Selected Bibliography

Punishing Vulnerability:
CRIMINALISATION of HIV TRANSMISSION,
EXPOSURE & NON-DISCLOSURE

HIV and the Law: Risks, Rights & Health

September 2012
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This paper asks the narrow but important question of whether there is a *moral* case for lifting primary responsibility for HIV-prevention from the shoulders of those who know that they are infected. Focusing on criminal law, it examines whether there is a good moral case to be made against criminalization of transmission. Two important caveats are made. The paper does not address the use of criminal law to deter or punish individuals who deliberately expose others to HIV with the aim of causing harm or with callous disregard of a significant risk of transmission. Additionally, it does not attempt a moral analysis that is culturally comprehensive, but rather focuses on an analysis derived from Western ethics and political philosophy.

“Criminalization of HIV” refers to the enactment of criminal statutes that penalize the exposure of or the transmission to another of HIV. However, criminal law may express and, some believe, transmit moral values. Take for example the undoubtedly moral character of many common criminal law questions: what constitutes a significant risk – i.e. at what level of danger does the obligation arise?, is infection with HIV always a trigger, or can someone with an undetectable viral load be deemed not to pose a risk?, does condom usage always discharge moral obligation of the person who knows he or she is infected? Answers to these questions frequently assume that a person who has any sexually transmitted disease has a moral duty to avoid further transmission.

Rather than focusing on the individual, this paper starts from the assumption that the most important moral question to ask in relation to HIV is not what the ethical HIV infected individual should do in his or her sex life, but what we all, collectively, are morally obliged to do to create sexual communities that are both virally safe and socially just. From this, the essay proceeds by arguing through a series of philosophical hypothetical situations.

The paper concludes that the criminalization (a) treats HIV infection as *necessarily* a harm, (b) views risk-taking as *necessarily* unjustifiable (c) considers non-disclosure as *necessarily* reprehensible, and (d) constructs the person to whom HIV is transmitted as *necessarily* a victim. The imperative for criminalization lies not in the punishment of immoral behaviour – there is much that is immoral that is not criminalized – but in the social meaning of HIV and AIDS, and in the way we understand responsibility for onward transmission and risk taking as individual rather than as social. Nor does the desirability of avoiding HIV transmission provide a warrant: morally and practically, HIV prevention is a task for all. Precisely because judgments about HIV are so bound up with fear of death and, for many, disdain for the behaviour that brings transmission, the communal voice that speaks through the law cannot be uncritically heeded.

Thus, criminalization is inherently unjust because it treats HIV, or people with HIV, differently without thereby benefiting everyone. Criminalization also fails for the converse reason: it treats as the same things that are different in ways that are meaningful if not fundamental to a coherent account of a just community with HIV. Criminalization fails from a moral point of view not because it has no moral principles, but because the principles are incomplete and, in their partiality, unjust.
Countries across the world criminalise HIV exposure and transmission, although there are significant differences in prosecution and conviction rates. The rationales and justifications for imposing liability are that criminalisation incapacitates offenders and protects people in the wider community from transmission and the risk of transmission; criminalisation provides an opportunity for the rehabilitation of offenders; criminalisation is a powerful and effective way of articulating social disapproval for conduct; and criminalisation deters individuals from engaging in risk-taking behaviour. There exists no compelling evidence, however, that addressing the HIV pandemic through criminal law does good, and an increasing amount of evidence that it does harm – especially to those particularly vulnerable to infection (MSM, women, injection drug users, people in detention).

This paper provides an overview of the nature and scope of criminalisation of HIV transmission and exposure around the world. It identifies some of the most salient features of, and developments in, HIV law in Africa, Asia, Australasia, Europe, North America, and South and Central America (including the Caribbean), and summarises the key issues confronting legislators, law enforcement agencies and courts in these regions.

The following are some of the key matters and issues highlighted:

- There appears to be a far greater use of criminal law in wealthy countries and regions (notably Scandinavia and North America) with relatively low HIV prevalence. There is, however, no evidence to suggest that the use of criminal law leads to a reduction in onward transmission.
- There appears to be an assumption that introducing new laws criminalising exposure and transmission can have beneficial public health outcomes. There is no evidence to support this and it is therefore inadequate and insufficient as a justification for the use of criminal law.
- There is evidence of widespread over-criminalisation of PLHIV – not only through the criminalisation of both sexual and non-sexual exposure and transmission, but through broad and over-inclusive fault requirements (i.e. not just intention, but recklessness and negligence).
- There is insufficient, though in some regions increasing, recognition that undetectable viral load resulting from effective ART should be taken into account in allegations of exposure, and should in some cases defeat claims that the defendant was reckless or negligent.
- Although it is widely accepted that phylogenetic analysis evidence cannot in and of itself prove the route, timing or source of HIV transmission in a particular case, this is not universally recognised.

- Within regions, and in countries with local criminal jurisdictions (such as the US and Australia), there exists widespread disparity and variation in the scope, reach and deployment of criminal law, resulting in inconsistency and confusion for PLHIV.
- Women are disproportionately impacted by criminalisation provisions. This is not only because women may be more likely to know their HIV status (as a result of ante-natal testing) but because it may be more difficult for them to negotiate safer sex (something which also applies to younger people living with HIV).

