Title
Enforcement of HIV Criminalization in Tennessee

Authors
Cisneros, Nathan
Sears, Brad
Lennon-Dearing, Robin

Publication Date
2022-06-28

Data Availability
The data associated with this publication are not available for this reason: Licensing restrictions

RESEARCH THAT MATTERS

ENFORCEMENT OF HIV CRIMINALIZATION in Tennessee

JUNE 2022

Nathan Cisneros
Brad Sears
Robin Lennon-Dearing

UCLA School of Law Williams Institute

OVERVIEW

The Williams Institute analyzed data from the state of Tennessee about individuals who were convicted of an HIV crime and placed on the state's sex offender registry (SOR). In addition to the registry data, we also analyzed detailed data from 77 case files of those on Tennessee's SOR who resided and were prosecuted in Shelby County, home of Memphis.

The analysis of statewide SOR data shows that

- **Overall enforcement:** At least 154 people have been placed on Tennessee's SOR for an HIV-related conviction. The majority of HIV registrants (51%) were convicted for aggravated prostitution (AP). Just under half of HIV registrants (46%) were convicted for criminal exposure (CE). About 3% of all HIV registrants were convicted for both AP and CE.
- **Shelby County:** Shelby County drives most of the HIV convictions in the SOR. Overall, 64% of the SOR's HIV registrants living in Tennessee (and not incarcerated) resided in Shelby County. For context, Shelby County makes up only 13% of the state's population, 17% of SOR registrants overall, and 37% of the state's people living with HIV (PLWH).
- **Race and sex:** Enforcement of HIV crimes in Tennessee disproportionately affects women, Black people, and Black women in particular.
    - Nearly half (46%) of the SOR's HIV registrants were women. However, less than 4% of all people on the SOR were women, and women were only 26% of PLWH in Tennessee in 2019. When considering the type of conviction, about three-fourths (77%) of all AP registrants were women; women were only 15% of CE registrants.
    - Over 75% of all HIV registrants were Black. In comparison, only 27% of all people overall on the SOR overall were Black, and Black people are only 56% of PLWH in Tennessee.
    - Black women were the majority of AP registrants (57%), while Black men were the majority of CE registrants (64%).
    - Although Black women were less than 1% of those on the overall SOR, they were nearly one-third (29%) of all HIV registrants. In contrast, white men, who were 68% of the overall SOR, comprised only 12% of HIV registrants. Put differently, a Black woman was 290 times more likely to be on the registry for an HIV conviction than a white man. Black men were about 10 times more likely to be on the SOR for an HIV conviction than white men, and white women were 28 times more likely to be on the SOR for HIV conviction than white men.
- **Socio-economic status:** Those convicted of an HIV-related offense are likely more economically vulnerable when compared to others on the state's SOR. Among registrants living in Tennessee and not incarcerated:
    - One in five HIV registrants (19%) were homeless—over twice the share (9%) of all SOR registrants who were reported as homeless.
    - About half (49%) of SOR registrants provided an employer address, while only 28% of HIV registrants reported an employer address.
    - Nearly two-thirds (64%) of SOR registrants had a vehicle registered in their name, however, only 21% of HIV registrants had a vehicle registered.

In addition to the SOR, we obtained detailed case files from Shelby County, home to nearly three-quarters (74%) of all AP SOR registrants and just over half (51%) of all CE registrants living in the state. The Shelby County case files reveal several key findings:

Aggravated Prostitution Convictions in Shelby County

- **High level of enforcement**: Shelby County (Memphis) appears to have more aggressively convicted sex workers for HIV-related offenses than similarly situated counties. We reviewed 58 AP cases in Shelby County, one AP conviction for every 115 PLWH in the county. By comparison, Saint Louis has one conviction for every 2,962 PLWH; Jackson County (Kansas City) has no such convictions.
- **Race and sex**: Compared to the population of AP convictions across the state identified in the SOR, those arrested in the Shelby County files were even more likely to be Black women—74% of people arrested in Shelby County compared to 57% in the SOR statewide. Overall, Black people were 90% of all people arrested for AP in the Shelby County files.
- **Socio-economic indicators:** Of the case files (16) that contained information about education level and employment history, 69% indicated that the person convicted did not complete high school or the equivalent (GED certificate). Close to one-half (44%) reported no employment history at all. Of the case files (25) that include information about legal representation, 96% of those convicted were represented by a public defender (23) or court-appointed attorney (1).
- **Alcohol and substance use:** Assessments of alcohol use history and of illegal substance use history were included in 15 of the case files: only one of these defendants reported neither alcohol nor substance use.
- **Risk of transmission**: The overwhelming majority of convictions resulted from police vice squad activities; virtually none of the 58 arrest reports alleged that any actual sex acts occurred. In total, only two of the 58 arrest reports (3%) alleged *any* intimate contact. Instead, the arrests were mainly based on conversations between vice squad officers and people suspected of engaging in sex work.
    - Almost half (47%) of all arrests involved *only* discussion about oral sex, which carries no risk of transmitting HIV.
    - At most, two arrests stemmed from alleged verbal agreements to sex acts that would have carried a per-act transmission risk of greater than 1%. That transmission risk would fall to 0% if effective mitigation strategies were also used.
- **Prices:** The prices discussed for the sex acts ranged from free (in exchange for a place to stay for the night) to $120 (in a case involving sex with two people). The average amount agreed to for oral sex alone was just over $15; agreements involving vaginal sex were in the $20 range, while those for anal sex were $64 per person on average.
- **Outcomes:**
    - For those files with bail information, the average bail amount was about $6,500, with a median of $1,000 and a range of $100 to $50,000. In 81% of cases, the defendant was not able to make bond, including six cases in which the bond was set at $100.
    - In all 22 cases for which we have data, the defendant pled guilty; no case went to trial.

- In cases for which we have sentencing data, the average sentence length was 2.91 years, and the median was three years. Sentences ranged from a low of one year up to eight years.

Criminal Exposure Convictions in Shelby County

- **Types of cases:** Among the 20 CE cases from Shelby County, one was the result of exposure to spitting or biting ("exposure"). The remaining 19 cases involved sexual contact. Four cases involved an underlying sexual assault charge ("assault"). The remaining 15 cases (80%) alleged that the person arrested did not disclose their HIV status to an intimate partner ("non-disclosure").

  In 12 of the non-disclosure cases, the files indicate that the arrestee and the victim had an ongoing intimate relationship. Eleven of the cases involved different-sex partners, while four involved same-sex partners. Six of these cases indicated some level of condom use and four indicated that the person may have been on effective treatments, although neither use of a condom nor being on effective treatments are defenses under Tennessee law.

- **Race and sex:** All of those convicted for CE crimes in Shelby County were Black. Compared to demographics of people across the state with a CE conviction on the SOR, those arrested in the Shelby County files were much more likely to be Black men (95% of people arrested in Shelby County compared to 64% in the SOR).
- **Socio-economic indicators:** We have education levels and employment history for nine of the people convicted in these CE cases. None of the individuals convicted graduated from college. One-third reported no employment history at all. Of the nine cases where we have information about the type of representation, two-thirds (67%) retained private counsel (hired a lawyer). The others either had a public defender or a court-appointed attorney.
- **Alcohol and substance use:** Assessments of alcohol and of illegal substance use history were included in seven of the case files. All seven reported a history of one or both.
- **Risk of transmission:** In 35% of the cases, details of the alleged sex acts were not available, so it is not possible to determine the risk of transmission. One file indicated only spitting, which has no transmission risk, and an additional 35% percent of files indicate oral sex, which also has no risk of transmission. Almost 40% of the files indicate insertive vaginal sex (where the male defendant is HIV-positive), which has a 0.08% risk of transmission (1 in 1,234), even if no condom is used. That risk falls to 0% if the HIV-positive partner is on effective treatment.
- **Outcomes:** In the cases for which we have bail information, the average bail amount was $26,000, with a median of $30,000. The bail amounts ranged from $15,000 to $50,000. We have information about whether the defendant pled guilty or went to trial for only two cases, in both cases the defendant pled guilty. We have sentencing information for four cases. The average sentence length for criminal exposure cases was 3.75 years, and the median was 3.5 years, with a range of three to five years.

Cost of Incarceration

We conservatively estimate that in total, people have been incarcerated for at least 209 person-years in Tennessee as the result of the enforcement of its AP and CE HIV crimes. Using an average annual cost-per-person of $18,250, we estimate the total cost of incarceration in prison for HIV crimes in Tennessee to be $3.8 million.

BACKGROUND

HIV criminalization is a term used to describe statutes that either criminalize otherwise legal conduct or that increase the penalties for illegal conduct based upon a person's HIV-positive status.[1] Tennessee has two primary HIV criminal laws: aggravated prostitution, first enacted in 1991, and criminal exposure, first enacted in 1994. Both of Tennessee's HIV crime laws were enacted before effective medications to treat and prevent the transmission of HIV were identified and made widely available in 1996.[2]

AGGRAVATED PROSTITUTION

In Tennessee, aggravated prostitution (AP) occurs when a person who knows of their HIV-positive status does one of the following:

- "engages in sexual activity[3] as a business"
- "is an inmate in a house of prostitution"
- "loiters in a public place for the purpose of being hired to engage in sexual activity."[4]

Actual transmission of HIV is not required for conviction,[5] nor is the intent to transmit HIV, nor even is conduct that can actually transmit the virus. Indeed, intimate contact is not required at all to sustain a conviction. For example, a person can be convicted for having a conversation in which they agree to perform oral sex in exchange for money.

A review of the legislative record indicates that Tennessee enacted its aggravated prostitution law in 1991 with little debate. Violation of Tennessee's HIV aggravated prostitution law is a Class C felony,[6] with penalties including imprisonment for three to 15 years, and fines up to $10,000.[7] In contrast, solicitation by someone who is not HIV-positive in Tennessee is a Class B misdemeanor,[8] with penalties of up to six months incarceration and no more than a $500 fine.[9]

---

[1] Dini Harsono, Carol Galletly, Elaine O'Keffe & Zita Lazzarini. "Criminalization of HIV Exposure: A Review of Empirical Studies in the United States." *AIDS and Behavior* 21, no. 1 (2017): 27-50.

[2] Brad Sears and Shoshanna Goldberg. "HIV Criminalization in Georgia: Evaluation of Transmission Risk." The Williams Institute, University of California Los Angeles School of Law (2020) (https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Crim-Transmission-GA-Mar-2020.pdf).

[3] Sexual activity is defined to include acts that do not require close contact, such as "lascivious exhibition of the female breast," as well as acts that involve close contact, but that could not be a transmission route for HIV, such as oral sex and touching. See Tennessee Code § 39-17-1002 (2020).

[4] Tennessee Code Annotated § 39-13-516(a) (2020).

[5] Tennessee Code Annotated § 39-13-516(c) (2020).

[6] Tennessee Code Annotated § 39-13-109 (2020).

[7] Tennessee Code Annotated § 40-35-111 (b)(3) (2020).

[8] Tennessee Code Annotated § 39-13-512 (6) (2020); Tennessee Code Annotated § 39-13-513(b)(1) (2020). Prostitution near a church or school is a Class C misdemeanor and carries higher penalties.

[9] Tennessee Code Annotated § 40-35-111 (e)(2) (2020).

CRIMINAL EXPOSURE

Tennessee makes it a crime for a person living with HIV to engage in certain activities without first disclosing their status.[10] Criminal exposure (CE) can be through

- "intimate contact with another"
- blood, organ, or other bodily fluids donation
- exchange of non-sterile intravenous drug paraphernalia, such as needles.[11]

"Intimate contact" is further defined as "the exposure of the body of one person to a bodily fluid of another person in any manner that presents a significant risk of HIV… transmission." The statute specifically states that HIV transmission is not required for conviction,[12] nor is the intent to transmit HIV. The statute creates an affirmative defense if "the person exposed to HIV knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and gave advance consent to the action with that knowledge."[13]

While Tennessee's criminal exposure statute does not define "significant risk,"[14] more recently, case law has required that the risk of transmission be more than "a faint, speculative risk of transmission," and must be supported by "expert medical proof":

> We conclude that "significant risk" is a product of both the severity of the consequences and the likelihood that HIV will be transmitted. The question of whether a risk is significant is fact specific and should not be hamstrung by a mathematical straight jacket. Because the contraction of HIV and the development of AIDS can lead to death, the consequences are severe. But simply using severity as the benchmark would be too broad. If the chance of transmitting HIV is but a faint possibility and no more than speculative in nature, *see Onishea,* 171 F.3d at 1299, then the risk is not "significant" for purposes of the criminal exposure statute, despite the severity of the potential consequences. We hold that in the context of the criminal exposure to HIV statute, "significant risk" requires a chance of HIV transmission that is more definite than a faint, speculative risk, as shown by expert medical proof.[15]

Criminal exposure to HIV is a Class C Felony[16] punishable by three to 15 years in prison and a fine of up to $10,000.[17]

In contrast to the 1991 bill that created an aggravated prostitution offense, legislators in 1994 expressed a range of views about a possible criminal exposure law. During the legislative proceedings on the bill, one representative asserted that many cases of HIV involved individuals who committed

[10] Tennessee Code Annotated § 39-13-109 (2020).

[11] Tennessee Code Annotated § 39-13-109(a) (2020).

[12] Tennessee Code Annotated § 39-13-109 (d)(1) (2020).

[13] Tennessee Code Annotated § 39-13-109(b)(2) (2020).

[14] Tennessee Code Annotated § 39-13-109(b)(2) (2020).

[15] *State v. Hogg*, 448 S.W.3d 877 (Tenn. 2014). Most criminal exposure convictions analyzed here occurred prior to these case law refinements.

[16] Tennessee Code Title 39. Criminal Offenses § 39-13-109(e)(1).

[17] Tennessee Code Title 40. Criminal Procedure. § 40-35-111 (b)(3).

crimes and willfully or recklessly transmitted the virus, but did not reference any statistics or evidence.[18] The Commissioner of Health, testifying before the Senate Judiciary Committee, expressed concerns about deterring people from getting tested for HIV—a view that has since been adopted by the federal Centers for Disease Control and Prevention—and emphasized that quarantine and allowing the department to promulgate additional rules was a more effective measure.[19] A Tennessee state Senator stated that prosecution could be possible if someone "engaged in a lifestyle" that was highrisk while choosing to not get tested, although that provision did not become part of the law as enacted.[20]

Hepatitis B and Hepatitis C were added to the criminal exposure law in 2011.[21] Hepatitis exposure is a Class A misdemeanor,[22] punishable by a $1,000 fine and the possibility of restitution to victims.[23] The legislative record indicates that the sponsor of this amendment would have liked to have made viral hepatitis criminal exposure a felony as well, however, he was unable to secure the support to do so.[24]

SEX OFFENDER REGISTRATION

Aggravated prostitution and criminal exposure are both considered a "violent sexual offense," and require a person convicted to register as a sex offender. Registrations for violent sexual offenses are for life.[25] However, an offender who is required to register solely on the basis of an aggravated prostitution conviction may petition the sentencing court for termination of the registration requirements based on the person's status as a victim of a human trafficking offense.[26] Removal from the registry in this way requires a formal petition to a court and a judgment; there is not an administrative process available.

Sex offender registration comes with a variety of obligations and burdens. Violent sex offenders are required to check in with local law enforcement quarterly. Failure to satisfy registration or reporting requirements is a Class E felony.[27] Registrants' information is provided to local schools and other

[18] 03231994_House_Session43_REF (46:29).

[19] 04051994_Senate_Judiciary_Tape2_REF (3:30); Centers for Disease Control and Prevention. "HIV Criminalization and *Ending the HIV Epidemic in the U.S.*" Centers for Disease Control and Prevention (2021) (https://www.cdc.gov/hiv/policies/law/criminalization-ehe.html).

[20] 04051994_Senate_Judiciary_Tape2_REF (12:49).

[21] Tennessee Code Annotated § 39-13-109 (2020).

[22] Tennessee Code Annotated § 39-13-109(e)(2) (2020).

[23] Tennessee Code Annotated § 40-35-111 (e)(2) (2020).

[24] *SB 0052*, Tennessee General Assembly Archives (Mar. 1, 2011) (http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=SB0052&ga=107). Discussion of the bill begins at 50:38 of the Judiciary Committee Video.

[25] Tennessee Code Annotated §4 0–39-201-215 (2020). Before July 1, 2010, aggravated prostitution was considered a sexual offense, and registration was for at least 10 years.

[26] Tennessee Code Annotated § 40-39-218, which created the exception to registry requirements for victims of abuse and human trafficking convicted of aggravated prostitution, was formerly referred to as Senate Bill No. 1160, House Bill No. 754; it was introduced in 2015. According to the video provided on the state legislature's website, the bill was part of a larger effort to protect victims of human trafficking and sexual violence. Removing victims of abuse from the sex offender registry would allow them to receive medical treatment and other services related to HIV that would otherwise not be available to them due to the fact that children are often on the premises at these treatment facilities. See *SB 1160*, Tennessee General Assembly Archives (Apr. 15, 2015) (http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=SB1160&ga=109). Discussion of the bill begins at 1:16:37.

[27] Tennessee Code Annotated § 40-39-208 (2014).

organizations. Registrants are also barred from certain places where children are present, such as schools and playgrounds, even if the registrant is the parent or guardian of a child. Registrants might also be prevented from seeking treatment at medical facilities or residential programs because of the facility's proximity to children, and might not be able to attend places of worship if childcare facilities are present.

PREVIOUS STUDIES OF HIV CRIMINAL ENFORCEMENT

This report builds on a series of studies analyzing the enforcement of HIV criminal laws using state-level data. Since 2015, the Williams Institute has published similar studies for California,[28] Georgia,[29] Florida,[30] Missouri,[31] Nevada,[32] Kentucky,[33] and Virginia.[34] These studies show that

- Thousands of people have been prosecuted for HIV crimes.
- The number of HIV-related arrests and prosecutions has not decreased in recent years.
- The vast majority of arrests, prosecutions, and convictions are pursuant to state laws that do not require actual transmission of HIV, the intent to transmit, or even conduct that can transmit HIV.
- Black people and women are disproportionately affected by HIV criminal laws.
- Sex workers are often disproportionately affected by HIV criminal enforcement.
- In most states, arrests are concentrated in just a few counties and appear to be driven by local law enforcement practice.
- Convictions for HIV crimes can carry long sentences and create lifelong collateral consequences from a felony conviction. Some states also require registration on the state's SOR.
- Enforcement of HIV criminal laws has cost states tens of millions of dollars in incarceration costs alone.

[28] Amira Hasenbush, Ayako Miyashita & Brad Sears. "HIV Criminalization in California: Penal implications for people living with HIV/AIDS." The Williams Institute, University of California School of Law (2015) (https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-CA-Dec-2015.pdf).

[29] Amira Hasenbush. "HIV criminalization in Georgia: Penal Implications for People Living with HIV/AIDS." The Williams Institute, University of California Los Angeles School of Law (2018) (https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-GA-Jan-2018.pdf).

[30] Nathan Cisneros and Brad Sears. "HIV criminalization in Florida: Length of Incarceration and Fiscal Implications." The Williams Institute, University of California Los Angeles School of Law (2021) (https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Incarceration-FL-Jul-2021.pdf).

[31] Brad Sears, Shoshana Goldberg & Christy Mallory. "The criminalization of HIV and Hepatitis B and B in Missouri: An Analysis of Enforcement Data From 1990 to 2019." The Williams Institute, University of California Los Angeles School of Law (2020) (https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MO-Feb-2020.pdf).

[32] Nathan Cisneros and Brad Sears. "Enforcement of HIV Criminalization in Nevada." The Williams Institute, University of California Los Angeles School of Law (2021) (https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-NV-May-2021.pdf).

[33] Nathan Cisneros and Brad Sears. "Enforcement of HIV criminalization in Kentucky." The Williams Institute, University of California Los Angeles School of Law (2021) (https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-ky/).

[34] Nathan Cisneros and Brad Sears, "Enforcement of HIV criminalization in Virginia." The Williams Institute, University of California Los Angeles School of Law (2021) (https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-VA-Dec-2021.pdf).

The Williams Institute reports follow several earlier studies analyzing the enforcement of HIV criminal laws in other states. For example, Trevor Hoppe, analyzing 431 HIV-related criminal convictions in six states, concluded that victim characteristics drive uneven patterns of enforcement and sentencing.[35] Hoppe found that there are disproportionately high rates of convictions among heterosexual white male defendants, yet at sentencing, Black defendants were punished more severely, and women were treated more leniently. Men accused of not disclosing to women were punished more harshly than those accused by men.

Another study documented the enforcement of Tennessee's two HIV criminal laws in the Nashville area.[36] That study analyzed individual case files for 23 persons (25 arrests) for aggravated prostitution and 25 persons (27 arrests) for HIV exposure between 2000 and 2010.[37] Significant findings from this study related to the aggravated prostitution arrests include that

- The majority of people charged were female (68%) and white (52%).
- Seven defendants (30%) were homeless, and two others (9%) had no home address listed in court records.
- Nearly half (44%) of arrests also included a drug-related charge.
- Public defenders represented the defendants in 80% of the cases.
- Of the 17 cases for which there is information on the sexual behavior solicited, 13 cases involved solicitation for oral sex, three cases involved solicitation for vaginal intercourse, and one case involved solicitation for condom-protected anal sex.
- In 56% of these arrests, the defendants were charged after solicitation of an undercover police officer or police representative.
- Nearly all (97%) cases resulted in convictions: 41% resulted in aggravated prostitution convictions, and 56% resulted in a conviction for a lesser charge.
- The median sentence length for aggravated prostitution was three years.

Significant findings from this study related to the criminal exposure arrests include that

- The majority of people charged with HIV exposure were male (74%) and white (56%).
- Three defendants were homeless.
- Public defenders represented the defendants in two-thirds of the cases.
- Eleven (41%) of the 27 arrests for HIV exposure involved scratching, spitting (some with saliva, some with saliva mixed with blood), biting, or flinging or splattering blood. In 10 of these 11 cases, the complaining witnesses were a police officer (8) or hospital emergency staff member (2). Only one of these cases resulted in a criminal exposure conviction. The median sentence length for these convictions was four months.

