

- ~65% of US prison population has active SUD
- 20% under influence of substances at the time of 'crime'
- Incarcerated people up to 129x more likely to die from overdose 2 weeks after release vs general population
- Mass incarceration & the overdose disproportionately impact BIPOC
- Ensuring access to MOUD in carceral settings can reduce overdose and recidivism



Bottom Line

- MOUD saves lives and allows people with OUD to live productive lives
- ADA protects people with SUDs; people cannot be discriminated against because they use MOUD or because they are diagnosed with OUD
- Denial of MOUD is discrimination
- Refusal to treat a patient because they are on MOUD is discrimination
- Litigation has been successful
- Discrimination against people seeking health services or drug rehabilitation violates the ADA

What can you do?

- Short of litigation:
 - Send a letter – educational
 - You are in violation of Federal Civil Rights laws and subject to lawsuit
 - Here is how you can correct it
 - Report to DOJ
- Litigation
 - Americans with Disabilities Act
 - Rehabilitation Act
 - Constitutional (if in jail/prison)
 - False claims act?

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THANK YOU

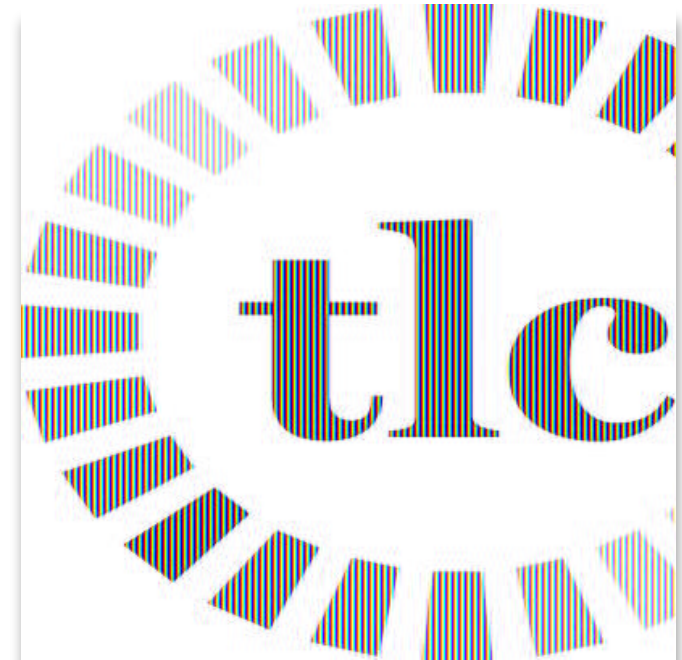
The Americans with Disabilities Act: Protecting the Rights of People Living with HIV against HIV Criminalization

Lynly S. Egyes
Legal Director
Transgender Law Center

Sean McCormick
Staff Attorney
Center for HIV Law and Policy

Transgender Law Center

- **Transgender Law Center (TLC)** is the largest national, trans-led organization working to set all people free. We champion the right of all transgender and gender-nonconforming people to make their own choices and live freely, safely, and authentically.
 - TLC's litigation team focuses on fighting criminalization for trans people - from policing to convictions, incarceration and parole.



TLC's Litigation Process

- TLC's Programs
 - **Disability Project**
 - Magnifies the leadership, collective power, and analysis of marginalized disabled, Deaf, ill, and Mad communities, while increasing Disability Justice capacity in the movements that seek to serve them.
 - **Black Trans Circles**
 - develops the leadership of Black trans women in the South and Midwest through the creation of healing justice spaces to work through oppression-based trauma and incubate community organizing efforts to address anti-trans murder and violence.
 - **Gender Justice Leadership Project**
 - a collaboration between Transgender Law Center and GSA Network, is a national trans and gender-nonconforming youth leadership and storytelling program that aims to build empathy, understanding, and a movement for youth to share their stories in their own words and in their own way.
 - **Positively Trans**
 - Led by trans women of color living with HIV, Positively Trans addresses inequities, stigma, and discrimination nationally and in our local communities through community-driven research, leadership development, and storytelling.

What is HIV criminalization?

