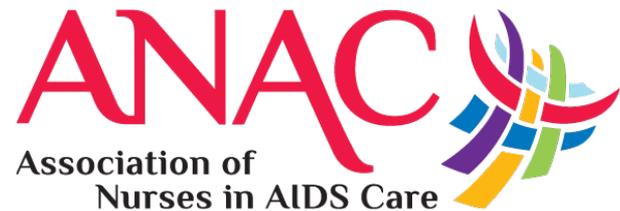


Building Support for HIV Criminalization Reform & Advocacy

Moderator: Carole Treston
Panel: Robert Suttle
Erin Athey
Teresa Sullivan
Barb Cardell

USCA
September 9, 2017



Association of Nurses in AIDS Care

Core Ideology: Public policy must be grounded in patient advocacy, human rights, compassion, and social justice. We advocate for the health, welfare, and rights of all individuals affected by HIV and its comorbidities.

Clinicians Guidelines on HIV Criminalization

This work is funded in part through a grant to The Association of Nurses in AIDS Care from the Elton John Foundation.

Agenda

1. HIV Criminalization: Overview
2. Results of Surveys
3. Intersection of HIV Criminalization & Stigma
4. Advocacy & Policy
5. Panel Discussion

HIV Criminalization Examples

Nick Rhoades, an Iowa man who had a one-time sexual encounter, using a condom and while he had an undetectable viral load. He was sentenced to 25 years in prison and lifetime sex offender registration.

Eddie Casto, who was born with HIV, and was convicted as a teenager in Spokane, Washington, for failing to disclose even though he had an undetectable viral load.

Monique Moree, who was prosecuted by the Army in South Carolina, even though she had an undetectable viral load and her partner said she told him to use a condom.

Mark Hunter, born with hemophilia and acquired HIV from blood products; after Mark and his fiancée broke up, she pressed charges for him not having initially disclosed his HIV status, even though they always used condoms and he had an undetectable viral load. He served 2.5 years in Arkansas.

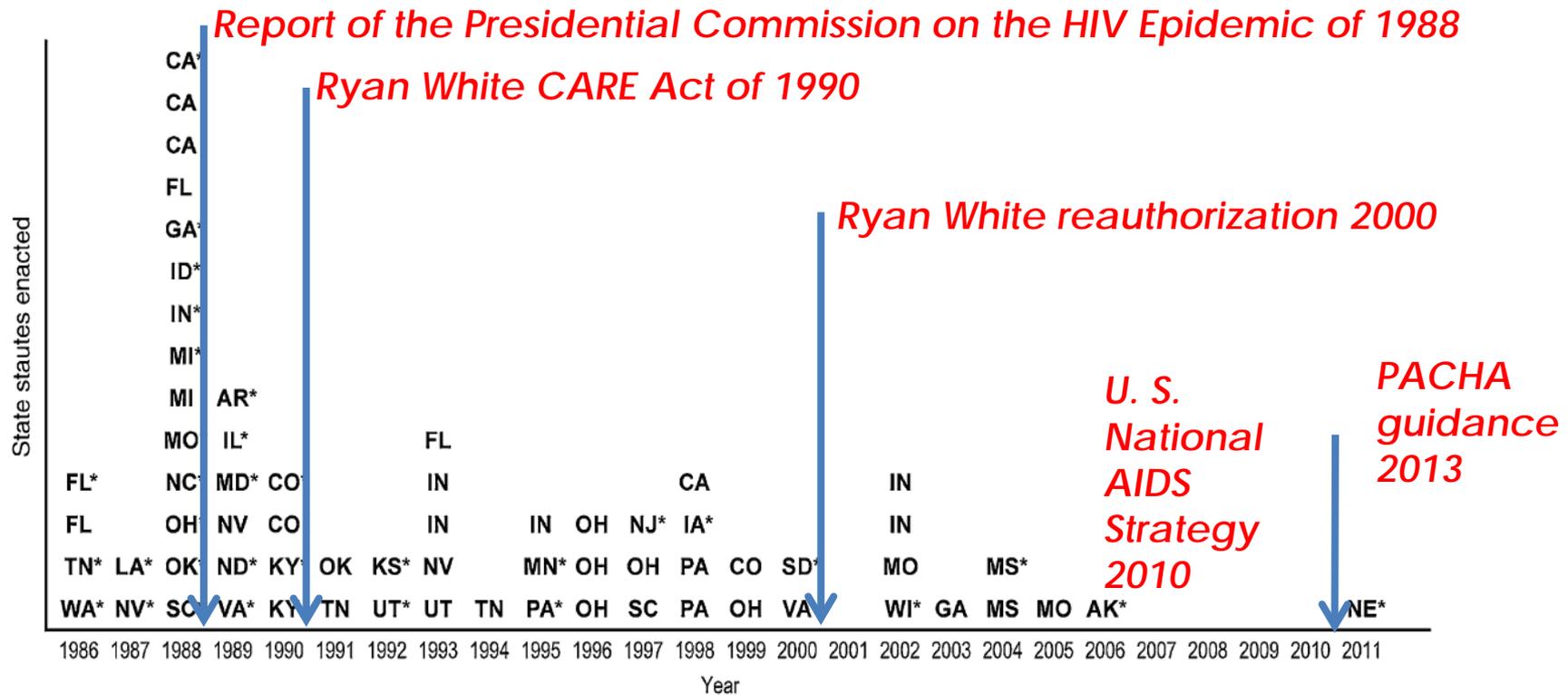
Robert Suttle: Served 6 months in Louisiana prison in 2011 for HIV exposure under a plea deal. He was prosecuted after he and a former partner, with whom he had a contentious relationship, stopped seeing each other. The HIV negative partner had previously threatened to file charges against Suttle.