[35] Trevor Hoppe. *Punishing Disease: HIV and the Criminalization of Sickness.* University of California Press (2018).

[36] Carol L. Galletly and Zita Lazzarini. "Charges for criminal exposure to HIV and aggravated prostitution filed in the Nashville, Tennessee prosecutorial region 2000–2010." *AIDS and Behavior* 17 No. 8 (2013): 2624-2636.

[37] *Id*.

- Sixteen (59%) of the 27 arrests involved non-disclosed "exposure" to HIV through sex. The majority (75%) of incidents involved opposite-sex partners. Of the 16 sexual exposure cases, eight cases ended in a guilty verdict for HIV exposure, two ended in guilty verdicts for a lesser charge (reckless endangerment), and six were dismissed. The median sentence for convictions was 42 months.

In the next section, we provide an analysis of registrants on Tennessee's sex offender registry to get an overview of enforcement patterns across the entire state. We then move to an analysis of 77 individual case files of people convicted of an HIV-related offense in Shelby County (Memphis), where the majority of convictions across the state have taken place. The case files provide detailed information on who is arrested, the conditions of arrest, and arrest outcomes, including bail and sentencing information. Taken together with Galletly and Lazzarini's analysis of enforcement in Nashville, this report offers a nuanced look at how Tennessee's HIV criminal laws play out on the ground in the state's two most populous cities.

TENNESSEE'S SEX OFFENDER REGISTRY

Tennessee requires that everyone convicted of aggravated prostitution (AP), and everyone convicted of criminal exposure (CE) involving "intimate contact" register with the state's sex offender registry (SOR).[38] Both AP and CE are classified as a "violent sexual offense," and thus SOR registration is for life.[39] The SOR can therefore be used as a proxy for the absolute minimum number of HIV-related convictions in Tennessee. We focus on the SOR here because it is the only comprehensive statewide data source for HIV-related convictions. (See the Data and Methods section and Appendix for more details on Tennessee data sources.)

However, there are situations in which a person convicted of an HIV-related offense might not appear in the SOR. For example, CE convictions related to injection drug use and blood/tissue donation do not require sex offender registration. If a person dies, they are removed from the registry. There might be special circumstances included in a plea agreement that prevent sex offender registration. Finally, AP convictions before July 1, 2010, carried a 10-year registration, although removal from the registry was not automatic; a person was required to petition the Tennessee Bureau of Investigation (TBI) and have a clean subsequent criminal history.[40]

Moreover, the sex offender registry does not capture unsuccessful HIV-related prosecutions or the number of people who were arrested or charged with an HIV-related offense who then pled to a different or lesser charge. For example, in Virginia, we found that only 54% of HIV-related arrests resulted in a conviction.[41] In Nevada, 29% of HIV-related arrests resulted in a conviction.[42] In California, only 33% of HIV-related arrests resulted in a conviction.[43]

WHO IS ON TENNESSEE'S SEX OFFENDER REGISTRY?

Number of HIV-related registrants: There were 26,143 total registrants on the state's SOR as of March 9, 2022.[44] Of these, 154, or 0.6% of all registrants, had an HIV-related conviction that resulted in SOR registration ("HIV registrants"). About 3% of all HIV registrants had both an AP and a CE conviction. A little more than half (51%) only had AP convictions, while a little less than half (46%) had only CE convictions.

[38] Tennessee's criminal exposure law also criminalizes exposure to Hepatitis B and C, however only HIV exposure is a felony, and only conviction of an HIV exposure from "intimate contact" results in sex offender registration. (Conviction from needle/syringe and from blood and tissue donation do not result in sex offender registration.) Intimate contact is defined as "the exposure of the body of one person to a bodily fluid of another person in any manner that presents a significant risk of HIV", which includes non-sexual contact with bodily fluids such as saliva from spitting and biting and from urine.

[39] Before July 2010, aggravated prostitution was classified as a "sexual offense," with a ten-year registration requirement. There are provisions for a registrant who has been on the registry for 10 years, or who is a registrant because of an aggravated prostitution conviction but who is a "victim of human trafficking, sexual offenses or domestic abuse" to petition for removal from the registry.

[40] Tennessee Code Annotated § 40-39-207 (2020).

[41] *Supra* note 34.

[42] *Supra* note 32.

[43] *Supra* note 28.

[44] This includes 302 people who were on the registry on October 28, 2021 who were no longer on the registry as of March 9, 2022. An archive of the state's public SOR is available upon request.

Table 1. Number of SOR registrants by HIV-related conviction

SOR CONVICTION	NUMBER OF REGISTRANTS
Only Criminal Exposure	71
Only Aggravated Prostitution	79
Both Criminal Exposure and Aggravated Prostitution	4

Sex: Men accounted for the overwhelming majority of all SOR registrants—more than 96% of all registrants were men. Indeed, only 918 registrants in total were women. Further, men were 74% of people living with HIV in Tennessee in 2019.[45] In contrast, women were a much higher share of HIV-related registrants—nearly half (46%) of all people on the SOR for HIV-related convictions were women.

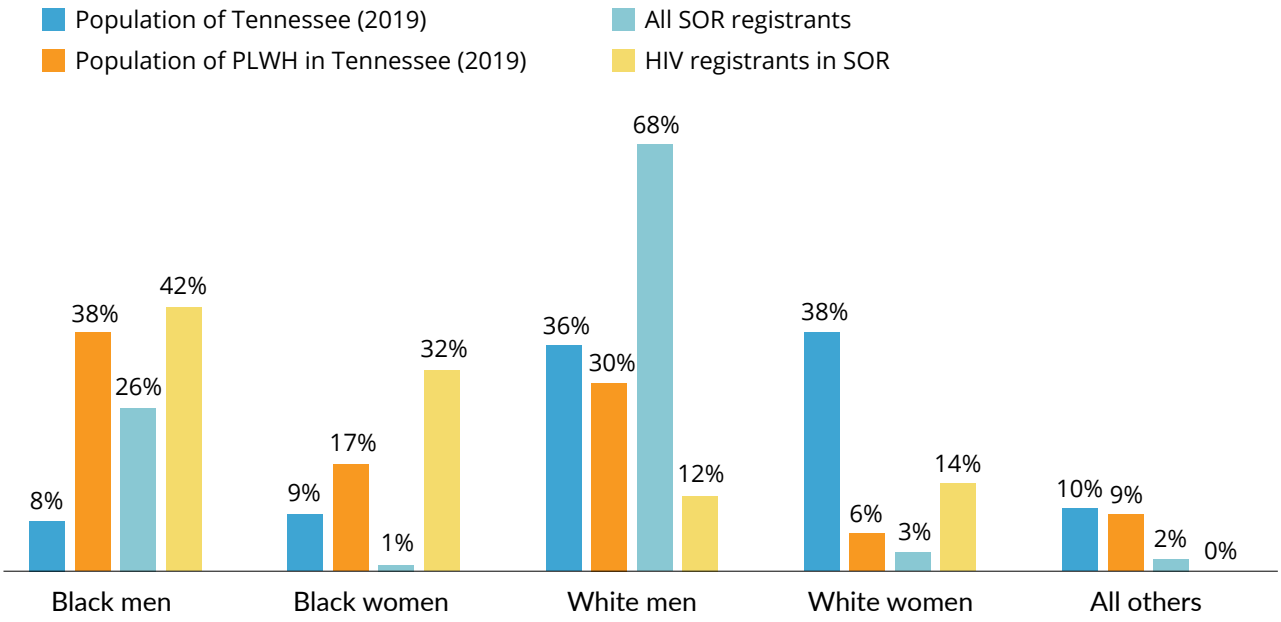
Gender Identity: Tennessee's sex offender registry does not report a person's current gender identity. Moreover, Tennessee does not allow a person to change the sex assigned at birth on their birth certificate, although there is a process to change a person's gender marker on their driver's license. As a result, we were unable to count the number of SOR registrants who identify as transgender or gender nonconforming, and we do not know how many people are misgendered as male or female.

Race: Disparities were also observed by race. Black registrants were 27% of the state's SOR but only 17% of the state's population. Moreover, while Black Tennesseans were only 55% of the state's population of people living with HIV in 2019, 75% of all HIV registrants were Black. We were unable to analyze disparities by Hispanic/Latino ethnicity because the SOR does not report this information.[46] (See Data and Methods section for more details.)

[45] Tennessee collects HIV prevalence data by trans- and cis-gender identity. In 2019, cisgender women were 24.7% of all people living with HIV in the state. Transgender people of any gender were 1.1% of all people living with HIV. The state does not further break out transgender individuals into gender groups. See Tennessee Department of Health. *Tennessee HIV Epidemiological Profile, 2019*. Tennessee Department of Health (February 2021) (https://www.tn.gov/content/dam/tn/health/program-areas/hiv/2019-Tennessee-HIV-Epidemiological-Profile.pdf).

[46] Individuals identified as "American Indian" or "Asian or Pacific Islander" were less than 1% of the overall SOR, and no one with an HIV conviction was identified in either group.

Figure 1. Demographic profile of Tennessee, people living with HIV in Tennessee, registrants on Tennessee's sex offender registry, and HIV registrants on Tennessee's sex offender registry



Sex and race: The sex and race disparities are also compounded. Although Black women were less than 1% of the overall registry, they were nearly one-third of all HIV registrants. Indeed, of the 171 Black women on the SOR, 50 (33%) were on the registry because of an HIV-related conviction. In contrast, white men, who were 68% of the overall SOR, comprised only 12% of HIV registrants.

Put differently, a Black woman was 290 times more likely to be on the registry for an HIV conviction than a white man. Black men were about 10 times more likely to be on the SOR for an HIV conviction than white men, and white women were 28 times more likely to be on the SOR for HIV conviction than white men.

Figure 2. Selected sex and race characteristics of HIV SOR registrants in Tennessee compared to all PLWH and all SOR registrants

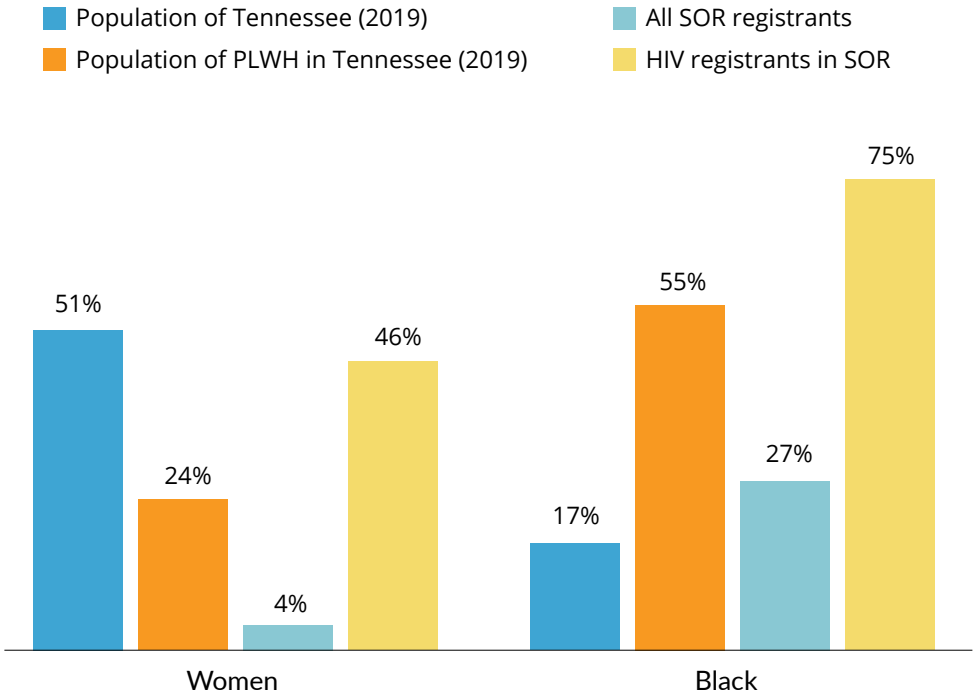
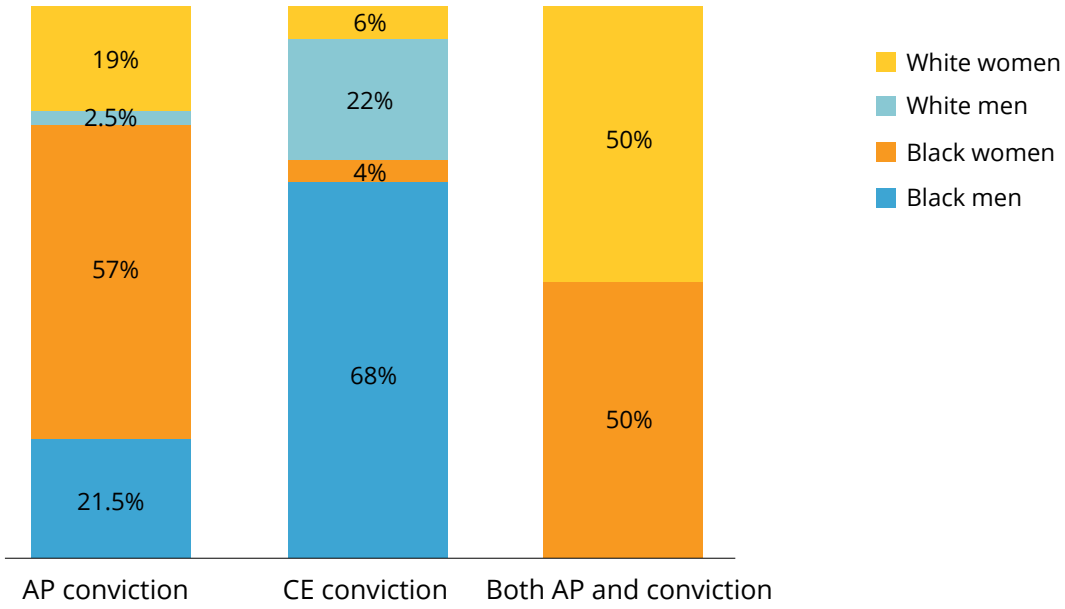


Figure 3. Demographic profile of HIV registrants in Tennessee by type of HIV conviction



Race and sex by conviction: We also observed distinct demographic patterns by type of conviction. About three-fourths (77%) of all AP registrants were women; women were only 15% of CE registrants. Black people were the majority among both AP and CE registrants: Black women were the majority of AP registrants (57%), while Black men were the majority of CE registrants (64%).

Age: The average (mean) age on the SOR was about 51 years old; for HIV registrants the average age was about 48 years old. When comparing registrants' age at the time of the offense that resulted in registration, HIV registrants were slightly older (35 years old) compared to the overall registry (33 years old). These were close to registrants' ages at first offense (34 years old for first HIV offense compared to 33 years old for the overall SOR). There was no difference in the average age for first conviction between AP and CE convictions.

Figure 4. Age of HIV registrants in Tennessee's SOR in 2022

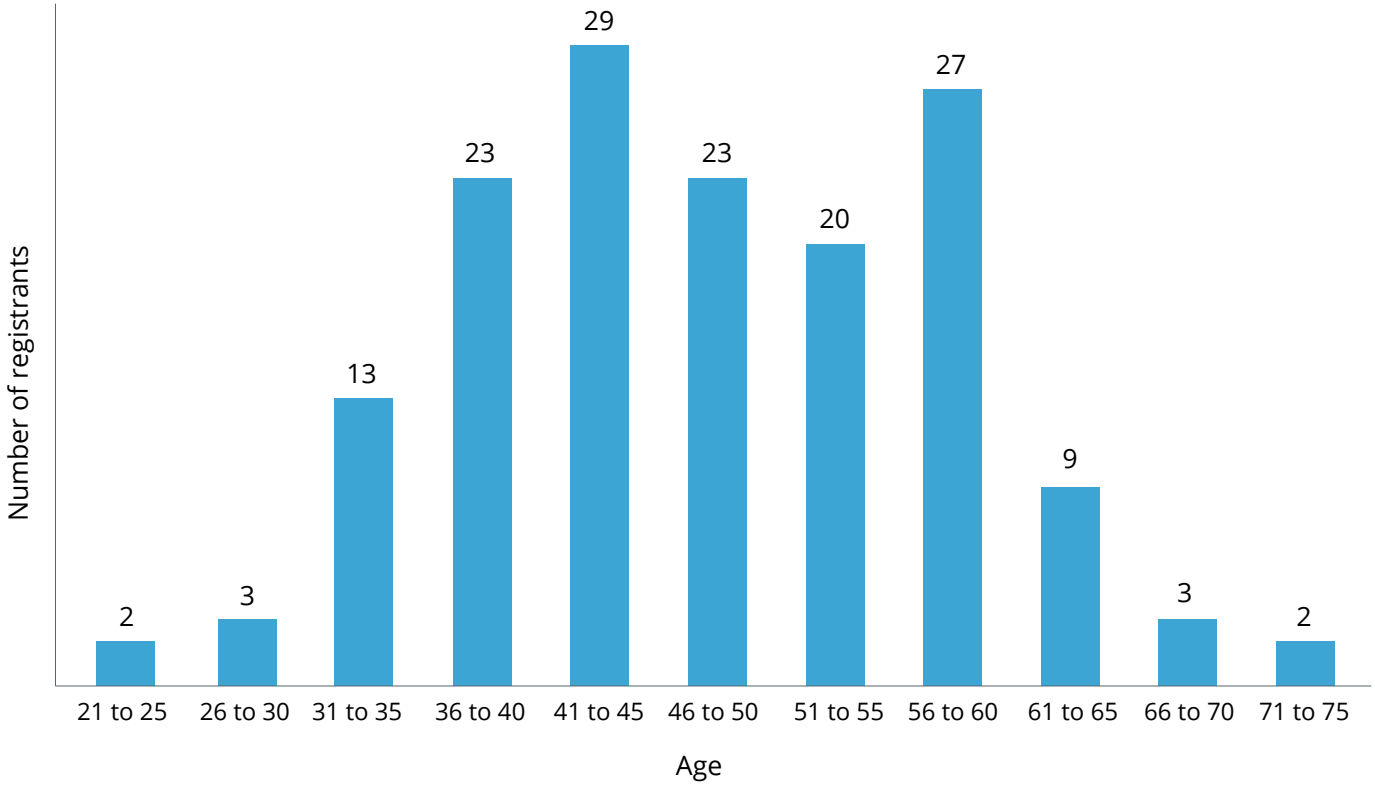
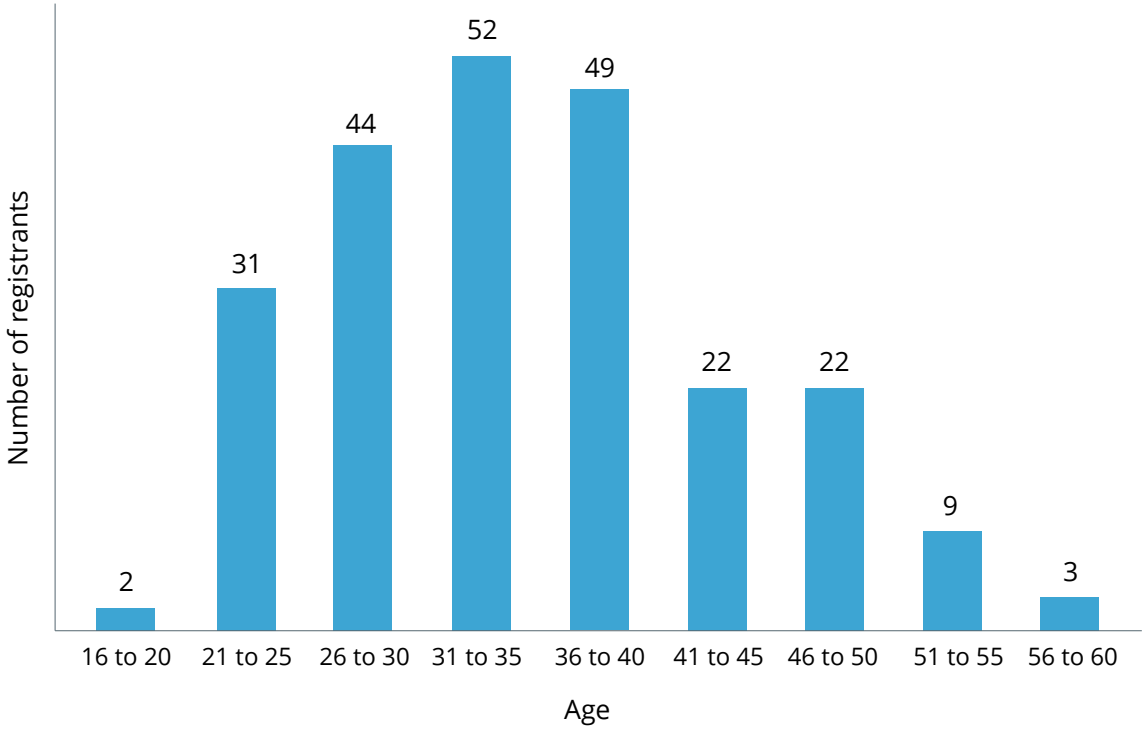


Figure 5. Age at offense date for HIV conviction in Tennessee's SOR

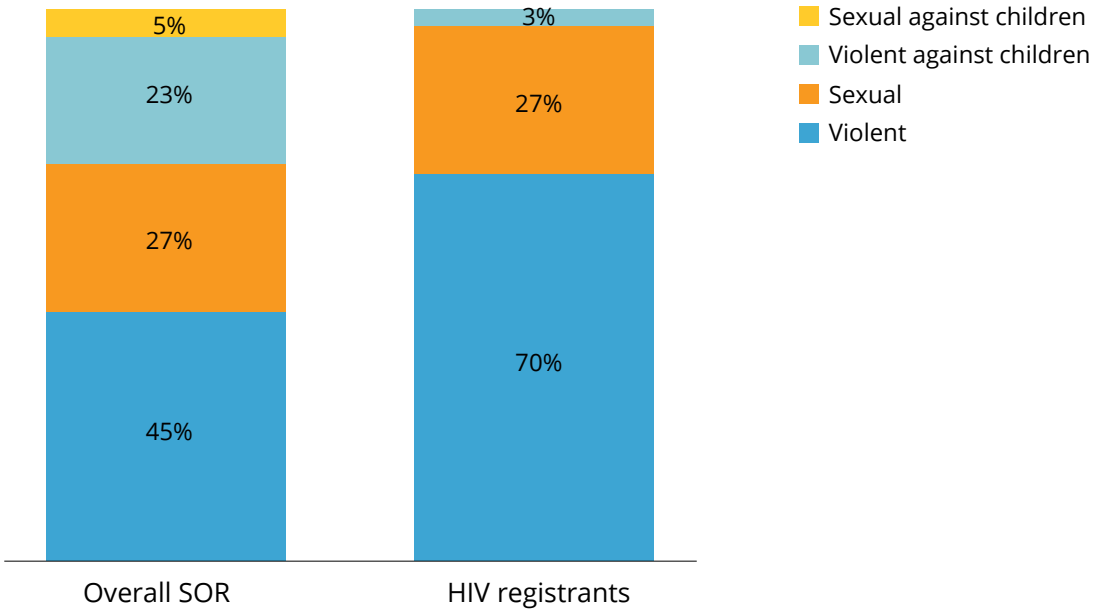


Registrant Status

The SOR gives certain designations to registrants depending on the type of conviction. A person can be designated an "offender against children" or against adults, and every registrant is also classified as either "violent" or "sexual." AP was considered a sexual offense until July 1, 2010, when it was reclassified as a violent offense. CE is also considered a violent offense.

