

Social Determinants of Health Legal Series – HIV/STI Criminalization

Objective

- Welcome and Introductions
- Complete poll and trivia questions on HIV/STI criminalization via Mentimeter
- The history, impact, and modernization of HIV Criminalization Laws by Dori Molozanov, J.D
- Select HIV Criminalization Efforts at the New York City Department of Health and Hygiene by Adrian Guzman, J.D, MPH
- Q&A session

Welcome and Introductions

Social Determinants of Health Team



Rodderick Sheppard
Pronouns (He/Him/His)
Manager, Prevention
rsheppard@nastad.org



Kristina Santana, MPH
Pronouns (She/Her/Ella)
Senior Manager, Prevention
ksantana@nastad.org



Matty Helton
Pronouns (They/Them)
Senior Associate, Prevention
mhelton@nastad.org

For more information regarding Social Determinants of Health programming at NASTAD please feel free to contact us.

Trivia & Poll Questions

- Go www.menti.com
- Enter code **6807 6922**



Please enter the code

Submit

The code is found on the screen in front of you

Rectangul

We use cookies to provide this service and improve your experience. [Learn more](#) ×

Powered by Mentimeter [Terms](#)

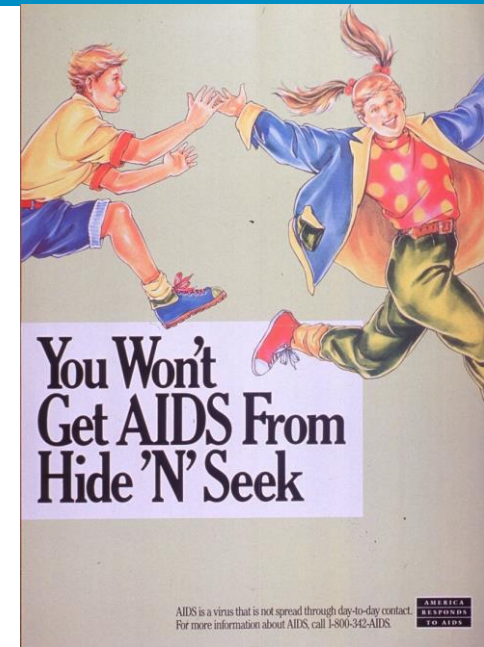
Overview

- History of HIV criminalization and impact on public health
- “Modernizing” HIV criminalization laws
- Advocacy and engagement

History of HIV Criminalization



A 1985 protest in New York City, the hub of the AIDS epidemic and the corresponding art movement. Source: <https://mashable.com/2016/10/26/aids-epidemic-study/>



Part of the CDC's tireless campaign against AIDS misinformation. (Centers for Disease Control, 1980s)

AIDS Action Committee (Massachusetts). "AIDS Causes Blindness." AIDS Action Committee (Massachusetts), [ca. 1986].



"Stop shooting up AIDS. Get into drug treatment." (National Institute on Drug Abuse (NIDA), 1980s)

Impact of HIV Criminalization

Criminal transmission laws are shown not to improve health outcomes or deter behaviors that carry risk of transmission.

Instead, they create...

- Stigma
- Fear of legal consequences

...which leads to:

- Reduced testing, prevention, and adherence to care and treatment
- Increased community viral load
- Mistrust of the health care system and providers (including, potentially, SSPs)

Impact of HIV Criminalization

*“People living with HIV (PLHIV) who identify as transgender or third sex are more likely than any other group to feel that it is reasonable to avoid HIV testing (58%), disclosure of one’s HIV positive status to sex partners (61%) or accessing HIV treatment (48%) **because of fear of HIV criminalization and distrust of the U.S. criminal justice system.**”*



Transgender Law Center, July 2, 2013,
<https://transgenderlawcenter.org/archives/8538>

HIV Criminalization In the News

Man Sentenced To 30 Years In Prison For Not Telling Sex Partners He's HIV Positive Gets Out 25 Years Early