The paper concludes by offering a number of observations and suggestions. First, knowledge of the legal situation in some regions is much greater than in others – notably Asia and South and Central America. It should be a priority of the Commission to get up-to-date information so that it may be better able to respond at a truly international level. Second, there are many examples across the regions of elision between criminal law and public health law. This results in the development of public health laws that are coercive and punitive when they should be facilitative. Third, despite the understanding of the problems with investigating, prosecuting and convicting
PLHIV, politicians and policy makers continue to resort to criminal law as a legitimate and rational response to the HIV epidemic. More often than not this appears to be the result of — and so perpetuates — misinformation and prejudice. Therefore the value and importance of evidence-based policy-making and legislation should be emphasised as strongly as possible. Finally, there appears to be some correlation between the use of the criminal law and the wealth of a country. The fact that there is so little criminalisation in practice in Africa or in Asia may be a consequence either of limited resources, or of an unwillingness on the part of people to come forward with complaints to law enforcement agencies. The Commission may wish to consider the value of research that seeks to explore correlations between economic, social and cultural factors, and the use of criminal law.
# Judgments

## Case
*United States v. Moore, 846 F.2d 1163 (8th Cir.1988)*.

<table>
<thead>
<tr>
<th>Nature &amp; Scope of Authority</th>
<th>Binding law in the 8th Circuit jurisdiction.</th>
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<tbody>
<tr>
<td>Facts &amp; Background Law</td>
<td>Appellant Moore was an inmate in Minnesota who, knowing he was HIV positive, bit two correctional officers during a struggle and threatened to kill them. Moore was convicted of two counts of assault with a deadly and dangerous weapon upon federal correctional officers – the indictment charged that Moore’s mouth and teeth were a deadly and dangerous weapon and specifically charged that Moore was a person infected with HIV. The court declined to instruct the jury that the government was required to prove that AIDS could be transmitted by way of a bite in order to prove that Moore’s mouth and teeth were a deadly and dangerous weapon.</td>
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<tr>
<td>Issue</td>
<td>Whether the evidence at the trial was sufficient to sustain a finding that Moore’s mouth and teeth were a deadly and dangerous weapon, despite the fact that the medical evidence indicates that HIV/AIDS has never been shown to spread through contact with saliva/through biting.</td>
</tr>
<tr>
<td>Holding</td>
<td>Conviction affirmed – Moore’s mouth and teeth were a deadly and dangerous weapon because the evidence supported a finding that Moore used his teeth in a manner likely to inflict serious bodily harm – even if he had not been infected with HIV.</td>
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| Rule, Application, and Judgment | **RULE:** Question of what constitutes a ‘deadly and dangerous weapon’ is a question of fact for the jury (United States v. Czeck, 671 F. 2d 1195, 1197 (8th Cir. 1982)) – this has been defined as an object ‘used in a manner likely to endanger life or inflict serious bodily harm e.g. something more than a minor injury, but not necessarily injury creating a substantial likelihood of death (see United States v. Hollow, 747 F. 2d 481, 482 (8th Cir. 1984) and United States v. Webster, 620 F.2d 640, 641-42 (7th Cir. 1980)). The object need not be inherently dangerous, or a “weapon” by definition, such as a gun or a knife, because what constitutes a dangerous weapons depends not on the nature of the object itself but on its capacity, given the manner of its use, to ‘endanger life or inflict great bodily harm’ (United States v. Johnson, 324 F. 2d 264, 267 (4th Cir. 1963)).

**APPLICATION:** Potential for ‘serious infection’ from a human bite is a form of ‘serious bodily harm’ within the meaning of Hollow, even though Moore’s bite did not cause serious infection, as it is the capacity for the harm in the weapon, not the actual harm inflicted, that is significant. Therefore the human mouth and teeth are a deadly and dangerous weapon in circumstances like this, even if the actual harm inflicted was not severe and Moore had not been infected with HIV/AIDS.

**JUDGMENT:** The evidence was sufficient to support the jury finding that Moore’s mouth and teeth were used as a deadly and dangerous weapon, even though the evidence did not support a finding that Moore's bite could have transmitted AIDS. |
### Statute
#### French Penal Code 222-15 – Code Pénal [C. Pén.] art. 222-15 (Fr.)

<table>
<thead>
<tr>
<th>Nature, Scope &amp; Source of Authority</th>
<th>National law, effective throughout France.</th>
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<tbody>
<tr>
<td>Substance</td>
<td>An administration of noxious substances that affected the psychic or physical integrity of another is punished by the penalties mentioned under articles 222-7 to 222-14 according to the distinctions there laid down. Giving prejudicial substances which impair someone's physical or psychical integrity is sentenced to penalties as mentioned in articles 222-7 to 222-14 according to the differences provided for in these articles. The first two paragraphs of article 132-23 related to minimum sentence apply to the offence in the same way as of those established in those articles.</td>
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### Statute
#### Canada Criminal Code, R.S.C. 1985, c. C-46, ss. 271-273

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<tr>
<th>Nature, Scope &amp; Source of Authority</th>
<th>National law, effective throughout Canada.</th>
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| Substance                           | • **Sexual assault (s. 271)** - Everyone who commits a sexual assault is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years; or an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding eighteen months.  

• **Sexual assault causing bodily harm (s. 272)** - (1) Every person commits an offence who, in committing a sexual assault, carries, uses or threatens to use a weapon or an imitation of a weapon; threatens to cause bodily harm to a person other than the complainant; causes bodily harm to the complainant; or is a party to the offence with any other person.  

• **Aggravated sexual assault (s. 273)** - (1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant. |

### Statute
#### Offences Against the Person Act, 1861, 24 & 25 Vict., c. 100, §§ 18, 20 (Eng.)

|--------------------------------------|-----------------------------------------------------|
| Substance                           | **Section 18: Wounding with intent to do grievous bodily harm**  
Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause |
any grievous bodily harm to any person ...with intent, ... to do some ... grievous bodily harm to any person, [or with intent to resist or prevent the lawful apprehension or detainer of any person,] shall be guilty of an offence, and being convicted thereof shall be liable ... to imprisonment for life.

