



Ending The HIV Epidemic



Legislative Overview Series: 2023 Public Health Spotlight

Introduction

The federal government's Ending the HIV Epidemic initiative set an objective in 2019 to reduce new HIV infections by 90% by 2030.¹ There were approximately 34,800 new HIV diagnoses in the United States in 2019, with an estimated 80% of transmissions occurring among people who are unaware that they have HIV or are not regularly receiving care for their HIV.² New HIV diagnoses decreased by 17% from 2019 to 2020; however, there was also a sharp decline in HIV testing during that period that may conceal a larger number of new HIV infections.³ The Ending the HIV Epidemic initiative has accelerated its work with state and local health departments and partner organizations in response to concerns that HIV may be under-detected in the community due to lower testing rates.

Beyond enhancing HIV testing, states and territories are also implementing policies to improve access to preexposure prophylaxis, establish syringe services programs to prevent the spread of infectious diseases, and taking steps to modernize laws that criminalize HIV exposure.

Legislative Trends

Expanding Access to Preexposure Prophylaxis

Preexposure prophylaxis (PrEP) allows people who are at risk of getting HIV to reduce their chance of infection by taking a daily medication.⁴ PrEP is recommended for anyone who is at high risk of acquiring HIV from sex or injection drug use. State policies to increase PrEP access include allocating funds for the medication, authorizing pharmacists to provide PrEP, and eliminating barriers for minors to access PrEP.

In 2022, at least nine states (Hawaii, Illinois, Kansas, Maryland, Massachusetts, Minnesota, New Jersey, New York, and Wisconsin) introduced legislation related to PrEP access. Of those, Illinois and Wisconsin enacted laws related to PrEP. Illinois expanded its pharmacist's scope of practice to allow pharmacists to provide an initial patient assessment and dispense PrEP in accordance with a physician standing order. Wisconsin enacted a law to provide funds for PrEP by amending an existing grant program for nonprofits and public agencies that provide comprehensive HIV services to allow funds to be used for PrEP.

Establishing and Enhancing Syringe Service Programs

Syringe services programs (SSPs) provide people who inject drugs with access to and safe disposal of sterile syringes and injection equipment alongside resources for vaccination, testing, and linkages to infectious disease care and substance use treatment.⁵ Comprehensive SSPs are an evidence-based prevention strategy that can reduce the spread of HIV and other infectious diseases safely, effectively, and inexpensively. As of August 2019, 38 states and the District of Columbia have laws facilitating SSPs by either explicitly authorizing or regulating them or removing legal barriers to implementing them.⁶

In 2022, at least 15 state legislatures (California, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Vermont, Washington state, and West Virginia) considered laws to support, create, or expand SSPs. At least seven states passed a law establishing or amending guidance for SSPs that operate within the jurisdiction. For example, New Mexico enacted a law establishing a harm reduction program within the New Mexico Department of Health tasked with creating a program to support SSPs in the state. These SSPs will provide and exchange sterile hypodermic syringes and needles, supplies to test drugs for adulterants, and educational materials on preventing the spread of HIV. In addition, New Jersey passed a law amending its existing harm reduction services to specify that it includes access to syringe exchange services and HIV testing.

Decriminalizing HIV

Early in the HIV epidemic, many states enacted criminal laws related to behavior thought to transmit HIV, and 35 states have laws criminalizing HIV exposure in 2022.⁷ Advancements in biomedical science and substantial research on HIV transmission over 40 years reveal that many of the existing laws criminalizing HIV transmission are outdated, with laws in at least 14 states criminalizing behaviors (e.g., biting or spitting) that cannot transmit HIV.⁸ Additionally, some current laws do not require a person living with HIV to have an intent to transmit the disease or even commit an action with the potential for transmission of HIV.⁹

In 2022, at least seven states (Florida, Georgia, Indiana, New Jersey, New York, Mississippi, and Tennessee) considered bills relating to criminalizing HIV transmission, and two states enacted legislation modernizing their HIV transmission laws. Georgia revised its criminal transmission law to require a person to intend to transmit HIV to another person without disclosing their status and perform a sexual act with significant risk of transmission based on current medical science. New Jersey amended its general law prohibiting the purposeful transmission of disease through sexual penetration, lowering the penalty from a felony to a misdemeanor.

