

**Missouri State Medical Association
House of Delegates**

Resolution #8
(A-20)

Introduced by: Nathanial Nolan, MD, MPH

Subject: Decriminalization of HIV

Referred to: Reference Committee B

1 WHEREAS, current Missouri law penalizes patients living with HIV (PLHIV) who, without disclosing
2 serostatus, expose others to bodily fluids, whether through sex, spitting/biting, or sharing of needles
3 with a felony punishable with up to 30 years in prison [1]; and
4
5 WHEREAS, Missouri has had many notable prosecutions under this law, including a 2015 case in which a
6 young man was sentenced to 30 years in prison [2] before having the conviction overturned in an
7 appeals court after serving 5 years [3]; and
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9 WHEREAS, many convictions have come down to discrepancies in story, such that the defendant reports
10 disclosing his/her status but is not believed by the jury [4]; and
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12 WHEREAS, the law does not take into account things such as intent, plausibility of exposure, or
13 reasonable scientific mechanisms to prevent transmission [4]; and
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15 WHEREAS, some of the above punishable offenses, such as spitting and biting, are known to not create
16 risk of HIV infection [5]; and
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18 WHEREAS, multiple high quality studies have demonstrated that when PLHIV have a suppressed viral
19 load they have no risk of transmission, even during condomless sex [6,7] and the CDC is currently
20 campaigning the message to patients and healthcare providers that undetectable viral load means they
21 are untransmittable (aka the U=U campaign) [8]; and
22
23 WHEREAS, laws that criminalize patients for nondisclosure can have unintended consequences, such as
24 increasing stigmatization and decreasing testing so that patients will continue to have unknown status
25 and not be subject to prosecution; and
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27 WHEREAS, other states have been attempting to amend and repeal their HIV criminalization laws to be
28 more in line with scientific evidence [9]; and
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30 WHEREAS, the Missouri State Legislature has introduced bills that are attempting to amend HIV
31 disclosure laws, including House Bill No 1692; and
32
33 WHEREAS, the American Medical Association has policy stating the AMA will “advocate for repeal of
34 legislation that criminalizes non-disclosure of Human Immunodeficiency Virus (HIV) status for people
35 living with HIV;” therefore be it
36

37 RESOLVED, that our Missouri State Medical Association advocate for repeal of legislation that
38 stigmatizes and criminalizes individuals for HIV positive status; and be it further

39
40 RESOLVED, the our Missouri State Medical Associations support repeal or amendment of legislation
41 specifically penalizing individuals living with HIV for non-disclosure of seropositive status when science
42 based measures of non-transmission have been attempted, such as but not limited to: a) condom use, b)
43 use of antiretroviral treatment to the point of undetectable viral levels, c) use of pre- and post-exposure
44 prophylaxis, and d) use of needle-exchange programs; and be it further

45
46 RESOLVED, that our Missouri State Medical Association support repeal or amendment of legislation
47 specifically penalizing individuals living with HIV for exposure of others to bodily fluids scientifically
48 proven not to lead to HIV transmission.

Fiscal Note:

Current Policy:

References:

1. MO.REV.STAT. §§191.677;558.011.1(1),(2)(2018) accessed on 2/9/2020 at <https://revisor.mo.gov/main/OneSection.aspx?section=191.677>
2. Schlinkmann M. (2015, July 13). Ex-College Wrestler Gets 30 Years in HIV Case in St. Charles County. *St. Louis Post Dispatch*. Available online at https://www.stltoday.com/news/local/crime-and-courts/ex-college-wrestler-gets-years-in-hiv-case-in-st/article_c3123243-b8d3-58c9-97df-e2c5a504902a.html
3. Rueb E. (2019, July 14). He Emerged From Prison a Potent Symbol of H.I.V. Criminalization. *The New York Times*. Available online at <https://www.nytimes.com/2019/07/14/us/michael-johnson-hiv-prison.html>
4. HIV Criminalization in the United States - A Sourcebook on State and Federal HIV Criminal Law and Practice. 3rd Ed. Published by the Center for HIV Law and Policy. Accessed on 2/9/2020 at <http://www.hivlawandpolicy.org/sourcebook>
5. HIV Transmission. HIV Basics. Centers for Disease Control and Prevention. Accessed on 2/9/2020 at <https://www.cdc.gov/hiv/basics/transmission.html>
6. Rodger AJ, Cambiano V, Bruun T, et al. Sexual Activity Without Condoms and Risk of HIV Transmission in Serodifferent Couples When the HIV-Positive Partner Is Using Suppressive Antiretroviral Therapy. *JAMA*. 2016;316(2):171-81.
7. Rodger AJ, Cambiano V, Bruun T, et al. Risk of HIV transmission through condomless sex in serodifferent gay couples with the HIV-positive partner taking suppressive antiretroviral therapy (PARTNER): final results of a multicentre, prospective, observational study. *Lancet*. 2019;393(10189):2428-2438.
8. HIV Treatment as Prevention. HIV Risk and Prevention. Centers for Disease Control and Prevention. Accessed on 2/9/2020 at <https://www.cdc.gov/hiv/risk/art/index.html>
9. Yang YT, Underhill K. Rethinking Criminalization of HIV Exposure - Lessons from California's New Legislation. *N Engl J Med*. 2018;378(13):1174-1175.

Relevant MSMA and AMA Policy

Discrimination and Criminalization Based on HIV Seropositivity H-20.914

H-20.914 Discrimination and **Criminalization** Based on **HIV** Seropositivity

Our AMA:

- (1) Remains cognizant of and concerned about society's perception of, and discrimination against, **HIV**-positive people;
- (2) Condemns any act, and opposes any legislation of categorical discrimination based on an individual's actual or imagined disease, including **HIV** infection; this includes Congressional mandates calling for the discharge of otherwise qualified individuals from the armed services solely because of their **HIV** seropositivity;
- (3) Encourages vigorous enforcement of existing anti-discrimination statutes; incorporation of **HIV** in future federal legislation that addresses discrimination; and enactment and enforcement of state and local laws, ordinances, and regulations to penalize those who illegally discriminate against persons based on disease;
- (4) Encourages medical staff to work closely with hospital administration and governing bodies to establish appropriate policies regarding **HIV**-positive patients;
- (5) Supports consistency of federal and/or state laws with current medical and scientific knowledge including avoidance of any imposition of punishment based on health and disability status;
- (6) Encourages public education and understanding of the stigma created by **HIV criminalization** statutes and subsequent negative clinical and public health consequences; and
- (7) will: (a) advocate for repeal of legislation that criminalizes non-disclosure of Human Immunodeficiency Virus (**HIV**) status for people living with **HIV**; and (b) work with other stakeholders to develop a program whose primary goal is to destigmatize **HIV** infection through educating the public, physicians, and other health care professionals on current medical advances in **HIV** treatment that minimize the risk of transmission due to viral load suppression and the availability of PrEP.