

Crime and Punishment: Is There a Role for Criminal Law in HIV Prevention Policy?

Project Staff: Stephen F. Morin, PI: Leslie E. Wolf; Richard Vezina

Project Description: The Until There's A Cure Foundation funded us to research and publish a monograph analyzing an area of current HIV/AIDS public policy. This project explores what role, if any, criminal law should have in addressing HIV transmission and what the scope of that role should be. This monograph reviews the criminal law approach to HIV transmission, including the history and policy background to criminalization of intentional HIV exposure and the reasons that states may use such laws. It then analyzes in detail the statutes that states have adopted to criminalize intentional HIV exposure, focusing on the specific statutory and its implications to highlight how criminal HIV exposure laws can support or undermine public health prevention efforts.

Significance: This project is particularly timely in light of the recently announced CDC guidelines emphasizing HIV prevention with HIV-infected people. Such efforts often require HIV-infected people to disclose their participation in activities that may be illegal in their state. Since the mid-1990s, numerous states have either enacted broad new legislation criminalizing HIV transmission or substantially increasing the penalties on existing laws.

Federal and state legislators have an important role in shaping HIV prevention policy, both through the statutes they adopt and the funding they authorize. HIV education and other prevention efforts have proven highly effective in reducing HIV infection. However, sustaining these efforts requires legislative support for social and environmental changes. Criminal HIV exposure laws have historic precedent and potentially important symbolic value, and many legislators and their constituents support them. However, legislators also need to take into account the broader effect these statutes may have on HIV prevention efforts. We believe that, with careful consideration, legislators can make decisions that appropriately balance these two competing goals and further support efforts to reduce the incidence of HIV.

Unlike other literature on this topic, this monograph analyzes the statutory language and makes specific recommendations for drafting criminal HIV transmission statutes that achieve an appropriate balance between public health interests and criminal law goals. In particular, we make specific recommendations for how to improve existing criminal HIV exposure statutes to minimize the risks to public health prevention efforts.

Interesting Findings: The high variability among state laws on HIV-exposure has created challenges in developing consistent, sound policy. Although most of the debate about criminalization of HIV transmission to date has been at the extremes – criminalization of all exposures or none at all – our analysis suggests that the sounder position falls between the extremes. We conclude that criminalization can be appropriate, but only in limited circumstances, and that statutes must be carefully drafted to minimize any adverse impact on public health prevention measures.

We make several recommendations to lawmakers that can aid in the development of more balanced, consistent HIV-exposure laws. Included in these recommendations are: exclusion of behaviors that comply with prevention guidelines; requirement of intent to harm; providing legal protections; and, targeting persistent offenders.