



POSITION STATEMENT

HIV Criminalization Laws and Policies Promote Discrimination and Must be Reformed

Adopted by the ANAC Board of Directors – November 2014

The Association of Nurses in AIDS Care (ANAC) advocates for public health policy grounded in evidence, human rights, and the delivery of socially just health care. Current HIV criminalization laws and related policies promote discrimination and hinder HIV prevention, care, and treatment. Consequently, we call for the reform and/or repeal of unjust and harmful HIV criminalization statutes. **It is the position of the**

Association of Nurses in AIDS Care to support the following:

- Reform of all state and federal policies, laws, regulations, and statutes to ensure that they are based in scientifically accurate information regarding HIV transmission routes and risk
- Repeal of punitive laws that single out HIV infection or any other communicable disease and that include inappropriate or enhanced penalties for alleged nondisclosure, exposure, and transmission
- Education and understanding of the negative clinical and public health consequences of current HIV criminalization statutes, arrests, and prosecutions, and their contribution to HIV-related stigma and discrimination.

Statement of Concern

The stigma associated with HIV remains high. Fear of discrimination or the

potential for intimate partner violence causes some to avoid learning their HIV status, disclosing their status, or accessing appropriate health care and treatment.

At least 32 states in the United States have legislation that criminalizes HIV exposure; a significant number of these laws include exposures that are now known to pose negligible risk of transmission, such as spitting (Lehman et al., 2014; Center for HIV Law & Policy, 2014). General criminal laws have also been used to prosecute persons living with HIV. Many laws and prosecutions include disproportionate sentence enhancements based on HIV status. Most arrests and prosecutions under these HIV criminalization laws are tantamount to human rights violations. These laws are based on outdated and erroneous information about HIV risk and transmission and further promote misinformation that contributes to stigma and discrimination. These criminal laws contradict public health messages regarding individual responsibility for safer sex, do not alter behavior, can create a disincentive for seeking HIV testing, and potentially alienate patients from health care providers. These laws disregard current knowledge about treatment efficacy, including significantly reduced transmission potential when a person living with HIV has an undetectable HIV viral load.

Background information

HIV criminalization refers to the use of criminal law to penalize alleged, perceived, or potential HIV exposure; alleged nondisclosure of a known HIV-positive status prior to consensual sexual contact (including acts that do not risk HIV transmission), or non-intentional HIV transmission. Most of these laws were adopted decades ago, in an era of limited understanding of transmission risk stratification and in an environment of fear and discrimination. In 1990, the Ryan White CARE Act (PHL 101-881) required states to certify that criminal laws were adequate to prosecute individuals

who knowingly exposed another “non-consenting” person to HIV (Ryan White Comprehensive AIDS Resources Emergency Act of 1990). However, significant evidence-based shifts in the understanding of HIV prevention, transmission, and public health policy have occurred since then. Congress repealed the criminalization mandate in 2000, after all states had met the requirement, but to this day, states have retained outdated HIV-specific laws.

Landmark clinical studies have now demonstrated that effective use of antiretroviral therapy substantially reduces HIV transmission risk by up to 96% (Cohen et al., 2011); consistent condom use reduces HIV transmission risk by 80% (Weller & Davis-Beatty, 2011), and condom use combined with antiretroviral therapy reduces the risk of HIV acquisition from sexual exposure by 99.2% (Patel et al., 2014). In the National HIV/AIDS Strategy, released by the White House in July 2010, the reform of HIV criminalization statutes is considered a component of an effective public health strategy and was recommended (Office of National AIDS Policy, 2010). The U. S. Department of Justice (2014) recommends states reform these laws to eliminate HIV-specific criminal penalties except in two distinct circumstances related to sexual assault and proven intent to transmit HIV. Other experts recommend that reform of criminal laws by eliminating HIV-specific statutes and ensuring that any prosecution on the basis of HIV or any other sexually transmitted infections must require: (a) proof of an intent to harm, (b) conduct that is likely to result in that harm, (c) proof that the conduct of the accused in fact resulted in the alleged harm, and (d) punishment that is proportionate to the actual harm caused by the defendant's conduct (Positive Justice Project, 2012). Recently, the CDC encouraged states with HIV-specific criminal laws to re-examine existing laws, assess the laws' alignment with current evidence regarding HIV transmission risk, and

consider whether the laws are the best vehicle to achieve their intended purposes (Lehman et al., 2014).

One concern is that these outdated laws will inhibit HIV testing (O'Byrne, et al, 2012), either directly or by promoting stigma and discrimination that consequently hinder HIV testing (Golub & Gamarel, 2013). This is critical because studies have shown that HIV-infected individuals who know their status are significantly less likely to engage in sexual behaviors that may increase risk of HIV transmission to a partner than HIV-infected individuals who remain unaware they are infected (Marks et al., 2005; Weinhardt et al., 1999). Because the majority of new HIV infections are transmitted by those unaware of their infection, undiagnosed HIV remains one of the most significant factors driving the HIV epidemic (Marks, Crepaz, & Janssen, 2006). Moreover, other studies suggest that HIV-specific criminal laws do not alter sexual behaviors (Burriss et al., 2007; Galletly et al., 2012).

Legal Advocacy experts such as the Center for HIV Law and Policy point out There is no evidence that HIV-specific criminal laws and prosecutions have any effect on behavior and that the argument that these laws serve a deterrent effect is unfounded. Punishing people for behavior that is either consensual or poses no risk of HIV transmission only serves to further stigmatize already marginalized communities. (Center for HIV Law and Policy, 2014, p. 4)

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