Internet advice on disclosure of HIV status to sexual partners in an era of criminalization

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Abstract

HIV-specific statutes are increasingly popular in the United States and often impose harsh penalties for failure to disclose an HIV diagnosis to sexual partners. The purpose of this study was to examine HIV-related websites for information about non-disclosure as a crime and the relevance of this advice for US audiences. Internet searches were conducted for HIV-related websites with advice on disclosure to sexual partners. Once identified, these sites were analyzed for content, quality, and type of approach to disclosure and the law. Each site was given a page ranking (P. Score) according to Google’s priority listing algorithm, and a value ranking (V. Score) for textual content and quality of advice. Internet advice on disclosure and the law was highly variable. With few exceptions, highly ranked US sites offered less advice than sites in Britain, Canada and Australia. All US sites followed the law by placing the onus of responsibility for disclosure on the HIV-infected individual, but few offered advice on how to disclose or how to obtain proof of disclosure in order to avoid prosecution. None addressed the special risks of African Americans who are most likely to be prosecuted for non-disclosure. It is concluded that HIV advice websites should offer strategies on how to disclose to sexual partners and to document proof in case of prosecution.

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HIV-specific statutes are increasingly popular in the United States and often impose harsh penalties for failure to disclose an HIV diagnosis to sexual partners [1]. General criminal law is also used to prosecute HIV-related acts involving non-disclosure [1]. The precursors to criminalizing HIV non-disclosure arose from moral panics of the 1980s when epidemiologists at the Centers for Disease Control and Prevention (CDC) coined the term “the four H’s” to describe homosexuals, heroin users, hookers, and Haitians as risk groups for HIV/AIDS [2]. Since marginalized people were viewed as disease bearers from the outset, it is perhaps inevitable that HIV-related behavior was criminalized in the U.S. and that non-disclosure to sexual partners became the lynchpin of efforts to include HIV-specific statutes in the canon of criminal law.

The legal requirements for disclosure were embedded in the Ryan White Care Act of 1990, in which states had to agree to prosecute cases of “intentional” HIV exposure in order to receive federal funding for HIV care [3].

The 1990s thus became a watershed decade for HIV-specific laws in which non-disclosure was considered to be a criminal act, particularly if an “innocent” partner became infected heterosexually [3,4]. The increase in criminalization for HIV-related cases in the U.S. is consistent with trends in other Western countries [5].

However, the U.S. has led the way with more prosecutions of HIV-related acts involving non-disclosure or threats to public safety than anywhere else in the world [6].

Evolving law on criminal non-disclosure

US case law on HIV-related crime has evolved over the past 30 years. In the 1980s, non-disclosure of positive HIV serostatus could be prosecuted under existing public health statutes that allowed states to charge people who willfully or knowingly exposed someone to infectious diseases that were a threat to public health. This provision included prosecutions for sexually transmitted infections (STIs) such as syphilis and gonorrhea [7]. However, the misdemeanors that could be imposed for breaching public health laws were too lenient for many lawmakers who sought harsher penalties for HIV exposure than public health statutes would allow [8]. By 1990, 23 states had enacted HIV-specific laws that were designed to control disease and punish wrongdoers [1]. A decade later, HIV-specific laws had been enacted in 34 states, and sexual and even non-sexual acts such as spitting, biting, or throwing tainted blood, were being prosecuted under general criminal law [1]. In some cases, non-disclosure was being prosecuted even if the accused was unaware of being HIV-infected [10].

General criminal law is widely used to prosecute non-disclosure and non-sexual acts that are perceived to be risky for police officers and other first responders. HIV-infected people have been charged with criminal exposure, aggravated or felonious assault/assault with a deadly weapon, sexual battery, rape, reckless endangerment and murder regardless of whether or not HIV transmission or even sexual activity took place. Once convicted, HIV-infected people often receive enhanced penalties because of the perceived seriousness of their crimes [1,11]. HIV was criminalized further in the wake of 9/11 when prosecutorial desire to impose penalties for HIV-related behavior received a boost from new laws to combat terrorism. This
expansion of law meant that threatening to infect someone with HIV was considered a "terroristic threat" and, in one notable case, was prosecuted as a case of bioterrorism [12].

