

***HIV CRIMINALIZATION in 2014:  
Why does it matter to nurses &  
what can we do about it?***  
Wednesday, July 9 , 2014

A discussion presented by

Carole Treston, RN, MPH ANAC Chief Nursing Officer

J. Craig Phillips, PhD, LLM, RN, ARNP(US-FL), PMHCNS-BC, ACRN, ANAC Policy  
Committee Chair, Associate Professor, University of Ottawa

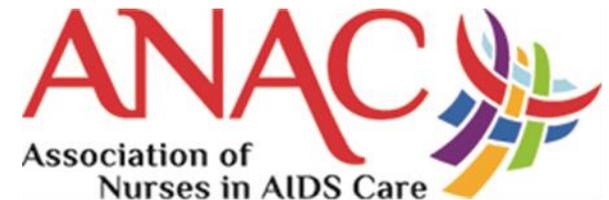
Jirair Ratevosian, MPH Legislative Director, Office of Congresswoman Barbara  
Lee (D-CA)

Moderator: Kim Carbaugh, Executive Director, ANAC



# Agenda

- Overview of HIV Criminalization Issues Today
- Impact on Health Care Access and Patient Provider Relationships
- ANAC /University of Ottawa School of Nursing Needs Assessment Survey “HIV Criminalization & Quality of Care”
- REPEAL Act
- Discussion& Questions

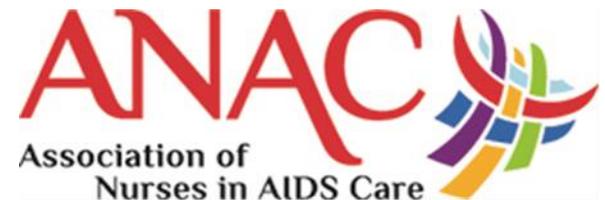


# The Association of Nurses in AIDS Care

The Association of Nurses in AIDS Care (ANAC) represents more than 2,000 nurses, nurse practitioners, and other health care providers worldwide. ANAC is the leading professional HIV nursing association educating, connecting and advocating for nurses concerned about HIV and HIV-related care. ANAC promotes a comprehensive, holistic and evidence-based approach to quality HIV care, and advocates for policies grounded in a human rights approach to health. [www.nursesinaidscare.org](http://www.nursesinaidscare.org)

## ANAC Policy Agenda

1. **Access to care** for all individuals living with HIV/AIDS
2. **Decriminalization** of HIV, HIV transmission and homosexuality in all jurisdictions locally and globally
3. Support of **evidence based** and scientifically driven **HIV prevention and care programs**
4. Support for HIV/AIDS **Workforce Development**



# Association of Nurses in AIDS Care

Two fundamental values:

- Nurses can have an influential and powerful voice as public policy advocates
- Nurses have expertise related to health care and human rights.



# HIV Criminalization Examples

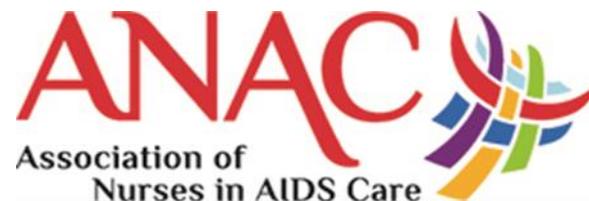
**Nick Rhoades**, an Iowa man who had a one-time sexual encounter, using a condom and while he had an undetectable viral load. He was sentenced to 25 years in prison and lifetime sex offender registration.

**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.

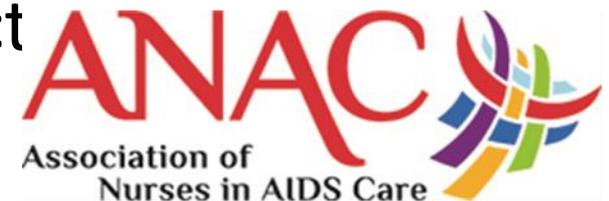
**Mark Hunter**, born with hemophilia and acquired HIV from blood products; after Mark and his fiancée broke up, she pressed charges for him not having initially disclosed his HIV status, even though they always used condoms and he had an undetectable viral load. He served 2.5 years in Arkansas.

**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

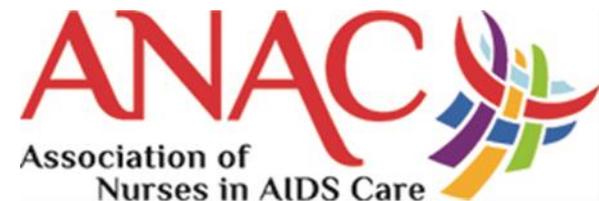
- Most states (33) have Criminal Liability for HIV exposure
- 67 Laws- HIV specific or HIV enhancements
- Intent or Actual Transmission is not relevant in these laws
- Media frenzy & disclosure issues
- Disproportionate sentences
- Number of cases may be small (200) , impact is great
- History- 1990 Ryan White Care Act



