

## Homosexually active men's views on criminal prosecutions for HIV transmission are related to HIV prevention need

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*(Received 20 August 2007; final version received 12 December 2007)*

There has been much debate and discussion about the potential public health impact of the emergence of criminal prosecutions for the sexual transmission of HIV in the United Kingdom. This paper offers a unique opportunity to examine data that connects views on criminal prosecutions with evidence of HIV prevention need among an opportunistic sample of men in the UK who are homosexually active. Quantitative and qualitative data on criminal prosecutions were collected as a part of the *Gay Men's Sex Survey 2006*, and this paper represents an initial analysis of those responses. The data demonstrate how dominant views on criminal prosecutions come into direct conflict with health promotion aims, thereby exacerbating pre-existing HIV prevention need in a population at increased risk of participating in HIV transmission. This conflict is most clearly apparent in the close relationship between men's support of criminal prosecutions, and their expectation that a partner with diagnosed HIV will disclose his status before engaging in sex. Changing such unrealistic and universalised expectations has long been an aim of HIV prevention planning that targets Gay and Bisexual men, yet it would appear that the popularity of criminal prosecutions helps to resist attitudinal change, thereby exacerbating HIV prevention need.

**Keywords:** HIV; criminal law; gay men; responsibility; risk

### Introduction

In the UK, the first criminal prosecution for the sexual transmission of HIV took place under existing legislation in 2001. Since then, a total of 15 prosecutions have been undertaken. Many have ended in custodial sentences, although acquittals have started to result from closer scrutiny of the scientific evidence that is available (Carter, 2006). A number of reviews of the core legal issues and the broad policy matters arising from such prosecutions in the UK have emerged (Bernard, 2007; Dodds, Weatherburn, Hickson, Keogh, & Nutland, 2005; Weait, 2007) yet there remains little evidence of the way that pre-existing health promotion approaches to the reduction of HIV transmission relate to the emergence of criminal prosecutions. This paper offers a unique opportunity to examine data which directly brings this relationship into view, by exploring the connections between views on criminal prosecutions and evidence of HIV prevention need among an opportunistic sample of men in the UK who are homosexually active. The data demonstrate how dominant views on criminal prosecutions come into direct conflict with health promotion aims, thereby exacerbating pre-existing HIV prevention

need in a population at increased risk of participating in HIV transmission.

### Methods

The *Gay Men's Sex Survey (GMSS)* is an annual periodic survey of homosexually active men living in the UK. Initiated in 1993, *GMSS* has grown to become the largest annual survey undertaken with this population anywhere in the world. The questions cover a range of demographics, health indicators, sexual behaviours, HIV prevention needs, use of settings in which health promotion can occur and recognition of national interventions. *GMSS* recruits men via booklets distributed by over 100 HIV health promotion agencies and via the Internet. Of the 12,155 homosexually active men who completed the 2006 survey, 8286 (68.2%) accessed it online.

This paper focuses on responses to a particular question asked in the 2006 online version of *GMSS*:

A. *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?*

- Yes
- No
- Not sure

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**B. Why do you say ... (no/yes/not sure)?**

For reasons relating to data capture, men completing the booklet version of the survey were not asked part B, and are therefore not included in this analysis. Of the men completing the online version of the survey, 8252 answered part A, and 6718 of those went on to answer part B.

The statistical analysis package SPSS 14.0 was used to analyse the quantitative data collected in the survey. In order to include the open-ended responses to part B of the question above, two researchers worked independently and then collaboratively to develop a complex coding framework (Figure 1) that would accurately reflect all of the answers given. Firstly, the researchers devised a shortlist of metathemes (see Figure 1) of key ideas that emerged from comparing answers within a random subsample. They then developed subthemes that appropriately reflected the range of responses within each of the metathemes. This list of subthemes was then tested against a random selection of responses in order to ensure thematic coherence and sample coverage. A third researcher coded every qualitative response at metatheme level, and a random selection of 20% of responses at subtheme level. This coding process was then cross-checked by the author.

