



Brief Report

Decriminalizing HIV in Indiana: A Policy Analysis

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A B S T R A C T

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The US National HIV/AIDS Strategy (2022-2025) underscores a critical need for reform of state HIV criminalization laws to mitigate health inequities. This article examines Indiana's laws, which are discriminatory and do not reflect the current science of HIV transmission. The Centers for Disease Control and Prevention Policy Analytical Framework was employed, and historical context and public health implications were analyzed, revealing that the most favorable solution to mitigate inequity and support prevention is to repeal HIV-related laws in Indiana. Nurse practitioners must be aware of this discriminatory legislation and contribute to advocacy efforts for policy change by leveraging clinical expertise to influence legislative discussions.

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The US National HIV/AIDS Strategy (2022-2025), developed by the White House Office of National AIDS Policy and the Health and Human Services Office of Infectious Disease and HIV/AIDS Policy, highlights the necessary promotion of reform for state HIV criminalization laws to reduce HIV-related disparities and health inequities.¹ Currently, 35 states have HIV-related criminal laws that can result in varying violations and levels of sentencing. Only 13 states have repealed or reformed these laws.² Nurse practitioners (NPs) can address HIV-related disparities and health inequities on an individual level through patient care and can approach disparities and inequities through policy advocacy. NPs have the unique opportunity, and duty, to contribute to policy conversations as expert clinicians.³ In this article, Indiana's HIV-related criminal laws⁴ are analyzed systematically using the Centers for Disease Control and Prevention's (CDCs) Policy Analysis Framework.⁵ Using a framework can elevate an NP's policy advocacy efforts.

The CDC's Policy Analysis process provides a systematic way to develop policies to address public health problems. There are 5 domains, including problem identification, policy analysis, strategy and policy development, policy enactment, and policy implementation. With these 5 domains, there is ongoing engagement of change agents, education, and evaluation. This project's focus is in the first 2 domains: problem identification and policy analysis. Within domain 2, there are 4 steps: identifying the problem, identifying an appropriate policy solution, identifying and describing policy options, and developing a strategy for furthering adoption of a policy solution.⁵

Step 1: Identify the Problem

In Indiana, there are 6 laws, including 2 health codes and 4 criminal codes, that allow for people living with HIV (PLWH) to

be prosecuted with felony charges, fined up to \$10,000, and serve up to 6 years in jail.⁴ These laws are not only outdated in language and science, such as escalating a battery charge for spitting on someone from misdemeanor to felony when it is known that HIV cannot be spread through saliva,^{6,7} but detrimental to public health efforts to prevent new HIV infections.^{1,2} When HIV-related criminal laws exist, HIV incidence rates are higher in all populations.⁸ In Indiana, where Black and Latinx people make up 16.3% of the population but 54.4% of new HIV infections,⁹ a disproportionate percentage of people of color are at risk of being criminally charged related to HIV. When people are afraid of criminal consequences, fewer people get tested for HIV, which is detrimental to the health of individuals and communities.^{1,8,10,11}

Step 2: Framework for Policy Analysis

To advocate for policy change as an NP, it is important first to understand the historical rationale for the creation of the policy, changes over time, and how the policy has been beneficial and/or hurtful to the public. The use of a policy analysis tool, such as the CDC's Policy Analytical Framework,⁵ is helpful in gaining a deeper knowledge of a specific policy. This is accomplished by answering framing questions related to factors such as policy change in other jurisdictions or unintended positive and negative consequences of the policy, and understanding public health and ethical impacts, feasibility of change, and the potential economic impact.⁵ With this knowledge, an NP is more informed, better able to encourage change, and prepared to discuss and/or debate the urgency of policy change. In the following steps, policy analysis and advocacy are related to decriminalizing HIV in Indiana.

Step 3: Policy Analysis Key Questions

Indiana's HIV-related criminal laws were analyzed under the headers of framing questions, impact on public health, feasibility of change, and economic and budgetary impacts of a change in criminality of HIV in Indiana.