In general, HIV registrants were much less likely to be considered an offender against children—3% compared to 28% in the overall registry. However, HIV registrants were much more likely to be classified as violent sexual offenders against adults—71% compared to 44%. Of those "violent" HIV registrants, a little over a third (37%) were on the sex offender registry because of an AP conviction. Furthermore, of the 41 HIV registrants with a "sexual" classification, 38 were on the registry solely for AP convictions with offense dates before July 1, 2010, meaning the statutory 10-year registration period had expired and they ought to be eligible for removal from the registry as they had no subsequent SOR convictions.

Figure 6. Classification status of registrants in Tennessee's SOR



Registrants are required to notify the SOR whenever there is an address change. Those who fail to register after an address change or who fail to make their regular check-ins with a local law enforcement agency are labeled an "absconder." While only 3% of the overall SOR was considered an absconder, 19% of HIV registrants were so tagged. This may be due to the fact that HIV SOR registrants are over twice as likely to be unstably housed, as discussed below.

The SOR also records whether a person is currently incarcerated. Among registrants who lived in Tennessee, 26% were incarcerated. For HIV registrants, the figure was 21%.[47] Among those with an AP conviction, 13% were incarcerated compared to 29% of those with a CE conviction. Finally, the SOR reports if a registrant has moved to another state. While nearly a quarter (23%) of all SOR registrants were inactive because they moved to another state, only 10% of HIV registrants had moved out state.

Socioeconomic Indicators

Housing status: The SOR records whether or not a person is homeless. About 8% of all SOR registrants living in Tennessee were reported as homeless.[48] In contrast, 19% of HIV registrants in the same group were homeless. Black HIV registrants were more likely to be homeless than Black registrants in the overall SOR (19% of Black HIV registrants living in Tennessee were homeless compared to 14% of all Black registrants). For white registrants the gap was even greater: one in six

[47] In total, 71% of HIV registrants were not dead, deported, or incarcerated, and also lived in Tennessee.

[48] A person who has died or been deported should be removed from the registry, however, 189 registrants were listed as "Inactive – Deceased," and 371 registrants were listed as "Inactive – Deported." A further 5,146 were listed as "Inactive–Incarcerated." Of the remaining registrants, an additional 613 did not have a primary address that was within Tennessee. The remaining registrants were all in the community with a last known address within Tennessee. We use the phrase "…registrants living in Tennessee…" to mean "…registrants living in Tennessee and not dead, deported, or incarcerated…" in the remainder of the text.

(16%) white HIV registrants living in Tennessee was homeless, compared to one in 20 (5%) of the same group in the overall SOR. The homelessness rate among HIV registrants was about the same whether a registrant had an AP or CE conviction and whether a person was identified as a man or a woman.

Employment status: Registrants are required to report if they have an employer and to list the employer's address. About half (49%) of SOR registrants provided an employer address, while only 28% of HIV registrants reported an employer address. For AP convictions, the figure was 23%; for CE convictions it was 32%.

Vehicle registration and ID status: Tennessee requires registrants to list any registered vehicles, and requires registrants to carry valid and appropriately marked identification at all times. Both a person's vehicle description and their state ID numbers are publicly available in the SOR. Inability to furnish proper identification can result in arrest or citation. Nearly two-thirds (64%) of SOR registrants living in Tennessee had a vehicle registered in their name, however, only two in five (21%) of HIV registrants had a vehicle registered. In contrast, nearly all registrants were issued a state ID—95% of all SOR registrants and 97% of HIV registrants.

WHAT CONVICTIONS LED TO SEX OFFENDER REGISTRATION?

SOR convictions in Tennessee: The SOR contains 34,465 separate convictions that resulted in registration. The overwhelming majority of these convictions were for non-consensual sex acts—sexual assault and rape, sexual contact with or exploitation of a minor (who cannot consent), and statutory rape. Consensual sexual contact between adults—including prostitution—was very rare in the SOR. (See Data and Methods section for more details.)

HIV-related SOR convictions in Tennessee: We identified 234 separate HIV-related convictions that resulted in SOR registration: 139 for aggravated prostitution, and 95 for criminal exposure. Of the 154 people on Tennessee's SOR for HIV-related convictions, about one-third (31%) had more than one HIV-related conviction that mandated registration. Nearly all these repeat convictions were AP convictions. Among registrants with AP convictions, over four in 10 (43%) had more than one AP conviction. In contrast, only 5% of CE registrants had a subsequent CE conviction.[49] In other words, recidivism within the same HIV-offense category was fairly common for prostitution-related convictions but very rare for exposure-related convictions. Moreover, among people on the SOR for AP convictions, AP was the *only* conviction that mandated registration.[50]

[49] Five registrants met the criteria for counting a subsequent conviction (see Data and Methods section), but one appears to have a typo in the offense date and was discarded.

[50] Additionally, four people with an AP conviction also had an HIV-specific CE conviction. In contrast, just over one-third (35%) of people with a CE conviction also had another (non-HIV-related) conviction that mandated registration. The additional convictions were: statutory rape (14 convictions), rape (10 convictions), sexual battery (5 convictions), sexual exploitation of a minor (3 convictions), and other (4 convictions).

Figure 7. Number of HIV-related SOR convictions in Tennessee by conviction type

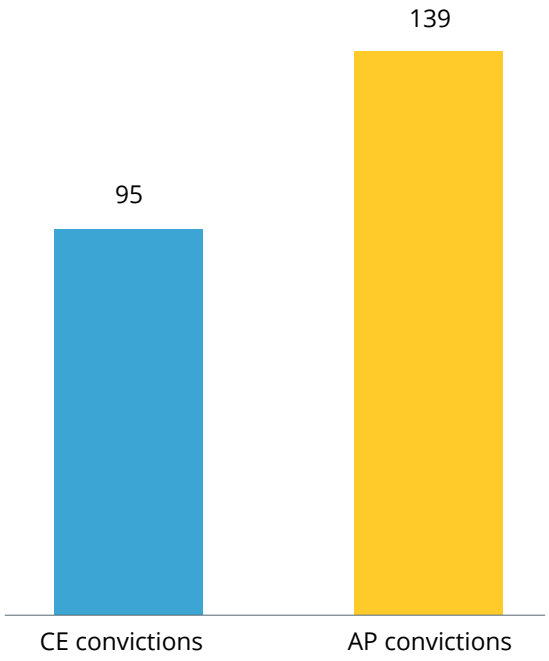
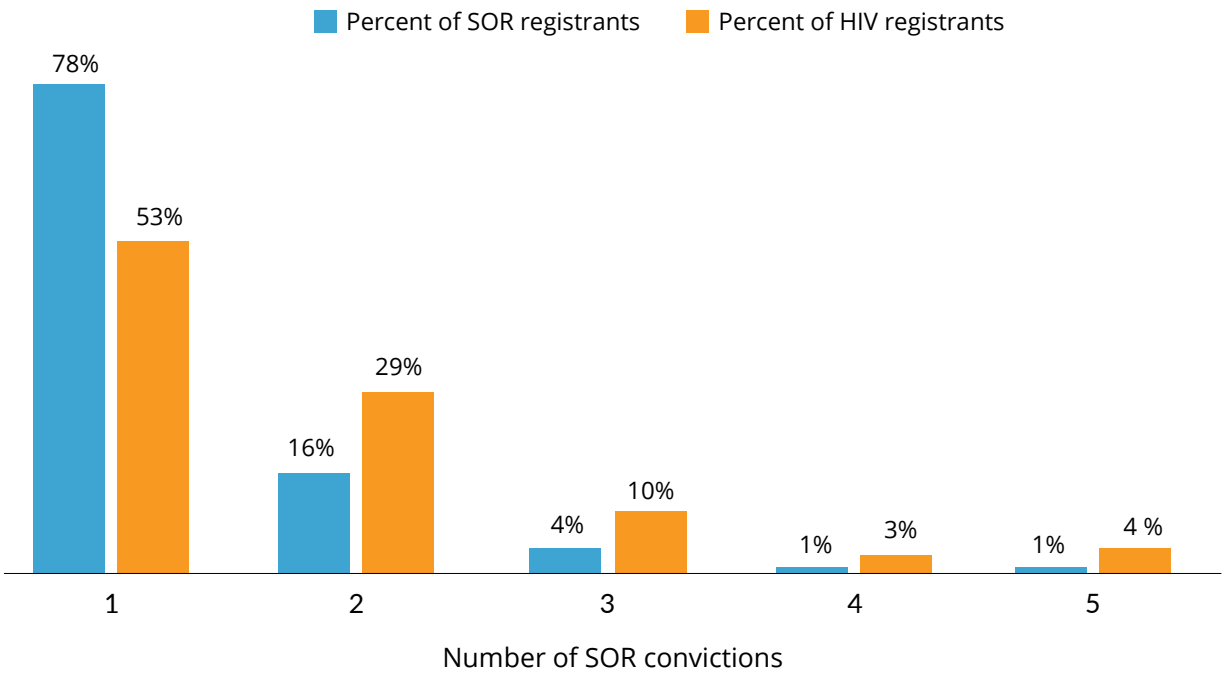
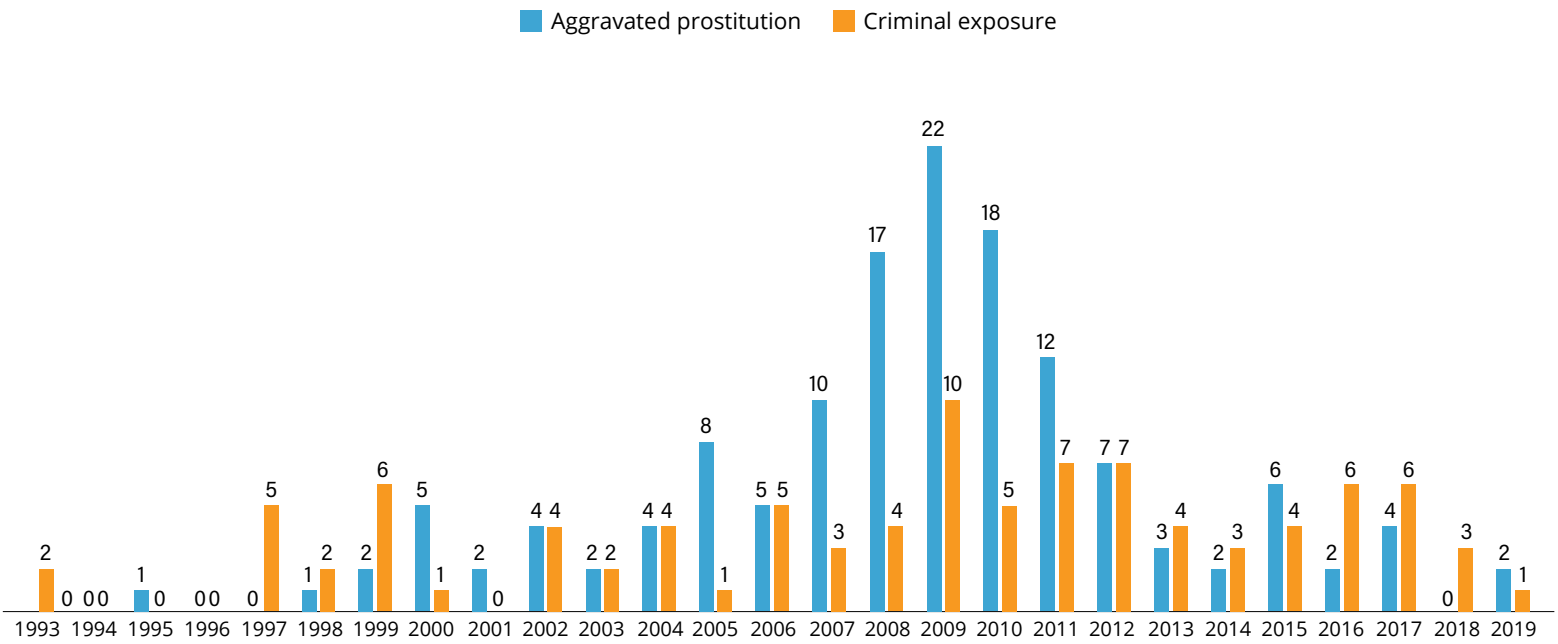


Figure 8. Number of SOR convictions per SOR registrant in Tennessee



SOR convictions by year: The earliest HIV-related offense that resulted in SOR registration occurred in 1993; the most recent was in 2019. Enforcement shows a distinct peak around 2009. The peak is driven by AP convictions. While CE convictions are more-or-less constant throughout the period, AP convictions shoot up in the period between 2007 and 2011, then taper back down. The peak in AP convictions appears to be driven by enforcement patterns in Shelby County. (See Geography section below for more details.)

Figure 9. Number of HIV-related SOR convictions by year in Tennessee



Geography

The SOR does not report the jurisdiction within which an offense leading to SOR registration occurred. It does, however, report a registrant's address. We use this as a proxy for the location of the offense.[51]

SOR registrants resided in each of Tennessee's 95 counties. Only a handful of counties had more than a few percent of the overall SOR. Among SOR registrants living in Tennessee and not incarcerated, 17% lived in Shelby County. Another 10% lived in Davidson County, and 4% lived in Knox County and Hamilton County. All other counties each had less than 3% of the SORS registrants, but together accounted for 62% of all registrants, meaning that registrants were fairly well-distributed across the state.

[51] The share of overall SOR registrants in the top five counties (40%) is roughly in line with the top five counties by population in Tennessee in 2019. For example, Shelby County had 17% of SOR registrants and 13% of the state's population. Davidson County had 10% of registrants and 10% of the state's population. For Knox county, the figures were 4% and 7%; for Hamilton County, 4% and 5%; for Rutherford County, 3% and 5%. See Data and Methods section for more details.

Figure 10. Population of Tennessee and population of SOR registrants by county

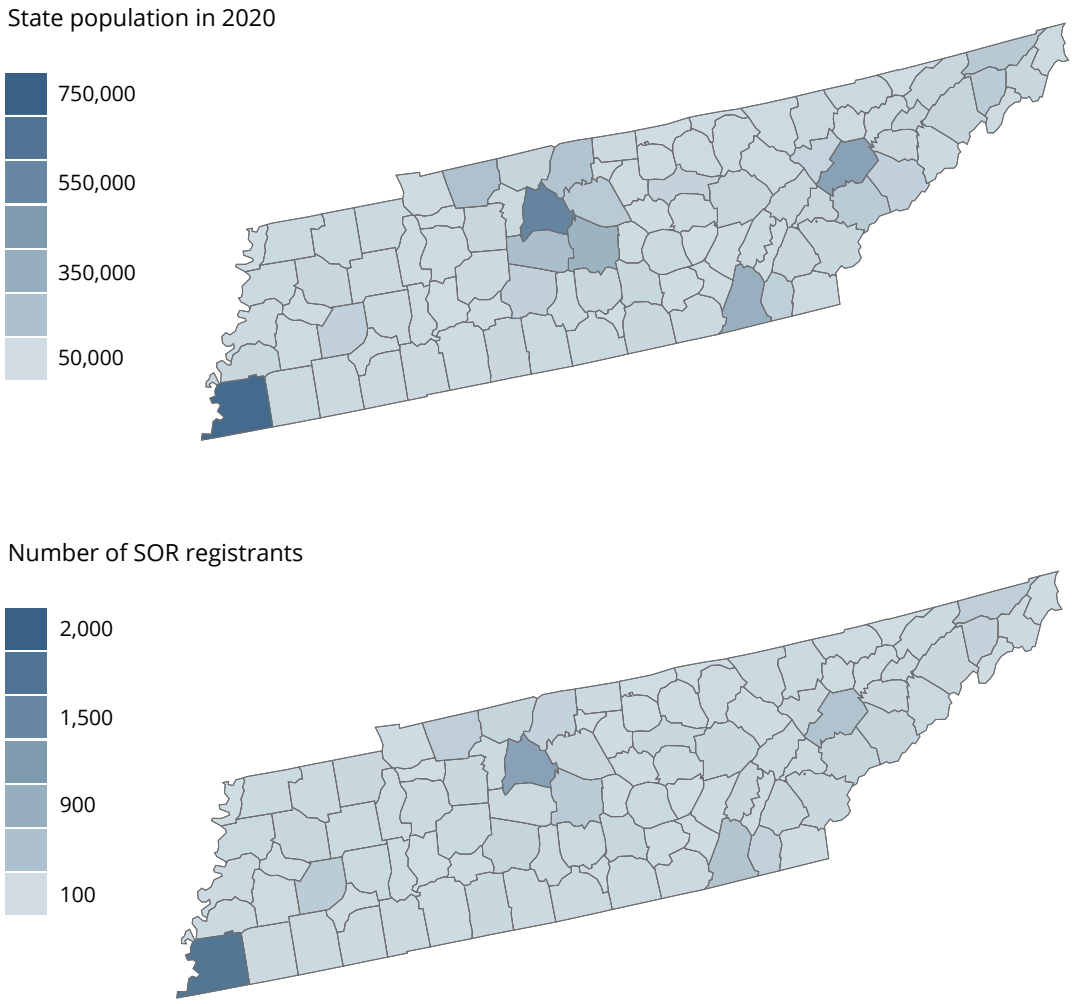


Figure 11. County of residence of SOR registrants and share of county population in 2020

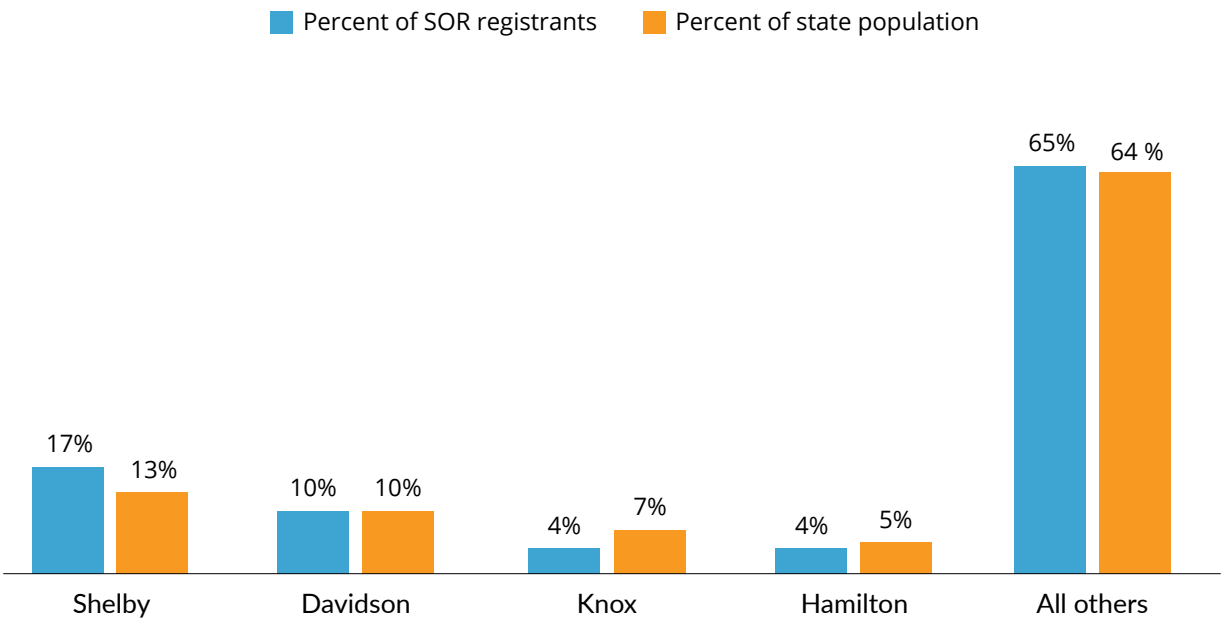


Figure 12. Population of PLWH in Tennessee and population of HIV SOR registrants by county