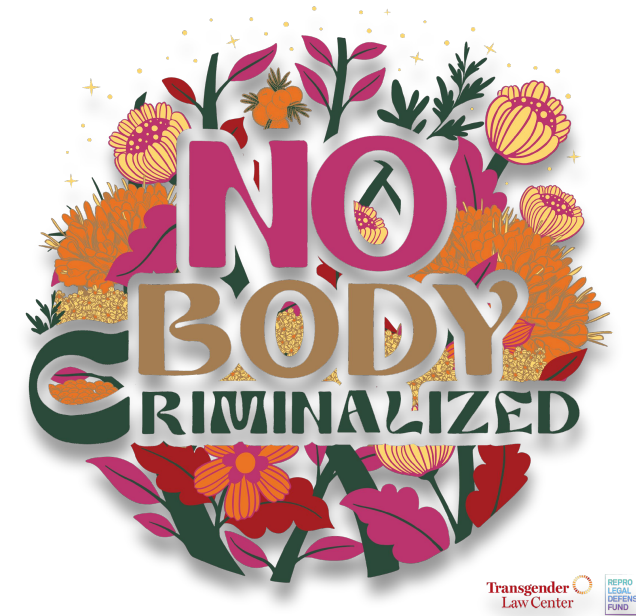
HIV criminalization refers to laws, policies, and practices that result in increased criminal penalties for people diagnosed with HIV for conduct that is either legal or less severely punished for people not diagnosed with HIV.

Some common kinds of HIV criminalizing laws are:

- Laws prohibiting consensual sexual conduct between people living with HIV and people who are not
- Laws prohibiting exposure to bodily fluids (for example, spitting)
- Laws hypercriminalizing sex work for people living with HIV
- Laws prohibiting blood and organ donation for people living with HIV

What are the harms of HIV criminalization?

- We know **criminalization is a counterproductive response.**
- Studies have shown that HIV criminalizing laws do not result in their alleged goal of decreasing transmission of HIV
 - They **do not result in safer sex practices**, decrease in sexual partners, increase in condom use, or increase in HIV status disclosure.
 - Criminalization can decrease trust in medical professionals, which can hinder access to care and testing.



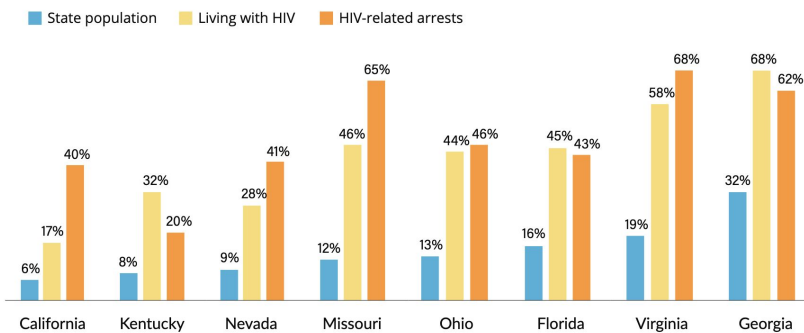
Discriminatory Impact of HIV Criminalization

- HIV criminalizing laws are often applied in racist, sexist, homophobic and transphobic ways
- Black men who have sex with men and Black trans women are often targets for general enforcement
- HIV criminalizing laws related to sex work have been used to target Black women especially frequently
- The application of these laws further perpetuates the racist, sexist, homophobic and transphobic harms of the criminal legal system

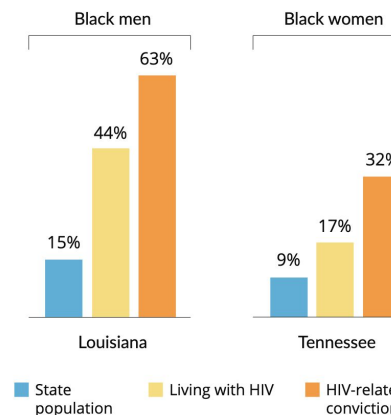
HIV Criminalization and Race

UCLA School of Law
Williams Institute

Black Americans are more likely to be **arrested** for HIV-related offenses.



Black people with HIV-related **convictions** are over-represented in state sex offender registries.



How has HIV criminalization been challenged?

