



Joining forces

Evidence informed global, regional and national campaigns against the criminalization of HIV transmission and exposure

Global snapshot

- What is the criminalisation of HIV transmission and/or exposure?
- Globally—many laws being passed but not necessarily prosecutions
- Europe—second to North America as the region with highest number of criminal prosecutions:
 - Sweden (38+, at least 2 in recent weeks)
 - England and Wales (17 since 2002; 3 Scotland since 2001)
- Presence/ absence of the law
- Presence/ absence of prosecutions
- Mitigating the impact – a ‘harm reduction’ approach

Criminalization and its Discontents



Unhappy bedfellows?

HIV, Public Health, Human Rights, and Criminal law.

Complex ... e.g. excerpt UK film

Stigma and access to justice

The People Living with HIV Stigma Index: UK 2009

- **KNOWLEDGE of key national statutes is low**, with just over half of people living with HIV (56%) having heard of the DDA and even fewer (40%) having heard of the UNGASS Declaration of Commitment
- **LEGAL REDRESS even lower.** Even though many reported direct experiences of discrimination (19%), only 6% sought legal redress
- **Shared responsibility: almost unanimous agreement.** 92% said that both partners, regardless of HIV status, share equal responsibility for preventing HIV transmission.
- **Mixed reaction about criminalisation:** The responses were split between no (the majority, 41%), yes (26%) and not sure (26%).
- Knowledge of laws and rights
- Internalised stigma—feeling guilty, potentially criminal liability, blame
- Both the 'victim' and accused need support



What's special about the criminal law?

"... [One] should not say that an act offends the common consciousness because it is criminal, but that it is criminal because it offends that consciousness. We do not condemn it because it is a crime, but it is a crime because we condemn it."

Emile Durkheim

- Crime and punishment seen as an expression of shared beliefs—a collective consciousness—a moral 'barometer'
- Powerful manifestation of the coercive power of the state
- Makes 'good' news ... sells papers, prone to sensationalism, interesting
- Difficult to prove...blunt instrument in the bedroom
- Sex at the heart of life and identity ... Intersectionality and the inadequacy of legal mechanisms to respond to life's complexity
- Fuels BOTH stigma and discrimination

Legal considerations

- **Enforcement**—targeting some people?
- **Sentencing**—aggravating factor?
- **Custody**—ART, condoms and psychosocial support needs?
- **Consent**—what is informed and what 'can' we consent to?
- **Police** and law enforcement—unjust? Whose interest?
- **Lack of information** for people living with HIV—about criminalisation and also seeking legal redress when rights violated
- **Evidence**—proof?
- 'Game-changing' impact of new scientific results:
 - Swiss Statement
 - HPTN 052 study

2 cases

- 1) Scotland: Lack of information (PMTCT)
- 2) Belgium: Intersectionality (religion, migration)

Cross-cutting themes:

- Internalised stigma
- Denial
- Media coverage
- Personal impact of court case beyond charges

Mark Devereaux, 41
Scotland: Dundee
February 2010



The law in Scotland concerning HIV transmission or exposure is a common law offence and as such no specific definition is given of what constitutes 'culpable and reckless' conduct.

- Offshore worker
- 6 year relationship
- Have been diagnosed HIV positive 9 years before entering relationship
- Charged with four counts of culpable and reckless conduct between January 2003 to December 2008 (one case of HIV transmission, others of exposure).
- His ex-partner, a 28-year-old woman, was pregnant with twins, chose to have an abortion after discovering she was HIV positive
- Pled guilty, sentenced to 10 years in prison
- Name added to sexual offenders register
- Sentence reduced to 8 years on appeal (June 2010)

"It seems to me that you callously and cruelly betrayed the trust placed in you by each of your partners and that you deceived them for your own self-centred reasons... I am willing to accept, to some degree, that you pushed the reality of matters to the back of your mind, but this cannot in any sense excuse the highly irresponsible nature of your behaviour."

Lord Pentland, Statement at the High Court in Dumbarton, (25 Feb 2010)

Devereaux =
1st UK case exposure
(only possible in Scotland)

- Stigmatising media coverage
- Ill-informed media coverage:
- 'Evil HIV beast took my babies away from me' (The Scottish Sun, 21.1.10)
- 'Lying chef with HIV 'stole my babies' says lover who had twins aborted' (Daily Record, 21.1.10)

Devereaux is 'white', born in Scotland and lived most of his life in Dundee, is heterosexual...and that is how he is presented in the media.

How does the law and media respond to further complexities of race and/or religion and/or sexual identity?

Devereaux was dishonest, should the fact he is living with HIV render these actions criminal?



