

13-11

STATEMENT OF POLICY

Stigma, Discrimination, and Criminalization Against Persons with Infectious Diseases

Policy

The National Association of County and City Health Officials (NACCHO) encourages local, state, and federal governments to demonstrate political will and leadership in opposing stigmatizing and punitive measures against persons with infectious diseases, including HIV, viral hepatitis, sexually transmitted infections (STIs), and tuberculosis. As implementers, coordinators, and partners in providing and assuring high-quality infectious disease prevention and treatment, local health departments are essential to eliminating infectious disease-related stigma, discrimination, and criminalization, which actively inhibit accessible, effective, and equitable prevention and treatment services for persons living with or impacted by infectious diseases.

NACCHO encourages local health departments to take the following actions toward eliminating stigma, discrimination, and criminalization of persons living with and impacted by infectious diseases:

- Engage social justice movements, advocacy groups, and organizations representing and staffed by persons disproportionately impacted by stigma, discrimination, and criminalization (ex. communities of color, LGBTQ+ individuals, immigrants, sex workers, and people who inject drugs). Promote these representatives as leaders in local efforts to reduce stigma, discrimination, and criminalization against persons with infectious diseases.
- Implement and support culturally and linguistically competent and evidence-based public health strategies and service delivery models for infectious disease prevention and treatment.
- Ensure and maintain confidential testing, counseling, and treatment to foster trustworthy healthcare environments.
- Ensure that health department staff, community members, healthcare providers, law enforcement, policymakers, local media, and other community stakeholders have access to accurate, up-to-date information about disease transmission and the impact of infectious disease-related stigma, discrimination, criminalization, abuse, and violence.
- Support processes to monitor stigma related to infectious disease and its impact on health outcomes (e.g., the Medical Monitoring Project, a surveillance system designed to learn more about the experiences and needs of people living with HIV).



- Promote health equity by developing public health social justice strategies that work to eliminate stigma, discrimination, and criminalization by tackling the root causes of health inequities, including racism, classism, and gender inequity.

Of particular concern are laws that criminalize infectious diseases due to their contribution to infectious-disease related stigma and discrimination. Disease-specific criminalization laws impose or enhance criminal penalties for behaviors that could result in disease transmission for people living with infectious diseases, primarily HIV and hepatitis C. These laws are not evidence-based and do not promote public health. NACCHO encourages local health departments to undertake the following efforts to oppose infectious disease-related criminalization:

- Provide elected officials and policymakers information and support for the review of disease-specific criminal statutes, ensuring that laws are consistent with current knowledge of disease transmission and support public health approaches to prevent and treat infectious diseases.
- Educate elected officials and policymakers about the harms of existing laws and draconian penalty enhancements, which negatively impact public health, result in unjust prosecutions, and greatly stigmatize and oppress people living with infectious diseases.
- Work in collaboration with public health and advocacy partners to engage law enforcement agencies (e.g., police, sheriffs, prosecutors, judges, district attorneys, and public defenders) to reduce groundless and unsubstantiated arrests, prosecutions, convictions, and sentencing of persons with infectious diseases (i.e., cases where there is no proof of intent to harm, the behavior is unlikely to result in disease transmission, no disease transmission occurred, and/or the punishment is excessive in regard to the harm caused).
- Support the efforts of national, state, and local coalitions advocating for the reform or elimination of unjust infectious disease-related laws.

Justification

In the United States, approximately 1.1 million people are living with HIV infection, and nearly 20 million new STI cases occur each year. Meanwhile, as of 2017, there are approximately 850,000 and 3.5 million people in the U.S. living with chronic hepatitis B and C, respectively, and just over 9,000 tuberculosis cases were reported in the U.S. in 2018.^{1,2} An estimated 14% of people living with HIV (PLWH), half of people living with hepatitis C, and two-thirds of people living with hepatitis B are unaware of their status, and under-reporting due to a lack of testing and symptoms is substantial for STIs, especially chlamydia and gonorrhea.^{3,4,5}

Testing and treatment of infectious diseases are critical components of disease prevention and control.⁶ However, stigma, discrimination, and criminalization of individuals living with infectious diseases create significant barriers to care and have been widely documented to affect testing, care, and treatment.^{7,8,9} Stigma, discrimination, and criminalization can be strong disincentives for individuals to learn their health status, access medical care, and/or disclose their status to sex partners, family, friends, and medical providers. Additionally, such discrimination

can lead to loss of employment and housing, estrangement from family and society, and increased risk of violence, all of which also significantly impact individuals' health and ability to access healthcare services. Moreover, infectious diseases such as HIV, STIs, hepatitis B and C, and tuberculosis – and accompanying stigma – disproportionately impact communities of color, LGBTQ individuals, immigrants, sex workers, and people who inject drugs (PWID)—populations that already experience heightened levels of stigma and discrimination as well as unequal harm within the U.S. criminal justice system (i.e., higher rates of arrests and prosecutions and longer sentences for similar crimes).

