

HIV is a virus, not a crime

Abstract

Simply because certain laws have been on the books for decades does not justify their continued existence in an ever evolving society. Systematic review is required to ensure that laws created around the HIV population still make sense today given advances in science and knowledge. The Repeal Existing Policies that Encourage and Allow Legal (REPEAL) HIV Discrimination Act, aims to modernize our justice system and end criminal discrimination and consequences associated with having HIV/AIDS, by requiring that all federal and state laws, policies, and regulations regarding the criminal prosecution of individuals for HIV-related offenses be reviewed. While there is little evidence to support that our current laws reduce the spread of HIV, they do promote fear and stigma and undermine HIV prevention efforts.

Keywords: repeal, HIV/AIDS, HIV criminalization, undetectable viral

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Abbreviations: HIV, human immunodeficiency virus; AIDS, acquired immunodeficiency syndrome; REPEAL, repeal existing policies that encourage and allow legal; DOHMH, department of health and mental hygiene; MSM, men who have sex with men; CDC, centers for disease control and prevention

Introduction

The first national “HIV is Not a Crime” conference was held this past summer in Iowa. Writer and HIV/AIDS advocate Mark S. King wrote in his blog about his experience. Most notably he speaks about an extremely powerful and moving speaker named Kerry Thomas. Thomas, who participated in the conference by video, was prosecuted for not disclosing his HIV status even though he had an undetectable viral load and always used a condom with his partner, making the transmission of HIV almost impossible. In fact, his partner wasn’t affected. Thomas is currently serving a 30-year prison sentence for this and will not be released until 2038.

Currently, there are 32 states that have HIV-specific criminal laws where people are prosecuted for perceived exposure to or transmission of HIV, even in the absence of transmission or the increased risk of transmission. An analysis conducted by Centers for Disease Control and Prevention (CDC) and Department of Justice researchers found that, by 2011,¹ at least 32 states had enacted a total of 67 HIV-related laws focused on persons living with HIV, and prosecution for alleged exposure to HIV is happening in at least 39 states. Furthermore, bodily fluids such as blood, semen, and saliva from those living with HIV have been referred to as deadly weapons. Still worse is the fact that people have been charged with aggravated assault, attempted murder, and even bioterrorism under the current set of laws. The New York City Department of Health and Mental Hygiene (DOHMH) reported that for the year 2011² in Queens, NY, there were a total of 505 new HIV diagnoses, 225 new AIDS diagnoses, and 11,656 men living with HIV/AIDS. Of the 40,950 estimated number of new HIV infections in the United States in 2010, men who have sex with men (MSM)³ accounted for over 50% (28,500) of those newly infected. In other words, HIV is still an issue and needs a lot more attention and resources put towards eliminating it.

In response to the outdated laws, attitudes towards those that are HIV positive, and the advances that have been made over the past three decades, U.S. Congresswomen Barbara Lee and Ileana Ros-

Lehtinen introduced H.R. 1843: The Repeal Existing Policies that Encourage and Allow Legal⁴ (REPEAL) HIV.

Discrimination Act on May 7, 2013⁵ the bill was assigned to a congressional committee on December 10, 2013, and almost two years later this is where it still sits. In short, the bill would require a review of all federal and state laws, policies, and regulations regarding the criminal prosecution of individuals for HIV-related offenses. The bill aims to modernize our justice system and end criminal discrimination and consequences associated with having HIV/AIDS and engaging in sex.⁶

There is an urgency to restore a standard of fair treatment for all. How will punishing “exposure” encourage people to reveal their HIV status to their sexual partners, want to seek counseling, or get educated? Where should the focus be, on criminalizing HIV positive people or getting people tested and treated which can reduce the risk of infecting someone else by 95%?⁷

In a society where many different populations suffer the consequences of being stereotyped and marginalized, how will the status quo move us forward in our thinking and actions to increase equity and social justice?⁸

Conclusion

There is little evidence to support that our current laws actually reduce the spread of HIV, but they do promote fear and stigma while undermining HIV prevention efforts. HIV-related stigma is a significant public health problem creating barriers for those with HIV. It makes people with HIV feel that they can’t be honest for fear they could lose the very services they need most (i.e., housing, access to healthcare), all of which are essential to their overall health. Scientific understanding and advances have surpassed the need for these outdated laws. Keeping them endangers present and future public health efforts to reduce HIV infection. Let’s get smart and

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Conflict of interest

The author declares no conflict of interest.

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