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Center for Interdisciplinary Research on AIDS
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**CRIMINALIZATION OF HIV
NON-DISCLOSURE, EXPOSURE,
AND TRANSMISSION**
Working Annotated Bibliography

**Criminalization of HIV Transmission and Exposure Working Group
Law, Policy and Ethics (LPE) Core
Center for Interdisciplinary Research on AIDS
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This annotated bibliography is a working document. New literature will be added and updated periodically.

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Background

Criminal prosecution for non-disclosure, exposure and/or transmission of HIV has been a central discussion topic among people living with HIV, legal practitioners, public health officials, and those who work in HIV sectors. While there has been an extensive analysis in the literature discussing the complex issues associated with laws targeting HIV exposure and non-disclosure of one's HIV positive status to sexual or needle sharing partners, there is still a lack of robust empirical research investigating the impact of criminalization on people living with HIV and public health practices.

This annotated bibliography reviews existing literature focusing on the public health and legal issues related to criminalization of HIV non-disclosure, exposure, and transmission published in the last decade (2000-present). Although not exhaustive, the annotated bibliography provides a general introduction to selected articles that raise some of the complex issues and discussions surrounding criminalization of undisclosed HIV exposure. This document was initially generated to support the development of an agenda and scope of a work session involving policymakers, advocates, researchers, people who have been affected by HIV criminalization laws, and other relevant stakeholders. The work session was held in November 2011 in New Haven, Connecticut, and attended by participants representing academic research community, HIV/AIDS advocacy, public health, and criminal justice/legal sectors. The event was organized by the Criminalization of HIV Transmission and Exposure Working Group, a multidisciplinary group convened by the Law, Policy and Ethics (LPE) Core at the Center for Interdisciplinary Research on AIDS (CIRA) at Yale University. The work group aims to examine the law, policy, and ethical issues around laws criminalizing non-disclosure, exposure, and transmission, convene discussions to address the ethical and other implications of these criminal laws, and support new research initiatives related to criminalization of HIV undisclosed exposure.

Relevant articles are identified through a systematic examination of computerized databases including MEDLINE, PsycINFO, Web of Science, LexisNexis Academic, as well as a search for grey literature (Dissertation Abstracts, Google and Google Scholar). Additional literature resources have also been identified through consultation with key stakeholders.

The bibliography is broadly divided into four categories:

- Category 1: annotates policy documents and fact sheets pertaining to HIV/AIDS exposure and transmission criminalization
- Category 2: focuses on ethical issues related to HIV status disclosure and non-disclosure
- Category 3: describes existing empirical studies concentrating on epidemiology/psychology/behavioral evidence
- Category 4: explores the implications of criminalization on public health and legal practice.

Category 1: Policy Documents and Fact Sheets

Association of Chief Police Officers (ACPO). (2010). *ACPO investigation guidance relating to the criminal transmission of HIV*. London: Association of Chief Police Officers (ACPO). Retrieved from <http://www.nat.org.uk/Our-thinking/Law-stigma-and-discrimination/Police-investigations.aspx>.

In 2010, the Association of Chief Police Officers (ACPO) in collaboration with the National AIDS Trust and Terrence Higgins Trust published guidance for investigations involving cases of HIV reckless transmission. The guidance was developed to ensure fair investigation that respects the right of people living with HIV and set the standard in line with the Crown Prosecution Service (Crown Prosecution Service, 2008) policy for police involved in the investigation of HIV exposure or transmission cases. Key documents included in the guidance are as follows: 1) a police investigation flowchart that describes investigative process once an allegation is made, 2) a fact sheet of HIV-related clinical facts, 3) an evidential flowchart that illustrates the steps to ensure appropriate evidence collection, 4) documents with recommendations related to issues of confidentiality, cases involving a person under 18, and initiating a contact with individuals via sexual health clinics. The guidance is available to police officers in England, Wales, and Northern Island.

Center for HIV Law and Policy. (2010). *Ending and defending against HIV criminalization: state and federal laws and prosecutions, vol. 1*. New York City: Center for HIV Law and Policy. Retrieved April 28, 2011 from <http://www.hivlawandpolicy.org/resources/view/564>.

This guidance paper was released in November 2010, and is intended as a comprehensive resource to support people living with HIV, their lawyers and advocates to respond to HIV criminalization. The paper includes analyses of laws in each state and U.S. territory and illustrative cases to provide the reader with information on how policies and statutes are applied in their states. In addition, a summary of federal criminal statutes and prosecutions of HIV-related offenses in the military is presented. The guidance also includes several informative illustrations representing number of prosecutions, arrests, and sentencing enhancements in various jurisdictions in the United States, descriptions and outcomes of HIV exposure cases between 2008 and 2010, and a fact sheet that recapitulates issues surrounding HIV criminalization intended to be used by advocates.

Center for HIV Law and Policy. (2011). *Guidance for people living with HIV who are at risk of, or are facing, criminal prosecution for HIV non-disclosure or exposure*. New York City: Center for HIV Law and Policy. Retrieved May 5, 2011 from <http://www.hivlawandpolicy.org/resources/view/580>.

This fact sheet provides concise important guidance on what to do when a person who is HIV-positive is at risk of being arrested and charged with HIV status non-disclosure or exposure. The guidance includes recommendations to document evidence of HIV status disclosure, to understand the laws that criminalize HIV exposure and/or non-disclosure in the state where a person lives, as well as other "do's" and "don'ts" to avoid or prepare for criminal prosecution. A list of legal service providers and resources is also included in this fact sheet.

Center for HIV Law and Policy. (2012). *Prosecutions for HIV exposure in the United States, 2008–2012*. New York City: Center for HIV Law and Policy. New York City: Center for HIV Law and Policy. Retrieved January 23, 2012 from <http://www.hivlawandpolicy.org/resources/view/456>.

This chart reports 128 prosecutions and arrests for HIV exposure in the United States between 2008 and 2012. Descriptions and outcomes of each case are presented and internet links to news articles reporting the cases are also included when available. The authors note that since not all cases of HIV exposure are reported in the media, the chart serves as an illustrative, not exhaustive review.

Crown Prosecution Service. (2008). *Policy for prosecuting cases involving the intentional or reckless sexual transmission of infection*. London: The Crown Prosecution Service. Retrieved from <http://www.cps.gov.uk/publications/prosecution/sti.html>.

In 2008, the United Kingdom Crown Prosecution Service (CPS) released a policy statement to clarify how the CPS responds to cases that involve intentional or reckless sexually transmitted infection in England and Wales. The statement describes the review process of referred cases that include an evidential test to provide a "realistic prospect of conviction against each defendant on a consideration to decide whether a prosecution is needed in the public interest. It also clarifies circumstances related to prosecutions such as that reckless HIV transmission is only punishable if the defendant is aware of their HIV status and that he or she understands that they were infections to other people. The policy statement received both positive responses and critiques from HIV/AIDS organizations and stakeholders.

Crown Prosecution Service. (2008). *Intentional or reckless sexual transmission of infection*. London: The Crown Prosecution Service. Retrieved from http://www.cps.gov.uk/legal/h_to_k/intentional_or_reckless_sexual_transmission_of_infection_guidance.

This legal guidance is an accompanying document to the policy statement published by the Crown Prosecution Service (Crown Prosecution Service, 2008). This guidance is intended for prosecutors in the UK and outlines how prosecutors should deal with cases involving intentional or reckless sexually transmitted infection during consensual sexual activity. The document defines the conduct of people living with HIV and circumstances that could be charged by the criminal law as well as evidence required to show that the defendant is responsible for exposing others.

Elliot, R. (2002). *Criminal law, public health and HIV transmission: A policy options paper*. Geneva: UNAIDS. Retrieved May 4, 2011 from http://data.unaids.org/publications/IRC-pub02/jc733-criminallaw_en.pdf.

This policy options paper was issued by the UNAIDS to provide guidelines and policy considerations that should be taken into account by policymakers in addressing HIV/AIDS-related legislation. The UNAIDS urges policymakers to examine the functions of the criminal law in the community and whether or not the law contributes to preventing HIV transmission. The use of public health law as an alternative to HIV criminalization is discussed, identifying the benefits of the former including flexibility in interventions to support individuals to address underlying problems (e.g., addiction) instead of punishment, and placing the person in a less high-risk setting than a prison. The UNAIDS HIV/AIDS and Human Rights International Guidelines advise against HIV-specific laws, and highlight some considerations in defining prohibited conduct: 1) to target conduct that creates both risk of HIV transmission and actual transmission; 2) to consider the degree of HIV transmission risk and only prosecute conduct that carries a

significant risk; 3) to examine the nature of the conduct whether it is coercive (e.g., rape, needle stabbing) or consensual (e.g., deceit, non-disclosure); and 4) to define mental culpability (i.e., intent, recklessness). The paper concludes with recommendations regarding facilitating HIV prevention efforts, setting parameters on the use of criminal law, and establishing prosecutorial guidelines and HIV education for all personnel within the criminal justice system including prosecutors, police, lawyers, and jurors.

National Alliance of State & Territorial AIDS Directors (NASTAD). (2011). *National HIV/AIDS Strategy Imperative: Fighting Stigma and Discrimination by Repealing HIV-specific Criminal Statutes*. Washington, D.C.: NASTAD. Retrieved April 6, 2011 from

http://www.nastad.org/Docs/highlight/2011311_NASTAD%20Statement%20on%20Criminalization%20-%20Final.pdf.

This policy statement asserts that the National Alliance of State & Territorial AIDS Directors (NASTAD) is strongly against the enactment of HIV-specific legislation and sentence enhancement for people living with HIV who are convicted of criminal offenses. The statement shows NASTAD's support for the National HIV/AIDS Strategy (NHAS) and highlights the steps identified in the NHAS, namely to review existing HIV-specific statutes and ensure that they reflect current evidence of HIV transmission and public health effort to prevent and treat HIV. The statement indicates that NASTAD is committed to support the provision of HIV prevention and care services for individuals living with HIV, encourage them to learn their status using confidential HIV test, and promote public knowledge of the stigmatizing impact of criminalization. NASTAD calls for the development of HIV transmission prevention programs by state and local governments that protect the human rights of people living with HIV.