Key federal documents that guide the national, state, and local response to infectious diseases, including the *National HIV/AIDS Strategy: Updated to 2020 (NHAS)*, *Ending the HIV Epidemic: A plan for America*, *National Viral Hepatitis Action Plan for 2017-2020*, and the Centers for Disease Control and Prevention's (CDC) *2015 STD Treatment Guidelines*, recognize and highlight the need to address stigma, discrimination, and criminalization as barriers to care to advance the prevention and control of infectious diseases. Monitoring and quantifying stigma, discrimination, and criminalization of infectious diseases is challenging but critical to galvanize action; determine priorities; evaluate the effectiveness of strategies to reduce stigma, discrimination, and criminalization; and measure progress. Further research and evaluation is needed to develop systems to measure and monitor stigma, discrimination, and criminalization of people living with infectious diseases.

Local health department efforts to document stigma, discrimination and criminalization—whether through existing surveillance systems or otherwise—can be used to increase awareness among local stakeholders, including policymakers, law enforcement, and media. However, it is equally important to evaluate and examine our existing surveillance systems that monitor diseases. Disease surveillance systems can be beneficial in detecting and proactively tracking disease trends but can also be used to increase stigma, discrimination, and criminalization of diseases as well as present a barrier to testing and treatment of infectious diseases. Other community stakeholders, including social justice movements, advocacy groups, and organizations representing and staffed by persons disproportionately impacted by stigma, discrimination, and criminalization, are important partners to engage in this work and are valuable sources of local information.

Disease-specific criminalization laws and policies often result in unjust prosecution or sentencing and fuel stigma and discrimination against people living with infectious diseases. The Center for HIV Law and Policy reports there are currently 34 states with HIV-specific criminal laws and/or sentence enhancements applicable to PLHW. Of these, 29 states have HIV specific criminal laws; nine have sentencing enhancements; and six may require registration as sex offender as part of HIV-specific laws.¹⁰ These laws, often requiring that persons that know about their HIV status disclose their status to sexual partners, or criminalizing behaviors known to pose a low to negligible risk of HIV transmission (e.g. spitting), are not evidence-based. The science is clear that if someone is living with HIV and is adherent to medication and maintains an undetectable viral load, that person has no risk of transmitting the virus to other sexual partners; evidence also negates that HIV can be spread through saliva.^{11,12} Additionally, 13 states

have enacted laws that criminalize viral hepatitis, and others have criminalizing laws specific to persons diagnosed with other STIs.¹³ Disease-specific laws have been found to negatively impact public health and undermine public health efforts by disincentivizing testing for persons at risk, and exacerbating stigma and discrimination against people living with infectious diseases.¹⁴ Often, neither disease-specific criminalization laws nor related arrests, prosecutions, or sentencing takes into account whether disease transmission occurred, intent to harm another person, and/or forms of risk reduction such as condom use or antiretroviral treatment as prevention.¹⁵ Many of these laws were developed when less was known about the transmission of HIV and other infectious diseases and do not reflect current science.

Due to implicit bias, systemic racism, and gender and sexuality-based discrimination, disease-specific criminalization laws have been shown to most severely affect people that are disproportionately impacted by infectious diseases and who already experience unequal harm within the criminal justice system, including communities of color, LGBTQ individuals, immigrants, sex workers, and PWID.^{15,16,17,18} 12 states impose enhanced penalties for prostitution and solicitation offenses when a sex worker is living with HIV. Similarly, 12 states and one U.S. territory have provisions criminalizing syringe sharing or sale by PLWH and 14 states require PLWH to disclose their HIV status to needle-sharing partners. The fear that these legal consequences create makes it extremely difficult for PWID to seek testing and treatment services.¹⁷ While criminalization laws primarily target people living with HIV—and to an increasing extent, hepatitis C—the intersections of stigma, discrimination, oppression, and infectious diseases contribute to the overrepresentation of people living with infectious disease in the criminal justice system. An estimated 1 in 3 inmates in U.S. jails and prisons have hepatitis C, despite the national prevalence of approximately 1%, and studies in Maricopa County, AZ, and Atlanta, GA, suggest that between a quarter to half of the people living with tuberculosis in the U.S. have been incarcerated.^{1,13,19,20}

Stigma and discrimination against people living with infectious diseases have been widely documented and are continuing problems.²¹ Federal agencies have recognized the need to reduce stigma and associated disparities to promote and increase testing, treatment, and prevention efforts. While criminalization laws are intended to prevent disease transmission, in reality, they exacerbate stigma and discrimination; disincentivize testing, treatment, and risk reduction strategies, particularly for sex workers and PWID; and result in unjust arrests, prosecutions, and sentences that are based on misconceptions about disease transmission. A far more effective approach to infectious disease prevention includes increasing access to and public funding for prevention, testing, and treatment services and increasing uptake of these services by mitigating stigma and discrimination. As trusted public health experts and leaders in disease prevention and control, local health departments are uniquely positioned to drive local efforts to reduce stigma, discrimination, and criminalization and ensure equitable access to healthcare for people living with infectious diseases. Ending the stigma, discrimination, and criminalization faced by people living with infectious diseases is an important step to improving individual health and protecting the public's health and, as such, should be a priority of local health departments.

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Record of Action

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