



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 that:**

- 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, disclose their status, or accessing appropriate health care and treatment.

At least 32 states in the USA 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 spittingⁱ ⁱⁱ. 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 These laws are based on outdated and erroneous information about HIV risk and transmission and further promote misinformation that contributes to stigma and discrimination.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 healthcare 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 HIVⁱⁱⁱ. 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 out-dated HIV-specific laws.

Landmark clinical studies have now demonstrated that effective use of antiretroviral therapy substantially reduces HIV transmission risk by up to 96%,^{iv} consistent condom use reduces HIV transmission risk by 80%,^v and condom use combined with antiretroviral therapy reduces the risk of HIV acquisition from sexual exposure by 99.2%.^{vi} 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^{vii}. The United States Department of Justice 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^{viii}. Other experts recommend that reform of criminal laws by eliminating HIV-specific statutes and ensure that any prosecution on the basis of HIV or any other sexually transmitted infections must require: proof of an intent to harm; conduct that is likely to result in that harm; proof that the conduct of the accused in fact resulted in the alleged harm; and punishment that is proportionate to the actual harm caused by the defendant's conduct^{ix}. 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^x.

One concern is that these outdated laws will inhibit HIV testing^{xi}, either directly or by promoting stigma and discrimination that consequently hinder HIV testing^{xii}. This is critical because studies have shown HIV+ 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+ individuals who remain unaware they are infected.^{xiii} ^{xiv} 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^{xv}. Moreover, other studies suggest that HIV specific criminal laws do not alter sexual behaviors.^{xvi} ^{xvii}

Legal Advocacy experts such as the Center for HIV Law and Policy point out that “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".^{xviii}

ⁱ Lehman, J Stan et al. Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States. *AIDS and Behavior* 2014; 18(6) 997-1006 Published on-line March 15,2014

ⁱⁱ Center for HIV Law & Policy. (2014). Ending and Defending Against HIV Criminalization A Manual for Advocates: State and Federal Laws and Prosecutions. Retrieved October 25, 2014, from <http://www.hivlawandpolicy.org/resources/ending-and-defending-against-hiv-criminalization-state-and-federal-laws-and-prosecutions>

ⁱⁱⁱ Public Law 101-881. <http://www.gpo.gov/fdsys/pkg/STATUTE-104/pdf/STATUTE-104-Pg576.pdf><http://www.gpo.gov/fdsys/pkg/STATUTE-104/pdf/STATUTE-104-Pg576.pdf>

^{iv} Cohen MS, Chen YQ, McCauley M, et al; HPTN 052 Study Team. Prevention of HIV-1 Infection with early antiretroviral therapy. *N Engl J Med* 2011;365(6):493-505.

^v Weller SC, Davis-Beatty K. (2011). Condom effectiveness in reducing heterosexual HIV transmission (Review). The Cochrane Collaboration. Wiley and Sons. Retrieved November 2, 2014, from <http://apps.who.int/whl/reviews/CD003255.pdf>

^{vi} Patel, P., Borkowf, C. B., Brooks, J. T., Lasry, A., Lansky, A., & Mermin, J. (2014). Estimating per-act HIV transmission risk: A systematic review. *AIDS*, 28(10), 1509-1519. doi: 10.1097/QAD.0000000000000298

^{vii} National HIV AIDS Strategy. Office of National AIDS Policy, The White House. July 2010.

Recommendation 3.3

^{viii} U.S. Department of Justice, Civil Rights Division. Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Supported Factors. March 2014

^{ix} Positive Justice Project. Consensus Statement on the Criminalization of HIV in the United States, July 2012

^x Lehman, J Stan et al. Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States. *AIDS and Behavior* 2014; 18(6) 997-1006 Published on-line March 15,2014

^{xi} O'Byrne, Patrick, et al. Nondisclosure Prosecutions and HIV Prevention: Results From an Ottawa-Based Gay Men's Sex Survey. *Journal of the Association of Nurses in AIDS Care*, Vol. 24, Issue 1, p81–87 May 2012

^{xii} Golub, Sarit A PhD, MPH, The Impact of Anticipated HIV Stigma on Delays in HIV Testing Behaviors: Findings from a Community-Based Sample of Men Who Have Sex with Men and Transgender Women in New York City. *AIDS PATIENT CARE and STDs*. Volume 27, Number 11, 2013

^{xiii} Marks G et al. Meta-analysis of high-risk sexual behavior in persons aware and unaware they are infected with HIV in the United States. *JAIDS*, 39(4):446-53, 2005.

^{xiv} Weinhardt LS, Carey MP, Johnson BT, et al. Effects of HIV counseling and testing on sexual risk behavior: a meta-analytic review of published. *Am J Public Health*. 1999 Sep;89(9):1397-405.

^{xv} Marks G, Crepaz N, Janssen RS. Estimating sexual transmission of HIV from persons aware and unaware that they are infected with the virus in the USA. *AIDS* 2006 Jun 26;20:1447-50.

^{xvi} Burris, S. et al. Do criminal laws influence HIV risk behavior? An empirical trial. *Ariz St LJ* 2007; 39:467-517

^{xvii} Galletly CL et al, New Jersey's HIV exposure law and HIV related attitudes, beliefs and sexual seropositive status disclosure behaviors. *AM J Public Health*.2012; 102 (11) 2135-2140

^{xviii} <http://www.hivlawandpolicy.org/issues/criminal-law>