Criminalization as Violence Against People Living with HIV

Positive Women’s Network - USA
Tuesday, November 29, 2016
Webinar Objectives

1. Understand how policing and incarceration disproportionately affect communities impacted by HIV.

2. Learn the specific challenges of incarceration and reentry back into the community for women living with HIV (WLHIV).

3. Discuss HIV criminalization as a specific form of violence against people living with HIV (PLHIV).

4. Review PWN-USA's new factsheet on “Criminalization as Violence Against Women Living with HIV.”

5. Highlight policy recommendations and actions you can take to challenge structural violence against PLHIV.
Agenda

Welcome

Overview of Criminalization as Violence against PLHIV
   Arneta Rogers, PWN-USA

Policing: Law Enforcement and HIV Risk for Transgender Women
   Megan McLemore, Human Rights Watch

Incarceration and Reentry for WLHIV
   Teresa Sullivan, PWN-USA Philly & Philadelphia FIGHT

HIV Criminalization
   Robert Suttle, SERO Project

Fact Sheet: Criminalization as Violence Against WLHIV
   Cammie Dodson, PWN-USA

Policy Recommendations

Moderated Q & A
Presenters

Megan McLemore
Human Rights Watch

Robert Suttle
SERO Project

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PWN-Philly & Philadelphia FIGHT

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Overview: Criminalization and Violence

- High rates of violence and trauma among WLHIV
  - E.g. Intimate Partner Violence (IPV), emotional abuse
  - Poorer mental and physical health outcomes
  - Affects ability to engage in healthcare

- Disparate impact: majority of WLHIV in the U.S. are women of color and low-income women
  - Communities face discriminatory policing and surveillance by law enforcement
  - Increasing rates of incarceration, often a source of trauma and violence

- Interpersonal violence and institutional (or structural) violence are interconnected
  - HIV criminal laws increase the potential for threats, abuse, and coercion in relationships
  - Policing limits sex workers’ ability to protect themselves and makes them vulnerable to harassment and abuse
Law Enforcement and HIV Risk for Transgender Women
Transgender women and HIV in the US

- HIV Prevalence among transgender women nearly 30%

- Higher among transgender women of color
  - Systematic review of studies showed 56 percent TG women of color HIV-positive vs. 17 percent of white TG women and 16 percent of Latina TG women
Community in Crisis

- Transgender women, particularly those of color, experience high rates of factors known to increase HIV risk:
  - Poverty
  - Homelessness/housing instability
  - Incarceration
  - Violence
Incarceration

• Incarceration is associated with increased HIV risk and poorer HIV outcomes upon release, particularly for women and people of color.

• 1 in 5 transgender women report a history of incarceration.
• This increases to 1 of 2 for African-American transgender women.
• African-American transgender women report higher rates of incarceration and sexual assault in detention than white (non-Hispanic) transgender women.
Violence

- Transgender people report high rates of violence in all venues: home, public, and in detention
- In 2013, majority of victims of hate crime homicides in US were transgender women, 67 percent were women of color
- 21 transgender women reported murdered in 2015
- 13 transgender people reported murdered in first six months of 2016, majority were women of color
Violence and Law Enforcement

• Transgender people 7 times more likely to experience police violence than cis-gender people
• Transgender people of color 6 times more likely to experience police violence than white transgender people
• Human Rights Watch has documented police abuse and sexual exploitation of transgender women in New Orleans, Los Angeles, New York, Washington DC and other cities
Violence in Detention

- Between 2007 and 2012, 34% of adult transgender prisoners reported sexual assault in US prisons and jails (higher rates among transgender women of color).
- In California, 60 percent of female transgender prisoners housed in men’s prisons reported sexual assault.
- Federal law (PREA) requires case-by-case housing determination based on safety rather than bio gender, but many state and local prisons and jails continue to assign without regard to safety.
Violence in Detention, continued

• ICE policy for immigration detention is unclear on housing assignment for transgender detainees

• In 2016, Human Rights Watch documented violence against transgender women in US immigration detention:
  • Of 28 women interviewed, half had spent time in a male facility
  • Many reported sexual abuse from other inmates and guards
  • Reporting abuse frequently led to solitary confinement
Violence and HIV Risk

- Data emerging on link between violence and HIV
  - 1 of 2 women living with HIV have experienced Intimate Partner Violence (IPV) (55 vs 36 percent for women overall)
  - Among women living with HIV, history of IPV is linked to reduced access to and adherence to anti-retroviral medications and increased risk of death from HIV
  - HIV status frequently reported as cause of IPV
  - 58 percent of transgender women report history of IPV
Law Enforcement and HIV Risk

- Human Rights Watch and others (OSF, PROS Network) have documented police use of condoms as evidence of prostitution
  - Reduces willingness of sex workers (and those suspected of sex work) to carry condoms
  - Impacts transgender women, particularly of color, often profiled as sex workers by police
  - LGBT community guidelines for police must be enforced to prevent arrest
Detention and HIV Risk

• “Jail is where I assume I caught HIV, as trans girls were just prey for career criminals in there, with no protection.” –Tela Love, New Orleans, Louisiana

