

Reevaluating Current HIV Laws: A Call to Action

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INTRODUCTION

The US is one of approximately 60 countries that has enacted laws making it a crime to expose others to HIV, to engage in certain sexual acts without the disclosure of one's HIV status, as well to intentionally transmit HIV to another person.¹ Thirty-three US states have laws criminalizing HIV transmission or exposure, while 38 can use general crime laws to prosecute HIV transmission or exposure. Twenty-four states require that HIV-positive people reveal their status to their sexual partners and 14 of those 24 states require that HIV-positive people reveal their status to any needle sharing partners.² Since 2008, the US alone has had more than 200 HIV-related prosecutions. While some of these prosecutions were warranted, HIV-infected individuals have been imprisoned for exploits as trivial as spitting or biting, acts known to carry no risk of transmission. Many of these laws were created over 20 years ago, when much less was known about the virus, and may have been seen as prudent at the time. However today, HIV can be very well controlled with proper testing and treatment, rendering many of these laws obsolete and discriminatory.

ANALYSIS

Jeff S. Crowley, Program Director of the National HIV/AIDS Initiative at the O'Neill Institute for National and Global Health Law, has spent much of his career shedding light on issues surrounding HIV and the law. I had the pleasure of attending his stimulating talk at the Conference on Retroviruses and Opportunistic Infections (CROI).³ Amid the myriad of cutting-edge HIV research presentations, Crowley enlightened attendees with an informative presentation focusing on the need to reframe current conversation about HIV criminal laws in order to protect and promote public health. Since the birth of the HIV epidemic in the 1980's, the ethical concerns surrounding this disease have always been muddled with misunderstanding and misinterpretation. It seems that in the last decade HIV, and its ensuing bioethical baggage, has taken a backseat to other demanding problems facing our healthcare industry. Nevertheless, Crowley reminded his audience that the criminalization of HIV remains a barrier to further progress in ending this global epidemic.

The CDC's website contains a thorough and updated list of known risks and their potential rate of HIV transmission. A person who is on therapy, with complete viral suppression, carries an insignificant risk of transmitting to another person. Even for those not on treatments, the risk for needle-sharing during injection drug use is 63/10,000 exposures, while receptive anal intercourse is 138/10,000, a mere .014% risk of infection.⁴ In his talk, Crowley noted that although the CDC reports spitting and biting as posing a "negligible" risk of transmission, this type of wording does not always hold up in a courtroom where vague phrasing can be misinterpreted and used against a person in trial. Still, each case carries its own nuisances. Proving if a disclosure was made, the person who rightfully transmitted the disease, and whether or not a condom had been used can be very difficult in a court of law.

However, what can be certain is that many of the laws previously enacted must be revisited. Most do not reflect the current hard scientific facts about HIV transmission risk. Additionally, as Crowley pointed out, there is no evidence proving these laws deter risky behavior. Currently, these laws simply cause worry, confusion, and send an “inaccurate message”¹ that the best prevention strategy is to avoid sexual partners with HIV. Outdated and inaccurate laws continue to fuel stigma, isolating the HIV positive population and discouraging many from seeking the care of health professionals. The individuals most at risk for transmitting HIV are more often the ones who do not know of their own positive HIV status. With laws still in place that continue to stigmatize HIV, these individuals are less likely to get tested, due to fear of legal prosecution. Nevertheless, it is crucial to differentiate between intentional and malicious cases of HIV transmission—which should undoubtedly be prosecuted—and less harmful cases such as nondisclosure. Furthermore, existing criminal assault laws cover these “purposeful intent” cases and do not require additional HIV-specific laws to properly convict a criminal.

This past summer, Iowa paved the way for change, becoming the first state in the country to reform its existing HIV criminalization law. One of the most strict in the country, this law subjected people living with HIV/AIDS to up to 25 years in prison as well as inclusion on the state’s sexual offender registry if no proof of disclosure to a sexual partner existed—regardless of whether safe sex had been practiced.⁵ It is the hope that the other states with HIV criminalization laws will follow suit and revisit laws that contain statutes which no longer reflect contemporary scientific research.

While Iowa’s unprecedented repeal demonstrates a sign of progress, Crowley reminded all CROI attendees that there is still much to be done, and change is not solely in the hands of lawyers, lobbyists and politicians. Crowley addressed all healthcare personnel in saying as patient providers, we have a unique capacity to shape popular opinion and serve as patient advocates. It is vital that healthcare providers learn about HIV laws and educate patients, as well as find opportunities to present objective scientific evidence to prosecutors about HIV transmission risk. New initiatives, such as developing tools for judges to learn more about HIV, can further educate all parties involved so we can begin to seal the rift between public health and law.

¹ Global Commission on HIV and the Law: Risks, Rights & Health, July 2012.
<http://www.hivlawcommission.org/index.php/report>

² McDonald, Helen, “Five Things You Should Know About The U.S.’s Criminalization of HIV”
<http://www.hivlawandpolicy.org/news/five-things-you-should-know-about-us’s-criminalization-hiv>.

³ Crowley, Jeff S. “Criminalizing HIV: Recent Experience in the United States and Africa to Update Laws and Policies to Promote the Public Health.” Conference on Retroviruses and Opportunistic Infections. Seattle, Washington. 25 Feb. 2015. Lecture.

⁴ <http://www.cdc.gov/hiv/policies/law/risk.html>

⁵ Philpott-Jones, Sean, “Living with HIV/AIDS Should Not be a Crime,”
<https://thebioethicsprogram.wordpress.com/2014/06/06/living-with-hiv-aids-should-not-be-a-crime/>.