



# **Punishment is Not a Public Health Strategy: The Criminalization of Viral Hepatitis in the United States**

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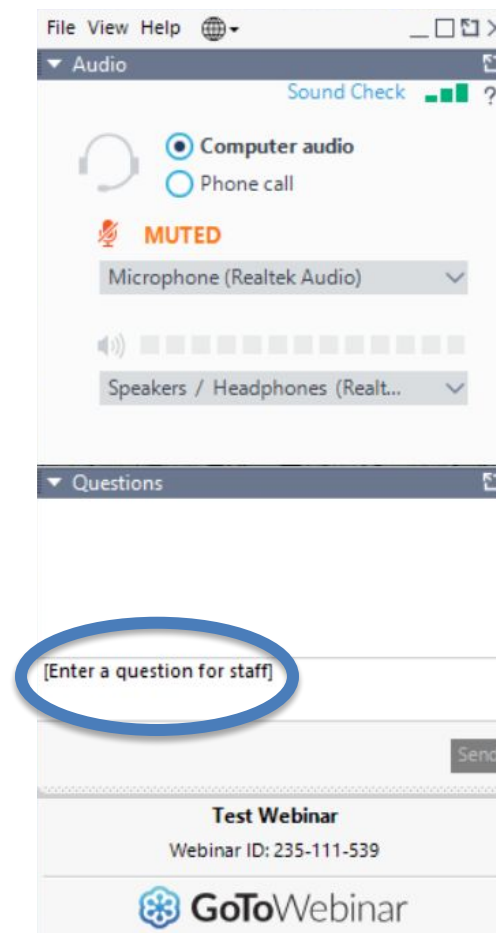
*Mike Selick  
Harm Reduction Coalition*

*October 4<sup>th</sup>, 2018*



# Housekeeping: GoToWebinar

- Slides and a recording of the webinar will be sent to everyone who registered and posted on our website.
- Please use the question box to submit your questions and comments
- The Q&A session will follow the last presentation



# Harm Reduction Coalition

- Founded in 1993 by needle exchange providers, advocates, and drug users.
- National advocacy and capacity-building organization to promote the health and dignity of individuals and communities impacted by drug use.
- Our work is driven by a commitment to drug user rights and social inclusion of marginalized communities.

POLICY &  
ADVOCACY

TRAINING &  
CAPACITY  
BUILDING

OVERDOSE  
PREVENTION &  
SYRINGE  
ACCESS

NATIONAL &  
REGIONAL  
CONFERENCES

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PUBLICATIONS

# THE NATIONAL VIRAL HEPATITIS ROUNDTABLE

The National Viral Hepatitis Roundtable (NVHR) is a national coalition working together to eliminate hepatitis B and C in the United States.

NVHR's vision is a healthier world without hepatitis B and C.



**The Center for HIV Law & Policy**  
challenges barriers to the rights and health of people affected by HIV through legal advocacy, high-impact policy initiatives, and creation of cross-issue partnerships, networks, and resources. We support movement building that amplifies the power of individuals and communities to mobilize for change that is rooted in racial, gender, and economic justice.

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147 Prince St.  
Brooklyn, NY 11201  
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# Webinar Agenda

	Viral Hepatitis Criminalization
1	Introductions
2	Issue Overview
3	Harm Reduction
4	Viral Hepatitis Treatment Access
5	HIV and Viral Hepatitis Criminalization
6	Discussion/Q&A



Join the conversation:  
**#EndViralHepCrim**



# Glossary

PWID—People Who Inject Drugs

PWUD—People Who Use Drugs

HIV – Human Immunodeficiency Virus

HCV – Hepatitis C Virus

HBV – Hepatitis B Virus

HAV – Hepatitis A Virus

PLWHA—People Living with HIV/AIDS

STI—Sexually Transmitted Infection

STD – Sexually Transmitted Disease

SAS – Syringe Access Services

SSP – Syringe Service Program

- **Sexual Orientation** >>  
to whom we are sexually attracted
- **Gender Identity** >>  
sense of self as male or female, neither  
or both
- **LGBTQI**  
Lesbian, Gay, Bisexual, Transgender,  
Transsexual, Two Spirited, Questioning,  
Intersex



# Punishment is not a Public Health Strategy: The Criminalization of Viral Hepatitis in the United States

## Principles of Harm Reduction



# Harm Reduction is...

- ❑ A set of practical strategies to reduce negative consequences of drug use.
- ❑ Includes a spectrum of strategies/interventions
- ❑ Meets people “where they're at” *but doesn't leave them there.*
- ❑ Does not minimize or ignore the harms associated with licit and illicit drug use.

# What Harm Reduction is **Not**

Harm reduction **does not** mean “anything goes.”

Harm reduction **does not** enable drug use or high risk behaviors.

Harm reduction **does not** endorse or encourage drug use.

Harm reduction **does not** exclude or dismiss abstinence-based treatment models as viable options.

# 8 Principles of Harm Reduction

1. Drug use is part of our world
2. Drug use exists on a continuum
3. Quality of individual/community life is the measure of success
4. Non-judgment and non-coercive
5. Nothing About Use Without Us
6. Participant Self-Determination
7. Recognize Intersectional Inequalities & Injustices
8. Recognize the harms of drugs

# Harm Reduction as an Approach

Increase Trust with Clients and Foster Engagement

Provides people with their immediate needs and keeps them safe.