For the purposes of this paper, a selection of demographic variables and indicators of prevention need have been cross-tabulated with responses to the above question. This has been undertaken in order to better understand how views on criminal prosecutions, risk behaviour, self-identity and HIV prevention need may coalesce within certain subsections of the population. The part B answers that were the most common and that reveal the most direct relationship to aspects of HIV prevention need are those that dwell on notions of responsibility, therefore these responses receive particular attention in this paper. Further analysis of these responses within the context of the entire dataset is ongoing, and a detailed report of a broader range of findings will be published later in 2008.

### Results

Most men completing the online version of *GMSS* 2006 were supportive of criminal prosecutions for HIV transmission. Of the 8252 men answering this question, more than half ( $n=4676$ ) agreed that prosecutions were a good idea. About a quarter ( $n=2120$ ) of men were unsure and the remainder ( $n=1456$ ) were opposed to prosecutions.

This is a list of the upper level thematic categories in the coding framework. All answers (regardless of whether the first part of the question was answered with a yes, a no or a not sure) were coded into one of these areas.

**Responsibility** – responses focussing on the duties and obligations of sexual partners, and their correlated rights

**Contingency** – responses indicated that particular aspects of cases that would influence the respondents' views - such as use of condoms, understanding of transmission, or whether or not someone lied

**Details about the use of the criminal / legal process** - the appropriateness or inappropriateness of using the criminal law and custodial sentencing in such circumstances

**Public health outcomes** – responses focussing on the potential for prosecutions to either increase or decrease HIV prevalence, or factors associated with prevalence such as knowledge of status, service access or stigma

**Description of the harm caused by HIV transmission** – responses that focussed on the presumed physical and psychological outcomes of infection

**Not sure** – responses that were unable to offer a definitive viewpoint

**Misunderstands the question** – where it was clear that some element of knowledge or intention was misunderstood, this category was assigned

**Other**

Figure 1. Metatheme coding categories for qualitative responses.

Four fifths of the men who answered the first part of the question offered a useable response to the second (open-ended) part of the question ( $n = 6718$ ).

Figure 2 represents the proportion of different themes that were attributed across the entire sample of open-ended responses.

**Responsibility**

When asked for the reasoning behind their view on criminalisation, men most commonly turned to a discussion that hinged on responsibility in one form or other.

Further coding within the responsibility category revealed a range of sub-themes, including:

- Exclusive responsibilities of people with diagnosed HIV before and during sex.
- Shared responsibility between sexual partners.
- Exclusive and individualised responsibilities of those who are HIV negative, or who do not know their HIV status.

Analysis of a random sample of all responses coded within the responsibility category ( $n = 411$ ) found that almost two thirds ( $n = 260$ ) had focussed on the exclusive and primary responsibilities that people with diagnosed HIV have to their partners. The remainder were somewhat evenly split between focussing on the exclusive responsibilities of negative

and untested partners, and raising the notion that responsibility is shared equally between the partners having sex – regardless of circumstance or known HIV status.

The majority who felt that partners with diagnosed HIV had a primary responsibility to prevent transmission wanted to see this exercised in a relatively small number of concrete ways.

Three fifths of those in the coded subsample who focussed on the responsibilities of people with diagnosed HIV felt they should ALWAYS disclose their status to their sexual partners prior to sex. In most cases, respondents did not specify instances when such disclosure was mandated. Comments about the responsibility for disclosure by people with diagnosed HIV tended to regard it as an activity that should always take place, no matter what kind of sex, and no matter what kind of relationship.

It is a careless attitude to have and should be declared before they have sex. (online response to Part B)

There was also a strong feeling among many such respondents that upon diagnosis, people with HIV became duty-bound to protect others.

It is irresponsible to potentially endanger someone's health in this way. If you know you have HIV, you have a duty of care over the other person. (online response to Part B)