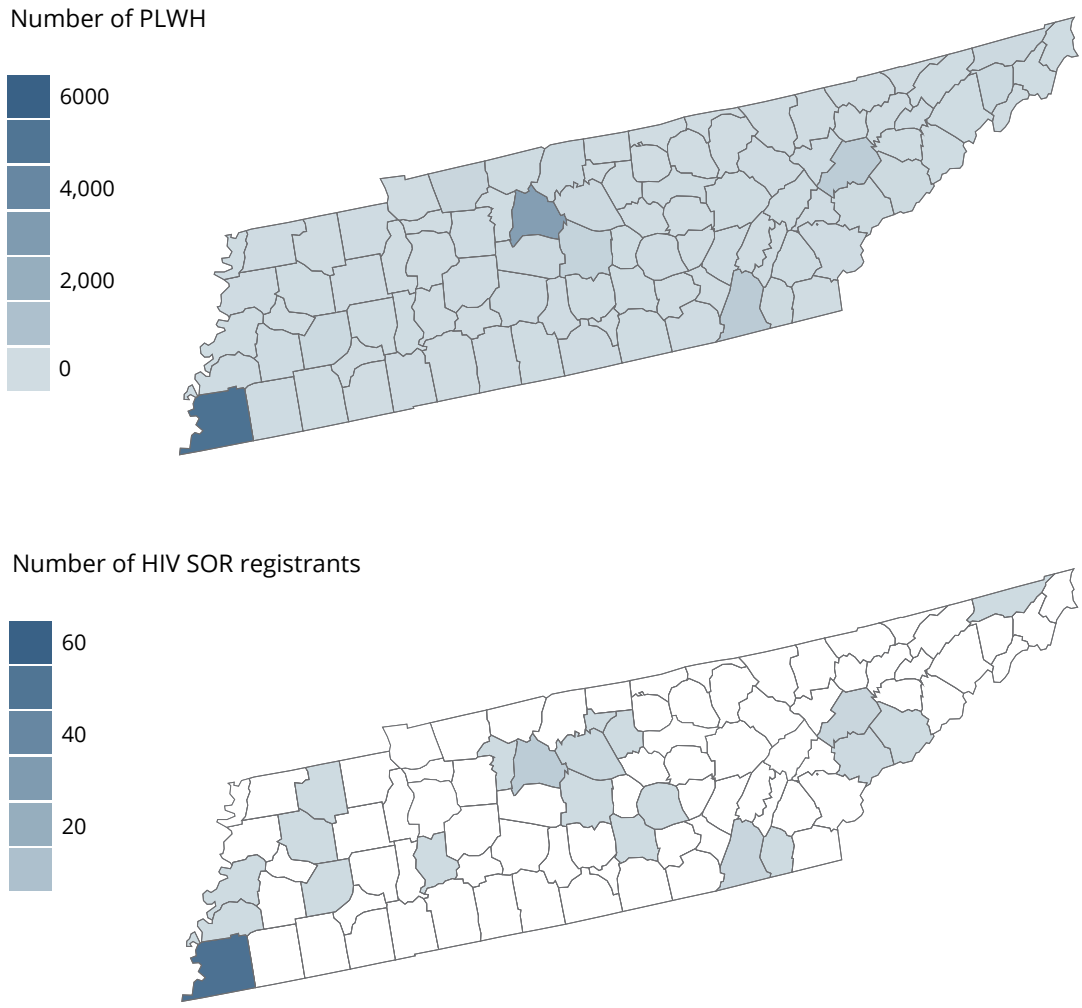
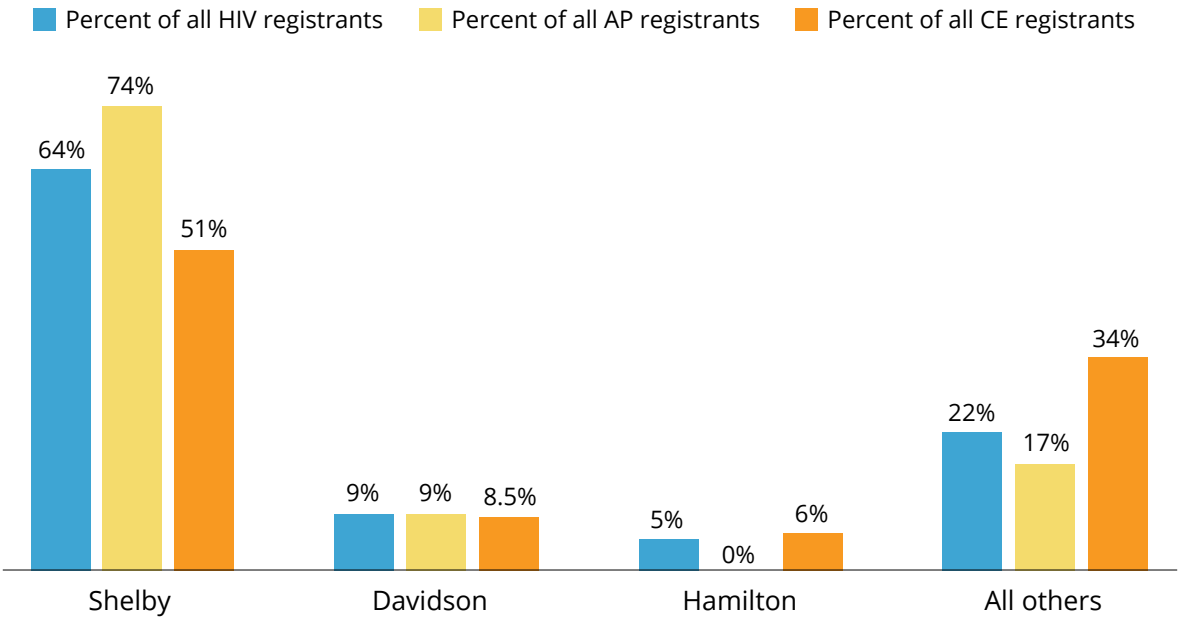


Figure 13. County of residence of HIV registrants by conviction type

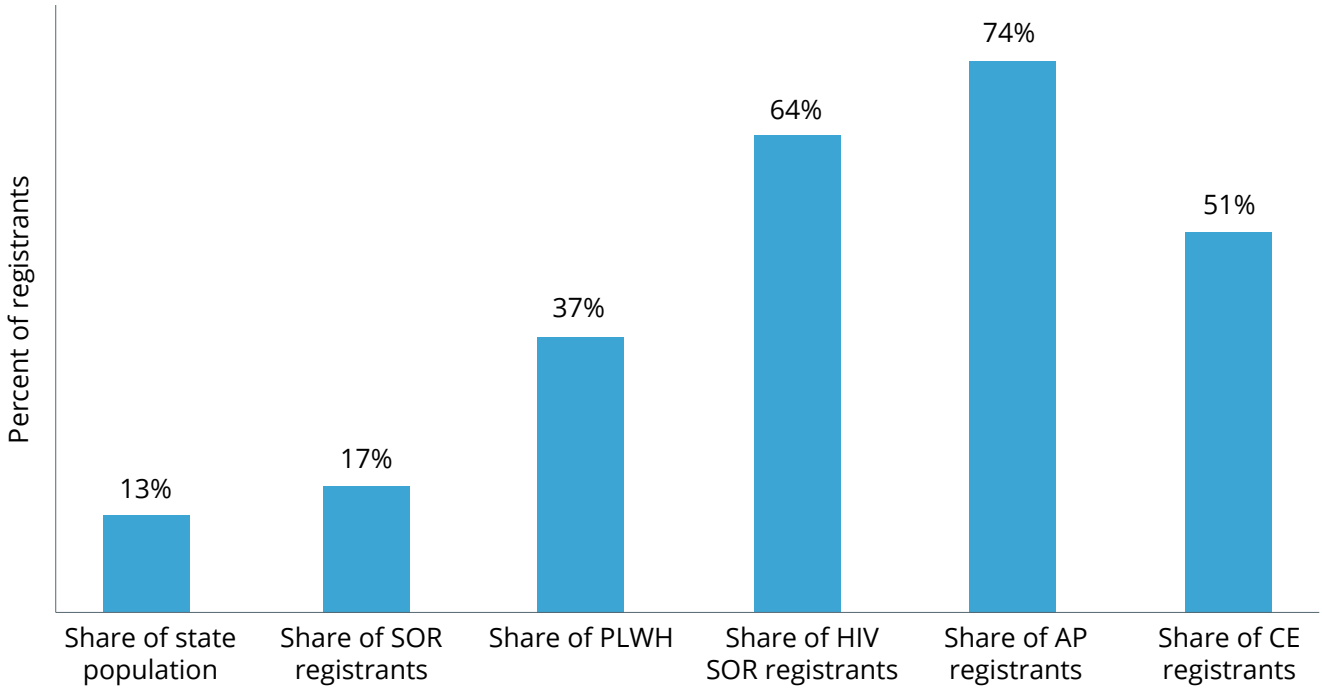


Shelby County

While the geographic distribution of the overall SOR mirrors that of the state, the distribution of HIV registrants looks dramatically different. Nearly two-thirds of all HIV registrants in Tennessee lived in Shelby County. About 9% of HIV registrants lived in Davidson County, and 5% lived in Hamilton County. Knox County had 4% of HIV registrants. All other counties combined had only 18% of the total. In 2020, Shelby County accounted for only 13% of the state's population.

Indeed, Shelby County is over-represented in both AP and CE convictions: Shelby County accounted for nearly three-quarters (74%) of all AP registrants living in the state, while Davidson County accounted for 9% of AP registrants. For registrants with CE convictions, Shelby County accounted for just over half (51%) of the total, while Davidson County again accounted for 9% of registrants.

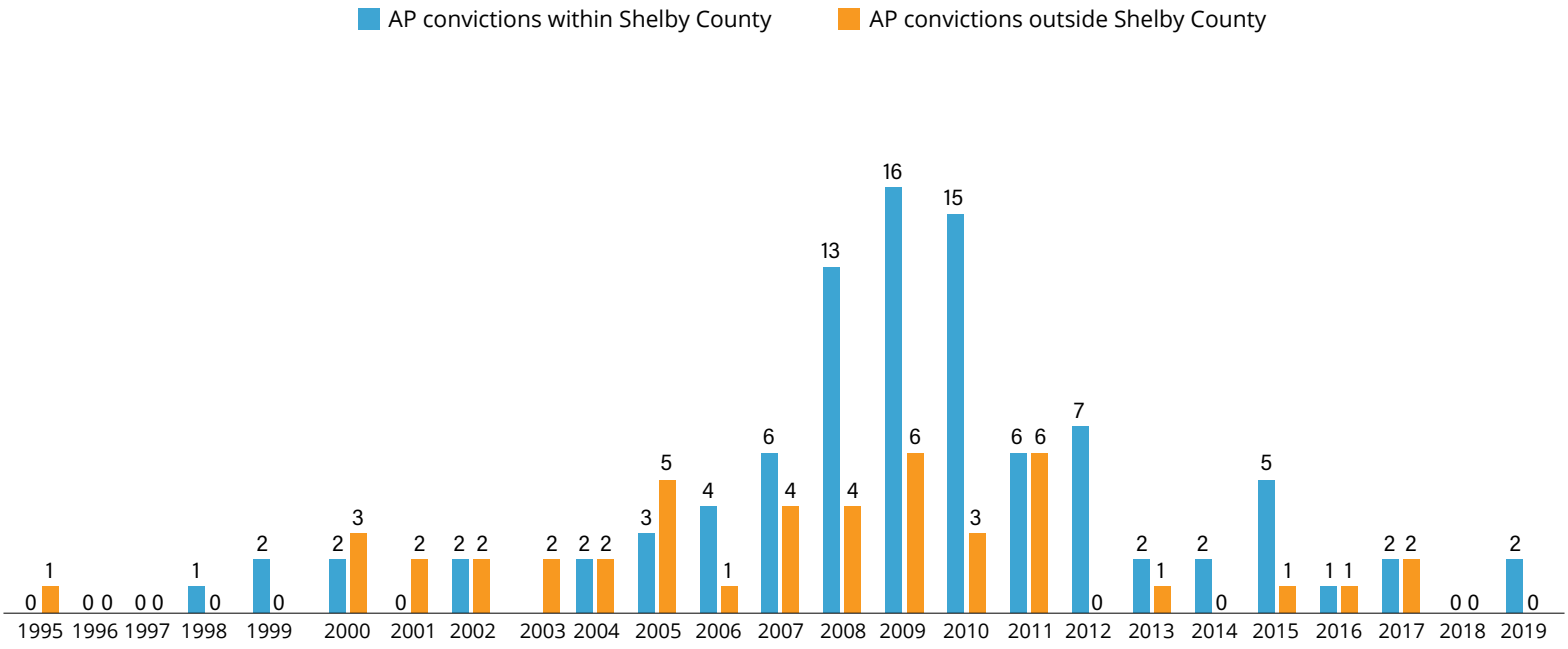
Figure 14. Selected characteristics of Shelby County, Tennessee[52]



Moreover, a distinct time trend is apparent in HIV-related convictions in Shelby County. AP enforcement ramps up until about 2010, then trails off. There is no similar time trend in other counties.

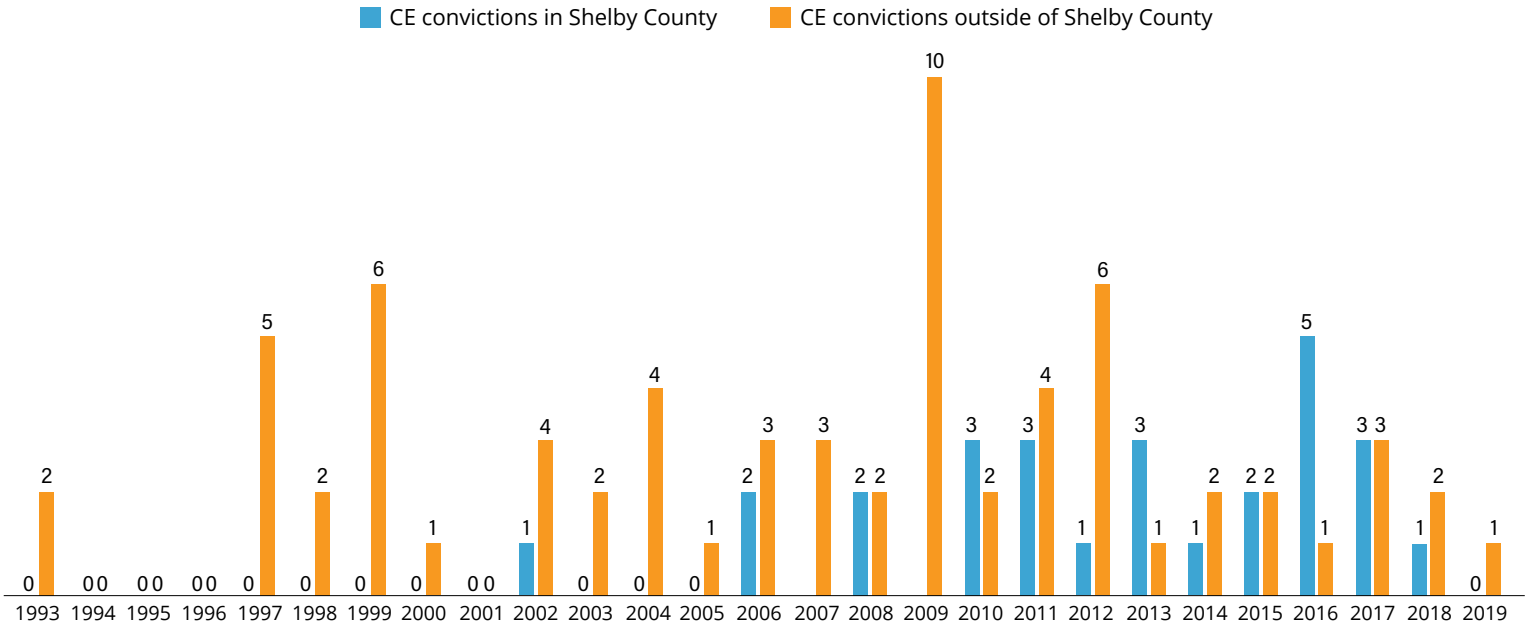
[52] Figures for SOR registrants are the share of HIV SOR registrants who were not dead, deported, or incarcerated who live in Tennessee.

Figure 15. Aggravated prostitution convictions in Shelby County and elsewhere in Tennessee by year



In contrast, CE enforcement remained relatively constant, both within Shelby County and outside the county.

Figure 16. Criminal exposure convictions in Shelby County and elsewhere in Tennessee by year

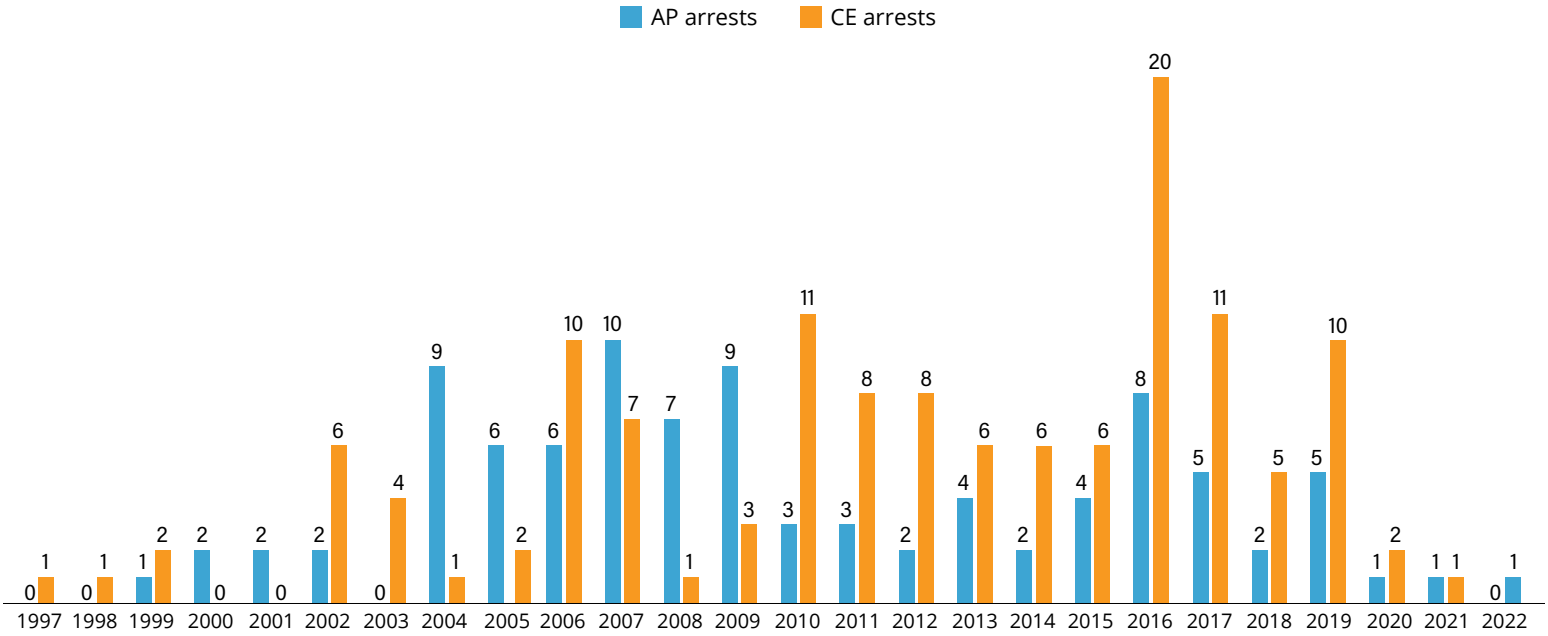


SOR REGISTRANTS' PRIOR AND SUBSEQUENT LAW ENFORCEMENT CONTACTS

In addition to information about a person's SOR convictions, Tennessee's sex offender registry also includes a criminal history for each registrant. However, the criminal history section is incomplete, providing only a partial list of the registrant's contacts with law enforcement. Nevertheless, we can use this information to situate registrants' convictions within a broader history of contacts with law enforcement and the legal system.

There were 236,558 separate law enforcement contacts in the SOR. Of those, 227 appeared to be HIV-related, spread across 108 people. (See Data and Methods section for more details.) Fifteen SOR registrants appeared to have HIV-related contacts with law enforcement, however, we found no evidence that these HIV-related contacts lead to a conviction for aggravated prostitution or criminal exposure. The 15 individuals were either arrested or charged with an HIV-related offense, but the arrest did not lead to a conviction for an HIV-related offense.[53] The individuals were on the SOR for convictions unrelated to the two HIV crimes.

Figure 17. HIV-related entries in criminal history by year



Prior arrests: Although incomplete, the criminal history section can be used to examine how many people had prior arrests for the same or similar charge to the HIV-related offense that resulted in SOR registration. (See Data and Methods section for more details.) For AP, it appears that nine people had arrests for an AP charge before their first AP conviction. For CE there were three people who likely had a previous arrest for a similar CE charge.[54]

[53] Two of the 15 people had a final disposition for the HIV entry in their criminal history. Both were AP charges. One pled guilty to a lesser offense. The other plead guilty to the AP charge, but this appears to not have resulted in SOR registration.

