Getting Involved in Criminalization Reform & Advocacy for Providers: What You Need to Know

December 4, 2018
What We’ll Cover

• Why are HIV providers important in these efforts?

• Introduction to HIV criminal law, civil cases, and reform efforts at the state level

• HIVMA member testimonials

• What providers can do and how to get involved

• Q&A
Why This Work Is Important

W. David Hardy, MD
Chair, HIV Medicine Association
2018-2019
Introduction to HIV Criminalization

Scott A. Schoettes
Counsel & HIV Project Director,
Lambda Legal
Getting Involved in HIV Criminalization Reform and Advocacy: What You Need to Know.

HIV Medicine Association Webinar
December 4, 2018

Scott A. Schoettes
HIV Project Director/Counsel
Lambda Legal
Our Mission

Lambda Legal is a national organization committed to achieving the full recognition of civil rights of lesbians, gay men, bisexuals, transgender people and people living with HIV through impact litigation, education and public policy work.
HIV Project

Lambda Legal brought the first HIV discrimination lawsuit in 1983, when we successfully prevented a New York co-op from evicting a doctor who was treating people with HIV.

Since then, achieving significant victories in the areas of privacy/confidentiality, employment, foster care/adoption, parenting and access to health care, housing and public accommodations.
What’s Happening Out There

- A 10-year sentence for a Georgia woman alleged not to have disclosed her HIV Status
- A 25-year sentence in Iowa after a one-time encounter involving protected sex
- A 35-year sentence for a Texas man who spit at a police officer while living with HIV
Questions to Think About

What drives these prosecutions and extremely harsh sentences?

What are the aims of these laws and are they advancing those goals?

Are these laws fairly distributing the obligations, burdens, benefits and responsibility for maintaining sexual health?

Is this an appropriate context for regulation by the state? If so, is the criminal law the right tool to use in this context?
Overview

- Describe the landscape of HIV criminalization in the United States
- Explain why HIV criminalization is doing more harm than good
- Discuss what is being done / what you can do to help fix the problem
What does an “HIV-specific statute” look like:

In Florida:
It is a felony, punishable by up to five years in prison and/or a $5,000 fine, if an HIV-positive person:
1. Knows that she/he is HIV positive;
2. Has been informed that HIV may be transmitted during sexual intercourse; and
3. Has sexual intercourse with any other person without disclosing his/her HIV status.
HIV Criminalization Laws
HIV Criminalization, 2010-2013

Prosecution information:

Legend:
- **Statute & Prosecutions**
- **No Statute, Prosecutions**
- **Statute, No Prosecutions**
- **No Statute, No Prosecutions**

States are color-coded based on their status regarding HIV criminalization:
- Red: Statute & Prosecutions
- Orange: No Statute, Prosecutions
- Yellow: Statute, No Prosecutions
- White: No Statute, No Prosecutions

Warning signs indicate states with 5+ prosecutions.
Why HIV Criminalization Does More Harm than Good

- Is Contrary to Public Health Goals
- Raises Due Process Issues
- Inflicts Serious Individual & Group Harms
Contrary to Public Health Goals

1. Disincentive to HIV testing
2. May actually encourage non-disclosure
3. Alienate patients from healthcare providers
4. Do not deter targeted behavior
5. Send inaccurate message regarding prevention responsibility
Raise Due Process Issues

6. Intent requirement has disappeared
7. Extremely difficult to prove disclosure
8. Juror moral disapproval and disconnect from other subcultures
9. Scientific details are frequently ignored
10. Results in disproportionate punishment
Inflict Serious Individual and Group Harms

11. May result in secondary disclosure
12. Used as a coercive tool by HIV-negative partner
13. Ruin individual lives
14. Oppress already marginalized populations
15. Stigmatize all people with HIV
<table>
<thead>
<tr>
<th>Public Health</th>
<th>Due Process</th>
<th>Group Harms</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Disincentive to HIV testing</td>
<td>6. Intent requirement has disappeared</td>
<td>11. May result in secondary disclosure</td>
</tr>
<tr>
<td>2. May actually encourage non-disclosure</td>
<td>7. Extremely difficult to prove disclosure</td>
<td>12. Used as a coercive tool by HIV-negative partner</td>
</tr>
<tr>
<td>3. Alienates patients from healthcare providers</td>
<td>8. Juror moral disapproval and disconnect</td>
<td>13. Ruin individual lives</td>
</tr>
<tr>
<td>5. Send inaccurate message regarding prevention responsibility</td>
<td>10. Result in disproportionate punishment</td>
<td>15. Stigmatize all people with HIV</td>
</tr>
</tbody>
</table>
15 Ways
HIV Criminalization Laws
Harms Us All

www.lambdalegal.org/publications/
15-ways-hiv-criminalization-laws-harm-us-all
Advocacy Efforts

- International
- National
- State and Local
A Health Care Provider’s Role in Improving the Legal System

- Assisting the Accused
- Legislative Reform Efforts
- Impact Litigation
Member Testimonial

W. David Hardy, MD
Chair, HIV Medicine Association
2018-2019
Member Testimonial

Barb Gripshover, MD
Case Western Reserve University
Cleveland, OH
Member Testimonial

Edwin DeJesus, MD, FIDSA, FACP
Orlando Immunology Center
Orlando, FL
Provider’s Role in Improving Legal System

Scott A. Schoettes
Counsel & HIV Project Director, Lambda Legal
A Health Care Provider’s Role in Improving the Legal System

- Assisting the Accused
- Legislative Reform Efforts
- Impact Litigation
First Things First

Getting Connected

Know Your Stuff

Recognize Your Role

Never Fudge the Facts
Assisting the Accused

- Fight a subpoena (inform patient)
- Connect with accused’s counsel
- Explain actual risks to prosecutor
- Testify at trial for the defense
- Testify as character witness before sentencing (if patient is accused)
Legislative Reform Efforts

- Learn about the law in your state
- Join a state-wide reform effort
- Write a letter to the legislature
- Author an op-ed
- Testify in support of a reform bill
Impact Litigation

- Often civil cases; process a bit more formal than in criminal court
- Providing a declaration
- Authoring an expert report
- Being deposed
- Testifying in court
What You Can Do

- Become Very Well Informed
- Help Spread the Word
- Testify for the Accused
- Advocate for Repeal and/or Reform
Lambda Legal
www.lambdalegal.org

Midwest Regional Office
105 W. Adams, Suite 2600
Chicago, IL 60603

Legal Help Desk
Midwest Region 312.663.4413
Toll-free (866) 542-8336
Getting Involved in Criminalization Reform & Advocacy for Providers: Q & A