I. INTRODUCTION

Sensational cases like that of Nushawn Williams, who exposed over one hundred women to HIV, have prompted calls for criminal laws to punish people for intentional HIV exposure.¹ This article considers what role, if any, criminal law should have in addressing the issue of intentional HIV exposure and what the scope of that role should be. In that vein, the article explores the inherent tension between public health and criminal law approaches to HIV exposure, details the criminal law approach to HIV exposure—including the history and policies that have motivated criminalization of intentional HIV exposure—and the difficulties that can arise when states attempt to prosecute HIV exposure under general criminal law. Various state statutes criminalizing intentional HIV exposure are analyzed to foster an understanding of how criminal HIV exposure laws can either support or undermine public health’s HIV prevention efforts. The types of cases tending to attract the most public attention and concern are identified by presenting and evaluating illustrative intentional HIV exposure cases prosecuted under general criminal and criminal HIV exposure statutes.

Finally, the article considers how society’s public health interests can be balanced against goals advanced by criminal law, and makes specific recommendations for improving existing criminal HIV exposure statutes to

minimize the risk criminal law can pose to public health’s HIV prevention efforts. It concludes by urging legislators to carefully consider the implications of their policy decisions by striving to enact legislation that supports the ultimate goal of reducing HIV infection.

In 1995, a young African-American man named Nushawn Williams followed a woman to Jamestown, New York, a small, rural town near Buffalo. Recently released from a New York City prison, the young man quickly developed a reputation in rural Jamestown for his involvement in drug sales and his numerous sexual relationships. It was not long before he also became notorious as the man who exposed dozens of women to HIV, and infected many of them.

In Jamestown, Williams reportedly “traded on his charm and drugs for sex.” News reports emphasized Williams’ image as an abusive sexual predator.

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2. Id. at B3.

3. Donn Esmonde et al., *Drifter Targeted Crop of Lost Teens*, Buffalo News 1A (Nov. 2, 1997).

4. Id.


6. Lawrence K. Altman, *The Doctor’s World: Sex, Privacy and Tracking H.I.V. Infections*, N.Y. Times F1 (Nov. 4, 1997); Esmonde, *supra* n. 3, at 1A; Agnes
describing how he liked to have “rough sex,” and that he never used a condom. Some who knew Williams referred to him as a “sex fiend.” While many of the reports attempted to portray the reasons why such an unusually high number of Williams’ partners became HIV-infected, they also built upon stereotypes about race, sex, and drugs, leaving many in the region, and across the nation, in fear of a supposed new breed of sexual predator.

Palazzetti, Suspect Kept Score: Williams’ Records Helped Track Infected Women, Buffalo News 1A (Oct. 29, 1997).


8. E.g. Henry L. Davis, Use of Drugs, Rough Sex Eyed for Role in Outbreak, Buffalo News 1A (Nov. 2, 1997) (reporting on speculation that rough sex, anal sex, and sharing needles may have been to blame for the extraordinarily high rate of infection among Williams’ partners).

9. Ellen Goodman, Putting a Face on Reality, Ventura County Star (Cal.) D08 (Nov. 10, 1997).

10. Esmonde, supra n. 3, at 1A.

Williams first came into contact with New York City public health officials in 1996, after being referred into treatment for a sexually transmitted disease. At the recommendation of the public health officials, Williams was also tested for HIV, the result of which was positive. Public health officials subsequently began contacting the twenty women Williams identified as his sexual partners to advise them that they had been exposed to HIV and should be tested for it. The officials also admonished Williams to disclose his infection to future sexual partners and to use a condom; however, facts later showed that Williams did not follow that instruction.

Meanwhile, in 1997, Jamestown public health officials identified ten women who were infected with HIV. Jamestown previously had only fifty cases of HIV since the 1980s, so the significant number of infections identified within such a short time caught officials’ attention. By the fifth case, officials suspected that

12. Altman, supra n. 6, at F1.
13. Id.
14. Id.; McCarthy, supra n. 11, at A54.
15. McCarthy, supra n. 11, at A54; Tom Precious, Test Results Ease AIDS Fears in Chautauqua, Buffalo News 1A (Nov. 12, 1997).
16. Palazzetti, supra n. 6, at 1A.
17. Id.
18. Andrew Z. Galarneau, The Doctor Who Dared, Buffalo News 1C (Nov. 11,
the cases were connected and, ultimately, identified Williams as the probable source of infection. Eventually, state officials pursued an unusual course of action—they sought a court order authorizing the release of Williams’ name, aliases, and photograph, arguing that he posed an “imminent danger” to the public health, and thus his HIV status should not be protected by confidentiality laws.