Looking Ahead

ASTHO expects states to continue adopting laws aimed at ending the HIV epidemic. In addition to efforts that increase access to PrEP, prevent the spread of HIV through SSPs, and reassess laws criminalizing HIV, state actions may include:

- Increasing access to preventive treatment and services—such as PrEP—for minors absent parental consent, when warranted.
- Expanding routine testing and service programs to high-prevalence areas and high-risk populations.
- Expanding Medicaid benefits to cover PrEP and other HIV prevention measures as the federal government rolls back Ryan White Funding pandemic expansions.
- Expanding comprehensive sex education, including instruction on how to prevent HIV transmission.

1. CDC. “About Ending the HIV Epidemic in the U.S. Initiative.” Available at <https://www.cdc.gov/endinghiv/about.html>. Accessed 10-31-2022.
2. Hecht J, Sanchez T, Sullivan P, et al. “Increasing Access to HIV Testing Through Direct-to-Consumer HIV Self-Test Distribution – United States, March 31, 2020–March 30, 2021.” MMWR. 2021. 70(38):1322–1325. Available at <https://www.cdc.gov/mmwr/volumes/70/wr/mm7038a2.htm>. Accessed 10-31-2022.
3. DiNenno EA, Delaney KP, Pitasi MA, et al. “HIV Testing Before and During the COVID-19 Pandemic — United States, 2019–2020.” MMWR. 2022. 71(25):820–824. Available at <http://dx.doi.org/10.15585/mmwr.mm7125a2>. Accessed 11-18-2022.
4. CDC. “HIV: Pre-Exposure Prophylaxis (PrEP).” Available at <https://www.cdc.gov/hiv/risk/prep/index.html>. Accessed 10-31-2022.
5. CDC. “Syringe Services Programs (SSPs): Safety & Effectiveness Summary.” Available at <https://www.cdc.gov/ssp/syringe-services-programs-summary.html>. Accessed 10-31-2022.
6. Fernandez-Vina M, Prood NE, Herpolsheimer A, et al. “State Laws Governing Syringe Services Programs and Participant Syringe Possession 2014–2019.” Public Health Rep. 2020. 135(1 suppl):128S–137S. Available at <https://journals.sagepub.com/doi/10.1177/0033354920921817>. Accessed 10-31-2022.
7. CDC. “HIV and STD Criminalization Laws.” Available at: <https://www.cdc.gov/hiv/policies/law/states/exposure.html>. Accessed 10-31-2022.
8. CDC. “HIV Criminalization and Ending the HIV Epidemic in the U.S.” Available at <https://www.cdc.gov/hiv/policies/law/criminalization-ehe.html>. Accessed 10-31-2022.
9. Cineros N, Sears B, Lennon-Dearing R. “Enforcement of HIV Criminalization in Tennessee.” Available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-TN-Jun-2022.pdf>. Accessed 10-31-2022.
10. UCLA School of Law Williams Institute. “HIV Criminalization.” Available at <https://williamsinstitute.law.ucla.edu/issues/hiv-criminalization>. Accessed 10-31-2022.

People living with HIV who are Black are disproportionately arrested and convicted of HIV criminal laws, with research by the Williams Institute showing overall enforcement of these laws varying greatly within a state.¹⁰

In 2019, PrEP was added to the list of essential health benefits required to be covered under the Affordable Care Act, and private insurers began covering PrEP in 2021. This coverage was paused in 2022 by a federal court for violating the Religious Freedom Restoration Act. The court case is ongoing.



Learn more at www.astho.org

Headquarters:

2231 Crystal Drive, Suite 450, Arlington, VA 22202

Regional Office:

855 Emory Point Drive, NE, Suite C-100, Atlanta GA 30329



Association of State and Territorial Health Officials