UNAIDS. (2008). *Policy brief: Criminalization of HIV transmission*. Geneva: UNAIDS. Retrieved April 28, 2011 from

http://data.unaids.org/pub/basedocument/2008/20080731_jc1513_policy_criminalization_en.pdf

In this Policy Brief, UNAIDS recognizes that applying criminal law beyond intentional transmission cases could deter HIV prevention efforts. People could be discouraged to access HIV testing since not knowing one's status may be perceived as the best defense in a criminal case. Distrust in health services and researchers could also occur as people may fear that their HIV status information will be used in a law suit. UNAIDS makes several recommendations to governments: 1) limit criminalization only to the intentional transmission of HIV; 2) review the application of general criminal law to avoid inappropriate enforcement in the context of HIV; 3) expand proven HIV prevention programs while protecting the human rights of all people including people living with HIV; and 4) protect women and members of marginalized groups such as sex workers and drug users from being disproportionately prosecuted due to stigma and discrimination. Furthermore, the importance of engaging people living with HIV, women's and human rights groups, and other key populations in developing and/or monitoring HIV laws and enforcement is also underlined in this paper.

UNAIDS Reference Group on HIV and Human Rights. (2008). *Statement on Criminalization of HIV Transmission and Exposure*. Geneva: UNAIDS. Retrieved May 4, 2011 from

http://data.unaids.org/pub/Report/2009/20090303_hrrefgroupcrimexposure_en.pdf

This statement was released by the UNAIDS Reference Group on HIV and Human Rights to support the policy brief (UNAIDS, 2008) and the UNAIDS's recommendations

for countries to review criminal laws to HIV transmission. The Reference Group states that HIV-specific offenses are not generally warranted and that governments should only limit criminalization to cases of intentional transmission of HIV. The statement urges countries to reform their laws and policies and take the following steps: 1) promoting supportive environments for voluntary disclosure of HIV status; 2) removing legal barriers to HIV prevention programs such as age-appropriate sex education and needle-exchange programs; 3) enforcing anti-discrimination laws that protect people living with HIV or at risk of infection; 4) reviewing laws that criminalize marginalized vulnerable groups such as sex workers and men who have sex with men; and 5) reforming national intellectual property legislation to support global trade rules and promote access to affordable generic HIV pharmaceuticals. The Reference Group also expresses its concerns about the application of criminal law to HIV transmission that will expose women to more violence and vulnerability based on the fact that women are often first to learn their status within a couple. This statement paper concludes with a recommendation for effective public education about non-discrimination and human rights in relation to HIV.

The White House Office of National AIDS Policy. (2010). *National HIV/AIDS Strategy for the United States: Federal Implementation Plan*. Washington, D.C.: ONAP. Retrieved May 3, 2011 from <http://whitehouse.gov/sites/default/files/uploads/NHAS.pdf>.

Following the release of President Barack Obama's Domestic HIV/AIDS Plan, the Office of National AIDS Policy committed to develop a National HIV/AIDS Strategy with three primary goals: 1) reducing the number of new infection HIV cases; 2) increasing access to care and improving health outcomes for people living with HIV; and, 3) reducing HIV-related health disparities. The strategy paper outlines a concise framework identifying priorities and actions to tackle the spread of HIV infection and improve the health of people living with HIV, as well as specific immediate Federal actions to be taken in calendar years 2010 and 2011. The Strategy highlights the importance of examining HIV-specific sentencing laws and the effects on people living with HIV. The paper also calls for legislators and policymakers to reconsider whether such laws would help support HIV prevention approaches or actually undermine the public health goals of promoting HIV screening and treatment. Also, collaboration between the Department of Justice and other Federal agencies is to be facilitated to prevent discrimination charges involving HIV from occurring.

Whitehorn, L. (2000). *America's Most Wanted: POZ conducts the first-ever national survey of new HIV-transmission crimes*. Retrieved May 5, 2011 from http://www.poz.com/articles/204_10206.shtml.

The article presents a comprehensive list of HIV-transmission crimes that occur between 1987 and 2000 across the United States. Eleven of the 101 reported cases resulted in HIV transmission but the author indicates that some information was difficult to verify including data about disclosure and HIV infection. The list includes 45 consensual sex cases, 22 for spitting or biting and five rape cases, among others. The article also presents nine first-person accounts of the offenders detailing their cases and punishment.

Category 2: Ethics

Bennett, R., Draper, H., and Frith, L. (2000). Ignorance is bliss? HIV and moral duties and legal duties to forewarn. *Journal of Medical Ethics*, 26(1), 9-15.

Bennet, Draper, and Frith explore whether transmission of HIV through consensual sex without the disclosure of positive HIV status should qualify as a criminal offense in the UK. The authors focus on determining if moral and/or legal duties to forewarn sex partners of HIV status exist. After careful analysis, they reject a general obligation to forewarn, and state that a specific moral obligation to forewarn may exist if there is a significant level of transmission risk. The authors also note that the criminalization of HIV transmission alone is unjustifiable, and criminalization laws should only be used where there is deliberate or reckless transmission of HIV, or any communicable disease, which leads to death or serious injury. The authors argue that laws that criminalize consensual sex where HIV may be transmitted on the basis of self-inflicted harm violate an individual's right to privacy and should be repealed. The authors conclude that criminal punishment of HIV transmission should only be applied where there is clear evidence that an individual was harmed and wronged when he/she became infected with HIV and argue for equal application of these laws in comparable cases of reckless transmission of other communicable diseases.

Katz T., and Betteridge G. (2004). Ontario: police disclose HIV status of accused under Police Services Act. *HIV AIDS Policy Law Rev*, 9(3), 22-24.

This paper describes "public safety advisory", a procedure taken by police services in Ontario, Canada to disclose personal information about a person charged with aggravated assault for HIV non-disclosure through unprotected sexual intercourse. Personal information disclosed by the police includes at the very least, name, age, and a photo with an advice for sexual partners to seek HIV testing or encourage people who had sexual relations with the person charged to contact the police. The authors argue that the advisories raise a number of legal issues for people living with HIV including offending the presumption of innocence when the advisory is applied to a person who is not found guilty. These advisories also contribute to increasing the feeling of alienation as well as stigma and discrimination experienced by people living with HIV. Further, it may also deter people from accessing health care services or other supports.

Muraca, S., and Mandell, M. A. (2003). Criminalization of HIV transmission involving non-disclosure of one's HIV-positive status. *University of Toronto Medical Journal*, 80(2), 123-125.

The paper discusses the case of R vs. Cuierrier in Canada and issues related to the case. It was reported that the defendant knew of his HIV-positive status at the beginning of his relationship with the complainant yet failed to disclose. However, his partner continued having unprotected sex with him after they were both tested for HIV and she was made aware of his HIV-positive status. The authors then pose some questions regarding Cuierrier's accountability for HIV exposure as well as the questionable consent that his partner gave following the HIV tests. The authors maintain that it is important to consider people living with HIV's 'moral duty' upon exploring a 'legal duty' to disclose. They further indicate that the level of transmission risk (low vs high risk) as described in the legislation should be taken into account as a factor that influences the strength of a moral duty to warn others of HIV infection. The authors state that individual's autonomy to disclose must be respected, unless there is a significant risk of harm to others. The authors conclude that criminalization is justifiable only when the complainant is harmed

by HIV infection and misinformed by not being warned of his/her partner's known HIV-positive status.

O'Byrne, P. (2011). HIV, nursing practice, and the law: what does HIV criminalization mean for practicing nurses. *J Assoc Nurses AIDS Care*, 22(5), 339-344.

O'Byrne discusses the application of HIV criminal laws in Canada and some potential effects of criminalization including increased stigmatization and discrimination among people living with HIV. He questions whether or not incarceration prevents HIV transmission. Practicing nurses often provide HIV care, and should be aware of the potential implications of these laws on their practice. The author notes several recommendations for nurses in order to assure patient confidentiality and avoid decreased service utilization due to a risk of being criminalized for non-disclosure: 1) obtaining patient's informed consent by letting them know that the information revealed during consultations will be recorded and can be used in courts of law, 2) documenting "practitioner actions, not patient history" to reduce the incriminating nature of such a report, and 3) ensuring an informed process for patients who seek diagnosis for other STIs without documenting data that could be incriminating such as a history of unprotected sex.

Säfken, C., and Frewer, A. (2007). The duty to warn and clinical ethics: legal and ethical aspects of confidentiality and HIV/AIDS. *HealthCare Ethics Committee Forum*, 19(4), 313-326.

The authors present an overview of HIV transmission criminalization in several countries including the United States, and how the criminalization of non-disclosure impacts the duty of a physician to reveal HIV-positive status to a person at risk. The authors cite the Tarasoff case decision in the 1970s that mandates physicians to warn a third party (i.e., identifiable victim) who is being threatened by a patient in order to avoid foreseeable harm. The authors review subsequent cases in which physicians neglect to warn their patients and third parties of HIV infections and therefore become liable to prosecution, as well as courts that refuse to apply the Tarasoff legislation to make their decisions. They discuss the complexity involved in performing a physician's duty to warn, weighing between breaking patient-physician confidentiality and preventing further HIV infection. The authors recommend physicians upon making their decisions to consider the gravity of possibly injury, to communicate with an individual who is HIV-positive about his or her obligation to inform their partners about the infection, and to contact a clinical ethics committee in cases of doubt. The authors conclude that despite the ongoing debate and issues related to a duty to warn, they ascertain that it is a useful tool to protect others from harm.

Category 3: Epidemiology/Psychology/Behavioral Research

Studies conducted in the United States

Bayer, R., and Fairchild-Carrino, A. (1993). AIDS and the limits of control: public health orders, quarantine, and recalcitrant behavior. *American Journal of Public Health*, 83(10), 1471-1471.

This paper describes findings from a survey that was conducted to gather information from 50 state health departments regarding any policies and practices to address individuals who are HIV-positive whose behavior poses a risk of transmission to others. Twenty-four states, including New York, New Jersey, and Massachusetts, that have high

AIDS prevalence, reported having no formal strategies to investigate reports about individuals suspected of recalcitrant behavior between the years 1980 and 1991. Of states that have processed reports of recalcitrant behavior, some had to discontinue their investigations due to lack of information, while others provided special counseling to reported individuals or issued cease and desist orders to those who failed to change their behavior (e.g., use condoms, disclose serostatus to sexual partners) despite counseling. In a small number of cases, public health officials have used the authority to order confinement in psychiatric facilities (i.e., quarantine) when a person is deemed as a public health threat. In some cases where an individual persists in certain risk behavior, criminal law has also been applied to assert social control over recalcitrant behavior. The authors note that the goal of public health interventions would be to prevent future harms and behavioral change, and stress that HIV prevention strategies should continue their focus on education, counseling, and harm reduction approaches.

Burris, S., Beletsky, L., Burleston, J.A., Case, P., and Lazzarini, Z. (2007). Do criminal laws influence HIV risk behavior? An empirical trial. *Arizona State Law Journal*, 39, 467-519.

