

PUNISHMENT IS NOT A PUBLIC HEALTH STRATEGY

THE CRIMINALIZATION OF VIRAL HEPATITIS IN THE UNITED STATES

WHAT IS IT?

Laws criminalizing hepatitis single out people living with viral hepatitis for especially harsh treatment under our criminal legal system. Laws criminalizing viral hepatitis target the same behaviors as HIV criminal laws: sex, exposure to bodily fluids (blood or saliva), and needle-sharing. **Often, the laws include situations where there is no real risk of disease transmission.**

WHAT'S THE PROBLEM?

Just like HIV criminal laws, laws criminalizing hepatitis are unscientific, overly harsh, and discriminatory. **Criminalizing someone's health status should never be the solution to a public health challenge.**



A PERFECT PUBLIC HEALTH STORM



Viral hepatitis is on the rise in the United States.

Injection drug use (IDU) has been the most significant risk factor in the increase.¹ Appalachian and southern states have also been particularly hard-hit by increases in hepatitis B.²



Between 2004 and 2014, the annual incidence rate of acute hepatitis C (HCV) infection more than doubled nationwide.



Most states prohibit the possession of drug paraphernalia.

This makes it more difficult for people who use drugs to access safe syringes. While syringe exchange programs have become more common, access remains inadequate.



Some state Medicaid programs and private insurers impose sobriety restrictions that deny treatment for HCV to people who inject drugs.³



Viral hepatitis is related to our correctional crisis.

An estimated 1 in 3 inmates in U.S. prisons and jails is living with HCV.⁴ Less than 1% of those with an HCV diagnosis in corrections are receiving treatment.⁵



Incarcerating people living with hepatitis because of their health status is only going to make things worse.



The current administration and some states have voiced support for criminal justice responses to the opioid crisis.⁶

THE CRIMINALIZATION OF HIV AND VIRAL HEPATITIS IN THE STATES

IOWA

In 2016, Iowa experienced the largest number of people diagnosed with hepatitis C since reporting began, including the largest number and proportion of people 30 and under who were diagnosed with HCV.⁷

Just two years earlier, Iowa amended its HIV criminal law to include other health conditions, including viral hepatitis, tuberculosis, and meningococcal disease.

It remains a felony to recklessly transmit hepatitis to someone else—reckless exposure that doesn't result in transmission is still a serious misdemeanor.⁸

OHIO

Ohio has a law that makes it a third-degree felony for someone living with viral hepatitis or HIV to cause another person to come into contact with their blood, semen, urine, feces, or another bodily substance. The punishment is up to three years of prison time.

Between 2013 and 2016, the rate of hepatitis C cases in Ohio more than doubled, going from 86.3 cases per 100,000 population to 205.3 cases per 100,000 population.⁹

In January 2018, a man with hepatitis C was charged with four felonies for spitting at first responders during the course of an arrest.

SOUTH DAKOTA

In the 2018 session, South Dakota legislators introduced SB 93, a bill that would have created a new HCV criminal statute to run parallel with the state's HIV criminal law, making donation, needle sharing, or exposing another person to blood a Class 3 Felony, punishable by up to 15 years' incarceration.¹⁰

Fortunately, that piece of the bill failed, but it may be a sign of what's to come and shows why we must take action now to resist new efforts to criminalize health status.

Most of the states that criminalize & punish HCV also restrict access to curative treatments.¹¹

NOTES

- 1 ajph.aphapublications.org/doi/10.2105/AJPH.2017.304132
- 2 From 2009 to 2013, incident cases of hepatitis B infection increased by 114% in the states of Kentucky, Tennessee, and West Virginia. cdc.gov/mmwr/volumes/65/wr/mm6503a2.htm?s_cid=mm6503a2_w
- 3 nvhr.org/sites/default/files/users/u33/One%20Pager%20on%20HCV%20and%20Opioid%20Crisis.pdf; asam.org/docs/default-source/advocacy/aaam_implications-for-opioid-addiction-treatment_final.pdf?sfvrsn=cee262c2_25; stateofhepc.org
- 4 hcvinprison.org/resources/71-main-content/content/191-hepcprison
- 5 healthaffairs.org/doi/abs/10.1377/hlthaff.2016.0296; nytimes.com/2018/03/15/us/hepatitis-c-drugs-prisons.html
- 6 See, e.g., the March 20, 2018 memo from Attorney Jeff Sessions to US Attorneys that suggests capital punishment may be an appropriate punishment for certain drug-related crimes.
- 7 idph.iowa.gov/Portals/1/userfiles/198/HCV%20End%20of%20Year%20Report%202016_1.pdf
- 8 hivlawandpolicy.org/sites/default/files/iowa%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S._0.pdf
- 9 odh.ohio.gov/-/media/ODH/ASSETS/Files/bid/survhep/Data-and-Statistics/2016-HCV-Yearly-Report.pdf?la=en
- 10 legiscan.com/SD/text/SB93/id/1693652 (The only difference between the proposed HCV criminal statute in SB 93 and the current HIV criminal law is that the latter also criminalizes sex).
- 11 For more on each state, visit stateofhepc.org.



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