



# HIV Care Nurses' Knowledge of HIV Criminalization: A Feasibility Study

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*HIV-related criminal laws in some jurisdictions may hamper population health efforts to manage HIV and bring about an AIDS-free generation. HIV care nurses have an instrumental role to play in ensuring equitable care and health for all in a context of HIV. The purpose of our study was to determine HIV care nurses' knowledge of HIV-related criminal laws. Ecosocial theory and content expert opinion guided development of a questionnaire to assess nurses' knowledge of HIV-related criminal laws. A total of 174 HIV care nurses from Canada (n = 23) and the United States (n = 151) completed the questionnaire. Knowledge gaps were observed in several aspects of HIV-related criminal laws that can influence nursing clinical practices. Nurses should increase their knowledge of HIV-related criminal laws to ensure the success of population health initiatives and to reduce stigma and discrimination experienced by people living with HIV.*

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The overly broad use of criminal laws against people living with HIV (PLWH), often referred to as HIV criminalization, is a controversial structural (societal level) approach to managing HIV (Cameron, 2009; Center for HIV Law and Policy, 2014; Joint United

Nations Programme on HIV/AIDS [UNAIDS], 2013; United Nations Development Programme, 2012). This approach may limit the ability of people living with, or at risk of acquiring, HIV to benefit from biomedical (e.g., antiretroviral therapy) and public health interventions (e.g., voluntary counseling and testing), which have demonstrated efficacy in managing HIV at individual and population levels. Ongoing prosecutions of PLWH based on allegations of nondisclosure, or potential or perceived exposure to others, may limit the efficacy of biomedical and public health interventions (Burris, Beletsky, Burleson, Case, & Lazzarini, 2007; Burris & Cameron, 2008; Cameron, Burris, & Clayton, 2008; Lazzarini, Bray,

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& Burris, 2002; UNAIDS, 2010b; UNAIDS, 2014; United Nations Development Programme, 2012).

Approaches to HIV criminalization differ widely across and within international jurisdictions. For example, in Canada there is no HIV-specific criminal law, but PLWH do have a criminal-law obligation to disclose their HIV status (Dej & Kilty, 2012; Mykhalovskiy & Betteridge, 2012). In the United States, at least 33 states have HIV-specific criminal laws (Lehman et al., 2014). Despite differences in legal approaches, there have been criminal prosecutions of PLWH in both countries. Approaches to HIV criminalization include sentence enhancements for other crimes when HIV is a factor in the case (sentence enhancements); court decisions that consider HIV a “deadly weapon,” resulting in PLWH being prosecuted for biting or spitting (nonsexual exposure); and laws that criminalize potential for or perceived HIV exposure without disclosure (exposure without disclosure). Evidence of intent to harm or evidence of actual transmission is not required in most laws (Cameron, 2009; Center for HIV Law & Policy, 2014; Global Network of People Living with HIV, 2014). These prosecutions occur even when there is evidence that the PLWH had practiced safer sex by using a condom or had an undetectable HIV viral load, or both—both of which reduce the risk of HIV exposure to near zero (Cameron, 2009; Center for HIV Law & Policy, 2014). Nurses’ knowledge of HIV-related criminal laws in North America may influence their abilities to provide high-quality care to persons living with or at risk of acquiring HIV.

## Background and Significance

### North American HIV-related Criminal Law

Prosecutions for HIV exposure without disclosure and/or potential or perceived exposure have occurred in North America (Canada and the United States) and are increasing in some jurisdictions (Dej & Kilty, 2012; Mykhalovskiy & Betteridge, 2012). Canadian law does not explicitly criminalize HIV exposure, but decisions of the Supreme Court of Canada and other court decisions since 1998 (most recently in 2012) have created a legal context in which PLWH face an increasing likelihood of being prosecuted

for HIV nondisclosure. Similarly, the United States has prosecuted at least 1,000 persons for HIV-related crimes, with 180 known prosecutions reported between 2008 and 2013 (Center for HIV Law & Policy, 2014; Global Network of People Living with HIV and HIV Justice Network, 2013). Additionally, some U.S. territories and the U.S. Military Code of Criminal Justice have HIV-specific criminal laws, and PLWH have been prosecuted in those jurisdictions (Center for HIV Law & Policy, 2014).

This complex legal context creates challenges for the delivery of high-quality nursing and health care for persons living with or at risk of acquiring HIV. HIV is a reportable communicable disease in North America; however, some nurses are confused about the extent of their professional obligations regarding a duty to protect population health. Nurses’ uncertainties can be related to whether they have a “duty to warn” persons at risk of contracting HIV (for example, from a partner who has not disclosed his/her HIV status) and their duty to report a communicable disease. This confusion may be compounded by emotional responses on the part of nurses and other members of society brought on by sensationalized media reports about HIV criminalization cases. Emotional responses may be combined with a lack of understanding of the state of the science for the management of HIV at individual and population levels, including treatment and prevention efforts. For example, nurses and other health care providers may shape clinical practices based on their responses to media headlines such as “... man charged with using spit as a deadly weapon” (Boven, 2010, ¶1). Understanding what nurses know about HIV-related criminal laws is necessary for the development of training programs to enhance their abilities to provide care to persons living with, and at risk of acquiring, HIV and to effectively manage the HIV epidemics in North America.

## Research Objectives and Methods

We describe the knowledge our HIV nurse participants had about HIV-related criminal laws in the jurisdictions where they practiced. The research question addressed in our study was: What

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