This paper is a comprehensive analysis, including a detailed background section and footnotes, of the issues at hand in the criminalization debate. The authors surveyed 490 participants who are HIV-positive, HIV-negative, and with unknown serostatus, men who have sex with men (MSM) or have history of IDU, and compared risk behavior by state of residence – one state has an HIV-specific disclosure law (i.e., Illinois) and the other does not (i.e., New York). The study also examines participants' beliefs about whether or not such a law exists in their state of residence. The authors report that participants engaged in similar risk behaviors regardless of state of residence or their belief that their state of residence had such a law. The authors also find that the majority of respondents thought that it was wrong to expose others to infection and also that they should disclose their infection to sex partners. The outcome measure used in this analysis is condom use at last vaginal or anal sexual encounter. One interesting finding is that respondents in Illinois are more likely to use condoms for vaginal sex overall. Since risk behavior or likelihood of disclosure is not associated at all with the belief that a law existed in the state, the authors conclude that HIV criminal laws not only have no effect on risk behavior, but also do not deter people from accessing HIV prevention services, like HIV testing, and increasing HIV-related stigma. The authors note that in Illinois individuals living with HIV who disclose are more likely to engage in unsafe sex.

Delavande, A., Goldman, D. P. and Sood, N. (2008). Criminal prosecution and HIV-related risky behavior. *American Law & Economics Associate Annual Meeting*, 89, 1-44. Retrieved May 4, 2011 from <http://law.bepress.com/cgi/viewcontent.cgi?article=2583&context=alea>

This paper explores the effect of HIV-related prosecutions on people living with HIV's sexual behaviors using an economic model of risky sex with criminal enforcement. The model includes several types of risky sexual behavior such as number of partners; safer sex practices; HIV-positive status disclosure; and promiscuity of partners (whether or not respondent had sex with prostitutes). The authors use two sets of data: 1) HIV criminalization statutes and law enforcement in the US from a previous study (Lazzarini et al., 2000); and 2) sexual activity of people living with HIV from the HIV Costs and Services Utilization Study (HCSUS, 1994-2000). The authors describe that individuals who are HIV-positive and live in states where HIV-related prosecution rates are more aggressive are more likely to practice safe sex and have less sexual activity; but they are also associated with an increase in sex with prostitutes and reduced disclosure of

their HIV-positive status. Upon the authors' further analyses, a simulation model to illustrate the impact of their findings on HIV transmission found that a 100% increase in prosecution rate would reduce new infections numbers by roughly 34%. The authors conclude that further research is required to investigate other behavioral variables involved as well as the effect of HIV-related criminalization on the behavior of HIV-negative individuals and/or on AIDS treatment.

Duru, O. K., Collins, R. L., Ciccarone, D. H., Morton, S. C., Stall, R., Beckman, R. (2006). Correlates of sex without serostatus disclosure among a national probability sample of HIV patients. *AIDS and Behavior*, 10(5), 495-507.

Disclosure of HIV-positive serostatus to a sexual partner is a complex process. The authors examine the relationship between any sex without disclosure and theoretically- and empirically-based predictors of non-disclosure including individual and partnership variables. The cross-sectional study utilizes data from the 1998 Risk and Prevention survey, part of the HIV Cost and Services Utilization Study (HCSUS) comprises a nationally representative sample of 875 adults who are HIV-positive. Data collected include information on sexual behavior, disclosure of HIV status, and attitudes related to HIV-transmission risk behaviors. Personal responsibility variables such as religiosity and responsibility to disclose are found as significant correlates of sex without disclosure. Other significant predictors of non-disclosure include expected negative reactions from sex partner and friends, perceived social support, the belief that HAART reduces HIV transmission risk, drug use, and relationship characteristics (e.g., long-term partnership vs. one-time sex partner). Within the multivariate analyses combining both individual-level and partnership-level variables, potential legal consequence (i.e., felony charge) for non-disclosure is not a predictor, and the authors report that there is no difference in the percentages of those engaging in sex without disclosure among residents of states where non-disclosure laws are reinforced and residents of states without such laws. Although knowledge of the laws is not measured in the study, the authors emphasize that the presently enacted laws are not associated with lower rates of sex without disclosure. Analyses across subgroups were not conducted due to limited sample size, and the authors acknowledge that circumstances and attitudes toward disclosure or lack of disclosure may be different for gay and bisexual men, heterosexual men, and women.

Francis, A. M. and Mialon, H. M. (2008). The optimal penalty for sexually transmitting HIV. *American Law and Economics Review*, 10, 388-423.

In this paper, the authors discuss a signaling model of sexual behavior and testing that they develop to determine whether current HIV exposure criminal laws are efficient and to develop the socially optimal law. The authors consider a law to be socially optimal if it generates information disclosure and thus minimizes non-consensual HIV transmission. In the analyses, the authors take the following factors into account: 1) assumption that anonymous HIV test is available; 2) inclusion of both verifiable and unverifiable HIV tests (the latter refers to when only the person who takes the test can directly know the result); 3) assumption that safe sex is not always safe in relation to the effectiveness of condom use. They propose that the optimal law includes a penalty for knowing and unknowing HIV transmission therefore creates an incentive to HIV testing, and involves no penalty for exposure without actual transmission. The authors argue that their proposed law is efficient and would reduce trial costs since penalizing cases of actual transmission is less difficult than uncovering cases without transmission. They address concerns regarding the fairness of a law for punishing people for unknowingly transmitting HIV and examine the probability and recommendation.

Galletly, C. L., and Dickson-Gomez, J. B. (2009). HIV seropositive status disclosure to prospective sex partners and the criminal laws that require it: Perspectives of persons living with HIV. *International Journal of STD & AIDS*, 20(9), 613-618.

The authors review a study exploring the views of individuals with HIV living in Michigan on the state's HIV disclosure law. Thirty-one Michigan residents who are HIV-positive participated in focus groups and discussed various aspects of HIV-positive status disclosure and Michigan's law. The study reveals that while participants endorse serostatus disclosure as a personal duty and social norm, they object to the law itself. Some negative impacts of the law are identified: 1) unwanted secondary disclosure; 2) false accusation of failing to disclose; 3) perceived vulnerability within the legal system; and 4) unfair distribution of HIV prevention burdens between persons living with HIV and ostensibly HIV-negative at-risk partners. The authors highlight misunderstandings among participants regarding criminal laws and legal proceedings. The authors conclude that further research is required focusing on comparisons of likeliness to disclose and perceived HIV-related stigma between persons with HIV living in states with and without HIV-specific statutes. Lastly, more research is also needed to better understand the impact of HIV disclosure laws among HIV-negative individuals, specifically on perceived sense of responsibility for safer sexual behavior.

Galletly, C. L., DiFranceisco, W., and Pinkerton, S. D. (2009). HIV-positive persons' awareness and understanding of their state's criminal HIV disclosure law. *AIDS and Behavior*, 13, 1262-1269.

The authors surveyed a convenience sample of 384 people living with HIV about their knowledge of the HIV disclosure law in Michigan and collected data on level of understanding of the law, where they learn about the law, and demographic information to assess differences among groups. Results indicate that 76% of participants are aware that the law existed. Participants who live longer in the state and with higher incomes are positively associated with awareness of the law. Most participants have a good understanding of the law, however approximately 70% are unaware of the penalty for non-disclosure. Most participants (80%) report learning about the law through HIV-specific sources (i.e., support groups, flyers, and AIDS Service Organizations), whereas only 50% report getting information from the general media. Also of note, the percentage of participants who received information about the law when first diagnosed with HIV has increased steadily since the law was passed. The authors call for further research to determine whether criminal HIV disclosure laws have any unanticipated negative effects on people living with HIV.

Galletly, C.L. and Pinkerton, S.D. (2008). Preventing HIV transmission via HIV exposure laws: applying logic and mathematical modeling to compare statutory approaches to penalizing undisclosed exposure to HIV. *Journal of Law, Medicine and Ethics*, 36(3), 577-584.

The authors set out to analyze state HIV criminalization laws. They categorized laws into two groups: "strict" exposure laws that require serostatus disclosure prior to any sexual activity and "flexible" exposure laws that allow low-risk sexual activities. The authors examine the circumstances in which each type of law would be most effective at reducing HIV transmission. The effectiveness of each type of law hinges on the level of risk individuals take following disclosure of HIV positive status. The authors found that depending on compliance with the laws, both types of laws could be effective at producing behavior change. However, because flexible laws provide the person who is HIV-positive with two options, disclosure or low risk sex, they do less to protect the partner's autonomy to determine the level of risk he or she is willing to take. The model

used in this assessment however, looks at separate sexual acts and does not account for sexual partnerships, which could be a limitation.

Galletly, C. L., Pinkerton, S. D., and DiFranceisco, W. (2012). A quantitative study of Michigan's criminal HIV exposure law. *AIDS Care*, 24(2), 174-179.

The objectives of the study were (1) to determine the extent to which persons living with HIV in Michigan were aware of and understood Michigan's criminal HIV exposure law, (2) to examine whether awareness of the law was associated with seropositive status disclosure to prospective sex partners, and, (3) to examine whether awareness of the law was associated with potential negative effects of the law on persons living with HIV including heightened HIV-related stigma, perceived societal hostility toward PLWH, and perceived need to conceal one's HIV infection. A statewide sample of 384 people living with HIV in Michigan completed anonymous surveys. More than three-quarters (76%) of respondents were aware that Michigan had an HIV exposure law and the majority (62%) reported that they learned about the law from a case manager. Awareness of the law was not associated with seropositive status disclosure to all prospective sex partners, decreased HIV transmission risk behavior, or increased perceived responsibility for HIV transmission prevention. However, awareness of the law was significantly associated with disclosure to a greater proportion of sex partners prior to respondents' first sexual interaction with that partner. Awareness of the law was not associated with increased HIV-related stigma, perceived societal hostility toward PLWH, or decreased comfort with seropositive status disclosure. The authors note that evidence of an impact of HIV exposure law on disclosure was mixed and that further research is needed to examine the various forms of HIV exposure laws among diverse groups of persons living with or at increased risk of acquiring HIV.

Gorbach, P. M., Galea, J. T., Amani, B., Shin, A., Celum, C., Kerndt, P., and Golden, M. R. (2004). Don't ask, don't tell: patterns of HIV disclosure among HIV positive men who have sex with men with recent STI practicing high risk behavior in Los Angeles and Seattle. *Sexually Transmitted Infections*, 80, 512-517.