**Section 20: Inflicting bodily injury, with or without weapon**
Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanor, and being convicted thereof shall be liable ... to imprisonment ... for not more than five years.

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<tr>
<th>Statute</th>
<th>Crimes Act 1961, s. 145 (N.Z.)</th>
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<tr>
<td><strong>Nature, Scope &amp; Source of Authority</strong></td>
<td>National law, effective across New Zealand.</td>
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</table>
| **Substance** | Sec. 145 Criminal nuisance:
(1) Every one commits criminal nuisance who does any unlawful act or omits to discharge any legal duty, such act or omission being one which he knew would endanger the lives, safety, or health of the public, or the life, safety, or health of any individual.
(2) Everyone who commits criminal nuisance is liable to imprisonment for a term not exceeding one year. |

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<tr>
<th>Statute</th>
<th>Criminal Code, Pt. XVIII, § 323 (Berm.), as amended by Amendment Act 1993:2.</th>
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<tbody>
<tr>
<td><strong>Nature, Scope &amp; Source of Authority</strong></td>
<td>Applies nationally in Bermuda.</td>
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<tr>
<td><strong>Substance</strong></td>
<td>Creates a felony sexual assault charge, punishable by up to 20 years imprisonment, for “sexual assault by a person with AIDS, etc” (Part XVIII, 324) This defines ‘sexual assault’ as if a person, (a) knowing that he has a sexual disease, does a sexual act which (i) “involves contact between any part of his body and any part of the body of another person (whether or not that person is his spouse and or consents to the act) and (ii) “is capable of resulting in the transfer of bodily fluids to that person; and (b) before he does the act does not inform that other person that he has the disease.</td>
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<th>Statute</th>
<th>Denmark – Penal Code 252 (2)</th>
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<tr>
<td><strong>Nature, Scope &amp; Source of Authority</strong></td>
<td>Suspended in February 2011.</td>
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<tr>
<td><strong>Substance</strong></td>
<td>Made it a crime for anyone with HIV to willfully or negligently infect or expose another to the risk of infection.</td>
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UNAIDS reports that a working group was established by the Danish government to consider whether the law should be revised or abolished based on the best available scientific evidence regarding HIV transmission. See: http://www.unaids.org/en/resources/presscentre/featurestories/2011/april/20110426criminalization/

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<tr>
<th>Statute</th>
<th>Brottsbalken [BrB] [Criminal Code] 13:7 (Swed.)</th>
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<tr>
<td>Substance</td>
<td>Criminalises the creation of a “general danger to human life or health by...transmitting or spreading serious disease” as the spreading of poison or a contagious substance, punishable by up to six years imprisonment and up to ten years imprisonment if the crime is defined as gross, through manifesting an intent to harm another's life or health or by exposing a number of persons to danger.</td>
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<tr>
<th>Statute</th>
<th>Norwegian Penal Code, § 192</th>
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<tr>
<td>Nature, Scope &amp; Source of Authority</td>
<td>Applies nationally throughout Norway</td>
</tr>
<tr>
<td>Substance</td>
<td>Section 192 defines the offense of rape and provides for an enhanced penalty of up to 21 years, if the victim dies or ‘sustains considerable injury to body or health.’ Sexually transmitted diseases are deemed to be serious injury to body or health.</td>
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The report discusses the right to health, a right that includes not only timely and appropriate health care, but also access to health determinants such as clean water and sanitation, adequate housing and nutrition and consideration of social determinants including gender, race and ethnic disparities. The report notes the impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and “TRIPS plus” on access to medicines. The importance of TRIPS flexibilities is highlighted and the barriers that free trade agreements (FTA’s) pose for access to necessary medications is stressed. The report notes that despite the importance of TRIPS flexibilities for ensuring that the right to health is protected, a number of developing countries and least developed countries (LDC’s) have adopted TRIPS-plus standards in recent years that may adversely affect access to medicine.


The Guidelines were created in order to provide direction to States regarding how to take real steps to protect human rights surrounding HIV. The Guidelines are evidence based directions, derived from lessons learned throughout the course of the epidemic confirming that the protection of human rights in the HIV context has positive results for public health and the HIV response. The Guidelines serve to assist policymakers and government officials in conforming to international human rights standards and provides “an international framework for discussion of human rights considerations at the national, regional and international levels in order to arrive at a more comprehensive understanding of the complex relationship between the public health rationale and the human rights rationale of HIV/AIDS.” The Guidelines were first developed at the Second International Consultation on HIV/AIDS and Human Rights in Geneva, held from the 23 to 25 of September 1996. After witnessing advances in HIV-related treatment and various political and legal developments across the world since 1996, a Third International Consultation on HIV/AIDS and Human Rights was held in 2002 to update Guideline 6.

Guideline 4 calls upon States to “review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV or targeted against vulnerable groups.” It maintains that public health legislation should not include HIV-specific laws but only general criminal offences to be applied in exceptional cases of intentional transmission. It also calls for the review and repeal of laws prohibiting sexual acts between consenting adults, the decriminalizing of adult sex work and needle and syringe exchange programs, and the improvement of safety and health services in prisons.


