



HIV Criminalization Health Department Talking Points and FAQs

The National Alliance of State & Territorial AIDS Directors (NASTAD) is concerned with a number of recent attempts to revise HIV criminalization laws in the United States. Many of these efforts run contrary to the goals articulated in NASTAD's February 2011 [*National HIV/AIDS Strategy Imperative: Fighting Stigma and Discrimination by Repealing HIV-specific Criminal Statutes*](#) (HIV Decriminalization Policy Statement). As a result, NASTAD has developed the points below to assist health departments respond to frequently asked questions and guide discussions around any reform efforts that are consistent with the Decriminalization Policy Statement. NASTAD strongly opposes laws that create HIV-specific crimes or increased penalties for persons who are HIV positive and convicted of criminal offenses.

- Reform efforts should reflect the current understanding of HIV transmission and sound public health approaches, as outlined in the [National HIV/AIDS Strategy \(NHAS\)](#), NASTAD's Decriminalization Policy Statement, the UNAIDS [Policy Brief on Criminalization of HIV Transmission](#) and others.
- HIV can only be transmitted via direct exposure to blood, semen, vaginal secretions, or breast milk of an HIV-infected individual, which must pass through a mucous membrane or puncture to enter the blood stream. In this way, HIV is difficult to transmit. If an individual living with HIV is also taking HIV medications, the level of virus circulating in the blood stream (viral load) may be substantially reduced and the risk of infection after an exposure is even less likely.
- Current treatment options reduce the HIV viral load in many individual's blood to nearly undetectable levels (thus further reducing the risk of transmission) and, as a result, they have transformed HIV into a chronic, treatable condition.
- Studies have also shown that:
 - most HIV transmission takes place during sex between two consenting adults, neither of whom is aware that one of them is living with HIV;ⁱ and
 - HIV+ individuals who know their status are significantly less likely to engage in sexual behaviors that may risk HIV transmission to a partner, than HIV+ individuals who remain unaware they are infected.ⁱⁱ

NASTAD recognizes that health department HIV/AIDS and infectious disease staff are likely to encounter frequently asked questions regarding the modernization of HIV criminalization laws. Some suggested responses to these questions are set out below:

- **Don't criminalization laws assist in promoting disclosure of HIV status and how do we encourage disclosure without them?**

- There has been no documented evidence that HIV criminalization laws encourage disclosure of HIV status.
 - The CDC has recognized that disclosure is complex and difficult and that post-test follow-up and care should include disclosure assistance services to HIV positive individuals.ⁱⁱⁱ These types of services have been shown to be effective^{iv} and should be made available not only upon HIV diagnosis, but also as part of ongoing care and treatment. The goal of these services is to promote a voluntary, rather than coerced, disclosure of HIV status.
 - Criminalization laws effectively penalize HIV-positive people for knowing their HIV status by creating standards that cannot be reasonably enforced. An episode of potential exposure results in one person's word placed against another's as to whether the positive person sufficiently disclosed his or her status, with the HIV-positive person usually losing.^v Because people who do not know their HIV status are much more likely to transmit HIV than those who know they are positive, these misguided laws fail to address the root problem.^{vi}
 - Patient confusion and uncertainty about these laws may serve to curb open discussions with healthcare providers and counselors.
 - HIV criminalization laws further harm already marginalized communities (e.g., women, MSM, immigrant/refugee populations, commercial sex workers and people who use drugs) contributing to heightened risk of HIV infection due to a myriad of stressors and social determinants of health.^{vii} HIV exposure laws therefore exacerbate the structural forces shaping the HIV epidemic and do not effectively prevent the transmission of HIV.^{viii}
 - HIV criminalization laws will exacerbate disparities for Blacks and Latinos. Specifically, these laws aim to accomplish HIV prevention without addressing factors that contribute to risk environments. These laws inappropriately use public health officials as actors in criminalization efforts, reduce the capacity of the public health system to deliver much-needed HIV prevention and care services to disproportionately impacted populations, and create barriers for the most vulnerable state residents to develop trust and connection to health services.
- **Don't HIV criminalization laws help protect women (and other potential victims) from exposure to HIV and possible infection?**
 - These laws implicitly suggest that women should forgo responsibility to actively control their own sexual health, and should entrust the security of their physical well-being to a sexual partner based solely on the individual's silence. If the rationale behind criminalization is that it will deter HIV+ people from having sex without disclosing their status, then the direct implication is that people who do not disclose must be HIV negative. Prevention science in a range of sexual health arenas, including HIV, STIs, and pregnancy

