



**INFECTIOUS DISEASES SOCIETY OF AMERICA (IDSA) AND HIV MEDICINE ASSOCIATION (HIVMA)
POSITION ON THE CRIMINALIZATION OF HIV,
SEXUALLY TRANSMITTED INFECTIONS AND OTHER COMMUNICABLE DISEASES**

IDSA and HIVMA Position (Approved March 2015):

The Infectious Diseases Society of America (IDSA) and the HIV Medicine Association (HIVMA) strongly support evidence-based prevention measures and interventions to reduce the spread of infectious diseases. We oppose legal statutes that undermine public health by criminalizing transmission of HIV, viral hepatitis, tuberculosis and other infectious diseases. Studies have documented that these laws discourage individuals from being screened and treated for conditions when early diagnosis and treatment of infected individuals is one of the most effective methods to control the disease.^{1,2,3,4}

Efforts to minimize transmission of these diseases should instead direct resources to evidenced-based prevention interventions that, when available and accessible, are more effective methods for minimizing the spread of infectious diseases.

Criminalization is not an effective strategy for reducing transmission of infectious diseases and in fact may paradoxically increase infectious disease transmission. We, therefore, urge state policy makers to promote public health by revising statutes that criminalize transmission of diseases, such as HIV infection, viral hepatitis and other communicable diseases. Specifically, if these statutes are maintained, we recommend that they be revised to require all of the following elements:^{5,6}

- Proof of intent to harm;
- Evidenced-based definition of conduct that is likely to result in harm;
- Proof that the conduct of the accused in fact resulted in the alleged harm; and
- Punishment that is proportionate to the actual harm caused by the defendant's conduct.

Rationale for IDSA/HIVMA Position

IDSA and HIVMA represent physicians, scientists, public health preventionists, and other health care professionals who specialize in infectious diseases, including HIV, viral hepatitis and tuberculosis. Our shared mission is to improve the health of individuals, communities, and society by promoting excellence in patient care, education, research, public health, and prevention relating to infectious diseases, including HIV.

All individuals should take personal responsibility for protecting themselves from communicable diseases. This includes but is not limited to all persons engaging in unprotected or potentially risky sexual or drug-using behavior who should be encouraged to discuss and disclose their HIV and/or Sexually Transmitted Infection (STI) status, except in situations where disclosure may cause harm to themselves or others.

A joint review of the literature by the Centers for Disease Control and Prevention (CDC) and the Department of Justice (DOJ)⁷ found no valid medical or scientific evidence to support that criminalizing transmission of communicable infections such as HIV, viral hepatitis, tuberculosis and meningococcal disease reduces infections. Furthermore, studies as referenced in this statement indicate that criminalization of HIV infection impedes efforts to address the continuing HIV epidemic by discouraging individuals from being tested, reducing HIV treatment adherence and stigmatizing the disease.

Status of HIV and other Infectious Diseases Criminalization Laws in the United States

According to the CDC,⁸ 33 states have enacted a total of 67 HIV-specific criminalization laws.⁹ Twenty-four states have general STI/communicable disease laws; twenty-one have STI/communicable disease misdemeanor laws, and nine have STI/communicable disease felony laws.¹⁰

HIV criminalization laws include excessive incarceration sentences for behaviors that pose little to no risk of HIV transmission.^{11,12,13} The laws were enacted prior to the availability of highly effective antiretroviral therapy for HIV and before there was strong evidence that the risk of HIV transmission drops to near zero when individuals are maintained on treatment.¹⁴ In addition, these laws often fail to take into account the infected individual's intent to transmit or his or her use of prevention measures that significantly reduce transmission risk, such as condom use or effective antiretroviral therapy.^{15,16}

Conclusion

Given the rapidity of medical progress and the effective public health interventions available to prevent and treat communicable diseases, such as HIV infection and hepatitis C, we urge state policy makers to refrain from enacting laws that criminalize infectious disease transmission. We also urge state policymakers to modernize existing criminalization laws and to direct resources to evidenced-based prevention interventions that, when available and accessible, can significantly reduce the impact of infectious diseases in the United States and globally.

