

The Weight of Science: HIV Is Not a Crime

New Report Aims To Educate Public, Lawyers, Lawmakers

The AIDS Law Project of Pennsylvania and the Pennsylvania HIV Justice Alliance have collaborated to produce a new report, *The Weight of Science: Decriminalizing HIV in Pennsylvania*, which was released in August.

It updates 2017's *All Pain, No Gain: HIV Criminalization in Pennsylvania*. **Anna Kastner**, the AIDS Law Project's SERO Project Fellow, said the report is intended to educate both the general public and the legal profession and provide vital guidance in drafting new legislation.

"I hope it can be used to eventually change the laws in Pennsylvania and make sure judges aren't unnecessarily criminalizing people," Anna said.

The report outlines the ways in which people living with HIV are criminally punished in Pennsylvania for ac-



The AIDS Law Project of Pennsylvania partnered with the Pennsylvania HIV Justice Alliance, above, and The Elizabeth Taylor AIDS Foundation to produce the report, which was released in August.

tivity that would not be a crime, but for their HIV status.

Since 2017 there have been some relatively minor changes in the law. But the most significant development has been the global public health consensus that people living with HIV on effective

treatment cannot transmit the virus.

An overwhelming body of clinical evidence has firmly established that people living with HIV who achieve and maintain an undetectable viral load cannot sexually transmit the vi-

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Judge Issues Encouraging Ruling in Spitting Case

The AIDS Law Project recently received good news from Southwest Pennsylvania.

A man living with HIV was charged in October 2021 with various crimes, including aggravated assault and reckless endangerment, based in part on the allegation that he attempted to spit at state troopers during a mental health crisis.

His public defender is diligently fighting for him and consulted with the AIDS Law Project for technical assistance

shortly after the man's arrest. Although the case is still pending, a judge recently granted the public defender's motion that the Commonwealth be precluded from discussing the defendant's HIV status at the trial.

The AIDS Law Project connected the man's public defender with **Dr. Luis Montaner**, Vice President for Scientific Operations at the Wistar Institute, who offered expert testimony

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NAVIGATING THE SYSTEM

Sometimes it takes a village of lawyers, as in the case of a client on the verge of losing her income and housing.

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HIV Endurance

*Women's Journeys from
Diagnosis to Aging*

CHARLENE F. D'AMORE

'I WANT THEM TO KNOW THAT THEY ARE NOT ALONE'

A client hopes her new book will inspire other women living with HIV.

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A BAR STAR

The Philadelphia Bar Association has honored **Yolanda French Lollis**, our managing attorney, as a "Bar Star." **Page 5**



FROM THE EXECUTIVE DIRECTOR

The Facts of Life

Almost seven years have gone by since “alternative facts” entered the lexicon, when **Kellyanne Conway** defended Press Secretary **Sean Spicer**’s false statement about attendance numbers at **Donald Trump**’s inauguration.

This issue of Good Counsel offers facts based on science.

In the more than 40 years since HIV was identified, scientific research has been unequivocal about transmission. Despite false stories about bathrooms, doorknobs, and even food, HIV is only transmitted through blood or bodily fluids in specific ways.

Expanded research in recent years shows that people living with HIV whose viral load is undetectable cannot sexually transmit the virus to others — a concept popularly framed as Undetectable=Untransmittable, or U=U.

The Weight of Science: Decriminalizing HIV in Pennsylvania, a report by the AIDS Law Project of Pennsylvania in collaboration with the PA HIV Justice Alliance, makes it clear that punishing people with HIV for conduct that would not be a crime, or would be a less serious crime, is not supported by science.

On a related note, a study just reported in JAMA found no significant change in crime in the areas where two Overdose Prevention Centers have been operating in New York City for the last two years. The study concluded that medical emergency calls to 911 fell markedly near the OPCs, but hardly changed elsewhere. Calls to 311 related to homelessness decreased, while calls about public drug use and unsanitary conditions did not show a statistically significant increase.

As the AIDS Law Project and the Safehouse legal team fight to dispel myths about OPCs, such research shows the value of evidence-based initiatives to fight an overdose crisis in which more than 110,000 people have died across the U.S., including 1,500 in Philadelphia.

To protect public health, we must embrace the truth, verify information sources, trust proven facts, and rely on science.

We wish you a peaceful and healthy holiday season and new year — and that’s a fact.