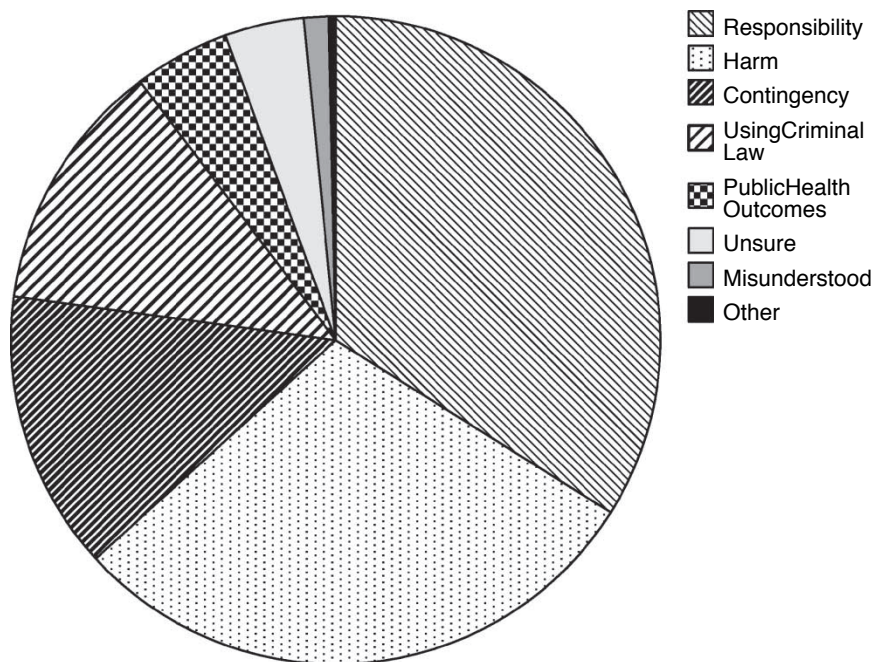


Figure 2. Metatheme categories represented as a proportion of all qualitative responses.

Nearly all who took this view about the primary and exclusive responsibilities of people with diagnosed HIV infection agreed that criminal imprisonment for the sexual transmission of HIV was a good idea.

There were more mixed views on the acceptability of criminal prosecutions among those who regarded responsibility for sexual transmission of HIV in different ways.

For instance, among the minority who were against prosecutions, men were equally likely to comment on the shared nature of responsibility between sexual partners or on the individual responsibility of negative and untested partners to protect themselves and be aware of the risks of transmission at all times. The following quotes reflect these viewpoints:

Both parties have a responsibility for safe sex and should not assume they know the status of their partner. (online response to Part B)

Everyone should be responsible for their own sex lives; therefore, everyone should assume their partner is HIV positive and take appropriate precautions. (online response to Part B)

Men who weren't sure of their view about prosecutions were the least likely to engage in an exploration of responsibility in their answer. Those who did were fairly equally split between expressing views on the exclusive responsibilities of positive people, joint responsibility and individual responsibilities of those who were negative or untested.

Further analysis on the random sample that was subcoded revealed that men with different HIV testing histories were likely to focus on responsibility in very different ways. Of the men reporting an HIV diagnosis, 70% of responses fell evenly between two subthemes: negative and untested men's responsibilities, and equal responsibility for avoiding transmission. Men who reported never having had an HIV test were most likely to focus on the exclusive responsibilities of the positive partner (60%), with two thirds of these making mention of a duty to disclose. Men whose last test was negative offered responses relating to responsibility that were much more varied. Most focussed on the equal responsibility that is shared by sexual partners (34%), followed by the responsibility of the positive partner to disclose prior to sex (25%). Men whose most recent HIV test was negative also mentioned the responsibilities of negative and untested partners to avoid transmission (22%), as well as the general feeling that positive people were exclusively responsible (17%).

### *Indicators of HIV prevention need*

In the same survey, we asked men a separate question about whether they expected a man who knew he had HIV to disclose his status before having sex. Figure 3 represents the answers to this question, including a further division across men's different views on criminal prosecutions. While expectations of disclosure are high within the sample as a whole, they are most evident among men who support criminal prosecutions. This analysis demonstrates that 86% of those who think imprisonment is a good idea would expect a man with HIV to disclose to them before sex, a figure which declines to 70% of men who aren't sure about imprisonment, and even further to 50% of men who do not think that imprisonment is a good idea.

We would expect that men's own testing history bears some relation to their views on serostatus disclosure, as well as their views on criminal prosecution – and this was demonstrated when responses to these questions were correlated with those demographic features. However, further analysis demonstrated that men whose last HIV test result was negative represent more than half of those who disagreed with imprisonment – therefore this is not a relationship that is cast in stone. Men in the sample who had never had an HIV test were most likely to strongly expect HIV disclosure from diagnosed sexual partners, and were also most likely to support criminal prosecutions. Years of data collection have demonstrated that never having tested is a marker of increased levels of HIV prevention need within this population. The data presented here further develops that picture by demonstrating the way that support for criminal prosecutions is closely related to other indicators of HIV prevention need.