HIV Criminalization

- 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

HIV Criminalization

- Most states (32) have Criminal Liability for HIV exposure
- 67 Laws- HIV specific or HIV enhancements
- Intent or Actual Transmission is not relevant in these laws
- Media frenzy & disclosure issues
- Disproportionate sentences
- Number of cases may be small, impact is great
- History- 1990 Ryan White Care Act



* First state law enacted in any given state. For each year, state laws enacted in that year are listed alphabetically

** Number of laws enacted in any given state ranged from one to six laws (includes newly enacted laws and amendments to previous laws that did not originally contain HIV-specific language)

*** From 1986 to 2011, a total of 67 HIV-specific criminal laws were enacted in these 33 states

The information presented here does not constitute legal advice and does not represent the legal views of the Centers for Disease Control and Prevention, the Department of Health and Human Services, or the Department of Justice, nor is it a comprehensive analysis of all legal provisions that could possibly implicate the criminalization of potential HIV exposure. Rather, this information provides state-specific snapshots of HIV-specific criminal laws. This information is subject to change and does not contain measures implemented by counties, cities, or other localities. Use of any provision herein should be contemplated only in conjunction with advice from legal counsel

Fig. 1 Enactment of state laws that criminalize potential HIV exposure in 33 states—1986–2011***

Lehman, J. S., Carr, M. H., Nichol, A. J., Ruisanchez, A., Knight, D. W., Langford, A. E., . . . Mermin, J. H. (2014). Prevalence and public health implications of state laws that criminalize potential HIV exposure in the united states. *AIDS and Behavior*, doi:10.1007/s10461-014-0724-0

HIV Criminalization Now

- Proof of Intent not a factor
- HIV Transmission not a factor
- Low/No risk equal to high risk activities
- No evidence that sexual behaviors changed by laws
- Ignores partners responsibility “universal precautions”
- **Ignores clinical advances and scientific evidence**

*PJP Consensus Statement 2012



HPV vs. HIV

HPV

- 14 mil new infections/year
- 40K HPV cancers/year
- ~10,000 deaths/year
 - Cervical
 - Anal
 - OP