- These laws have been challenged through **legislative advocacy**
 - Coalitions of people living with HIV and their allies, like HIV Modernization Coalition of Tennessee, have worked with their state legislators to repeal HIV criminalizing laws
 - As of 2024, 14 states have repealed or reduced consequences for HIV criminalizing laws
- These laws have been challenged in the courts through **lawsuits**
 - Constitutional Rights claims – many have failed
 - The Americans with Disabilities Act (ADA) protects people living with disabilities from institutional discrimination and ensures equal access to public services



Team ATAC (ADA to Attack Criminalization)

- Team ADA to Attack Criminalization (Team ATAC) uses protections in the Americans with Disabilities Act to challenge HIV criminalization.
 - Team ATAC leverages an interdisciplinary approach, incorporating coalition-based advocacy, administrative advocacy, and legal advocacy.
- As public entities, the state agencies that enforce HIV criminalization laws discriminate against people living with HIV, a protected condition, by subjecting them to heightened criminal penalties, solely because of their HIV status.

Recent Developments in the Fight Against HIV Criminalization Using the ADA

CHLP COLLABORATED

with people directly affected by HIV criminalization statutes in Ohio and Tennessee and filed DOJ complaints that alleged disability-based discrimination.

THE DOJ ISSUED A FINDINGS LETTER

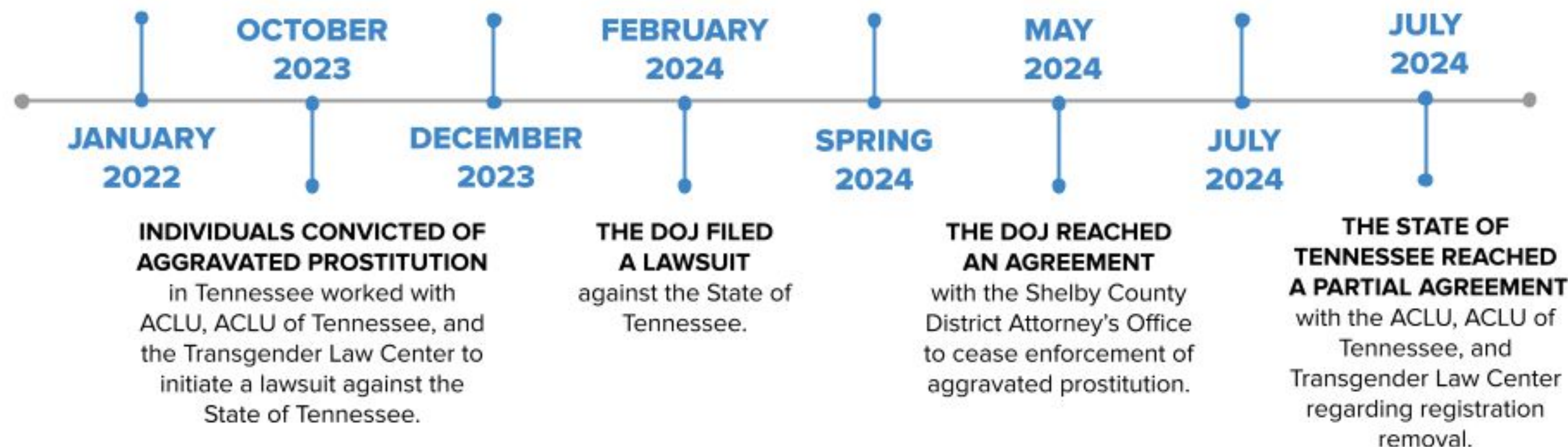
that concluded the State of Tennessee violated the ADA through its enforcement of the aggravated prostitution offense.

THE TENNESSEE HIV MODERNIZATION COALITION

worked to implement the DOJ's recommendations through legislation.