The authors conducted in-depth interviews with 55 men who have sex with men (24 in Seattle, 31 in Los Angeles) reporting either a recent STI or recent unprotected anal intercourse with an HIV negative or serostatus unknown partner. Themes with references to HIV disclosure are identified in the interview analysis and the authors categorize the themes into four broad concepts: 1) ethical obligations related to HIV (nobody's business, responsibility, fear of law); 2) gauging risk and rationalization (low viral load, type of sex); 3) acceptance and adjustment to HIV positive status (denial, fear of rejection); and 4) context and meaning of sex (drug use, public sex, casual sex, feelings for partner). The authors report that fear of criminalization as a rationale to disclose is identified by more men in Los Angeles than Seattle, with verbatim quotes noting that non-disclosure could be considered "murder" or "manslaughter". While the authors indicate that raising people's awareness about the legal implications for non-disclosure for HIV transmission may improve a sense of personal responsibility and the likelihood to disclose, they also state that further research is required before incorporating this into any public health policy.

Horvath, K. J., Weinmeyer, R., and Rosser, S. (2010). Should it be illegal for HIV-positive persons to have unprotected sex without disclosure? An examination of attitudes among US men who have sex with men and the impact of state law. *AIDS Care*, 22(1), 1221-1228.

This paper presents findings from a descriptive online survey of attitudes among MSM toward criminalizing unprotected sex without disclosure by people living with HIV. The study also investigates whether participants residing in a state with HIV-specific statutes have different sexual risk behavior and attitudes toward criminalization compared with those who live in a state with no HIV-specific law. The authors report that most respondents (65%) believe it should be illegal for individuals who are HIV-positive to have unprotected sex without disclosure and confirms the results from previous study (Burris et al., 2007) that reports residing in a state with HIV-specific statutes is not associated with differences in attitudes. The authors conclude that HIV-criminalizing statutes are not a deterrent to high-risk sexual behavior among MSM, and that preventive measures should be more focused on improving personal responsibility beliefs and other individual risk factors.

Kelly, B., Khanna, N., and Rastogi, S. (2011). *Diagnosis, sexuality and choice: Women living with HIV and the quest for equality, dignity and quality of life in the U.S. (Vol. 2011, pp. 1-16)*. Oakland: Positive Women's Network. Retrieved June 29, 2011 from <http://www.pwn-usa.org/wp-content/uploads/2011/03/PWN-HR-Survey-FINAL.pdf>.

The U.S. Positive Women's Network (PWN) distributed a national survey from February 2010 to January 2011 to examine factors pertaining to human rights and quality of life of women living with HIV in the U.S. The survey questions collect both quantitative data and anecdotal reports that are focused on 1) HIV testing, counseling, and disclosure experiences; 2) sexual and reproductive health; and 3) criminalization of HIV. Out of 160 participants, 103 identified as HIV-positive. When asked why they take HIV testing, many women stated that they get tested only after experiencing AIDS-related symptoms and required to be hospitalized. Women also reported breaches of confidentiality by health professionals such as medical providers, pharmacists, and AIDS service organizations staff. Only half of women indicated having conversations about their reproductive options with their doctors, and many experienced stigma and discrimination based on their HIV-positive status when expressing their reproductive intentions. Most women in the survey are aware of laws criminalizing HIV exposure and transmission but are uncertain if their state has such laws and how the laws are applied. Concerns regarding criminal laws are related to increasing stigma against people with HIV, and that the laws would undermine testing, disclosure, and treatment campaigns. Those who believe that the laws are not harmful for people with HIV (27%) commented that every person should take responsibility to prevent from being infected with HIV. The U.S. Positive Women's Network (PWN) recommends reviewing any HIV-related laws and their enforcement to support human rights approach to increase voluntary HIV disclosure rather than criminal prosecutions.

Klitzman, R., Kirshenbaum, S., Kittel, L., Morin, S., Daya, S., Mastrogiacomo, M., and Rotheram-Borus, M. J. (2004). Naming names: perceptions of name-based HIV reporting, partner notification, and criminalization of non-disclosure among persons living with HIV. *Sexuality Research & Social Policy*, 1(3), 38-57.

Using in-depth interviews, the authors explore the experiences and views of people living with HIV toward three HIV-related controversial policies that are enacted in some states within the United States: 1) name-based HIV case reporting; 2) partner notification; and 3) criminalization of non-disclosure of HIV-status to sexual partners. A

subset of sample (n=76) was randomly selected for this study from a larger sample (n=152) of a research project addressing people living with HIV's risk and other health-care behaviors. Content analyses of the interviews show that attitudes fall into three broad themes: in favor, against, and mixed. The authors note the difficulty faced by respondents in weighing conflicting ethical and public health values across the policies. Public health benefits are expressed by respondents, including epidemiological surveillance (HIV registry), providing opportunities to individuals to seek information and treatment (partner notification), and supporting disclosure and safer sex behavior (criminalization). However, the authors also recognize a wide range of misconceptions and ambivalences about the policies and call for educational efforts targeting public understanding and awareness of the policies. They conclude that policymakers must take into account the life contexts explored in the study upon designing and implementing HIV prevention strategies.

Lazzarini, Z., Bray, S., and Burris, S. (2002). Evaluating the impact of criminal laws on HIV risk behavior. *Journal of Law, Medicine and Ethics*, 30(2), 239-253.

The authors report that criminalization of HIV could affect behavior by deterring unsafe behavior, supporting social norms, or incapacitating through imprisonment those that engage in unsafe behavior. Throughout the course of the paper, Lazzarini, Bray and Burris negate each of these points in the case of HIV criminalization. The authors state that prosecutions are not clearly related to the presence or absence of an HIV-specific statute or the prevalence of HIV in a jurisdiction. Additionally, they report that the number of HIV-related prosecutions is low compared to the estimated number of acts that put partners at risk of transmission. The authors found no evidence of systematic enforcement of HIV exposure laws. Another important point they raise briefly in this article deals with privacy of confidential health information and the release of this information to law enforcement by public health authorities for criminal cases of HIV transmission/exposure.

National Alliance of State and Territorial AIDS Directors (NASTAD). (2011). *Understanding state departments of health and corrections collaboration: a summary of survey findings — part II and strategic guidance towards ending criminalization-related stigma and discrimination*. Washington, D.C.: NASTAD. Retrieved January 6, 2012 from

http://www.nastad.org/Docs/021036_NASTAD%20Decriminalization%20Packet.pdf.

This report describes findings from an online survey conducted by the National Alliance of State and Territorial AIDS Directors (NASTAD) that examines state health departments' awareness of policies and practices that penalize individuals for non-disclosure, exposure, or transmission of HIV. The 34-item survey was sent to administrators of HIV/AIDS and viral hepatitis state health department programs in 59 U.S. states and territories. Thirty-eight (64.4%) state health departments responded and 21 participants indicated that their state has laws that criminalize HIV exposure or non-disclosure. Twenty-one respondents reported that there have been criminal proceedings in which individuals living with HIV have been arrested and/or prosecuted for consensual sex, biting and spitting. The author notes that as two-thirds of all states have HIV-specific criminal laws and prosecutions have been reported in 36 states, the relatively low responses (n=21) may reflect misidentification of HIV criminalization laws in their state and underreporting of where prosecutions have occurred. The majority of health departments indicate not having (n=21, 55.2%) or not being aware of (n=11, 28.9%) any policies and procedures that require people with HIV to acknowledge potential criminal liability for not disclosing their serostatus when engaging in sexual intercourse or giving

blood. Most respondents (65.8%) state that there are policies around the release of medical records to law enforcement in incidences involving alleged intentional HIV exposure. The author emphasizes that according to the survey results, some policies and procedures implemented in response to the criminal laws do not represent sound public health policy and call for refinement. In response to this, NASTAD has developed the Guidelines to End HIV Criminalization in Public Health Practice as a resource for state health departments to review their current policies relating to HIV criminalization.

Schwartz, S. L. (2010). *Who should've known better? Judgments of negligent sexual transmission of an STD as a function of STD type, litigant sexual orientation, and commitment* (PhD Dissertation), University of Nebraska, Lincoln.

This dissertation research investigates how judgments of negligent sexual transmission of sexual transmitted disease (STD) differ based on 1) type of STD (i.e., HIV or genital herpes); 2) sexual orientation of the litigants (i.e., heterosexual or gay); and 3) type of commitment between the litigants during sexual relationship (i.e., one night stand, an 8-month short-term relationship, a 5-year long-term relationship including cohabitation, or a 5-year long-term relationship including marriage). The study involves a group of mock jurors that are asked to make a number of legal and psychological judgments and utilizes an experimental approach using a computer-based self-report questionnaire and audio-recorded vignettes. The author reports that mock jurors tend to find the plaintiff more responsible when the type of relationship is less serious. Mock juror gender is found to have impact on verdict judgments in which male jurors tend to be in favor of the plaintiff when the plaintiff is gay and when the STD is genital herpes, whereas the opposite effects are reflected among female jurors. Other factors affecting judgments include individual differences in HIV stigma, anti-femininity bias, and religious fundamentalism. The author highlights the influence of HIV/AIDS stigma on attributions of blame found in her study, and discusses some practical implications such as the need for legal practitioners to develop a strategy for jury selection to avoid individual bias, and case presentation strategies to emphasize or deemphasize case-specific facts.

Wise, D. L. (2008). *Criminal penalties for non-disclosure of HIV-positive status: Effects on HIV testing rates and incidence*. (PhD Dissertation), University of Missouri, Kansas City.

This paper reports the first known study in the U.S. that examines the impact of laws criminalizing HIV non-disclosure on HIV testing rates and incidence. Secondary data on monthly HIV tests (i.e., confidential and anonymous tests), HIV incidence, and testing rates among high-risk individuals from state health departments with (i.e., New Jersey, California, and Virginia) and without (i.e., North Carolina, Oregon, and Texas) criminal laws were assessed using an interrupted time-series analysis. The underlying independent variable of the study to observe differences before and after the laws are implemented is the dates of the enactment of criminal laws in the intervention states (i.e., New Jersey, California, and Virginia). With the exception of California, there is a significant increase in total monthly tests in the month of the enactment of the laws in the intervention sites. Impacts on testing rates among high-risk persons are not reported, but a decrease in monthly testing is observed among those not reporting a risk factor in New Jersey. Only in New Jersey where the enactment of the law has an impact on HIV incidence – a decrease in HIV incidence at six months delay from the law implementation is reported. The author notes that variation in impacts on laws across intervention states can be explained by observing differences in the scope of the laws where California arguably has less strict laws due to the requirement of demonstrating

the intent to expose HIV. The author acknowledges limitations of the study such as lack of complete data and that it only includes information from publicly funded test sites.

Studies conducted outside the United States

Adam, B. D., Elliott, R., Husbands, W., Murray, J., and Maxwell, J. (2008). Effects of the criminalization of HIV transmission in Cuerrier on men reporting unprotected sex with men. *Canadian Journal of Law and Society*, 23, 143-159.