Ronda

N A V I G A T I N G

Sometimes It Takes a Village of Lawyers

Our 59-year-old “Delores” has been receiving Social Security disability benefits based on HIV complications for more than half her life, but in 2020 her HIV stabilized. By the time she called us for help, she was at great risk of losing her income and her housing.

The Social Security Administration had determined she was no longer disabled by HIV. As Delores suffers with cardiac, pulmonary, and mental health problems, and a hoarding disorder, and substance use disorder, she appealed the determination. An Administrative Law Judge hearing was scheduled, but she stopped opening her mail and didn’t know the hearing date.

At the same time, her landlord was trying to illegally lock her out because of her hoarding. AIDS Law Project housing lawyer **Shamus Brennan** advised the landlord that he’s required to follow the legal eviction process. The landlord filed an eviction complaint, and a hearing was scheduled.

Days before the eviction hearing, Delores called to report that she hadn’t received her Social Security check and the case was assigned to **Yolanda French Lollis**, AIDS Law Project’s managing attorney.

Yolanda discovered that Delores’s Social Security benefits were terminated because she didn’t attend the hearing. She knew that Delores would need to reapply for benefits.

However, once Yolanda met Delores in person, she decided a more aggressive approach was necessary.

Delores was obviously physically impaired and suffering with auditory and visual hallucinations. Yolanda knew that if she couldn’t get Delores’s benefits quickly, she would die on the street. She immediately filed a petition to vacate the dismissal and reopen the case.

The petition to reopen was granted and an ALJ hearing was scheduled. Senior Staff Attorney **Jacob M. Eden** contacted Social Security and successfully requested that Delores’s benefits be restarted and continued pending her appeal.

Meanwhile, Shamus was trying to prevent Delores from being evicted. The landlord agreed to give Delores \$1,000 if she voluntarily left her apartment. She accepted the money and moved to her brother’s house.

Yolanda won Delores’s ALJ hearing by arguing that the combination of her numerous severe medical impairments prevented her from working, and would not improve regardless of her drug and alcohol addiction.

Delores is now in treatment for her physical health needs and is saving money for a place of her own. She still is working through mental health needs, but has a village of lawyers to turn to, if necessary.



Puzzling Through Health Care Benefits

Coordinating federal, state plans for disabled individuals can be challenging

Jane is 50 years old and had been on Social Security Disability and Medicare for decades. More than seven years ago, she returned to work and was no longer eligible for SSD, but was able to keep her Medicare for an extended period of time.

The Social Security Administration's work incentive programs transition disabled individuals back into the workforce by allowing them additional time to keep their government-provided health insurance, even if their employment income is too much to receive cash benefits.

Based on her income, she was also eligible for Medicaid through the Healthy Horizons program, which fills in the gaps of Medicare coverage.

Senior staff attorney **Jacob M. Eden** advised Jane when she lost her SSD that her Medicare would continue for about seven years. As expected, seven years later her Medicare ended and Jane called us for help.

In the intervening seven years, she would have been at risk of losing her

Healthy Horizons Medicaid, but COVID emergency benefits allowed her to keep it even though her income continued to increase.

As a dual eligible, someone who receives Medicare and Medicaid, Jane had drug coverage through Medicare. When she lost her Medicare, she lost her prescription coverage.

Jacob contacted the County Assistance Office to advise that since Jane was no longer eligible for Medicare, she needed to be switched to a different Medicaid plan, so that her prescriptions would be covered. Her Medicaid, however, would only last until the end of the unwinding of COVID-related benefits which began in May.

Adrian M. Lowe, senior staff attorney, followed up on Jane's Medicaid eligibility and advised her to apply for the Medical Assistance for Workers with Disabilities program. Enrolled in the MAWD program, the client has successfully made her way back to permanent employment and health insurance.

Another client had been on Medicaid

and then became eligible for Medicare. Individuals who are awarded Social Security Disability benefits must wait two years before becoming eligible for Medicare. The County Assistance Office switched him to a Medicare plan before he had time to enroll into a Part D plan. When he went to get his medication at the pharmacy, he discovered that he no longer had prescription coverage.

He contacted us for help. Jacob advised the pharmacy that the client was eligible for the temporary Medicare program, LINET (Limited Income Newly Eligible Transition) and to bill that program for the client's medications. Jacob counseled the client to sign up for a Medicare Part D plan and the Special Pharmaceutical Benefits Plan so that his prescription coverage would continue without interruption.

