U.S. Tops List of Global HIV-Criminalization Hot-Spots

July 27, 2012 By Reed Vreeland

Two new studies create a combined portrait of the United States as an HIV-criminalization hot-spot, where statutes and criminal prosecutions have created an uncertain and inequitable legal environment for people living with HIV and will have profound effects on public health efforts to get more people infected with the virus tested and into care.

Preliminary results studies—the GNP+ Global Criminalization Scan and the Sero Project's National Criminalization Survey –were reported on Wednesday, July 25, at the XIX International AIDS Conference (AIDS 2012) in Washington, DC.

A Global Overview of HIV Criminalization

Edwin J. Bernard, co-coordinator of the HIV Justice Network, presented a preview of his research and findings from the GNP+ Global Criminalization Scan, a country-by-country analysis of HIV-related prosecutions. Results from the scan showed that even though HIV-related criminal cases are often framed by prosecutors and the media as being "deliberate," many nations continue to inappropriately prosecute people living with HIV for non-intentional exposure and for alleged non-disclosure and exposure—in many cases when HIV transmission has not actually occurred or when the transmission route has not been adequately proven.

A prosecution can be classified as an HIV-criminalization case when it is brought based on someone's HIV-positive status under HIV-specific laws—legislation that specifically criminalizes HIV transmission, exposure or potential exposure—or under general law. An example of an HIV-criminalization prosecution brought under general law is when HIV is stipulated as a "deadly weapon" or "dangerous instrument" in an aggravated assault charge when an HIV-positive defendant is accused of biting or spitting.

Bernard reported that at least 66 countries currently have one or more jurisdictions with HIV-specific criminal laws, and at least 47 countries have used HIV-specific or general laws to prosecute HIV non-disclosure, exposure or transmission. Since researchers were limited to searching case records and media reports when counting and categorizing countries' HIV-criminalization prosecutions, Bernard said that results should not be considered comprehensive and should instead be seen as suggestive of the international variance in HIV criminalization.

Bernard also presented an assessment of global HIV-criminalization hot-spots—a final ranking of 15 nations that had the highest number of HIV-related arrests and prosecutions per 1,000 people living with HIV through July 1, 2012. The United States was at the very top of the list of 15 countries, with the states of South Dakota, Idaho, Mississippi, Louisiana, Tennessee, Illinois, Missouri, Indiana, Ohio, Florida and Oklahoma responsible for the greatest number of HIV-criminalization prosecutions and arrests.

“At least a quarter of the prosecutions in the United States are for things that don’t even risk exposure—such as spitting and biting [with no blood-to-blood contact]—but the United States isn’t the only country doing this,” Bernard explained. There is currently no evidence that HIV criminalization reduces overall rates of HIV transmission. However, Bernard explained, there is growing evidence that HIV-related prosecutions increase HIV stigmatization and discourage HIV testing and treatment.

Other nations considered hot-spots included Bermuda, Malta, Sweden, Australia, New Zealand, Finland, Norway, Austria, Denmark, Canada, the Czech Republic, Switzerland, Hungary and Singapore. Bernard noted that high-income countries, especially in North America and Scandinavia, were bringing the highest number of HIV-criminalization cases.

The Legal Vulnerability of HIV-positive People in the United States

Citing preliminary results from the Sero Project’s national criminalization survey, Laurel Sprague, the project’s research director and lead investigator, showed that HIV criminalization may be a significant deterrent to testing and accessing treatment and services for HIV in the United States. The online survey had 2,076 U.S. respondents who self-reported as HIV positive and was promoted through HIV-positive online networks and on POZ.com and AIDSmeds.com. Questions were designed to assess national views on HIV criminalization.

More than 25 percent of participants said they knew one or more person who did not want to get tested for HIV because of fear of prosecution if they tested positive. Five percent of respondents specified that “many people” had told them this. In addition, roughly 41 percent of respondents considered it reasonable for an HIV-positive person to avoid HIV treatment for fear of prosecution.