“Since four of the six men were white, his trial was incredibly **racially charged**, leading to an **unprecedented sentence** of 30.5 years. Today he was released, 25 years early, after an appeals court **deemed his original trial ‘fundamentally unfair.’**” – July 11, 2019, *YourTango.com*

“Mr. Johnson, 27, was released on parole on Tuesday after an appeals court found that his 2015 trial was **‘fundamentally unfair.’** His original sentence was **longer than the state average for second-degree murder.**” – July 14, 2019, *New York Times*

He Emerged From Prison a Potent Symbol of H.I.V. Criminalization

Michael L. Johnson, a gay athlete convicted of not disclosing his H.I.V. status to sexual partners, was released 25 years early and has become a galvanizing force to overhaul laws.



Originally sentenced to 30 years, Michael L. Johnson has galvanized advocates working to update laws that they say further stigmatize and unfairly penalize people with H.I.V. Leah Klafczynski for The New York Times

HIV Criminalization “Modernization”

- Downgrading from felony to misdemeanor
- Expanding criminalization laws to include other communicable diseases, in addition to HIV
- Incorporating scientific standards related to transmission risk
- Limiting prosecution to cases where:
 - defendant acted with intent to transmit
 - transmission actually occurred
- Statutory defenses

California

Intentional transmission of an infectious or communicable disease

Cal. Health & Safety Code § 120290 ([SB 239](#), eff. January 1, 2018)

	Old law	Current law
Diseases subject to criminalization	HIV only	Infectious or communicable diseases
Degree of crime	Felony	Misdemeanor
Type of conduct criminalized	Sexual activity without use of condom	Conduct that poses a substantial risk of transmission
Disclosure of status	Defendant must fail to disclose	
Intent	Specific intent to transmit required	
Transmission v. exposure	Actual transmission not required	Actual transmission not required, but longer sentence if transmission occurred
Defenses	None	Defendant took or attempted to take practical means to prevent transmission

Michigan

Intercourse while HIV positive; duty to inform

Mich. Comp. Laws Ann. § 333.5210 ([HB 6020](#), eff. Mar. 28, 2019)

	Old law	Current law
Diseases subject to criminalization	HIV only	
Degree of crime	Felony	Felony or misdemeanor (depends on intent and whether transmission occurred)
Type of conduct criminalized	“Sexual penetration” (including oral sex or “any intrusion, however slight, of any part of a person’s body or of any object into anal or genital openings” of another)	“Vaginal or anal intercourse”
Disclosure of status	Defendant must fail to disclose	
Intent	Not required	Not required, but it’s a felony if defendant acted with specific intent to transmit
Transmission v. exposure	Actual transmission not required	Actual transmission not required, but it’s a felony if transmission occurred
Defenses	None	Defendant is virally suppressed (unless defendant acted with intent to transmit)

HIV Criminalization “Modernization”

Nevada ([SB 275](#), eff. June 6, 2021)

- No longer limited to HIV, includes other communicable diseases
- Eliminates felony penalties
- Intent to transmit required
- Actual transmission required
- Defenses for disclosure and consent, or taking practical means to prevent transmission

Illinois ([HB 1063](#), eff. July 27, 2021) → repeals HIV crim law

The Case for a Public Health Approach

The HIV National Strategic Plan calls for state legislatures to reconsider criminalization statutes that may act as barriers to public health prevention goals and may interfere with public health strategies to reduce transmission of HIV/AIDS.

Criminal Laws Undermine Public Health

A study of 150 HIV-negative MSM found that **7 percent** were **less or much less likely to seek HIV testing** due to concern over future prosecution.

“Subsequent models estimated that this 7% reduction in testing could cause an **18.5% increase in community HIV transmission**, **73%** of which was driven by the failure of HIV-positive but undiagnosed MSM to **access care and reduce HIV transmission risk by using ART.**”

Kessler, Maya A., et al., *Prosecution of non-disclosure of HIV status: Potential impact on HIV testing and transmission among HIV-negative men who have sex with men* (Feb. 28. 2018), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0193269>

HIV Criminalization Exacerbates Racial Disparities

“[P]enalties associated with HIV-specific statutes are **unevenly imposed on the basis of race and sex.**”

“Discriminatory enforcement of HIV-criminalization statutes **compounds injustices based on race, sex, and socioeconomic status**, and it undermines the retributivist rationale for HIV criminalization.”

