

# *Public Health and the Criminalization of HIV Transmission, Exposure & Non-Disclosure*

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**US National Dialogue on the Criminalization of HIV: The Role of States and the Federal Government**

## ***Mission***

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*NASTAD strengthens state and territory-based leadership, expertise and advocacy and brings them to bear on reducing the incidence of HIV and viral hepatitis infections and on providing care and support to all who live with HIV/AIDS and viral hepatitis*

## ***Vision***

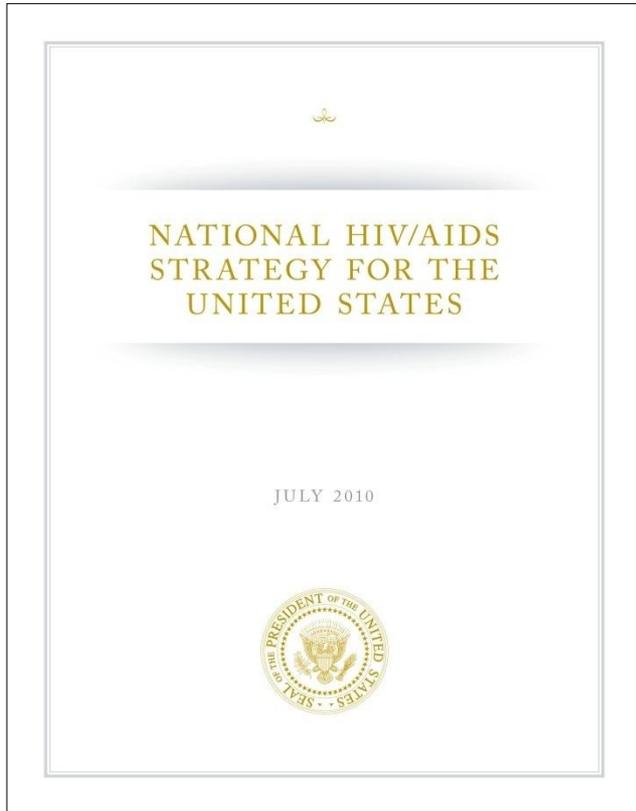
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*NASTAD's vision is a world free of HIV/AIDS and viral hepatitis*



# National Alliance of State and Territorial AIDS Directors

- Provides technical assistance and other support to health department HIV/AIDS and viral hepatitis programs
- Provides national leadership on HIV/AIDS and viral hepatitis policy and programs
- Educates about and advocates for necessary federal funding for all HIV/AIDS and viral hepatitis programs