¹ Arreola, S, Santos, GM, Beck J, Sundararaj, M, Wilson PA, Herbert P, Makofane, K, Do, T, et al. Sexual stigma, criminalization, investment, and access to HIV services among men who have sex with men worldwide. *AIDS Behav.* 2014.

² Phillips, JC, et al. Associations between the legal context of HIV, perceived social capital, and HIV antiretroviral adherence in North America. *BMC Public Health.* 2013;13:736.

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- ³ Gostin, L. The politics of AIDS: compulsory state powers, public health, and civil liberties. *Ohio St. L.J.* 1989;49(1017):1413.
- ⁴ Lee, SG. Criminal law and HIV testing: empirical analysis of how at-risk individuals respond to the law. *Yale J Health Pol’y L. & Ethics.* 2014; Winter.
- ⁵ Newman, SJ. Prevention, not prejudice: the role of federal guidelines in HIV criminalization reform. *Northwestern University Law Review.* 2013;107(3);1403.
- ⁶ Positive Justice Project/Center for HIV Law and Policy. *Consensus Statement on the Criminalization of HIV in the United States.* 2012. Accessed online 1/28/2015 at: <http://www.hivlawandpolicy.org/resources/positive-justice-project-consensus-statement-criminalization-hiv-united-states-positive>.
- ⁷ Centers for Disease Control and Prevention (CDC), Lehman et al (2014), “Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States”, accessed online 8/18/2014 at: <http://link.springer.com/article/10.1007/s10461-014-0724-0/fulltext.html>
- ⁸ Ibid. 1
- ⁹ Ibid. 1, for example:
- Twenty-four states require persons who are aware of their HIV infection to disclose their status to sexual partners;
 - Fourteen states require disclosure to syringe-sharing partners;
 - Twenty-five states criminalize behaviors that pose little or almost zero risk for HIV transmission;
 - Nearly two-thirds of U.S. states have statutes that criminalize potential HIV exposure -- many of which criminalize behaviors that pose extremely low risk for HIV transmission.
- ¹⁰ Center on HIV Law and Policy, <http://hivlawandpolicy.org/state-hiv-laws> (accessed 8/14/2014).
- ¹¹ 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).
- ¹² Notably, with regard to Hepatitis B, the Departments of Justice, Education and Health and Human Services issued a joint letter to Schools of Medicine, Schools of Dentistry, Schools of Nursing, and other Health-Related Schools in June, 2013 (accessed online 8/14/2014 at <http://www.justice.gov/opa/pr/2013/June/13-crt-671.html>) making it clear that educational institutions refusing to allow individuals with chronic hepatitis B infection to participate in courses of studies involving the provision of healthcare are in violation of the Americans with Disabilities Act (and other relevant laws) unless those institutions can point to current medical knowledge and/or the best available objective evidence to establish that the individual in question presents a direct threat to the health or safety of others through participation in such programs. It can accordingly be construed that state and local laws that discriminate on the basis of a disease state may be in violation of federal antidiscrimination laws pertaining to individuals with disabilities.
- ¹³ “About HIV/AIDS Discrimination,” U.S. Department of Justice, Civil Rights Division (accessed online 8/14/2014 at <http://www.ada.gov/aids/>).
- ¹⁴ Cohen MS, Chen YQ, McCauley M, et al. Prevention of HIV-1 infection with early antiretroviral therapy. *N Engl J Med.* 2011;365:493.
- ¹⁵ Newman, SJ. Prevention, not prejudice: the role of federal guidelines in HIV criminalization reform. *Northwestern University Law Review.* 2013;107(3);1403.
- ¹⁶ Cohen MS, Chen YQ, McCauley M, et al. Prevention of HIV-1 infection with early antiretroviral therapy. *N Engl J Med.* 2011;365:493.