You Can't Address HIV by Tackling Only HIV:
The Center for HIV Law and Policy's Position on Confronting the Stigmatization of All Infectious and Communicable Disease

Tackling the HIV epidemic always has required tackling the stigma attached to HIV.

HIV stigma is a manifestation of a much broader set of "social diseases": homophobia, transphobia, racism and the related "othering" that is done to marginalize, criminalize, imprison and even kill those who make mainstream, non-queer people feel afraid or uncomfortable.

We believe that we have no hope of addressing HIV and HIV stigma by tackling only HIV.

HIV, sexually transmitted infections, tuberculosis (TB), and meningococcal disease are all are poorly understood, stigmatized conditions that disproportionately affect and often intersect in vulnerable and marginalized communities with limited social or political capital.

- There were 10,528 reported cases of TB in the United States in 2011.
- Many of the active TB cases are found among marginalized groups, including people living with HIV, injection drug users, homeless people, people of color, and those living in poor high-density urban areas.
- Many immigrants – including those living with HIV – have been exposed to TB and have latent TB. In fact, a majority (63%) of reported TB cases in the United States occur among immigrants.
- The rate of TB among foreign-born persons in the U.S. (15.9 cases per 100,000) in 2012 was approximately 11 times higher than among people born in the U.S. (1.4 cases per 100,000).
- TB remains a top cause of death for people with HIV globally.
- TB also carries stigma. In fact, the President of Gambia recently noted that "LGBT can only stand for leprosy, gonorrhoea, bacteria and tuberculosis."
- Meningococcus recently was associated with a highly publicized outbreak among gay men – particularly those living with HIV – in New York City.
- Hepatitis C (HCV) is a major illustration of racial health disparities in the United States. African Americans are twice as likely as whites to have HCV, and the HCV-related mortality rate for African Americans is almost double that for whites.
- The estimated proportion of primary and secondary syphilis cases attributable to men who have sex with men (MSM) increased from 7% in 2000 to 64% in 2004. In 2010, approximately 67% of cases were among MSM.

We have all but forgotten about TB in the United States, and TB does not have the same kind of advocacy community as HIV. Hepatitis advocates have struggled for years to bring attention to and investment in tackling hepatitis and the stigma associated with the virus.

CHLP believes it is essential to engage in open, respectful, and collaborative dialogue on difficult policy decisions – including the voice of individuals affected by them – as we advance proposals to modernize HIV-specific criminal laws. This dialogue must include a racial and economic justice analysis that is deeply relevant to the criminalization of queer folks, people of color, and immigrants. The experiences of people of color, immigrants, and other marginalized communities must inform the compromises that we make as advocates and as a movement.

CHLP was created, in part, to ensure that the most marginalized members of our communities have a voice, and are represented with the facts when proposed policies affect them. We base our positions on the substance of policies and their impact on our communities, not their source.

The Iowa Bill

At present, Iowa has two laws that affect HIV and other infectious and communicable diseases.

- Iowa Code Section 709C currently makes it a felony punishable by up to 25 years in prison to "intentionally" expose "the body of one person to a bodily fluid of another person in a manner that could result in the transmission" of HIV.
- Under current Iowa Code Sections 139A.20, 139A.25, and 903.1, a person who knows she/he has hepatitis, TB, meningococcal disease, or "any other disease determined to be life threatening" [with the exception of HIV] who "knowingly exposes another … with the intent that another person contract" the disease is guilty of a *simple misdemeanor, punishable by a fine no greater than $625 and/or imprisonment no greater than thirty days*.
- Under the least onerous version of the pending bills to amend Iowa Code Section 709C, people with hepatitis, TB, and meningococcal disease *would now face felony charges and a 25 year sentence for essentially the same conduct*.
- Interpretation and implementation of the law leave people with all of these conditions at serious risk for unjust convictions. If the current law – which targets people living with HIV who intentionally expose a partner to their bodily fluids in a way that could transmit HIV – had been applied fairly, many if not most of those charged to date would not have been convicted. The same criminal justice system would be enforcing a law that would make "intentional" transmission of TB a felony.
- In contact with Iowa advocates about the pending bill's dramatic increase in felony exposure and punishment that people with TB and others would face, CHLP was advised that advocates would not consider eliminating reference to these diseases in their reform advocacy, despite being informed that nurses and physicians had expressed concerns at this part of the proposal.
- Local and state issues have profound implications on national policy.
- Personal attacks discourage dialogue and drive people out of the movement.

The last several years have seen growing consensus that existing HIV criminal statutes need modernization to eliminate stigmatizing single-disease-specific laws. The HIV anti-criminalization movement will benefit by treating HIV stigma as symptomatic of broader social justice issues affecting queer and marginalized people, with the goal of working to end criminal prosecutions triggered by an individual's health or disability and the related prejudice and discrimination that informs criminalization and prosecution.

Criminal convictions based on the extraordinarily rare cases of intentional wrongdoing through disease transmission must require: 1) proof of intent to harm, 2) conduct likely to cause harm, and 3) actual harm; and punishment must be proportionate to the actual harm caused.