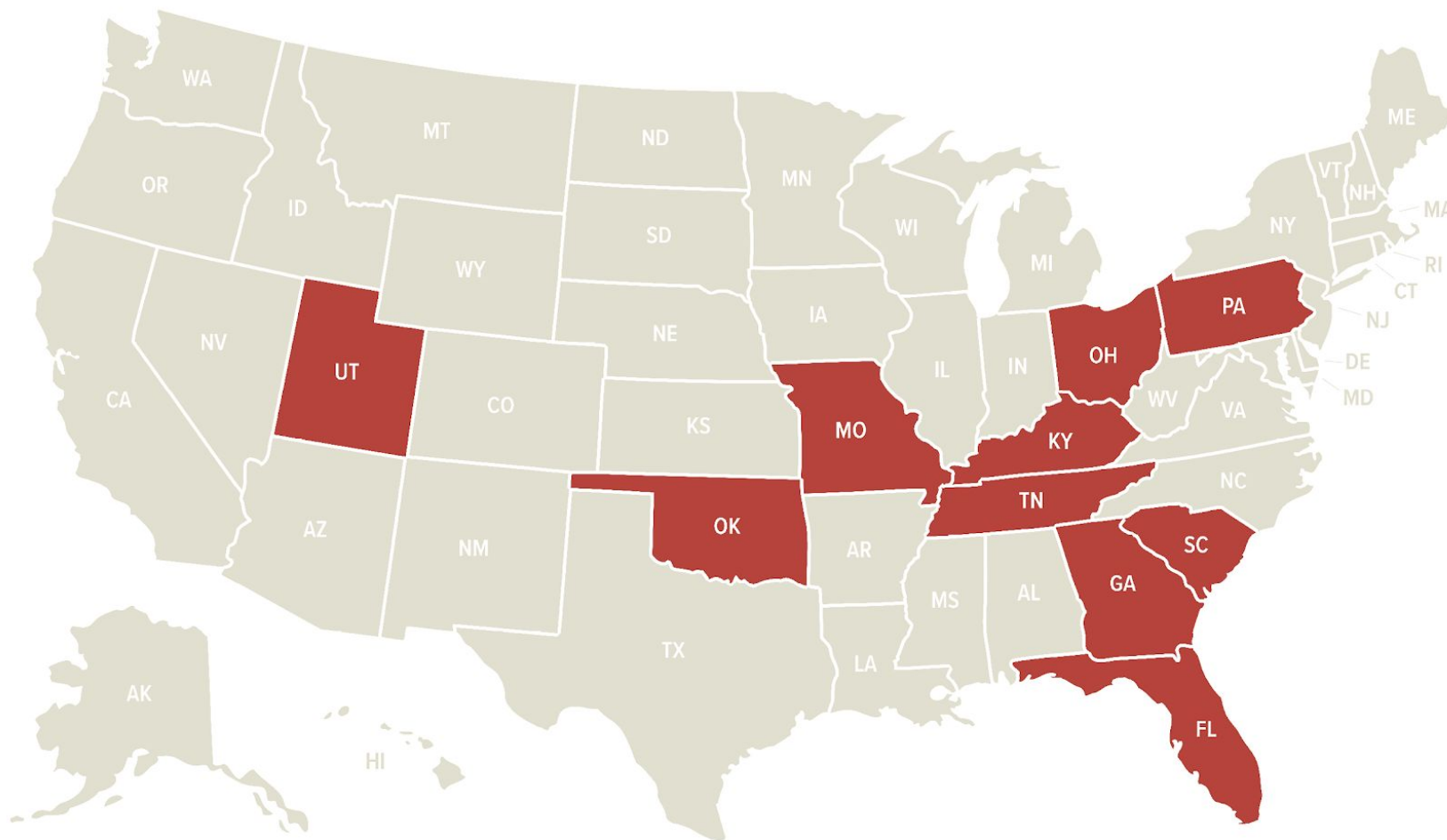
LEGISLATION REPEALED THE REGISTRATION REQUIREMENT

and allowed for registry removal for people convicted of aggravated prostitution; the reform did not fully repeal the aggravated prostitution offense.



Mapping HIV Criminalization Laws in the U.S.

PENALTY ENHANCEMENTS FOR SEX WORK



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STATES
have penalty
enhancements that
target people who are
living with HIV and
engaging in sex work.

How does Aggravated Prostitution work in TN?

General Prostitution is a misdemeanor, resulting in up to six months in jail, while **Aggravated Prostitution is a felony offense**, resulting in up to 15 years in prison and, until recently, mandatory lifetime registration as a violent sexual offender.