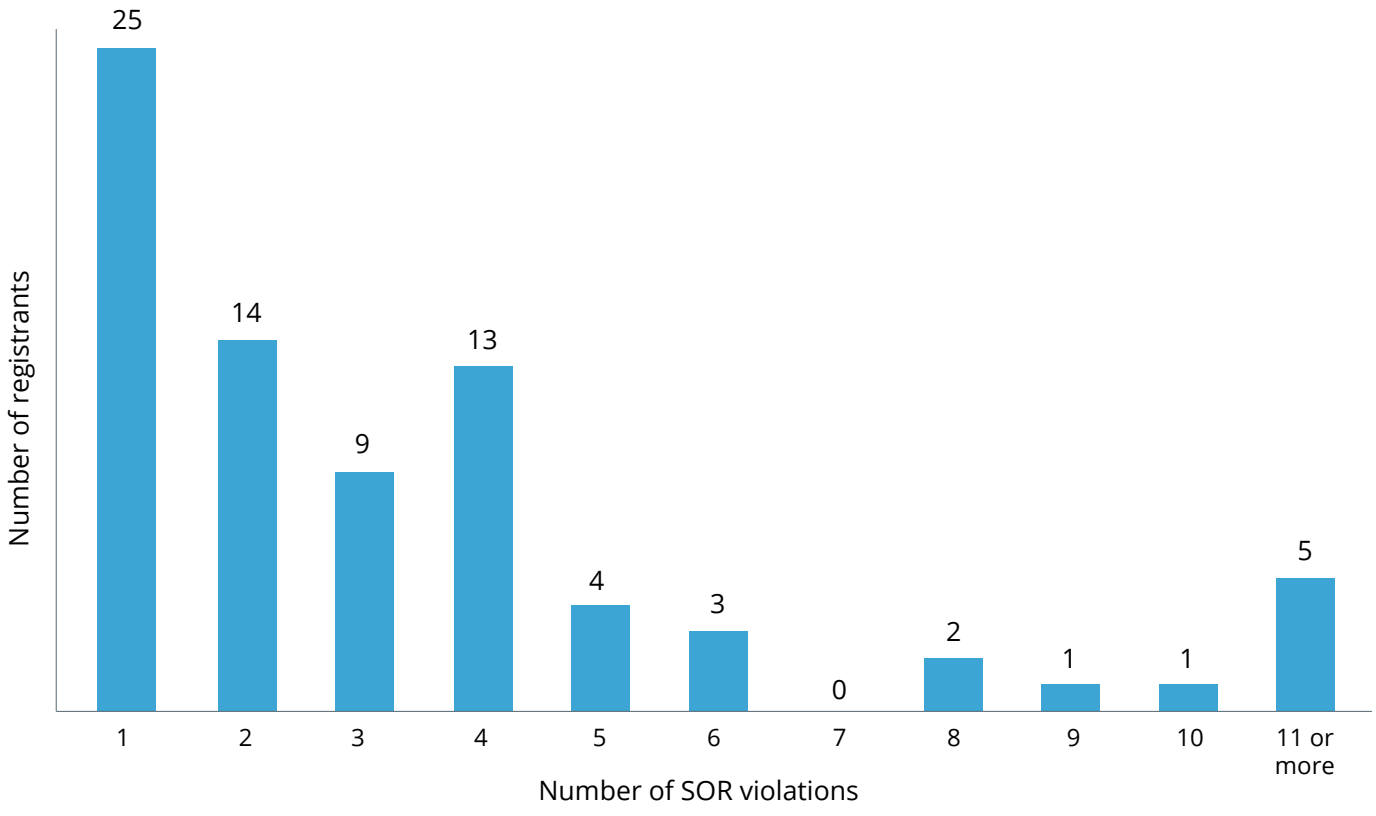
[54] For CE, the prior arrest must be at least one year before the first CE conviction to make sure we are not counting the same arrest cycle. See Data and Methods for more details. Using a 90-day cutoff six people appear to qualify.

Subsequent arrests: Likewise, the criminal history can be used to see how many people were subsequently arrested for an HIV-related offense, even if it did not lead to a conviction. For example, a person might have been arrested again and charged for criminal exposure, but later have the charge dropped.

Among AP registrants, nearly two-thirds (65%) were later re-arrested for AP, and of those people re-arrested, about two-thirds (68%) went on to have additional sex offender registrations for AP. In other words, these individuals were arrested and convicted for AP and placed on the SOR, then later arrested, convicted, and once more placed on the SOR for AP. In contrast, only one-quarter of CE registrants had subsequent exposure-related arrests, of which one-third resulted in additional registrations. Put differently, recidivism was much more likely among those charged with AP than among those charged with CE.

SOR violations: Once on the SOR, registrants are subject to a number of requirements and sanctions as required by the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004. These include mandatory quarterly reporting to local law enforcement agencies, an annual fee paid to the state of Tennessee, mandatory identification requirements, prohibitions on entering or approaching schools, playgrounds, and other areas where children congregate, including possibly schools and treatment facilities, even if the registrant is a child's caretaker or guardian. Everyone convicted of an HIV-related offense from 2010 onward is required to adhere to these requirements for life. A violation of the SOR is a Class E felony. A person in violation of the act faces rearrest and reincarceration. Among HIV registrants, 77 people, exactly half of all HIV registrants, had SOR violations in their criminal history. Among AP registrants, 61% had such violations; for CE registrants, 39% had SOR violations. These figures likely understate the total number of HIV registrants with SOR violations because the criminal history portion of the SOR is incomplete.

Figure 18. Number of SOR rule violations in HIV registrants' criminal history in Tennessee



SHELBY COUNTY CASES

As described in the Data and Methods section below, we have more detailed information on the HIV-related convictions of SOR registrants who reside in Shelby County. We received case files for 77 people in total, all of whom were prosecuted for an HIV-related offense in Shelby County; 57 were convicted for aggravated prostitution and 20 were convicted for criminal exposure. For one person convicted of aggravated prostitution, we have two separate arrest incidents.

AGGRAVATED PROSTITUTION

We have information on 58 separate arrests for prostitution. (One person was arrested on two separate occasions.) All 58 arrests resulted in a felony AP conviction that mandated SOR registration.

Origin, Location, and Timing of Arrest

The Shelby County case files reveal that the overwhelming majority of AP arrests (91%) were initiated by the Memphis Police Department's Organized Crime Unit (vice squad), which conducts undercover sting operations on street-level sex workers. In each of these arrests, an undercover police officer solicited a sex worker. Another two arrests were undertaken by plainclothes police officers who reported that they were propositioned by the arrestee. Only three arrests were the results of complaints or by regular patrol officers. Put differently, 95% of AP arrests analyzed involved only law enforcement officers and the person arrested—in these cases there were no clients and complaints from the community. Only two arrests out of 58 involved a client, and one arrest was the result of a complaint to the police. We were unable to determine if the other party in these cases was also arrested and charged.

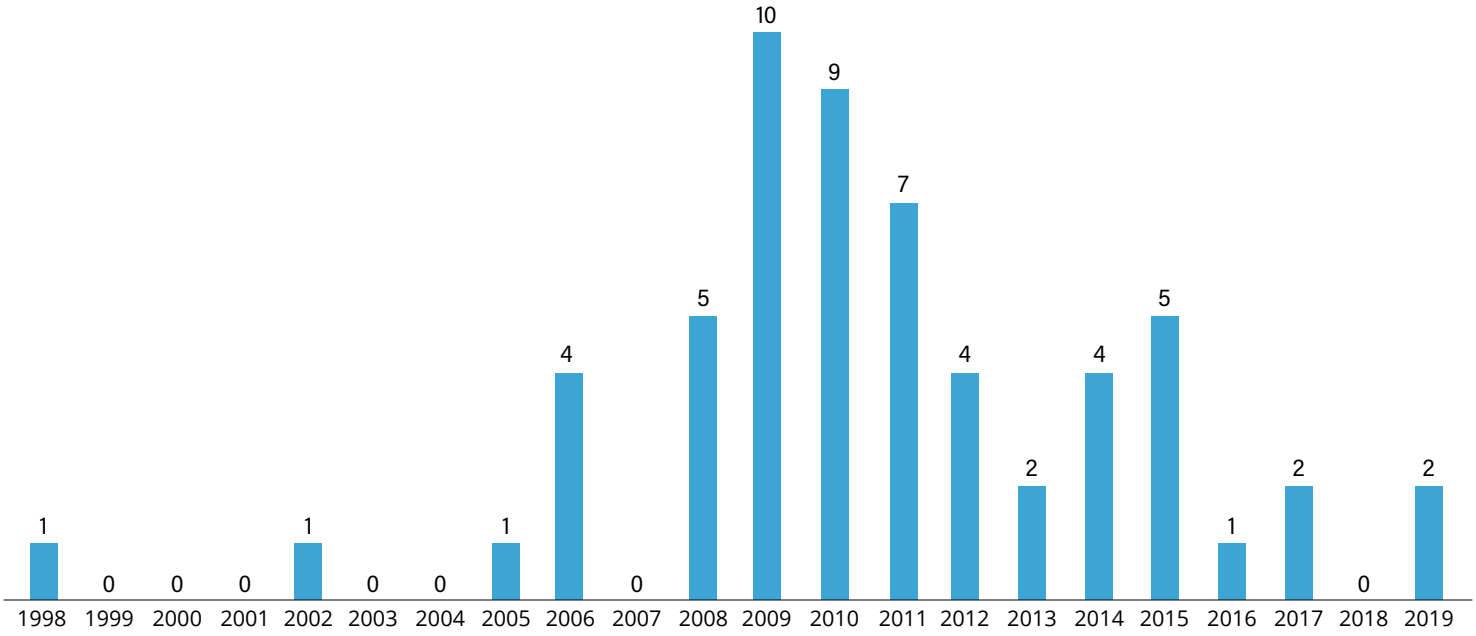
Figure 19. Cause of arrest for aggravated prostitution convictions among Shelby County, Tennessee case files

In all but one arrest for which we have information, the person arrested lived in Memphis (56 arrests), and in every arrest for which we have information the arresting agency was the Memphis Police

Department (57 arrests). The peak years for these arrests were 2009 to 2011. These three years account for 45% of all arrests that resulted in AP convictions between 1998 and 2019. However, arrests continued even after the 2009 peak. Indeed, there were 36 arrests in the decade from 2010 to 2019 compared to only 27 arrests in the preceding decade. (See Appendix for a discussion of prostitution-related arrests in Tennessee during this time period.)

In 95% of the case files examined the initial charge was for misdemeanor prostitution, usually prostitution near a school (1.5 miles) or church (100 feet). In each case, the person was taken into custody and subsequently charged with felony aggravated prostitution once the person's HIV status became known. Only three arrests began with a citation for AP.

Figure 20. Year of arrest for aggravated prostitution convictions among Shelby County, Tennessee case files[55]



The activity of the Memphis Police Department's vice squads drives the enforcement patterns seen among AP arrests, such as the spike in arrests from 2009 to 2011. At a more granular level, this is reflected in the day of the week and time of arrest. For example, the majority of arrests occurred on Tuesdays and Wednesdays (57%). In fact, out of the 58 arrests, only one person was arrested on Sunday and one on a Monday, and those are the only two cases in which an actual client was involved rather than the vice squad or plain clothes police. Further, the time of these arrests is mainly in the early evening until midnight: 60% of the arrests occurred between 6 pm and midnight, 14% between midnight to 6 am, only 5% between 6 am and noon, and 19% between noon and 6 pm.

Shelby County appears to have more aggressively convicted sex workers of HIV crimes than similar cities for which we have comparable data (See Table 2). For example, when compared to the rate of convictions for Saint Louis County and City (Saint Louis) in Missouri, Shelby County has a rate of

[55]One arrest date was missing in the Shelby County case files and was added from the SOR. The arrest date was in 2010.

conviction relative to the underlying population of PLWH that is 30 times higher than Saint Louis and in Jackson County Missouri (Kansas City) there have been no such convictions. Put differently, Shelby County has convicted a person living with HIV for a sex work crime for every 115 people living in the county with HIV; Saint Louis has one conviction for every 2962 PLWH, and Jackson County has no such convictions.

Table 2. Rates of convictions for sex work HIV crimes in three counties[56]

COUNTY (CITY)	TIME PERIOD OF DATA COLLECTION	PLWH IN 2019	PEOPLE CONVICTED OF HIV-RELATED SEX WORK CRIMES	RATE
Jackson County, Missouri (Kansas City)	1990-2019	3670	0	0.0000
Saint Louis County, Missouri (Saint Louis)	1990-2019	5,923	2	0.0003 or 1 in 2962
Shelby County (Memphis)	1998-2019	6,543	57	0.0087 or 1 in 115

Demographics of People Arrested

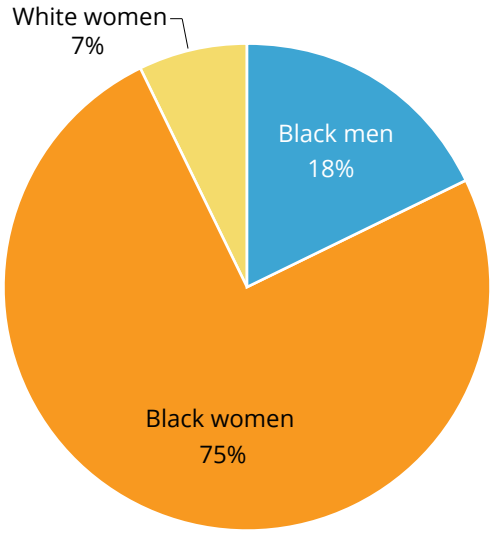
Race and sex: Compared to AP convictions in the SOR, those arrested in the Shelby County files were more likely to be Black women (74% of people arrested in Shelby County compared to 57% in the SOR). In contrast, white women were less likely to be arrested compared to the SOR (7% in Shelby County and 20% in the SOR). Overall, Black people were 90% of all people arrested for AP in the Shelby County files. The remainder of the arrestees were white; no one was identified as Hispanic/Latino.

Gender Identity: The case files do not report a person's a person's current gender identity, hence we are unable to count the number of people who identify as transgender or gender nonconforming. However, one study of people arrested for AP in Memphis found that undercover police specifically profile transgender women of color as sex workers.[57] In that study, of 14 interview participants who were convicted for AP in Shelby County, 83% identified as transgender and 93% identified as Black.

[56] *Supra* note 31, and Missouri Department of Health and Senior Services. *Epidemiological Profiles of HIV, STD, and Hepatitis in Missouri-2019*. Missouri Department of Health and Senior Services (https://health.mo.gov/data/hivstdaids/pdf/mo-hivstd-2019.pdf).

[57] Robin Lennon-Dearing, Melissa Hirschi, Sarah Dill, and Kayla Gore. "'We all deserve justice': Perspectives on being arrested for aggravated prostitution." *Journal of HIV/AIDS & Social Services* 20, no. 3 (2021): 183-208.

Figure 21. Demographic profile of aggravated prostitution arrestees in Shelby County, Tennessee



Age at time of arrest: At the time of arrest, the age of those convicted for aggravated prostitution ranged from 23 to 58; with an average age of 35.5 years old and a median age of 33 years old.

Educational attainment: We have education levels for 16 of the people convicted in these aggravated prostitution cases. None of the people convicted graduated from college, although one person reported some college attendance.

Employment history: Of the 16 case files that include employment history, close to one-half (44%) reported no employment history at all.

History of alcohol and substance use: Assessments of alcohol use history and of illegal substance use history were included in 15 of the case files.[58] Fourteen (93%) reported a history of at least one or the other.

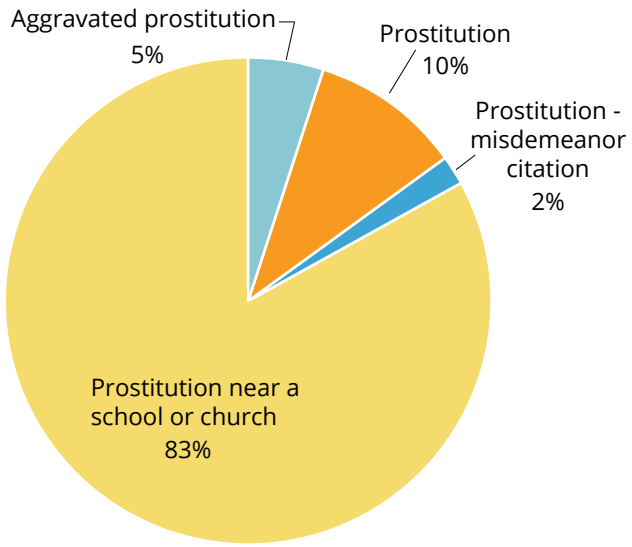
Circumstances of Arrest

Nearly all the AP cases resulted from vice squad activities; as a consequence, virtually none of the 58 arrest reports alleged any actual sex acts. In total, only 3% of all arrest reports alleged *any* intimate contact. Instead, the arrests were mainly based on conversations between undercover vice squad officers and those they suspect of engaging in sex work.

It is also clear from the case files that the arresting officers were not focused on the risk of HIV transmission or even the HIV status of the person arrested. The offense cited at the time of arrest was aggravated prostitution in only three cases. In the rest, the offense at arrest was misdemeanor prostitution. In only one case was there an indication that HIV was discussed before arrest, and only eight cases indicated discussion of condoms.

[58] A history of early, frequent, or problematic alcohol use was coded as alcohol use history; infrequent alcohol use or no history of alcohol use was coded as no alcohol use history here. Any reported history of illegal substance use was coded as a history of substance use. Alcohol and substance use history was self-reported unless there was evidence of use at time of arrest.

Figure 22. Initial charge for aggravated prostitution arrestees in Shelby County, Tennessee



In 56 of 58 AP arrests, we have information on the specific sex acts negotiated or alleged. In most cases, the proposed act either cannot transmit HIV or has a vanishingly low risk of HIV transmission. Almost half (47%) of all arrests—each of which resulted in a felony conviction and sex offender registration—involved *only* discussion about oral sex, which has no transmission risk.

About four in 10 arrests (43%) alleged discussion of vaginal sex, alone or with oral sex. The per-act risk of a man contracting HIV from vaginal sex with a woman who is HIV-positive is only four one-hundredths of one percent (0.04% or 1:2380), even if no condom is used. If the woman is on effective treatment, the risk falls to 0%, even if no condom is used.[59]

In three cases, the riskiest sex act alleged was insertive anal sex (a man inserting into an HIV-positive partner), which has a per-act transmission risk of approximately one-tenth of one percent (0.11% or 1:909) without a condom. Again, the risk drops to 0% if the HIV-positive receptive partner is on effective treatment.

In the remaining two cases, the sex worker was identified as male and anal sex is discussed. We cannot tell from the police reports who would be the insertive partner and who would be the receptive partner. If the insertive partner is the HIV-positive sex worker, and if there are no mitigation strategies such as condom use, then the risk of transmission of HIV is just over one percent (1.38% or 1:72). Stated differently, out of all the aggravated prostitution case files examined, only two arrests involved a proposed sex act in which the risk of transmission from that encounter would have been greater than one percent if the sex act had actually taken place, and if no mitigation strategies had been employed. Again, if the sex worker were on effective treatment, the risk of transmission would be 0%, even without condom use.

[59] A person who is taking anti-retroviral medication and who is virally suppressed so that HIV is undetectable in their blood is unable to pass on HIV to another person through sexual contact. See Alison Rodger, Valentina Cambiano, Tina Bruun, Pietro Vernazza, Simon Collins, Jan Van Lunzen, Giulio Maria Corbelli et al. "Sexual activity without condoms and risk of HIV transmission in serodifferent couples when the HIV-positive partner is using suppressive antiretroviral therapy." *JAMA* 316, no. 2 (2016): 171-181.

Consistent with the SOR analysis, the Shelby County case files also reveal that the people convicted of AP were likely poor and engaged in sex work to survive. The prices discussed ranged from free (in exchange for a place to stay for the night) to $120. The average amount discussed was $25, and the median was $20.[60] Although over 80% of those convicted were women, men were able to charge more than women, with an average amount discussed for the sex of $49 for men and $21 for women. None of the case files that included information on financial assets listed any arrestee with any meaningful assets.

Table 3. Risk-per-exposure for HIV from sexual acts discussed at time arrest in Shelby County, Tennessee aggravated prostitution case files

ACTIVITY	RISK-PER-EXPOSURE[61]	PERCENT OF AP CONVICTION CASES WITH SPECIFIC ACT AS THE HIGHEST RISK ACT INCLUDED IN THE ALLEGATIONS (N=57)	AVERAGE PRICE DISCUSSED FOR SEX ACT (ROUNDED TO THE NEAREST DOLLAR)
Receptive fellatio,[62] no condom,viral load not known	Estimates range from 0.00% to 0.04% (1 in 2500)[63]	47%	$16
Vaginal sex, female-to-male,[64] no condom	0.04% (1 in 2380)[65]	43%	$22 for vaginal sex alone; $30 if oral sex is also included
Vaginal sex,[66] female-to-male, no condom, undetectable viral load	0%[67]		
Insertive anal sex,[68] no condom	0.11% (1 in 909)[69]	5% - 9%	

[60] The average amount agreed to for oral sex alone was about $16; agreements involving vaginal sex were in the $20 range; anal sex was significantly more expensive ($64 per person on average).

[61] Roger Pebody. "Estimated HIV risk per exposure." NAM Aidsmap (May 2020) (https://www.aidsmap.com/about-hiv/estimated-hiv-risk-exposure).

[62] Keith Alcorn. "Oral sex and the risk of HIV transmission: a research briefing." NAM Aidsmap (July 2019) (https://www.aidsmap.com/about-hiv/oral-sex-and-risk-hiv-transmission).

[63] Patel, Pragna, Craig B. Borkowf, John T. Brooks, Arielle Lasry, Amy Lansky, and Jonathan Mermin. "Estimating per-act HIV transmission risk: a systematic review." AIDS (London, England) 28, no. 10 (2014): 1509.

[64] Roger Pebody. "Vaginal sex and the risk of HIV transmission: a research briefing." NAM Aidsmap (July 2019) (https://www.aidsmap.com/about-hiv/vaginal-sex-and-risk-hiv-transmission).

[65] *Supra* note 64.

[66] *Supra* note 65.

[67] *Supra* note 59.

[68] Roger Pebody. "Anal sex and the risk of HIV transmission: a research briefing." NAM Aidsmap (July 2019) (https://www.aidsmap.com/about-hiv/anal-sex-and-risk-hiv-transmission).

[69] *Supra* note 64.

ACTIVITY	RISK-PER-EXPOSURE[61]	PERCENT OF AP CONVICTION CASES WITH SPECIFIC ACT AS THE HIGHEST RISK ACT INCLUDED IN THE ALLEGATIONS (N=57)	AVERAGE PRICE DISCUSSED FOR SEX ACT (ROUNDED TO THE NEAREST DOLLAR)
Insertive anal sex,[70] no condom, undetectable viral load	0%[71]	5% - 9%	$44 for oral and anal sex;[72] one case of anal alone for $100
Receptive anal sex,[73] no condom	1.38% (1 in 72)[74]	0% - 4%	
Receptive anal sex,[75] no condom, undetectable viral load	0%[76]		

Representation, Bail, and Sentencing

Given arrestees' financial resources, it is not surprising that almost all of the defendants in the AP cases were represented by a public defender. Of the 25 cases where we have information about the type of legal representation, only one defendant retained private counsel (hired a lawyer). The rest were represented by a public defender (23) or were appointed counsel (1).

The extremely low dollar amounts agreed upon for the sex work in these cases analyzed above starkly contrast with the bail amounts. We have bail amounts for 15 AP cases. The average bail amount was about $6,500, with a median of $1,000. The bail amounts ranged from $100 to $50,000.