Framing Questions

Indiana's HIV-related laws are both regulatory and legislative in nature. The 2 health codes fall under regulatory agencies which implement and enforce law. The other 4 laws, which are criminal codes, are written and enacted in the legislative branch of government.^{4,12} These laws are enforced governmentally and allow for sentencing as stated above—felony charges, fines, and/or imprisonment. The legal landscape surrounding criminality of HIV demonstrates that 13 states including California, Colorado, Georgia, Illinois, Iowa, Michigan, Missouri, Nevada, New Jersey, North Carolina, Texas, Virginia, and Washington have amended or repealed HIV-related criminal laws.^{12,13} These states vary in location, demographics, political leanings, size, and HIV prevalence, but all determined that some level of policy change was necessary. People and groups advocating for change in these other states were social justice advocates, clinicians, PLWH and allies, advocacy coalitions, and governmental and nongovernmental public health organizations. In Indiana, these policies have been previously debated by many. Most significantly, the HIV Modernization Movement (HMM),¹² which is an Indiana-based network of PLWH and allies who are clinicians, public health experts, legal teams, and community leaders, has advocated solely for change to Indiana's HIV-related criminal and public health laws. They use scientific evidence, experience, and public health knowledge to support change, noting that these laws are not in line with the scientific understanding about HIV transmission, stigmatize PLWH, unfairly prosecute PLWH, and inhibit efforts to end HIV.^{2,4,6-8,12} HMM has achieved some small but meaningful successes in modernizing stigmatizing language and updating criminal law enhancements, but they have had many efforts deflected. On the basis of experiences in other states, expected outcomes of repeal of Indiana's HIV-related laws would likely include a decrease in fear and stigma felt by PLWH, a reduction of disproportionate criminal prosecution of people of color, and more people at risk for HIV being tested, treated, and preventing further spread of HIV.^{1,2,4,6-8,10-12} One barrier advocates face is that some legislators assume that people would be less careful about transmission if HIV was not criminalized.^{8,10,12}

Public Health and Ethical Impact

To address potential concern among legislators that people might be less careful about HIV transmission if HIV-related laws were repealed, an analysis of incidence levels in these 13 states before and after reform. It was difficult to compare directly pre- and post-reform HIV incidence by state because many of these changes have been recent, and there has not been enough time to see meaningful shifts. Additionally, the entire United States saw a steep decline in new HIV cases in 2019–2021 because of the COVID-19 pandemic. During this time, fewer people were being tested for HIV, and there was likely less actual transmission due to social distancing.¹⁴ However, none of the 13 states that have reformed or repealed HIV-related laws have had a substantial increase in incidence of new HIV infections following reform or repeal.^{10,15} The largest increase seen was 1 additional case per 100,000 people over the span of a reported year.¹⁵

Efforts in prevention of HIV transmission have evolved as well. No longer are the preventative objectives only abstinence and condom use. Now, treatment of HIV is seen as an effective, patient-centered transmission prevention measure.^{2,8,11,16,17} When a seropositive person has a HIV viral load of <200 copies/mL for at least 4 to 6 months, the risk of seroconversion for a seronegative person is negligible. In fact, having a consistently low viral load is more effective than condom use in preventing transmission of HIV through sexual contact.¹⁶ Another effective HIV transmission prevention measure is HIV pre-exposure prophylaxis (PrEP). HIV PrEP is a single daily pill or injection every 2 months that, when taken correctly and consistently, prevents acquisition of HIV, even when engaging in behaviors that may put the HIV seronegative person at risk.^{2,17} Access to both HIV treatment and PrEP for HIV require a person to be tested for HIV. With a decrease in fear of criminal consequences related to a medical diagnosis, people at risk will be more likely to get tested and can start taking either prophylactic medications or antiretroviral medications, both of which can eliminate risk for transmission of HIV. An undetectable HIV viral load is untransmissible.^{2,6-8,12}

State-specific laws, such as those in Indiana, exacerbate health care and criminal justice inequities already present among minority populations such as women, Black and Latinx people, and men who have sex with men (MSM).^{18,19} A study from 2017²⁰ found that states without laws that criminalize HIV, compared with states which had HIV criminalization laws at the time, had no significant difference in rates of new HIV infection. This means that these laws are doing nothing to prevent transmission, and therefore rates of new infections, of HIV. Acts that are legal in seronegative populations are considered criminal in populations of PLWH in many states, even with negligible to no risk of transmission of HIV. This contributes to continued stigma and health inequities.^{2,4,8,9}

Feasibility

Thirteen US states have been successful in reforming or repealing HIV-related laws,² so from a broad perspective, it is feasible that Indiana can do the same. Looking more closely at past attempts at reform in Indiana, there have been some victories, such as language change. Some examples of this include replacing “dangerous communicable disease” with “serious communicable disease,” and replacing “carrier” with “individual with a communicable disease.” There have also been failed attempts at reform, such as efforts to reduce sentencing, and repeal endorsements that elevate prosecution of non-HIV-related crimes, when the individual has HIV.^{4,12,13} The HIV Modernization Movement² has a coalition that already advocates for policy change, so it is feasible that efforts to modernize these laws will continue. Revision or repeal of HIV-related laws in Indiana is dependent on state legislators' votes. However, lawmakers vote based on their understanding of the policies, their responsibilities to voters, and considerations for their futures as politicians in Indiana. NPs can help legislators by providing expert opinions, stories and examples of how these laws have negatively impacted individuals and groups, and scientific facts to improve their understanding of these policies.