Yang, Y. Tony, Sc.D., LL.M, M.P.H., et al., *Rethinking Criminalization of HIV Exposure — Lessons from California’s New Legislation*, <https://www.nejm.org/doi/full/10.1056/NEJMp1716981>

Advocacy and Engagement

- Legislative advocacy
 - Lobby Day
 - Individual meetings with legislators' health policy staff
- Media attention and news coverage of the issue
- Engaging non-governmental partners (e.g., Medical Society)
- Coalition membership
 - Advocates, lobbyists, legislators, health departments

Resources



NASTAD resource: [*HIV Criminalization Resources*](#)

These resources:

- Help public health professionals broaden their knowledge about HIV criminalization
- Highlight ineffectiveness of criminal laws as a public health measure
- Emphasize the importance of public health-based alternatives that align with current science and are more effective at preventing and ending HIV transmission and stigma
- Discuss emerging issues related to data confidentiality and ethics

Questions?

Dori Molozanov, JD

Manager, Health Systems Integration

dmolozanov@nastad.org

Select HIV Criminalization Efforts at the New York City Department of Health and Mental Hygiene

NASTAD Social Determinants of Health Legal Series – HIV/STI Criminalization Webinar
Wednesday, October 26, 2022, 3-4pm

Adrian Guzman, JD, MPH
Director, Policy and External Affairs

Bureau of Hepatitis, HIV, and Sexually Transmitted Infections

Envisioning a New York City without transmission or illness related to viral hepatitis, HIV, and sexually transmitted infections.