Coordinating federal and state benefits plans for disabled individuals can often feel like an advanced game of Tetris. Thankfully, AIDS Law Project lawyers are able to offer a skilled hand where needed.

Repairing the Damage When an Identity Thief Strikes

Direct Express cards are a lifeline for people who receive federal benefits but don't have bank accounts. Money is deposited on the card, which works like a debit card and can be used to pay for a variety of basic expenses.

That's why a woman panicked in July when she realized her card wasn't working, with rent coming due. She had contacted Direct Express multiple times by phone and email but had not been able to resolve the situation. She contacted **Jacob M. Eden**, a senior staff attorney for the AIDS Law Project, on July 27.

"She was upset and a little bit frazzled because she didn't know what was going on or how to fix it," Jacob said.

Jacob and his client immediately contacted Direct Express to figure out what happened.

They discovered that someone in Chicago had stolen the woman's identity and requested her Direct Express card be sent to them. Jacob helped cancel that card, verify his client's identity using more intensive ID verification, and had a new card expedited, with the fee waived.

Jacob then reviewed her Social Security disability benefits and realized the Social Security Administration was deducting \$91 for a previous overpayment. Jacob and his client called together and were able to arrange a \$10 payment plan, which his client could handle.

When it was all over his client said Jacob made it seem so easy to set things straight.

"The bureaucracy can wear down anybody," Jacob said. "You need to know where to call and what to ask for."

GOOD COUNSEL BY E-MAIL

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FRIENDS OF THE AIDS LAW PROJECT

Safehouse's Legal Fight Continues

As death toll rises, City Council blocks a proven model, but offers no alternative

As overdose deaths reach record levels in Philadelphia, supporters of Safehouse continue their efforts to open it as an Overdose Prevention Center using a model that has proven to save lives.

In a recent setback, the Philadelphia City Council voted in September to adopt zoning regulations that make it highly unlikely Overdose Prevention Centers could open in all but one council district.

Although Mayor **Jim Kenney** vetoed the decision ten days after the vote, the council soon voted to override his veto. The mayor supports Overdose Prevention Centers as long as they are privately funded.

Ronda B. Goldfein, executive director of the AIDS Law Project and vice president of Safehouse, said the council failed its duty to protect public health.

"City Council took an evidence-based initiative off the table and offered no workable solution as an alternative," she said.

Since shortly after it was founded as a nonprofit in 2018, Safehouse has been embroiled in a federal lawsuit initially filled by the Trump administration's Department of Justice, which claimed it was prohibited under the Controlled Substances Act.

Safehouse would provide safe consumption and observation rooms staffed by a medical staff prepared to administer overdose reversal if needed. More than 100 such sites have existed in Europe, Canada, and Australia for over 30 years. There are two sites in the U.S., both in New York City.

Safehouse's medically based model would provide a range of services, including on-site initiation of medically assisted treatment, recovery counseling, education about substance use treatment, basic medical services, and referrals to supporting services such as housing, public benefits, and legal services.

As Safehouse awaits its next day in

court, which is scheduled for December 4, a study reported in JAMA, the Journal of the American Medical Association, in November found that no significant change in crime has taken place in the areas where two Overdose Prevention Centers have been operating in New York City since November 2021. The study concluded that medical emergency calls to 911 fell markedly near the OPCs, but hardly changed elsewhere. Calls to 311 related to homelessness decreased, while calls about public drug use and unsanitary conditions did not show a statistically significant increase.

An essay on the study that appeared in the New York Times, *A Safe Injection Site Won't Destroy Your Neighborhood. It May Save It*, points out that "(p)revious research has consistently shown that harm reduction approaches that prioritize public health over drug-law enforcement do not worsen neighborhoods or increase crime rates. And most of all, these policies don't lead to higher drug use among youth or people who are already addicted, and can increase the likelihood that they enter treatment."

Client Shares Women's Stories

Charlene F. D'Amore, a client of the AIDS Law Project, has published a book that she hopes will give other positive women inspiration as they live and age with HIV.

"I want them to know that they are not alone," she said.

HIV Endurance: Women's Journeys from Diagnosis to Aging offers an autoethnographic analysis of the lived experience of disclosing HIV to others, incorporating HIV into one's identity, challenging HIV stigma, and aging with HIV. It includes Charlene's experiences as well as the stories and perspectives of 17 other women.