This report discusses the increase in the number of laws criminalizing HIV transmission and exposure and the increase in prosecutions under these laws across the globe. It cites concerns arising from these laws, including the spread of misinformation, disincentives to testing, increased stigma, creation of barriers to accessing HIV services, invasions of privacy and disproportionate application to women, among others. The report discusses the consultation results, finding broad agreement that criminal law is an inappropriate tool for HIV prevention grounded
solely in retribution, and its use should be confined to cases where the defendant intentionally sought to transmit the virus. It also highlighted the problems presented by the vague, broad and poorly formulated criminal laws that are increasingly being adopted. At the end of the consultation, parties concluded that a human rights-based approach to HIV is required, that nations must be cautious when applying criminal law to the HIV context, that nations must prioritize HIV prevention measures, that the particular vulnerability of women and girls must be addressed, and that more funding and resources for HIV and human rights work is required.


The Handbook represents an effort by the Inter-Parliamentary Union (IPU) to create a global exchange regarding information on effective AIDS legislation and national policy. The Handbook is meant to bring together lessons from national response to HIV and provide guidance to State governments in their compliance with international commitments and creation of effective HIV/AIDS responses. It serves as call to action and a reference guide for parliamentarians to use in implementing their own strategies at the national level, based on a collection of good practices and effective responses.

The Handbook calls on parliamentarians to protect human rights through dismantling barriers to effective prevention programmes including opioid substitution therapy, sex education, and access to condoms. It also calls for the repeal of laws that discriminate against people living with HIV and vulnerable populations and for the enactment of legislation expanding affordable access to HIV medicines and treatments.


Countries in West and Central French speaking Africa and across the world are increasingly criminalizing HIV transmission and exposure. At least 13 countries in the region have national legislation criminalizing HIV transmission or exposure, and many others are considering such legislation. This article examines the objectives of the legislation and analyzes the effects of the legislation on the prevalence of the AIDS epidemic and the lives of the people living with HIV (PLWHIV). It also examines the public response to the increase in criminal laws in the region. The article discusses the HIV/AIDS model law adopted in N’Djamena, Chad, which, while it contains some measures aimed at curbing discrimination against PLWHIV, also prohibits the ‘willful transmission of HIV’ and requires disclosures of HIV-positive status. The article finds that national laws modeled after N’Djamena, while seeking to protect the rights of PLWHIV and those at risk of exposure, are often vague or broad, prosecution under them is rare, and there is no evidence that they are effective in combating the spread of HIV. Rather than safeguarding rights, they may contribute to the vulnerability of women and the stigmatization of those living with HIV/AIDS. The propensity of HIV transmission/exposure criminalization to undermine HIV prevention and treatment efforts calls for continued research and debate regarding the role of criminal law in the HIV/AIDS context.


The authors argue that criminal law should not be used as a method to address the spread of HIV except in the rare instance when a person acts with conscious intent to transmit HIV and does in fact transmit the virus. Imposing liability on an individual who did not have the requisite blameworthy state of mind or intent to harm another is inconsistent with the rational norm of personal responsibility regarding the risks of sexual behaviour. This article notes that no credible evidence has been produced showing that HIV criminalization protects individuals or society, and that such evidence is required to provide a public health justification for the invasion of privacy and autonomy.
caused by sexual regulation. Criminalization does not influence sexual behaviour, but serves to increase stigma, undermines public health efforts to encourage safe sex, and contributes to the subordination of women. The article calls for an effective human rights and public health response to criminalization, framing criminalization as an inappropriate policy. The article maintains that to combat the negative impact of HIV specific criminal laws, countries must institute effective policies that meet the needs which drive demand for criminalization, and institute harm reduction services where complete decriminalization is unattainable.


The article analyses whether the criminalization of HIV transmission/exposure is an effective preventive measure to curb the spread of HIV/AIDS in the US. The authors determine that criminalization does not prevent transmission or reduce the risk of spreading HIV, but rather serves to jeopardize public health measures by undermining access to treatment and promoting stigmatization of PLWH. The authors find that while 25 states have public health disease transmission statutes, and half have HIV-specific statutes, the behaviour prohibited under them still persists, and the actual number of charges and prosecutions under the statutes are low. Most of those charged with HIV-related crimes were already engaged in illegal behaviour, such as a sex crime, assault or act of prostitution. The study also found that these statutes do not establish clear rules that deter or influence behaviour that drives the spread of infection, such as voluntary sex. The article maintains that criminal law is only effective in preventing the spread of HIV when it successfully deters those who are responsible for a large proportion of the epidemic’s increase. However, the intentional use of HIV as a weapon is too rare to contribute substantially to the spread of HIV, and the criminal law thus ends up targeting those who engage in voluntary sex or needle sharing – behaviours difficult and controversial to deter or prohibit.


This report summarizes the extent of criminal laws across the globe aimed at HIV transmission or exposure and presents evidence showing no correlation between HIV prevalence and the use of punitive criminal laws aimed at preventing the spread of the epidemic. It also highlights the possible negative consequences flowing from the institution of HIV-specific criminal laws. The report maintains the criminal laws and prosecutions under them undermine prevention efforts by increasing stigma and driving people living with HIV and those vulnerable to contraction under-ground. It notes that North America has the highest number of HIV prosecutions and that Sweden, Norway, Finland and Denmark also have some of the highest rates of prosecution per capita of people living with HIV. The report calls for increased community advocacy in order to spur government reform and dispel illusions regarding the perceived benefits of criminal laws targeting HIV.