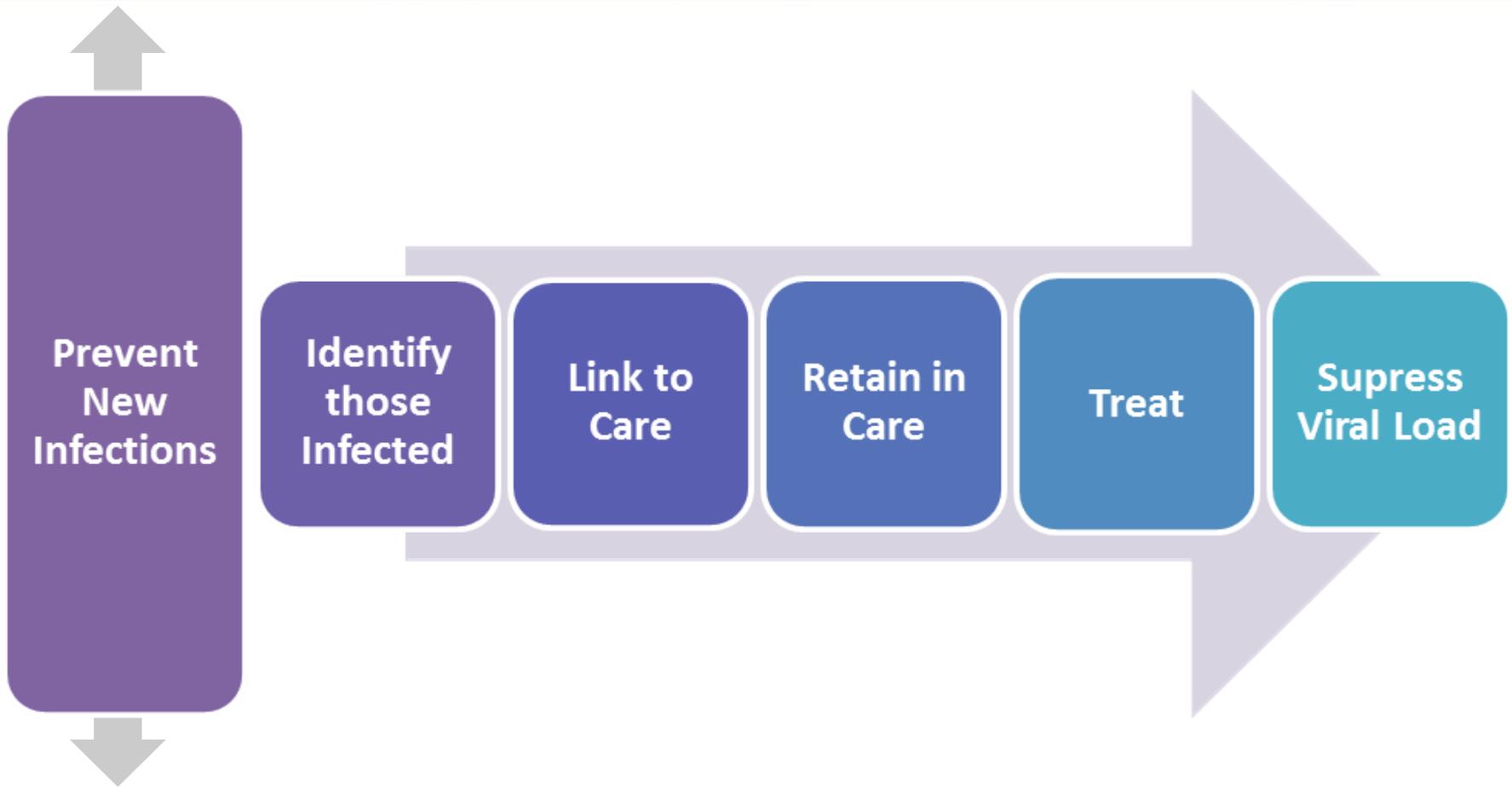


The United States will become a place where new HIV infections are rare and when they do occur, every person, regardless of age, gender, race/ethnicity, sexual orientation, gender identity or socio-economic circumstance, will have unfettered access to high quality, life-extending care, **free from stigma and discrimination.**

