

Women, HIV & Criminal HIV Exposure & Transmission Laws

Prepared ABA Meeting on the Criminalization of HIV

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- Background
- U.S. approach to public health problems
- Multiple stigmas faced by HIV+ women
- Repercussions of Exposure & Transmission law on women & their families
- The right to a healthy & satisfying sex life & to start a family
- Laws as tools of harassment & abuse
- Diminished rights of HIV+ pregnant women
- Ways forward

Background

- Intent: to protect the public health and human rights
- Unintended consequences:
 - Criminalization of people living with HIV
 - Many HIV exposure & transmission laws come with felony sentences and if convicted, some require sex offender registry
 - Increased fear and stigma of HIV
 - Fear of testing, disclosure, & interaction with medical & law enforcement community
 - Another tool for
 - Harassment within relationships
 - Creating a first time criminal, possible felony record
 - Increased sentencing
 - Possible assignment to sex offender lists

HIV+ Women's Experiences

- First reaction to HIV criminalization laws for most people are positive
 - U.S. has a history of approaching public health problems criminally
 - Drug use
 - Sex work
 - This approach has not been proven to improve public health and safety but has been exported around the world
 - Often isolates people who may need help the most

“I think it makes people just go underground with their status and avoid testing or treatment when they suspect they may be infected.”*

The stigma trifecta for HIV+ women

- HIV+ women are disproportionately
 - Women of color
 - 83% HIV+ women are women of color – women of color make up 32% of U.S. female population. †
 - Low income
 - 64% of HIV+ women living on < \$10,000/yr. †
 - Experience a multiplicity of stigmas and discrimination
 - Women (women as disease vectors)
 - Women of color (structural racism → economic marginalization)
 - HIV+ (community stigma, self blame, illness can lead to loss of income, trouble taking care of family and other dependents)
- “Women, and especially women of color and economically disadvantaged women so often receive the burden of blame for HIV transmission.”***

Concrete repercussions

- Felony status
 - For women who are responsible in large part for caretaking of children & dependents a felony sentence can be devastating and rip apart families
 - Can lose custody of children
 - Can find it difficult to find work
 - Can lose eligibility for life saving benefits like housing subsidies
 - Can have an effect on immigration status
- Sex offender registries can prevent a women from
 - maintaining custody of children;
 - living near or entering a school
 - holding jobs that are traditionally held by women
 - Child care
 - Teaching
 - Same restrictions as rapist or child molester

“ . . . just another way of hurting the true victims of abuse.”

- Story of sex worker in Knoxville, TN: aggravated prostitution → sex offender

"I understand there is a public policy to control the spread of HIV, but I'm not sure that accelerating prostitution to a felony charge and meting out more severe punishment is the way to deal with the crisis," said Julie Auer Gautreau of the Knox County District Public Defender's Office. "I think it's inherently unfair to treat sick people, mentally ill people and drug addicts as criminals who are intent on endangering the public, because that's not what they're trying to do. It may be that they, in effect, present a kind of public danger, but in the case of every prostitute I've ever represented, you are dealing with somebody who is deeply troubled, who has suffered for years, and whose addiction ... is the result of some kind of abuse or mental illness or addiction." **

- Result: woman in great need of mental health and drug addiction support services cannot take part in many residential drug treatment programs because juveniles may be present and she is a sex offender

The right to a healthy and satisfying sex life & to start a family

- Everyone has the right to a healthy and satisfying sex life & to start a family
- In Mississippi people who test positive for HIV are asked to sign a Health Department Legal Form promising to not get pregnant or impregnate another person.***

“I refuse to be judged by this disease for I am much, much more than the disease. So, I keep this a secret. As a teacher I could lose my job. Not disclosing could get me jail time. Therefore, I no longer date. It's difficult being a leper of the 21st century.”*

“I don't even want to try to have a relationship because I am afraid of the consequences of rejection and criminalization.”*

“HIV criminalization laws hurt everyone with HIV because it's hard enough to feel okay about being sexual without feeling like your body is a deadly weapon.”*

Criminalization laws as a tool for harassment & abuse

“In an abusive relationship the man can use these laws against you. You almost need written consent to protect yourself.”*

“Someone could know [your HIV status] because you told them and get angry with you or want to take revenge and lie and say they never knew [your status] and you could be charged.”*

One woman’s story in South Carolina

- prolonged abuse and stalking by ex-boyfriend ended in
 - criminal HIV exposure charges brought by ex-boyfriend
 - Loss of child custody
 - Difficulty finding employment post incarceration
 - Forced to disclose not only her felon status but HIV status as well because of the nature of the charge

Diminishing the rights of pregnant HIV+ women

- When HIV+ women are pregnant their rights to medical consent and information are often diminished in the name of ensuring a safe and healthy pregnancy.
 - Diminished consent for testing while pregnant
 - Loss of basic rights while pregnant: HIV+ Cameroonian woman accused of falsifying immigration documents ordered to give birth in prison to “protect” child from contracting HIV (later overturned)‡
- Creates distrust and lack of communication between women and health service providers at a time when they could benefit greatly from a trusting relationship

Ways forward

- Support White House/National HIV/AIDS Strategy effort to review, and assist in amendment or elimination of state HIV exposure and transmission laws
- Promote research on effects of laws
- Support increase in evidence based HIV education on clinical and structural factors that drive HIV for
 - Criminal defense attorneys
 - Judges
 - Prosecutors
- Support expansion of access to civil and criminal representation for women with HIV
 - Sensitive and informed criminal representation from lawyers who understand consequences of HIV crime sentences
 - Support with consequences of criminal sentencing → family law