TACKLING CRIMINAL TRANSMISSION OF HIV

THE ROLE OF PUBLIC HEALTH
BACKGROUND – IOWA’S LAW

• Passed in 1998, following the case of NuShawn Williams in New York State; 25 years maximum for nondisclosure of positive HIV status prior to sexual exposure or sharing needles; or for donating blood, tissue, semen, etc.

• No discussion or dissent by Iowa lawmakers. No involvement from the Iowa Dept. of Public Health.

• From 1999 to 2013, there were 37 charges filed against 25 individuals. Fifteen of those individuals were convicted on a total of 24 counts.

• Public health surveillance data, which were collected for the purpose of monitoring the epidemic and ensuring linkage to care, testing of partners, and best health outcomes, must be released with a court order to establish diagnosis dates in courts of law.
BACKGROUND – IOWA’S LAW

• Advocates were organized by the health department in 2005 to help us respond to lack of funding for ADAP (to eliminate a waiting list situation)

• They chose to address the criminalization statute in 2010 – after many years of choosing not to address it.
THE CASE FOR A PUBLIC HEALTH APPROACH

• Criminal statutes affect public health programming
  • Create stigma around HIV – particularly if the statute is HIV specific
THE CASE FOR A PUBLIC HEALTH APPROACH

“Disentangling stigma from HIV risk, infection, and treatment is one of the greatest public health challenges of the 21st century.”

Source: NASTAD and NCSD; Addressing Stigma: A Blueprint for Improving HIV/STD Prevention and Care Outcomes for Black & Latino Gay Men
THE CASE FOR A PUBLIC HEALTH APPROACH

• Criminal statutes affect public health programming
  • Create stigma around HIV – particularly if the statute is HIV specific
  • Create a lack of trust of public health programming
    • Participation in re-engagement programming
    • Information discussed with counselors and testers pre- and post-test
    • Behaviors discussed with case managers
    • Prevention with Positives programs
    • Care programs – conversations with medical providers and engagement in care
    • Decreases STI testing for PLWHA
  • Use surveillance or program data in ways in which they were not intended
Data to Support Intervention

HIV criminal prosecutions and public health: An examination of the empirical research
Patrick Byrne, Alyssa Bryan, Marie Roy
Med Humanit 2013

“In summary, the nascent literature about HIV criminal laws and public health identifies that these laws
a) Do not uniformly affect sexual risk-taking
b) Correspond to poor HIV-medication adherence and reluctance to access healthcare, and
c) Exacerbate HIV stigmatization and discrimination.”
DATA TO SUPPORT INTERVENTION

HIV criminal prosecutions and public health: An examination of the empirical research
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“The literature indicates that HIV criminal laws undermine relationships between public health officials and people diagnosed with HIV. This situation may worsen PLWHAs’ health status, while exacerbating onward transmission.”

The relationship with testing is not linear (i.e., is complicated).
THE ROLE OF PUBLIC HEALTH

• The involvement of the State Health Department is critical
  • Work with advocates to keep the efforts and focus on public health effects of statutes
  • Present the public health argument – demonstrate state support for arguments
  • Discuss risks and modes of transmission
  • Present scientific literature
  • Discuss importance of **point in time** in epidemic, in Iowa – state data, continuum of care, TasP; NHAS
  • Present state plan – which includes addressing stigma
  • Talk to reporters and editorial boards about epidemic, state plan, and science
  • Engage others in government – Attorney General’s office
  • Engage partners outside government – Medical Society, etc.
THE ROLE OF PUBLIC HEALTH

• What the public health department did in Iowa
  • Made technical changes to surveillance statute
  • Took a position to support the concept that Iowa’s statute deserved to be reviewed by legislators
  • Engaged state epidemiologist, legal counsel, department director
  • Developed a departmental fact sheet with help of legal counsel
  • Attended coalition meetings with advocates, lobbyists, legislators (often with legal counsel)
  • Presented at forums across the state with advocates
  • Drafted an op-ed piece to call for review of statute
  • Drafted options for how to revise statute
  • Drafted potential bills
  • Drafted language to be used in bill – legislative intent; revisions to bills at the request of legislators
HOW TO WORK WITH ADVOCATES

• Allow advocates to initiate meetings with legislators, then have legislators request meetings with department staff
PUBLIC HEALTH RECOMMENDATIONS

Principles for modernizing Iowa’s statute from a public health perspective:

1. Improve alignment with a constructive public health approach.
   • An updated statute could better support use of personal and public health measures to control contagious diseases, such as use of prophylactic devices, testing, following the guidance of medical professionals and public health officials, and adherence to effective treatment regimens.

