



## **Policy Statement**

### **The Criminalization of Communicable Disease Transmission**

#### **Policy**

The Anchorage Health Department (AHD) opposes criminalizing the transmission of sexually transmitted infections (STIs) and any proposed ordinances that seek to do so within the Municipality of Anchorage.

#### **Justification**

The Anchorage Health Department operates an infectious disease prevention and control program. Through a combination of clinical health nursing services, timely, evidence-based disease prevention strategies, and collaborations with Anchorage residents and communities, AHD works to reduce the rates of sexually-transmitted infections (STIs). AHD's stance on this issue is in accordance with numerous other medical and public health organizations which oppose criminalization of STI transmission. Criminalization is likely to hinder disease-prevention efforts and public health goals, rather than help efforts to stop the spread of STIs.

#### *Existing Laws*

Thirty-three U.S. states have criminal laws dealing with HIV transmission<sup>i</sup>. While Alaska law does not specifically outlaw transmission of HIV, AS 12.55.155(C)(33) allows criminal sentences to be increased in cases in which a crime victim was exposed to HIV during commission of a criminal offense. Some states also criminalize the transmission of a broader class of communicable diseases, including other STIs<sup>ii</sup>. Alaska does not have such a law, although it may be possible to prosecute the transmission of certain STIs under existing assault statutes.

#### *Effectiveness of Current Criminalization Laws*

There is little evidence that laws criminalizing STI transmission reduce the transmission of STIs. Criminal laws seek to influence behavior in three ways – by incapacitating offenders, by setting social norms, and by deterring offenders<sup>iii</sup>. Laws criminalizing HIV transmission have not been shown to be effective in incapacitating offenders or changing social norms<sup>iii</sup>. Evidence on the deterrent effects of these laws is mixed, but no study has found that criminalization of HIV transmission deters enough people to significantly reduce HIV prevalence in a community<sup>iii</sup>. In other words, criminalization laws are ineffective at meeting their stated goals of decreasing transmission of communicable disease.

One example of the inefficacy of these laws can be found in California. Despite its extensive law criminalizing the transmission of communicable disease, California has seen rates of all major STIs rise rather than drop over the past several years. According to a 2018 report by the California Department of Public Health, between 2016 and 2017 chlamydia rates increased by 9%, gonorrhea rates increased by 16%, early syphilis rates increased by 21%, and congenital syphilis rates increased by 32%.<sup>iv</sup> Concerns about the effectiveness of their communicable disease law, as well as concerns about discriminatory enforcement, prompted California to relax provisions of the law earlier this year<sup>v</sup>. Colorado has also similarly changed its law to decrease penalties associated with HIV transmission<sup>vi</sup>.

## **Complications and Unknowns:**

### *Possible Effects of Criminalization Laws on Disease Prevention and Control Efforts*

There are several negative effects that criminalization could have on efforts to prevent and control outbreaks of communicable disease. On a general level, criminalization could contribute to increased stigma and discrimination against people with communicable diseases. Fear of increased stigma and discrimination has been associated with a decreased willingness to cooperate with testing and treatment efforts<sup>ii</sup>.

More specifically, criminalization efforts may actually provide a disincentive for potentially affected people to undergo testing for STIs, because being unaware of their status would be a defense to criminal prosecution. Criminalization could also be expected to have a negative impact on AHD's ability to provide partner notification services, which negatively impact AHD's efforts to fight communicable disease outbreaks. Currently, disclosure of partner information is completely voluntary and relies exclusively on a client's willingness to self-report sexual contacts. A law penalizing the transmission of communicable disease would discourage clients from identifying the people who they may have infected, who would then not be notified of their potential exposure and not seek out testing and treatment.

These pitfalls were recognized by the federal government in its 2015 National AIDS/HIV Strategy, which noted that "[i]n too many instances, the existence and enforcement of these types of laws run counter to scientific evidence about routes of HIV transmission and effective measures of HIV prevention, and undermine the public health goals of promoting HIV screening and treatment."<sup>vii</sup> Rather than adopting laws criminalizing communicable disease transmission, the government recommended that states combat the spread of HIV by using "evidence-based public health approaches" and enhance "broad-based efforts to reduce stigma" of HIV and other STIs.<sup>vii</sup>

## **References**

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<sup>i</sup> Lehman, S. J., Carr M. H., Nichol, A. J., Ruisanchez, A., Knight, D. W., Langford, A. E., Gray, S. C., Mermin, J. H. (2014). Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States. *AIDS and Behavior*, 18:997–1006. DOI 10.1007/s10461-014-0724-0.

<sup>ii</sup> National Association of Council & City Health Officials. (2013). Statement of Policy: Opposing Stigma and Discrimination against Persons with Communicable Diseases. Retrieved from <https://www.naccho.org/uploads/downloadable-resources/13-11-Stigma-and-Discrimination-Against-Persons-with-Communicable-Diseases.pdf>.

<sup>iii</sup> Lazzarini, Z., Galletly, C. L., Mykhalovskiy, E., Harsono, D., O'Keefe, E., Singer, M., & Levine, R., J. (2013). Criminalization of HIV Transmission and Exposure: Research and Policy Agenda. *American Journal of Public Health*.103: 8: 1350 - 1353.

<sup>iv</sup> California Department of Public Health. (2018). Sexually transmitted disease data. Retrieved from <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/STD-Data.aspx>.

<sup>v</sup> Rosenberg, Eli. (2017 October 10). Knowingly infecting others with HIV is no longer a felony in California. *The Chicago Tribune*. Retrieved from <http://www.chicagotribune.com/lifestyles/health/ct-hiv-felony-california-20171010-story.html>.

<sup>vi</sup> Center for HIV Law and Policy. (2016). Colorado activists celebrate modernization of HIV criminal laws. Retrieved from <https://www.hivlawandpolicy.org/news/colorado-activists-celebrate-modernization-hiv-criminal-laws>.

<sup>vii</sup> The White House. (2015). *National HIV/AIDS strategy for the United States: Updated to 2020*. Retrieved from <https://files.hiv.gov/s3fs-public/nhas-update.pdf>.