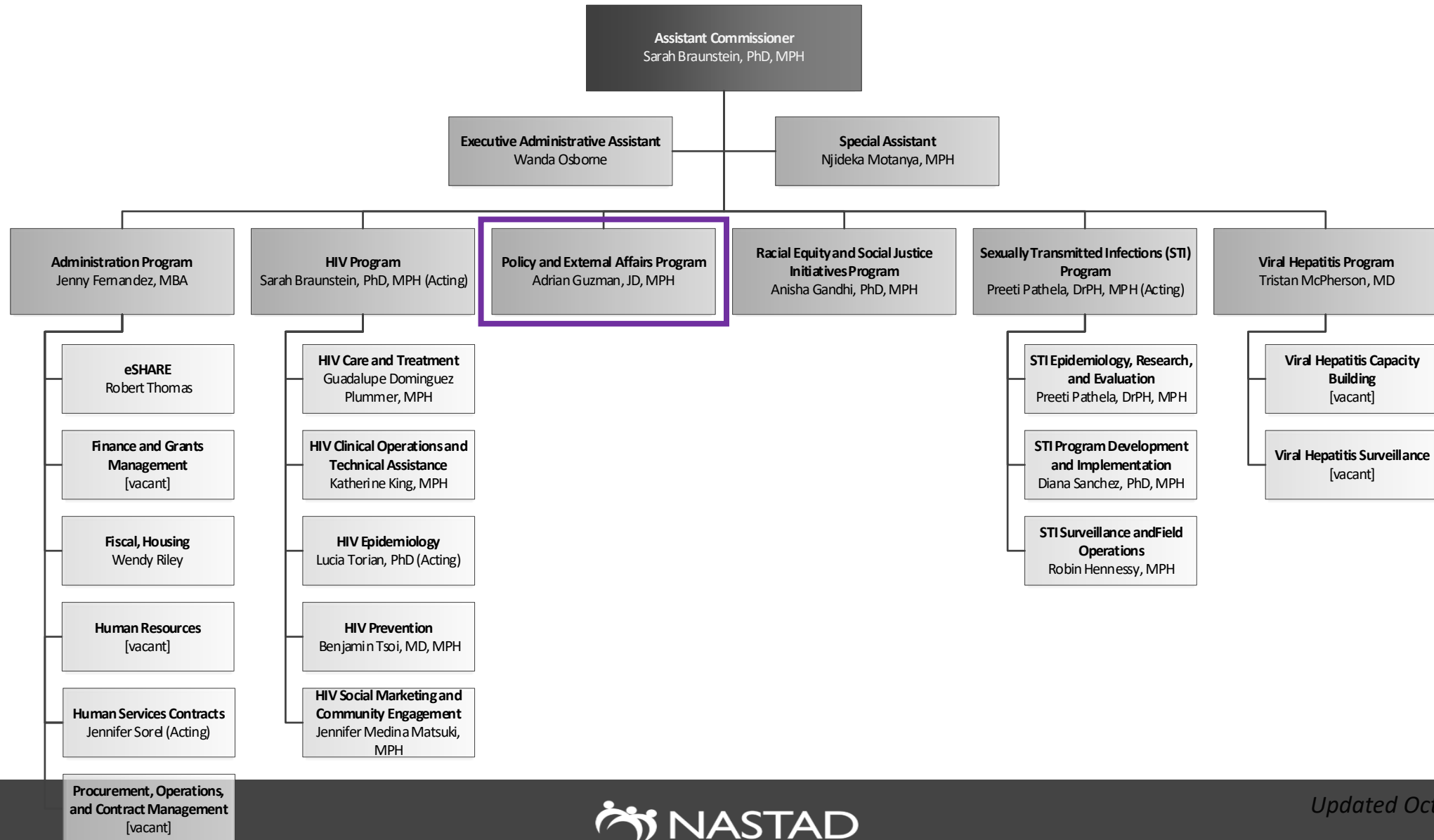
Table of Contents

- Bureau of Hepatitis, HIV, and Sexually Transmitted Infections (BHHS) Overview
- BHHS-Led Trainings on HIV Criminalization and Related Topics
- BHHS HIV and Criminal Justice Projects
- Agency Web Page on HIV and Related Legislation, Regulations, and Policies
- HIV Jurisdictional Plans and HIV Criminalization



Bureau of Hepatitis, HIV, and Sexually Transmitted Infections (BHHS) Overview

BHHS Organizational Chart



BHHS Policy and External Affairs Program Responsibilities

- Policy
 - Develops local, state, and federal HIV-, STI-, and viral hepatitis-related BHHS legislative and regulatory agendas, and collaborates with NYC DOHMH Office of External Affairs (OEA) Intergovernmental Affairs and General Counsel, government officials, and community stakeholders to implement agenda items and related policies
 - Monitors and responds to HIV-, STI-, and viral hepatitis-related policies, funding streams, and health systems activities, including New York State Medicaid redesign efforts
 - Represents BHHS in various local, state, and federal interagency and community-based policy work groups and coalitions

BHHS Policy and External Affairs Program Responsibilities (cont.)

- External Affairs
 - Oversees BHHS media and public relations, including liaising with the OEA Press Office, responding to media and constituent inquiries, fielding requests for appearances and presentations by leadership, and ensuring BHHS messaging is consistent and accurate
 - Oversees BHHS communications matters, including liaising with the OEA Bureau of Communications and coordinating the BHHS Communications Strategy Work Group



BHHS-Led Trainings on HIV Criminalization and Related Topics

CDC CBA Training Module on Legal and Policy Issues Related to Cluster and Outbreak Detection

In November 2020, BHHS led a Centers for Disease Control and Prevention (CDC) Capacity Building Assistance (CBA) **training module on legal and policy issues related to HIV cluster and outbreak response plans for health departments.** The module covered:

- Brief history of HIV activism;
- HIV criminalization overview;
- HIV criminalization and cluster and outbreak detection and response; and
- Health department best practices.



New York City Prosecutors' Roundtable on the Criminal Justice Response to HIV and Infectious Disease

In June 2021, BHHS joined the Association of Prosecuting Attorneys and The Center for HIV Law and Policy's **New York City Prosecutors' Roundtable on the Criminal Justice Response to HIV and Infectious Disease**. BHHS led three sessions:

- Causes and Transmission of Infectious Diseases: Bloodborne Diseases;
- Causes and Transmission of Infectious Diseases: Airborne Diseases; and
- HIV, Hepatitis C, Tuberculosis, and COVID-10 in New York City: Latest Surveillance Data and Available Resources.