This paper reports on perceptions and experiences identified by 34 men who have unprotected sex with men most or all of the time. The authors emphasize that the study sample is not representative of the majority of gay and bisexual men who practice protected sex most or all of the time. Of these participants, 24 were HIV-positive, 10 were HIV-negative. Some participants report clear support for the requirement to disclose, mentioning the Supreme Court's law and ethical obligation to disclose as adequate rationalities. The authors present challenges faced by participants in terms of practicing disclosure including fear of rejection especially by partners they hope to establish relationships with. The authors also examine participants' views regarding shared responsibility between people living with HIV and those who are HIV-negative to prevent transmission. Some uncertainties related to vulnerability to prosecutions were expressed by participants including boundaries of safety level in safer sex, establishing disclosure and consent, and remaining liability if an HIV-negative partner does not take precautions despite a disclosure. The authors conclude that enforcing disclosure through a threat of criminal prosecution as an HIV prevention method becomes questionable especially in contexts where safer sex is practiced consistently regardless of disclosure.

African and Carribean Council on HIV/AIDS in Ontario (ACCHO). (2010). *Criminals and victims? The impact of the criminalization of HIV non-disclosure on African, Caribbean and Black communities in Ontario*. Toronto: African and Carribean Council on HIV/AIDS in Ontario. Retrieved January 24, 2010 from http://accho.ca/pdf/ACCHO_Criminals_and_Victims_Nov2010.pdf.

There have been a number of initiatives that examine the implications of criminalization of HIV non-disclosure in Canada, but little is known about the impacts of the laws on members of African, Caribbean and Black (ACB) communities. This report attempts to explore the intersections of race, HIV, and law in Ontario, and discusses opinions and experiences of ACB living with or affected by HIV in relation to HIV non-disclosure criminalization. Several face-to-face and telephone interviews were conducted with key informants (i.e., AIDS organizations, representatives from academic, legal, and media sectors) as well as focus groups with frontline workers from ethno-specific AIDS organizations, and ACB community leaders and members. With regards to serostatus disclosure by ACB persons who are HIV-positive, several issues are highlighted including possible negative impacts on families and communities upon disclosure such as alienation, and confusion regarding circumstances to disclose (i.e., whether disclosure is required when using condoms and/or viral load is undetectable). The report also underscores a possible overrepresentation of Black men among those charged, and due to data limitation, to confirm or deny this suggestion is difficult. The context of race and the criminal justice system in Canada is also examined, and also the impacts of criminalization on AIDS organization. The report comments on the role of media in covering HIV non-disclosure cases and reviews several inaccurate and stigmatizing portrayals that may affect the public's understanding of the laws and the reported cases. The report also presents responses to criminalization of HIV non-disclosure in many

countries and provides recommended strategies to address the racialization of criminalization in Ontario.

Dodds, C. (2007). Homosexually active men's views on criminal prosecutions for HIV transmission are related to HIV prevention need. *AIDS Care*, 20(5), 509-514.

This article presents an analysis of the responses of gay men to the HIV criminalization laws in the United Kingdom. The report includes quantitative and qualitative data that were drawn from the Gay Men's Sex Survey 2006. More than half of respondents agreed that prosecution of HIV transmission was a good idea. When asked for the reasoning behind their views, most men stated issues of personal responsibility to prevent HIV transmission. Three categories of "responsibility" were reported: 1) exclusive responsibilities of people with HIV; 2) shared responsibility by sexual partners; and 3) exclusive and individualized responsibilities of those who are HIV negative or with unknown HIV status. Almost two-thirds of respondents focused on the responsibility of HIV positive men and the rest was divided approximately even between the other two categories. Of those who are diagnosed with HIV, 70% indicated that the responsibility fell on either the negative partner or equally both partners to avoid transmission. Among men who never had an HIV test, 60% placed the responsibility on the positive partner. Expectations of disclosure are related with issues of responsibility, e.g, 86% of respondents who support imprisonment would expect a partner who is HIV-positive to disclose prior to sex. These responses highlight that criminalization laws pose a challenge in HIV prevention efforts, specifically in changing unrealistic expectations in relation to status disclosure from one's sexual partner.

Dodds, C, Bourne, A., and Weait, M. (2009). Responses to criminal prosecutions for HIV transmission among gay men with HIV in England and Wales. *Reproductive Health Matters*, 17(34), 135-145.

A qualitative study by Dodds and colleagues aims to examine responses to criminal prosecutions for sexual transmission of HIV among individuals who are HIV positive in England and Wales. The report outlines considerable confusion regarding the law with some respondents indicating little knowledge related to level of sentencing in HIV transmission cases or the possibility to use medical records in a criminal court. Forty-two participants in the study expressed mixed reactions to the impact of the laws on them personally, with some indicating that prosecutions had not influenced their sexual behavior while others stated that they had (or planned to) change their behavior and/or communicate differently with their sexual partners due to the potential of legal implications. A number of participants said that they disclosed their status more consistently since hearing about criminal cases while others chose to increase their anonymity by being less open about their HIV status. This paper highlights misunderstanding regarding the law as well as unwanted effects of the laws on behaviors, namely increased anonymity during sexual encounters and decreased disclosure of HIV status. The authors conclude that lawmakers, politicians, policymakers and other stakeholders should be informed of the complex consequences of criminal prosecutions of HIV non-disclosure to ensure the ideal balance between the pursuit of justice and the protection of public health.

Dodds, C. and Keogh, P. (2006). Criminal prosecutions for HIV transmission: people living with HIV respond. *International Journal of STD & AIDS*, 20, 509-514.

Dodds and Keogh conducted an exploratory study of 20 focus groups with heterosexual African American men and women and gay and bisexual men who are HIV-positive in the UK to assess reactions to criminal convictions for HIV transmission. They report that

90% of respondents regard criminalization laws as conflicted with messages about shared responsibility for safer sex and exacerbate HIV-related stigma and discrimination. Study participants reported that increased stigma would interfere with a person's ability to be open about HIV within his or her community and also with sex partners. The authors point out that fear of prosecution could decrease the quality of life for those with HIV and inhibit their ability to live openly with HIV. Further, the authors explain that a minority of participants think that criminalization may be justified if it causes people with HIV who do not disclose their status and engage in unprotected sex to change their behavior, although no scientific evidence exists to suggest that criminalization laws drive behavior change. The authors conclude by calling for research to determine the specific impact that HIV criminalization laws have on sexual risk behavior, disclosure of HIV status, and willingness to discuss HIV with health professionals.

Dodds, C., Weatherburn, P., Bourne, A., Hammond, G., Weait, M., Hickson, F., Reid, D., and Jessup, K. (2009). *Sexually charged: the views of gay and bisexual men on criminal prosecutions for sexual HIV transmission*. London: Sigma Research. Retrieved May 4, 2011, from <http://www.sigmaresearch.org.uk/files/report2009a.pdf>.

This report describes findings from a study exploring the perspectives on HIV-related criminal prosecutions of men who have sex with men in the UK. The authors explain that while prosecutions for HIV transmission have occurred since 2001, there is no HIV-specific law in UK criminal legal systems. A self-report survey called the Gay Men's Sex Survey (GMSS) 2006 was conducted, recruiting over 12,000 respondents across the UK. All men are asked, "Do you think it is a good idea to imprison people who know they have HIV if they pass it to sexual partners who do not know they have it?" and given options to answer: Yes, No, Not Sure. Respondents were then asked to give an open-ended explanation of their response. The authors report that men who are HIV-positive are much less likely to support prosecutions, and favor for prosecutions are common among men not diagnosed with HIV (previously negative or never tested). The authors address the importance of providing men who have limited experience of HIV with knowledge and skills to understand criminalization and minimize harm. They conclude that HIV health promotion needs to focus on the stigma associated with gay and bisexual men living with HIV.

Karago-Odongo, J. W. (2008). *Immigrant women living with HIV/AIDS: their barriers as experienced by service providers*. *Theses and dissertations, Paper 91*. Retrieved June 2, 2011 from <http://digitalcommons.ryerson.ca/dissertations/91>.

This paper discusses service providers' perspectives in working with immigrant women living with HIV/AIDS and barriers experienced by the population. The author approaches the issues by first reviewing relevant Canadian literature to highlight barriers identified in previous studies. Secondly, she conducted face-to-face interviews with people working in organizations that serve immigrant women who are HIV-positive. The author reports that her findings are in line with other studies identifying barriers that prevent immigrants living with HIV from seeking services, such as stigma, language, cultural practices and religious beliefs, gender and sexual orientation, and trust. Although the focus of this study is not HIV disclosure law in particular, criminalization is indicated as a barrier to service by most study participants. Service providers report that criminalization will create challenges: 1) the fear of HIV criminalization may deter immigrant service users from accessing the service; 2) criminalization will put women living with HIV in a vulnerable place with a risk of being charged for exposing their children to HIV; and 3) informing clients who are HIV-positive of the law will be challenging as they may view

the workers as “a person who is policing their behavior”. The author recommends that it is important to involve more immigrant women, regardless of their serostatus, in the community groups and provide them with knowledge to help reduce stigma and disseminate HIV prevention information.

Mykhalovskiy, E., Betteridge, G. and McLay, D. (2010). *HIV non-disclosure and the criminal law: Establishing policy options for Ontario*. Toronto: Ontario HIV Treatment Network. Retrieved May 3, 2011 from <http://www.ohtn.on.ca/Documents/Publications/HIV%20non-disclosure%20and%20the%20criminal%20law.pdf>.

This report focuses on experiences and concerns of people living with HIV and those who work with them regarding the criminal law obligation to disclose HIV status in Canada. It is part of a larger document funded by the Ontario HIV Treatment Network that compiles evidence addressing policy and issues related to HIV criminalization. Using qualitative approaches, the authors conducted interviews and focus groups with 25 people living with HIV and 28 people who work in HIV sector including health care providers, public health officers, lawyers and HIV/AIDS case workers. The authors present themes discussed in the interviews such as respondents' concerns about HIV criminalization, legal requirement to disclose, and vague concept of significant risk stated in the Criminal Code. The authors conclude with recommendations offered by participants suggesting coordination between public health and criminal justice systems without compromising each system's mandate and autonomy. The interview respondents also point out that scientific evidence-based information should be taken into account in establishing greater clarity about significant risk, and that prosecutorial guidelines in HIV-related cases need to be developed to promote standards within the criminal justice systems.

Mykhalovskiy, E. (2011). The problem of "significant risk": exploring the public health impact of criminalizing HIV non-disclosure. *Soc Sci Med*, 73(5), 668-675.

