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

A discussion presented by
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Jirair Ratevosian, MPH Legislative Director, Office of Congresswoman Barbara Lee (D-CA)
Moderator: Kim Carbaugh, Executive Director, ANAC

ANAC
Association of Nurses in AIDS Care
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**
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

THE NATIONAL HIV/AIDS STRATEGY ON HIV CRIMINALIZATION (JULY 2018)

"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 states even after 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 mythical 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 can counter to scientific evidence about routes of HIV transmission and may undermine the public health goals of promoting HIV screening and treatment."

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NEARLY 200 PROSECUTIONS SINCE 2008*

*The total number of arrests and prosecutions from 2008-2017 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.

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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
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


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.
HIV Criminalization Resources


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:  rrichardson@hivlawandpolicy.org

Sero Project:  http://seroproject.com

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

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