The upward trend in HIV-related arrests and prosecutions is evident in statistical reports. By 2010, a total of 375 arrests and prosecutions – a low estimate – were documented in the United States [1,11]. Almost 30 percent of these cases (n=109) were prosecuted between 2008 and 2011 alone, an increase that is variously attributed to media sensationalism, public outrage, harsher sentencing, and even having to register as a sex offender for life [1,13,14]. Public health campaigns that were once popular in promoting shared responsibility by both partners to establish sexual histories, discuss safer sex, and use condoms failed to curtail this trend, perhaps because of the multiplying effects of harsher social attitudes toward sexual crimes, epidemiologic trends in race-gender disparities in HIV/AIDS, and the highly-charged contexts in which most prosecutions occurred.

**Public health models for HIV prevention**

In the mid-1980s, public health approaches to HIV prevention focused on a particular message: People should inquire about the sexual history of potential partners before having sex [15]. This approach to safer sex, termed “the mutual (shared) responsibility” model, recommended seeking information about sexual orientation, drug use, frequency of sexual activity, and STI history as a means of assessing HIV risk [16]. The approach was the model of choice for HIV prevention, primarily because of the public health sector’s reluctance to place the burden of responsibility solely on HIV-infected people who were already heavily stigmatized as putative AIDS vectors [17]. The goals of the campaign were to promote co-equal information sharing, full disclosure of HIV status, and mutual responsibility for initiating condom use. The model assumed that sexual actors would be both self-empowered and self-motivated to engage in safer sex. However, a campaign that was designed primarily for HIV seropositive or at-risk men in the gay community was not always relevant to other actors, especially African Americans and women. Wingood and DiClemente [18] reported that African American women were ill served by public health directives to initiate safer sex with sexual partners. Such women were often accused of sexual cheating and undermining male authority, and, rather than being self-empowered, sometimes faced threats of violence and abandonment as a result of attempts to negotiate condom use.

By the late 1980s, the individual (personal) responsibility model for HIV disclosure, also known as the altruism or “responsibility for the other” approach [19] had gained influence among policymakers [17]. According to Bayer [20], many HIV prevention specialists opposed this approach because they believed it would intensify HIV stigma for highly vulnerable groups in society. Nevertheless, ethics concerns over the special responsibilities of HIV-infected persons in a deadly epidemic, and the potential for HIV transmission in the absence of disclosure, provided the impetus for widespread acceptance of the personal responsibility approach to HIV prevention [20]. The model posited that HIV-infected people must disclose their seropositive status prior to sexual activity, and also to assume responsibility for both disclosure and safer sex. Mutual exchange of information between sexual partners, and shared responsibility for safer sex were no longer a public health priority. The CDC formalized the individual responsibility model in a report titled “Advancing HIV
prevention: New strategies for a changing epidemic – United States 2003” [17]. The link between the individualistic approach to HIV prevention and legal enforcement of this approach was underwritten in expectations of “contractual responsibility,” in which recipients of HIV care were fully responsible for HIV disclosure [19]. As noted, this change in public health policy meant that U.S. citizens who received public HIV care could be prosecuted if they failed to disclose their HIV seropositive status to sexual partners [3].

The law versus medicine

The law enforcement approach to HIV non-disclosure to sexual partners is at odds with recent medical advances in HIV care. First, the advent of antiretroviral medicines (ARVs) meant that HIV-infected people were able to lead longer and healthier lives [21] in which the chances of HIV transmission were greatly reduced when ARVs were taken as prescribed [22]. On the basis of these advances, the CDC promoted routine HIV testing in the belief that early diagnosis and treatment would save lives and prevent transmission to sexual partners [23]. This recommendation took account of the life-saving benefits of the new HIV drugs, but did not reduce the burden of disclosure for HIV-infected people. If anything, the policy meant that people who heeded the CDC’s recommendation for early testing and were then diagnosed with HIV suddenly faced the prospect of legally circumscribed sexual activity on a permanent basis. Second, rather than recognize the changing medical landscape for HIV transmission, lawmakers increased their efforts to impose stiff penalties on HIV-infected people who were assumed to place others at risk by failing to disclose their HIV status.

What accounts for this divergence between medicine and the law? Critics have charged that stigma rather than medical evidence drove the zeal to criminalize non-disclosure, particularly in cases involving heterosexuals [4]. As a case in point, HIV is often compared to infectious diseases such as Hepatitis B or C, also acquired through injection drug use or unprotected sex. After HIV emerged as a public health threat in the 1980s, these less sensationalized conditions did not attract the same stigma despite high rates of morbidity and even mortality [24,25]. Unlike HIV, exposure to Hepatitis B and C is rarely prosecuted under public health statutes and even more rarely under general criminal law [26].

