



Legal Barriers to Treatment and Prevention



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Disclosures

- The Center for HIV Law and Policy:
 - Gilead Sciences – Grant, The Prosecutorial Guidelines Project/National Prosecutors Roundtable on HIV Law and Policy

- Self (Catherine Hanssens):
 - No conflicts of interest to report





OBJECTIVES

- Improved understanding of legal landscape for PLWH in terms of legal protections and legal risks
- Understanding of the nature of HIV-specific criminal laws and prosecutions, and their likely impact on diagnosis/engagement in care
- Understanding of the dangers of relaxed boundaries between health care/public health/surveillance/prevention services and law enforcement
- Identification of ways that health care and prevention professionals can reduce legal risk to PLWH and to those at risk of HIV



Rumors About the Death of HIV-Related Discrimination Are Premature

- People Living with HIV continue to contend with laws and policies that either directly target PLWH in a negative way, or with the ongoing reality and impact of stigma associated with HIV
- State and federal laws and policies that either persecute or fail to protect PLWH effectively punish diagnoses and entry into care and are likely to undermined national and state HIV goals



Protections without Enforcement, Punishment without Cause

- Federal and states laws banning discrimination and violations of privacy exist, but resources to enforce are inadequate
- Individual expectations of privacy concerning HIV test, surveillance or treatment records regularly betrayed
- State laws in 32 states and 2 territories have specific criminal laws single out the conduct of PLWH for unique controls and punishments; > 200 prosecutions since 2008



Particularly Problematic: Testing and Prevention Bait & Switch

- State and Federal health officials: broad promotion of testing (e.g., National HIV Testing Day!), know your status, HIV is treatable disease, end “exceptionalism”
- State and federal prosecutors: exposing someone to HIV is like pointing a loaded gun at their head; HIV is a “death sentence”
- Expanded use of surveillance data: new STI, possible criminal charge



Potential HIV exposure/transmission is a serious felony in most of the U.S.

- 32 US states and 2 territories have laws criminalizing the failure to disclose one's HIV status prior to conduct the legislature deems can expose or transmit HIV transmission to another
- 11 states have laws that make it a crime for people with HIV to spit or bite (issues that sometimes arise in the context of arrest by law enforcement)
- A number of other states (e.g., NY, TX, PA) use general criminal laws to prosecute PLWH who engage in “exposure without prior disclosure”
- 10 states have punishment that includes sex offender registration
- PLWA serving years to decades for conduct legal for everyone else

Center for HIV Law and Policy, When Sex is a Crime and Spit is a Dangerous Weapon, <http://www.hivlawandpolicy.org/resources/when-sex-crime-and-spit-dangerous-weapon-snapshot-hiv-criminalization-united-states-center>.

The Center for HIV Law and Policy, *Prosecutions and Arrests for HIV Exposure in the United States, 2008–2014*, http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Chart%20of%20US%20Prosecutions%202008-2014_revised%201.2015.pdf.

The Center for HIV Law and Policy, Comparative Sentencing for HIV in the U.S., <http://hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Comparative%20Sentencing%20Chart%20%28The%20Center%20for%20HIV%20Law%20and%20Policy%2C%20May%202012%29.pdf>





ELEMENTS OF HIV CRIMINAL LAWS

- **What gets you in trouble?**

- Tested HIV-positive
- Had any kind of contact viewed as “sex”
- Scuffle with law enforcement + HIV status

- **What doesn't help?**

- Verbal consent
- In most states: Use of condoms, sticking to oral sex, low viral load, engaging in near-zero risk conduct



Facts of HIV-Specific Laws

- Defendants are working against extreme bias: Assumption by courts that no one would ever knowingly have sex with someone with HIV
- Common factor #1: severe ignorance of the routes and actual risks of HIV transmission
- Common factor #2: severe ignorance of the actual impact, life expectancy with HIV.



Talk about Exceptionalism! HIV vs. other incurable STIs

HPV

- Cervical cancer in the absence of HPV is uncommon.
- 33,000 HPV-associated cancers are diagnosed annually in the U.S.; about 2/3 of these cancers occur in women.
- CDC: nearly all sexually active people get it.

Herpes

- Increases risk that HPV will lead to cervical cancer.
- CDC: 16% of people 14 to 49 in U.S. have genital herpes.
- Genital herpes causes pregnant women to miscarry, deliver prematurely, & delivery via C-section recommended as herpes is deadly to newborn.

Criminal cases based on Herpes or HPV? No.



Unintended Consequences: Is there too much focus on disclosure?

- Is it fair or realistic to expect, let alone demand, HIV disclosure in all circumstances?
- Is the responsibility for preventing STI transmission shared between all consensual partners?
- Is responsibility for preventing HIV the same as for all STIs? Is it solely on the person with HIV?
- Has everyone in this room who ever had an STI disclosed it every time before sex?