Prioritizes safety and self efficacy

# Increasing Trust

- Building trust takes time
- Creating a safe space for discussions is essential
- Honesty and respect



# Providing for Immediate Needs

- Providing a client with safer drug use supplies
- Providing a client with a place to take a shower
- Prioritizing what the client identifies
- Recognize that what the client identifies as immediate needs can change on

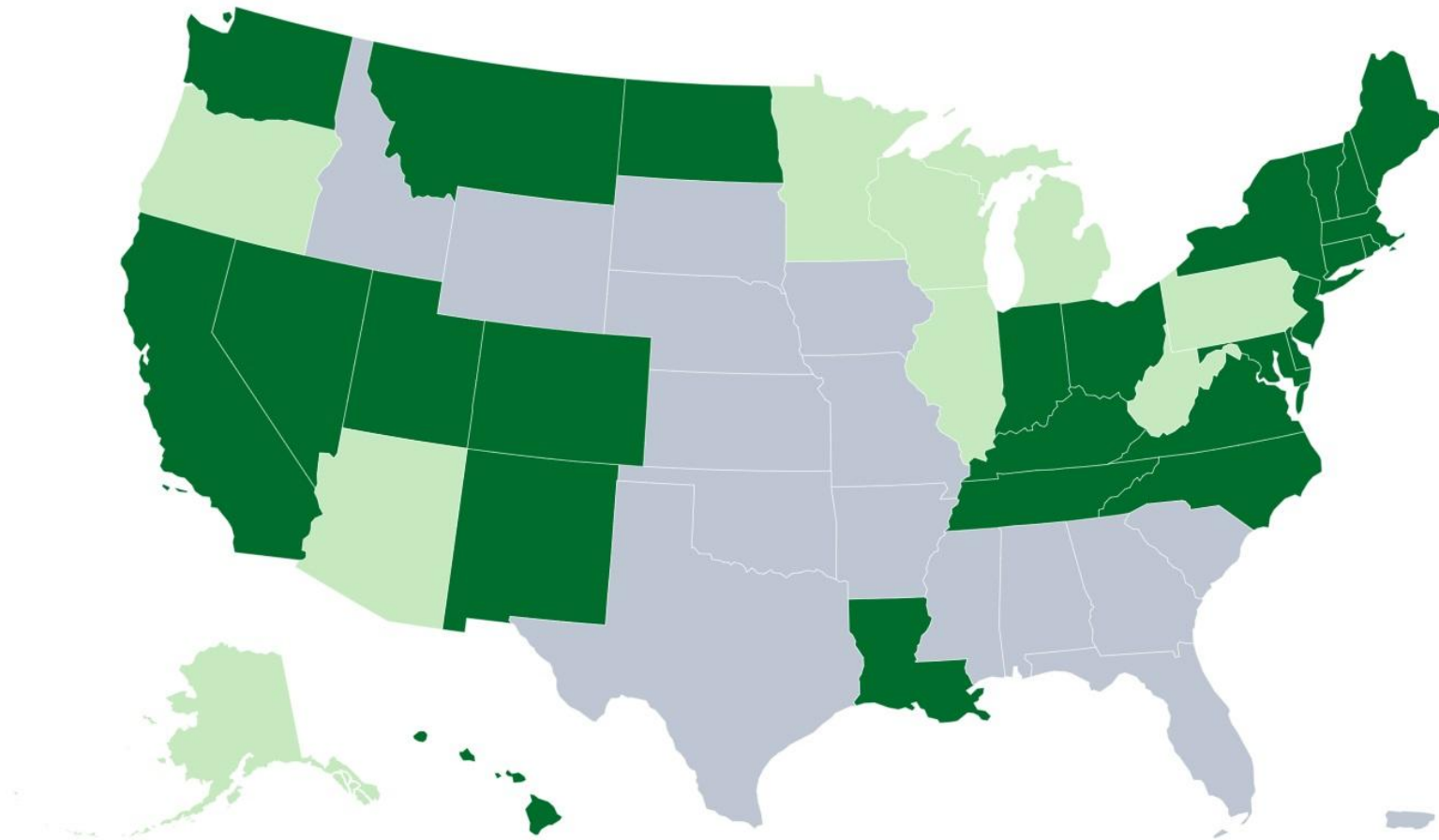


# Prioritizing Safety and Self Efficacy

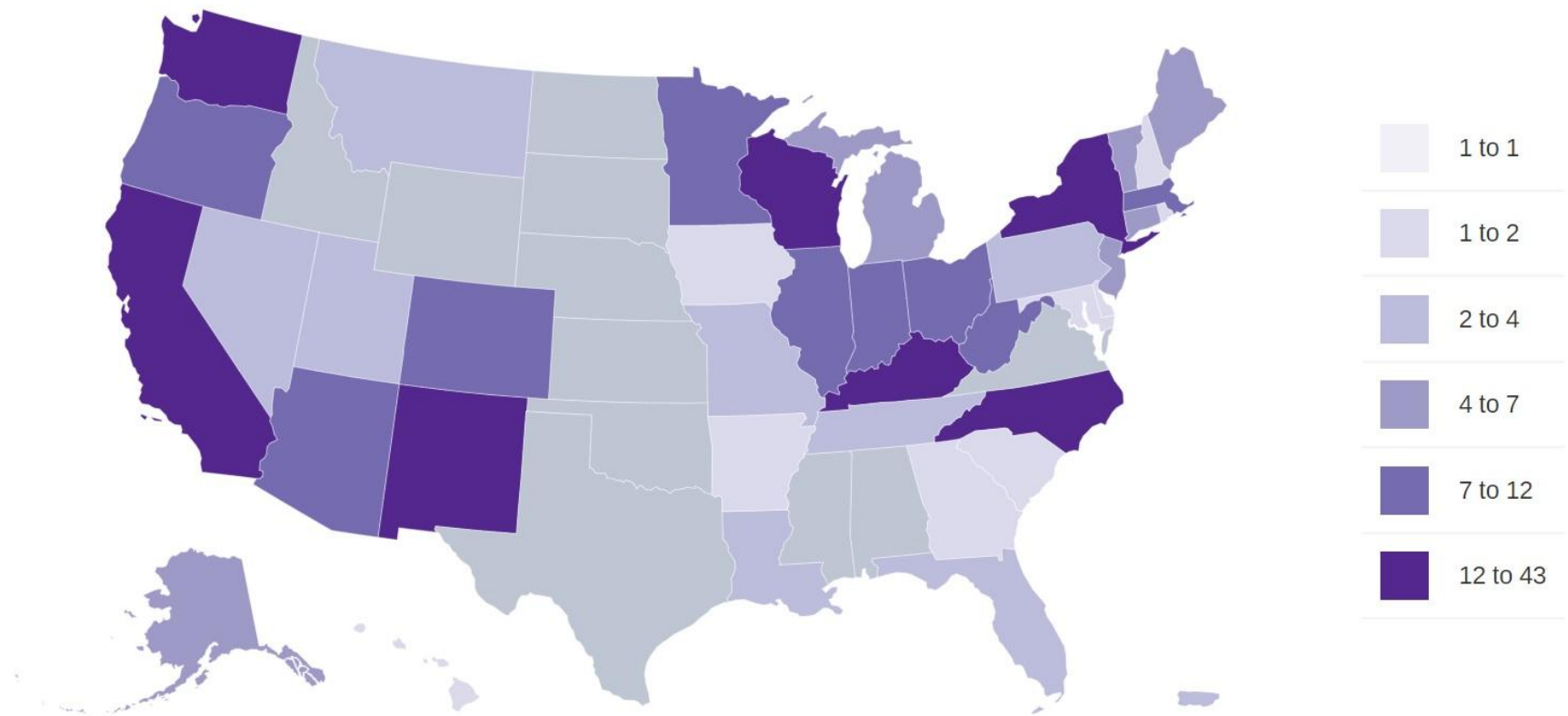
- Safety is the most important issue
- Reduce risk of harms
- It is our job to educate, not decide for the client
- Change takes time







Dark Green = Statewide authorization  
Light Green = Local authorization



Check North American Syringe Exchange Network (NASEN) directory for an updated list and contact info:

<https://nasen.org/directory/>

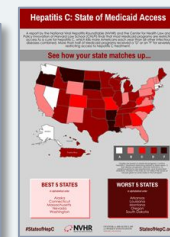