HIV

- 37K new infections/year
- 12,300 PLWH deaths /yr
 - 6721 deaths/year due to HIV/AIDS

HIV Criminalization: Attitudes and Opinions of the
American Public



Sean Strub, SERO Project and Jeff Henne
and Rosita Thomas of The Henne Group
April 10-27, 2015 – **800** telephone interviews
random digit dial samples

Sero Project: <http://seroproject.com>

OBJECTIVES

The objectives of this study were to:

Assess current attitudes and opinions on *HIV-related issues*

Assess current attitudes and opinions *about HIV criminalization statutes*

Test potential messages that might be used to *educate and inform the general public* about HIV criminalization statutes

Determine the types of messages that are **most and least effective** with supporters, potential supporters, and likely opposition groups

SUMMARY

RESULTS

- Significant percentages have misperceptions about transmission
- **Most are completely unaware of HIV criminalization**
- Lack of awareness causes the public to presume the current HIV specific laws must exist for valid reasons
- A little information helps the public understand and believe the logic behind the need for modernization of HIV criminalization statutes
- The survey was a teaching moment for many of the respondents; their responses changed significantly as different language is used.
- **While initially almost all were in favor of criminalization, when questions were posed differently, and additional information provided, the numbers became more favorable.**
 - **Shared responsibility and intent to harm matter to the American public.**
- The most effective messages are those that point out:
 - The current laws are inconsistent with current scientific knowledge.
 - Unintended consequences of the current laws are that they discourage: testing, getting treatment and disclosure.

AMERICAN NURSES' KNOWLEDGE OF HIV-RELATED CRIMINAL LAWS



J. Craig Phillips, Brian Heffernan, & Jean-Laurent Domingue

2015 Online survey – a set of 39 questions – collected online using Fluid Surveys platform

Nurses (n = 1,559) from across the United States



uOttawa

Where did you FIRST learn about criminal laws that affect people living with HIV?

	<i>N</i>	%	
While completing this survey	380	24.4	
News media	375	24.1	
School (e.g., college, university)	301	19.3	
Other (please specify)	137	8.8	
Professional conference	92	5.9	
Professional colleague	91	5.8	
Internet	77	4.9	
Professional journal	67	4.3	
Licensing agency (State Board of Nursing)	24	1.5	
	Missing	15	1.0
	Total	1559	100.0

HIV Criminalization & Stigma

HIV Criminalization laws  Institutionalized Discrimination

Experiences of Stigma*

Label of devaluation; “other” based on characteristics

- Confrontations: Assaults, Threats
- Access to work, education, health care, housing, services
- Perceived Stigma: Gossip, non-verbal, harassment
- Internalized stigma: fear, anticipation of what others will do/think
- **Rights, laws , policies**

HIV Criminalization laws  Institutionalized Discrimination

*PLWH Stigma Index

HIV Criminalization & Stigma

- Misunderstanding about scope of HIV Criminalization
- Heightened fear re: risk of prosecution
- Erosion of personal security
- Increased feelings of vulnerability
- Increased risk of IPV
- Hampers ability to live openly with HIV

The public health implications of HIV criminalization: past, current, and future research directions. Eric Mykhalovskiya, Department of Sociology York University, Toronto, Canada, Published online: 10 Jul 2015. Critical Public Health August 2015

<https://www.researchgate.net/publication/280063244>

HIV Criminalization: Strategies

National HIV AIDS Strategy: Promote public health approaches to HIV prevention and care: State legislatures should consider reviewing HIV-specific criminal statutes to ensure that they are consistent with current knowledge of HIV transmission and support public health approaches to preventing and treating HIV.

