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The public health implications of HIV criminalization: a special issue of *Critical Public Health*

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By Michelle Pentecost

The latest issue of [Critical Public Health](#) features a [Special Issue on HIV Criminalisation and Public Health](#). Guest editor *Eric Mykhalovskiy* outlines [the public health implications of HIV criminalization: past, current, and future research directions](#):

While public health remains the primary site of authority for preventing HIV transmission, recent shifts in the biopolitics of HIV have heightened tensions in the institutional and discursive relations through which the sexual lives of people living with HIV and broader HIV epidemics are regulated. Most notably, over the past decade, criminal justice responses to HIV have gained considerable traction. The growing use of the criminal law to regulate perceived HIV transmission risks has occasioned considerable controversy among people living with HIV, community-based AIDS organizations, health-care providers, public health authorities, prosecutors, judges, and the legal community. This article introduces a special section of *Critical Public Health* focused on the public health implications of HIV criminalization. The article reviews past and current work on the topic, situates the contributions made by the articles published in the special section, and outlines directions for future inquiry.

[HIV disclosure as practice and public policy](#)

Barry D. Adam, Patrice Corriveau, Richard Elliott, Jason Globerman, Ken English and Sean Rourke

Responses to the largest surveys of HIV-positive people in Ontario show that most either disclose to or do not have partners who are HIV-negative or of unknown status. Non-disclosure strategies and assumptions are reported by relatively small sets of people with some variation according to employment status, sexual orientation, gender, ethnicity, and having had a casual partner.

Interviews with 122 people living with HIV show that disclosure is an undertaking fraught with emotional pitfalls complicated by personal histories of having misread cues or having felt deceived leading up to their own sero-conversion, then having to negotiate a stigmatized status with new people. In gay communities, constructions of the self as individual actors in a marketplace of risk co-exist with the sexual etiquette developed throughout the AIDS era of care of the self and other through safer sex. Among heterosexual populations, notions of responsibility show some divergence by gender. The findings of this study suggest that the heightened pressure of criminal sanction on decision-making about disclosure in personal interactions does not address difficulties in HIV transmission and is unlikely to result in enhanced prevention.

[Examining public health nurses' documentary practices: the impact of criminalizing HIV non-disclosure on inscription styles](#)

Chris Sanders

In Canada, there has been a rise in criminal HIV non-disclosure cases where public health records have been subpoenaed for use in police investigations and criminal court proceedings. In particular, public health nurses' written counseling notes, originally collected for the purposes of creating a record of treatment and a plan of care, have been used as evidence against their clients. This article engages sociologically with this issue by analyzing whether and how this criminal law development has affected public health nurses' reasoning and documentary practices in settings of HIV post-test counseling sessions. The paper argues that variations in nurses' inscription styles result in part from considerations about the criminal law, which indicates the influence of 'medico-legal' relations that connect health care and the criminal justice system. Implications for nursing practice and the broader goals of HIV prevention are discussed. Data are drawn from interviews with thirty nurses working at four public health units in Ontario.

[Keeping confidence: HIV and the criminal law from HIV service providers' perspectives](#)

Catherine Dodds, Matthew Weait, Adam Bourne and Siri Egede

The present qualitative research findings about how perceptions of criminal prosecutions for the transmission of HIV interact with

the provision of high-quality HIV health and social care in England and Wales. Seven focus groups were undertaken with a total of 75 diverse professionals working in clinical and community-based services for people with HIV. Participants' understanding of the law in this area was varied, with many knowing the basic requirements for a prosecution, yet lacking confidence in the best way to communicate key details with those using their service. Prosecutions for HIV transmission have influenced, and in some instances, disrupted the provision of HIV services, creating ambivalence and concern among many providers about their new role as providers of legal information. The way that participants approached the topic with service users was influenced by their personal views on individual and shared responsibility for health, their concerns about professional liability and their degree of trust in non-coercive health promotion approaches to managing public health. These findings reveal an underlying ambivalence among many providers about how they regard the interface between criminal law, coercion and public health. It is also apparent that in most HIV service environments, meaningful exploration of practical ethical issues is relatively rare. The data presented here will additionally be of use to managers and providers of HIV services in order that they can provide consistent and confident support and advice to people with HIV.

[Counselling anomie: clashing governmentalities of HIV criminalisation and prevention](#)

Martin French

HIV criminalisation is a term that describes the criminal prosecution of persons in instances of HIV transmission, exposure and so-called non-disclosure of their HIV serostatus. In the United States (US), there have been over 500 reported instances of HIV criminalisation. Over the past decade, several negative consequences of HIV criminalisation have been identified, including its capacity to increase stigma and social injustice. In addition, scholars have built an evidence base demonstrating that HIV criminalisation has the potential to undermine HIV prevention and that it is thus harmful to public health. This article contributes to that evidence base by (1) combining Foucaultian studies of 'governmentality' with the sociology of 'anomie' to theorise the larger implications of HIV criminalisation for the institution of public health, and (2) presenting interviews with public health service providers working in Tennessee, USA. This state is an important site for studying the public health implications of HIV criminalisation

because, between 2008 and 2012, it was reported to have led all American jurisdictions in prosecutions of HIV-specific criminal offences. Concentrating on discussions of post-test counselling, this article argues that a major system-level effect of HIV criminalisation is the propagation of an anomic affective climate, which makes it difficult to establish norms of HIV prevention.

[Criminalizing HIV transmission using model law: troubling best practice standardizations in the global HIV/AIDS response](#)

Daniel Grace

A growing body of social science research has focused on the negative public health consequences of criminalizing the sexual transmission of HIV. I examine the criminalization of contagion in West and Central Africa and address a significant research gap: *How do legislative environments that enable harmful laws to be applied become created in the first place?* With stated aims of promoting human rights and public health objectives, HIV/AIDS-related laws have been created transnationally through the use of an omnibus model law. A group of legislative actors have problematized this United States Agency for International Development (USAID) funded model law, known as the USAID/Action for West African Region model law, or N'Djamena model law. This 'harmonizing' text led to the rapid spread of HIV/AIDS laws, including the criminalization of HIV transmission, across at least 15 countries in West and Central Africa between 2005 and 2010. The HIV model law was packaged and 'sold' to developing countries through the strategic use of best practice discourse. Best practice replications are enabled through a set of social and technological relations of use including the availability of mobile, standardizing texts. Although best practice standardization has been a key feature of global health institutions work activities in the HIV response over the past two decades, recent replications related to the criminalization of HIV transmission illustrate the potential public health dangers of 'don't reinvent the wheel' thinking. I offer a normative critique of the transnational, text-mediated process that has produced highly problematic laws.

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