# HIV Criminalization Now

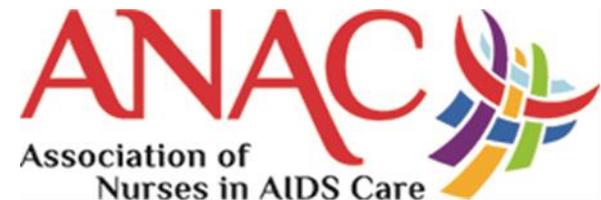
- Proof of Intent not a factor
- HIV Transmission not a factor
- Low/No risk equal to high risk activities
- No evidence that sexual behaviors changed by laws
- Ignores partners responsibility “universal precautions”
- Ignores clinical advances and scientific evidence

\*PJP Consensus Statement 2012



# HIV Criminalization Now

- **Spit /Bite (17)** AR, GA, ID, IL, IN, LA, MD, MS, MO, NE, ND, OH, OK, PA, SD, UT, WA
- **Sentence Enhancement (9)** AK, CA, CO, FL, IN, MA, TN, UT, WI
- **Sex Offender (9)** AR, IN, LA, MO, NE, ND, OH, OK, PA, SD, UT, WA
- Laws on mandated disclosure(24) Low Risk Acts(25)



# WHEN SEX IS A CRIME AND SPIT IS A DANGEROUS WEAPON

## A SNAPSHOT OF HIV CRIMINALIZATION IN THE UNITED STATES



An Idaho man was sentenced to 15 years in prison for engaging in sex (no ejaculation, no transmission) without disclosing his HIV status.

In South Dakota, a 19-year-old student was charged with intentional HIV exposure after consensual sex with another student.

A man with HIV in Michigan was charged under the state's anti-terrorism statute with possession of a "biological weapon" after an altercation with a neighbor. Prosecutors equated his HIV infection with "possession or use of a harmful device."

A 23-year-old Oregon man was sentenced to 87 months in prison after pleading guilty to unprotected sex without disclosure of his HIV-positive status to a man he met on Manhunt.com.

A man with HIV in Iowa who had an undetectable viral load, was sentenced to 25 years after a one-time sexual encounter during which he used a condom.

A man with HIV in Texas is serving 35 years for spitting at a police officer.

A man in New York was sentenced to 10 years for aggravated assault after biting a police officer.

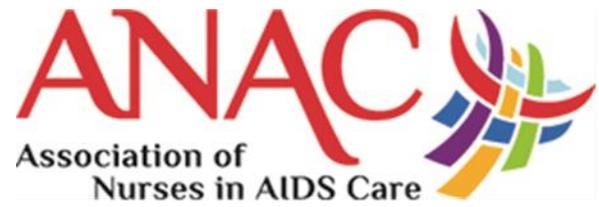
NEARLY  
**200**  
PROSECUTIONS  
SINCE 2008\*

**THE NATIONAL HIV/AIDS STRATEGY ON HIV CRIMINALIZATION (JULY 2010)**  
 "Since it is now clear that spitting and biting do not pose significant risks for HIV transmission, many believe that it is unfair to single out people with HIV for engaging in these behaviors and [people engaging in these behaviors] should be dealt with in a consistent manner without consideration of HIV status. Some laws criminalize consensual sexual activity between adults on the basis that one of the individuals is a person with HIV who failed to disclose their status to their partner. CDC data and other studies, however, tell us that intentional HIV transmission is atypical and uncommon.... [These 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.... In many instances, 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."

- HIV-SPECIFIC STATUTE, AT LEAST ONE PROSECUTION IN PAST TWO YEARS
- HIV-SPECIFIC STATUTE, NO RECENT REPORTED PROSECUTIONS
- HIV-RELATED PROSECUTIONS, THOUGH NO HIV-SPECIFIC STATUTE
- ▲ PUNISHMENT INCLUDES SEX OFFENDER REGISTRATION

**THE CENTER FOR HIV LAW & POLICY**  
 The Center for HIV Law and Policy  
 65 Broadway, Suite 832  
 New York, NY 10006  
 212.430.6733  
[www.hivlawandpolicy.org](http://www.hivlawandpolicy.org)

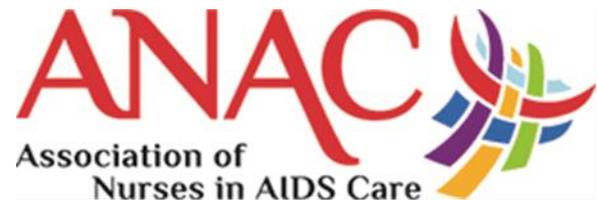
\*The total number of arrests and prosecutions from 2008-2013 reported here are illustrative, not a precise count. It is impossible to track all such arrests and prosecutions as there is no uniform system of monitoring and reporting them. The numbers represent those cases that are searchable in news and legal databases or that otherwise have come to the attention of the authors.



