

APA RESOLUTION on Opposing HIV Criminalization

FEBRUARY 2016

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(Suggested citation is included with references.), Revised March 2018

WHEREAS the National HIV/AIDS Strategy (NHAS), released by the White House in July 2010, calls attention to the problem of HIV criminalization, stating that most HIV-specific laws are not based in the current science of HIV prevention and transmission (NHAS, 2010);

WHEREAS most HIV-specific laws do not consider correct and consistent condom use and the efficacy of Antiretroviral Therapy (ART) that reduces the risk of HIV transmission to a negligible level (Lehman, 2014; DOJ, 2014);

WHEREAS many HIV disclosure laws were enacted in the 1980s during a climate of fear and uncertainty about the course of the epidemic, before transmission routes were understood and effective prevention strategies (e.g. condoms, ART, Post-exposure prophylaxis (PEP), Pre-exposure prophylaxis (PrEP) were available;

WHEREAS the Centers for Disease Control and Prevention (CDC) encourage states with HIV criminal statutes to re-assess these laws based on the current state of the evidence regarding HIV transmission risk and the public's health, given that behavior such as biting, spitting, and throwing bodily fluids, which pose a negligible risk of HIV transmission has, in some cases resulted in overly harsh sentencing (CDC, 2014);

WHEREAS APA strongly supports policies grounded in the research and science of HIV transmission and risk behavior;

WHEREAS criminalization laws may result in people living with HIV (PLHIV) being arrested for behaviors that pose a negligible risk of exposure or transmission;

WHEREAS criminalization laws may result in PLHIV being arrested for consensual sex;

WHEREAS criminalization laws may result in PLHIV being arrested for non-disclosure, even when proving disclosure occurred is often impossible;

WHEREAS laws and policies that focus on HIV-specific crimes and impose harsh penalties on people living with HIV are unjust, can potentially have a life-long impact (e.g. for felony conviction

that may result in inability to vote, difficulty obtaining employment, etc.), ultimately undermine evidence-based interventions and run counter to public health efforts to reduce HIV transmission;

WHEREAS HIV-specific criminal laws are often used to enhance non-related cases and to seek harsher penalties and sentencing;

WHEREAS states may also use general criminal laws or communicable disease laws to prosecute persons accused of intentionally trying to transmit HIV instead of HIV-specific criminal laws;

WHEREAS being convicted of violating HIV criminalization laws may result in serving time in correctional facilities where few HIV treatment programs exist;

WHEREAS incarceration of PLHIV increases the likelihood of HIV transmission within correctional facilities;

WHEREAS considerable taxpayer resources are expended in arresting, prosecuting, sentencing, and housing people accused of violating HIV criminalization laws with no clearly identified public health benefit;

WHEREAS these resources could be diverted to HIV treatment and prevention efforts;

WHEREAS HIV-specific laws and prosecutions may undermine significant publicly funded programs that encourage early testing and treatment of PLHIV;

WHEREAS all people must take responsibility for their actions with respect to protecting sexual partners and for protecting themselves from HIV and other sexually transmitted infections (STIs);

WHEREAS criminalization of HIV can increase the risk of interpersonal violence (IPV) for both women and men when HIV disclosure is not safe or advisable, during custody disputes or pregnancy, and can provide a mechanism for control by abusers who may threaten prosecution based on HIV status;

WHEREAS HIV criminalization laws increase stigma and discrimination related to HIV/AIDS;

WHEREAS people living with HIV are often marginalized and stigmatized on the basis of Lesbian, Gay, Bisexual, Transgender,

Queer or Questioning, and Intersex (LGBTQI) status, gender identity/expression, disability, race, ethnicity, socioeconomic status (SES), pregnancy/parental status, sex work, and intravenous drug use, even apart from legal discrimination in those states with HIV criminalization statutes;

WHEREAS criminalization of HIV may cause particular harm to women, youth, and men who have sex with men (MSM) as outlined in the background section below;

WHEREAS laws that criminalize perceived or potential HIV exposure may actually undermine public health efforts by providing a disincentive for persons at-risk to be tested;

WHEREAS HIV stigma and discrimination continue to be significant barriers to HIV testing, diagnosis, treatment and engagement in care, thereby fueling the epidemic;

WHEREAS APA strongly supports policies that are anti-discriminatory based on HIV status;

WHEREAS the U.S. Department of Justice recently released a guidance to states with HIV-specific criminal laws recommending the repeal or reform of these laws to eliminate any HIV-specific criminal penalties with the exceptions of 1) a person with known HIV committing a sex crime where there is risk of transmission, and 2) a person with known HIV who has the intent to transmit the virus and is engaged in a behavior with a high risk of transmission;

WHEREAS the U.S. Department of Justice (2014) and the following professional organizations have called for the end to discriminatory and stigmatizing HIV-specific criminal laws: National Alliance of State and Territorial AIDS Directors (2011), HIV Medicine Association (2012), Positive Justice Project (2012), Presidential Advisory Council on HIV/AIDS (2013), National Association of County & City Health Officials (2013), U.S. Conference of Mayors (2013), American Medical Association (2014), and the Association of Nurses in AIDS Care (2014);