This research examines the concept of "significant risk" - a legal concept that has been used in coordinating criminal law governance in Canada - and its impact on public health practices and strategies. Mykhalovskiy interviewed 28 healthcare and HIV service providers, and conducted four focus groups with 26 people living with HIV in the three cities in the province of Ontario: Toronto, Ottawa and Hamilton. A key theme emerged in the analysis was that there is a significant disconnect between scientific research on HIV transmission and the understanding of what poses a “significant risk” in sexual circumstances. Some participants who are HIV-positive state that they disclose at all times prior to sexual circumstances while others become less open due to the law. Healthcare providers report that unclear legal concepts of significant risk have challenged their efforts to communicate public health-focused safer sex and establish an honest and open dialogue about HIV non-disclosure in counseling relationships. The author emphasizes that the lack of clarity of the concept of significant risk has contributed to troubling burdens experienced by healthcare providers to provide meaningful HIV prevention and non-disclosure counseling.

Mykhalovskiy, E. and Betteridge, G. (In Press). Who? What? Where? When? And with what Consequences? An Analysis of Criminal Cases of HIV Non-disclosure in Canada. *Canadian Journal of Law and Society*.

This paper provides a comprehensive analysis of temporal trends, demographic patterns, and aggregate outcomes of criminal cases of HIV non-disclosure in Canada. The authors examined news reports published by the Canadian HIV/AIDS Legal

Network and conducted electronic searches of legal databases and internet searches to identify criminal cases related to HIV non-disclosure. A total of 122 cases were documented between 1989 and 2010 in Canada in which 114 individuals faced criminal charges, and nearly half (48%) of these cases occurred in Ontario. The authors reported an increase in the number of cases in 2004 and it remains high until 2010. Demographic patterns analyses highlight that those who have been charged for non-disclosure are mostly heterosexual men, and there is a large proportion of recent criminal cases involving Black, African, and Caribbean men. Data on case outcomes demonstrate a wide range in sentences of incarceration. The authors conclude with recommendations for future research such as to investigate the experiences of people who have become HIV-positive due to non-disclosure, and examine stigma and other social processes in relation to the high proportion of criminal cases involving Black heterosexual men.

Category 4: Public Health/Legal Practice Issues

Azad, Y. (2008). Developing guidance for HIV prosecutions: an example of harm reduction? *HIV/AIDS Policy & Law Review*, 13(1), 13-19.

Prosecutions for reckless HIV exposure and transmission have been taking place in England and Wales since 2003. This paper describes the process of how the UK HIV organizations have collaborated with the Crown Prosecution Service (CPS) to develop guidelines clarifying the application of laws criminalizing HIV non-disclosure, exposure and transmission for prosecutors and caseworkers. Consultation process to outline the guidelines have involved multi-sector representatives including HIV organizations, police, department of justice, department of health as well as the British HIV Association. Content of the guidance is briefly addressed in the paper highlighting the importance of scientific evidence to determine the direction of HIV transmission in the court and evidence to establish knowledge of HIV status and recklessness. The author also reviews whether or not the prosecutorial guidelines have any positive impacts on people living with HIV.

Bray, S. (2003). *Criminal prosecutions for HIV exposure: overview and analysis*. Center for Interdisciplinary Research on AIDS Working Paper, 3(1). New Haven: Yale University. Retrieved May 4, 2011 from http://cira.med.yale.edu/law_policy_ethics/criminal_pros.pdf.

In this working paper, Bray explores criminal prosecutions for HIV in the US. The paper suggests that prosecutions are not likely to reduce HIV transmission. Bray found a total of 316 HIV-related prosecutions in 39 states and the military, which resulted in 164 convictions on HIV-related charges. Approximately 200 of the cases involved illegal behavior regardless of HIV exposure. States with HIV-specific laws were found to have a higher average number of prosecutions for transmission than states without an HIV-specific law. Information on race/ethnicity was not available for almost all defendants. In prosecutions involving prostitution, Bray reports that the defendant's behavior posed no real exposure to HIV, and many cases resulted in conviction despite the defendant disclosing HIV status, refusing to engage in high risk activity, and demonstrating no intent to transmit the virus. This seems to be the result of laws that increase penalties for prostitution if the defendant has HIV. The argument for using criminalization laws to directly prevent HIV transmission is contradicted by the number of prosecutions that involve acts that have not been demonstrated to transmit HIV, e.g. spitting or biting. Information presented in this paper suggests that criminalization laws are applied

inconsistently across states, and that sometimes convictions are not based on objective risk of transmission.

Burris, S. and Cameron, E. (2008). The case against criminalization of HIV transmission. *JAMA*, 300, 578-581.

In this paper, Burris and Cameron argue that the use of laws that criminalize HIV transmission and exposure is inappropriate except when a person intentionally acts to transmit HIV and transmission occurs. The authors describe the existence of HIV exposure laws throughout the world, including a “model law” crafted in Africa that many African countries to date have adopted (Action for West Africa Region HIV/AIDS Project) which criminalizes HIV transmission regardless of mechanism or intent to harm. Concern that this law will be applied to mother to child transmission is expressed in this paper, among others. Burris and Cameron argue that in cases of consensual sex, both parties should be responsible for protecting their health rather than resting full responsibility on the partner who is HIV-positive to disclose status and take measures not to transmit infection. They additionally raise the point that women are more likely to face prosecution due to increased efforts for antenatal testing. Under the African law, not only will women living with HIV have the responsibility to notify (potentially dangerous) partners, but they could be prosecuted if they fail to disclose HIV status. Cameron and Burris call for measures to address the subordination of women as a more effective HIV prevention strategy.

Burris, S., Cameron, E., and Clayton, M. (2008). *The criminalization of HIV: Time for an unambiguous rejection of the use of criminal law to regulate the sexual behavior of those with and at risk of HIV*. Retrieved May 4, 2011 from <http://ssrn.com/abstract=1189501>.

The authors argue that although public health agencies have not supported the adoption of HIV-specific criminal laws, an unambiguous stand against criminalization has yet to be taken. They report that public health evidence fails to support criminalization as an effective tool to curb HIV infection rates. Further, the laws raise stigma and risk issues among vulnerable populations, specifically women who are often deprived of their rights to sexual decision making and physical safety. The authors emphasize three public health and human rights responses against criminalization: 1) criminalization does not stop the HIV epidemic and international organizations should have governments repeal existing HIV laws; 2) positive policies that protect women against violence and promote equal status need to be advocated and implemented; and 3) if revoking HIV criminal laws is politically unattainable, efforts to reduce the damage of criminalization are immediately required. The authors recommend partnerships between the Joint United Nation Programme on HIV/AIDS, national and local health agencies to deploy policy guidance and training to avoid inappropriate use of the criminal laws.

Cameron, E., Burris, S., and Clayton, M. (2008). HIV is a virus, not a crime. *HIV/AIDS Policy and Law Review*, 13(2-3), 64-68.

This is a critique based on a plenary presentation by the first author highlighting reasons why criminalization is poor public health policy. The authors discussed cases of HIV criminalization in several countries including the United States, Zimbabwe and Sierra Leone illustrating that criminalization is an ineffective tool for regulating HIV infection. The authors point out ten reasons to oppose the rationale for criminalization that can be summarized into the following focal points: 1) criminalization laws and prosecutions are not an effective prevention against HIV nor a substitute for measures that protect those at risk of HIV infection, 2) criminalization is often enforced unfairly and singles out

already vulnerable groups such as women, men who have sex with men, and sex workers, thus increases stigma, 3) criminalization places all the blame on the person with HIV instead of recognizing that it is a responsibility of two people, 4) the laws are degrading to apply since they intrude on the privacy of consensual sex and where the laws are adopted, the criminal provisions are unclear and poorly drafted, 5) criminalization creates a discouraging state for people to seek treatment and testing for their HIV status.

Cameron, E. (2009). Criminalization of HIV transmission: poor public health policy. *HIV/AIDS Policy & Law Review*, 14(2), 63-75.

In this call to action piece, Cameron presents various criminal cases of HIV transmission from throughout the world and describes why many of them are inappropriate applications of the law. Based on these cases, he describes how criminalization laws could be applied in future cases. Cameron reports that the global trend toward criminalization of HIV is accelerating. Canada is the world leader in HIV-related prosecutions for sexual offenses. Two recent Canadian cases, in which defendants face charges for attempted murder for not disclosing HIV-positive status prior to consensual sex, may signify a movement toward broader application of HIV criminalization laws. He presents several arguments against criminalization of HIV including: 1) it is misdirected and should not replace harm reduction strategies; 2) laws are often vague; 3) it fuels stigma; and 4) it may discourage testing. Cameron argues that consent should not be considered void if a person with HIV fails to disclose his or her HIV status prior to sexual activity. Assumptions should not be made that the partner would have chosen not to engage in sex if he or she was aware of the defendant's HIV status.

Csete, J., and Elliott, R. (2011). Criminalization of HIV transmission and exposure: in search of rights-based public health alternatives to criminal law. *Future Virology*, 6(8), 941-950.

The authors discuss the impacts of the use of criminal law on HIV prevention and treatment, and the importance of a global campaign and leadership to change the global response to HIV to strategies focused on human rights. The Joint UNAIDS and UNDP have provided a set of guidance published in 2008 to avoid using criminal laws in specific circumstances (e.g., when there is no significant risk of transmission or exposure, when HIV status has been disclosed), however, these cautions have not been fully exercised and there are cases in which transmission is unlikely still prosecuted. At the policy level, a lack of empirical evidence of how criminal laws undermine public health responses to HIV contributes to uninformed public policy making and misuse of the law. The authors note that it will take time to repeal and reform the criminal laws, other approaches are needed to mitigate the harm associated with these laws. UNAIDS is in support of a project lead by the International HIV/AIDS Alliance to develop training in human rights issues related to HIV and to provide policymakers and legislators in selected countries with technical advice and training from legal and human rights experts. The Global Commission on HIV and the Law at UNDP will produce recommendations for governments to avoid using criminal laws and suggest alternatives that are more human rights-centered. Other possible approaches include obtaining statements from medical professional societies on the negative impact of HIV criminalization, and revisiting criminal HIV laws and other laws that further stigmatize sex workers, drug users, and other groups. The authors also call for more funding to support research examining the impacts of the laws and for countries to develop prosecution guidelines.

Csete, J., Pearhouse, R., and Symington, A. (2009). Vertical HIV transmission should be excluded from criminal prosecution. *Reproductive Health Matters*, 17(34), 154-162.