Broad social trends and epidemiologic changes can help to explain recent trends in criminalization. Poverty [27], drug use [27], minority ethnic status [28], and mental illness [29] are all indicators of HIV risk in the United States. African Americans are 10 times more likely than Whites to acquire HIV/AIDS, a disparity that has widened over time [28]. Furthermore, today’s criminal cases are driven mostly by heterosexual rather than same-sex acts, particularly if they involve Black men [4,29,30,31]. This racial patterning suggests that social factors and, perhaps, racial stereotyping are at work in re-stigmatizing HIV. The hardening public attitudes toward acts that classify as sexual offenses [32] have also contributed to harsher attitudes toward HIV non-disclosure. These attitudes were driven, in part, by media sensationalism over sex crimes [33], so that people who fail to disclose an HIV-positive diagnosis were likely to be perceived as sexual predators, especially if they were male [11]. History has shown that public attitudes toward issues of race/ethnicity, gender, and sexuality are particularly potent when it comes to the law [34].
Criminalization leads to fear of being tested for HIV [35,36], and to erroneous beliefs that non-disclosure of seropositive HIV status to sexual partners is driving the epidemic, despite evidence that the lack of HIV testing and treatment is a greater problem [37]. The success of HIV criminalization as an HIV prevention tool is certainly in question; new HIV cases in the U.S. have remained stubbornly high, at around 56,000 annually over the past decade [38]. Persson and Newman [4] wrote that the law enforcement approach to HIV non-disclosure is counterproductive, and involves blame motifs involving perpetrators and victims [4] “in a revival and reframing of the old familiar discourse of ‘innocent victims’ and ‘guilty others’ so prevalent in early news reporting” (p. 633). This polarization is at the heart of high-profile cases in which HIV-infected men such as Nushawn Williams, an African American man who infected mostly White women, have been prosecuted for non-disclosure. Scholars argue that the refocus on individual responsibility represents a victim-perpetrator antagonism which, in the words of Galletly and Pinkerton [39]: “Reinforces the ‘them versus us’ dichotomy that is central to prevailing theories of stigma” (p. 457). Indeed, fears over this type of stigmatization were the original impetus for formulating the mutual responsibility model when moral panics over HIV were at their peak in the 1980s. The transition to the individual responsibility model signals a maturing epidemic, as well as a law and order approach to infection control after HIV was associated with sexual crime and, not incoincidentally, communities of color.

The disclosure dilemma

Legal enforcement of HIV-positive status ignores the difficulties of disclosing to sexual partners. Serovich and Mosack [40] reported that perhaps 50% of HIV-infected people do not disclose to sexual partners for fear of being rejected, abandoned, or even assaulted. The criminalization of non-disclosure presents a new wrinkle among HIV-infected people: Risk rejection or even violence if you disclose and prosecution if you do not. Being liable for prosecution begins even before deciding whether or not to disclose to sexual partners. Few people are aware that HIV-specific statutes override confidentiality laws when someone is charged with an HIV-related crime and that medical records can be subpoenaed as evidence for the prosecution [41]. In other words, an HIV-positive diagnosis can be used against the accused in a court of law.

Most HIV-infected people are counseled about their rights and responsibilities at the time of diagnosis, including information about legal requirements for disclosure to sexual partners. In the Internet age, HIV-infected people are also likely to consult relevant websites on how to disclose to sexual partners, especially if they fear rejection, seek anonymity, or wish to be protected from legal jeopardy. The purpose of the present study was to examine the relevance of advice on HIV disclosure and the law for Internet users in the United States. The specific goals were to: 1) Identify websites that offer information on HIV disclosure and the law, 2) Identify the intended audience for U.S. websites, 3) Conduct a content analysis on quality of the advice, 4) Compare the search engine rankings with the quality of advice, and 5) Describe the approaches to such advice according to the Mutual Responsibility and Individual Responsibility models as described above.
The study

Ethics approval was obtained from the Institutional Review Board at the University of Alabama, which was followed by multiple Google searches using search terms such as “HIV disclosure,” “Telling/Partner/HIV,” and “How do I disclose HIV?” The searches were conducted on four different computers at home, work, and a computer laboratory in order to circumvent a process known as personalization, the method by which Google uses personal search histories and a page-rank algorithm to filter results [42]. This reiterative search produced more than 300 pages of results, mostly news items, legal documents, or scientific articles (they were discarded) as well as duplicated results for HIV-related websites. All relevant items were counted only once in the final tally. In the second stage of the research, a Priority Score (P. Score) was assigned to the remaining 113 items on HIV disclosure, that is, the page ranking assigned by the search engine itself. The most-highly ranked item was assigned a score of 1 (“highest accessibility”) with other items ranked sequentially, ending with the 113th item on the list (“lowest accessibility”).

