



North Dakota Public Health Association 2022 Resolution on Opposing HIV Criminalization

Whereas the Positive Justice Project, a coordinated national effort to address “HIV criminalization” statutes, laws that create HIV-specific crimes or which increase penalties for persons who are living with HIV (PLWH) and convicted of criminal offenses, support efforts to examine and supports proven public health approaches that end punitive laws that single out HIV over other sexually transmitted infections (STIs) and that impose penalties for alleged nondisclosure, exposure and transmission that are severely disproportionate to any actual resulting harm^{1,2};

Whereas North Dakota residents who are living with HIV who know their HIV status may not engage in sexual activity without disclosing their HIV status to their sex partners may be charged with a class A felony, punishable by up to 20 years imprisonment and a fine of up to \$10,000. Neither the intent to transmit nor actual transmission of HIV is necessary for a conviction²;

Whereas a legal obligation to disclose one’s HIV-positive status should not be required by law as everyone has the right to privacy about their health and it might lead to serious stigma, discrimination and possible violence;

Whereas the U.S. Department of Justice (2014) and the following professional organizations have called for the end to discriminatory and stigmatizing HIV-specific criminal laws: National Alliance of State and Territorial AIDS Directors (2011), HIV Medicine Association (2012), Positive Justice Project (2012), Presidential Advisory Council on HIV/AIDS (2013), National Association of County and City Health Officials (2013), U.S. Conference of Mayors (2013), American Medical Association (2014) and the Association of Nurses in AIDS Care (2014)^{4,5,6};

Whereas the National HIV/AIDS Strategy (NHAS) 2022 - 2025, released by the White House Office of National AIDS Policy (ONAP) in 2021 calls attention to the problem of HIV criminalization, stating that most HIV-specific criminal laws perpetuate HIV-related stigma and are not based on the current science of HIV prevention and transmission and recommends states repeal or updated outdated laws and practices (NHAS, 2021)⁷;

Whereas the Centers for Disease Control and Prevention (CDC) encourage states with HIV criminal statutes to re-assess these laws based on the current state of the evidence regarding HIV transmission risk and the public’s health, given that behavior such as biting, spitting, and throwing body fluids, which pose a negligible risk of HIV transmission, in some cases resulted in overly harsh sentencing (CDC, 2014)⁸;

Whereas many HIV disclosure laws were enacted in the 1980s during a climate of fear and uncertainty about the course of the epidemic, before transmission routes were understood and effective prevention strategies (e.g. condoms, antiretroviral therapy (ART), post-exposure prophylaxis (PEP), pre-exposure prophylaxis (PrEP) were available);

Whereas PLWH have shown to have no risk of sexual transmission of HIV if their viral load is undetectable and U=U (undetectable = untransmittable) is a national campaign to bring awareness to HIV treatment is prevention and encourages early diagnosis⁹;

Whereas criminalization laws may result in PLWH being arrested for consensual sex, for behaviors that pose a negligible risk of exposure or of transmission, for behaviors that do not result in actual HIV transmission, for non-disclosure, even when proving disclosure occurred is often impossible³ ;

Whereas laws and policies that focus on HIV-specific crimes and impose harsh penalties on PLWH are unjust and can potentially have a life-long impact (e.g. for felony conviction that may result in ability to vote, difficulty obtaining employment, etc.), ultimately undermine evidence-based interventions and run counter to public health efforts to reduce HIV transmission¹⁰ ;

Whereas North Dakota may also utilize general criminal laws or communicable disease laws to prosecute persons accused of intentionally trying to transmit HIV instead of HIV-specific criminal laws⁸ ;

Whereas all people must take responsibility for their actions with respect to protecting sexual partners and for protecting themselves from HIV and other STIs; and

Whereas the U.S. Department of Health and Human Services (HHS) calls for Ending the HIV Epidemic by 2030 and ending stigma and discrimination of PWHL is supported in ending the epidemic goals⁷ ; now, therefore, be it

Resolved, that the North Dakota Public Health Association, on behalf of its members:

1. opposes HIV criminalization and recommends the repeal of HIV statutes in North Dakota that discriminate against PLWH and are not based on scientific and public health evidence of transmission and prevention of HIV.

References

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3. North Dakota Century Code. 12.1-20-17. <https://www.legis.nd.gov/general-information/north-dakota-century-code>
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5. The HIV Medicine Association (HIVMA) Urges Repeal of HIV-Specific Criminal Statutes. April 5, 2013. <http://www.hivlawandpolicy.org/fine-print-blog/hiv-medicine-association-urges-repeal>
6. National HIV/AIDS Strategy Imperative: Fighting Stigma and Discrimination by Repealing HIV-Specific Criminal Statutes. https://www.nastad.org/sites/default/files/resources/docs/092549_NASTAD-Decriminalization-Documents.pdf
7. The White House. 2021. National HIV/AIDS Strategy for the United States 2022–2025. Washington, DC.
8. HIV Legal Landscape, Centers for Disease Control and Prevention. December 2020; www.cdc.gov/hiv/policies/law/index.html
9. Undetectable = Untransmissible, Prevention Access Campaign. <https://www.preventionaccess.org/undetectable>
10. Criminalization of HIV Transmission: UNAIDS Policy Brief. http://data.unaids.org/pub/basedocument/2008/20080731_jc1513_policy_criminalization_en.pdf