In this paper, Csete, Pearhouse and Symington recognize that criminal laws that target HIV transmission have often been proposed and adopted to protect women, however upon closer inspection may exacerbate stigma and reduce the utilization of prevention programs geared toward reducing mother to child transmission. The authors call for laws to be revised to exclude vertical transmission from criminal prosecution, while expanding access and availability of other proven prevention services such as HIV screening and treatment. Barriers exist for women around the world to access services for vertical HIV prevention or disclose HIV positive status to partners, such as stigma, discrimination, violence, and abandonment. The article recognizes that African legislation based on the “model law” is too new to determine whether or not policies that criminalize HIV transmission will have net positive or negative effects. The authors report that some countries, however, have taken initiative and enacted provisions that exclude vertical transmission from criminalization. Furthermore, the authors describe several cases in which women who are HIV-positive were prosecuted for negligence for transmitting HIV (or the possibility of transmitting HIV) to their children, and present implications that these prosecutions will have on a mother’s right to decline medical interventions for herself and her child (autonomy). The authors also raise concerns about what constitutes “reasonable measures” to ensure that transmission does not occur in resource-poor settings where medical care, prevention services, food, and clean water may not be readily available.

Galletly, C.L. and Pinkerton, S.D. (2004). Toward rational criminal HIV exposure laws. *Journal of Law, Medicine and Ethics*, 32(2), 327-337.

This article examines criminal HIV exposure statutes that address undisclosed exposure through consensual sexual activity. Twenty-seven U.S. states have adopted some form of HIV exposure statute. Thirteen of these statutes specifically address exposure through sexual activity, eleven statutes could be applied to exposure through sexual activity without specifying the behavior that leads to exposure, and three statutes criminalize exposure via the sale or donation of blood or semen for purposes other than scientific research. Although the penalties for breach of these laws are often severe, the risk of actual harm posed by the behaviors prescribed is minimal and in some cases virtually nonexistent. After an overview of the various types of U.S. criminal HIV exposure statutes and a discussion of the HIV transmission risks through various sexual activities addressed in the laws, the authors highlight the tenuous relationship between the prohibited activities and actual risk of HIV virus transmission. The authors address this limitation in the law by offering a framework of the evaluation and construction of HIV-related statutes that considers not only the intent of the person who is HIV-positive but also accurate information on the risks that his or her conduct poses to others.

Galletly, C.L. and Pinkerton, S.D. (2006). Conflicting messages: how criminal HIV disclosure laws undermine public health efforts to control the spread of HIV. *AIDS and Behavior*, 10(5), 451-461.

Galletly and Pinkerton report that at the time of publication, 23 states had laws that criminalize people with HIV for engaging in sexual activities. This article explains that penalties for similar crimes vary dramatically by state, which Bray (2003) similarly reported. The authors argue that criminalization runs counter to other HIV prevention efforts in that it ultimately disregards central features of the public health response to HIV, fails to distinguish between higher and lower risk sexual activities, endorses a disclosure-based norm for promoting safety that undermines each person’s responsibility

for his or her own health, and exacerbates stigma. Increased stigma could drive the infection underground by discouraging people from being tested and/or seeking care, which could increase the rates of people who are unaware of infection and not receiving treatment, thereby driving transmission.

Galletly, C.L., Pinkerton, S.D., and Petroll, A.E. (2008). CDC recommendations for opt-out testing and reactions to unanticipated HIV diagnoses. *AIDS Patient Care and STDs*, 22, 189-193.

The commentary paper discusses the CDC new recommendation to use an "opt-out" approach in which health care providers inform all patients that they will be tested for HIV unless they explicitly decline. The authors explain that this approach aims to identify HIV-infected persons who might not otherwise be tested, regardless of their risk behaviors. Prevention counseling and intensive informed consent are no longer required prior to testing. The authors review a number of impacts that might occur due to unanticipated HIV diagnoses such as a risk of self-harm or harming others especially among those who had preexisting mental illness, and increased drugs and alcohol abuse as a coping strategy upon learning their HIV positive status. Some people may also disclose their HIV status indiscreetly to sexual partner and/or family without considering the possibility of losing existing emotional, financial, and instrumental support. The authors conclude that in order to prevent and/or cope with associated harms, further in-depth research is required to identify the vulnerabilities and potential harms among recently diagnosed individuals who did not anticipate testing HIV-positive.

Gostin, L. O. and Hodge, J. G. Jr. (2001). Handling cases of willful exposure through HIV partner counseling and referral services. *Women's Rights Law Reporter*, 23, 45-62.

The authors examine legal and ethical questions as well as control measures to guide Partner Counseling and Referral Services (PCRS) counselors and public health authorities in handling cases of willful exposure of HIV in their practice. The authors analyze existing laws supporting a patient's rights to privacy and their partner's right to know including the application of various statutes and regulations drafted by the Department of Health and Human Services. They briefly touch on the different legal and ethical duties of Health Care Workers and PCRS counselors in cases of willful exposure. The authors also examine potential problems related to prosecuting individuals with HIV using two types of offenses: intentional and reckless transmission. The authors conclude with several practical recommendations in handling cases of willful exposure and point out that ultimately, there is no uniformed approach to deal with such cases, and that a case-to-case basis approach may be required.

Jurgens, R., Cohen, J., Cameron, E., Burris, S., Clayton, M., Elliott, R., Pearshouse, R., Gathumbi, A., and Cupido, D. (2009). Ten reasons to oppose the criminalization of HIV exposure or transmission. *Reproductive Health Matters*, 17 (34), 163-172.

This discussion paper is a revised version of a document initially published by a coalition of HIV, women's and human rights organizations (Cameron, E., Burris, S., and Clayton, M., 2008). The authors explore ten reasons why criminalizing HIV exposure or transmission is an unproductive and unjust public health policy, with the exception for cases where individuals purposely transmit HIV with the intent to harm others. Furthermore, the authors propose that instead of passing criminal laws, the legislators should reform laws that hinder HIV prevention and treatment, i.e., 1) enforce laws protecting women's equal rights and their right to be free from violence; 2) enact anti-discrimination laws to protect people at risk of infection and those who are actually or presumed to be living with HIV and AIDS; 3) remove legal barriers to condoms and age

appropriate sex education and reproductive health services; 4) scrutinize laws and police practices that criminalize vulnerable and marginalized groups such as sex workers, drug users, and men who have sex with men; and 5) involve experts and representatives from key populations to support HIV legislation pertaining to scientific and medical best evidence. The paper concludes that countries should take measure to increase evidence-based HIV prevention and treatment programs and support human rights-based responses to HIV that provide individuals the right to have accurate information and to make responsible choices regarding their sexual behaviors and reproduction, as well as access to technologies for comprehensive HIV prevention.

Mears, A. (2007). The criminalization of HIV transmission in England and Wales: a brief review of the issue arising. *Current Opinion in Infectious Diseases*, 20, 47-53.

This review provides analysis of prosecutions for HIV transmission taking place in England and Wales between the year 2001 and 2006 and the moral and public health issues related to these prosecutions. The author points out that the UK law prosecutes the transmission of HIV by taking into account whether it be intentional or reckless (the latter refers to the defendant subjectively knowing his or her HIV status and the risk of transmitting infection yet choosing to take the risk) and that the law applies to other serious infections, not only to HIV. According to the author, while some argue that not disclosing infection status means putting another person at risk of harm and compromising his or her autonomy to make an informed choice, people should take responsibility for their own health and reliance on disclosure is an inadequate way to protect oneself. She then explains the negative impact of prosecutions on public health due to fear of prosecutions and stigma including reduction in testing and engagement in HIV services among those who suspect they may be HIV positive, diminished opportunity for the sexual partner to use post-exposure prophylaxis, and general distrust of physicians and other health services. The author concludes that while the law for reckless HIV transmission needs to be reviewed by government, health education in relation to HIV infection remains an important strategy to prevent HIV infection.

Morin, S. F. (2000). Early detection of HIV: assessing the legislative context. *Journal of Acquired Immune Deficiency Syndromes*, 25(Suppl. 2), S144-S150.

The author of this paper analyzes the legislative context in the United States regarding HIV testing laws specifically that were passed between the years of 1997 and 1999 at the state level. The article evaluates the effects of these laws within the public health priorities of promoting early HIV detection and new HIV treatment options, resulting in the identification of several major themes: 1) limited confidentiality of HIV test results; 2) mandatory name-based reporting; 3) partner notification; 4) criminalization of non-disclosure in sexual and needle-sharing situations; and 5) newborn testing and reducing perinatal transmission. Confidentiality issues are questioned when the 'Good Samaritan' laws were adopted to protect law enforcement officers and emergency medical personnel who are at risk for HIV infection from exposure to blood or other bodily fluids, as the laws allow testing of the source of the exposure without his or her consent. A name-based reporting system initiated to improve AIDS case surveillance was actually found in several studies to have a deterrent effect on HIV testing especially in groups at highest risk of infection. Furthermore, the author points out that the criminalization laws of non-disclosure of HIV status are often lacking clear definitions of what sexual behaviors are prohibited without disclosure. One state law enacted to reveal previous HIV testing information of people being charged with sexual offense in order to sentence the maximum penalty contradicts the informed consent policy for the initial HIV testing and may cause distrust in the public health system. The article concludes that while

much of the state laws on HIV testing from 1997 through 1999 aim to assist HIV-infected people to obtain care, the effect of these policies are not properly evaluated and researched, and that developing effective policies requires consultation and collaboration by public health officials, affected individuals, legislative policymakers, and other stakeholders.

Morton J., Hofmann, R., and Guitierrez Jr, O. R. (2009). *Sex crime*. Retrieved May 5, 2011 from http://www.poz.com/articles/HIVtransmission_crime_laws_2376_17279.shtml. This article criticizes criminalization of HIV transmission and states that it will not mitigate the epidemic and instead, undermines public health efforts. Prosecutions of individuals living with HIV may deter people from HIV testing, accessing treatment, or disclosing their status to others. The authors argue that sentences given to HIV-related offenders are disproportionately unfair and only worsen ongoing issue of stigma and discrimination. The authors explain that individuals living with HIV should remember to disclose their status, and keep evidence of informed consent using one of the following alternatives: 1) asking the person to whom disclosure was given to sign a notarized letter acknowledging the person's HIV-positive status and disclosure; 2) recording disclosure with a cell phone or a digital camera with the other person verbally agreeing to the taping and understanding the disclosure; 3) inviting a friend to be present during disclosure as a witness; and 4) taking a potential partner to a doctor to get information about HIV and related risks. The authors urge HIV community to get in touch with government officials and lawmakers to reconsider the HIV criminalization laws.

