



## HIVMA URGES REPEAL OF HIV-SPECIFIC CRIMINAL STATUTES

(Approved: October 16, 2012)

The HIV Medicine Association (HIVMA) of the Infectious Diseases Society of America (IDSA) represents physicians, scientists and other health care professionals who practice on the frontline of the HIV/AIDS pandemic. HIVMA strongly advocates public policies that are grounded in the science that has provided the tools and knowledge base to envision a world without AIDS.<sup>1</sup>

Stigma and discrimination continue to be major impediments to the comprehensive response necessary to address the HIV public health crisis. Policies and laws that create HIV-specific crimes or that impose penalties for persons who are HIV-infected are unjust and harmful to public health around the world. In the U.S., HIV criminalization has resulted in unacceptable human rights violations, including harsh sentencing for behaviors that pose little to no risk of HIV transmission.<sup>2</sup> Thirty-two states and two U.S. territories have HIV-specific criminal statutes.<sup>3</sup> Thirty-two states have arrested or prosecuted individuals with HIV infection for consensual sex, biting and spitting.<sup>4</sup> These laws and prosecutions unfairly target individuals with HIV infection and are not based on the latest scientific knowledge regarding HIV transmission, including the finding that transmission risk from biting or spitting is negligible.<sup>5</sup>

Individuals with HIV infection can live healthy lives and approach near normal life expectancies with access to HIV care.<sup>6</sup> Early diagnosis and effective management of HIV infection not only improves clinical outcomes for infected individuals but significantly reduces their risk of transmitting the virus to others.<sup>7</sup> Laws that criminalize HIV infection discourage individuals from learning their HIV status and from receiving care. In doing so, they jeopardize the lives of HIV-infected individuals and place more individuals at risk of contracting an infectious disease that remains fatal if untreated. HIV-specific criminalization fuels the stigma associated with HIV infection that slows efforts to combat the disease.<sup>8</sup> Despite the availability of highly effective treatment for HIV infection, of the 1.1 million individuals living with HIV infection in the U.S., nearly 20 percent remain undiagnosed, only 37 percent are in care and just 25 percent have undetectable levels of the virus in their blood which makes it unlikely for them to be infectious to others.<sup>9</sup>

All individuals must take responsibility for protecting themselves from HIV infection and other sexually transmitted infections (STIs). All persons engaging in unprotected or potentially risky sexual behavior are encouraged to discuss and disclose HIV and STI status except in situations where disclosure poses a risk of harm.



## HIVMA Position:

HIVMA urges a coordinated effort to address and repeal unjust and harmful HIV criminalization statutes. We support the following:

- An end to punitive laws that single out HIV infection and other STIs and that impose inappropriate penalties for alleged nondisclosure, exposure and transmission;
- All state and federal policies, laws and regulations to be based on scientifically accurate information regarding HIV transmission routes and risk;
- A federal review of all federal and state laws, policies, and regulations regarding the criminal prosecution of individuals for HIV-related offenses to identify harmful policies and federal action to mitigate the impact of these laws, including the repeal of these laws and policies or guidance for correcting harmful policies; and
- Promotion of public education and understanding of the stigmatizing impact and negative clinical and public health consequences of criminalization statutes and prosecutions.

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<sup>1</sup> President Barack Obama. Remarks by the President on World AIDS Day, 2011. Speech presented at George Washington University.

<sup>2</sup> Center for HIV Law and Policy and Positive Justice Project, "Prosecutions and Arrests for HIV Exposure in the United States, 2008–2012," (August, 2012). Examples have included:

- An HIV-positive man sentenced to 10 years in prison for aggravated assault after biting a police officer. His saliva was considered to be the dangerous instrument for the purposed of the "aggravated" portion of the charge (People v. Plunkett, New York Court of Appeals);
- A man with HIV in Iowa, who had an undetectable viral load, was sentenced to 25 years after a one-time sexual encounter during which he used a condom (Rhoades v. State of Iowa);
- A man in Oregon was convicted of ten counts of attempted murder and ten counts of attempted assault based on allegations that he engaged in unprotected sexual intercourse without disclosing his medical condition (State of Oregon v. Hinkhouse).

<sup>3</sup> Center for HIV Law and Policy, "Ending and Defending Against HIV Criminalization: State and Federal Laws and Prosecutions," (November, 2010)

<sup>4</sup> IBID.

<sup>5</sup> Centers for Disease Control and Prevention (CDC). HIV Transmission Risk. Online at: <http://www.cdc.gov/hiv/law/transmission.htm>. Accessed Oct. 2, 2012.

<sup>6</sup> High, et al, "HIV and Aging: State of Knowledge and Areas of Critical Need for Research. A Report to the NIH Office of AIDS Research by the HIV and Aging Working Group," Journal of Acquired Immune Deficiency Syndromes: 1 July 2012 - Volume 60 - Issue - p S1–S18.

<sup>7</sup> Cohen MS, Chen YQ, McCauley M, et al. Prevention of HIV-1 Infection with Early Antiretroviral Therapy. New England Journal of Medicine. 2011;365:493-505.

<sup>8</sup> Mahajan, et al, "Stigma in the HIV/AIDS epidemic: a review of the literature and recommendations for the way forward," AIDS: August 2008 - Volume 22 - Issue - p S67-S79.

<sup>9</sup> CDC, "HIV in the United States: The Stages of Care," treatment cascade fact sheet accessed online October 2, 2012 at: <http://www.cdc.gov/nchstp/newsroom/docs/2012/Stages-of-CareFactSheet-508.pdf>