We have bond condition status for 16 cases: in one case, no bond was set; in two cases the defendants were released on bond; in the remaining 13 cases (81%), the defendants were unable to make bond, including six cases where the bond was set at $100.

We have information about whether the defendant pled guilty or went to trial for 11 of the aggravated prostitution cases; in all 11 cases, the defendant plead guilty.

We have sentencing information for 23 aggravated prostitution cases. The average sentence length for these cases was 2.9 years and the median was 3 years, with a range of 1 to 8 years.

[70] *Supra* note 69.

[71] Alison J. Rodger, Valentina Cambiano, Tina Bruun, Pietro Vernazza, Simon Collins, Olaf Degen, Giulio Maria Corbelli et al. "Risk of HIV transmission through condomless sex in serodifferent gay couples with the HIV-positive partner taking suppressive antiretroviral therapy (PARTNER): final results of a multicentre, prospective, observational study." *The Lancet* 393, no. 10189 (2019): 2428-2438.

[72] In one case the amount offered was $120 for two individuals. $44 is the average per-person amount offered, however the HIV status of one sex is not reported as positive.

[73] *Supra* note 68.

[74] *Supra* note 68.

[75] *Supra* note 68.

[76] *Supra* note 71.

CRIMINAL EXPOSURE

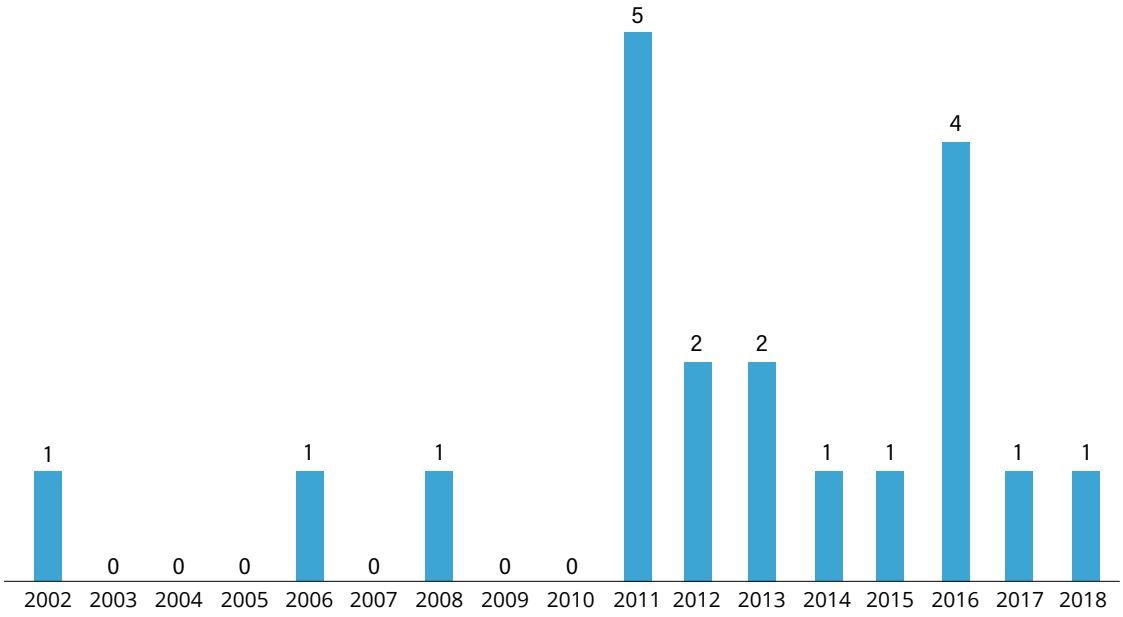
We have information on 20 separate arrests for criminal exposure. All 20 arrests resulted in a felony CE conviction that mandated SOR registration.

Location and Timing of Arrest

Of the 20 people arrested for CE, we have residency information for 17. At the time of arrest, 16 people resided in Shelby County (15 within the city of Memphis). In every case where we have location of arrest, the location was Memphis; Memphis PD was the arresting agency in 12 cases for which we have arresting agency information. The Shelby County Sheriff's Office was the arresting agency in two cases. The CE cases differ from the AP cases in that all the CE cases began with a complaint to the police.

For most years between 1998 and 2019, there were at most two arrests that resulted in a CE conviction. 2011 and 2016 are the only years with higher numbers of arrests with five in 2011 and four in 2016. However, in the decade from 2011 to 2019, there were 17 arrests that resulted in a CE conviction compared to three in the preceding decade and zero in the decade before that, suggesting that enforcement may have increased over the decades.[77]

Figure 23. Year of arrest for those in the Shelby County, Tennessee case files convicted of criminal exposure[78]



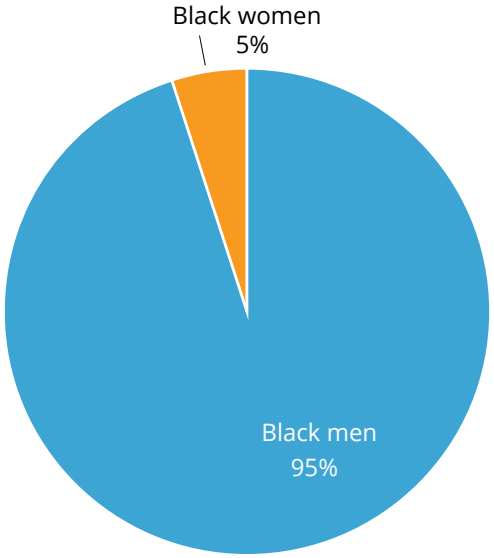
[77] Seven people were in the SOR for criminal exposure with an offense date before Jan 1, 2000, however none of them resided in Shelby County. Tennessee's criminal exposure law was enacted in 1994.

[78] Two arrest dates were missing in the Shelby County case files and were added from the SOR. The arrest dates were in 2002 and 2016.

Demographics of People Arrested

Race and sex: Compared to CE convictions in the SOR, those arrested in the Shelby County files were much more likely to be Black men (95% of people arrested in Shelby County compared to 64% in the SOR).[79] Indeed, all but one person arrested was a Black man. The other person arrested was a Black woman (who was the only person arrested for a non-sexual spitting CE offense). Together, 100% of people arrested for CE in the Shelby County cases were Black, compared to 77% of CE convictions in the rest of the state.[80] No one was identified as Hispanic/Latino in the Shelby County CE case files. As with the AP case files, we were unable to determine whether individuals arrested might identify as cisgender, transgender, or another gender identity.

Figure 24. Demographic profile of people arrested for criminal exposure in Shelby County, Tennessee



Age at time of arrest: Those convicted of CE ranged from 20 years old to 48 years old at time of arrest, with an average age of 34 years old and a median age of 35 years old.

Educational attainment: We have education levels for nine of the people convicted in these CE cases. None of the individuals convicted graduated from college.

Employment history: Of the nine case files that include employment history, only one-third indicated any recent employment, and one-third reported no employment history at all.

History of alcohol and substance use: Assessments of alcohol use history and of illegal substance use history were included in seven of the case files. All seven reported a history of either one or both.

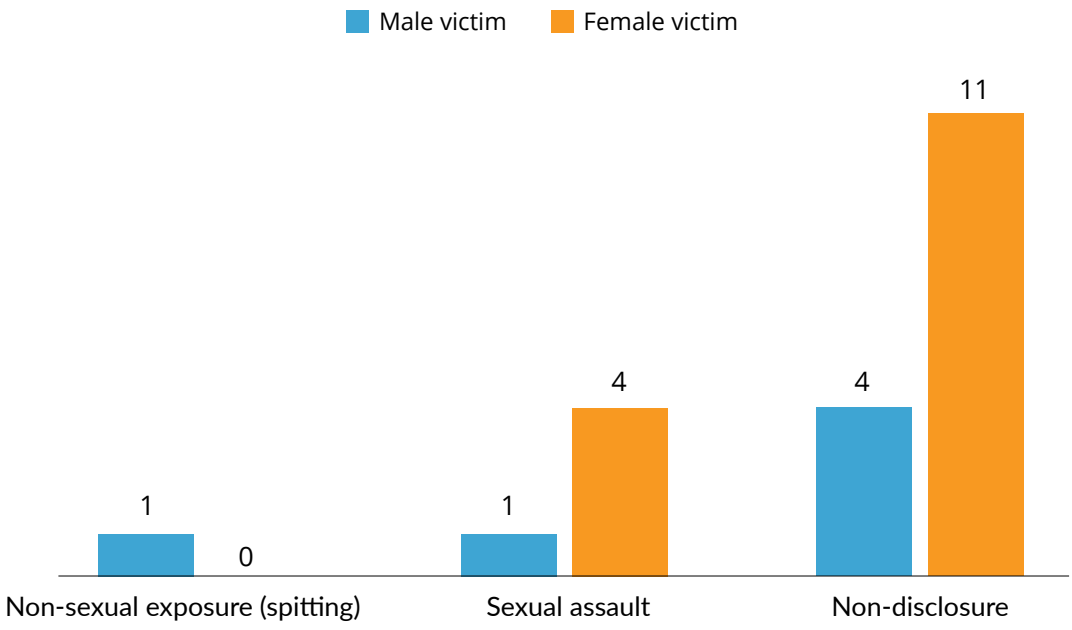
[79] We used demographic information from the SOR for two case files that were missing demographic information.

[80] There were 26 people who resided in Shelby County on the SOR for a CE conviction. 23 of them were Black men, two were Black women, and one was a white woman. All three women also had an AP conviction.

Circumstances of Arrest

Tennessee's CE law criminalizes both intimate (sexual) and non-intimate contact, such as spitting or biting. (See Background section for more details on Tennessee's criminal exposure law.) Among the 20 CE cases from Shelby County, one was the result of exposure to spitting or biting (henceforth "exposure"). The remaining 19 cases involved sexual contact. Four cases involved an underlying sexual assault charge (henceforth "assault"). The remaining 15 cases (79%) alleged that the person arrested did not disclose their HIV status to an intimate partner (henceforth "non-disclosure").

Figure 25. Type of criminal exposure cases in Shelby County, Tennessee



Exposure cases: One person was convicted for exposing another person to bodily fluids. While in custody, this person allegedly spat at a law enforcement officer.

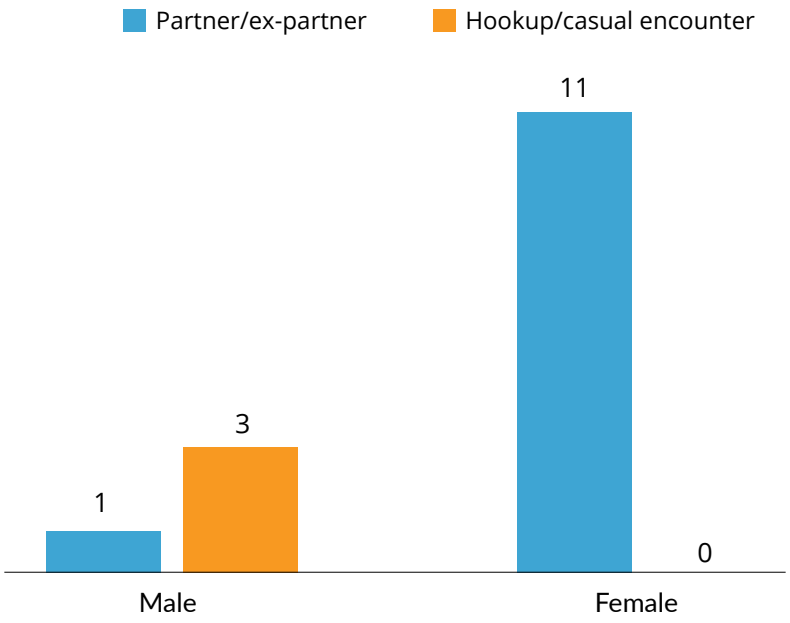
Assault cases: In four cases, there was an underlying allegation of sexual assault or rape. In all four cases, the person arrested was also convicted of the underlying sexual assault or rape charge in addition to the criminal exposure charge. In three cases, the victim was a female; in one case the victim was male.

Non-disclosure cases: In 15 cases, the HIV-related allegation was that the person arrested did not disclose their HIV status to their intimate partner within the context of a consensual sexual relationship.[81] In 12 instances, the case files indicate that the arrestee and the victim had an ongoing intimate relationship. In the other three cases, the relationship was likely a casual encounter or hookup. Four (27%) of the non-disclosure cases involved a male victim (of which three were likely casual encounters). We have a definite age for 10 victims; the average age was 29 years old.

[81] One case involved sexual contact with someone who was likely less than 18 years old. The case file does not indicate the victim's age, and the person arrested was not charged with a crime that would indicate inappropriate contact with a minor. The person plead guilty to a single count of criminal exposure.

Three of the 11 cases that involved opposite-sex victims included an additional aggravated or domestic assault charge in the original complaint; among the four cases with same-sex victims, there were no additional charges. When including the four sexual assault cases, over four in 10 (43%) CE convictions with an opposite-sex victim included allegations of violent behavior such as assault or rape.

Figure 26. Type of relationship involved in Shelby County, Tennessee non-disclosure criminal exposure arrests



Risk of Transmission

Some of the files include information on whether the person convicted took precautions to prevent the transmission of HIV, although Tennessee law does not recognize taking such precautions as an affirmative defense to criminal exposure. Ten of the 15 non-disclosure cases included information on condom use: 60% reported that condoms were not used; the remainder reported occasional or infrequent condom use, or there were conflicting descriptions of condom use.[82]

In four cases, the person convicted was in treatment (taking anti-retroviral medication), which, if adhered to, reduces the risk of transmission through sexual contact to zero. However, in at least two cases the discovery of the defendant's medication by an intimate partner ultimately led to a criminal complaint for non-disclosure. In none of the cases for which we have both information on the defendant's treatment status and information on whether transmission occurred, did we find evidence of actual transmission.

[82] In three of the four assault cases a condom was likely not used; in the fourth case we could not locate any information on condom usage.

Only five of the 15 non-disclosure cases provided information on whether the victim asked the defendant about his HIV status; three of those files indicate that the victim and defendant did not discuss status questions. In only two cases did we find evidence of HIV status was ever discussed with intimate partners, although we do not know the contents of the discussions.

Further, in most of these cases, the sex acts at issue have a low risk of transmitting HIV. It is important to note, however, that actual transmission is not required for conviction under Tennessee's criminal exposure statute.[83] Seven of the 15 non-disclosure cases (47%) did not provide enough information to determine transmission risk.[84] Of the remainder, two mention penile-vaginal sex acts alone. The per-act risk of a woman getting HIV from vaginal sex with a man who is HIV-positive is only eight one-hundredths of one percent, even if no condom is used. If the man is on effective treatment, that risk falls to 0%, even if no condom is used. Two cases mention penile-vaginal and penile-anal sex between a man and a woman. The per-act risk of transmission for receptive anal sex is 1.38%, or 1 in 72, without a condom. That risk also drops to 0% if the man is on effective treatment.

The remaining four cases (27%) involve anal sex between men. However, the case files do not indicate whether the defendant was an insertive partner, receptive partner, or both. If the defendant was the insertive partner, the risk is the same as above for different-sex anal sex when an HIV-positive man is the insertive partner and the victim is the receptive partner. The per-act risk of transmission for receptive anal sex is 1.38%, or 1 in 72, without a condom. That risk also drops to 0% if the man is on effective treatment. However, if the defendant was the receptive partner in anal sex the per-act risk falls to 0.11% if no condom is used and to 0% if a condom is used.

Three of the assault cases alleged penile-vaginal contact, of which, two additionally alleged penile-oral contact. Again, the per-act risk of a woman getting HIV from vaginal sex with a man who is HIV-positive is only eight one-hundredths of one percent, even if no condom is used. If the man is on effective treatment, that risk falls to 0%, even if no condom is used. The fourth case did not provide details on the intimate contact involved. None of the assault cases indicated whether the victim sought or received post-exposure prophylaxis (PEP), which is a medical treatment that if taken soon after exposure can significantly reduce the risk of transmission.[85]

In total, seven cases (35%) mention oral sex, which has a negligible transmission risk. An additional file only involves spitting, which has no risk of transmitting HIV.

Almost 40% (38.1%) of all 20 files indicate insertive vaginal sex (where the male defendant is HIV-positive). In approximately 9.5% of cases, the defendant is an HIV-positive male who is alleged to have had insertive anal sex with a woman, which has a per-act risk of HIV transmission of 1.38%, or 1 in 72, without a condom. That risk also drops to 0% if the man is on effective treatment.

---

[83] See Tennessee Code Annotated § 39-13-109 (d)(1) (2020): "Nothing in this section shall be construed to require the actual transmission of HIV in order for a person to have committed the offense of criminal exposure of another to HIV."

[84] These files use terms like "sex" (1) or "sexually active" (1) or "sexual relations." (4) to describe the intimate contact. One file did not provide any description of the intimate contact.

[85] Roger Pebody. "How effective is post-exposure prophylaxis (PEP)? a research briefing." NAM Aidsmap (April 2019) (https://www.aidsmap.com/about-hiv/how-effective-post-exposure-prophylaxis-pep).

Table 4. Risk-per-exposure for HIV from sexual acts included in criminal exposure SOR case files for Shelby County

ACTIVITY	RISK-PER-EXPOSURE[86]	PERCENT OF CRIMINAL EXPOSURE SOR CASES WITH SPECIFIC ACT (N=20)
Information in the file does not include specific acts	Unknown	30% (6)
Spitting	0.00%	5% (1)
Receptive oral sex, no condom, viral load not known	Estimates range from 0.00% to 0.04% (1 in 2500)	35% (6)
Vaginal sex, male-to-female, no condom	0.08% (1 in 1234)	35% (7)
Vaginal sex, male-to-female, no condom, undetectable viral load	0%	
Insertive anal sex, no condom	0.11% (1 in 909)	10%-35% (2-7)
Insertive anal sex, no condom, undetectable viral load	0%	
Receptive anal sex, no condom	1.38% (1 in 72)	0.0%–25% (0-5)
Receptive anal sex, no condom, undetectable viral load	0%	

Representation, Bail, and Sentencing

Of the nine cases where we have information about the type of representation in these criminal exposure cases, two-thirds (67%) retained private counsel (hired a lawyer), two (22%) had public defenders and one had a court-appointed attorney.

We have bail information for 10 criminal exposure cases. Two people were not granted bail (there was no bail amount set). For the remainder of cases, the average bail amount is $26,000, with a median of $30,000. The bail amounts ranged from $15,000 to $50,000. In three cases, the person was released on bond; in the remainder of cases, the person stayed in custody.

We have information about whether the defendant pled guilty or went to trial for only two criminal exposure cases; in both cases, the defendant plead guilty.

We have sentencing information for four criminal exposure cases. In terms of the length of sentence, the mean sentence length for criminal exposure cases was 3.75 years and the median was 3.5 years, with a range of 3 to 5 years.

[86] *Supra* note 62-65, 68-69, 72.

Table 5. Rates of convictions for sex work HIV crimes in three counties[87]

COUNTY (CITY)	TIME PERIOD OF DATA COLLECTION	PLWH IN 2019	CRIMINAL EXPOSURE CONVICTIONS	RATE
Jackson County, Missouri (Kansas City)	1990-2019	3670	8	0.0022 or 1 in 459
Saint Louis County, Missouri (Saint Louis)	1990-2019	5,923	51	0.0086 or 1 in 116
Shelby County (Memphis)	1998-2019	6,543	20	0.0031 or 1 in 327

COST OF INCARCERATION

To estimate the fiscal cost of incarceration to taxpayers for HIV-related convictions in Tennessee, we multiplied the total number of years served in prison by the annual cost of incarceration per incarcerated person in Tennessee.

Total number of years sentenced: To get the total number of years served, we took the median sentence for aggravated prostitution (3 years) and criminal exposure (3.5 years) and multiplied it by the total number of unique arrest cycles resulting in a conviction for AP and CE in the SOR.[88] We counted 139 separate AP arrest cycles leading to conviction. We counted 80 unique CE arrest cycles leading to conviction. This comes to 417 person-years for AP and 280 person-years for CE, or 697 person-years sentenced.

Total number of years served: To get the actual total number of years served, we took into account the offender classification for those convicted. We only had information about offender classification for seven defendants from Shelby County. Six of these seven were classified as Range I standard offenders who are ineligible for release until they have served 30% of their actual sentence.[89] The seventh person was a Range II multiple offender eligible for release after serving 35% of their sentence.[90] We conservatively assume that all those on SOR for HIV convictions are Range I standard offenders and that they all were released after serving 30% of their time. This yields a minimum incarceration time of 209.1 person-years.

[87] *Supra* note 57.

[88] A person might be sentenced for multiple charges stemming from the same arrest cycle. To identify unique AP arrest cycles we counted each separate offense date as a separate arrest cycle. For example, if a person had two offenses on the same date they were assumed to be the same arrest cycle and were counted once. For criminal exposure, we counted offense dates that were more than a year apart as separate arrest cycles. For example, if a person had two convictions with one offense date in January and other in March of the same year, it was counted as the same offense cycle. A total of 75 people had CE convictions in the SOR. Nine of the 75 had multiple convictions. We identified five more likely unique arrest cycles between those nine registrants with multiple convictions. See also Data and Methods section for more details.

[89] See Tennessee Code Annotated § 40-35-501(c) (2020): "Release eligibility for each defendant sentenced as a Range I standard offender shall occur after service of thirty percent (30%) of the actual sentence imposed less sentence credits earned and retained by the defendant."

[90] See Tennessee Code Annotated § 40-35-501(d) (2020): "Release eligibility for each defendant sentenced as a Range II multiple offender shall occur after service of thirty-five percent (35%) of the actual sentence imposed less sentence credits earned and retained by the defendant."

Per-person cost of incarceration: In Tennessee, the weighted average operational costs per day are estimated to be $51.36 for each person housed at state facilities and $48.77 for each person housed at local facilities.[91] We round these rates to $50 to create an annual rate of $18,250 per person incarcerated.[92] Using our above figures for the number of years served (209.1 person-years) and average annual cost-per-person incarcerated ($18,250), we estimate the minimum total cost of incarceration in prison for HIV crimes to be $3.8 million.[93] Including people who were convicted of an HIV crime but who did not appear on the SOR during the study period would increase the cost. This cost estimate also does not take into consideration the costs of providing specialized care for PLWH while in custody.

