HIV Law & Practice Conference 2018
Symposium on HIV and Criminal Law
Current Advocacy Approaches: Focus on North Carolina
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HIV-specific laws in the Deep South*

- All but Texas have HIV-specific laws on the books
- Most are felony laws
  - Exceptions
    - North Carolina – public health misdemeanor
    - Alabama – communicable disease exposure misdemeanor
- Two have minimum sentence requirements
  - Arkansas: not less than 6 years or more than 30.
  - Georgia: not less than 5 years or more than 20.

*AK, AL, FL, GA, LA, MS, NC, SC, TN, TX
Activities that are Criminalized

- **Failure to disclose HIV status to sexual partner**
  - All Deep South states have some version of this.
  - Some problems with vagueness
  - e.g. Arkansas (must disclose status before “the insertion of ... any object into the genital or anal opening of another person.”)

- **Sharing needles, syringes, or works previously used by an HIV+ person**
  - All but Arkansas and Florida include.

- **Donating or selling blood, blood products, plasma, tissue, organs etc.**
  - All but Louisiana and Arkansas include.

- **Sex work specifically**
  - About one half do not include (Alabama, Arkansas, Louisiana, North Carolina)
Activities that are Criminalized (cont’d)

- Assault on law enforcement (3 states)
  - **Georgia**: criminalizes assault on correctional officer engaged in performance of duties with intent to transmit HIV using bodily fluids, including saliva, urine and feces.
  
  - **Louisiana**: criminalizes exposing a police officer to HIV through “any means or contact” (defined to include spitting, biting, ... throwing blood or other bodily substances.)
  
  - **Mississippi**: criminalizes an attempt or actually causing corrections employees, visitors to a correctional facility, or other prisoners to come into contact with blood, seminal fluid, urine, feces, or saliva.

- Failure to disclose status to physician or dentist before receiving treatment.
  - **Arkansas**: misdemeanor punishable by up to 1 year in prison.
Preventing Transmission of HIV

- **Treatment as Prevention**
  - Experts agree: A person living with HIV who has a sustained, undetectable viral load cannot sexually transmit HIV to another person. (052 study and others)

- **PrEP: Pre-exposure Prophylaxis**
  - Can reduce the risk of getting HIV from sex by more than 90% and reduce transmission risk by 70% for persons who inject drugs when taken as prescribed.

- **Old-fashioned Condom use**
  - Provides a high degree of protection
Recognized Defenses to Charges

- In all Deep South states, the only defense is proof that the HIV+ person disclosed his/her HIV status. Intent to transmit is not required for conviction in any Deep South State.

- Two states take it a step further:
  - In Florida and Tennessee, person charged must also prove:
    - That the “victim” knew the action could result in HIV transmission AND
    - Voluntarily consented to the action.

- Not recognized as defenses in any Deep South State:
  - Condom use
  - Viral suppression
  - Evidence re: risk of transmission
North Carolina HIV Control Measures (pre-Jan. 2018)

Infected persons shall:

1. **Refrain from sexual intercourse** unless **condoms are used** and exercise caution when using condoms;
2. **Not share needles or syringes** or **any drug-related equipment, paraphernalia, or works** that may be contaminated with blood through previous use;
3. **Not donate or sell** **blood**, **plasma**, **platelets**, **other blood products**, **semen**, **ova**, **tissues**, **organs**, or **breast milk**
North Carolina HIV Control Measures (cont’d)

- Have a **TB skin test**

- **Notify future sexual intercourse partners** of the infection

- **If time of infection is known**, notify **sexual and needle partners** since the **date of infection**

- **If time of infection is not known**, notify **sexual and needle partners** for **previous year**
Enforcement of Control Measures

- **Violation of control measures** is a **misdemeanor** punishable by up to **2 years in prison** (NCGS 130A-25)

- Local or state health director has discretion to issue an **Isolation Order** before seeking prosecution:
  - Order that warns HIV+ person to refrain from activities that put others at risk.
  - May also include requirement for **mental health** or **substance abuse** counseling and treatment.
Enforcement, cont’d

If HIV+ person is prosecuted and found guilty of control measure violations and is sent to prison, can not be released early unless:

❖ Judge determines (after getting recommendations from the prison medical consultant, the State Health Director and the local health director) that the person “would not create a danger to the public health.”
Modernizing NC’s HIV Control Measures: Process

- Creation of **Task Force** (including providers, PLWH, advocates) to give input throughout the process
- Consultation/negotiation with **Department of Public Health**
  - Duke, NCAAN, Community Task Force
- Other stakeholder input (County Health Directors, HIV providers- ADAP Advisory Committee)
- Final draft negotiated
- Rule amendments proposed to **NC Commission for Public Health**
- **Written comments** accepted through 10/31/17
- **Public Hearing** Held: October 3, 2017
- **Final Meeting** of the NC Commission for Public Health: December, 2017
- **Final Amended Rule Effective**: January 1, 2018. [10A NCAC 41A.0202]
Changes to North Carolina’s HIV Control Measures

❖ PLWHIV who meet the **following criteria** are no longer required to **use a condom** or **inform sexual partners** of their HIV status:

➢ In care and following the treatment plan of the medical provider
➢ Been virally suppressed for at least 6 months.

❖ Those who have **not** achieved viral suppression are still legally required to notify their sexual partners of their HIV status **and** use a condom, except:

➢ No condom use required:
  ✓ if partner is on PrEP under medical supervision
  ✓ Sexual partner is also living with HIV.
<table>
<thead>
<tr>
<th></th>
<th>Condom Required?</th>
<th>Disclosure to partner required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Virally suppressed for at least 6 months (and in care)</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Not virally suppressed</td>
<td>YES w/exceptions</td>
<td>YES</td>
</tr>
<tr>
<td>Not virally suppressed, but partner on PrEP</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>Not virally suppressed, but partner is HIV+</td>
<td>NO</td>
<td>YES</td>
</tr>
</tbody>
</table>
Other Changes...

- Allows PLWHIV to **donate organs** under provisions of federal HOPE Act
- Allows **sperm or ova to be harvested** under medical supervision to achieve pregnancy
- Updates **language** in the Control Measures:
  - E.g. changes “HIV-infected persons” to “persons living with HIV.”
- No changes to **needle sharing provisions** of the rules:
  - Persons living with HIV are still prohibited from sharing needles, syringes, or drug paraphernalia.
Next Steps