### **Discussion**

These findings should not be used to infer a causal relationship between the emergence of criminal prosecutions and an intensification of men's expectations of HIV status disclosure. The latter has been a feature of ongoing HIV transmission since the virus was first identified. However, what the data demonstrates is the strong willingness that many Gay and Bisexual men have to use narratives about criminal prosecution to maintain their pre-existing and unrealistic expectations of disclosure. The qualitative data is replete with discourses of blame and responsibility with a view to see that all those who do not disclose their HIV-positive status would

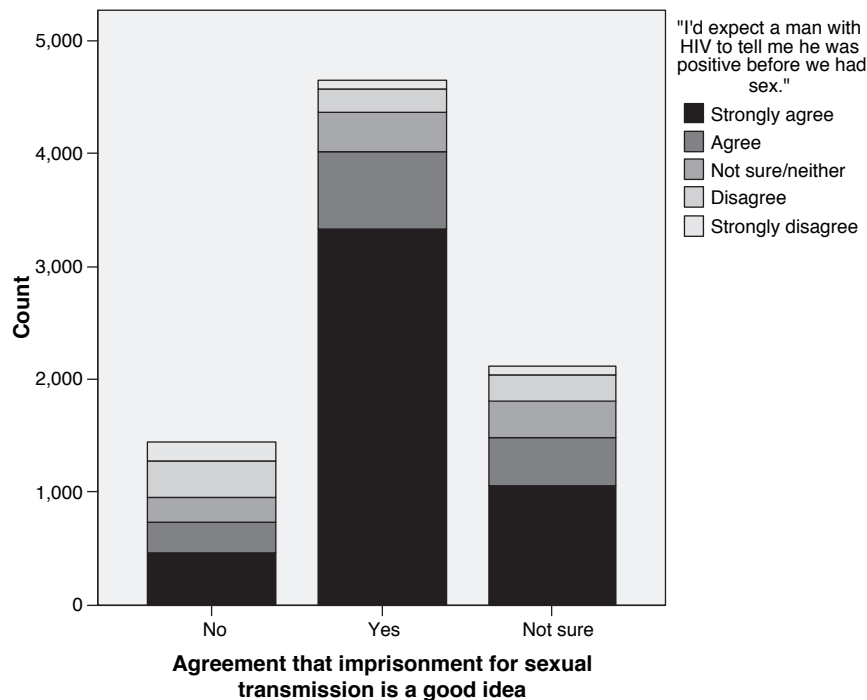


Figure 3. Support for criminal prosecutions and expectations of disclosure.

be punished for their actions. However, men's desire for the law to protect them from HIV clashes directly with the finding that 29% of men diagnosed with HIV had unprotected insertive anal intercourse with a partner of unknown HIV status in the previous year (Hickson, Weatherburn, Reid, Jessup, & Hammond, 2007). The desire and the reality simply do not add up.

Responsibility has been a topic area long avoided by those working to reduce HIV transmission in the United Kingdom. It makes health promoters shift in their seats uneasily. However, there can be little doubt that homosexually active men mobilise notions of responsibility very actively in their accounts of HIV and risk – and avoidance of this issue is no longer an option. When this paper was presented at the AIDS Impact Conference in 2007 alongside data from Australian colleagues on perceptions of responsibility among the newly diagnosed (Ellard & Murphy, 2007) it became clear that trajectories of responsibility across the life experiences of homosexually active men require specific investigation in order to acquire knowledge about how men's views adapt. Individuals' adaptation to an HIV-positive diagnosis may give us an initial window through which we can observe some of these changes.

The overall findings presented here help to spell out what many working in the field of HIV prevention have been working to express since the first criminal prosecution. They illustrate a direct conflict between the attitude changes that are necessary in order for men to avoid acquisition of HIV and the way that these same men use popular narratives about criminal prosecutions to support their view about the way the world *should be*. To this extent, it is likely that criminal prosecutions are undermining HIV prevention efforts to encourage Gay and Bisexual men to explore their own assumptions about the HIV status of their sexual partners.

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