• Data are scarce on HIV transmission in jails and prisons; most incarcerated persons with HIV had the virus before entering prison

• BUT prevention measures in jails and prisons are virtually non-existent; people describe using plastic bags and rubber gloves for protection when they are able
US National HIV/AIDS Strategy

• Addresses gender-based violence as increasing HIV risk for women and girls
• Includes transgender women in call for more research and programming on violence and HIV risk

BUT...Fails to address the criminal justice system as site for violence against transgender women
• Fails to address HIV risk resulting from this violence
Recommendations

• US HIV and public health officials must acknowledge links between HIV risk and criminal justice system
• More research on HIV risk from sexual assault in jails and prisons
• US law must require and enforce housing assignment based on safety for all transgender detainees, including immigration detention
• US must address root causes of high incarceration and violence against transgender people (poverty, homelessness, discrimination)
Incarceration to Reentry for Women Living with HIV

Teresa Sullivan
PWN-USA Philly & Philadelphia FIGHT
The number of women currently incarcerated has grown by 50% over the last 25 years.

It is a financial hardship on families while loved ones are incarcerated because some families are living below the poverty line.

A 2014 Survey found that half of all formerly incarcerated people and their family members experience negative health outcomes and economic loss related to their loved one’s incarceration.
• Depression and anxiety, including PTSD from the trauma of incarceration, can have a negative effect on family members.

• There is a lasting negative effect after someone is released from incarceration due to barriers to reunification with their children.

• 79% of those coming home are ineligible for housing programs because of their conviction history, leaving them without a home plan or stable housing.

‘My mom’s in jail,’ says the ‘Sesame Street’ Muppet named Alex. ‘I don’t like to talk about it.’

(SESAME STREET)
HTTPS://YOUTU.BE/KDUDNIEIG38
Barriers to Reentry

• Families that are living in low-income housing are not allowed to have loved ones reside in the home because of their felony convictions.

• Employment is difficult or impossible for citizens returning to the community.

• Some people are banned from educational loans because of their conviction history, many are banned for receiving welfare benefits in some states.
PWN-USA’s Recommendations

• Repeal or reform HIV exposure, non-disclosure, and transmission laws in every state and US territory that has them

• End law enforcement practices that target communities disproportionately impacted by HIV, including, people of trans experience, sex workers, people who use drugs, immigrants, mental illness and communities of color.

• Congress should repeal the federal lifetime ban on Temporary Aid to Needy Families (TANF) (Snap) Food assistance for people with felony convictions.
Thank You

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HIV Criminalization

Robert Suttle
SERO Project
HIV Criminalization

- Form of state-sponsored discrimination that creates a viral underclass in the law
- Singles out people living with HIV for criminal penalties for: **nondisclosure, perceived exposure, transmission** of HIV
- HIV-specific statues exist in 30+ US states and territories
- Jurisdictions without HIV-specific statues also prosecute people living with HIV using **enhanced penalties** and general laws
The Social Environment

• People living with and affected by HIV frequently come from socially and politically vulnerable communities: poor people, racial minorities, transgender people, young people, immigrants

• Community members face multiple intersections of stigma and discrimination

• Distraught history with public health and the police, even before HIV

• Communities already disproportionately criminalized
Why Are These Laws So Bad?

• Another way to incarcerate already marginalized and vulnerable communities
• One of the drivers of today’s epidemic
• Dehumanizing effects: *felony, sex offender, lengthy prison sentences, loss of parental rights*
• Laws are not based in science or require criminal intent
• Done more harm than good when it comes to supporting public health approaches
Other Effects of Criminalization (HIV)

- **Criminalization of Sex Workers** – charged with prostitution/soliciting for prostitution while living with HIV
  - repressive law enforcement practices
  - vulnerability to HIV

- **Sexual Assault** - need accountability, but also these laws shouldn’t be used to suppress women living with HIV.
What You Can Do About It!

• Talk about HIV criminalization!!
  – people need accurate info about their legal vulnerabilities
  – learn possible strategies to protect yourself from prosecution
• Join statewide campaigns or grassroots organizing criminalization reform efforts
• Join *HIV is Not a Crime* webinars
  – practical training on strategies and best practices for changing laws that criminalize people with HIV
• Attend community forums or workshops at annual conferences
Connecting the Dots...
Criminalization as Violence Against Women Living with HIV

New Factsheet:

www.pwn-usa.org/factsheet-doa2016
CRIMINALIZATION AS VIOLENCE AGAINST WOMEN LIVING WITH HIV

Women living with HIV (WLHIV) are likely to have experienced intimate partner violence (IPV), sexual assault, physical and emotional abuse, and trauma at rates much higher than the general population in the U.S. A majority of WLHIV in the U.S. are women of color and low income women, and consequently also live with the compounding effects of trauma resulting from HIV-related, gender, and racial discrimination, along with institutional violence entrenched in discriminatory practices and policies of public institutions such as the criminal justice system.

Specifically, the criminalization, policing, and incarceration of communities impacted by HIV are structural factors that contribute to high rates of interpersonal violence (IPV), sexual assault, and trauma among WLHIV. This structural violence must also be accounted for as a form of violence against WLHIV, on its own.