White House Convening on HIV Criminalization

In June 2022, BHHS joined the White House Office of National AIDS Policy, Association of Prosecuting Attorneys, and The Center for HIV Law and Policy's **White House Convening on HIV Criminalization**. The meeting brought together nearly 50 State and District Attorneys, health department representatives, and White House and CDC officials to address HIV-specific criminal and civil laws and sentence enhancements that target people with HIV on the basis of their status. BHHS discussed:

- The public health implications of HIV criminalization; and
- The importance of health department-led partnerships with prosecutors, defense attorneys, and policymakers to address HIV criminalization and to build HIV and sexual health literacy among criminal justice stakeholders.



HIV Criminalization Presentations to Agency Staff and External Stakeholders

Since 2016, BHHS has delivered numerous **presentations on HIV criminalization** to New York City Department of Health and Mental Hygiene (NYC DOHMH) staff and external stakeholders. Presentations included:

- Definition(s) of HIV criminalization;
- Select states' HIV-specific criminal laws and sentencing schemes;
- Select cases involving arrests and prosecution under HIV-specific criminal laws;
- Public health implications of HIV criminalization; and
- The role of local and state health departments in modernizing or repealing HIV-specific criminal and civil laws and sentencing enhancements.



BHHS HIV and Criminal Justice Projects

BHHS HIV and Criminal Justice Projects

In fall 2021, following the New York City Prosecutors' Roundtable on the Criminal Justice Response to HIV and Infectious Disease, BHHS began exploring programming to address the intersection of HIV and criminal justice in New York City and New York State.

BHHS is currently seeking to fund an organization to carry out two projects:

- **HIV Criminal Justice Stakeholders Project;** and
- **HIV Criminalization Project.**

BHHS HIV and Criminal Justice Projects

As part of the **HIV Criminal Justice Stakeholders Project**, the funded organization will:

- Develop informational products (e.g., palm cards, fact sheets) for a diverse array of criminal justice stakeholders (e.g., NYPD officers, prosecutors, defense attorneys) on the basics of HIV and other infectious disease transmission and on New York State legislation, regulations, and policies regarding HIV and infectious disease discrimination and confidentiality; and
- Develop and implement HIV and infectious disease literacy programs for these criminal justice stakeholders.

BHHS HIV and Criminal Justice Projects

As part of the **HIV Criminalization Project**, the funded organization will:

- Develop and implement a portfolio of HIV criminalization policy projects and programming, including local and state legislative, regulatory, and policy analyses and recommendations for improving outdated or stigmatizing content therein; and
- Provide technical assistance to update NYC DOHMH policies, as needed, for the protection of staff and to ensure appropriate private protections for people with HIV and/or other infectious diseases.



Agency Web Page on HIV and Related Legislation, Regulations, and Policies

Agency Web Page on HIV and Related Legislation, Regulations, and Policies

BHHS is exploring developing a **public- and provider-facing web page** on the NYC DOHMH website featuring local and state legislation, regulations, and policies related to HIV and other STIs, viral hepatitis, and harm reduction.

The web page will serve to inform New Yorkers of the services, quality of care, and confidentiality protections to which they are entitled under local and state law, and to inform providers of their service delivery and reporting requirements.

The web page will also serve as a companion to the New York State Ending the Epidemic (ETE) Dashboard Policy Tracker, which is designed to share progress on policy efforts that address ETE goals in New York State



HIV Jurisdictional Plans and HIV Criminalization

Policy Issue: HIV Criminalization



New York City 2020 Ending the HIV Epidemic Plan: *Selection from Cross-Cutting Issue: Social and Structural Determinants of HIV-Related Health Inequities, Key Activity 1:*

“Work to end stigma and discrimination related to HIV status or marginalized identities”

National HIV/AIDS Strategy: 2022-2025: *Selection from Objective 3.1: Reduce HIV-Related Stigma and Discrimination:*

“HIV-specific criminal laws perpetuate HIV-related stigma, and discrimination can also deter individuals from getting tested. Some of these laws criminalize behavior that pose low or no risk for transmitting HIV and apply regardless of actual HIV transmission. These outdated laws do not reflect our current understanding of HIV and should be repealed or updated. . . . Such efforts must ensure that criminal laws and policies regarding HIV transmission are based on the latest scientific evidence and reflect effective public health strategies, and that legislators, prosecutors, and law enforcement officials have an accurate understanding of HIV transmission risks.”

