BACKGROUND

According to a recent CDC/DOJ report, thirty-two (32) U.S. states currently have HIV-specific criminal laws on the books. In general, these laws make it a crime for people living with HIV to either: 1) engage in sexual behaviors with a partner without disclosing their HIV-status beforehand; or, 2) expose another to HIV without their consent.

Social movements in the United States have recently drawn attention to the racial disparities in the American criminal justice system. Studies have shown that Black heterosexual men are disproportionately convicted under at least one U.S. state’s HIV disclosure law: Michigan. These findings raise questions about how evenly American HIV-specific criminal laws are applied. However, no study has yet examined whether there are racial or gender differences in the length of criminal sentences handed out under American HIV exposure and disclosure laws.

METHODS

This study draws on an original dataset of convictions under HIV-specific criminal laws in five U.S. states: Arkansas, Florida, Michigan, Missouri, and Tennessee.

RESULTS

Prison was the most common sentence. Overall, 357 convictions were identified in the five states studied between 1990 and 2015. Of these cases, 307 cases were sentenced to incarceration in jail or prison while 50 were sentenced to probation. The average incarceration sentence was 83.26 months (nearly 7 years), while the average probation sentence was 44.81 months.

Black men were sentenced to three years longer in prison than white men: Overall, black men were assigned lengthier incarceration terms (109.79 vs 73.64 months for white men) and probation sentences (55.73 vs 35.57 months).

In Arkansas, Black men were sentenced to nearly a dozen more years in prison than white men: In four out of five states, black men were given greater prison sentences, with the greatest disparity observed in Arkansas (278.86 months vs. 139.50 for white men).

Overall, men were sentenced to lengthier incarceration terms (98.16 vs 36.35 months for women) and probation terms (46.51 vs 38 months for women).

Few Black women were convicted in most states, with the exception of Florida; in that state, sentences between Black and white women were similar (27.32 vs 25.42 months for white women).

DISCUSSION AND CONCLUSIONS

Overall, this study suggests that there are important racial and gender disparities in sentencing under U.S. HIV disclosure and exposure laws that mirror broader patterns in the American criminal justice system. These findings suggest advocates may wish to appeal to broader frameworks of racial injustice in their efforts to reform these laws.