Scott M. Hammer M.D., *Antiretroviral Treatment as Prevention, 365 NEW ENG. J. MED. 561, 561-562 (2011).*

The editorial discusses the importance of a combined preventive approach to the HIV epidemic, with antiretroviral therapy working in concert with a public health directive to HIV treatment. Hammer discusses Cohen et al.’s study regarding the effect of preventive antiretroviral treatment for HIV-1-positive partners on transmission rates to the negative partner. The evidence from the study shows that early-therapy resulted in a 96% reduction in the rate of transmission, and also reduced the rate of disease progression in the HIV-1 infected patients. The author advocates for the use of aggressive programs targeted at diagnosis and treatment as one component of a comprehensive prevention plan.

The authors conducted a clinical study across nine countries, enrolling 1763 couples with one HIV-1 positive partner and one HIV-1 negative partner and randomly assigned the HIV-1 positive partner to either immediate (early) antiretroviral therapy or delayed therapy instituted after the onset of HIV-1 related symptoms or a decline in the CD4 count. The study found that early antiretroviral therapy reduced sexual transmission rates of HIV-1.


This report details 10 reasons why criminalizing HIV exposure or transmission is ineffective at preventing the spread of HIV and is an unjust violation of human rights, unless the accused has specifically intended to maliciously transmit the virus in order to cause harm to another. The 10 reasons are as follows: 1) criminalizing HIV transmission is justified only when individuals purposely or maliciously transmit HIV with intent to harm others. In these rare cases, existing criminal laws can and should be used, rather than passing HIV-specific laws; 2) applying criminal law to HIV exposure or transmission does not reduce the spread of HIV; 3) applying criminal law to HIV exposure or transmission undermines HIV prevention efforts; 4) applying criminal law to HIV exposure or transmission promotes fear and stigma; 5) instead of providing justice to women, applying criminal law to HIV exposure or transmission endangers and further oppresses them; 6) laws criminalizing HIV exposure and transmission are drafted and applied too broadly, and often punish behavior that is not blameworthy; 7) laws criminalizing HIV exposure and transmission are often applied unfairly, selectively and ineffectively; 8) Laws criminalizing HIV exposure and transmission ignores the real challenges of HIV prevention; 9) Rather than introducing laws criminalizing HIV exposure and transmission, legislators must reform laws that stand in the way of HIV prevention and treatment; 10) Human rights responses to HIV are most effective. The report maintains that, in light of these reasons, criminal laws targeting HIV exposure and transmission should not be used outside of cases where individuals intend harm, as these laws do not prevent HIV transmission but threaten public health and human rights.


This report calls for an evidence based, prevention oriented approach to HIV transmission that remains sensitive to human rights concerns. The report maintains that the functions served by criminal sanctions have not been shown to contribute to a reduction in HIV transmission. It details the potential for infringement on human rights and calls upon policy-makers to recognize the negative effects that criminal legislation may have on these rights and on broader public health. The report presents policy alternatives to the criminalization of HIV transmission, calling for a public health approach based on the classification of transmissible diseases, the imposition of legal duties on health professionals, and increased funding for prevention and treatment efforts. The report calls on states to protect against discrimination and protect privacy, to address underlying causes of vulnerability to HIV infection, to increase access to testing and treatment services, to repeal coercive criminal laws, and to ensure appropriate legal protection where criminal laws remain.


All U.S. states have laws which criminalize sexual behaviours that pose some risk of HIV transmission, and about half of U.S. states have HIV-specific laws criminalizing sexual contact by those who are HIV positive unless those persons ensure safe sex or disclose their HIV status and obtain consent. The article explores both sides of the debate over
whether criminal law serves an important function in restraining HIV transmission and influencing risky behaviour and presents the findings of an empirical study aimed to assist in developing evidence based approaches to HIV. The authors conducted an empirical study testing whether differences in criminal laws aimed at curbing HIV transmission and beliefs regarding those laws influence condom use during sex by interviewing a sample of people at elevated risk of contracting HIV, including men who have sex with men (MSM) and injecting drug users (IDUs). The data did not support the belief that laws prohibiting unsafe sex or requiring disclosure influence sexual behaviour. Due to concerns about the possible stigmatizing effects of criminal law on HIV positive people, the report consequently cautions the use of criminal law in the HIV/AIDS context as a means for instigating behaviour change and promoting status disclosure. The article maintains that criminalization of sex behaviour does not influence the behaviour of people with HIV and thus cannot be justified under a public health framework. While the authors admit that criminal law may serve a purpose for those who intentionally use HIV as a weapon, there is no need to enact HIV specific laws, and those existing should be repealed.


The author details the current surge in criminal prosecutions pertaining to HIV transmission and exposure across the world and highlights a number of cases in Canada and the U.S. in which HIV positive individuals were prosecuted for transmission or exposure. Cameron maintains that prosecution for transmission may serve a legitimate purpose in certain scenarios, and the most important decisions should involve carefully defining when prosecution is and is not truly justified.

The article details a number of arguments levied against criminalization, including that it is misconceived and ineffective in preventing transmission, is not an effective replacement for harm reduction measures, endangers women, inappropriately shifts the burden of preventing transmission to one person instead of recognizing it as shared by two, is unacceptably vague, fuels stigma, and may discourage testing. Cameron concludes that the combination of vague criminal statutes and broad prosecution constitutes an overly punitive averse and insufficiently informed reaction to AIDS. Cameron calls for the ‘normalization’ of HIV, combining the application of general criminal laws to conduct deserving of prosecution with resistance to broad prosecutorial discretion and HIV-specific legislation.