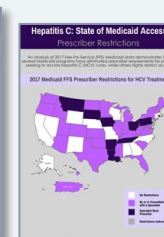
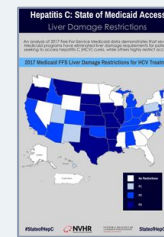
# **Punishment is Not a Public Health Strategy:**

The Criminalization of Viral Hepatitis in the United States

**Hepatitis C Treatment Access**

# Hepatitis C: The State of Medicaid Access - Overview

- One of NVHR's top priorities is **ensuring that public and private payers end all restrictions to treatment access.**
- This project examined Medicaid reimbursement criteria for available direct-acting antivirals (DAAs) for all 50 states, in addition to the District of Columbia and Puerto Rico.
  - **Focuses on liver damage, sobriety and prescriber restrictions.**
  - Highlights successes in access expansion as well as ongoing challenges since 2014.
  - Providing a first-time national assessment of Medicaid Managed Care Organization (MCO) coverage.



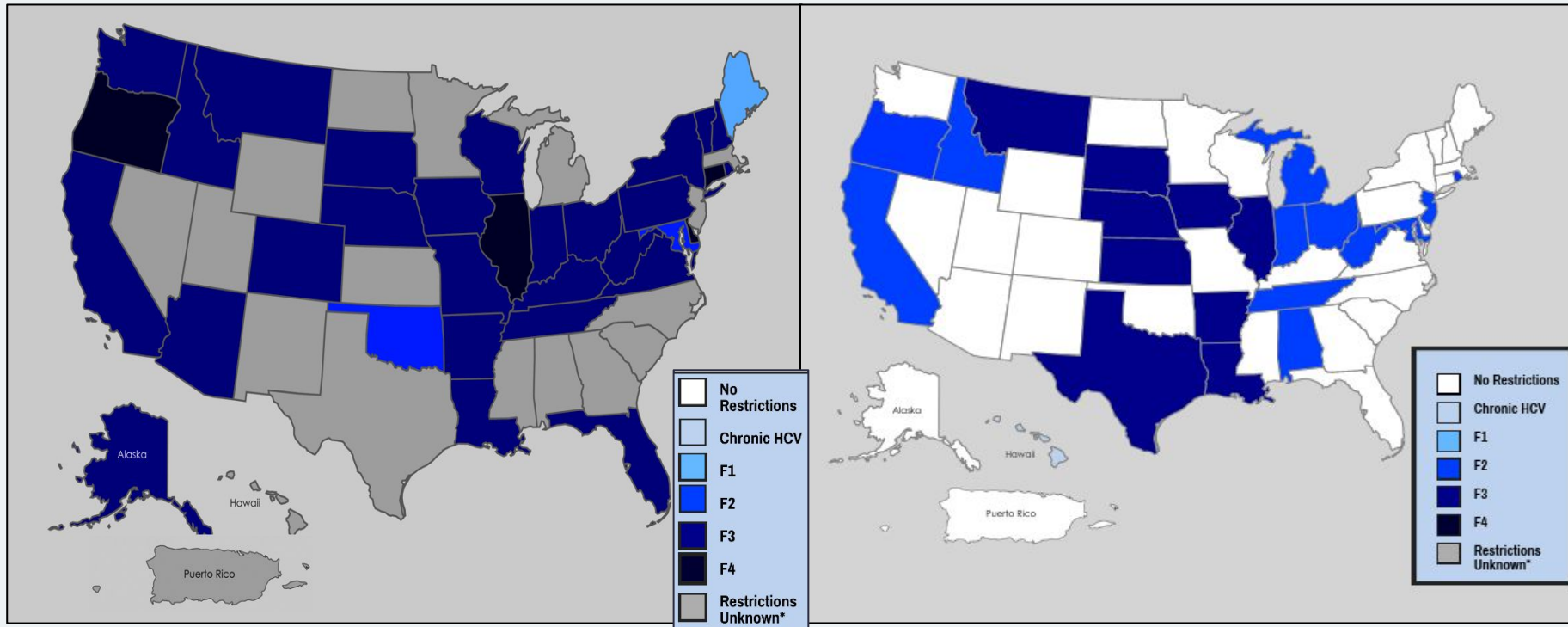
# Hepatitis C: The State of Medicaid Access - Findings

