HCV CRIMINALIZATION: PUNISHMENT IS NOT A PUBLIC HEALTH STRATEGY

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harm reduction COALITION

HEP

HEPATITIS EDUCATION PROJECT
VIRAL HEPATITIS CRIMINALIZATION OVERVIEW

WHAT IS IT?
Laws criminalizing hepatitis single out people living with viral hepatitis for especially harsh treatment under our criminal legal system. Often, the laws include situations where there is no real risk of disease transmission.

WHAT’S THE PROBLEM?
These laws are unscientific, overly harsh, and discriminatory. Criminalizing someone’s health status should never be the solution to a public health challenge.

PUNISHMENT IS NOT A PUBLIC HEALTH STRATEGY
THE CRIMINALIZATION OF VIRAL HEPATITIS IN THE UNITED STATES

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13 STATES HAVE LAWS THAT CRIMINALIZE HEPATITIS — ALL OF THEM ALSO CRIMINALIZE HIV
A PERFECT PUBLIC HEALTH STORM

**1. Viral hepatitis is on the rise in the United States.**
Injection drug use (IDU) has been the most significant risk factor in the increase. Between 2010-2016, the annual incidence rate of acute HCV infection increased about 3.5 fold nationwide.

**2. Most states prohibit the procession of drug paraphernalia.**
This makes it more difficult for PWUD to access safe syringes. While SSP has become more common, access and funding remains inadequate. Some state Medicaid programs and private insurers impose sobriety restrictions that deny treatment for HCV to PWID.

**3. Viral hepatitis is related to our correctional crisis.**
An estimated 1 in 3 inmates in U.S. prisons and jails is living with HCV. Less than 1% of those with an HCV diagnosis are receiving treatment. Incarcerating people living with hepatitis because of their health status is only going to make things worse.
The current administration and some states have voiced support for criminal justice responses to the opioid crisis.

Most states that criminalize & punish hepatitis C also restrict access to curative treatments.
BASICS OF HIV CRIMINALIZATION

- Over 30 states and several U.S. territories have discriminatory HIV-specific criminal laws, including sentence enhancements for sex workers or for underlying sex crimes.
- Two types of behavior primarily targeted:
  - Sexual contact (may include vaginal, anal or oral sex but is often defined to include activities posing no or low risk of HIV transmission)
  - Spitting and biting (often specific to law enforcement or corrections officers)
- PLHIV also prosecuted under general criminal laws (e.g., reckless endangerment or attempted homicide) – NY, PA and TX all examples

Defenses available under many states’ HIV-specific laws require that people living with HIV either disclose or be unaware of their HIV status prior to sharing a syringe or having sex. However, disclosure is often difficult to prove. Criminal penalties that hinge on knowledge of one’s positive status may increase HIV stigma, which can disincentivize testing.
MODERNIZATION OF HIV LAWS

Federal and State officials modernize criminal laws to eliminate HIV-specific statutes and ensure that any prosecution on the basis of HIV or any other STIs requires:

1. proof of an intent to harm;
2. conduct that is likely to result in that harm
3. proof that the conduct of the accused in fact resulted in the alleged harm; and
4. punishment that is proportionate to the actual harm caused by the defendant’s conduct.
INTERSECTIONS OF HCV CRIMINALIZATION

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<td>No harm reduction strategies</td>
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Within the lens of criminalization - get tested, get a positive result, and maybe linked to care. However, in the states that are criminalizing HCV, there is very little chance that you are able to start treatment. - So this can ultimately leave you vulnerable to criminal prosecution.
Justice continues to be elusive and conditional for PWID, people experiencing homelessness and people infected by HCV due to a range of unequal laws and policies that dehumanize, victimize, and criminalize these populations.

Too often the discussion of preventing new infections is polarized, looking for blame and condemnation.

The most vulnerable among those living with HCV/VH will be left behind based on past experiences with HIV criminalization reform/advocacy.
PUNISHMENT IS NOT A PUBLIC HEALTH STRATEGY

• The use of the criminal law to try to influence behaviors conflicts with public health principles.

• Criminalization laws do nothing to advance individual or public health, but rather enhance stigma, embrace blame, discourage testing and have the potential to corrupt the physician-patient relationship
  – In fact, HIV research suggests that criminalization may in some cases delay testing and, in turn, entry into care


• Diagnosis informing disclosure laws undermines the most basic public health message concerning getting tested and knowing your status

• The use of the criminal legal system to stop or slow HCV transmission is both ineffective and devastating to those targeted, and to public health as a whole.
Toolkits stress need for intersectional advocacy, encourage modernization efforts that don’t leave marginalized communities e.g. PWUD or people living in incarceration, behind
TAKING ACTION

Coordinate

• Cross-Movement Collaboration: homelessness, incarceration, drug user unions, HIV, viral hepatitis
• Develop comprehensive viral hepatitis criminalization toolkit
• HIV criminalization/HIV advocates to learn about viral hepatitis and include that in their work

Educate

• Hepatitis 101 – tailored for different audiences: elected officials, criminal justice, departments of health, CBOs & SSOs, general public
• Those working with individuals and communities impacted to prioritize safety and protect individuals
• Training support from CDC and the Department of Justice (DOJ)

Advocate

• Personal Stories as an Antidote to Stigma
• Frame as drug user health, opioid epidemic solutions
• Advocate for increased funding and support for SSPs and safe consumption sites
• Make a cost effectiveness case—what is the savings of not incarcerating someone under a viral hepatitis criminal law

Integrate

• We all bring something to these efforts, prioritizing work that can be integrated into what we are already doing
• Viral hepatitis elimination planning efforts
• Initiatives that address social determinants of health
WHAT CAN YOU DO RIGHT NOW

• Join the viral hepatitis criminalization listserv
• Join the working group
• Stay up to date
• Spread the word

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