[91] Tennessee General Assembly Fiscal Review Committee. "Fiscal Note SB 2248 – HB 2656." Tennessee General Assembly (February 13, 2022) (https://www.capitol.tn.gov/Bills/112/Fiscal/SB2248.pdf).

[92] For comparison, the Vera Institute of Justice estimated the annual cost-per-person incarcerated in Tennessee at $23,468 in 2015, which was $28,091 in 2022 dollars. However, it includes fixed costs (e.g., building prisons) not included in the Tennessee General Assembly Fiscal Committee when calculating operational costs. See Chris Mai and Ram Subramanian. *The Price of Prisons: Examining State Spending Trends, 2010-2015*. Vera Institute of Justice (2017). (https://www.vera.org/downloads/publications/the-price-of-prisons-2015-state-spending-trends.pdf).

[93] The Tennessee legislature provides different cost estimates for people housed in Department of Corrections facilities. The per-day cost to house a person incarcerated in a Department of Corrections facility was $80.46 per day in 2021, or about $29,368 per person per year. Using these numbers, the total minimum cost to house people convicted of HIV-related offenses in Tennessee is at least $6.14 million. See Tennessee General Assembly Fiscal Review Committee. "Fiscal Note SB 561 – HB 1532." Tennessee General Assembly (February 13, 2022) (https://www.capitol.tn.gov/Bills/112/Fiscal/SB0561.pdf).

DATA AND METHODS

SEX OFFENDER REGISTRY

The Tennessee Bureau of Investigation (TBI) maintains a public sex offender registry, available online at https://sor.tbi.tn.gov/home. The online sex offender registry was scraped using a computer script on October 28, 2021 and again on March 9, 2022. This yielded 26,143 unique profiles, including 302 profiles that were on the registry in October 2021 but no longer available in March 2022.

In addition to biographical information, the sex offender registry contains information on registrants' current address, vehicle registration, employment address, and driver's license number. The registry also reports registrants' classification ("violent" or "sexual", and whether the registrant is an "offender against children"), the registrant's incarceration and state residency status, and whether the registrant is an "absconder," that is, whether the person currently resides at their last known residential address and has reported to the appropriate local law enforcement agency on time.[94] Finally, the registry reports information on the conviction(s) that resulted in sex offender registration. Convictions information is provided to TBI from the court in which a person is convicted.[95] The registry also includes a partial list of registrants' criminal history, which is provided to TBI by local law enforcement agencies.[96] Not all agencies report a complete list of registrants' criminal history, and unlike the convictions information, the criminal histories do not have an associated Tennessee Code Annotated (TCA) code. Instead, a short description of the offense is entered.

The 26,143 registrants had a combined 34,465 convictions that resulted in SOR registration. To identify HIV-related convictions, we filtered both by TCA and by short description. A conviction was labeled HIV-related if it matched either TCA code or description.

[94] Registrants are required to report periodically to law enforcement agencies:
A person classified as a "sexual offender" is required to report annually between 7 days prior to and 7 days following his or her birthday. A person classified as a "violent sexual offender" is required to report quarterly during the months of March, June, September, and December. "Sexual offenders" and "violent sexual offenders" are required to report in person within 48 hours of changing any required registry information; however, "sexual offenders" and "violent sexual offenders" have 72 hours to report any changes to their social media screen names, email addresses, or other online identifiers.

[95] Author correspondence with Tennessee Bureau of Investigation.

[96] *Id.*

Table 6. Criteria used to identify HIV-related convictions in Tennessee's sex offender registry

	AGGRAVATED PROSTITUTION	CRIMINAL EXPOSURE
TCA codes	39-13-516(B) 39-13-516(A) 39-13-516	39-13-109(1) 39-13-109(A)(1)
Description	AGGRAVATED PROSTITUTION AGGRAVATED PROSTITUTION, IF CONVICTION AFTER 7/1/2010 AGGRAVATED PROSTITUTION, IF CONVICTION BEFORE 7/1/2010 ATTEMPTED AGGRAVATED PROSTITUTION CRIMINAL ATTEMPT TO COMMIT AGGRAVATED PROSTITUTION CRIMINAL ATTEMPT TO COMMIT AGGRAVATED PROSTITUTION, IF CONVICTION AFTER 7/1/2010 CRIMINAL ATTEMPT TO COMMIT AGGRAVATED PROSTITUTION, IF CONVICTION BEFORE 7/1/2010 SOLICIATION TO COMMIT AGGRAVATED PROSTITUTION SOLICIT TO COMMIT AGGRAVATED PROSTITUTION SOLICITATION TO COMMIT AGGRAVATED PROSTITUTION, IF CONVICTION BEFORE 7/1/2010	CRIMINAL ATTEMPT TO COMMIT CRIMINAL EXPOSURE TO HIV: ONLY SUBSECTION (A)(1) OF 39-13-109 CRIMINAL EXPOSURE H.I.V. CRIMINAL EXPOSURE TO HIV CRIMINAL EXPOSURE TO HIV ONLY SUBSECTION CRIMINAL EXPOSURE TO HIV: CRIMINAL EXPOSURE TO HIV: ONLY SUBSECTION CRIMINAL EXPOSURE TO HIV: ONLY SUBSECTION (A)(1) OF 39-13-109 CRIMINAL EXPOSURE TO HIV: ONLY SUBSECTION A 1 OF 39-13-109 CRIMINAL EXPOSURE TO HIV: ONLY SUBSECTION A1 OF 39-13-109

Of the convictions that matched these criteria, three had a TCA code that is normally reserved for out-of-state convictions (39-13-PT5). We examined each profile associated with these matches and determined that three convictions likely originated within Tennessee; they were included in our analysis. These criteria yielded 234 HIV-related convictions that resulted in SOR registration: 139 for aggravated prostitution and 95 for criminal exposure. A total of 154 registrants had such HIV-related convictions.[97]

We used reported date of offense to calculate the number of unique arrest cycles that resulted in an HIV-related conviction. For aggravated prostitution, if there was at least one day between offense dates, we considered them to be separate arrest cycles that resulted in conviction. We did this because prostitution arrests occur in the context of the criminalized behavior. In contrast, for criminal exposure convictions we used a window of one year; offense dates needed to be at least one year apart to be considered separate arrest cycles that resulted in conviction. We did this for two reasons: first, criminal exposure arrests always happen after the alleged offense date, second, multiple alleged offenses are often reported in the same arrest cycle. A one-year window allows us to count multiple offense dates that are close together as a likely originating in a single arrest cycle.

[97] Sex offender IDs that begin with "S" appear, in the main, to be reserved for registrants with out of state convictions. There were two such IDs among the HIV-related registrants, however, both appear to have in-state HIV-related convictions and are therefore included here.

The criminal history section of the SOR does not include a TCA, and there is much more variability in the short descriptions. There were 236,558 total criminal history entries across the entire SOR, of which, about 25% included a final disposition. There were 43,218 unique offense description entries, many of which were apparent duplicates with slight typographic variations. We reduced the number slightly by removing white space at the beginning and end of each description and changing all letters to lowercase. We then manually identified likely HIV-related offense descriptions. Finally, we counted all criminal history entries that matched this list of likely HIV-related offense descriptions. Doing so, we identified 227 criminal history entries that were likely HIV-related: 95 prostitution-related and 132 exposure-related. Those 227 criminal history entries were spread across 108 registrants, 15 of whom were not among the HIV-related registrants.

Table 7. Criteria used to identify HIV-related entries in the criminal history section of Tennessee's sex offender registry

AGGRAVATED PROSTITUTION	CRIMINAL EXPOSURE
agg prostitute	(capias)criminal exposure to hiv
agg prostitution	agg assault to wit exposure to hiv
agg-prostitution	assault, criminal exposure of another to hiv
aggrav prostitution	capias(criminal exposure to hiv)
aggravated prosititution	capias-criminal to exposure to hiv
aggravated prosituition	crim expose to hiv
aggravated prositution	crim exposure to hiv
aggravated prostittution	criminal expose to hiv
aggravated prostitution	criminal exposue to hiv
aggravated prostitution (2cts)	criminal exposure h.i.v
aggravated prostitution 2 cts	criminal exposure h.i.v.
aggravated prostitution near a church school	criminal exposure hiv
aggravated prostitution near church of school	criminal exposure of another to hiv
aggravated prostitution x2	criminal exposure of another to hiv 20 counts
aggravated prostution	criminal exposure to h.i.v
criminal attempt aggravated prositution	criminal exposure to hiv
criminal attempt aggravated prostitution	criminal exposure to hiv (capias)
criminal attepmt aggravated prostution	criminal exposure to hiv 2cts
prostitution- aggravated	criminal exposure to hiv virus 1 count
prostitution, aggravated	criminal exposure to hiv virus x1
sol-aggravated prostitution	criminal exposure to hiv x3
violation of probation (agg prostitution)	criminal summons (hiv criminal exposure)
violation of probation (aggravated prostitution)	criminl exposure to hiv
prostitition with knowledge of hiv	hiv- exposure of another
aggravated prostitution, if conviction before 7/1/2010	probation violation criminal exposure hiv 216721
criminal attempt to commit aggravated prostitution, if conviction before 7/1/2010	probation violation criminal exposure hiv 216722
aggravated prostitution, if conviction after 7/1/2010	probation violation criminal exposure hiv 216723
soliciation to commit aggravated prostitution	probation violation criminal exposure hiv 216724

AGGRAVATED PROSTITUTION	CRIMINAL EXPOSURE
criminal attempt to commit aggravated prostitution, if conviction after 7/1/2010	probation violation criminal exposure hiv 216725
attempted aggravated prostitution	rape x2,crimianl exposure of another
criminal attempt to commit aggravated prostitution	violation of probation (criminal exposure to hiv)
solicit to commit aggravated prostitution	intentional exposure of aids
solicitation to commit aggravated prostitution, if conviction before 7/1/2010	criminal attempt to commit criminal exposure to hiv: only subsection (a)(1) of 39-13-109
	criminal exposure to hiv: only subsection (a)(1) of 39-13-109
	criminal exposure to hiv: only subsection
	criminal exposure to hiv: only subsection a 1 of 39-13-109
	exposing others to hiv w/out their knowledge
	knowing/willing expos to hiv
	criminal exposure to hiv: only subsection a1 of 39-13-109
	criminal exposure to hiv only subsection
	criminal exposure to hiv:

We used a similar procedure to identify likely SOR violations in HIV registrants' criminal history. There were 3,300 individual criminal history entries among HIV registrants' criminal history, of which there were 1,179 unique charge descriptions. We manually identified 101 likely SOR violation descriptions, then filtered HIV registrants' criminal histories using these descriptions. Doing so, we identified 291 unique criminal history entries indicating likely SOR violations.[98]

Table 8. Criteria used to identify HIV-related entries in the criminal history section of Tennessee's sex offender registry

CRIMINAL HISTORY DESCRIPTION	CRIMINAL HISTORY DESCRIPTION
failure to register as sex offender	vio. sex offender registration act
failure to register for sex offender	vioaltion of sex offender registry act
failure to register sexual offender (capias)	viol of sex off reg act 4 counts
failure to register/sexual offender	viol of sex offender reg act 2 counts
offender id required	viol of sex offender reg act 13 counts
poss of offender id required	viol of sex offender register/act
possession of offender id required	viol of sex offender registration act
possession of offender identification required	viol of sex offender registry
register, ex-con (sex offender)	viol of sex offender registry act
sex offendeer possession of offender identificatio	viol of sex offender registry act 2 counts
sex offender poss of indentification required	viol of sex offender registry act 2 cts
sex offender poss of offender ident required	viol of sex registry act 2 counts
sex offender poss of offender identification requi	viol ofg sex offender reg act 3 cts
sex offender possesion of offender identification	viol sex offender reg
sex offender possession identification required	viol sex offender registration 2nd offense

[98]We did not do the same procedure for the overall SOR criminal histories because doing so would require manually reviewing over 42,000 individual offense descriptions.

CRIMINAL HISTORY DESCRIPTION	CRIMINAL HISTORY DESCRIPTION
sex offender possession of id required	viol sex offender registry act
sex offender possession of identification require	violate of sex offender registry act
sex offender possession of identification required	violation of sex offender register act
sex offender possession of offender id required	violation of registration law
sex offender possession of offender identification	violation of sex off reg
sex offender possession of offender indetification	violation of sex offende registry
sex offender regisgery violation	violation of sex offender
sex offender registration form violation	violation of sex offender act
sex offender registration viol.-1st offense	violation of sex offender monitoring program
sex offender registration viol.-2nd offense	violation of sex offender reg
sex offender registration viol.-3rd offense or mor	violation of sex offender registration
sex offender registration violation	violation of sex offender registration act
sex offender registration violation-1st offense	violation of sex offender registry
sex offender registration violation-2nd offense	violation of sex offender registry (capias)
sex offender registry violation	violation of sex offender registry act
sex offender registry violations	violation of sex offender registry act 2x
sex offinder registry violation	violation of sex offender registry act 3 counts
sexual offender and violent sexual offender regist	violation of sex offender registry law
sexual offender registration & tracking	violation of sex offender registry x 2
sexual offender registration and trackin	violation of sex offenders act
sexual offender registration and tracking	violation of sex offendrer registry act
sexual offender registration form violations	violation of sex offener registry act x3
sexual offender residential restrictions	violation of sex offenfer registry act
sexual or violent offender identification	violation of sex offneder registry
sor	violation of sex registration act
sor criminal inquiry only	violation of sexual offender registry
tn sexual offender and violation sexual offender r	violation of sexual offerender registration
tn sexual offender and violent offender registrati	violation of sexual registry
tn sexual offender viol sexual reg 2 counts	violation of state registration
vio of sex off registry	violation of tennessee sex offender registration
vio of sex offen reg act	violation of the tennessee sexual offender
vio of sex offender	violation sex offender registry
vio of sex offender reg act	violation sexual offend registration requirements
vio of sex offender registry	violof sex offender registry act
vio of sex offender registry act	voilation of sex offenfer registion act 3cts
vio. sex offender law	

We used two SOR fields to identify whether a registrant was homeless: whether the SOR's internal homeless flag was set to "YES" or whether the street address was reported as "000 HOMELESS" or "HOMELESS". The SOR provides a number of residency and incarceration options. To calculate the percent of registrants in Tennessee who were incarcerated, we excluded those with status code ID, IM, and IP, and further excluded all registrants whose primary address was not in Tennessee. We then divided the number of registrants with status II by the total remaining.

Table 9. Registrant status codes in Tennessee's sex offender registry

OFFENDER STATUS
A: ACTIVE
AI: ACTIVE–INCAPACITATED
AR: ACTIVE-RESIDES OUT OF STATE,EMPLOYED IN STATE
B: ABSCONDER
ID: INACTIVE–DECEASED
II: INACTIVE–INCARCERATED
IM: INACTIVE–MOVED TO ANOTHER STATE
IP: INACTIVE–DEPORTED
U: UNKNOWN STATUS

To calculate the percent of registrants with an employer, we divided the number of registrants with an employer address listed by the total number of registrants. We did the same for vehicle registrations to find the percent of SOR registrants with a vehicle registered in their name, and for the "driver's license" field to find the percent of SOR registrants with a state ID. Again, the denominator was people with a primary address in Tennessee and who also did not have a status code of ID, II, or IP. Status codes AR and IM did not always match the state of residence in the primary address, so we used primary address state to identify people residing within Tennessee.[99]

The SOR does not break out Hispanic/Latino ancestry as a separate race/ethnicity group. It does, however, include an "unknown" race category. About 1.6% of SOR registrants were in this group. (About 5.7% of the state identified as Hispanic/Latino of any race in 2021.[100]) We suspect that people who might identify as Hispanic/Latino are inconsistently categorized as either white or "unknown". The last names of people whose race was "unknown" and that occured more than once in the SOR were: BONILLA, CASTILLO, CHAVEZ, CONTRERAS, CORTEZ, CRUZ, DIAZ, FERNANDEZ, GARCIA, GONZALEZ, GUILLEN, HERNANDEZ, JACKSON, JUAREZ, LOPEZ, LOZANO, LUNA, MARTINEZ, MENDEZ, MENDOZA, PEREZ, RAMIREZ, RAMOS, REYES, RIVERA, RODRIGUEZ, RUIZ, SALAZAR, SANCHEZ, SANTIAGO, SMITH, TORRES, VEGA, and VILLEGAS. We took this list of last names, removed the names Smith and Jackson, then counted the race of everyone with these last names on the SOR. About two-thirds of the registrants had their race reported as white, and one-third were reported as "unknown." We therefore conclude that "white" in the SOR likely includes both non-Hispanic white registrants and Hispanic/Latino registrants.

The SOR does not include information on the jurisdiction in which a person was arrested or convicted. However, it does include information on where registrants live. We use the county of registrants' primary address as a proxy for the county in which the registrant was convicted. We have indirect evidence that a person often returns to the county in which they were convicted. We requested case files from Shelby County for all SOR HIV registrants with a primary address in Shelby County. We

[99] Just under 2% of all registrants were labelled as AR or IM but had a primary address in Tennessee. None of the HIV-registrants had an AR or IM status with a primary address in Tennessee.

[100] United States Census Bureau. "Quick Facts: Tennessee (V2021)." United States Census Bureau (https://www.census.gov/quickfacts/TN) (Accessed April 29, 2022).

received a positive response for 88% of these requests, meaning that a registrant was (1) living in Shelby County, (2) convicted in Shelby County for the HIV offense, (3) the case files were available, and (4) the case files were available to be shared externally. (See the subsection on the Shelby County Case files below for more information.) The remaining 12% of requests might not have been responsive for reasons not related to the county in which the registrant was convicted, for example, if the case file is no longer available, or was not appropriate to be shared externally. We interpret this to mean that most registrants return to the county in which they were convicted.

Variations in TCA and offense description make it a challenge to consistently count the top SOR convictions—TCA codes and descriptions change over time, and some use slightly different code citations and offense descriptions for the same underlying offense. To get a sense of the types of offenses that appear most often, we first striped the subsection from all TCA codes, then grouped all offense descriptions by TCA code. We next counted the most frequent words associated with each TCA code.

Table 10: Most frequent TCA codes and associated words in Tennessee's sex offender registry

TCA CODE	INVOLVES CONSENSUAL ADULTS	NUMBER OF CONVICTIONS	MOST FREQUENT WORDS IN DESCRIPTION
39-13-PT5		10114	sexual child degree a of assault rape criminal abuse with minor conduct lewd battery st indecent under nd aggravated sex
39-2-606 OR 39-13-504		3738	aggravated battery sexual commit to criminal attempt the commission facilitating solicitation conspiracy after a accessory by c conviction electronic exploitation
39-13-506		2465	statutory rape aggravated or on after court ordered date offense july and between committed november conviction commit to with for
39-13-505		2436	battery sexual commit to criminal attempt attery accessory after c conspiracy fact responsibility solicitation the
39-13-522		2026	a child of rape commit to criminal attempt att the commission facilitating solicitation accessory after consp fact conspiracy c responsibility
39-13-504		1453	battery sexual aggravated att after juvenile on or offender only commit to criminal attempt offe an authority by figure sol
39-2-604 OR 39-13-503		1452	rape commit to criminal attempt commission facilitating the solicitation c conspiracy responsibility
39-13-503		1170	rape commit to criminal attempt att commission facilitating the responsibility solicitation c consp
39-17-1003		1144	of a minor exploitation sexual to commit attempt criminal solicitation the commission facilitating after by conspiracy conviction electronic july means
39-2-603 OR 39-13-502		1097	aggravated rape commit to criminal attempt the commission facilitating conspiracy accessory after fact solicitation c responsibility
39-13-527		856	an authority battery by figure sexual commit to attempt criminal solicitation c
39-13-PT5-S		792	sexual child of a pornography degree minor with possession assault to indecent abuse criminal conduct rape in battery lewd rd
39-15-302	X	664	incest may occurring offense to prior after on or before commit attempt criminal att c solicitation

TCA CODE	INVOLVES CONSENSUAL ADULTS	NUMBER OF CONVICTIONS	MOST FREQUENT WORDS IN DESCRIPTION
39-13-502		660	aggravated rape commit to criminal attempt att the commission facilitating sol solicitation accessory after c consp fac fact pt responsibility
39-13-528		640	solicitation a of minor or felony class d e misdemeanor c b commit to criminal attempt if commission facilitating the
39-2-607		374	battery sexual commit to attempt criminal solicitation c
39-13-529		352	a minor of by electronic exploitation means conviction or on july after to commit solicitation attempt criminal aft prior un
39-2-606		318	sexual aggravated battery assault commit to attempt criminal child fondle c carnal commission ed facilitating intent knowledge the w
39-13-532		295	an authority by figure rape statutory commit to attempt criminal solicitation the accessory after c commission conspiracy facilitating fact
39-17-1005		288	a aggravated especially exploitation of sexual minor commit to attempt criminal solicitation the commission facilitating min accessory after c conspiracy
39-17-1004		276	a aggravated exploitation minor of sexual commit to attempt criminal class b solicitation accessory after c conspiracy fact the
39-2-604		253	rape attempt commit criminal to c
39-2-603		193	aggravated rape carnal commit knowledge to under attempt c commission criminal facilitating the
39-1-501		177	rape attempted attempt commit to sexual battery under criminal felony offense sex conduct c d
39-13-515		152	of promotion prostitution offense sexual st commit to attempt criminal nd or subsequent violent the commission facilitating accessory after c
39-13-516	X	135	aggravated prostitution conviction if after commit to before attempt criminal soliciation solicitation c
39-13-109		95	criminal to exposure hiv only subsection a of attempt commit c

SHELBY COUNTY CASE FILES

In 2019, co-author Robin Lennon-Dearing had a research assistant manually identify all SOR registrants with an HIV-related conviction who resided in Shelby County, home to Memphis. The HIV convictions were for (a) aggravated prostitution (TCA 39-13-516), and (b) criminal exposure to HIV (TCA 39-13-109). Each registrant entry lists demographic information, date of birth, address, and the charge(s) and date(s) of offense(s). A total of 75 people were identified with this method. A request for public records of all individual case reports was given to the Shelby County District Attorney General's Office. The District Attorney's office provided redacted copies of case file for the names requested in which a record existed. In March 2022, a second request for six case files was sent to the DA's office. In total, case files for 81 people with HIV-related convictions who appeared in the SOR were requested. We received case files for 78 people; one was discarded because it related to the wrong arrest, leaving 77 case files for people who were arrested and convicted of an HIV-related offense in Shelby County who were then entered in the state's sex offender registry.