- **Access to HCV treatment has improved, primarily in reduction/elimination of liver damage (fibrosis) restrictions.**
- Access restrictions related to sobriety and prescriber limitations have decreased to a far lesser extent.
- While there are some MCOs with low levels of restrictions, many follow their states' fee-for-service (FFS) Medicaid restrictions, and others impose more restrictions.
- Transparency about criteria has increased dramatically from 2014 to 2018.

# Findings: Liver Damage Restrictions

2014

2018

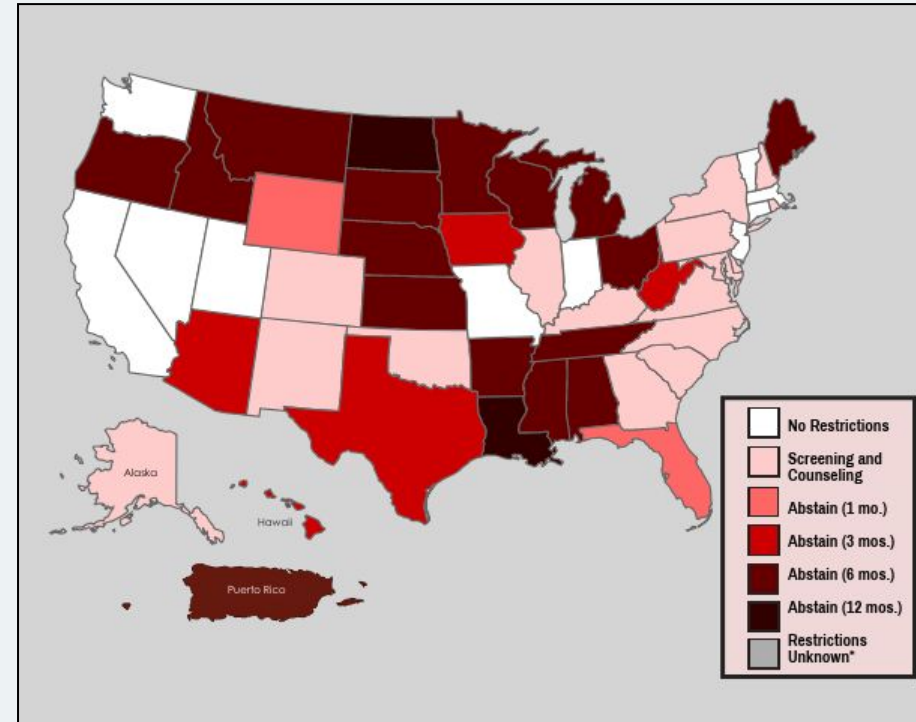
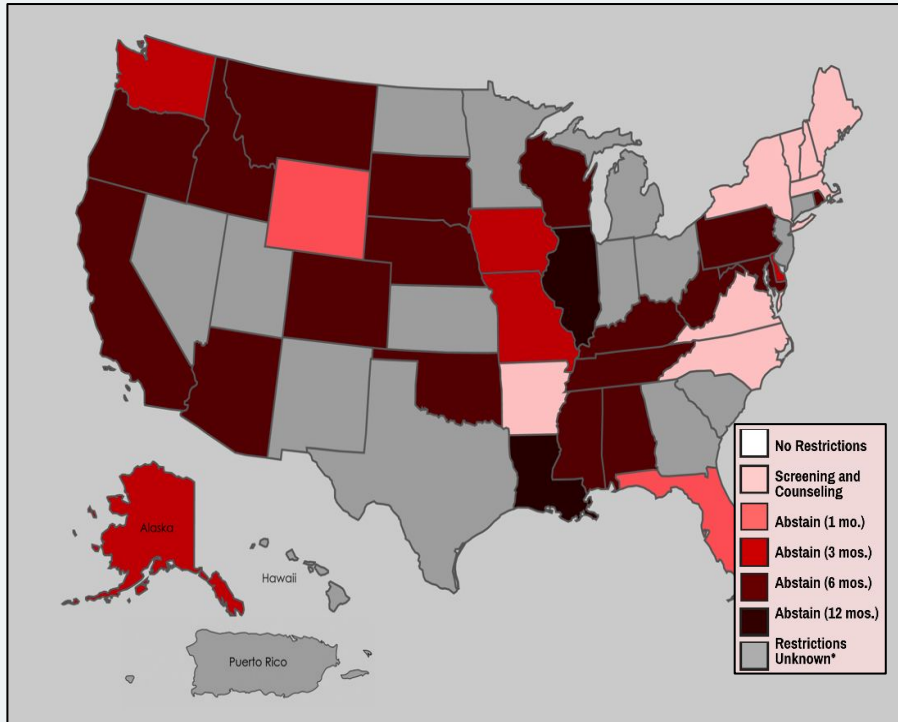


Data and figures presented here are current as of May 2018. CHLPI and NVHR at <https://stateofhepc.org/>.