Charlene works full time as a teacher

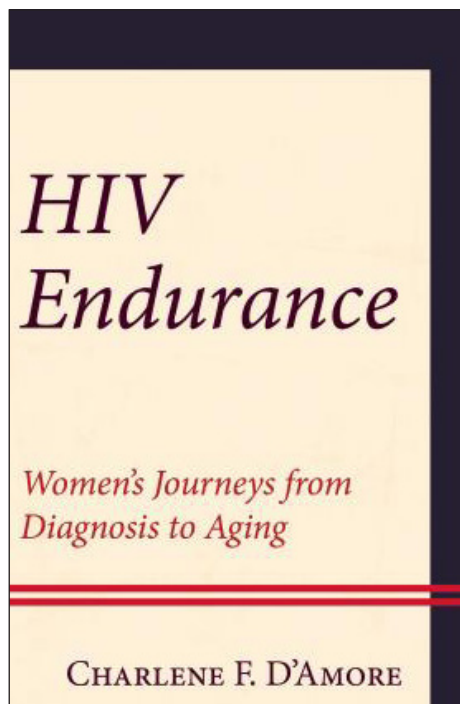
in public education and earned a Ph.D. in August 2019. Her book was released in October by Lexington Books, a subsidiary of Rowman & Littlefield Publishing Company.



"I hope my book offers readers a better understanding of the HIV disclosure dilemma and the HIV disclosure continuum," she said.

Among other goals, she hopes the book helps to destigmatize HIV and offers women ideas about how to integrate HIV into their identities.

Charlene is available for speaking engagements and can be reached at HIVendurance@gmail.com.



FRIENDS OF THE AIDS LAW PROJECT

After 10 years of JUNK, we hope for many more

*Brian Sanders' dance group
draws rave reviews*



The AIDS Law Project loves partnering with arts organizations and nothing illustrates that better than our collaboration in recent years with **Brian Sanders' JUNK**, a renowned Philadelphia-based dance group.

Brian said he likes to contribute to the community, so he was receptive when the AIDS Law Project approached him about performing at its 25th anniversary gala in 2013.

"I said, 'No problem, let's do this,'" he recalled.

What ensued was a stunning aerial performance that dazzled the audience. Brian Sanders' JUNK has since performed at numerous AIDS Law Project events, which our supporters always eagerly anticipate.

Sometimes he has brought his performers to whatever location the event is being held and sometimes he has dedicated a performance of one of JUNK's scheduled shows to us. JUNK does about three major performances a year.

"If I can show up artistically it makes me feel like I'm doing the right thing," Brian said.

Brian learned he had HIV in 1987 when he was 20 and living in Los Angeles. He said he was terrified and didn't have much of a support network. He moved to Philadelphia soon after and decided to study dance at the University of the Arts.

He founded JUNK 30 years ago and it has since earned rave reviews from critics and audiences alike. He describes his style as "classical ballet



acrobatic aerialist with pizzazz, and a little angst thrown in there."

The AIDS Law Project's relationship with JUNK deepened when Brian asked **Ronda B. Goldfein**, its executive director, to join its board, which she now chairs.

The AIDS Law Project is deeply appreciative of Brian's contributions and hope it's a relationship that lasts for many years.

To learn more about the group and upcoming performances, go to briansandersjunk.com.

INSIDE THE AIDS LAW PROJECT



Farewell to 2023 Summer Interns

The AIDS Law Project is grateful for the outstanding assistance we got from our summer interns.

From left: **Claire Ho Ferrance**, a sophomore at Reed College; **Lara Ormiston**, a third year student at Temple University Beasley School of Law; **Nora Casper**, a second year student at Drexel University Thomas R. Kline School of Law; **Jenna Centofanti**, a second year student at Rutgers Law School; **Kyle Mackey**, a second year student at Temple Law.

Inset, from left: **Thomas McGann**, a second year student at Temple Law; **Victoria Adams**, a second year student at Villanova University Charles Widger School of Law.

Help Wanted: Housing Attorney

The AIDS Law Project of Pennsylvania is seeking a staff attorney for its Housing Unit.

We have an energetic, high-volume Philadelphia-based housing practice that currently is staffed by an attorney and a paralegal. The staff attorney would be expected to manage a caseload in Philadelphia County Landlord-Tenant Court. We give priority to cases that involve eviction defense, efforts to address unhealthy housing conditions and the preservation of subsidies for publicly assisted housing. In addition to maintaining an active Landlord-Tenant Court docket, the staff attorney would provide tenants' rights and utility advice to people living with HIV throughout Pennsylvania.

