

HIV Criminalization: Law, Policy, and Modernization

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Overview

Presentation

- What is HIV criminalization?
- How are people living with HIV (PLWH) targeted for criminal prosecution in California?

Discussion

- What can we do about it?

What is HIV criminalization?

HIV Criminalization in the U.S.

- Use of HIV-specific and general criminal laws to specifically target PLWH.
- Prosecution of PLWH based on outdated and erroneous beliefs or understanding about HIV.
- Used in addition to public health laws.
- Most laws do not require exposure to HIV.
- All do not require actual transmission of HIV.
- Provides harsher penalties for PLWH.

HIV Criminalization in the U.S.

- As of 2011, 67 HIV criminalization laws were identified in 33 states.
- Of these, 25 out of 33 states (75%) criminalize one or more behaviors that pose a low or negligible risk of HIV transmission.
- Nearly 2/3 criminalize *potential* HIV exposure.
- Many laws were passed prior to understanding that ART significantly reduces HIV transmission risk.

Concerns with HIV Criminalization

- Contributes to HIV-related stigma
- Negatively impacts LGBT populations
- Most do not follow standard criminal law principles of requiring intent to harm
- Results in disproportionate penalties
- Defeats public health messages about HIV
- Are unsupported by research

How are PLWH targeted for criminal prosecution in California?

General Criminal Statutes

In reviewing published cases, the earliest criminal case addressing unprotected sexual activity involving an HIV-positive individual was in **1988** (attempted murder).

General criminal statutes were in use until **1991**, and these cases were most often prosecuted under Penal Code section 245 (assault with a deadly weapon).

CAL. HEALTH AND SAFETY CODE

§ 1621.5

- Knowing donation of blood, body organs, tissue, semen or breast milk by person with AIDS or person who has tested reactive to HIV.
- Enacted in 1988 and no published criminal cases have been found under this provision.
- Punishment: Felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years

CAL. HEALTH AND SAFETY CODE

§ 120290

- Willful exposure of self or another to a contagious, infectious, or communicable disease.
- Enacted in 1939 and no published criminal cases.
- Cited in civil proceedings (indicating a duty to disclose and liability for negligent transmission of HIV)
- Punishment: Misdemeanor

CAL. HEALTH AND SAFETY CODE

§ 120291

- Unprotected sexual activity by one who knows self to be infected by HIV; non-disclosure of HIV-positive status; specific intent to infect the other person with HIV.
- Enacted in 1998 with no published criminal cases. Traditional legal research and FOIA requests indicate there have been 2 convictions under this statute.
- Punishment: Felony punishable by imprisonment in the state prison for three, five, or eight years

CAL. PENAL CODE § 647f

- Sentence enhancement for previous convictions for solicitation and positive HIV test result.
- Enacted in 1988 and 2 published criminal cases.
- Punishment: Felony

CAL. PENAL CODE § 12022.85

- Sentence enhancement for specified violations while HIV-positive
 - rape
 - unlawful intercourse with a person under 18 years of age
 - rape of a spouse
 - sodomy
 - oral copulation
- Enacted in 1988 and 4 published criminal cases.
- Punishment: Three-year sentence enhancement for each violation in addition to the sentence provided for the violation

What can we do about it?

Discussion

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