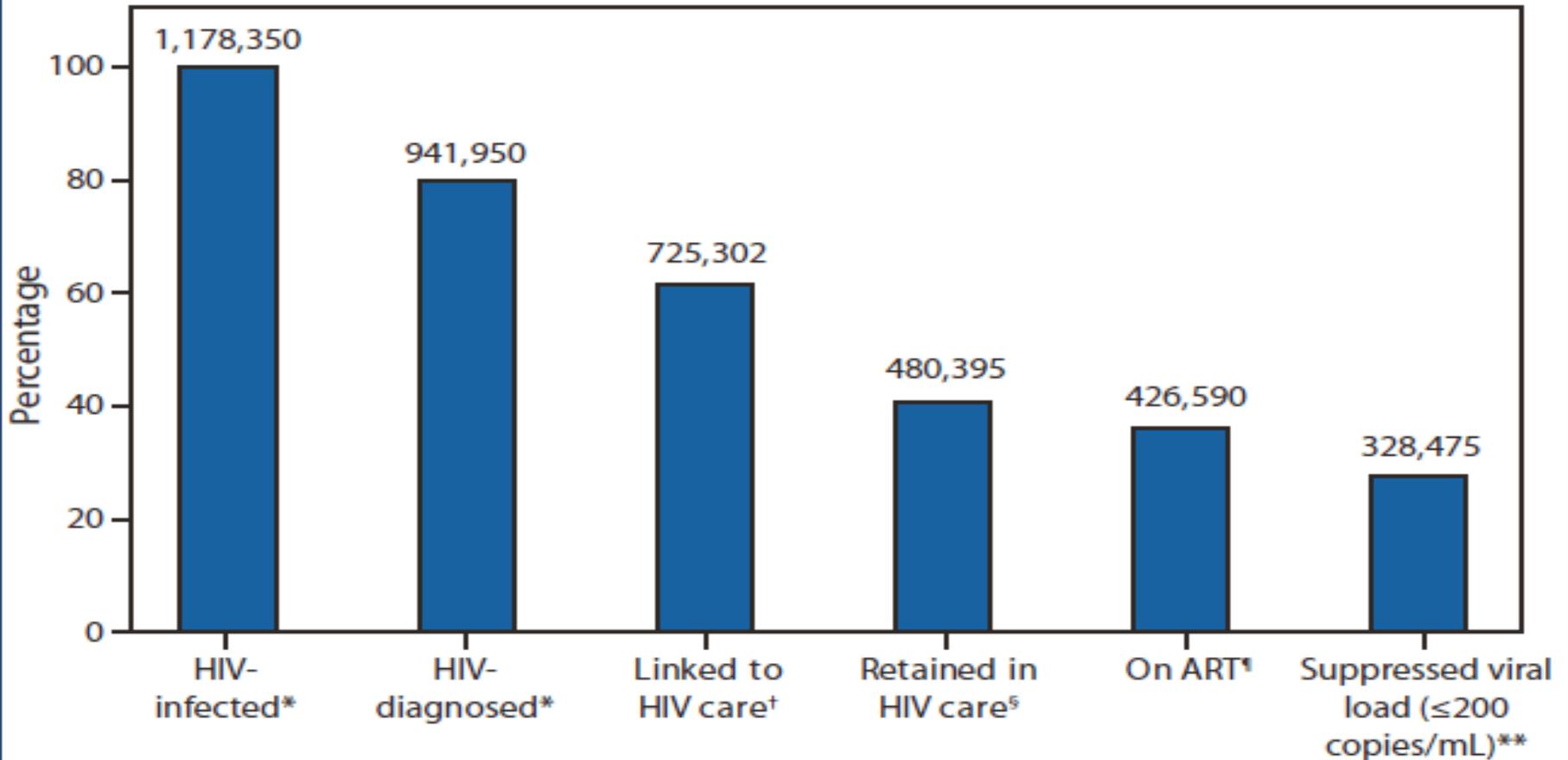
- Step 3.3, Promote public health approaches to HIV prevention and care
  - State legislatures should consider reviewing HIV-specific criminal statutes to ensure that they **are consistent with current knowledge of HIV transmission and support public health approaches to screening for, preventing and treating HIV.**

## What is Public Health?

- The science and art of protecting and improving the health of communities through education, promotion of healthy lifestyles and research for disease and injury prevention.
- Helps improve the health and well being of people in local communities and around the globe.
- Works to prevent health problems before they occur.



# Estimated Number and Percentage Engaged in HIV Care



## ■ What is stigma?

- *“An attribute that links a person to an undesirable stereotype, leading other people to reduce the bearer from a whole and usual person to a tainted, discounted one.”*

Erving Goffman (1963)

- Stigma exists and is practiced at the individual level and at the institutional and community levels

- What do we mean when we talk about INSTITUTION-LEVEL stigma?
  - Stigma as a feature of cultural groups, neighborhoods, communities, & organizations
  - HIV criminal laws serve as barriers to testing, prevention and adherence to medical care and treatment for people living with HIV

# Stigma's impacts on prevention

- **HIV/AIDS stigma affects HIV prevention efforts in 3 ways:**
  1. reduced condom use
    - requests for condom use can lead to assumptions about HIV serostatus
  2. lack of dialogue among HIV-negative and HIV-positive gay men
    - Black and Latino gay men are less likely than other gay men to disclose their HIV status to family, friends, health care professionals, and sex partners

# Stigma's impacts on prevention

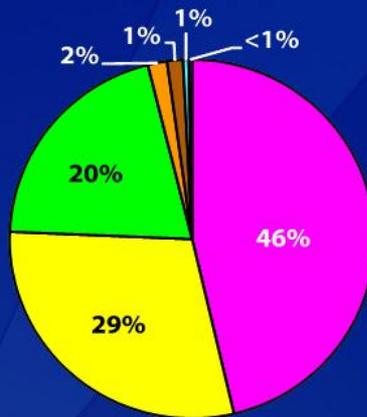
- **HIV/AIDS stigma affects HIV prevention efforts in 3 ways:**
  3. increased community viral load
    - HIV/AIDS stigma prevents gay men from getting testing for HIV, and from accessing and adhering to treatments
    - *“[HIV-positive Black MSM] don’t want to be identified as HIV-positive. They don’t want to show up in a clinic or a medical setting where it’s just no question about why you are there”*

- Being unaware of one's HIV status is the primary defense to prosecution under State criminal laws – providing a disincentive to getting tested.
- In most States, any sexual exposure – regardless of whether protection is used, if there is no deliberate intent to transmit HIV, or without assessment of risk – is subject to the same punishment as actual transmission.