A judge agreed and authorized public disclosure of Williams’ HIV status and identifying information. As one Jamestown public health official said, “I had to go after this guy, and I had to get him off the street.” Williams was ultimately alleged to have exposed forty-eight young women in Jamestown, and an additional fifty to seventy-five young women in New York City.

19. Galarneau, supra n. 18, at 1C; Palazzetti, supra n. 6, at 1A; Jerry Zremsk, AIDS Outbreak in Small Town Was Easy to Spot, Experts Say, Buffalo News 1A (Oct. 31, 1997).

20. Galarneau, supra n. 18, at 1C; Palazzetti, supra n. 6, at 1A.

21. Galarneau, supra n. 18, at 1C.

22. Id.

Jamestown prosecutors charged Williams with assault and statutory rape for having sexual intercourse with a thirteen-year-old child.\textsuperscript{24} Investigators discovered that he was already incarcerated in New York City on drug and robbery charges.\textsuperscript{25} Those charges quickly came to be the least of Williams’ legal woes. New York City prosecutors charged Williams with reckless endangerment, sexual misconduct, attempted assault, and endangering the welfare of a child by having sexual intercourse with a fifteen-year-old.\textsuperscript{26} Williams was not charged with intentional HIV exposure in either Jamestown or New York City, however, because New York did not (and does not) have a criminal HIV exposure statute.\textsuperscript{27}

Subsequent interviews with Williams indicate that he did not fully understand his diagnosis.\textsuperscript{28} He apparently did not believe that he was HIV-infected, and

\begin{itemize}
  \item \textsuperscript{24} \textit{Guilty Plea in HIV Rape Case}, Newsday A27 (Feb. 28, 1999); Waldman, \textit{supra} n. 23, at B3.
  \item \textsuperscript{25} Esmonde, \textit{supra} n. 3, at 1A; Palazzetti, \textit{supra} n. 6, at 1A; Palazzetti, \textit{supra} n. 19, at 1A; Waldman, \textit{supra} n. 23, at B3.
  \item \textsuperscript{26} \textit{Guilty Plea in HIV Rape Case}, \textit{supra} n. 24, at A27; Richardson, \textit{supra} n. 1, at B3; Waldman, \textit{supra} n. 23, at B3.
  \item \textsuperscript{27} See infra pt. IV (cataloging states that do and do not have criminal HIV exposure statutes).
  \item \textsuperscript{28} \textit{Man with HIV Says Numbers Overstated}, Dallas Morn. News 8A (Nov. 6, 1997); Michael Cooper, \textit{Drifter Says He Had Sex with up to 300}, N.Y. Times B5
\end{itemize}
stated that he thought Jamestown public health officials were “just trying to get [him] out of town.” 29 Williams was diagnosed with schizophrenia in proceedings related to the New York City reckless endangerment case, further suggesting that he may not have fully understood his diagnosis. 30 Almost two years after his case became public, Williams still questioned whether he had HIV, stating “I still don’t even know if I got it now.” 31

Williams’ case prompted calls for criminal laws to punish those who knowingly expose others to HIV. 32 Representative of the public’s mood is a 1999 statement of an Ohio lawmaker upon introducing a bill to make it a felony for an HIV-infected person to fail to inform a prospective sexual partner of his HIV status: “It is wrong for society to simply look the other way and not offer reasonable protection to those who are unknowingly being exposed to this lethal disease.” 33

According to one survey, more than three-quarters of Americans

(July 29, 1999); Lou Michel, Nushawn Pleads Guilty: Deal Expected to Result in 4-Year Term, Buffalo News 1A (Feb. 27, 1999).

