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Critics assail crime laws aimed at people with HIV

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NEW YORK — A man in Texas is serving a 35-year prison sentence for spitting at a police officer — because he has the virus that causes AIDS and his saliva was deemed a deadly weapon. In Michigan, an HIV-positive man who allegedly bit a neighbor during an argument faced a bioterrorism charge.

Charges for the same acts would have been far less severe if the defendants had been virus-free. Now, a coalition of advocacy groups — backed by an outspoken champion in Congress — is ratcheting up a campaign to press for review and possible repeal of criminal statutes specifically targeting HIV-positive people.

"These laws are archaic," said Rep. Barbara Lee, D-Calif. "They're criminalizing a population of people who should not be criminalized."

Lee introduced a bill in September that would provide states with incentives and support to reform criminal laws aimed at people with HIV. Lee assumes the bill has little chance of passage while Republicans control the House, but hopes it will help raise awareness about the state laws.

"It's very important to start these debates, to get governors and legislators to look at it," she said in a telephone interview.

Thirty-four states have criminal laws that punish people for exposing another person to HIV, according to the advocacy groups working with Lee. Prosecutions occur even in the absence of actual HIV transmission, and the laws generally do not consider use of a condom as a defense, the groups said.

Many of the laws were enacted early in the AIDS epidemic, when fear of the disease's deadliness was at its highest and before advances in understanding how HIV was transmitted. The laws have not been revised even though AIDS — thanks to the development of medication regimens — is no longer viewed as a death sentence.

Scott Burns, executive director of the National District Attorney's Association, suggested that most prosecutors would oppose Lee's bill and argue that the laws remain necessary to deter HIV-positive people from reckless or irresponsible behavior.

"Notwithstanding that we've made tremendous medical advances, I don't know anyone who'd want to be infected with HIV and go through the treatment regimen," he said.

According to the Centers for Disease Control, HIV is spread primarily by unprotected sex with an HIV-positive person, sharing of tainted needles or syringes, and births by an HIV-infected mother.

HIV is not spread by saliva, tears or sweat, and there are no documented cases of it being transmitted by spitting, according to the CDC. As for biting, the CDC says there is no transmission risk if the skin is not broken; in a "very small number of cases," transmission did occur when a bite drew blood and caused severe tissue damage.

While prosecutors defend the HIV laws as appropriate for certain cases, some activists argue that criminalization of exposure to HIV can backfire and actually fuel the spread of the disease.

They note that under most of the state laws, people who don't know they have HIV are less culpable than those who do know. This fact could deter some people from learning their HIV status, and thus preclude some HIV-positive people from getting treatment.

A better approach, the advocates say, is to encourage responsibility and disclosure without the underlying threat of arrest and prosecution.

The Obama administration's National AIDS Strategy, released in July 2010, echoes those concerns, saying some of the state laws "may make people less willing to disclose their status by making people feel at even greater risk of discrimination."

"It may be appropriate for legislators to reconsider whether existing laws continue to further the public interest," the strategy says. "In many instances, the continued existence and enforcement of these types of laws run counter to scientific evidence."

Advocates for changes in the laws say many people have served long prison terms and been forced to register as sex offenders for conduct that posed no meaningful risk of HIV transmission. Catherine Hanssens of the Center for HIV Law and Policy, one of the key groups in the advocacy coalition, blames the longevity of the laws on "a seemingly invincible ignorance" about transmission.

Annual surveys by the Kaiser Family Foundation have documented this phenomenon. According to this year's survey, 1 in 3 Americans has a basic misunderstanding about HIV transmission — believing, for example, that one can get HIV from sharing a drinking glass or swimming in a pool with someone with HIV.

"We need to educate people," Hanssens said. "Before we change the laws, we have to change their minds."

As part of an initiative called the Positive Justice Project, Hanssens' center recently documented scores of cases since 2008 in which people were prosecuted on charges specifically related to being HIV-positive.

Among the cases:

—In March 2010, an HIV-positive man in Michigan faced bioterrorism charges of using HIV as a weapon after he allegedly bit a neighbor on the lip during an argument. Three months later, a judge threw out that charge; the defendant, Daniel Allen, was placed on 11 months of probation for assault.

—In Iowa, an HIV-positive man, Nick Rhoades, received a 25-year sentence in 2009 for failing to disclose his HIV status prior to a one-time consensual sexual encounter during which the virus was not transmitted. Rhoades' sentence was eventually suspended, but he was nonetheless required to register as a sex offender.

—In 2008, a homeless man with HIV, Willie Campbell, received a 35-year sentence for spitting at a Dallas police officer because under Texas law his saliva was considered a deadly weapon. Local health officials said the risk of HIV transmission from saliva was extremely low, but the prosecutor in the case said the tough sentence was warranted.

"No matter how minuscule, there is some risk," said Jenni Morse. "That means there is the possibility of causing serious bodily injury or death."

In Ohio, there have been several recent cases of people being charged with felonious assault under an 11-year-old state law making it a crime for anyone diagnosed with HIV or AIDS to have sex without disclosing that status to their partner. The law applies regardless of whether HIV is transmitted.

"If you participate in any sex act, no matter how major or minor, you must tell your partner you are HIV-positive before having sex — even if you are practicing safer sex!" warns a fact sheet distributed by Ohio health groups.

In an ongoing case in Cincinnati, former professional wrestler Andre Davis faces the possibility of decades in prison after being convicted in November of 14 counts of assault for having sex with women without telling them he'd tested positive for HIV. His sentencing is set for Jan. 6.

In accordance with the judge's instructions, it was never established at the trial whether any of the women actually became infected with HIV through contact with Davis, whose wrestling stage names included "Gangsta of Love."

Davis' attorney, Greg Cohen, said the law regarding HIV and felonious assault is "fear-based" and flawed because it doesn't require proof that there was any attempt to cause harm. He has said he may file an appeal.

"You can't just assume someone intended to harm someone else just by sleeping with them," Cohen said in a telephone interview.

However, prosecutor Amy Tranter, in closing arguments at last month's trial, said Davis should go to prison for a long time.

"He's shown no remorse, no responsibility for anything that he's done," she said.

William McColl, political director of the Washington-based advocacy group AIDS United, believes criminal prosecutions should be avoided in HIV-related cases except possibly for the rare instances when an HIV-positive person deliberately seeks to transmit the virus to someone else.

In the more common cases where an HIV-positive sexual partner had no malicious intent and there is a dispute about whether the HIV status was disclosed, prosecution is probably inappropriate, McColl said.

Advocacy groups recommend that people with HIV — to guard themselves against prosecution — should find ways to document that they disclosed their status to sexual partners. This could entail making a video of a disclosure conversation, having the partner sign a letter confirming the disclosure, or having the partner join in a discussion with a health professional.

"When you are in love, or in the heat of the moment, it may seem impossible to do any of these things," advises the Positive Justice Project. "But remember that these are the tools that may help you fight an arrest or conviction."

For advocacy groups working on behalf of HIV-positive people, the criminalization laws represent a negative side of a mixed picture. Overall, activists are heartened by progress in combatting HIV-related discrimination, whether by private employers or the federal government.

However, everyday discrimination does persist despite the Americans with Disabilities Act, which extends its anti-discrimination protections to people with HIV. In Pennsylvania, for example, a 13-year-old boy recently was denied admission to a private school because he is HIV-positive.

Online:

Statement from Rep. Lee: <http://1.usa.gov/pG6rGe>

Positive Justice Project: <http://bit.ly/au71dN>

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