HIV Criminalization Laws: How They Hurt the Health of Floridians
A Positively U and Positive Justice Project Community Forum on HIV Criminalization
June 5, 2012
Hillsborough Department of Health, Tampa, Florida

The HIV Criminalization Laws Round Table Discussion had 3 speakers. Beirne Roose-Snyder was from the Center for HIV Law and Policy and her presentation, “HIV Criminalization Laws Overview,” provided a good summary of what HIV criminalization laws are and how difficult it is to provide legal defense if HIV criminalization laws are brought against you. Her final message was that HIV laws are inherently discriminatory and people who use HIV as a weapon and have real intent to harm can easily be prosecuted under existing laws and HIV specific laws are not needed. The second speaker, Brook Kelly, from the US Positive Women’s Network, a project of WORLD, gave a presentation, “Consequences of HIV Criminalization Laws and the impact on Women.” She emphasized the harm that these laws generate and even though they are supposed to protect citizens, especially women, but in fact do the opposite. They harm HIV+ women especially, and do not encourage prevention for HIV- women. Next, Robert Suttle, representing the SERO project, discussed his own experience with HIV criminalization. When his short relationship ended contentiously, his ex-partner brought criminal charges on him, even though there was no HIV transmission, and he was accused with failure to disclose his HIV+ status. Suttle discussed his long and arduous journey through the process of being charged with HIV criminalization laws. He accepted a plea bargain, which means he would be forever considered a convicted felon. Later, he learned that taking the plea bargain was not a smart choice. He spent a full 180 days in jail (HIV criminal felons are required to serve full sentence) and had to register as a sex offender for 10-15 years. Then, he had to alert the community when he moved that he was a sex offender and pay a significant amount of money in fines and fees. He carries a driver’s license with the words SEX OFFENDER stamped in red below his picture. His felony status has the words HIV in it, so his status is automatically and mandatorily announced to his new community even before he has had a chance to establish himself there. Suttle now works for the SERO project and is working to empower people living with HIV and eliminate HIV criminalization laws through sharing his story. Lastly, Janet Kitchen, from Positively U, spoke about the future goals of Positive Justice and Positively U in her presentation, “Next Steps for Advocacy.”

Additional Background on HIV Criminalization

HIV criminalization makes behavior that is legal for people who do not have HIV, or are unaware they have HIV, illegal for HIV+ people. HIV criminalization has been and still is negatively impacting the HIV+ population because it is inherently discriminatory. The discrimination include but is not limited to housing, deformation of character, job security, disclosure proof, contact with law enforcement, patient and medical provider relationship, and reproduction and parental rights of women. HIV criminalization laws consider HIV to be a weapon so if someone who is HIV+ is accused of nondisclosure before sexual contact, even if they use a condom, they are prosecuted under HIV-specific criminal laws or for assault and other crimes under regular criminal laws. The laws that were implemented were derived from ignorance and fear of the unknown. Lawmakers, courts and lawyers do not understand HIV or the science of transmission. These laws were created by each state with different degrees of severity in an attempt to protect the uninfected population, especially women, from the infected population.
Although the majority of the infected population has no intention to purposely harm anyone, the laws insinuate that their intentions are malicious.

Once persons infected with HIV are prosecuted, their lives become complex. Their life becomes a negative domino effect of obstacles and rejection. Even before a conviction is made, they are held in prison. They face prison time that is often double or triple the prison time of vehicular manslaughter if convicted. If they are convicted or accept a plea bargain, they are forced to register as a sex offender with their city/state and are expected to pay for this out of their own pocket. They are required to alert the community of their felony conviction, which indirectly discloses their HIV status to the community since the name of the felony has “HIV” right in the title of the offence. As a result, their character is compromised through these mandatory announcements. Due to the fact that HIV criminalization charges are considered a third degree felony, job security becomes nearly non-existent.

Women are affected the most by HIV criminalization. The criminalization laws ensure these laws were created to protect women. Many women even initially support the criminalization laws because they are under the assumption that the laws are effective and are for their protection. However, criminalization laws do not protect HIV+ women and even create unique challenges for them concerning reproductive rights. Once a woman is prosecuted under the same laws, she may lose her children and her ability to have children in the future. Even becoming pregnant can be used as evidence of intent to harm from unprotected sex.

Unfortunately, the two most reasonable and common forms of disclosure and proof of non-intent to harm during sexual encounters (condom usage and verbal accounts of disclosure) are not considered a defense against criminal charges. In addition, because of the bias nature of these laws, law enforcement contributes to further discriminate due to their ignorance of HIV transmission. A person with knowledge of their HIV status whom engages in biting or spitting of law enforcement personnel could result in criminal charges. For HIV+ persons, the only real way to demonstrate disclosure in court is with some type of written, time-dated documentation such as emails, text messages, or signed affidavits. This is harmful to the general public because not knowing your HIV status makes you safe from HIV criminalization charges and is a valid defense. This discourages people from getting tested if they suspect they are HIV+. There is even a saying, “Take the test, risk arrest.”

Criminalization causes a strained relationship between a patient and their primary care provider. Once a person is diagnosed with HIV by their medical provider, there should be a relationship of trust and confidentially between the patient and the provider. After the provider is confronted with a warrant to obtain a patient’s records, their medical history can be revealed without the patient’s consent. Many health care providers do not know that a warrant is not sufficient to force them to hand over confidential medical records. Fortunately, there is a way to protect the patient’s medical history. This is accomplished by including a written notice stating that no one can access a patient’s medical records without a court order. A court order is more difficult to obtain than a warrant and provides a higher standard of authority than a warrant. Often lawyers may even drop the case because obtaining a court order is such a difficult process.