



The Law of Stigma

December 2015

Recommendations

- Repeal laws that criminalize HIV exposure, non-disclosure, and unintentional transmission
- Improve education to women living with HIV about the risks of criminal prosecution
- Develop and adopt prosecutorial guidelines that consider scientific evidence and intent to harm as a basis for prosecution, not stigma and misinformation.
- Strengthen laws that protect women from intimate partner violence.
- Develop public media campaigns to increase awareness of personal responsibility in sexual relationships and destigmatizes people living with HIV.
- Ensure confidentiality for women living with HIV through improved training for health care providers and support workers.
- Ensure legal and financial support for women living with HIV facing prosecution

Criminalization of HIV—the justice system has turned a blind eye to evidenced based law making in favor of stigma based prosecution.

HIV is a disease, it is not a crime. As such, it is a public health issue not a criminal issue. In North America, people living with HIV are subject to prosecution under criminal law for not disclosing their HIV-positive status to sexual, drug using partners, and even for biting, and spitting. Women can also be prosecuted if they do not take anti-HIV treatment during pregnancy or if they breastfeed. Women also face discrimination in custody hearings because of their HIV status. Prosecution, conviction, and the legal process negatively affect the lives of women living with HIV. North American Justice Systems are not evidenced based and unfairly

brand women living with HIV as criminals instead of people with a health condition. Treating HIV as a criminal issue undermines public health prevention and care efforts. This uninformed, discriminatory approach to a public health problem increases stigma and discrimination; increases women's risk for intimate partner violence; discourages disclosure of HIV status and affects negatively on wellbeing.



Scope of the Issue

Stigma and discrimination in the justice system

The judicial systems in Canada and the United States often do not consider scientific evidence about HIV transmission risk, even when the risk is negligible or zero. Instead, most of these prosecutions and convictions are fear and stigma based. Prosecutions for exposure and negligible risk activities only serve to perpetuate myths and increase stigma for people living with HIV. HIV stigma is also evidenced by the fact

that other sexually transmitted diseases are not usually singled out for prosecution. While some states in the USA have specific HIV legislation on the books, others, as in Canada, rely on existing laws, such as aggravated sexual assault, in their respective criminal codes. Although Canada does not have any HIV-specific laws, it does have the dubious reputation of having the most prosecutions for HIV non-disclosure per capita in the world where at least 14 women have been

charged related to non-disclosure to a sexual partner. Charges ranging from sexual assault to murder have been imposed within provincial and federal jurisdictions. These laws, which were initially designed to protect women, are now used to villainize them. In both countries, stiff penalties are imposed ranging from probation to life in prison. Most people who are convicted are branded sex offenders for life .

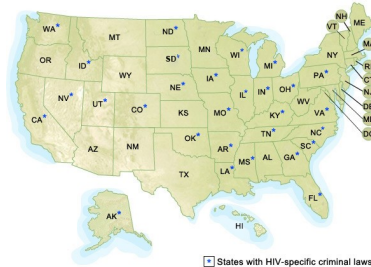


Scope of the Issue

In the United States criminalization of HIV has also sparked debate in the courts and among policy makers. In the early years of the epidemic, states were required to prove that they had sufficient laws on the books to ensure that anyone who intentionally infected another with HIV would be duly prosecuted to receive funding under the Ryan White Act. Unfortunately, many of these laws were based on fear and had not been revised to include advances in research in the area of HIV transmission.

Currently, more than thirty states have HIV-specific laws that can be used to prosecute people living with HIV. These

laws focus specifically on people living with HIV. HIV-specific criminal laws criminalize and impose additional penalties for certain behaviors, such as sexual activity or needle-sharing without disclosure of positive status; prostitution and solicitation; donation of blood/tissue/fluids; biting, spitting and



throwing of body fluids; and sex offenses. Some of these laws have little or no basis in science. For example, in Georgia and Louisiana, spitting HIV-positive saliva or throwing feces or urine at an officer of the law, is considered a criminal offense. Another example of stigma and fear fueled laws is in Alaska where it is not only a criminal offense to expose someone to a real risk but also exposure to a "fear that the offense could result in the transmission of HIV". Such laws only serve to fuel the ever-present stigma and discrimination faced by people living with HIV.

Increased Risk for Intimate Partner Violence

Criminalization of HIV does not protect women from HIV or sexual violence. Fear of criminal charges leads many women to disclose, even when it may not be safe to do so. Women are often the first

person diagnosed in the family due to increased interaction with the health care system. Women are often blamed for bringing HIV into the family and disclosure can create a power imbalance in relation-

ships and lead to a "who infected who" situation. In the case of a relationship breakup a "he said she said" scenario can develop when it comes to HIV disclosure placing women at risk of prosecution and violence.

Lives Disrupted

In every case, even those that result in acquittal or do not go to trial, the lives of women living with HIV and their families are disrupted and often destroyed. Women can lose their children, jobs, school, benefits, and housing. The impacts of prosecution can be further compounded by socioeconomic status, immigration status, or intimate partner violence.

Prevention, Care and Support

Criminalization of HIV nondisclosure is undermining public health efforts to ensure that women are linked to care. Women living with HIV, fearing disclosure of their health information to the judicial sys-

tem, may be reluctant to seek care or discuss sexual health issues with their care providers. Criminalization also undermines prevention efforts leading women to avoid testing for fear of hav-

ing to disclose to partners. For people living with HIV, criminalization creates an atmosphere of fear in the public and undermines efforts to reduce stigma against them.

Current Response

People living with HIV and community members have the support of most HIV specialists and some elected officials, including President Obama.

In Canada, leading health care providers developed a consensus statement in 2013 condemning the criminalization of HIV nondisclosure in sexual exposure cases. The statement was released during the Canadian Association of HIV Researchers Conference health in St. John's Newfoundland and published in

several national newspapers. This statement has made it more difficult for prosecutors to find an expert who will support their cases.

In the United States, The National HIV/AIDS Strategy provides some guidance regarding the issue of criminalization, and notes that some existing HIV exposure laws may need to be re-examined. Additionally, on 23 September 2011, Rep.

Barbara Lee (D-CA) introduced H.R. 3053, The Repeal Existing Policies that Encourage and Allow Legal HIV Discrimination Act or the REPEAL HIV Discrimination Act. The REPEAL HIV Discrimination Act calls for review of all federal and state laws, policies, and regulations regarding the criminal prosecution of individuals for HIV-related offenses.

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