In his book, Weait examines court opinions, criminal statutes, trial transcripts and media reports, arguing that the criminalization of HIV transmission and exposure does not serve to prevent transmission and improve public health, but only further stigmatizes those living with HIV/AIDS and deters these individuals from accessing preventive treatment and medical services.


This resource discusses the key legal, scientific, ethical and social issues surrounding the criminalization of HIV exposure and transmission. The author discusses how law can serve as both a punitive ‘sword’ and a protective ‘shield’ and that UNAIDS and other organizations argue that criminalization and the punitive approach only serves to drive those infected with or vulnerable to HIV underground, limiting their ability to access information and medical treatment.
The resource discusses UNAIDS recommendations for legal reform, including removing criminal offences against men who have sex with men, removing criminal sanctions on sex work, allowing for harm reduction services for people who use drugs, and enacting anti-discrimination laws that protect people living with HIV.


This document is an illustrative list of the various prosecutions and arrests for HIV exposure across the US from 2008 through to 2012. The document compiles 142 cases of arrest and/or prosecution under various US state laws, ranging from reckless risk of infecting another person with HIV, to prostitution with knowledge of HIV-positive status, to assault and battery.


The table lists all 50 U.S. states, whether or not they criminalize HIV transmission and, if so, the statute and type of crime involved as of July 12, 2010.


This report details the laws and important cases regarding HIV criminalization in each US state and territory, summarizing prosecutions of HIV positive individuals and the attention paid to HIV status and treatment as a factor in sentencing guidelines. The volume goes through each individual state and explains the situation faced by HIV positive individuals under criminal laws across the U.S. It serves as a compendium for HIV specific laws and general criminal laws throughout the U.S. and the application of these through state case law. The case summaries include information found in judicial opinions and news media sources, as well as objective, relevant facts regarding the events leading up to arrest and prosecution.


This document compiles laws that impact HIV prevention efforts and people living with HIV from across the globe. It divides these laws by country, citing both protective and punitive law examples. Protective laws – those that create an environment favorable to HIV prevention, treatment and care provision – are defined as those that protect people living with HIV against discrimination and those that specify protections for vulnerable subpopulations. Punitive laws – those that present barriers and curtail the rights of people living with HIV, sex workers, men who have sex with men and drug users – are defined as those that present obstacles to treatment, impose travel restrictions, criminalize HIV transmission and exposure, same-sex relations or prostitution, and those that impose compulsory treatment for drug offenses.
In 2004, Action for West Africa Region – HIV/AIDS (AWARE-HIV/AIDS) produced a model law on HIV to be used in Western Africa. Several West African countries have drafted national laws based upon the model law. The author highlights several positive features of the model law, including provisions guaranteeing pre- and post-test counseling and health care services for people living with HIV/AIDS, protections of medical confidentiality, and prohibitions on discrimination. However, the author notes that, when examined through a human-rights lens, the model legislation has a number of flaws.

The model law forbids certain health education for minors without prior parental consent, imposes disclosure obligations and the duty to warn on people living with HIV, creates exceptions that allow for mandatory HIV testing in certain circumstances and for certain persons, and is ambiguous regarding criminalization of HIV transmission or exposure. The model law also fails to address the particular vulnerabilities of women, prisoners and other vulnerable populations. The author calls for the use of international human rights principles as a guide for national legislators in assessing the efficacy of the model law and in drafting their own national legislation.

The article discusses the rise in HIV law in West and Central Africa modeled after the AWARE-HIV/AIDS 'model' law and contends that while these laws may have some positive effects – such as the provision of HIV information and education, the guarantee that HIV test results will be kept confidential, and the prohibition on discrimination against people living with HIV – they are often poorly considered and hastily passed with little regard for efficacy and evidence. Some negative provisions cited included the imposition of a duty to warn, such as in Cape Verde or Burkina Faso, compulsory HIV testing, and the criminalization of transmission or exposure. These laws therefore pose a threat to the human rights of those living with and vulnerable to HIV.

As these laws criminalize HIV transmission and exposure in an extremely imprecise and vague manner, the author calls for their amendment or removal in order to prevent injustice and protect human rights. Future legislative efforts must ask the right questions in order to create an evidence based framework that is both effective in preventing the spread of HIV and mindful of the rights of those vulnerable to HIV.

This article discusses problems arising from the language used in the N’Djamena legislation, model legislation developed in September 2004 at the Action for West Africa Region –HIV/AIDS (AWARE-HIV/AIDS) meeting in N’Djamena, Chad. The report notes that while the N’Djamena law is indicative of a positive step forward in assessing the impact of law on HIV responses, some provisions of the law are problematic and may be in need of revision. The article calls for a public health and human rights-based response to HIV, drawn from the International Guidelines on HIV/AIDS and Human Rights, in order to allow all people to take responsibility for protecting themselves and preventing the spread of the virus and to reduce stigma and discrimination.

In particular, UNAIDS recommends reforming the education and information provision (article 2) to allow for free access to information for young people; eliminating exceptions (articles 17, 18, 24) to the prohibition on mandatory HIV-testing targeting vulnerable groups; reforming partner notification provisions (article 26); requiring non-voluntary partner notification only in a limited number of exceptional circumstances; prohibiting discrimination against people living with HIV and vulnerable populations; decriminalizing HIV transmission and exposure, with
exceptions only for limited circumstances; and instituting specific provisions protecting vulnerable populations including women, prisoners, sex workers, men who have sex with men, and drug users.


This article details evidence showing that antiretroviral treatment can prevent the sexual transmission of HIV among heterosexual couples. The study conducted indicates that early treatment with ARVs is both beneficial to the individual patient and has positive public health consequences by reducing the rate of transmission. The editorial calls for the application of these findings in formulating national policy and coordinating public health action.