# Findings: Sobriety Restrictions

2014

2018

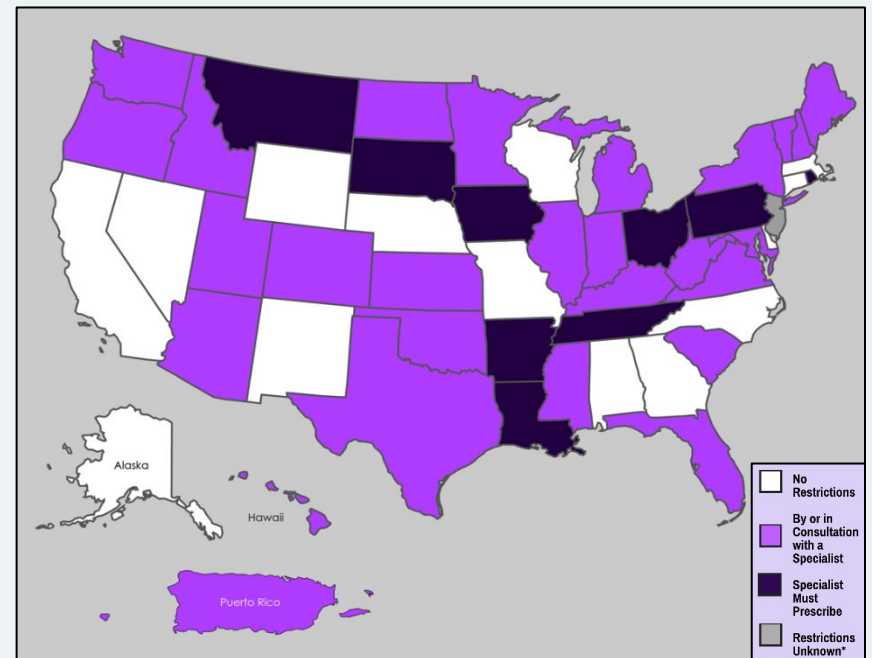
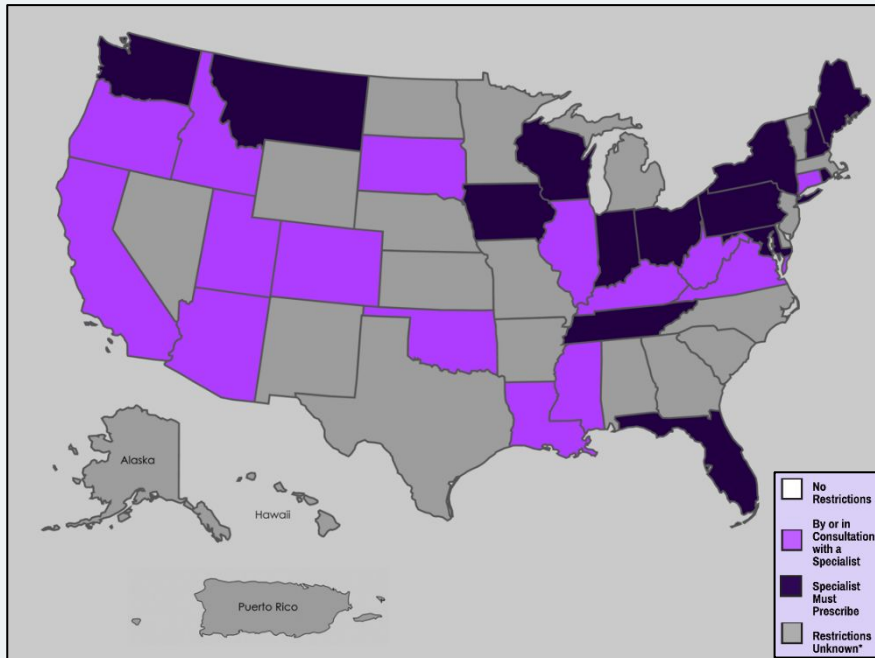


Data and figures presented here are current as of May 2018. CHLPI and NVHR at <https://stateofhepc.org/>.

# Findings: Prescriber Restrictions

2014

2018



Data and figures presented here are current as of May 2018. CHLPI and NVHR at <https://stateofhepc.org/>.



GIVEN THE STATE OF **TREATMENT  
ACCESS**, WHY IS THE  
CRIMINALIZATION OF VIRAL  
HEPATITIS A PROBLEM?

