



Psychiatry & Behavioral Sciences Section – 20??

I24 The Criminalization of HIV

Francisco Velarde, MD, University of Southern California, Institute of Psychiatry, Law and Behavioral Sciences, 2020 Zonal Avenue, Los Angeles, CA 90086; and Kaushal K. Sharma, MD, PO Box 6275, Huntington Beach, CA 92646*

After attending this presentation, attendees will learn more about the HIV/AIDS epidemic, and the laws governing HIV transmission.

This presentation will impact the forensic science community by discussing the impact this illness has had in shaping social policy; specifically, in regards to right to privacy, disclosure, and informed consent. The legal impact associated with the laws governing HIV transmission will also be addressed.

This presentation impacts the community in general and the forensic community specifically by increasing awareness that HIV/AIDS remains a significant public health issue of concern. The HIV/AIDS epidemic was first recognized in the United States in 1981. Since then, AIDS surveillance data using a standardized, confidential name-based reporting system has been used. Recently, revised data from the CDC reports that through 2005 a total of over 956,000 persons in the United States were reported as having AIDS.

This epidemic has had a powerful influence on the societal, economic, and personal health of this country. U.S. Public Health policy and the medical institutional roles have a responsibility to monitor, inform, and assist in the treatment of societal ailments. Within this duty also lies the struggle to maintain patient confidentiality and their personal integrity. The rights of privacy in regards to one's medical record have been clearly delineated by state and federal laws. This balance between individual confidentiality and the preservation of public health is a dynamic entity that must be continually addressed and monitored.

U.S. Public Health policy guidelines recommend that persons who are infected with HIV inform their sexual partners of their status. The decision as to when or who should inform individuals of their partner's HIV status can be a complex task involving issues of shame, rejection, stigma, or social isolation. Public Health studies have found that HIV infected individuals are not disclosing their status to sexual partners and that nondisclosers are more likely to engage in unsafe sexual practices. Studies also reveal that approximately 40% of HIV positive persons do not disclose their status. If individuals with HIV do not disclose their status to partners but engage in safe sex practices, is such behavior ethically defensible? This unilateral risk reduction strategy does not allow one's partner the opportunity to make an informed choice.

The intentional or reckless transmission of the human immunodeficiency virus is an illegal act. Persons who engage in such actions can be charged with criminal transmission of HIV, murder, manslaughter, attempted murder, or assault. The issue of how and to what extent criminal law should play a role in this challenge to public health will be discussed. Criminal law has been one of the regulatory mechanisms used in the U.S. to address/influence the risk behavior of persons with HIV/AIDS. This influence may be imparted in the form of deterring unsafe behavior, endorsing a social policy against this behavior, or restricting the individual through imprisonment.

The presentation explores the ways in which criminal law would better serve the preservation of public health by implementing and endorsing more specific prohibitions against unsafe practices. The medical community, through its research has discovered the means for transmission of this infectious disease. The law would better serve the community if it reflected prohibitions of known dangerous practices, and encouraged persons to become more aware of risk behaviors.

HIV, Disclosure, Criminal Law