WHEREAS APA has supported the 2014 REPEAL HIV Discrimination ACT (H.R. 1843); (Exhibit 6);

THEREFORE be it resolved that APA opposes HIV criminalization and recommends the repeal or reform of these laws to eliminate HIV-specific criminal penalties with the exceptions of 1) a person with known HIV committing a sex crime where there is risk of transmission, and 2) a person with known HIV who has the intent to transmit the virus and is engaged in a behavior with a high risk of transmission;

BE IT FURTHER RESOLVED that laws that are not in alignment with the current scientific evidence on HIV transmission should be repealed;

BE IT FURTHER RESOLVED that laws that criminalize behaviors posing low or negligible risk for HIV transmission should be repealed or reformed and better aligned with contemporary scientific evidence regarding HIV transmission probabilities for specific behaviors and the efficacy of risk-reduction activities (e.g., consistent condom use, use of PrEP);

BE IT FURTHER RESOLVED that laws that target PLHIV and engender harsher sentencing should be repealed;

BE IT FURTHER RESOLVED that laws that increase likelihood of incarceration for PLHIV should be repealed;

BE IT FURTHER RESOLVED that laws that undermine national HIV prevention efforts should be repealed;

BE IT FURTHER RESOLVED that criminalization laws that increase the risk of and intimate partner violence to, and control of women and other vulnerable people with HIV should be repealed;

BE IT FURTHER RESOLVED that laws that specifically target and criminalize PLHIV should be repealed;

BE IT FURTHER RESOLVED that laws that discriminate and stigmatize against PLHIV should be repealed;

BE IT FURTHER RESOLVED that psychologists practicing in states with HIV-specific criminalization laws are encouraged to better understand the impact of these laws on their patients/clients who have HIV or who may be at elevated risk for HIV infection.

Suggested Citation

American Psychological Association. (2018). Resolution Opposing HIV Criminalization. Retrieved from: <http://www.apa.org/about/policy/hiv-criminalization.aspx>