New York City 2020 Ending the HIV Epidemic Plan Overview

In March 2021, as part of our Ending the HIV Epidemic in the U.S. initiative, NYC DOHMH released the **New York City 2020 Ending the HIV Epidemic Plan** (NYC 2020 EHE Plan), which sets forth strategies and key activities for the next phase of our ending the epidemic efforts. The plan is organized around the four Ending the HIV Epidemic pillars plus two cross-cutting issues:



Diagnose



Treat



Prevent



Respond



**Social and Structural Determinants
of HIV-Related Health Inequities**



HIV Service Delivery System

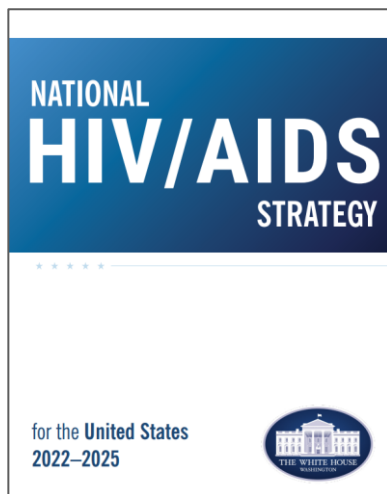
Selection from NYC 2020 EHE Plan's Cross-Cutting Issue: Social and Structural Determinants of HIV-Related Health Inequities, Key Activity 1:

“Work to end stigma and discrimination related to HIV status or marginalized identities”

Source: N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, NEW YORK CITY 2020 ENDING THE HIV EPIDEMIC PLAN (Mar. 2021), available at <https://nyhiv.org/wp-content/uploads/2021/03/2021-3-29-NYC-2020-EHE-Plan-FINAL.pdf>.

New York City 2020 Ending the HIV Epidemic Plan Overview

In December 2021, the White House released the **National HIV/AIDS Strategy: 2022-2026** (NHAS), which sets forth goals, objectives, and strategies to prevent new infections, treat people with HIV to improve health outcomes, reduce HIV-related disparities, and better integrate and coordinate the efforts of all partners to achieve the bold targets for ending the epidemic.



Selection from NHAS's Objective 3.1: Reduce HIV-Related Stigma and Discrimination:

“HIV-specific criminal laws perpetuate HIV-related stigma, and discrimination can also deter individuals from getting tested. Some of these laws criminalize behavior that pose low or no risk for transmitting HIV and apply regardless of actual HIV transmission. These outdated laws do not reflect our current understanding of HIV and should be repealed or updated. . . . Such efforts must ensure that criminal laws and policies regarding HIV transmission are based on the latest scientific evidence and reflect effective public health strategies, and that legislators, prosecutors, and law enforcement officials have an accurate understanding of HIV transmission risks.”

Contact Information

Adrian Guzman, JD, MPH
Director, Policy and External Affairs
Bureau of Hepatitis, HIV, and Sexually Transmitted Infections
New York City Department of Health and Mental Hygiene
Email: aguzman2@health.nyc.gov

Additional Information

- [NASTAD - HIV Criminalization Resources](#)
- [NASTAD – EHE Microsite](#)
- [CDC – Public Health Law Academy](#)
- [CDC – HIV and STD Criminalization Law](#)
- [HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice, The Center for HIV Law and Policy](#)

Question?
Comments.
Let's Chat.





Upcoming from the Social Determinants of Health Legal Series

Date: Housing -
November 16th at
2:00 PM

Date: Youth and
Adolescence –
Date January 2023