The content analysis consisted of a detailed review of relevant websites for information on HIV disclosure and the law. Only 50 (44%) of the 113 websites on HIV disclosure had information or advice about disclosure and the law. A value ranking (V. Score) was assigned to these sites, as calculated from the amount of text and quality of advice. The amount and quality of information were closely related. This content was then ranked from 1 to 5, with the least helpful (one to two sentences) receiving a score of 1, moderately helpful (several paragraphs to one page) receiving scores of 2 and 3 respectively, and very helpful (multiple pages with links) receiving a score of 4. Only one website received the top score of 5 because it was entirely dedicated to HIV disclosure and the law.

Once the ranking was complete, the author identified sites that offered peer-to-peer advice (informal), doctor-patient or institutional-legal advice (formal), or some other type of approach to disclosure and the law. The research also assessed whether or not each website addressed disclosure according to evolving legal standards for public health policy and the law. Then, the study examined the type of approach (“shared responsibility” versus “individual responsibility”) to see if the advice was tailored to client advocacy (the shared responsibility model), the law (the individual responsibility model), or some other approach. Finally, the target audience for each website was identified to determine if the advice was generic or crafted for a particular demographic or community.

Results

The results are organized into four sub-sections according to the specific research questions for the study. The first section describes the priority rankings that were generated by the search engine, and the relevance of these results for U.S. Internet users. This section is followed by an assessment of the quality of the advice on the most highly ranked sites, and approach to advice on HIV disclosure and the law. The third section analyzes the usefulness of advice on the top 10 ranked websites for US Internet users.
Table 1. HIV sites citing legal reasons for disclosure by Priority and Value Scores (N=21)

<table>
<thead>
<tr>
<th>P. Score¹Website</th>
<th>Audience</th>
<th>Tag line</th>
<th>V. Score²</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. AIDSmeds.com</td>
<td>HIV+</td>
<td>To tell or not to tell</td>
<td>2</td>
<td>US</td>
</tr>
<tr>
<td>2. Thewellproject.org</td>
<td>HIV+ women</td>
<td>HIV and disclosure</td>
<td>2</td>
<td>US</td>
</tr>
<tr>
<td>3. Thebody.com</td>
<td>HIV+</td>
<td>Should you disclose ... ?</td>
<td>4</td>
<td>US</td>
</tr>
<tr>
<td>4. Webmd.com</td>
<td>General</td>
<td>Telling others</td>
<td>1</td>
<td>US</td>
</tr>
<tr>
<td>5. Mdjunction.com</td>
<td>General</td>
<td>To tell or not to tell</td>
<td>2</td>
<td>US</td>
</tr>
<tr>
<td>6. IPPF.org</td>
<td>Youth</td>
<td>Some countries have laws</td>
<td>3</td>
<td>UK</td>
</tr>
<tr>
<td>9. Gmfa.org.uk</td>
<td>HIV+ men</td>
<td>Sexual transmission and law</td>
<td>4</td>
<td>UK</td>
</tr>
<tr>
<td>10. Catie.ca</td>
<td>HIV+</td>
<td>HIV, disclosure and the law</td>
<td>3</td>
<td>Canada</td>
</tr>
<tr>
<td>11. Aidslex.org (law)</td>
<td>HIV+</td>
<td>Disclosing your HIV status</td>
<td>5</td>
<td>Australia</td>
</tr>
<tr>
<td>12. FriendsofAIDS.org</td>
<td>HIV+</td>
<td>Ready to disclose?</td>
<td>1</td>
<td>US</td>
</tr>
<tr>
<td>13. Positivewomensnetwork</td>
<td>HIV+ women</td>
<td>Sex, HIV, and the law</td>
<td>3</td>
<td>Canada</td>
</tr>
<tr>
<td>14. Methedoctor.com</td>
<td>General</td>
<td>Some things to consider ...</td>
<td>2</td>
<td>Indonesia</td>
</tr>
<tr>
<td>20. Poz.com</td>
<td>HIV+</td>
<td>Daring to disclose</td>
<td>2</td>
<td>US</td>
</tr>
<tr>
<td>24. Pozitude.co.uk</td>
<td>HIV+</td>
<td>HIV, sex and the law</td>
<td>4</td>
<td>UK</td>
</tr>
<tr>
<td>26. Ehow.com</td>
<td>General</td>
<td>HIV disclosure laws</td>
<td>4</td>
<td>US, UK</td>
</tr>
<tr>
<td>30. Doh.state.fl.us</td>
<td>HIV+</td>
<td>Why is disclosure important?</td>
<td>3</td>
<td>US</td>
</tr>
<tr>
<td>39. Positivelypositive.ca</td>
<td>HIV+ men</td>
<td>Why is disclosure important?</td>
<td>3</td>
<td>Canada</td>
</tr>
<tr>
<td>40. Wdxcyber.com</td>
<td>Women</td>
<td>Relationships and HIV</td>
<td>1</td>
<td>US</td>
</tr>
<tr>
<td>41. HIVsa.org.au</td>
<td>HIV+</td>
<td>Know your rights!</td>
<td>3</td>
<td>Australia</td>
</tr>
<tr>
<td>47. AIDSLondon.com</td>
<td>HIV+</td>
<td>Disclosure</td>
<td>4</td>
<td>UK</td>
</tr>
<tr>
<td>50. Avert.org</td>
<td>HIV-related</td>
<td>Criminal</td>
<td>4</td>
<td>UK</td>
</tr>
</tbody>
</table>

