

New Jersey HIV/AIDS Planning Group

Position on the Decriminalization of HIV in New Jersey

When the Ryan White CARE Act was created in 1990, it required states receiving Ryan White funding to have laws in place that would “prosecute any HIV infected individual who knowingly exposed another person to HIV.” While the federal government required states to create these laws, there were no guidelines developed for the creation of the laws. This resulted in a lack of uniformity across states regarding the behaviors deemed to be criminal or the degree of prosecution associated with the behaviors.

In 2011, there were a total of 67 laws in 33 states explicitly focused on persons living with HIV. These laws vary as to what behaviors are criminalized or result in additional penalties.

This lack of regulation has led to inconsistent prosecution and discrimination. In 2011, twenty four states required an HIV+ individual to disclose their status to a sexual partner and fourteen states required a needle sharing partner to disclose his/her status. Additionally, 15 states categorized behaviors that are of low or no risk for transmission of HIV as criminal. (Lehman, JS, Carr, MH., Nichol, AJ, et al. “Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States”. AIDS Behavior 2014).

In the state of New Jersey, an HIV+ person is guilty of a crime if he/she knowingly has a venereal disease and “commits an act of sexual penetration without the informed consent of the other person” (NJSA 2C: 34-5(a)). Sexual penetration in this law is defined as vaginal, anal, or oral and includes “insertion of the hand, finger, or object into the anus or vagina”. The defendant is considered guilty if the State can prove the following:

1. At the time of indictment, the defendant was infected with an STI, regardless of variety or stage of the infection;
2. The defendant knew that he/she was infected;
3. The defendant committed an act of sexual penetration with another person;
4. That the other person did not provide the defendant with his/her informed consent.

The New Jersey law does not specify if the sex act is with or without a condom; or that the definition of sexual penetration is not consistent with the modes of transmission of HIV. Further, the law stated that an HIV+ individual, who has sex involving “sexual penetration” without the informed consent of their sexual partner, could face a sentence of up to 5 years in prison and/or a fine of up to \$15,000.

The consequences faced by the presence of discrimination in New Jersey law leads to the need to decriminalize HIV. In 2011, The National Alliance of State & Territorial AIDS Directors (NASTAD) joined efforts to repeal HIV criminalization laws stating, “HIV

criminalization undercuts our most basic HIV prevention and sexual health messages, and breeds ignorance, fear, and discrimination against people living with HIV”.

In 2013, HR 1843 Repeal HIV Discrimination Act was introduced to the House of Representatives for the second time with over 150 organizations endorsing the bill. The bill called for an audit of all existing state laws. This bill would “modernize laws and eliminate discrimination, with respect to people living with HIV/AIDS”.

The New Jersey HIV/AIDS Planning Group (NJHPG) supports the decriminalization of HIV. The group also supports the re-evaluation of the current New Jersey Law (NJSA 2C:34-5[a]). The current New Jersey law needs to be consistent with President Obama’s agenda and goals of the National AIDS Strategy. It must address which behaviors are modes of HIV transmission. It must address whether the individual with HIV was using protective barriers (i.e. condoms) during sexual penetration. It must also address whether the HIV+ individual had the intent to pass on HIV to the partner through unprotected sex or through needle use. The law was passed before studies showed that antiretroviral therapy (ART) reduces HIV transmission risk. In addition the law does not account for HIV prevention measures that reduce transmission risk, such as condom use, ART, or pre-exposure prophylaxis (PrEP).

The NJHPC supports the decriminalization of HIV. Until then, a re-evaluation of New Jersey law must be done to ensure fair and consistent treatment of HIV+ persons. This must include amendments to NJSA 2C:34-5(a) that would include definitions of HIV transmission risk factors as well as the addition of the words “without a condom or other protective barriers”. NJHPG further recommends that policy makers consider whether or not the current law is the best way to ensure that individuals do not **knowingly** infect other individuals with HIV.