GENERAL CONSEQUENCES

- Failure to “warn” about HIV is treated the same as rape, aggravated assault, homicide-- including restrictions on where you can live and mistreatment from neighbors if you wind up on a sex offender registry
- Applying tough sanctions without regard to offenders’ actual risk makes the community less safe by diverting police attention away from dangerous people



The Consequences for PLWH

- Offenders barred from employment, housing, voting (depending on state)
- For those treated as sex offenders, conviction/plea deal = social death
- Housing impact is huge: limitations on where can live, from states to communities
- Family impact as well as individual impact



IMPACT: PUBLIC HEALTH

- **Weakenes the message that sexual health is the responsibility of both partners during sex**
- **Professional/ethical conflict for health providers**
- **Increases stigma by strengthening culture of blame concerning infection**
- **Message: *Take the test. Risk Arrest.***



Modernization is Long Overdue!

- Laws reflect long-outdated misconceptions about the routes, risks and consequences of HIV transmission
 - “High Risk” = < 2% of transmission?
 - Risk associated with oral sex, insertive vaginal sex very low
 - With effective ART: HIV = chronic manageable disease, risk even further reduced to near-zero
- Laws and prosecutions at odds with health department-supported prevention priorities -- consistent condom use, mutual responsibility, anti-stigma campaigns, and getting tested!



State Officials and Policy Makers Are Behind the Curve of Consensus Against Criminalization

- **Presidential Advisory Council on HIV/AIDS (PACHA)**, Resolution on Ending Federal and State HIV-Specific Criminal Laws, Prosecutions, and Civil Commitments (2013)
- **U.S. Department of Justice**, Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Supported Factors (2014)
- **American Medical Association (AMA)**, Modernization of HIV Specific Criminal Laws (2014)
- **The Association of Nurses in AIDS Care (ANAC)**, HIV Criminalization Laws and Policies Promote Discrimination and Must Be Reformed (2014)
- **HIV Medicine Association (HIVMA)**, Repeal of HIV-Specific Criminal Statutes (2012)
- **National Alliance of State and Territorial AIDS Directors (NASTAD)**, National HIV/AIDS Strategy Imperative: Fighting Stigma and Discrimination by Repealing HIV-Specific Criminal Statutes (2011)
- **National Association of County & City Health Officials (NACCHO)**, Statement of Policy: Opposing Stigma and Discrimination Against Persons with Communicable Diseases (2013)
- **U.S. Conference of Mayors**, Resolution on HIV Discrimination and Criminalization (2013)
- **Positive Justice Project**, National Consensus Statement on the Criminalization of HIV (2012) (statement features more than 1000 organizational and individual endorsements from across the United States).
- <http://hivlawandpolicy.org/resources/collection-statements-leading-organizations-urging-end-criminalization-hiv-and-other>



The National HIV/AIDS Strategy on HIV Criminalization

Need to ensure that laws and policies support our current understanding of best public health practices for preventing and treating HIV

HIV specific criminal laws do not have a positive influence on the behavior of people living with HIV

HIV specific criminal laws may not have the desired effect and they may make people less willing to disclose their status by making people feel at even greater risk of discrimination

The continued existence and enforcement of these types of laws run counter to scientific evidence about routes of HIV transmission and may undermine the public health goals of promoting HIV screening and treatment.





Positive Justice Project Principles for Reform



- a) No disease-specific criminal law or sentence enhancement;
- b) Must prove specific intent to harm + conduct likely to do intended harm;
- c) Steps to reduce risk = no intent to harm;
- d) No airborne/casually transmitted diseases
- e) Proportionate penalty, no sex offender status
- f) No felony laws for treatable disease; and
- g) No new or increased penalties for others



WHAT CAN HEALTH CARE AND PREVENTION PROVIDERS DO?

- Ignorance ≠ Bliss: Promote sexual health literacy via school health programs, federally funded detention, foster care and prison facilities, etc., and as part of basic health care
- Surgeon Gen'l letter to U.S. households on STIs/HIV
- Advocate for consistency among government agencies in the treatment and messaging of HIV and other STIs



WHAT CAN HEALTH CARE AND PREVENTION PROVIDERS DO?

- Come out of the Anti-Criminalization Closet: ***speak out*** – via LTE, op-eds, calls to prosecutors and legislators and public health officials, against the prosecution of PLWH for consensual sex, spitting
- All health care providers, but ESPECIALLY AIDS/STI Directors and state health department officials: ***Flag and correct*** inflammatory, inaccurate, stigmatizing press and prosecution statements about HIV and PLWH
- ***CONNECT*** WITH THE POSITIVE JUSTICE PROJECT!



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