- prevention have demonstrated the open communication about health status should be facilitated not relegated to the realm of assumptions.
- Criminalization laws essentially direct individuals who are not HIV-positive or who are unaware of their status to base their self-protection on what their sexual partners do or do not tell them about their health, which is contrary to sound public health approaches to disease prevention and health promotion.
 - HIV criminalization laws create a powerful tool for control by abusers, who can threaten prosecution for HIV+ women who want to leave abusive relationships. Women can be imprisoned for non-disclosure of their HIV status without regard for the complex reasons why disclosure may not be advisable.
 - Female sex workers, who typically have proportionately less access to HIV prevention, testing, treatment, and support services, are often prosecuted under HIV criminalization statutes, particularly because mere condom possession can be used as evidence of intent to commit a crime. The criminalization of HIV exposure adds to the stigma these women face—a threat of double prosecution both for engaging in behavior that already is criminalized, such as sex work, and for HIV exposure.
- **Have there been cases involving an individual who knowingly and intentionally tries to infect other people with HIV, and don't these cases help to stop HIV transmission?**
- The vast majority of prosecutions for knowingly and intentionally infecting another individual have been predicated on little evidence of intent, often involving either consensual sex or conduct that posed no significant risk of HIV transmission (such as spitting or biting). Despite the factual circumstances surrounding these prosecutions, some have resulted in convictions of more than 25 years in jail even though no HIV transmission occurred.^{ix}
 - True cases of intentional transmission could likely be handled under other criminal statutes, so there is no need to single out HIV transmission in criminal law.
 - At a minimum, HIV exposure and transmission should not be prosecuted as a felony, especially without proof of an individual's intent to cause serious harm.

ⁱ Marks, G et al. *Estimating sexual transmission of HIV from persons aware and unaware that they are infected with the virus in the USA*. AIDS 20(10):1447-50, 2006.

ⁱⁱ Marks G et al. *Meta-analysis of high-risk sexual behaviour in persons aware and unaware they are infected with HIV in the United States*. JAIDS, 39(4):446-53, 2005.

ⁱⁱⁱ The Centers for Disease Control and Prevention. *What is the role of disclosure assistance services in HIV prevention?* Accessed June 29, 2012 from <http://caps.ucsf.edu/factsheets/disclosure-assistance-pcrs/>.

^{iv} The Centers for Disease Control and Prevention. *HIV Partner Counseling and Referral Services*. Accessed June 29, 2012 from http://www.cdc.gov/hiv/topics/prev_prog/AHP/resources/guidelines/Interim_partnercounsel.htm.

^v Global Commission on HIV and the Law, "Report of the High Income Countries Regional Dialogue of the Global Commission on HIV and the Law 13" (2012).

^{vi} Keith J. Horvath and others, "Should It Be Illegal for HIV-Positive Persons to Have Unprotected Sex Without Disclosure? An Examination Of Attitudes Among U.S. Men Who Have Sex With Men and the Impact of State Law," *AIDS Care* 22 (2010): 1221. (Showing that HIV specific criminal exposure and transmission laws do not affect risk behaviors).

^{vii} Congresswoman Barbara Lee, "Lee Introduces Bill to Fight Discrimination Against People Living With HIV: Congresswoman Calls For Repeal of Unfair Criminal and Civil Laws," Press release, September 23, 2011, available at <http://Lee.house.gov/Index.cfm?Sectionid=57&Itemid=2444>.

^{viii} Michele G. Shedlin and others, "Initial Acculturation and HIV Risk Among New Hispanic Immigrants," *Journal of the National Medical Association* 97 (2005): 32S.

^{ix} The Center for HIV Law & Policy and the Positive Justice Project. *Prosecutions for HIV Exposure in the United States, 2008–2012*. 2012. Accessed March 21, 2012 from <http://www.hivlawandpolicy.org/resources/view/456>.