Of those 77 individuals, 70 were still in the SOR in March 2022, and 67 still lived in Shelby County. Those 68 individuals accounted for about 87% of current HIV SOR registrants living in Shelby County, and about 44% of all HIV SOR registrants. Exactly half (77) of all HIV SOR registrants reside in Shelby County (including seven people listed as incarcerated and 22 listed as absconder). The case files therefore provide a unique look into the county in Tennessee with by far the most HIV-related criminal enforcement actions.

Table 11. Relationship of Shelby County case files to HIV SOR registrants in Tennessee

CASE FILES AND SOR INFORMATION	NUMBER
Files requested	81
Did not receive but still on SOR	3
Files received	78
Files responsive to the data request	77
No longer on SOR	7
Still on SOR	70
Still living in Shelby County	67
Living in another TN county	2
Living out of state	1
HIV SOR registrants living in Shelby County (March 2022)	77
Not among files received	10
AP conviction	5
CE conviction	5
Among files received	67*

*(87% of all Shelby County HIV SOR registrants; 44% of all HIV SOR registrants)

Each case file is for a single HIV-related conviction that resulted in SOR registration. The contents of each case file varied widely but could include a copy of the original arrest ticket and affidavit of complaint filed by the arresting officer(s), the indictment(s), the defendant's arrest history, case notes of the prosecutor or other office staff, court orders, and other preliminary pre-indictment documents. Each document was manually coded for a number of variables, then entered as tabular data (spreadsheets) for quantitative analysis. The document types available were:

DA cover sheet: Nearly all of the case files (68) include a DA cover sheet which includes hand-written updates through the case disposition.

Arrest reports: All the case files (77) include some documents in this category, which includes booking sheets, affidavits of complaint, indictments, and any ancillary materials produced by law enforcement agencies during their investigation.

Criminal history reports: About two-thirds of the case files (48) include criminal history reports. These reports include all contacts with Tennessee law enforcement agencies and the courts. The criminal histories also include any changes to outstanding cases or charges.

Pre-sentence reports: About a third of the case files (26) included pre-sentence reports. These reports include biographical information about the arrestee, including family information; educational attainment; alcohol and substance use history; employment history; bail information, and a summary of the original criminal complaint. These reports also include a more organized record of prior arrests, prosecutions, and convictions than the criminal history reports.

Bail and plea agreement forms: About one-fifth of the case files (16) include "Waiver Bind-over and Mittimus Information" forms. These include information on the charge to be pled, as well as a negotiated sentence settlements, and bail information.

Sentencing sheets: About one-sixth of the case files (13) include sentencing sheets, which include the original charge and the charge for which the person was convicted, a description of the type of counsel representing the defendant, information on the sentence length, details on any diversion programs or suspended sentence, etc.

The analysis in the Shelby County section comes from these documents. However, in a few instances, noted in the text, demographic information that was missing in the Shelby County files was borrowed from the SOR.

AUTHORS

Nathan Cisneros, M.S., is the HIV Criminalization Analyst at the Williams Institute.

Brad Sears, J.D., is the David Sanders Distinguished Scholar of Law and Policy and Founding Executive Director at the Williams Institute.

Robin Lennon-Dearing, Ph.D., is an Associate Professor of Social Work at the University of Memphis.

ABOUT THE WILLIAMS INSTITUTE

The Williams Institute is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. A think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance and disseminates it to judges, legislators, policymakers, media, and the public. These studies can be accessed at the Williams Institute website.

FOR MORE INFORMATION
The Williams Institute, UCLA School of Law
Box 951476, Los Angeles, CA 90095-1476
williamsinstitute.law.ucla.edu

RESEARCH THAT MATTERS

APPENDIX

THE ENFORCEMENT OF PROSTITUTION CRIME LAWS IN TENNESSEE

The Tennessee Bureau of Investigation (TBI) maintains an incident-based reporting system, the Tennessee Incident-Based Reporting System (TIBRS), which is used to report and analyze crime statistics.[101] TIBRS is modeled on the National Incident-Based Reporting System (NIBRS) maintained by the Federal Bureau of Investigation.[102] Every law enforcement agency in Tennessee reports incidents to TIBRS. As explained in the 2020 edition of *Crime In Tennessee:* "Incident-based reporting views a crime and all its components as an 'incident.' Information about the crime, including details of the offense, victim, offender, property, arrestees, and the relationship between the people involved, are all reported."[103]

Every year, TBI's Criminal Justice Information System (CJIS) Support Center produces a *Crime In Tennessee* report based on TIBRS data. The report presents crime statistics both for the state as a whole, and disaggregated by law enforcement agency. Crimes are grouped according to the FBI's definition of Group A and Group B categories, not by Tennessee statute or Tennessee Code Annotated (TCA) code.[104]

We collated data from every edition of *Crime In Tennessee* published between 2003 and 2021 (covering calendar years 2002 to 2020).[105] Overall, the number of major crime incidents (Group A) remained more or less constant throughout the period. Indeed, on a per-capita basis there is a slight decline. The same is true for the state's two largest metro regions: Nashville and Memphis. Group A incidents reported to TIBRS held roughly steady over two decades, and actually declined slightly on a per-capita basis in both regions. During this period, Nashville and Memphis had roughly the same share of the state's population at about 10% each.[106] Memphis accounted for about 20% of the state's Group A incidents; Nashville had about 15% of Group A incidents.

---

[101] Tennessee Bureau of Investigation Statistical Analysis Center. *Crime in Tennessee 2020*. Tennessee Bureau of Investigation (July 2021) (https://www.tn.gov/content/dam/tn/tbi/documents/000%20Crime%20in%20Tennessee%2020202.pdf).

[102] *Id*.

[103] *Id*. At 2.

[104] The Williams Institute repeatedly requested incident-based enforcement data relating to aggravated prostitution (TCA 39-13-516) and criminal exposure (TCA 39-13-109) from TBI, but the agency replied that TIBRS and TBI are not able to retrieve data based on TCA code or TCA description. We interpret this to mean that the state's incident-based reporting system is not able to retrieve data based on the state's own criminal code citation system.

[105] Prostitution is defined as "To unlawfully engage in sexual relations for profit," and includes misdemeanor prostitution as well as felony aggravated prostitution. "Assisting or promoting prostitution," and "purchasing prostitution" are both reported as separate categories.

[106] Nashville Metro Police Department includes all of Davidson County. Memphis Police Department includes just the city of Memphis. Shelby County has a separate sheriff's office. The population figures presented here compare Nashville Metro PD to Memphis PD.

Figure A1. Number of Group A incidents in Tennessee by year

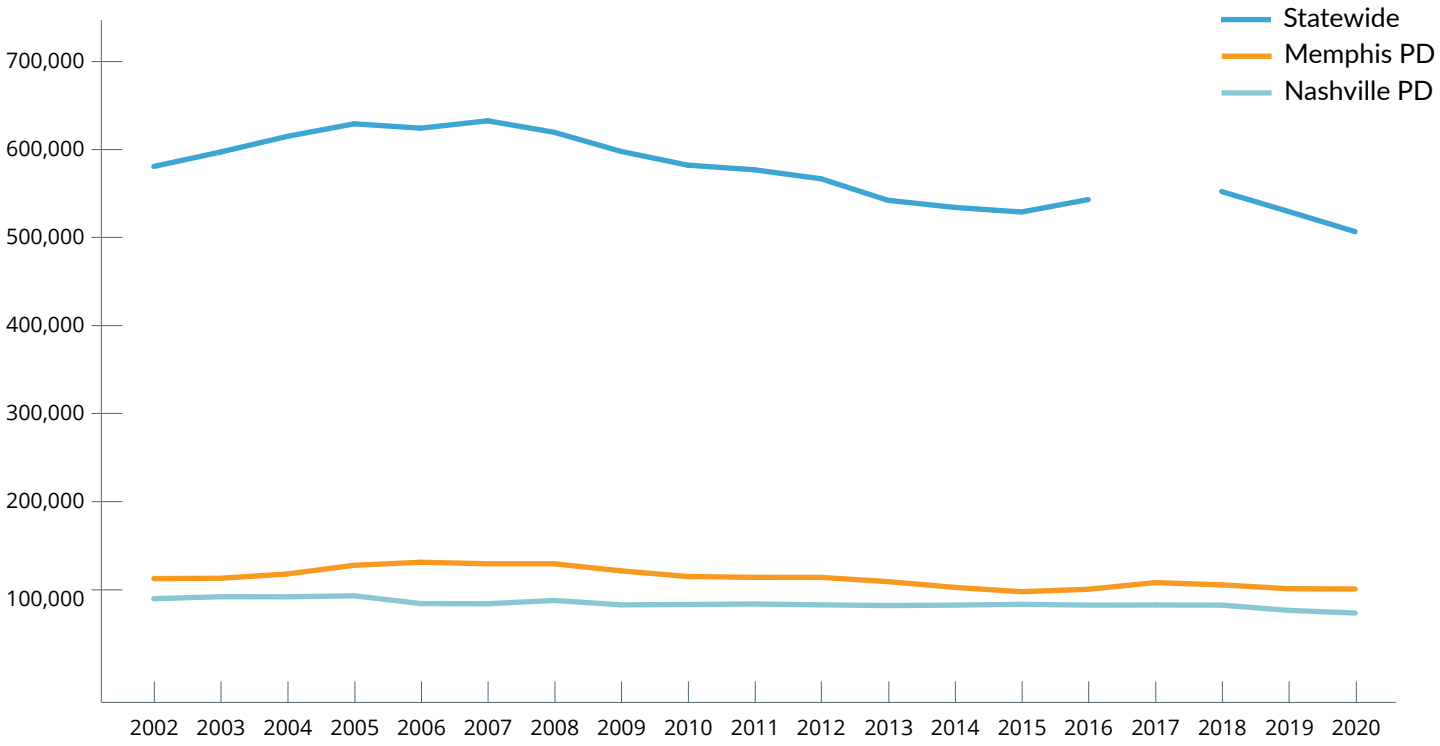
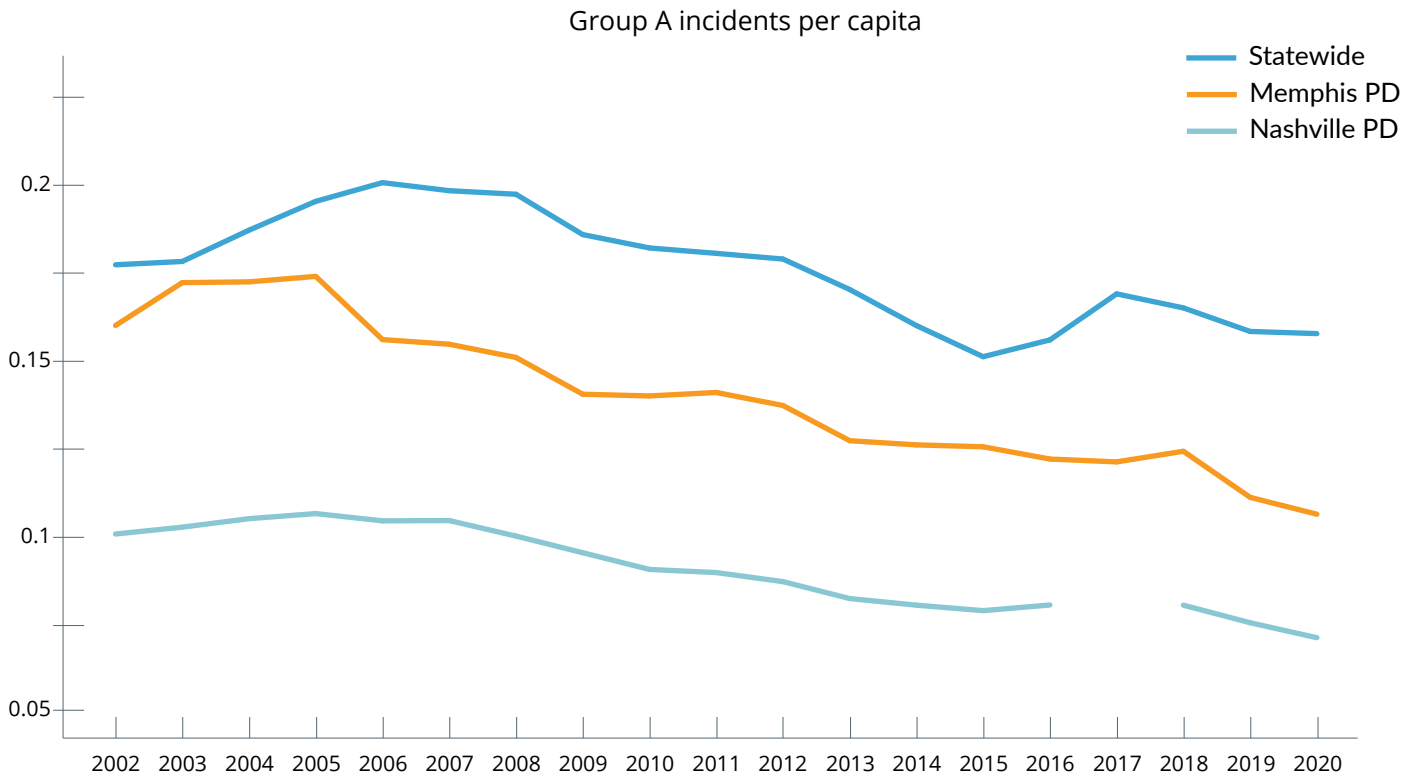
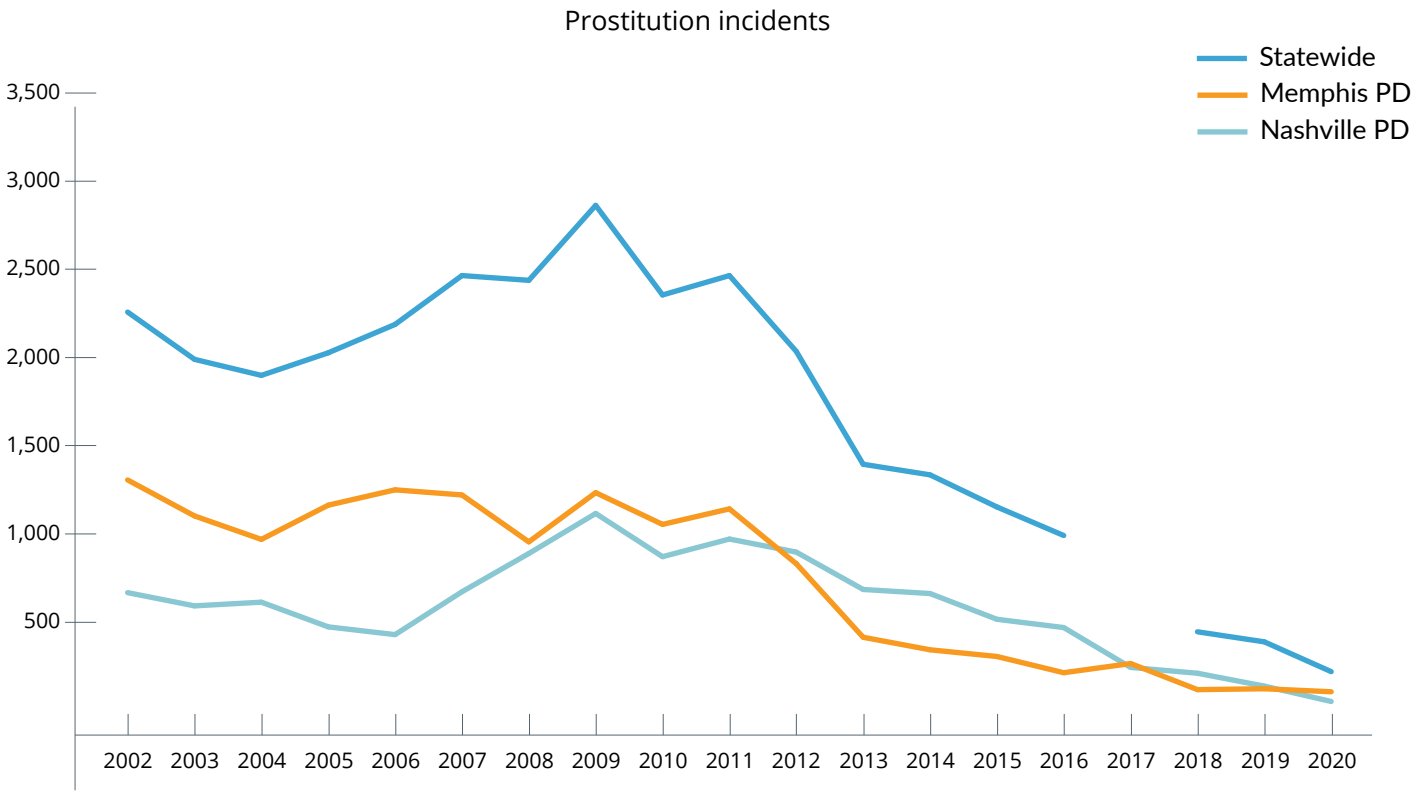


Figure A2. Number of Group A incidents per capita in Tennessee by year



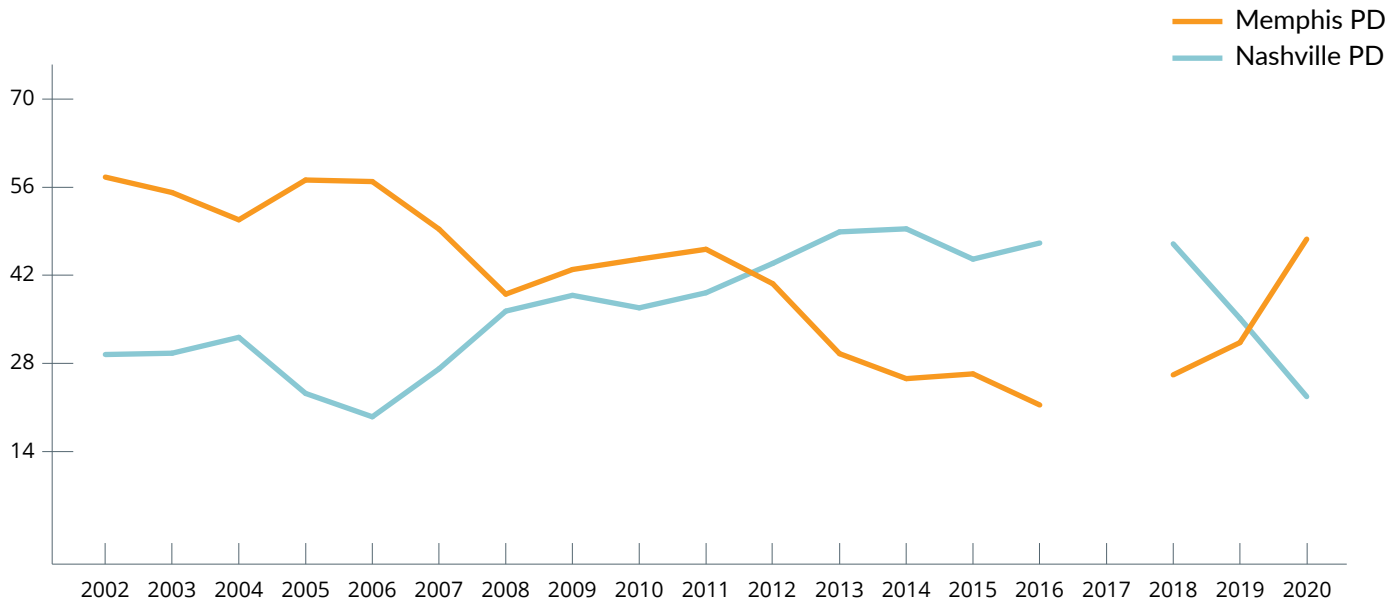
The pattern changes when looking at prostitution incidents. First, there is a distinct time trend. Prostitution incidents tick up until about 2009, then begin a precipitous decline. From a high of 2,863 prostitution incidents that year, the number falls to a low of just 388 in 2019, the last full year before the COVID-19 pandemic. In other words, the number of prostitution incidents declined 86% over the course of a decade. The slight uptick in the years before 2009 appears to be driven by an increase in incidents from Nashville, however, incidents in both Nashville and Memphis began to decline after 2009. By 2019, Memphis's prostitution incidents were only 10% of their peak; Nashville was only 12% of its peak.

Figure A3. Number of prostitution incidents in Tennessee by year



Moreover, Nashville and Memphis played an outsized role in prostitution incidents in the state. Although their combined population accounted for only 20% of the state's population, together the two jurisdictions at times accounted for over 85% of prostitution incidents. However, that share has declined over time, so that in 2019, Nashville and Memphis accounted for just two-thirds (67%) of prostitution incidents. In other words, prostitution incidents have declined slightly faster in Nashville and Memphis than in the state overall. We are not aware of any legal changes that would explain this change—for example, decriminalization of certain forms of sex work. We suspect that the change is instead driven by a change in policing practices.

Figure A4. Share of prostitution incidents by law enforcement agency in Tennessee by year



The spike and then decline in prostitution incidents in the TIBRS data match up with the enforcement patterns we observed in both the sex offender registry and in the Shelby County case files related to aggravated prostitution. In both analyses, we noted a distinct peak about a decade ago, followed by a steady decline. However, the decline in aggravated prostitution convictions does not appear to have declined as steeply as overall prostitution incidents. Moreover, the TIBRS data are looking at arrests only; our SOR and Shelby County analyses rely on convictions.

Figure A5. Number of prostitution incidents per capita by jurisdiction by year