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# Viral Hepatitis Criminalization in IOWA



## State of Medicaid Access Grade: **D**

- In 2014, Iowa amended its HIV criminalization law to include viral hepatitis. **It is a felony in the state to recklessly transmit hepatitis to someone else**—reckless exposure that doesn't result in transmission is still a serious misdemeanor.
- Just two years later, 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 hepatitis C.
- **On top of criminalization laws, Iowa Medicaid maintains liver damage, sobriety and prescriber restrictions that limit many people with hepatitis C from accessing treatment.**
- Currently, Iowa Medicaid requires a **three month period of sobriety from alcohol and substance use** and then the prescriber must provide counseling regarding alcohol and substance use and education to prevent transmission. Iowa Medicaid also requires at severe liver damage (fibrosis) of F3 or greater and requires a liver, infectious disease or digestive disease specialist to prescribe treatment.

# Viral Hepatitis Criminalization in OHIO



## State of Medicaid Access Grade: **D**

- 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.**
- **At the same 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. In January 2018, a man with hepatitis C was charged with four felonies for spitting at first responders during the course of an arrest.
- **Ohio also has stringent Medicaid restrictions on treatment that include liver damage, sobriety and prescriber restrictions that limit many of the individuals targeted by these criminalization laws from receiving curative medications.**
- Currently, Ohio Medicaid Fee-for-Service **requires at least moderate liver damage** (fibrosis) of F2 or greater and **imposes a six month sobriety period** on beneficiaries. Ohio Medicaid also **requires a specialist to prescribe medication.**

# Viral Hepatitis Criminalization in SOUTH DAKOTA



## State of Medicaid Access Grade: **F**

- **South Dakota has some of the most harsh Medicaid access restrictions on hepatitis C treatment in the U.S.** Currently, the state imposes liver damage, sobriety and prescriber restrictions that limit individuals living with hepatitis C from receiving curative medications.
- Currently, **South Dakota Medicaid requires at least severe liver damage** (fibrosis) of F3 or greater, **imposes a six month sobriety period**, and also **requires a specialist to prescribe** medication.
- 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**.
- **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.**

# The Criminalization of Viral Hepatitis in the United States

- Incarcerating people living with hepatitis because of their health status is only going to make things worse.
- An estimated 1 in 3 inmates in U.S. prisons and jails is living with hepatitis C. However, less than 1% of those diagnosed with hepatitis C in corrections are receiving treatment.
- NVHR believes that all individuals living with viral hepatitis deserve access to comprehensive treatment and harm reduction services and criminalizing people's health status undermines our ability to solve this growing public health crisis.

# The Criminalization of Viral Hepatitis in the United States

- The “*Punishment is Not a Public Health Strategy: The Criminalization of Viral Hepatitis in the United States*” fact sheet is available as a resource for advocates here:  
<http://nvhr.org/sites/default/files/.users/u34/Criminalization%20Fact%20sheet%208.20.18.pdf>
- The Center for HIV Law and Policy, the Harm Reduction Coalition and NVHR will be holding a convening on viral hepatitis criminalization laws on November 1 in Louisville, Kentucky. For more information, visit: <http://www.hivlawandpolicy.org/viralhepatitis>

**PUNISHMENT IS NOT A  
PUBLIC HEALTH  
STRATEGY: THE  
CRIMINALIZATION OF VIRAL  
HEPATITIS IN THE UNITED STATES**

**An Overview of Current Laws,  
Science and Implications for  
Reform**



# BACKGROUND

## ■ Background:

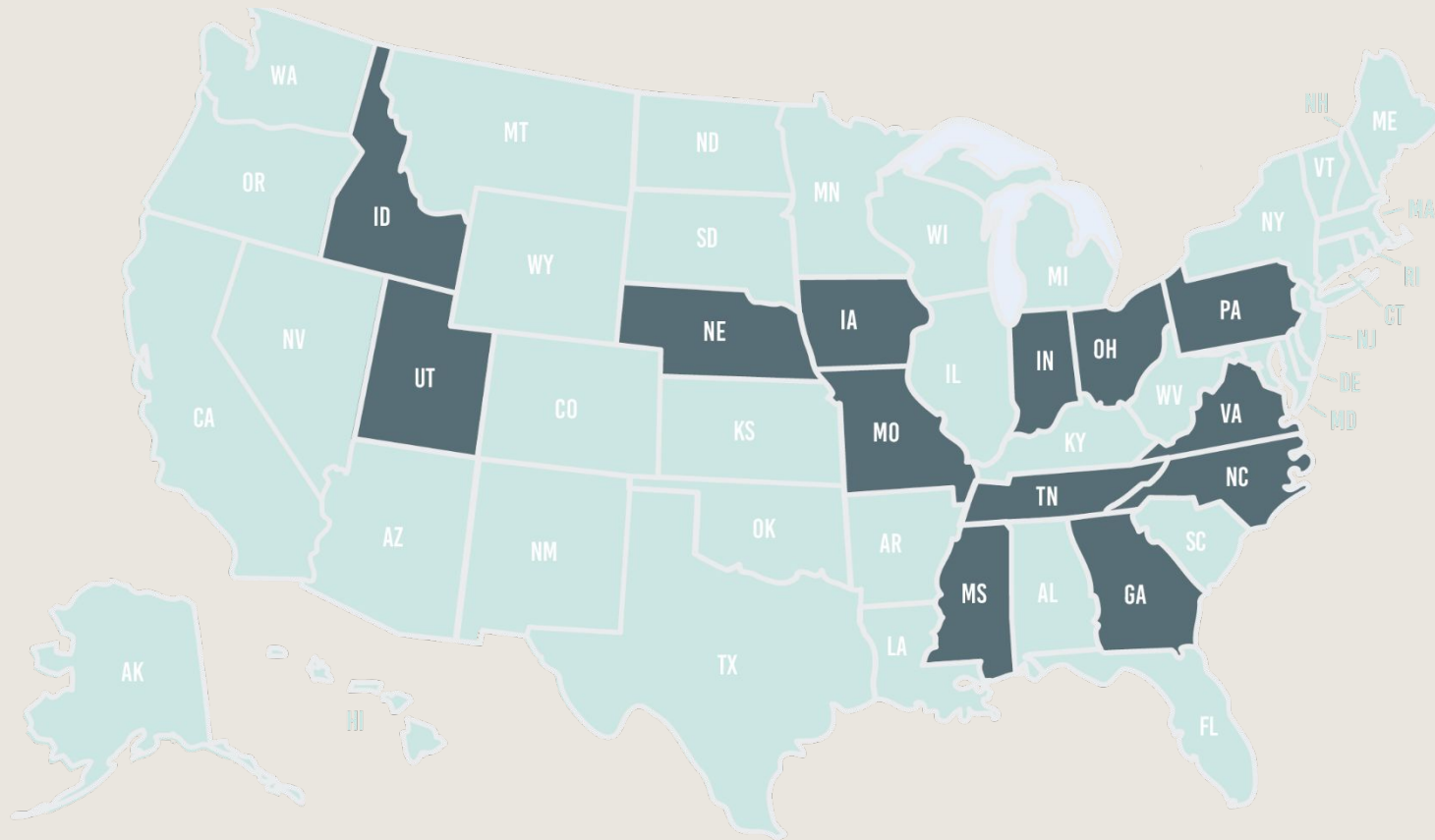
- CHLP's Positive Justice Project has been focused on the elimination of HIV criminal laws since 2010
- In the past several years, several key developments to bring us to this point:
  - The criminalization of viral hepatitis as an HIV criminal law reform strategy in Iowa (2014)
  - Updating our comprehensive *Sourcebook on HIV Criminal Laws* to include the criminalization of other STIs and infectious diseases (2017)
  - States proposing new criminal laws that target viral hepatitis exposure (e.g., South Dakota in 2018, Michigan in 2014)
  - Prosecutions of people for viral hepatitis exposure (ongoing)
  - Major increases in burden of viral hepatitis due to opioid crisis (ongoing)
- Most laws criminalizing viral hepatitis came about as same time as those targeting HIV