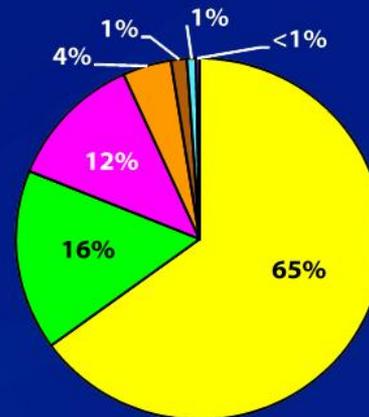
- Using the criminal law to deter or alter sexual behaviors of people living with HIV, studies show, is ineffective and does not influence the behavior of people living with or most at risk of HIV in the states where laws exist.
- Roughly more than half of cases involve consensual adult sex; about 25% involve spitting and biting; all types have produced severe sentences despite the absence of HIV transmission in most cases.

## Diagnoses of HIV Infection and Population, by Race/Ethnicity, 2010—46 States

**Diagnoses of HIV infection**  
 N = 47,129



**Population, 46 States**  
 N = 292,196,890



- American Indian/Alaska Native
- Asian
- Black/African American
- Multiple races
- Hispanic/Latino<sup>a</sup>
- Native Hawaiian/other Pacific Islander
- White

Note. Data include persons with a diagnosis of HIV infection regardless of stage of disease at diagnosis. All displayed data have been statistically adjusted to account for reporting delays, but not for incomplete reporting.  
<sup>a</sup> Hispanics/Latinos can be of any race.





## NATIONAL HIV/AIDS STRATEGY IMPERATIVE: FIGHTING STIGMA AND DISCRIMINATION BY REPEALING HIV-SPECIFIC CRIMINAL STATUTES

The National Alliance of State and Territorial AIDS Directors (NASTAD), the organization which represents the public health officials that administer state and territorial HIV/AIDS and adult viral hepatitis prevention and care programs nationwide is gravely concerned about the corrosive impact of sustained stigma and discrimination on state, federal and local efforts to combat HIV/AIDS in the United States. The National HIV/AIDS Strategy (NHAS) provides an unprecedented strategic blueprint for reducing HIV/AIDS incidence through the scale-up of interdisciplinary, impactful prevention approaches. NASTAD acknowledges that the NHAS is not a magic bullet; however, the NHAS' central vision of the U.S. becoming "a place where new HIV infections are rare" cannot be realized until the nation aggressively responds to the core of the matter: pervasive and unmitigated stigma and discrimination against people living HIV/AIDS that diminishes our best efforts to combat one of the greatest public health challenges of our time.

As a member of the Positive Justice Project, a coordinated national effort to address "HIV criminalization" statutes – laws that create HIV-specific crimes or which increase

***NASTAD  
releases its HIV  
Criminalization  
Policy statement  
In March, 2011***

## Policy Statement Goals

- Support the **maintenance of confidentiality** of HIV test and medical records in order to encourage and support individuals to be tested, learn their status and enter services if positive;
- Identify and **share best practices** related to successes in repeal of policies and/or laws and statutes in jurisdictions that are not grounded in public health science;
- Promote public **education and understanding** of the stigmatizing impact and negative public health consequences of criminalization statutes and prosecutions;
- Provide **unequivocal public health leadership** on the relative risks of transmission and the dangers of a punitive response to HIV exposure on the epidemic.

- HIV criminalization undercuts our most basic HIV prevention and sexual health messages, and breeds ignorance, fear and discrimination against people living with HIV.
- HIV criminalization has often resulted in egregious human rights violations, including harsh sentencing for behaviors that pose little to no risk of HIV transmission.