   • The National HIV/AIDS Strategy calls for state legislatures to reconsider criminalization statutes that may act as barriers to public health prevention goals and may interfere with public health strategies to reduce transmission of HIV/AIDS.
Iowa’s Continuum of Care 2012

- HIV Infected: 2,782
- HIV Diagnosed: 2,256
- Linked to Care: 2,193 (97%)
- Retained in Care: 1,296 (57%)
- Viral Load Suppressed: 1,135 (50%)
Iowa’s Model

Policy and Structural Support

Testing and Case Finding

Linkage and Engagement

Partner Services

Medical Care and Treatment

Re-engagement and Re-entry

Retention and Adherence

Case Management, Support Services, Prev. with Positives

Viral Load Suppression

Condom Distribution and STD Test & Treat
Iowa Comprehensive HIV Plan

http://www.idph.state.ia.us/HivStdHep/HIV-AIDS.aspx?prog=Hiv&pg=HivHome
PUBLIC HEALTH RECOMMENDATIONS

Principles for modernizing Iowa’s statute from a public health perspective:

1. **Improve alignment with a constructive public health approach.**
   - Criminal statutes may **work against existing public health measures, such as HIV partner services and HIV case management**, which require trust of public health officials to keep information about behaviors, partners, and exposures confidential.
2. Assure consistency in controls and penalties across comparable contagious diseases.

- The statute should avoid stigmatizing or singling out a specific disease, such as HIV, especially when there is currently very good evidence that the statutes do not change a person’s risk or disclosure behaviors (Burris, 2007).

- Penalties should reflect the actual risk of causing harm – those behaviors that are unlikely to result in transmission should not be criminalized;

- Felonies should be reserved for intentional and/or documented transmission;

- The statute should reflect the fact that new treatment therapies exist that render HIV less dangerous than was the case in 1998 when the statute was passed (Nakagawa, 2011).
3. Consider costs associated with prosecutions and incarcerations that may impact other state and local governmental bodies.
Legislative Options for Modernizing Iowa’s Criminal Transmission Statute:

For discussion purposes, the Department sets forth the following range of draft options, each of which (or some combination thereof) would achieve some or all of the public health principles outlined above.

The Department recognizes that other interests and input must also be considered in drafting this bill, including input from the correctional and law enforcement communities. The Department presents these options to assist the parties considering this issue in arriving at the optimal language for the state of Iowa to modernize this outdated statute. Other suitable options may also exist.

Option 1: Repeal the existing law
Option 2: Modify to law so it criminalizes only intentional transmission.
Option 3: Follow SF 323; provide two tiers of penalties based upon whether transmission occurred.
Option 4: Create requirement for significant risk of transmission; allow for practical means to protect partner; provide tiered penalties based upon intent or reckless disregard and whether transmission occurred.

Iowa Department of Public Health Fact Sheet, Jan. 2012
APPROACH OF ADVOCATES

• Determined in collaboration with the department

• Stick to public health modernization message
  • New era of HIV prevention and care;
  • New treatments available;
  • Moment in time to take action;
  • Need people to trust in public health system;
  • HIV no longer different than other diseases comparable in scope.
Approach of Advocates

• Outright repeal (decriminalization) may not be best option.

• **Protection of partners, not disclosure of positive status is what will decrease rates of transmission**

• Sentencing should be tiered according to intent to harm and whether harm was caused.

• Remove HIV-related stigma by making it not specific to HIV.

• Remove references to sexual transmission.
1. LEGISLATIVE FINDINGS. The general assembly finds that establishing a sound criminal justice and public health policy toward individuals living with a contagious or infectious disease is consistent with an evidence-based approach to disease control that focuses on prevention strategies that include notification of current and previously exposed partners, evidence-based behavioral risk-reduction programming, promotion of voluntary disclosure to sexual and needle-sharing partners, and suppression of viral load through engagement in care and treatment programs.
• Added duties for the department:

Duties of the department:
e. Subject to availability of funding, develop and implement a comprehensive prevention program for individuals with HIV that includes engagement and retention in HIV care activities, risk reduction and behavioral prevention programming, partner notification services, case management and other supportive services, and assistance with health insurance coverage or medication costs for low-income individuals.
MOVING FORWARD (AFTER PASSAGE)

• Work with the Attorney General’s office and others on educational material for county attorneys and prosecutors
  • What is included in the law
    • Elements of a crime
    • Modes of transmission and risks of transmission
• Educational materials for consumers and people who work with them (case managers, testers, public health)
• Revisions to public health code that may influence prosecutors
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