1. Numbers for the P. Score reflect the Internet rankings and are not in consecutive order.
2. Scores: One to two sentences =1; One or two short paragraphs =2; Half to one page=3; Multi-page or link=4; Entire report=5.

Finally, the question of: “whose responsibility?” is discussed in relation to website advice on disclosing to sexual partners within the framework of U.S. law.
Priority rankings

Only 44% of websites with advice on HIV disclosure provided information about the legal aspects of disclosing to sexual partners. Moreover, while 13 (65%) of the top 20 sites, as ranked by Google, addressed disclosure and the law – a reasonable showing - the percentage declined steadily thereafter. Table 1 presents a list of 21 U.S. and international sites that offered information on disclosure and the law (space limitations preclude listing all results in this category). These highly placed sites stood a reasonable chance of being read because they appeared in the top half of the rankings. Since the top five of these websites originated in the United States, the legal advice was relevant contextually to U.S. users. However, sites in the United Kingdom, Canada, and Australia ranked higher overall and were slightly more numerous as well. Compared to no-frills advice in four of the top U.S. websites, these foreign sites had detailed, friendly advice and even referrals to legal advisors if needed.

The top ranked U.S. websites offered multiple pages in the form of homepage, sections, videos, and links to other sites. Advertisements appeared for treatments and services within the site or on the page of Google results. The highest ranking (1/113) went to AIDSmeds.com, a New York-based advocacy network for people seeking advice on HIV treatment and clinical trials. The site was visually appealing, highly interactive, had news about HIV drugs and clinical trials, and provided ready access to affiliated sites for further information. Unlike other top ranked sites, AIDSmeds.com offered advice on disclosure and the law, which referred users to government services (e.g., “The Department of Public Health in your state is a good source of information about what the legal procedure is in your state and how it might apply to you”). Photographs, video clips, and graphics on the homepage suggested that the website catered to a cross-section of the HIV-infected community, although White men were typically depicted on the main page and links. The superior ranking of this site reflected its popularity in providing information on treatment advances and new developments in clinical care and, of course, advertising links to expensive, name brand HIV drugs. The site offered a link to RealHealth, a health website for African Americans, but the absence of an exclusive or even primary focus on HIV/AIDS on RealHealth suggests that the site lacked relevance for HIV-infected African Americans seeking information on how to disclose to sexual partners.