July 2010 2015



HIV Criminalization & the Presidents Advisory Council PACHA

PACHA Resolution on Ending Federal and State HIV-Specific Criminal Laws, Prosecutions, and Civil Commitments, Feb 2013

- DOJ Review of current laws
- Modernization Current Laws
- Review of Convictions
- CDC Statement

HIV Criminalization

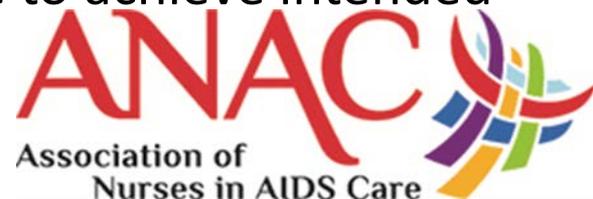
CDC: Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States. Lehman et al , AIDS & Behavior, March 2014

HIV Criminalization Laws

- Increase stigma
- Decrease likelihood of disclosure
- Decrease testing
- Increase risk of IPV

Recommendations:

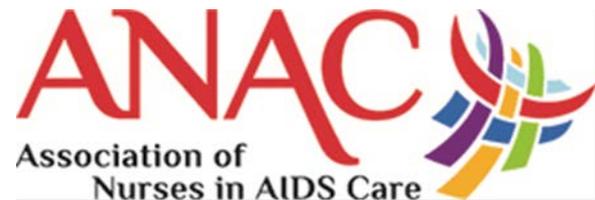
- States re-examine laws
- Assess the laws' alignment with current evidence
- Consider whether the laws are the best vehicle to achieve intended purposes.



HIV Criminalization Law Modernization

1. proof of an intent to harm;
2. conduct that is likely to result in that harm;
3. proof that the conduct of the accused in fact resulted in the alleged harm; and
4. punishment that is proportionate to the actual harm caused by the defendant's conduct.

*PJP Consensus Statement 2012



REPEAL Act

Repeal Existing Policies That Encourage and Allow Legal HIV Discrimination (HR1739- March 2017)

- Review of federal and state laws that impose criminal liability on individuals with HIV
- Provide states with guidance on best practices for revising these discriminatory laws.

“These laws undermine current HIV testing and prevention priorities and must reflect current medical and scientific knowledge and accepted approaches. We are fighting an epidemic, and we must have laws that are rational, holistic, and truly human rights-based.” Rep. Barbara Lee (D-CA)

Senate bill 2015- needs re-introduction

Providers' Individual Role

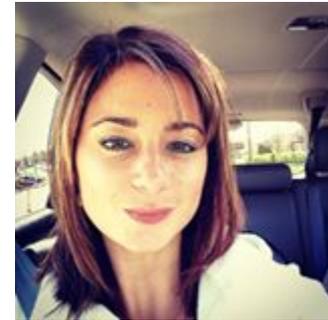
1. Maintain Trust & Therapeutic Relationship
2. Preserve a safe space for candid dialogue
3. Each person/circumstance/relationship is unique
4. Recognize and support that real life experiences of HIV disclosure are more complex than the simple good/bad perspective expressed in criminal laws
5. Provide accurate information
 - Clinical/Transmission Risk
 - Criminalization Environment in State*
 - Resources*
6. Appropriate documentation & release
7. LOCAL Education & Advocacy

POSITION STATEMENT: HIV Criminalization Laws and Policies Promote Discrimination and Must be Reformed November 2014

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.

Human Rights: HIV Criminalization



Resources

- ANAC: www.nursesinaidscare.org
- Sero Project: <http://seroproject.com>
- Center for HIV Law & Policy: The Positive Justice Project (PJP). www.hivlawandpolicy.org.
- Lambda Legal: www.lambdalegal.org
- CANAC: Legal & Clinical Implications of HIV Non-disclosure <http://librarypdf.catie.ca/pdf/ATI-20000s/26450.pdf>
- LGBT Policy Spotlight (Dec2016)
<https://www.lgbtmap.org/file/policy-spotlight-HIV-criminalization.PDF>

Panel Discussion

Participant Discussion