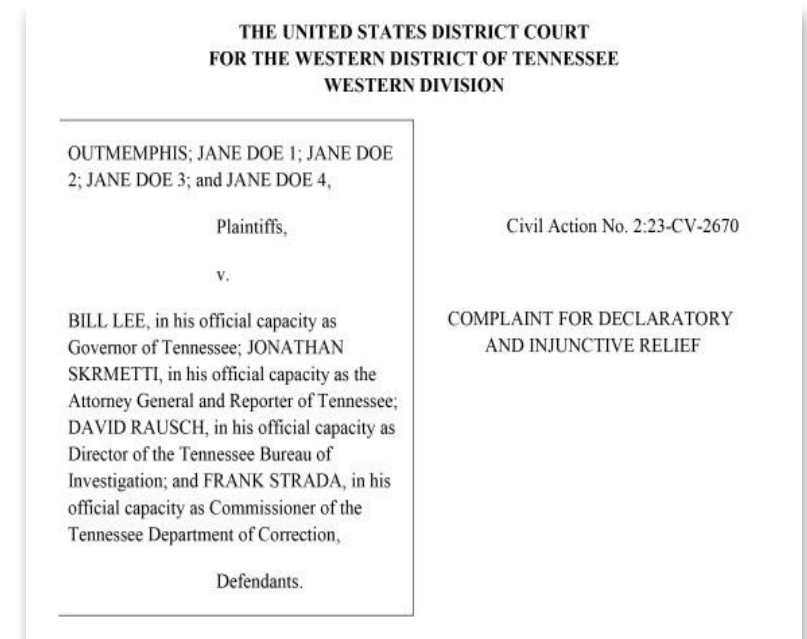
Tennessee's Aggravated Prostitution statute only requires that (1) the person is living with HIV; (2) the person is aware of their status; (3) and the person engaged in "an act of prostitution."

The law does not consider:

- If HIV was transmitted.
- Whether the person engaged in conduct where it is possible to transmit HIV, including any physical contact.
- Whether any mitigation measures were taken, including whether someone was incapable of transmitting HIV.

Challenging Tennessee Felony Prostitution Laws in the Courts: *OUTMemphis v. Lee*

- *OUTMemphis v. Lee* is a first-of-its-kind federal lawsuit challenging an HIV criminalization law, Aggravated Prostitution (“AP”), under the **Americans with Disabilities Act** (ADA) and the **US Constitution**
 - This lawsuit is the first challenge to an HIV criminalizing law as a whole using the ADA.
- *OUTMemphis v. Lee* seeks to strike down TN’s discriminatory, irrational, and cruel AP law and related sex offender registration requirements that hypercriminalize people living with HIV who are arrested for sex work



Why Challenge Aggravated Prostitution in Tennessee?

- **Felony convictions** and **registry as a violent sexual offender** can have devastating consequences, not only for time in prison but through limits on people's ability to find housing, work and community for the rest of their lives.
- **Racism, misogyny, and discrimination** against sex workers and people living with HIV are at the core of AP enforcement
 - 2022 Williams Institute report found race, class, and gender disparities, and a concentration of convictions in Shelby County, where Memphis is located.
 - One in five HIV registrants were unhoused and over 75% of all HIV registrants were Black.
 - Black women in Tennessee were 290 times more likely to be on the sex offender registry for an HIV-related conviction than white men.

Case Background

- Litigation developed to complement work of local movement leaders and state/national organizations working on HIV criminalization
 - For TLC, also developed in partnership with Positively Trans program
- **Counsel for Plaintiffs** are the national ACLU, ACLU of Tennessee, and TLC
- **Filed on October 24, 2023**, in U.S. District Court for the Western District of Tennessee, a federal court
 - The United States **Department of Justice** filed a similar suit on February 15, 2024, using largely the same claims, and our cases were consolidated.
 - However, after the election, the Department of Justice withdrew their case, leaving only our challenge remaining.

