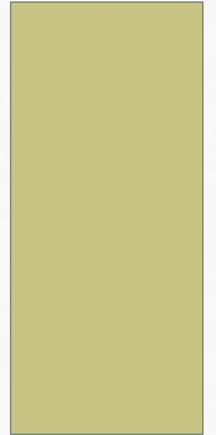


TACKLING CRIMINAL TRANSMISSION OF HIV

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

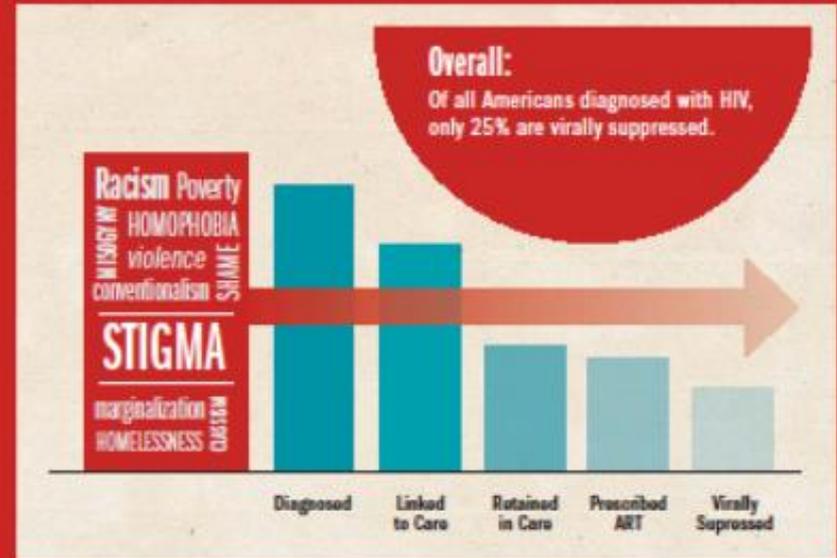
- Criminal statutes affect public health programming
 - Create stigma around HIV – particularly if the statute is HIV specific

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.^{2,16}”

Source: NASTAD and NCSD; Addressing Stigma: A Blueprint for Improving HIV/STD Prevention and Care Outcomes for Black & Latino Gay Men

THE BAR BEFORE THE BARS



Stigma and other social determinants influence the HIV care continuum before a diagnosis is even made.

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

Patrick Byrne, Alyssa Bryan, Marie Roy

Med Humanit 2013

“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 experts** - state epidemiologist, legal counsel, department director; Iowa Medical Society
 - **Developed a departmental fact sheet** with help of legal counsel
 - **Wrote Op-Ed** for Des Moines Register
 - **Was present in the discussion:**
 - Attended coalition meetings with advocates, lobbyists, legislators
 - Presented at forums across the state with advocates
 - Drafted language – bills; legislative intent
 - Responded to bills and amendment language

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.

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 the 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.

PUBLIC HEALTH MESSAGES

- This is a new era of HIV prevention and care;
- New treatments are available that are easy to take and reduce transmission by 96%;
- Data-to-care programs require people to trust in the public health system;
- HIV is no longer different than other diseases comparable in scope.

LEGISLATIVE INTENT LANGUAGE

Example of Legislative Intent Language:

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, **protecting sexual and needle-sharing partners from exposure to HIV**, and suppression of viral load through engagement in care and treatment programs.

SINCE PASSAGE (MAY 2014)

- 2 people have pled guilty to exposing someone to an infectious disease with the intent to transmit the disease – not HIV related; no publicity. These were class D felonies (up to 5 years).
- 2 people have pled guilty to acting with reckless disregard but not transmitting a contagious or infectious disease. Both had HIV. They were each fined, and one received time served.
- In the past, these would have been felonies with up to 25 years prison per count.
- 3 cases were investigated but not charged.

IOWA LESSONS

- Law requires protection of partners from “substantial risk of transmission” of an infectious disease; it does NOT require disclosure of status

Good News

- Prosecutors (and media?) have “learned” what law requires - documentation of a substantial risk
- There was no publicity about any of the *convictions*
- Law is working as it was intended - no egregious cases

Bad News

- No cases have yet challenged what is meant in the statute by creating a “substantial risk of transmission” - a requirement to be found guilty under the statute
- Two PLHIV did not seem to have been correctly charged initially
- Each misdemeanor conviction complicated other legal issues for those two PLHIV (former conviction; immigration)

CONCLUSION

- Law is working much as it was intended - creates a much more narrow pathway for prosecuting people with infectious diseases
- Misdemeanor is likely to be the most common outcome when there are prosecutions
- Expect fewer cases moving forward as prosecutors and county attorneys learn about the changes in the law
- Have a sense that stigma has been lowered for lowans with HIV but would like this confirmed with evidence

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