



Clinician
Guidelines
on

HIV CRIMINALIZATION

HIV criminalization refers to the use of criminal law to arrest and penalize people for alleged, perceived or potential HIV exposure; alleged nondisclosure of a known HIV-positive status prior to consensual sexual contact or non-intentional HIV transmission. Most of these laws were adopted decades ago, in an era of limited understanding of HIV and in an environment of fear and discrimination and do not reflect current knowledge of transmission risk. In 2015, ANAC and ANA called for the end to unjust HIV criminalization and a modernization of existing HIV laws.

This guide does not replace or supersede existing laws, professional and ethical standards, practice standards or institutional policies.

1 State Laws

At least 32 states in the USA have laws that criminalize HIV exposure. General criminal laws have also been used to arrest and prosecute persons living with HIV and may include disproportionate sentence enhancements based on HIV status. For state specific laws, <http://www.hivlawandpolicy.org/state-hiv-laws>

2 Stigma

Outdated laws that sanction HIV discrimination drive and support stigma. People with HIV may internalize the judgment and misperception of HIV as highly infectious, and fear getting tested, disclosing their status, or even fail to access health care due to internalized stigma.

HIV is now an easily manageable chronic disease, and when treated, extremely rare to transmit. Yet the stigma associated with HIV remains high and fear of rejection and the potential for intimate partner violence causes some persons to avoid learning their HIV status.

Singling out HIV status or any other diagnosis or disability as an element of a crime is unjust from legal, ethical, and public health perspectives.

3 Disclosure

Alleged non-disclosure of HIV status is an element of many HIV criminalization cases. Disclosure is difficult to prove. Clinicians should explore with clients their fears and safety concerns about disclosure of HIV status.

Explore with clients the opportunity to discuss HIV+ status with partner and third parties who can attest to the disclosure. When and if appropriate, encourage clients to bring partners to provider visits for disclosure and risk reduction counseling and documentation.

4 Release of Information

Inform the client of the request. Do not release health records or HIV information without proper legal support and guidance. Do not hide, destroy or alter material and do not sign any documents without legal advice. Subpoenas for information may not comply with HIPPA or State Privacy Standards, but do not ignore them. Seek support from HIV legal experts. (Lambda Legal www.lambdalegal.org or Center for HIV Law and Policy www.hivlawandpolicy.org) and contact your organization's attorney.

5 Documentation

It should include information that is clinically significant and relevant to the plan of care. Information that does not meet these criteria should not be documented. Documentation should focus on the actual work of clinicians (including education, counseling and psychosocial support) rather than detailing the client issues with disclosure or hearsay of other conversations.

6 HIV Treatment as HIV Prevention

Treatment of infected persons to achieve an undetectable HIV viral load significantly and substantially reduces their risk to negligible of transmitting HIV to others. The prevention benefit of treatment can only be realized with effective treatment, which requires knowledge of HIV status, linkage to and retention in HIV care, and adherence to antiretroviral therapy that is supported through a trusted clinician. Counsel patients regarding this benefit of treatment.

7 Knowledge of Laws:

HIV Criminalization laws and statutes are complex and state or locally based. While clinicians are well prepared to discuss and guide clients through disclosure and risk reduction education and strategies, they may benefit from partnerships with national and local experts in HIV law regarding anti-HIV criminalization strategies for their clients and community, such as Sero Project: www.seroproject.com

Conclusion: Outdated HIV laws and policies that criminalize alleged HIV exposure and transmission promote stigma and may impact patient/provider relationships and worsen health outcomes. They must be reformed to reflect current knowledge of transmission risk and include proof of intent to harm. For more information: www.nursesinaidscare.org

Supporting references available upon request.

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