This article discusses a number of statutes creating special crimes of HIV transmission or exposure across the world and explains their deleterious effect on HIV prevention efforts in response to the epidemic. The authors critically examine the supposed purpose behind criminalization and counter this with ten reasons why criminal laws and criminal prosecutions make bad policy in the AIDS epidemic. They maintain that: criminalization is ineffective at preventing the spread of HIV; criminal laws and prosecutions are poor substitutes for effective preventive measures; criminalization victimizes and endangers women; criminal laws are often unevenly applied and enforced against particularly vulnerable groups; criminalization unfairly forces one person to shoulder all the blame for risk; due to privacy infringements the laws are degrading to enforce; many laws are poorly drafted; criminalization increases stigma; criminalization deters testing and; criminalization punishes vulnerability, assuming the worst about HIV positive persons.


This briefing paper examines prosecutions of HIV positive people under the _Offences Against the Person Act 1861_ for transmission and exposure of HIV in England, Wales and Northern Ireland. The paper provides an overview of debates surrounding the use of criminalizing legislation as a transmission prevention method and the broader influence of HIV criminalization on public health. The paper details arguments both for and against criminalization, and discusses the problems that criminalization of HIV transmission and exposure pose for those living with HIV and populations vulnerable to HIV. It also makes a number of recommendations for civil society members, health care providers, law enforcement and the judiciary, aimed at maintaining and improving public health.


This article highlights the failure of HIV disclosure laws to reduce the prevalence of HIV. Across the U.S., 23 states have laws that criminalize engaging certain sexual behaviours without disclosing HIV-positive status to partners. These laws do not complement current prevention efforts, encourage safe sex, or serve as a deterrent to risky behavior, but rather undermine public health efforts and curtail the efficacy of harm reduction strategies. The laws also perpetuate the stigmatization of HIV positive individuals, driving them underground and impeding their access to health care and testing services.

This article discusses qualitative research conducted in Canada regarding the public health impact of HIV-specific criminal law. The article examines the interface between legal concepts used in the criminal context, such as “significant risk”, and the realities of public health and HIV. In exploring how criminalization influences the provision and access of HIV prevention counseling and health services, the author emerges with three key findings: 1) the legal concept of ‘significant risk’ is problematic, as it impedes effective HIV counseling and perpetuates contradictory information regarding HIV disclosure requirements; 2) criminalization discourages openness in counseling regarding HIV non-disclosure; 3) recontextualization of public health interpretations of ‘significant risk’ may lead to intensified criminalization.


This article attempts to unearth the impact of criminal prosecution for HIV transmission in England and Wales on HIV prevention efforts. As part of a qualitative study, the authors asked 42 participants about their knowledge surrounding criminal prosecutions for the sexual transmission of HIV and whether or not they altered this awareness of criminalization and prosecution caused them to alter their sexual behavior in certain respects. The authors found that many were confused regarding the state of criminal law surrounding HIV, leading many to hold false beliefs regarding the legality of their sexual behavior. The authors note that while knowledge of the criminal law led some respondents to adjust their behavior, others did not change or made adverse changes due to confusion or misunderstandings. The article concludes by questioning whether the criminalization of HIV produces desirable public health outcomes which may outweigh such undesirable effects on a broad scale.


This article highlights the lack of data to support the belief that laws criminalizing HIV transmission and exposure serve to restrict the prevalence of HIV. Rather, the article notes that these laws hinder public health efforts and curtail human rights, perpetuating stigma and inciting discrimination against people living with HIV and vulnerable groups. UNAIDS calls upon countries to limit criminalization to only those few cases where an individual intends to transmit HIV and does so in fact. The article calls for the expansion of successful preventive programs which have been proven to reduce transmission through information and commodity provision, confidential testing and counseling and anti-discrimination measures. The report also calls upon governments to strengthen anti-rape laws and enforce other laws against violence against women and children.


This document details how the criminalization of HIV exposure or transmission serves to endanger and further oppress women. It identifies 10 reasons why criminalization is likely to heighten the risk of violence and abuse women face, strengthen gendered inequalities, exacerbate fear and stigma and increase women’s risk of contracting HIV. The ten reasons are as follow: 1) Women will be deterred from accessing HIV prevention, treatment, and care services, including HIV testing; 2) Women are more likely to be blamed for HIV transmission; 3) Women will be at greater risk of HIV-related violence and abuse; 4) Criminalization of HIV exposure or transmission does not protect women from coercion or violence; 5) Women’s rights to make informed sexual and reproductive choices will be further compromised; 6) Women are more likely to be prosecuted; 7) Some women might be prosecuted for mother-to-child transmission; 8) Women will be more vulnerable to HIV transmission; 9) The most ‘vulnerable and marginalized’ women will be most affected; 10) Human rights responses to HIV are most effective.

The article discusses the focus placed on testing in Sweden’s HIV prevention programme. Danziger notes that the Swedish approach puts the emphasis on the HIV positive person’s knowledge of his or her status and responsibility to prevent transmission. The Communicable Diseases Act exemplifies this, focusing solely on the duties of those who are HIV positive while ignoring the larger responsibility of the entire community to work to prevent the spread of HIV.


Article discusses the importance of separating out the role of treatment for a couple and the effects of treatment in the population as a whole. The authors maintain that the use of antiretrovirals should directly decrease the incidence of infection, so long as diagnosis is timely and treatment is initiated much early during an infection. The article calls for the promotion of adherence to treatment and the use of condoms in order to prevent the transmission of HIV and other sexually transmitted infections.


