



Criminalization of HIV exposure or transmission: Stakeholder views and beliefs and effects on behaviour



Question

This rapid response summarizes the available research evidence from high-income countries to inform the following two questions:

1. What are the knowledge/understanding, attitudes, opinions and beliefs of people living with HIV/AIDS, service providers and other affected community members in relation to laws that criminalize HIV exposure or transmission?
2. What are the effects of laws that criminalize HIV exposure or transmission on the behaviour of people living with HIV/AIDS, service providers and other affected community members?

Key Take-Home Messages

- There is limited research evidence available to inform each of the questions posed by this review and the findings presented should be interpreted with caution.
- The available research evidence from the United States suggests that people living with HIV are: aware of criminal laws requiring disclosure of their HIV status to prospective sexual partners; understand most elements of these laws; and are supportive of these laws. However, these findings are based on two small studies (one a survey and the other based on interviews) in two states.
- Research evidence from the United Kingdom is mixed with a large survey of 8542 gay men finding that approximately half were supportive of HIV-specific criminal laws and slightly less than a fifth being opposed to such laws (the remaining were unsure). In contrast, findings from qualitative studies found considerable confusion among participants about criminal prosecutions for HIV transmission with one study reporting that most were critical of, and opposed the criminalization of HIV transmission.

EVIDENCE INTO ACTION

The OHTN Rapid Response Service offers HIV/AIDS programs and services in Ontario quick access to research evidence to help inform decision making, service delivery and advocacy. In response to a question from the field, the Rapid Response Team reviews the scientific and grey literature, consults with experts, and prepares a brief fact sheet summarizing the current evidence and its implications for policy and practice.

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- One study based in the United States found that a sample of people at elevated risk for HIV living in a state with a criminal law specifically regulating the sexual behavior of people living with HIV (Illinois) were minimally different in self-reported sexually behaviour as compared to a similar sample in a state without an HIV-specific law (New York).
- A qualitative study in the United Kingdom found mixed reactions to how the law had impacted them personally with some highlighting that prosecutions had not influenced their behavior while others indicated that they had (or planned to) change their behavior and/or communicate differently with their sexual partners due to the potential for legal intrusion into their lives.

The Issue and Why It's Important

One of the goals of criminalizing HIV non-disclosure is that these laws will deter such behaviour. However, criminalization may have unintended consequences such as making HIV disclosure more difficult for people living with HIV and further contributing to HIV-related stigma.

The Ontario Working Group on Criminal Law and HIV Exposure (CLHE) is engaged in education and advocacy regarding the use of the criminal law to address alleged non-disclosure of HIV status in Ontario. The CLHE is made up of people living with HIV and representatives from over 20 community-based ASOs from across Ontario. This rapid response was requested to support CLHE in providing evidence-informed education and advocacy.

What We Found

We found limited research evidence to inform the questions posed for this rapid response. Of the six relevant studies that we identified, only one directly addressed the question about the effects of laws that criminalize HIV exposure or transmission on the behaviour of people living with HIV/AIDS, service providers and community members.(1) The remaining five studies (2-6) investigated the views, awareness and understanding of people living with HIV about laws that criminalize HIV exposure or transmission. Due to the limited research evidence, the findings presented in this rapid response should be interpreted with caution.

Knowledge/understandings, attitudes, opinions and beliefs about HIV criminalization

Two of the five studies investigating views, awareness and understanding of people living with HIV about laws that criminalize HIV exposure or transmission draw on quantitative surveys and the remaining three present data from interviews and focus groups.

The first quantitative study conducted a survey of 384 people living with HIV in a U.S. state that enacted a law requiring HIV-positive persons to disclose their serostatus to prospective sex partners.(5) The majority of the respondents in the survey were aware of the HIV disclosure law with only 20% being unsure and 5% indicating they did not think such a law existed. The key factor determining

awareness was the number of months participants had lived in the state with all other demographic variables showing non-significant associations. The study also measured participants' understanding of the law using a 26-item questionnaire that asked about situations that may require disclosure and found that the median number of questions answered correctly was 23. Understanding of the law was not significantly associated with any of the demographic variables that were measured suggesting that awareness appears to cut across racial, gender, educational and geographical lines.(5) Lastly, the authors of the study note that awareness of the law was not surprising given that participants access a median of eight information sources about the law with the most helpful being HIV support groups and AIDS service organizations. The information sources identified as least helpful were those addressing a much wider audience such as radio and TV.