REFERENCES

- American Medical Association (2014). The AMA Adopts a Resolution Opposing HIV Criminalization. Resolution adopted June 2014. Available at: <http://hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/AMA%20HIV%20Criminalization%20Resolution%20with%20Ref.%20Comm.%20Comments.pdf>. Accessed on March 1, 2014.
- Association of Nurses in AIDS Care (2014). Position Statement: HIV Criminalization Laws and Policies Promote Discrimination and Must be Reformed. Position adopted, November 2014. Available at: http://www.nursesinaids.org/files/public/ANAC_PS_Criminalization_December12014.pdf. Accessed on March 1, 2014.
- Burris S, Beletsky L, Burleson J, Case P, & Lazzarini Z. (2007). Do criminal laws influence HIV risk behavior? An empirical trial. *Arizona State Law Journal*, 39:467-517
- Bradley H, Hall HI, Wolitski RJ, Van Handel MM, Stone AE, LaFlam M, et al. (2014). Vital Signs: HIV diagnosis, care, and treatment among persons living with HIV--United States, 2011. *MMWR*, 28;63(47):1113-7.
- Celum C & Baeten J. (2012). Tenofovir-based Pre-Exposure Prophylaxis for HIV Prevention: Evidence and evolving questions. *Curr Opin Infect Dis.*, 25(1): 51-57.
- Centers for Disease Control and Prevention (1993). Update: barrier protection against HIV infection and other sexually transmitted diseases. *MMWR*, 6;42(30):589-91, 597.
- Centers for Disease Control and Prevention (2009). HIV Prevention in the United States at a Critical Crossroads, 2009. Available at: http://www.cdc.gov/hiv/resources/reports/pdf/hiv_prev_us.pdf. Accessed on March 1, 2014.
- Center for HIV Law and Policy (2010). Ending and Defending Against HIV Criminalization: State and Federal Laws and Prosecutions. Available at: <http://www.hivlawandpolicy.org/resources/ending-and-defending-against-hiv-criminalization-state-and-federal-laws-and-prosecutions>. Accessed on March 1, 2014.
- Centers for Disease Control and Prevention (2014). Factsheet: HIV Transmission Risk: Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act. Available at: <http://www.cdc.gov/hiv/policies/law/risk.html>. Accessed on March 1, 2014.
- Dieffenbach CW & Fauci AS, (2009). Universal Voluntary Testing and Treatment for Prevention of HIV Transmission. *JAMA*. 301(22):2380-2382. doi:10.1001/jama.2009.828.
- Galletly CL, Glasman LR, Pinkerton SD, & DiFranceisco MS, (2012). New Jersey's HIV exposure law and HIV related attitudes, beliefs and sexual seropositive status disclosure behaviors. *AJPH*, 102 (11) 2135-2140.
- Halkitis, P.N., Kupprat, S.A., Hampton, M.E, Perez-Figueroa, R., Kingdon, M., Eddy, J. & Ompad, D.C. (2013). Evidence for a syndemic in aging HIV-positive gay, bisexual, and other MSM: implications for a holistic approach to prevention and healthcare. *Annals of Anthropological Practice*, 36(2), 365-386.
- HIV Medicine Association (2012). HIVMA Urges Repeal of HIV-Specific Criminal Statutes. Available at: http://www.hivma.org/uploadedFiles/IDSA/Careers_and_Training/Opportunities_for_Students_Residents/ID_Career_Paths/HIVMA%20Policy%20Statement%20on%20HIV%20Criminalization.pdf. Accessed on March 1, 2014.
- Lehman, JS, Carr M, Nichol AJ, Ruisanchez A, Knight DW, Langford AZ, et al. (2014). Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States, *AIDS Behav*, 18:997-1006.
- Leserman, J. (2008). The Role of Depression, Stress, and Trauma in HIV Disease Progression (meta-analysis). *Psychosomatic Medicine*, 70, 539-545.
- Logie, C. H., James, L., Tharao, W., & Loutfy, M. R. (2011). HIV, gender, race, sexual orientation, and sex work: A qualitative study of intersectional stigma experienced by HIV-positive women in Ontario, Canada. *PLoS medicine*, 8(11), e1001124.
- Mahajan A P, Sayles JN, Patel VA, Remien RH, Ortiz D, Szekeres G, & Coates TJ. (2008). Stigma in the HIV/AIDS epidemic: A review of the literature and recommendations for the way forward. *AIDS*, 22(Suppl 2):S67-S69.
- Marks G, Crepaz N, & Janssen RS, (2006). Estimating sexual transmission of HIV from persons aware and unaware that they are infected with the virus in the USA. *AIDS*, 26;20:1447-50.
- National Alliance of State and Territorial AIDS Directors (2011). National HIV/AIDS Strategy Imperative: Fighting Stigma and Discrimination by Repealing HIV-Specific Criminal Statutes. Adopted, February 2011. Available at: http://www.nastad.org/Docs/114641_2011311_NASTAD%20Statement%20on%20Criminalization%20-%20Final.pdf. Accessed on March 1, 2014.
- National Association of County & City Health Officials (2013). Statement of Policy: Opposing Stigma and Discrimination Against Persons with Communicable Diseases. Available at: <http://www.naccho.org/advocacy/positions/upload/13-11-Opposing-Stigma-and-Discrimination-against-Persons-with-Communicable-Diseases-2.pdf>. Accessed on March 1, 2014
- The White House Office of National AIDS Policy (2010). National HIV/AIDS Strategy for the United States. Available at: <https://www.whitehouse.gov/sites/default/files/uploads/NHAS.pdf>. Accessed on March 1, 2014.
- Patel P, Borkowf CB, Brooks JT, Lasry A, Lanksy A, & Mermin J, (2014) Estimating per-act HIV transmission risk: a systematic review. *AIDS*. 19;28(10):1509-19.
- Pinkerton, SD & Abramson PR, (1997). Effectiveness of condoms in preventing HIV transmission. *Social Science & Medicine*, 44(9), 1303-1312.
- Positive Justice Project (2012). National Consensus Statement on the Criminalization of HIV. Available at: <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/PJP%20Consensus%20Statement%20w%20Endorsers%2010-14.pdf>. Accessed on March 1, 2014.
- Presidential Advisory Council on HIV/AIDS (2013). Resolution on Ending Federal and State HIV-Specific Criminal Laws, Prosecutions, and Civil Commitments. Available at: http://hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/PACHA_Criminalization_Resolution%20Final%20012513.pdf. Accessed on March 1, 2014.
- Pretty LA, Anderson GS, & Sweet DJ, (1999). Human bites and the risk of human immunodeficiency virus transmission. *Am J Forensic Med Pathol*, 20(3):232-239.
- U.S. Conference of Mayors (2013). HIV Discrimination and Criminalization. Resolution proposed and adopted at the 81 st Annual Meeting, June 2013. Las Vegas, NV. Available at: http://www.usmayors.org/resolutions/81st_Conference/cs11.asp. Accessed on March 1, 2014.
- U. S. Department of Justice, Civil Rights Division (2014). Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Support Factors. Washington DC. Available at: <https://www.HIV.gov/federal-resources/national-hiv-aids-strategy/doj-hiv-criminal-law-best-practices-guide.pdf>. Accessed on March 1, 2014.
- Valdiserri, RO (2002). HIV/AIDS Stigma: An Impediment to Public Health. *Am J Pubic Health*, 92: 341-342.

- van der Straten A, Van Damme L, Haberer JE, & Bangsberg DR. (2012).
Unraveling the divergent results of pre-exposure prophylaxis trials for
HIV prevention. *AIDS*, 26(7), F13-F19.
- Young T, Arens FJ, Kennedy G E, Laurie JW, & Rutherford GW, (2007).
Antiretroviral post-exposure prophylaxis (PEP) for occupational HIV
exposure. *Cochrane Database of Systematic Reviews*, 1(1).
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