# OVERVIEW OF VIRAL HEPATITIS CRIMINALIZATION

- What is criminalized?
  - Law may apply to viral hepatitis generally (e.g., Ohio) or it may enumerate specific kinds of hepatitis (e.g., Idaho targets HBV)
  - Transmission is typically \*not\* required
- What kinds of behaviors are targeted?
  - Short answer is all the same things we see in HIV criminal laws!
    - Spitting, biting and other forms of bodily fluid exposure (including things not known to transmit hepatitis such as urine)—often specific to interactions with law enforcement or correctional personnel
    - Sex without prior disclosure of status
    - Needle-sharing
    - “Knowing exposure” = just about anything goes
- What is the punishment?
  - Ranges but often is a serious felony (e.g., in Georgia, can face up to 20 years in prison)

# OVERVIEW OF VIRAL HEPATITIS CRIMINALIZATION



# OVERVIEW OF VIRAL HEPATITIS CRIMINALIZATION: WHAT ARE THE PROBLEMS?

## ■ Unfair

- Unlike most other crimes against the person, prosecutor does not have to prove intent to harm/intent to transmit disease (no *mens rea*)
- Excessively punitive relative to comparable types of harm

## ■ Unscientific

- Criminalize conduct posing no, negligible, and low risk
- Promote misconceptions and stigma toward viral hepatitis
- Conflict with public health aims of universal vaccination for hepatitis A and B, treatment access and cure for hepatitis C

## ■ Disproportionately affect marginalized communities:

- Currently and formerly incarcerated people
- People who inject drugs
- People living with HIV (nearly 25% US PLHVI experience HCV coinfection)
- People of color, including API, AI/AN

See "Specific Populations Affected by HIV, AIDS, and Viral Hepatitis" SAMHSA (2015) found at: <https://www.samhsa.gov/hiv-aids-viral-hepatitis/specific-populations> or "Viral Hepatitis: Populations and Settings" CDC (2018) found at: <https://www.cdc.gov/hepatitis/populations/index.htm>

# CASE STUDY: OHIO

CLEVELAND

## Avon Lake man with Hepatitis C arrested after spitting in Cleveland officer's face, mouth

### I-Team: Police officers get justice for man's disgusting attack

POSTED 4:39 PM, JUNE 14, 2018, BY ED GALLEK

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Man sentenced for spitting in officers face



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# CASE STUDY: OHIO



- Outcome of case: 27-year old defendant pleaded guilty to one count of harassment with a bodily substance and was sentenced to 18 months.
  - Originally he was charged with four counts of harassment with bodily substance from a single encounter with first responders—he faced a maximum penalty of 12 years.
- From one of the police officer complainants:
  - “I’ve never had this much anxiety in my entire life due to this, having to go through all this testing for Hepatitis C, because he was knowingly trying to infect us.”

# CASE STUDY: OHIO

ORC § 2921.38(c): No person, with knowledge that the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a **carrier of a hepatitis virus**, or is infected with tuberculosis and with the intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with **blood, semen, urine, feces, or another bodily substance** by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.