“I want to emphasize that avoiding testing and avoiding treatment can have life-threatening consequences, and people know this,” Sprague explained. “Even so, people still felt that it was reasonable to avoid HIV testing and care.”

To make sense of this, Sprague offered more survey results. Nearly 40 percent of survey participants reported that they’d worried a few times or frequently about being falsely accused of not disclosing their HIV-positive status. Among transgender people living with HIV, this number was 60 percent. "For HIV-positive people, when things go terribly wrong in a relationship, we can be vulnerable to not only the pain of ending a relationship but also to punishment through the legal system,” said Sprague, who was speaking as a researcher and a woman living with HIV. Respondents in the Midwest and the South were more likely to express fear about false

accusations.

Respondents also indicated that they did not trust the criminal justice system and 49 percent said that their state would not, or probably not, give them a fair hearing if someone were to file a charge against them for non-disclosure. “People felt that as soon as they are seen as a person living with HIV, they will not be trusted and will not be seen as a reliable witness,” Sprague said. Another 29 percent of respondents said that they weren’t sure if they would get a fair hearing.

In fact, among the study participants uncertainty about the laws surrounding HIV disclosure was extremely common. More than 60 percent of respondents were not certain whether or not their state required people with HIV to disclose their status to a partner before having sex. Nearly half or respondents also expressed a lack of clarity about what actions or accusations could subject them to prosecutions. “People living with HIV in the U.S. find themselves in an incredibly vulnerable legal situation in which they can’t predict what kinds of behaviors might be criminalized,” Sprague added.

However, fear of prosecution did not appear to prompt disclosure. In fact, fear of criminal prosecution for non-disclosure was low on the list of replies when respondents were asked to share, in their own words, what factors motivated their HIV disclosure in relationships or potential relationships. Instead, respondents offered these reasons for disclosure: Because it’s the right thing to do; to have honest relationships; to not cause harm to other human beings; and to protect their partners.

These answers, Sprague explained, indicate that ethical considerations supersede legal considerations in motivating people to disclose their status.

While Sprague is clear that HIV criminalization appears to be detrimental to public health by discouraging testing, treatment and access to care, she insists that it may play a greater social role. “Criminalization serves to scapegoat individual people for larger social failures, including the failure to provide social and psychological support for people living with HIV; the failure to deal with social stigma and discrimination; the failure to fund empowerment projects; and perhaps most [pressingly] the failure to deal with gender inequality," she concluded.

The Personal and Societal Costs of HIV Criminalization

To further explain the personal and psychological results of being a defendant in an HIV-criminalization prosecution, Nick Rhoades discussed his conviction under the Criminal Transmission of HIV Law in Iowa. Rhoades was initially sentenced to 25 years in prison for not disclosing his HIV status during sex, even though he used a condom and HIV was not transmitted. He spent a year in prison, but after pressure from HIV advocates his sentence was suspended and he was given five years of supervised probation and lifelong registration as a sex offender.

Rhoades explained that because of the HIV-criminalization prosecution he has struggled with depression and has had difficulty finding employment. During his incarceration he had to skip

doses of antiretroviral medication when he was transferred to different prisons, and when he was released he was kicked of the AIDS Drug Assistance Program, which also created a gap in his adherence. Rhoades also estimated that the cost of a single successful HIV-criminalization prosecution to taxpayers in Iowa, factoring in the cost of medications and routine medical care, is from $65,000 to $70,000 dollars per year. This estimate doesn't factor in the lost income and the cost of probation and routine supervision by an official from the sex offender registry.

Rhoades also explains why these harsh HIV criminalization laws don't work well as a public health measure: "In many cases, such as mine, tax payers are paying for the enforcement of laws that punish people with HIV who actually follow the primary prevention messages of public counselors: stay in treatment, keep your viral load undetectable or as close to undetectable as possible, use condoms and otherwise keep sex safer." Speaking from personal experience, Rhoades said that these laws also increase HIV stigmatization. However, Rhoades was more up-beat when he mentioned the current domestic movements focused on stopping HIV-related prosecutions.

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