The ideal candidate will have experience in legal services, preferably with a background in landlord-tenant law; courtroom and negotiation experience; strong organizational and communication skills; and cultural competence and the ability to interact with individuals who are diverse in immigration status, race, class, ethnicity, sexual orientation and gender identity.

Salary is commensurate with experience. The AIDS Law Project offers a competitive benefits package.

Send resume and letter explaining your interest in helping people living with HIV to **Juan M. Baez, Esq.**, deputy managing attorney at jbaze@aidslawpa.org.

Managing Attorney Honored by City Bar

Yolanda French-Lollis, managing attorney of the AIDS Law Project, has been honored by the Philadelphia Bar Association as one of its "Bar Stars" for its Public Interest Section. **Heather Hulit** was also honored by the Section.

Mary Kate Kalinich, Public Interest Section Chair for 2023, wrote, "Both Yolanda and Heather have put in an incredible amount of work for the Section and we are so grateful for their willingness to volunteer their time."



Eric Pfeleider

SERO Project staff members from across the U.S. and Mexico held a week-long retreat in the Poconos in October. They took a day to come to Philadelphia to meet with the AIDS Law Project and the Pennsylvania HIV Justice Alliance. It was a reunion for many old friends and an opportunity to meet new ones.

Ruling

Continued from Page 1

ny in support of the motion at a hearing in January.

Dr. Montaner testified how HIV is transmitted and that broad scientific consensus is that saliva is not a route of transmission. In addition to crediting Dr. Montaner's testimony, the judge referenced recent changes to Pennsylvania law that demonstrate that the state legislature only intends to criminalize conduct that could actually result in the transmission of HIV.

"The judge ruled the man's

HIV status wasn't relevant because saliva is not a route of transmission," said **Anna Kastner**, the AIDS Law Project's SERO Project Fellow.

Although the decision does not set legal precedent because it was issued in a lower-level court, Anna said it still sends a message, that paying attention to the science is a crucial element of a fair, legal proceeding.

"The decision also shows the value of an expert witness to determine whether a defendant should be charged with a crime that is based on scientific findings," she said.

ABOUT US

WHAT WE DO

The AIDS Law Project of Pennsylvania is a nonprofit, public-interest law firm. We publish *Good Counsel* semiannually for our friends, volunteers and colleagues committed to protecting the rights of people with HIV and those at risk of HIV. Last year, we worked on about 1,600 legal issues, nearly all from people with HIV. We help people navigate the legal system, the welfare system, the housing system, and the worlds of public and private insurance. We provide education and training to professionals who work with people living with HIV.

WHO WE ARE

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HOW TO HELP

Remember us at workplace giving time. When you donor-designate in your workplace giving campaign, remember your neighbors served by the AIDS Law Project of Pennsylvania.

United Way of SEPA: Specific Care Option #09067
Combined Federal Campaign: Donor Option #36027

FROM THE COVER

Science

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rus to others, a concept popularly framed as Undetectable=Untransmittable or U=U.

Treatment is prevention, and our new report needed to reflect that to be an effective tool for educating lawmakers, prosecutors, defense attorneys, judges, and the public.

More than 50 organizations and individuals have already endorsed *The Weight of Science* and we are seeking additional supporters. To read the full report or to pledge support, go to the Publications page at www.aidslawpa.org.

HIV criminalization disregards science, ignores legal principles of harm and punishment, undercuts public health initia-

tives, devalues risk reduction strategies for HIV prevention, and exacerbates stigma. Criminalization makes it more difficult for people living with HIV to disclose to partners and to access and stay in care.

"The science developed over the more than 40 years since HIV was identified creates a clear path to prevent HIV transmission and ensure that people living with HIV do not face stigma and discrimination," the report concludes. "Relying on the weight of that science, instead of fear, will enable legislators, law enforcement officers, policymakers, educators, and advocates to stop HIV criminalization and end the HIV epidemic."

Partners in the Cause



Ronda B. Goldfein, executive director of the AIDS Law Project, met with the PA Thrive Partnership in Erie and remotely from rural locations in October. The Partnership has been helping those living with HIV lead active and productive lives for more than 30 years. Its highly trained and compassionate staff serves 25 counties in northwest and north-central Pennsylvania.



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Gifts received April 1, 2023 through September 30, 2023

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