Violation = ***third degree felony punishable by up to 3 years in prison***

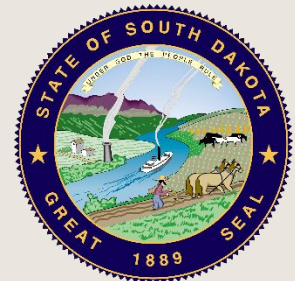
See [HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice](#) (2017)

# HOW DO THESE LAWS COME TO BE?

- Of the thirteen states that currently criminalize viral hepatitis, two primary approaches:
  - Simultaneously criminalizing hepatitis alongside HIV within the same piece of legislation or criminalizing hepatitis along with other infectious or communicable diseases, which may include HIV
  - Adding hepatitis onto an existing statute that criminalizes HIV.
- Iowa: criminalizing viral hepatitis as part of an HIV criminal law reform strategy in 2014
  - Expands scope of criminalized conditions to include viral hepatitis, meningococcal disease, and TB—the idea is that this constitutes a shift away from “HIV exceptionalism” or singling out HIV for especially harsh treatment under the criminal law
  - Result: “Reckless” transmission of viral hepatitis is a Class D Felony punishable by up to 5 years in prison

# HOW DO THESE LAWS COME TO BE?

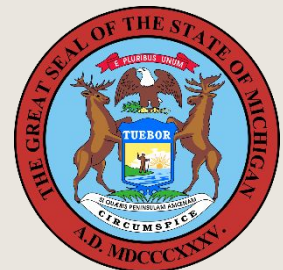
- South Dakota and SB 93 (2018)
  - That chapter 22-18 be amended by adding a **NEW SECTION** to read:
  - Any person infected with hepatitis C who intentionally exposes another person to infection by:
    - (1) Transferring, donating, or providing blood, tissue, organs, or other potentially infectious body fluids or parts for transfusion, transplantation, or other administration to another in any manner that presents a significant risk of hepatitis C transmission;
    - (2) Dispensing, delivering, exchanging, selling, or in any other way transferring to another person any nonsterile intravenous or intramuscular drug paraphernalia that has been contaminated by the person; or
    - (3) Throwing, smearing, or otherwise causing blood to come in contact with another person for the purpose of exposing that person to hepatitis C infection
- Class C Felony = up to **15 years incarceration**





# HOW DO THESE LAWS COME TO BE?

- Michigan and SB 1130 (2014)
  - (1) AN INDIVIDUAL who knows that he or she has or has been diagnosed as having acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, **OR THE HEPATITIS C VIRUS**, or who knows that he or she is HIV infected, and who engages in sexual penetration with another INDIVIDUAL without having first informed the other INDIVIDUAL that he or she has acquired immunodeficiency syndrome, or acquired immunodeficiency syndrome related complex, **OR THE HEPATITIS C VIRUS**, or is HIV infected, is guilty of a felony.
- Would have been punishable with up to **4 years incarceration**



# POSITIVE JUSTICE PROJECT PRINCIPLES FOR REFORM (2015)

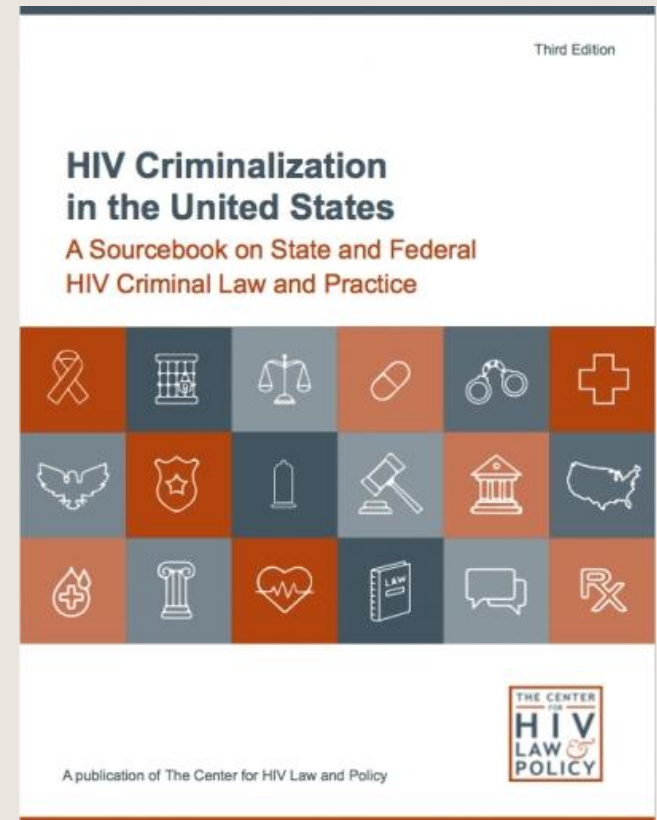


- a. No disease-specific criminal law or sentence enhancement;
- b. Must prove specific intent to harm + conduct likely to do intended harm;
- c. Steps to reduce risk = no intent to harm;
- d. No airborne/casually transmitted diseases;
- e. Proportionate penalty, no sex offender status;
- f. No felony laws for transmitting/exposing another to disease; and
- g. No new or increased penalties for others.

# FOR MORE INFORMATION

## *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*

*Contains information on the criminalization  
of HIV as well as other infectious diseases,  
including viral hepatitis*



# THE PERFECT PUBLIC HEALTH STORM

- Viral hepatitis is on the rise in the United States, and treatment access is often not meeting that need
- Most states prohibit the possession of drug paraphernalia, and syringe access remains inadequate
- Viral hepatitis is related to our correctional crisis, and incarcerating people based on their disease status will exacerbate this existing problem
- We must resist carceral approaches and instead promote intersectional advocacy to build solutions for people who inject drugs and people living with viral hepatitis

**Criminalizing someone's health status should never be the solution to a public health challenge.**

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