Case Background

- **Who were our clients at filing?**
 - **Four individual plaintiffs** who have been convicted of AP and have been forced to register as “sex offenders” or “violent sex offenders”
 - **OUTMemphis**, a non-profit organization that provides the LGBTQ+ community with support with housing, employment, healthcare, and other needs
- **Who have we sued?**
 - Governor Bill Lee
 - Attorney General Jonathan Skrmetti
 - Director of the TN Bureau of Investigation David Rausch
 - Commissioner of the TN Department of Correction Frank Strada



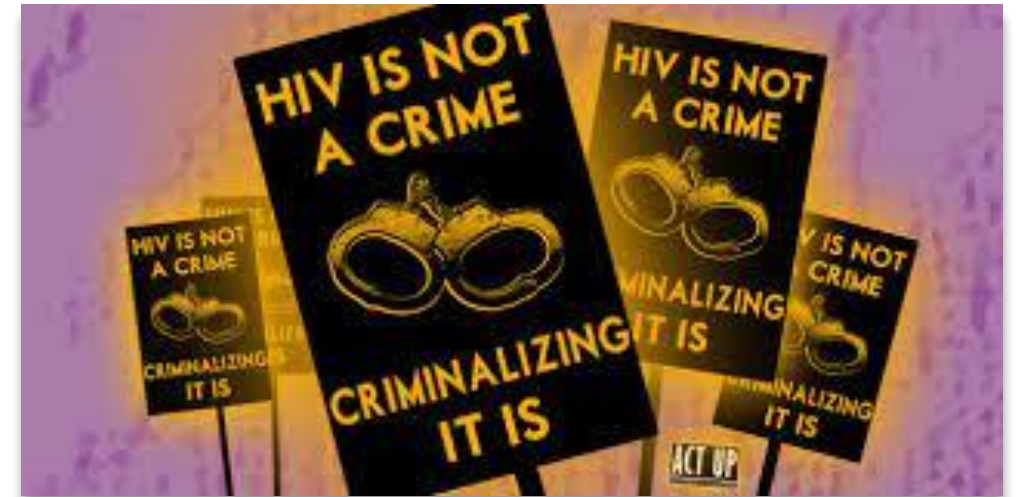
What claims did we file?

Both the Aggravated Prostitution statute and the registry requirements violate:

- Americans with Disabilities Act (ADA)
- The Equal Protection and Substantive Due Process clauses of the 14th Amendment
 - AP violates Equal Protection by singling out people living with HIV and depriving them of equal treatment by the law.
 - AP violates Substantive Due Process because law is based on discriminatory treatment without any rational relationship to a legitimate government interest.
- The 8th Amendment prohibition on cruel and unusual punishment
- The Ex Post Facto clause of the U.S. Constitution that prohibits retroactive punishment

What were we asking the court to do?

- Strike down the Aggravated Prostitution statute and stop its enforcement
- Strike down the sex offender registry law's provision that places people convicted of Aggravated Prostitution on the sex offender registry
- Remove everyone convicted of Aggravated Prostitution from the sex offender registry
- Expunge all registry-related state records for everyone registered because of an Aggravated Prostitution conviction



What has happened so far?

- **DOJ Settlement**
 - Shelby County District Attorney has agreed to halt the prosecution of AP in his jurisdiction.
- **Legislative change:** Tennessee removed registry requirement for future convictions and allowed possible removal for people already on registry for AP
- **OUTMemphis Registry Claims Settlement** post-legislative change
 - Our team settled our registry claims after reaching an agreement on the removal of people currently on the registry for AP convictions.
 - Includes a streamlined removal process and a timeline for review and notification, among other agreements.
 - Our team has been doing outreach and working with local organizations, and dozens of people have been removed from the registry.
- **Creation of ID Fund:** Our team worked with a local group to create a fund that covers the cost of new ID's and costs associated to accessing new IDs.

What happens next?

- The registry requirement has been addressed, but AP remains a felony conviction, so our lawsuit continues.
 - AP can still result in a sentence that is between six and 30 times the duration of the maximum sentence available for a Prostitution conviction.
- You can follow the case on TLC's case page:
<https://transgenderlawcenter.org/case/outmemphis-v-lee/>
- You can follow the case on the ACLU case page:
<https://www.aclu.org/cases/outmemphis-v-lee>

Moderated Questions

Attendee Questions

Please take this survey to evaluate conference sessions.