The lowest ranked US site (103/113) was the Florida-based dabtheaidsbearproject.com (“An American journey of hope”), a grassroots, multi-media website with photographs of AIDS bears (“Angel Bears”) and their human friends. The graphics were accompanied by a description of the bears’ origin as symbols of comfort during a time when HIV was a certain death sentence. On the homepage, messages of hope and self-empowerment offered a warm welcome to HIV-infected people and friends. However, this friendliness was offset by a stern warning about non-disclosure being both immoral and a felony in most states and a 3,500-word legal section which threatened search engines with legal action if they used algorithms, spyware, and other tracking devices for commercial or other purposes. Although Google’s search-and-store method of classifying data probably determined the website’s Internet ranking, the threatening tone of the legal section might also have contributed to the low priority score in Table 1.
Value rankings

Table 1 lists the V. Score on quality of advice. The V. Scores ranged from 1 (least helpful) to 5 (most helpful) and bore little relation to Google’s priority rankings. For instance, the top ranked U.S. site (AIDSmeds.com) provided a cursory 10 lines of information for a score of 2. The second-ranked site (Thewellproject.com, a women’s resource network) also earned a score of 2 for 10 lines of grimly worded text on the legal consequences of non-disclosure. The third ranked site (Thebody.com) provided comprehensive and up-to-date information for a score of 4, but the fourth ranked site (Webmed.com) offered a meager two lines for a score of 1 (the advice was less helpful than in the lowest-ranked U.S. site). Most remaining websites did not originate in the United States.

Foreign websites earned higher quality scores than U.S. websites. Sites in the United Kingdom, Canada, and Australia provided detailed legal information (e.g., explanations about the difference between reckless and intentional transmission in U.K. law), as well as advice on how to disclose to sexual partners in keeping with the law. These sites were often affiliated with government agencies and had benefited from the expertise that agency personnel provided to community-based organizations as a public service. Most of these sites catered to particular audiences or communities. To illustrate, Gmfa.org.uk (Gay Men Fight AIDS in the United Kingdom) offered expert advice on HIV disclosure and the law in accessible language ending with the gentle reminder to “take responsibility for your own health and safety when having sex.” In keeping with its mission for advocacy and self-empowerment, the website lamented the trend toward criminalization – which it deemed ineffective – and provided a link to an affiliate that advocated for legal change. In contrast to the U.S. sites, Black men were depicted in almost every image on the homepage and links, suggesting that the writers took account of HIV statistics involving men of color and had tailored their message accordingly.

The Body.com (a site for HIV-infected people) provided high quality advice for HIV-infected people, which helped to support the site’s self-proclaimed position as “the largest HIV/AIDS resource on the net.” Webpage authors offered friendly advice, which occasionally challenged the criminalization of HIV. For example, in a column titled “Sex While HIV Positive: The New Criminals,” the writer had advice on how to obtain proof of disclosure and expressed doubt about the wisdom of criminalization by stating: “[T]he more I have learned about the criminalization of HIV non-disclosure, the more I am convinced these laws are applied badly and actually do more harm than good. If I don’t get tested, I can’t be prosecuted for not disclosing my status, right?” An accompanying video blog discussed the fear of people being tested because of criminalization, which led to forgoing life-saving drugs that would also prevent HIV transmission. By contrast, few of the other U.S. websites went into such detail, with most advice consisting of simple directives to disclose to sexual partners as a moral and legal necessity.

How useful is the US advice?

Narratives on HIV disclosure and the law can help Internet users to resolve the legal aspects of safer-sex, that is, sexual activity within the law. Table Two summarizes advice on HIV
disclosure and the law in top ranked U.S. websites; that is, the 10 sites that were most likely to be read by Internet users seeking advice on disclosure to sexual partners.

All ten sites emphasized the basic importance of complying with the law. Once again, the amount of advice varied widely with the most complete information appearing on Thebody.com. A webpage titled: “Should you disclose?” sounded a cautionary note, followed by statements such as: “Many of these laws were written early in the epidemic, and were fear driven... . Deciding who should be punished, and for what offense, often lies in the hands of politicians and court systems that base their decisions on old data and personal prejudices.” The site defined willful exposure according to California law, explained how non-disclosure could lead to both criminal and civil penalties, and urged readers to disclose their HIV status in order to avoid the risk of prosecution. Links to other web pages led to advice on how to obtain proof of disclosure, including this nugget of wisdom: “You can share your status before you meet your date in person, such as over the Internet, or in a print personal ad, after a few preliminary dates when you know you’d like to pursue the relationship further.”