The second quantitative study was conducted in the United Kingdom as part of the Gay Men's Sex Survey in 2006.(3) More than half of the 8542 men that completed the question about criminal prosecutions for HIV transmission indicated that they thought prosecutions were a good idea with approximately a quarter of respondents being unsure and 17% (n=1456) were opposed. The survey also provided an open-ended question for respondents to provide a written response of which the majority (n=6718) completed. The authors report that responses to this question were conflicting with many indicating that all those not disclosing their HIV-status should be prosecuted/punished even though 29% of men diagnosed with HIV reported having unprotected insertive anal intercourse with partners of unknown HIV status.(3)

A qualitative study with 31 people living with HIV in Michigan found that most participants agreed with the intent of the state's disclosure law and expressed strong support that they had a duty to protect sexual partners from becoming infected.(6) In addition, participants felt a duty to disclose their serostatus or when disclosure was not possible to only engage in low-risk activities. However, key themes emerging from the focus group discussions also included: "concern about unwanted secondary disclosure of HIV-positive status; fear of being falsely accused of violating Michigan's HIV disclosure law; and perceived vulnerability of HIV-positive persons within the US legal system."(6)

Two studies conducted similar qualitative assessments but in the United Kingdom.(2;4) The most recent study assessed the awareness of 42 gay men about their awareness of criminal prosecutions for the transmission of HIV and whether and how they adapted their sexual behaviour. In contrast to the survey outlined above, Dodds et al. (2009) report that there was considerable confusion among participants about criminal prosecutions for HIV transmission. (4) Key areas of confusion noted in this study include:

- lack of awareness that HIV transmission between men could be prosecuted
- building evidence to support a prosecution for those with high number of sexual partners would be difficult to collect
- the misconception that only those with premeditated intent to transmit HIV risk being prosecuted
- lack of understanding of the types of evidence that can be used to prosecute (e.g., the misconception that virological evidence can prove the route of transmission and lack of awareness that the confidentiality of medical records could be broker for use in criminal court)

Another key finding from this study was that several participants indicated they feared condemnation from their community if it became known that they had engaged in unprotected sex, which resulted in transmission of HIV to their partner.

The second study from the United Kingdom reports findings from 20 focus group discussions with 125 participants (heterosexual African men and women and gay and bisexual men) living in England and Wales.(2) The study found that “[t]he majority of respondents were critical of, and opposed to, the criminalization of reckless HIV transmission.”(2) Specific concerns included that only placing responsibility on those who know their status contradicts the overall goals of interventions to promote safe sex in high-risk populations and that criminalization weakens the message that safe sex should be the responsibility of both partners. However, a minority of participants indicated that “criminalization may be justified if it operates to change the behaviour of people with diagnosed HIV who participate in unprotected sex without disclosing to their partners.”(2)

Effects of laws that criminalize HIV exposure or transmission on behaviour

A study by Burris et al. (2007) compared the use of condoms in two U.S. states of which one (Illinois) had an HIV-specific law explicitly requiring disclosure before sexual contact by people living with HIV and the other (New York) with no HIV-specific law.(1) The study included 490 people at elevated risk for HIV (248 in Chicago and 242 in New York City). Approximately half of the sample in each state were men who have sex with men and the other half were injection drug users.

The study found that those living in a state with a criminal law specifically regulating the sexual behavior of people living with HIV were minimally different in self-reported sexually behaviour as compared to those in a state without an HIV-specific law.(1) In addition, the study found that those who believed the law to require people living with HIV to practice safer sex or to disclose their status indicated comparable risky behaviors to those who did not. Furthermore, the study noted that most study participants thought it wrong to expose others to HIV, their HIV status should be disclosed to sexual partners but living in a state with or without an HIV-specific law was not found to be a significant contributor to these beliefs. Lastly, the authors of the study assert that HIV-specific criminal laws may promote stigma and a lack of cooperation with health authorities resulting in an environment not conducive to effective HIV prevention.(1)

The qualitative study by Dodds et al. (2009) outlined above also reported results related to the impact of criminal laws behavior. Participants in the study had mixed reactions to how the law had impacted them personally with some highlighting that prosecutions had not influenced their behavior while others indicated that they had (or planned to) change their behavior and/or communicate differently with their sexual partners due to the potential for legal intrusion into their lives.(4) Some participants indicated that they disclosed their status more consistently since learning of criminal cases while others noted that they sought to increase their anonymity (e.g., by modifying online social and sexual network profiles) and reduced their communication about their HIV status in order to reduce their risk of prosecution.

Factors that May Impact Local Applicability

All of the studies included in the summary were conducted in either the United States (n=3) or the United Kingdom (n=3). As a result, the results should be interpreted with caution given that the criminal laws for HIV exposure and transmission differ between countries (and within states in the case of the U.S.).

What We Did

We conducted a targeted search of Medline and Embase from 1996 to July 2011 using the following combination of search terms: Criminal Law (MeSH term) AND HIV. We also conducted a related articles search in PubMed using three articles (2;6;7) that we identified as being highly relevant to the summary.