Exclusive: Evil stare of HIV beast Mark Devereaux still haunts victim

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Devereaux told yesterday how the health Devereaux put at risk through a page picture of him in yesterday's of her ordeal.

Devereaux being driven from the High Court in jail sentence for his callous crimes.

That Devereaux was also a woman- photograph of his cold eyes "sent a look right through you - it's an evil absolutely no soul behind his eyes - very saw the photograph of him. He was also front of the Record brought it all back could give before he erupted. It still

- Related Stories
- HIV monster Mark Devereaux may have infected 'dozens' women Mar 1 2010
- Aids warning as women admit they have safe sex Feb 28 2010
- Chef who recklessly infected lover with HIV jailed for 10 years Feb 25 2010

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hiv, mark devereaux

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HIV infection man's jail sentence cut to eight years

A man jailed for 10 years after his pregnant girlfriend found out he had infected her with HIV has had his sentence cut.

SEE ALSO

- HIV man appeals sex jail sentence 17 March 10 | North East
- HIV man jailed for 'reckless sex'

Man, 54
Belgium
June 2011



Poisoning law, first case.

Unlike other examples, it seems media coverage factual and did not display photos.

- The couple met and married in 2004
- Wife, originally from Congo, discovered she was HIV-positive during pre-natal testing in 2005
- Divorced
- Court evidence showed that her husband, a 54 year old man, was diagnosed in 1994, whilst married to his first wife, but that he was in deep denial of the diagnosis
- Found guilty of 'knowingly infecting' his former wife with HIV
- Sentenced to three years in prison, two of which are suspended.

"My client is very religious. He prayed for healing. His first wife and the children he had with her never became infected. Therefore he assumed that his prayers were answered. Without ever taking drugs."

Rafael Pascual, Defence Lawyer

Joining forces

Step 1: Institutional Change

RFSU (the Swedish Association for Sexuality Education), HIV-Sweden, and RFSL (the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights)

2010-2012 advocacy project

RSFU: Institutional reflection and capacity development

- Partnership process
- MoU
- Literature review
- Board discussion
- Staff training (links with HIV workplace policy and programme)
- Advocacy campaign



“I may have t
perhaps the w
Marmite smug
TIM HARVEY

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weekly newsletter



There's no summer
without the sea



Swedish law behind rise in HIV cases: experts

Published: 1 Dec 10 15:15 CET | Double click on a word to get a [translation](#)



Four experts on **HIV** and criminal law have called for an overhaul of the law against **infectious diseases** act on World **AIDS** Day, alleging that the duty of **disclosure** has resulted in a spike in new Swedish HIV cases.

- [Facebook 'fair game' in benefits cheats battle](#) (20 Jun 11)
- [Swedish doc supplied drugs in overdose deaths](#) (16 Jun 11)

Summary of main arguments

- **The criminal law is ill-equipped** to respond to the complex layers of individual identities.
- **'Moral barometer'**. Crime and punishment in relation to HIV have prominence in the formation and regulation of moral norms—symbolic significance and influence stigma.
- **Re-enforces stigma?** Does more harm than good re forces around disclosure and denial – stigma.
- **'Double edged sword'**. People living with HIV need support not suspicion, and both the 'victim' or claimant are still vulnerable to these very same social attitudes as the accused.
- **Joining forces**. Bringing different 'skills' together for change, advocacy and mitigating the impact.

CRIMINALIZE HATE NOT HIV

Global campaign

- Launched at AIDS 2010 in Vienna
- Localised:
 - 46% Member Associations (72 organisations)
 - 39% European MAs (11 organisations)
- Variety of multi-media campaign materials
- 2011 Hook Days
- Workplace training
- Behind the Bars collection

European Campaign

- Shared ownership, multiple agendas, one message
- European Regional campaign
 - Website – platform to share resources (under development)
 - Kite mark – adapting campaign for different NGO branding
 - Links across European countries and also within
- Country impact initiatives e.g. Film Germany, Behind Bars stories, Edwin Bernard website



Criminalize Hate Not HIV



Considerations for regional support?

- Collaborative, multi-sector nation efforts most effective
- What regional support might help?
 - More information? E.g. Briefs on 'forgotten' or emerging issues (TAP, HLM outcomes, KPs)
 - Advocacy (e.g. HLM, no mention punitive laws)
 - Interactive website being developed
 - IAC 2012 'hard talk' event?
 - Engage AIDS Ambassadors?
 - Regional Forum specifically on this issue?
 - Links with global initiatives e.g. UNAIDS expert meetings, Global Commission on HIV and Law



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