29. Man with HIV Says Numbers Overstated, supra n. 28, at 8A.

30. Lou Michel & Gene Warner, Williams Is Found Mentally Ill, Buffalo News 1A (Nov. 4, 1997).

31. Cooper, supra n. 28, at B5.

32. Richardson, supra n. 1, at B3.

33. Mark Tatge, Bill Would Require HIV Disclosure, Plain Dealer (Cleveland,
agreed that those who knowingly infect another person with HIV should face criminal charges.\textsuperscript{34} Although this sentiment has been fueled by publicity surrounding sensational cases like that of Williams, it also reflects the changing nature of the AIDS epidemic in this country—people with HIV/AIDS are living longer, remaining healthier, and, potentially, having more sexual partners.\textsuperscript{35}

Proponents for laws criminalizing the failure to disclose one’s HIV status to a potential partner argue that it will deter HIV-infected individuals from high-risk behavior, as well as punish individuals who place others at risk of infection.\textsuperscript{36} Opponents to criminalization argue that criminal exposure laws will discourage high-risk people from being tested for HIV and undermine public health services and prevention efforts, thereby creating the potential for increased transmission of HIV.\textsuperscript{37} The inherent tension between criminal law and public health approaches to the issue is manifested in the debate over criminalization. Criminal law attempts to deter transmission or exposure deemed intentional by punishing those


\textsuperscript{35} Id. at E1446-47 (noting scientists’ suggestion that it is possible to suppress HIV to the point of chronic disease with early treatment).

\textsuperscript{36} Id. at E1447.

responsible with the belief that the threat of incarceration will operate as a deterrent.\textsuperscript{38} In contrast, the public health approach relies on the voluntary cooperation of those who are infected in HIV testing and in contacting partners of infected individuals who have been exposed to HIV, which the threat of criminal prosecution may render such voluntary efforts ineffective if high-risk individuals view such attempts to gather evidence to use against them.\textsuperscript{39} Accordingly, this article explores the balance between the competing goals and philosophies of public health prevention efforts and the criminal law in seeking to define the appropriate scope of criminal law in this controversial area.

Effective health policy requires an understanding of the problem at issue, thus Part I of this article begins by describing HIV, modes of transmission, and risk behaviors. Part II discusses the public health approach to HIV prevention. In this section, the traditional view of public health, which is more coercive, is distinguished from the contemporary view of public health, which primarily relies upon voluntary cooperation. Understanding the modern public health approach to

\textsuperscript{38} Zita Lazzarini, Sarah Bray & Scott Burris, \textit{Evaluating the Impact of Criminal Laws on HIV Risk Behavior}, 30 J. L. Med. & Ethics 239, 239 (2002); Lazzarini & Klitzman, \textit{supra} n. 37, at 537.

\textsuperscript{39} See Lazzarini & Klitzman, \textit{supra} n. 37, at 537 (referring to the ineffectiveness of tough sentences as deterrents, and racially motivated enforcement of laws resulting in distrust of the law).
HIV prevention will aid an understanding of how criminal HIV exposure statutes can affect those efforts. Part III discusses the criminal law approach to HIV transmission, beginning with a review of general criminal law principles, which leads to a discussion of the historical and policy background driving criminalization of intentional HIV exposure. That review assists an understanding of the circumstances and timing that have affected the adoption of various approaches to criminalizing HIV exposure.

Part IV analyzes various statutes criminalizing intentional HIV exposure. Four separate types of statutes are examined: (1) Those that create a separate crime of intentional HIV exposure; (2) statutes enhancing penalties when a crime is committed by someone who is HIV-infected; (3) general STI statutes that can be applied to HIV exposure; and, (4) general criminal laws. The article studies the language and implications of the statutes to reveal how criminal HIV exposure laws support or undermine public health prevention efforts.

Part V presents and evaluates illustrative cases that have been prosecuted for intentional HIV exposure under the various types of statutes discussed in Part IV. The analysis identifies the types of cases that have attracted the most public attention and concern, while Part VI identifies serious concerns about criminalizing intentional HIV exposure and how those concerns can be balanced with criminal law goals. In particular, specific recommendations are made for improving existing criminal HIV exposure statutes to minimize the risks they pose to public health prevention efforts.
The article concludes by urging policy-makers to carefully consider the implications of their decisions and to strive to make policies that support the ultimate goal of reducing HIV infection.