The report notes that in recent years, Sweden has seen an increase in the number of new diagnoses of HIV. The report discusses Sweden’s criminalization of HIV transmission and exposure, noting that over 40 people have been convicted of crimes related to HIV in Sweden. In Sweden, a person living with HIV can be incarcerated after engaging in unprotected sex, even when the sex was consensual and HIV was not in fact transmitted. The report speaks to the problems associated with current Swedish legislation - particularly the Communicable Disease Act - and case law, and their impact on the lives of people living with HIV, vulnerable populations and HIV prevention efforts as a whole. It notes the lack of evidence indicating that criminalization induces behavior change or is effective as a prevention effort. The report calls for a review of the Communicable Disease Act and laws criminalizing HIV transmission and exposure and the restructuring of Swedish HIV policy grounded in human rights and based upon international recommendations.


The paper is meant to serve as a tool for professionals working around criminal law and HIV. It details the ways in which phylogenetic analysis should and should not be used in criminal trials of persons charged with reckless transmission of HIV. Phylogenetic analysis is a process conducted by HIV virologists analyzing small differences in HIV genes to determine the degree of relatedness of two samples of HIV. Results of phylogenetic analysis have often been used in criminal trials as evidence of responsibility for HIV transmission/exposure.

However, as the paper notes, phylogenetic analysis alone cannot prove responsibility for transmission, as closely related HIV strains – unlike DNA – may not necessarily be unique to an individual but could also be carried by others. The paper calls upon expert witnesses to acknowledge the limitations of phylogenetic analysis for assigning responsibility for transmission at criminal trials, and asks that these experts be careful in their choice of language during testimony.

This article discusses the recent revision and reconsideration of HIV criminalizing statues across the globe. It cites the efforts of countries such as Denmark, Norway, Guinea, Togo and Senegal to review and revise HIV-related legislation that criminalizes transmission and exposure, in favor of limiting criminal charges to select cases of intentional transmission. These changes have been made in light of new scientific, medical, legal and human rights evidence indicating that criminalization of HIV transmission and exposure is harmful for public health and HIV prevention efforts. UNAIDS continues to call upon governments to seek evidence-based reform of national legislation pertaining to HIV.


The report notes that at the culmination of 2011, the total number of diagnosed HIV positive individuals in Finland was 2953. The most vulnerable groups in Finland are men who have sex with men (MSM), migrants, and people who inject drugs. Finnish HIV policy includes knowledge and information sharing through sex education, free access to anonymous testing and counseling, condom distribution and needle exchange to prevent transmission; free access to treatment and care for people living with HIV; social support and anti-discrimination to protect people living with HIV.


The report serves as a guide for those interested in learning about the various legal situations surrounding HIV in various countries around the world. It provides a snapshot of country case studies, examining key questions about the criminalization of HIV transmission and exposure and its impact on public health responses, human rights and discrimination. The guide can be used as a tool to support legal advocacy to repeal and reform HIV specific criminal law, consolidate arguments against the criminalization of HIV transmission and exposure, inform people living with HIV of their legal rights and catalyse national and international activism.


The article is a review of reports regarding determinants of HIV infection in injecting drug users from 2000 to 2009. The authors estimate that during 2010-15, HIV prevalence could be reduced by 41% in Odessa (Ukraine), 43% in Karachi (Pakistan), and 30% in Nairobi (Kenya) through a 60% reduction of the unmet need of programmes for opioid substitution, needle exchange, and antiretroviral therapy. They also estimate that mitigation of patient transition to injecting drugs from non-injecting forms could avert a 98% increase in HIV infections in Karachi and the repeal of laws prohibiting opioid substitution therapy could prevent 14% of infections in Nairobi. The authors call for evidence-based, rights centered interventions aimed at improving injecting drug users’ access to prevention and treatment programs in order to lower HIV transmission rates and curb the epidemic.

The authors conducted a mixed-method study in order to gain better perspective on the relationship between prison conditions, the criminal justice system and HIV and tuberculosis (TB) in prisons in Zambia. The report documents serious barriers to HIV and TB prevention and treatment in the prisons, as a result of overcrowded conditions and particular vulnerabilities of specific groups including juveniles, women, pre-trial detainees and immigration detainees.

The authors conclude that the dangerous prison conditions and lack of medical care in Zambian prisons constitutes a human rights violation requiring an immediate remedy. The report calls for an increase in prisoner based health services and linkages to community health care, in addition to general improvements in the criminal justice system to improve prison conditions and combat overcrowding. The report highlights these improvements as necessary in order to reduce the spread of HIV and TB in Zambia – both inside the prisons and across the general population as a whole.


The report documents the progress made by 147 countries across the globe in addressing the spread of HIV and implementing the 2001 *Declaration of Commitment on HIV/AIDS*. The report notes that while the global percentage of people living with HIV has stabilized since 2000, the overall number of people living with HIV has increased due to the new infections per year coupled with the beneficial impact of increased access to antiretroviral therapy.

Globally, Sub-Saharan Africa is the most heavily affected region. While it appears that epidemics in the region have stabilized or begun to decline, infections are increasing in countries outside of Africa. The report notes that injecting drug users, men who have sex with men and sex workers are particularly vulnerable populations for HIV risk. The report calls for countries to reduce gender inequality, stigma and discrimination. It also calls for an increase in prevention efforts, support services for people living with HIV, access to affordable antiretroviral medicines, and the implementation of evidence-based policies and programmes nationally.
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