- Weakens the message that sexual health is the responsibility of both partners during sex
- Professional/ethical conflict for health providers, public health officials and health departments
- Increases stigma by strengthening culture of blame concerning infection.
- Perceived legal vulnerability based on HIV+ status.

- Some states require signing of forms in which HIV+ persons acknowledge potential liability.
  - Used against people with HIV in prosecutions.
  - Example: written acknowledgment of “necessity to avoid causing pregnancy or becoming pregnant;”
- According to CDC, correct and consistent condom use reduces the risk of HIV transmission dramatically.
- Most state HIV-specific laws and prosecutions do not treat condom use as evidence of a reduced risk of harm or of the defendant’s lack of intent to transmit HIV – posing a risk to our prevention messaging.

- Laws reflect long-outdated misconceptions about the routes, risks and consequences of HIV transmission
- Effective ART makes HIV a chronic manageable disease, and further reduces all risk to near-zero
- Laws and prosecutions at direct odds with other government-funded initiatives and prevention priorities, e.g., consistent condom use, mutual responsibility, anti-stigma campaigns

Survey of NASTAD Members to gather information concerning states' awareness of any policies and practices that unjustly sanction persons living with HIV/AIDS by criminalizing exposure and/or transmission.

## Findings (n=38)

- **55 percent (n=21)** indicated that their state has law(s) that criminalize intentional exposure and/or failure to disclose status to a sex partner;
- **55.3 percent (n=21)** survey respondents reported that there have been cases in their states where someone was prosecuted or sentenced for intentional exposure, or failure to disclose status

## Findings

- **15 percent (n=6)** indicated institutional policies or regulations that require persons who are HIV positive (or who have been incarcerated) to sign forms or document their acknowledgment of criminal liability if they engage in otherwise legal conduct, e.g., sexual intercourse or donating blood
- **65 percent (n=25)** indicated the health department has policies or procedures around the release of medical records to law enforcement in incidences involving alleged HIV exposure
- **71 percent (n=27)** indicated the health department has materials and forms, e.g., testing, in-take, etc., that reflect current knowledge and understanding of HIV transmission risk

## Guidelines for Health Departments

- Five basic guidelines that:
  - identify current practices and procedures
  - provide a framework for evaluation, remedial measures and follow-up monitoring.
  
- The guidelines focus on policies **and** procedures which can be reviewed and modified by the health department.
  
- Technical assistance will be available to aid with the implementation of any of the guidelines.

Survey state, county and local programs/providers to ensure that policies and practices (1) protect the privacy of medical information and (2) promote prevention and linkage to care

- This guideline provides a mechanism to get an overview of current state, county and local policies and practices
- Sample survey instrument has been provided with the guidelines
- The survey should request copies of counseling protocols or paperwork given to patients regarding disclosure of their HIV status

### Provide an overview of privacy laws that protect an individual's HIV status to programs/providers

- This guideline seeks to ensure adherence to medical record privacy laws and to reinforce the requirements of those laws
- At a minimum, programs/providers must adhere to HIPAA's privacy rules
- Health departments should check with legal counsel to see if there are additional state privacy laws or common law (i.e., court-made) rules that apply

Ensure that policies/practices that assist with an individual's understanding of the importance of disclosure of their HIV status are free of inaccurate or misleading information

- This guideline calls for the evaluation of current disclosure or consent forms
- Programs and providers should play a minimal role (if any role at all) in informing clients or patients about the criminal laws related to HIV status

### Provide assistance to programs to make needed changes as quickly as possible

- This guideline looks to educate programs/providers about any problems that are identified with current policies and practices
- If problematic policies or procedures are identified, health departments may need
  - to issue a formal directive regarding required revisions or modifications
  - to offer training to programs/providers about the needed revisions and modifications

### Conduct ongoing monitoring of HIV-related policies and procedures

- This guideline seeks to create a process for the continued refinement of public health practices

- 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.
- HIV exposure laws therefore exacerbate the structural forces shaping the HIV epidemic and do not effectively prevent the transmission of HIV.

- 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.

- **Sample Survey Assessment**
  - Sent to evaluate local health department policies and procedures
- **Continuing robust support and TA to health department HIV/AIDS programs**
- **Continue to monitor NHAS Implementation and decriminalization**

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