



May 24, 2011

Jonathan Mermin, MD, MPH
Director, HIV/AIDS Prevention Program
Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30333

Dear Dr. Mermin,

As you may know, the HIV Prevention Justice Alliance (HIV PJA) has been working closely with the Positive Justice Project (PJP) and its founding organization, the Center for HIV Law and Policy (CHLP), on issues of HIV criminalization.

We are contacting you today, on behalf of both organizations and the PJP, to clarify the extent and scope of our collaborative efforts to date, to re-state our specific requests from the CDC on HIV criminalization laws and policies, and to again urge you to clearly and concretely publish a CDC position and related information that addresses the significant public health and human rights impacts of these policies.

On March 11, you stated in an email that "CDC has been active in gathering information about HIV criminalization statutes and experience in collaboration with the Prevention Justice Alliance and NASTAD." This does not accurately characterize the HIV PJA's work with the CDC or reflect the priorities of the organizations listed below in engaging in these efforts.¹ We respectfully request that CDC cease from characterizing its collaborative efforts with the HIV PJA as gathering information about HIV criminalization statutes and experience, something which the HIV PJA did not and does not offer to do.

¹ To date, Julie Davids, on behalf of the HIV PJA, has had one phone call with Chris Cagle and Stan Lehman to discuss criminalization issues and the 50-state legal assessment. On that call, Ms. Davids explained that the HIV PJA will be forming a researcher advisory council, which could be a potential resource for advising CDC on best practices for the use of legal assessments as data to determine the impact of policies. That, however, has been the full extent of the HIV PJA's communication with the CDC on this subject. Though not mentioned during that call, the PJP's Legal Working Group, comprised largely of HIV legal experts from across the country, also can assist with this type of project.

It is our understanding, however, that the CDC currently is pursuing a legal assessment project as a precursor to further action on HIV criminalization. Frankly, the CDC's choice of a lengthy legal assessment project as a necessary step towards further action on criminalization strikes us as both duplicative and unnecessary, when multiple, high-quality guides and resources on this and other HIV-related laws already exist. In fact, CHLP has provided you with a comprehensive guide to the HIV-specific criminal statutes, as well as the general criminal laws used to prosecute people with HIV for consensual sex and conduct that does not transmit HIV. Summaries of other HIV-specific laws have been catalogued and published and are available from CHLP, Lambda Legal and other sources. Further delay in real action on the issues on which the CDC speaks with authority is unwarranted.

There remains an unaddressed and pressing need for clarity and leadership from the CDC on the real routes and risks of HIV transmission, the lack of evidence supporting a criminal law approach, and the consequences of the states' failure to address the stigma—and related ignorance about HIV routes and risks—that are at the root of reliance on the criminal law. Earlier this year, the National Alliance of State and Territorial AIDS Directors (NASTAD), a leading member of the PJP, issued a statement (attached) that is a model for AIDS and health organizations around the country. It is time for the CDC to show similar leadership.

We ask CDC to state that criminalization of HIV/AIDS is not supported by the U.S. government.

USAID has already staked out this position. Robert Clay, Director of USAID's Office of HIV/AIDS was quoted in the Housing Works AIDS Issues Update (February 23, 2011) making this statement: "Criminalization of HIV/AIDS is not supported by the U.S. government."

Regardless of the merits of the CDC's 50-state legal assessment, we believe that CDC should comment on criminalization before the end of what may be a fairly lengthy assessment process. We know from the operational plans of the NHAS that the DOJ will "examine and report on HIV-specific sentencing laws and implications for people with HIV" by the end of 2011. The NHAS also directs that, working with DOJ, HHS must "provide technical assistance resources to States considering changes to HIV criminal statutes in order to align laws and policies with public health principles." Collecting and cataloguing existing state laws will not accomplish this; spelling out the applicable public health principles will.

We believe that it is now time for CDC to play the appropriate, proactive role in this process by stating, as USAID has, that criminalization of otherwise-legal conduct when engaged in by people with HIV is not supported by the U.S. government and that there is no evidence that criminalization curbs HIV transmission or reduces behaviors that lead to transmission.

We further ask that the CDC :

- 1) post and explain (on CDC.gov, AIDS.gov, Aidsinfo.nih.gov) current statistical data on actual routes and risks of transmission that clarify the low risks of HIV transmission in a single sexual contact and the significant difference in risk between various types of sexual contact (e.g., receptive anal sex versus receptive oral sex);
- 2) post and explain the effects of an “undetectable” viral load on the already low risks of HIV transmission described directly above;
- 3) clarify the state of current phylogenetic science and the inability to prove source and direction of infection;
- 4) clarify that there is no need to treat people with HIV with exceptional caution or for the criminal law to impose unique restrictions, penalties or obligations upon them based on the misperception that HIV is highly contagious or easily transmitted.

We are asking for this statement and these postings to occur by July 13, 2011. This date was selected because we would like to announce our thanks for your leadership on the one year anniversary of the release of the National HIV/AIDS Strategy.

Sincerely,



Julie Davids, HIV Prevention Justice Alliance



Catherine Hanssens, Executive Director, Center for HIV Law and Policy

Additional Members of the Positive Justice Project:

Andrew Novak, American Bar Association’s HIV/AIDS Coordinating Committee

Edwin Bernard, Advocate and Writer, Criminalhivtransmission.blogspot.com

Dr. Melinda Chateauvert, Advocate, Louisiana and Washington D.C., Board Member, HIPS

Robert Suttle, Advocate, Louisiana AIDS Advocacy Network (LAAN)

William McColl, AIDS United

John Peller and Roman Gardenhire, AIDS Foundation of Chicago

David Webber, AIDS and the Law (Editor)

Anna Forbes, Consultant

Joshua G Rosenberger, Indiana University

Scott Schoettes, Lambda Legal

Lisa Chin, New York State Psychiatric Institute and Columbia University

Michelle Lopez, NAPWA and Community Health-Care Network

Vanessa Johnson, NAPWA

Julie Scofield and Terrence Moore, NASTAD

National Organization of Black Law Enforcement Executives

David S. Novak, Online Buddies, Inc. and OLB Research Institute

Dana Van Gorder, Project Inform

Brook Kelly, U.S. Positive Women's Network

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cc:

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