Niemeier, D. P. (2001). *The criminal transmission of AIDS: a critical examination of Missouri's HIV-specific statute*. *Saint Louis University Law Journal*, 45, 667-708. The author reviews the application of HIV-related statutes in Missouri. The article examines criticisms associated with the original law enacted in 1988 and the amended statutes passed in 1997. The author maintains that the original law was enacted as a response to the Presidential Commission on the Human Immunodeficiency Virus Epidemic report that was published in 1988 and endorsed the criminalization of HIV transmission. The original statute was viewed as ineffective to prosecute offenders due to the requirements, such as demonstrating criminal intent at the time of HIV transmission. The changes in the new law include, among others, lessening the required mental element of culpability from intentional to reckless, and allowing a person's informed consent to be exposed to HIV as an affirmative defense. Furthermore, the author compares the Missouri laws with the statutes in Illinois and how the former can address the criticisms and improve accordingly.

Obermeyer C. M., Baijal P., and Pegurri E. (2011). *Facilitating HIV disclosure across diverse settings: a review*. *Am J Public Health*, 101(6), 1011-1023. This article reports a review of literature focusing on HIV disclosure by adults living with HIV. The review included 231 articles with more than two thirds conducted in high-income countries, mainly the United States, and more than half applied quantitative surveys. The majority of people in the studies disclose their HIV status to someone. Although findings have been mixed with respect to gender differences in disclosure rates, most studies record substantial gender differences in barriers and outcomes of disclosure. The meaning and process of disclosure vary across settings with respondents in Asia and South Africa reporting that their HIV status disclosure was involuntary, especially to family members. In terms of social context of disclosure, HIV-specific laws that require disclosure to partners in several countries are shown to influence the extent of disclosure, e.g., the individuals' perceived motivations to disclose,

health workers' practice to discuss disclosure with clients. The authors note that health worker facilitation of disclosure is restricted by the potential for discrimination at health facilities, limited counseling abilities, and health workers' own concerns regarding HIV. They conclude that making more services available for people living with HIV, their families, and communities could facilitate HIV disclosure as much as individual approaches and the provision of counseling.

Reilly, M., Coghlan, A., and Geddes, L. (2006). To know or not to know.... *New Scientists*, 191(2561), 8-9.

The article examines the CDC's plan to publish recommendations for voluntary HIV testing for every American between the age of 13 and 64, just before the recommendations were made official in September 2006. The authors review issues surrounding the policy voiced by HIV/AIDS experts including the availability of drugs and access to treatment for those who are tested positive, and concerns about individual rights and privacy versus large-scale public health concerns. Regarding the latter, the authors cited a court decision in California around the time of the publication where a man living with HIV's sexual history and medical records are opened up to scrutiny by the court to make a decision on a reckless HIV transmission case. Breaches of confidential databases such as the HIV registry as well as increasing health insurance premiums were other issues discussed in the article.

Rollins, J. (2002). AIDS, law, and the rhetoric of sexuality. *Law & Society Review*, 36 (1), 161-191.

This study examines AIDS-related litigation from the U.S. Circuit Courts of Appeals between 1983 and 1995, taking into account judicial characteristics, contextual, litigant and claim variables, with an emphasis on the social construction of sexuality, particularly homosexuality. The author applies content-based coding and stepwise analysis and uses people with HIV's "win" (if a PWA, either plaintiff or a defendant, prevailed on issues brought up in a case) and "homosexualized" references as dependent variables. The results indicate that 1) judges' age, expansive claims, positive linguistic markers, homosexualized references, medical transmission routes, and year of case as predictors of "win"; and 2) judicial religion, criminal defendants and death/plague references contribute to increased references to homosexuality. The author argues that despite uncertain causality between variables, it is important to note that in the context of AIDS, homosexuality significantly associates with death/plague metaphors, indicating issues to address in public health policy.

Sanon, P., Kabore, S., Wilen, J., Smith, S.J., and Galvão, J. (2009). Advocating prevention over punishment: the risks of HIV criminalization in Burkina Faso. *Reproductive Health Matters*, 17(34), 146-153.

Burkina Faso passed a national HIV law in 2008 using the "model HIV law" template created by a group convened by Action for West Africa Region HIV/AIDS (AWARE HIV/AIDS). Since then, two cases have been brought under the law, both women. In one case, a woman with HIV injected her neighbor with her blood. In another case, a woman with HIV bit a health worker with the intent of transmitting the virus. In the first case, the woman was convicted for assault (not the HIV code) and the other case was settled out of court. The authors caution about the potential harmful effects of these laws in Burkina Faso and advocate for amending the laws to eliminate the criminalization of HIV transmission. They urge government officials to prioritize HIV prevention approaches over prosecutions and respect the rights of people living with HIV and AIDS.

Sears, B. (2000). *Barebacking & HIV Disclosure: What's the Law?*. The Body: The Complete HIV/AIDS Resource. Retrieved May 5, 2011 from <http://www.thebody.com/content/art32643.html>.

The article addresses disclosure laws, specifically California's "Willful Exposure" law. The author comments on how someone who is HIV-positive can be prosecuted under California's law if she or he does all of the following: 1) has anal or vaginal sex; 2) knows that she or he is HIV-positive; 3) fails to disclose HIV status; 4) fails to use a condom; and 5) has the specific intent to infect the other person. He points out that some of HIV criminalization statutes are vague in application and many have been passed as a political movement by specific groups. The author strongly maintains that to avoid prosecution and other legal liabilities (e.g., attempted murder) under the law, it is best to always disclose one's status to sexual partners and practice protected sex.

Wainberg, M. A. (2008). HIV transmission should be decriminalized: HIV prevention programs depend on it. *Retrovirology*, 5(1), 108.

The author of this editorial maintains that criminalization of HIV transmission may significantly deter people from being tested for HIV infection. He presents two major negative consequences of delayed HIV testing: 1) failure to identify individuals living with HIV will lead to an increase in the spread of HIV infection as people who are unaware of their status are less likely to practice low-risk sexual behavior; 2) many HIV-infected persons may not have the benefit of an earlier initiation of antiretroviral therapy, thus may not be able to prevent life-threatening infections. The author indicates that criminalization of HIV transmission is not beneficial and that consensual sexual relations involve a personal responsibility to know one's partner on much more than a superficial level. He ascertains, however, that people who intentionally transmit HIV by sexually assaulting others or exposing others with contaminated bodily fluid should continue to be prosecuted under the law.

Weait, M., and Azad, Y. (2005). The criminalization of HIV transmission in England and Wales: Questions of law and policy. *Canadian HIV/AIDS Legal Network HIV/AIDS Policy and Law Review*, 10, 1, 5-12.

The paper discusses the impact of the criminalization of HIV transmission in England and Wales, including on individuals and organizations who work in the HIV/AIDS sector. The authors examine the interpretations of the fault requirement 'recklessness' (a person is considered reckless if she or he was aware of the risk of transmitting HIV to his or her partner at the time HIV transmission occurred) and also the understanding of 'consent' (accepting versus denying the defense of consent where bodily harm is inflicted) in the HIV-related court cases. The authors then question the relevance of HIV status disclosure in situations where those who allegedly have been infected understand the risks of transmission yet still agree to have sex with the individual who transmits HIV. Lastly, the authors discuss the relevance of the nature of relationship between the accused and the complainant and also the stigma and discrimination against those prosecuted who likely already belong to marginalized groups in the community. The authors highlight the strong consensus among HIV organizations against the criminalization of reckless transmission and the importance of focusing the response to HIV based on public health and human rights approach.

Wolf, L. E., and Vezina, R. (2004). Crime and Punishment: Is there a role for criminal law in HIV prevention policy? *Whittier Law Review*, 25, 821-886.

The paper provides a comprehensive review of criminal laws against HIV exposure in the United States and concerns about the laws raised by the public health community.

The authors present a discussion to find a balance between criminal law goals and public health principles so that both can work together efficiently to prevent HIV transmission. The authors conducted a survey of existing HIV-related statutes using computerized database search. At the time of publication, 23 states had adopted HIV-specific statutes with a substantial variation found in the legislative approaches to applying the laws, including activities defined in the statute (e.g., sexual activity, needle sharing), intent to expose requirement, use of condoms, and disclosure/consent as affirmative defenses, and ranges of penalties. The authors also review several HIV criminalization cases including those that were prosecuted under punishment enhancement statutes. The authors argue that if states choose to use HIV criminalization laws as part of their efforts to control HIV infection, some policy changes to improve current statutes are indicated, including amending scope of statutes to target only specific high risk behaviors and persistent offenders, and to support prevention measures. Furthermore, a monitoring mechanism is needed to continuously evaluate the impact of HIV criminalization on public health efforts.

Worth, H., Patton, C., and Goldstein, D. (2005). Reckless vectors: The infecting "other" in HIV/AIDS law. *Sexuality Research & Social Policy*, 2(2), 3-14.

The authors present an introductory article to a special topic in the *Sexuality Research & Social Policy* journal focusing on issues surrounding criminalization of HIV transmission and exposure. They look at criminalization with regards to the construction of the law, victims, and criminals. The authors point out that the use of either public health or legal laws have its own implications in the community. The role of media in constructing the context of HIV criminalization is highlighted. It was also noted that many persons living with HIV who were prosecuted are members of already stigmatized groups, such as migrants and drug users, leading to further stigma and discrimination. Despite existing guidelines published by the United Nations urging states to review and reform HIV criminal laws, more laws are actually being passed. The authors also maintain that HIV-related prosecution provides the governments with a sense of controlling the epidemic. Issues surrounding HIV disclosure are discussed, including how the existing laws fail to take into consideration the complexity of human relationships.

Worth, H., Patton, C., and McGehee, M. T. (2005). Legislating the pandemic: A global survey of HIV/AIDS in criminal law. *Sexuality Research & Social Policy*, 2(2), 15-22.

The authors who are affiliated with universities in Australia, Canada, and the United States review legislations used to prosecute HIV-related cases globally. They explain that there are different types of criminal laws (e.g., generic criminal codes, HIV-specific laws) and behavioral contexts (i.e., sexual intercourse, injecting activities, mother-to-child transmission) that the prosecutions and convictions concentrate on. The authors also describe legal terms commonly used in HIV-related cases, such as 'intent', 'bodily harm', and 'reckless endangerment', and note that these terms can be applied differently across different jurisdictions. The paper also explores issues related to the enactment of HIV-related legislation, which includes general public perception and political reasons among others, and how these factors can influence whether or not laws are heavily enforced in one region. The authors highlight that HIV-related prosecutions have increased in many developed countries (especially in the United States), while a country with a very high HIV prevalence such as South Africa has resisted HIV criminalization. They conclude that although public health law has a different approach to prevent HIV infection (e.g., partner notification, HIV registry), both criminal and public health laws are inadequate to deal with the complex human issues surrounding HIV transmission.