# 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.

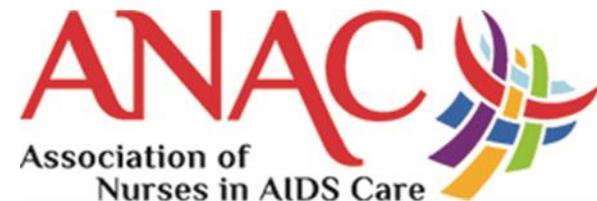
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# HIV Criminalization & the National HIV/AIDS Strategy

NHAS: 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



# 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

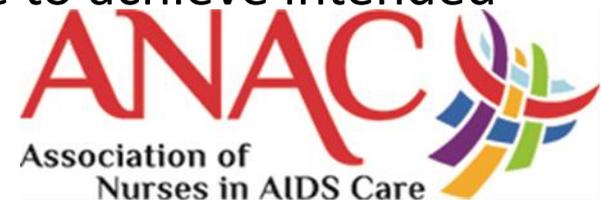
Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States. Lehman et al , AIDS & Behavior, March 2014

## 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.



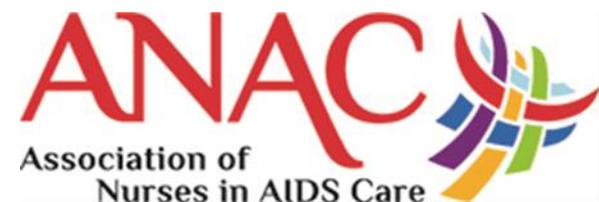
# Language, HIV Criminalization & Stigma

Example: IA Bill: removed sex offender status, attempts to destigmatize HIV by adding HCV, TB, Meningitis

Example: WA State progressive efforts at modernizing.

Intent: “to reduce the stigma that ... disparate treatment brings upon those infected with the human immunodeficiency virus,”

2013 draft language in WA state bill characterize HIV and other sexually transmitted infections as "destructive and noxious substances"



# ANAC & HIV Criminalization

- AMICUS briefs
- JANAC articles
- Nursing Survey
- Member Education
- Clinician Guides ( in development)
- Organizational Statement ( in development- with others)
- **Advocacy for REPEAL** HIV Criminalization Act
- **Member of Positive Justice Project/CHLP**

State Advocacy WG

10 states targeted for modernization

FL GA LA TN

CA CO IA MD MI MO NY OH PA

**PJP Info:** [rrichardson@hivlawandpolicy.org](mailto:rrichardson@hivlawandpolicy.org).



# HIV Criminalization Resources

**Center for HIV Law & Policy: Toolkit for Community Advocates** [www.hivlawandpolicy.org](http://www.hivlawandpolicy.org).

**The Positive Justice Project (PJP)** is a national coalition of organizations and **individuals** working to end HIV criminalization in the United States. Coordinated by CHLP Info: [r-richardson@hivlawandpolicy.org](mailto:r-richardson@hivlawandpolicy.org)

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

**CANAC: Legal & Clinical Implications of HIV Non-disclosure** <http://librarypdf.catie.ca/pdf/ATI-20000s/26450.pdf>

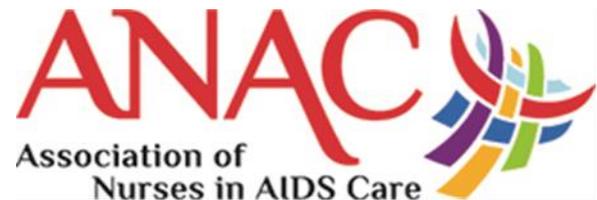


# HIV Criminalization

Impact on Health Care Access and Patient Provider Relationships

ANAC /University of Ottawa School of Nursing Needs Assessment Survey “HIV Criminalization & Quality of Care”

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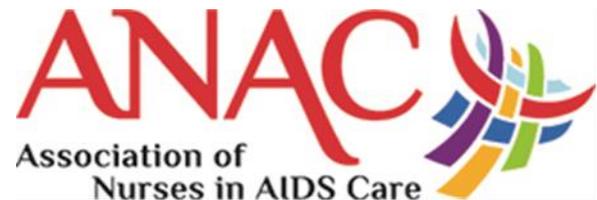


# HIV Criminalization

REPEAL HIV Discrimination Act

Repeal Existing Policies That Encourage and Allow Legal HIV Discrimination

Jirair Ratevosian, MPH Legislative Director, Office of  
Congresswoman Barbara Lee (D-CA)



# Questions & Discussion

**ANAC: Carole Treston** [carole@anacnet.org](mailto:carole@anacnet.org)

**Center for HIV Law & Policy:** [www.hivlawandpolicy.org](http://www.hivlawandpolicy.org).

**The Positive Justice Project (PJP).** Coordinated by CHLP

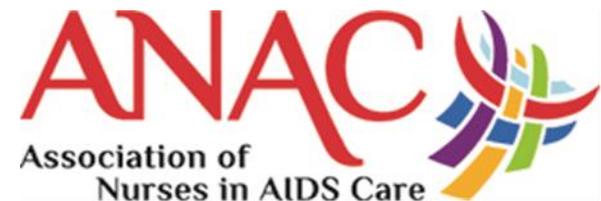
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**CANAC: Legal & Clinical Implications of HIV Non-**

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ANAC's 27th Annual Conference  
November 6-8, 2014  
Miami. Florida



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