Those different forms of violence and trauma lead to poorer mental and physical health outcomes, negatively impacting the ability to engage in healthcare and to maintain adherence to lifesaving medications. Ending violence against WLHIV means ending all forms of violence, including state-sanctioned brutality and institutional violence.

HIV CRIMINALIZATION

Thirty-four U.S. states and territories have criminal statutes that allow prosecutions for allegations of non-disclosure, exposure and/or transmission of the HIV virus. Frequently making HIV exposure a felony offense, these laws can carry sentences of 30 years or more. Prosecutions related to HIV status under HIV-specific or general criminal laws have occurred in at least 39 states.

Laws that criminalize people living with HIV disproportionately impact women, especially women of color and women of trans experience, placing them at greater risk of violence from both partners and law enforcement.

While women may face violence if they disclose their HIV status, they risk arrest and prosecution if they do not disclose. Laws that criminalize HIV exposure do not protect women. In fact, many women have been arrested or sent to prison based on accusations by former partners who used HIV criminal laws as a tool of harassment or control, often after the woman attempted to end the relationship.

An analysis of violence related to HIV exposure and arrest, focused on the impact on the communities already face disproportionate levels of policing and incarceration. A recent report on HIV criminalization in California found that from 1999-2014, 95% of people who came into contact with the criminal justice system based on their HIV status were engaging or suspected of engaging in sex work. The same report found that although Black women comprised only 4% of the population of those diagnosed with HIV in the state, they represented 21% of people who had contact with the criminal justice system related to HIV-positive status in California.

LAW ENFORCEMENT PRACTICES

Law enforcement practices target communities disproportionately impacted by HIV, including people of trans and gender non-conforming experience (TGNC), sex workers, people who use drugs, immigrants, people who are uncaring housed, people with mental illness, and communities of color.

People perceived to be doing sex work are often harassed by police and could have the fact that they have condoms used as evidence against them in a criminal prosecution. This limits sex workers’ ability to negotiate safer sex practices with their partners due to the risk of being turned into the police.

At least half of all people living with HIV/AIDS experience homelessness or housing instability at some point. The criminalization of homelessness,
• **Policy recommendations**

• **Further reading!**

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**PWN-USA Recommends:**

1. Repeal or reform HIV exposure, non-disclosure, and transmission laws in every state and US territory that has them.

   • Pass the REPEAL HIV Discrimination Act requiring the Attorney General, Secretary of Health and Human Services and the Secretary of Defense to work with state stakeholders to review federal and state HIV criminalization laws as well as provide guidance, support and incentives for state based HIV criminalization reform efforts.

   • When prosecutions occur, ensure the rights of the accused are upheld by ensuring adequate and competent legal support for the accused and educating legislators, judges, prosecutors, and criminal defense attorneys on how HIV is and is not transmitted, including up-to-date developments on viral suppression as risk reduction.

2. End law enforcement practices that target communities disproportionately impacted by HIV, including people of trans and gender nonconforming backgrounds.
HIV Criminalization

- Repeal or reform HIV exposure, non-disclosure, and transmission laws
- Pass the REPEAL HIV Discrimination Act
- Ensure competent legal support for those being prosecuted
- Educate legislators, judges, prosecutors, and criminal defense attorneys on the science of HIV transmission
Law Enforcement Practices

• End police targeting of LGBTQ people, sex workers, people who use drugs, immigrants, people who are unstably housed, people with mental illness, and communities of color

• Reform mandatory minimum sentencing guidelines and expand community based alternatives to incarceration

• Invest in syringe exchanges programs and other harm reduction models

• Eliminate “condoms as evidence” laws and other laws criminalizing sex workers

• Disentangle immigration enforcement and law enforcement at all levels
Police Violence, Harassment & Brutality

- End brutalization of PLHIV and communities impacted by HIV by law enforcement

- Demilitarize law enforcement and end the mass surveillance of communities of color

- Mandate HIV sensitivity and anti-stigma trainings for law enforcement officials, health department workers, violence specialists, and child protection services
Incarceration & Reentry

• Remove barriers reintegration into the community for those returning home from jail and prison and their families

• Improve access to healthcare in prisons, including access to HIV medication, reproductive healthcare, and transition-related care for transgender people

• Repeal the federal lifetime ban TANF, SNAP, and public housing assistance for people with felony convictions

• Pass “Ban the Box” state legislation that limits consideration of criminal records in hiring

• Probation, parole and community agencies should assist people in reentry to engage in care and assist transgender people in obtaining accurate identity documents
Questions?
Thank you!

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**Get involved:**

- [www.seroproject.com](http://www.seroproject.com)
- [https://www.hrw.org/join-us/take-action](https://www.hrw.org/join-us/take-action)
- [www.pwn-usa.org/get-involved](http://www.pwn-usa.org/get-involved)
- [www.pwn-usa.org/regional-chapters](http://www.pwn-usa.org/regional-chapters)
View the factsheet and other resources at:
www.pwn-usa.org/factsheet-doa2016