Economic and Budgetary Impact

Treatment is prevention when it comes to HIV.^{6,7,12,16,21} All people with HIV can access antiretroviral treatment at low or no cost. The CDC found that with each new HIV infection prevented in the US, \$360,000 is saved over that person's lifetime.²¹ As more new infections are prevented, there can be substantial cost savings in the health care system. The Indiana State Department of Health's HIV Services Program, with the help of the Ryan White HIV/AIDS

Program, provides PLWH with free access to core medical services, such as health insurance premium coverage, provider visits and medications; and support services such as psychosocial support, emergency financial assistance, and housing services.^{12,22} A savings of \$360,000 for antiretroviral medications does not even take into account all of the cost savings when access to services such as medical appointments for HIV treatment and maintenance, housing, food, and transportation support.

When someone is incarcerated for any reason, including being charged with an HIV-related crime, it costs taxpayers. An analysis of what this cost is in Indiana has not been undertaken. However, as an example, between 1997 and 2020 (23 years), Florida taxpayers spent \$15 million (>\$650,000 per year) on incarceration of PLWH who were charged with HIV-related crimes.¹³

Step 4: Policy Options

After in-depth policy analysis with a systematic tool like the CDC's Policy Analytical Framework, NPs can synthesize compiled data and make informed recommendations for policy change. To advocate for repeal of HIV-related laws in Indiana, additional research and documentation would be helpful. Current shortcomings in the data include the following:

- A state-level database to search for criminal and public health cases by Indiana code rather than by arrest date, case number, and offender's name
- Tracking the cost of incarceration for sentences related to HIV in Indiana and in states that have repealed or amended HIV-related laws
- More current data related to HIV incidence in states which have repealed or amended these laws, as the most current data is from 2022, which is close to the year that many states made amendments, and potentially skewed from lower reporting and other factors related to COVID-19

Regarding HIV-related criminal and public health laws in Indiana, there are several options the NP, now advocate, can recommend. These range from recommending no change, repealing endorsements that elevate prosecution of non-HIV-related crimes when someone has HIV, changing laws to allow for criminal prosecution only when HIV is transmitted knowingly and maliciously, or repealing all laws related to HIV. Abolishing all HIV-related laws in Indiana is ideal and most supports the US National HIV/AIDS Strategy's (2022-2025) directive to end criminalization of HIV in all states. In light of past attempts to reform policy, it is evident that there may be barriers to requesting full repeal of these laws in Indiana but requesting anything other than repeal would not be in line with national efforts to end HIV.¹

Implications for NPs

NPs have the unique opportunity, and duty, to contribute to policy conversations as expert clinicians. HIV-related laws in Indiana are particularly extensive, but variations exist in 35 US states. It is of utmost importance that NPs who see patients living with HIV, or at risk for HIV, understand the legal landscape in their state and the effect fear of criminality of a disease can have on overall health. People making health-related policy decisions at the state and national level rarely have clinical experience^{12,23} and must use the information they have to influence policy. As clinicians in the most trusted profession, NPs who advocate for policy change can share their expertise and professional opinions with policymakers to influence legislation. NPs can advocate for policy change in several ways: by speaking directly with policymakers, forming or

contributing to coalitions, developing policy briefs/fact sheets to present to legislators, or writing opinion pieces and editorials for the local press.

Conclusion

The US National HIV/AIDS Strategy (2022-2025) indicates that reform of state HIV criminalization laws is necessary to reduce HIV-related disparities and health inequities.¹ In Indiana, this would include reform/repeal of 4 criminal and 2 public health codes related to HIV. In the case of HIV criminalization, the purpose of advocating for policy change is not to encourage any malicious acts attempting to transmit HIV to another person but rather to decrease stigma, improve equity, and prevent HIV transmission through testing, treatment, and viral suppression. The CDC's Policy Analytical Framework⁵ can be applied to analysis of any public health policy and provides a basis for in-depth exploration of policy. By understanding previous and potential barriers to change, involvement of past and current advocacy groups, and the effect on the public and specific populations, NPs can more effectively contribute to advocacy efforts for policy change.

CRedit authorship contribution statement

Veronica Herndon: Writing – review & editing, Writing – original draft, Resources, Methodology, Investigation, Formal analysis, Data curation, Conceptualization. **Kara McGee:** Writing – review & editing, Validation, Supervision. **Julie Waldrop:** Writing – review & editing, Validation, Methodology, Conceptualization. **AnnMarie Walton:** Writing – review & editing, Validation, Supervision, Resources, Methodology, Conceptualization.

Declaration of Generative AI and AI-assisted Technologies in the Writing Process

During the preparation of this work the authors used ChatGPT in order to format highlights to word count requirement. After using this tool/service, the authors reviewed and edited the content as needed and take full responsibility for the content of the published article.

Declaration of Competing Interest

In compliance with standard ethical guidelines, the authors report no relationships with business or industry that may pose a conflict of interest.

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