Personal anecdotes helped to frame the importance of disclosure. For example: “For Tracy Johnson, 22 and HIV-positive, romance often begins at a karaoke bar. There's music, conversation and innocent touching. He's at ease until it's time for the first kiss -- that's when he leans in, pulls out the document and asks the object of his affection to sign, indicating he's shared that he has HIV. That piece of paper, he believes, could save him from years behind bars if a partner ever alleges that he didn’t disclose his status. He carries it everywhere.”

**Table 2. Disclosure+law content in top 10 U.S. websites**

<table>
<thead>
<tr>
<th>No 1.</th>
<th>Aidsmeds.com, No. 5, Mdjunction.com (10 lines)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>“It’s important for you to be aware of what the laws are in your state with regard to <em>contract tracing</em> and <em>partner notification.</em> Contact tracing refers to the efforts of government agencies to identify any and all persons who might be at risk of contracting HIV from an infected person. Partner notification refers to information conveyed to spouses, sexual partners, needle sharers and others who might be at risk for HIV infection. The laws regarding this vary from state to state. In many states, partner notification can be done anonymously through the state’s Department of Health. The Department of Health in your state is a good source of information about what the legal procedure is in your state and how it might apply to you.”</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No 2.</th>
<th>Thewellproject.com (10 lines)</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>“In most cases, sharing your HIV status is a personal choice, but in the case of sexual relationships, it can be a legal requirement. It is best if you disclose your status prior to having sex with anyone new. Non-disclosure of HIV status in a sexual relationship can lead to criminal charges whether or not your partner becomes infected with HIV. In most states, the law requires that you disclose your HIV status before knowingly exposing or transmitting HIV to someone else. Penalties vary from state to state. In many states, you can be found guilty of a felony for not telling a sexual partner you are HIV+ before having intimate contact.”</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No 3.</th>
<th>TheBody.Com (43 lines, multiple links, e-card: 15 lines of text excerpted below)</th>
</tr>
</thead>
</table>
|       | “Currently about 27 [sic] states have established criminal penalties for knowingly exposing or transmitting HIV to someone else. In California, the "Willful Exposure" law (although narrowly written and difficult to prosecute) makes exposing someone else to HIV (whether they become infected or not) a felony punishable by up to eight years in prison. In Alabama, you can be prosecuted for "Conducting yourself in manner likely to transmit the disease." (Just the thought of that is scary) ... If you tell the other person that you have HIV
before insertion, you cannot be prosecuted criminally. It would have to be proven in court that you had "specific intent" to infect the other person in order to be prosecuted criminally. In a civil case, the specifics to which you could be found guilty are much more flexible -- so be careful. Check with your local ASO (AIDS Service Organization) or legal services to find out what the laws are in your area."

No 4. WebmMD.com, No. 6, Friendsofaids.org (2 lines, e-card)

“State laws make it illegal to knowingly infect others. If you have unprotected sex without telling others, you're putting yourself at legal risk, as well as endangering the health of your partners.”

No 7. Poz.Com (7 lines, multiple links, e-card)

“Bear in mind that sometimes you are legally required to disclose to a sexual partner. Many states have laws that make it illegal to transmit HIV or to have unprotected sex without telling your partner your status. Don’t panic: Prosecutions are relatively rare because prosecutors usually have to prove that the person with HIV intended to infect his or her partner, which isn’t easy. To find out if your state has a criminalization law on the books, visit www.lambdalegal.org.”

No 8. Ehow.com (32 lines, e-card: 10 lines of text excerpted below)

“There are some circumstances in which it is legal for others to disclose [your HIV status], but this is only in very specific circumstances. 1. Willful Exposure: Willful exposure happens when someone knows she has HIV and does not disclose to sex partners and is not mindful of the possible transmission. Several states have passed laws to treat willful exposure as a criminal offense. 2. Criminalization: Many states have laws in place to criminalize willful exposure, and in the history of the disease, at least 300 people have been criminally prosecuted for knowingly infecting others. Depending on the state, the crime can be as severe as manslaughter or attempted manslaughter charge.”

No 9. Doh.state.fl.org (13 lines, e-card)

“Discussing and disclosing HIV status is a two-way street. Be it right or wrong, most people feel that when a person knows that he/she is HIV+ then he/she has an obligation to tell the other person, and counselors are encouraged to help people with this process. Also, laws in some areas require disclosure of HIV+ status prior to sex. However, both partners should be responsible for knowing their own status, disclosing their own status when it seems important, and asking their partner about their status if they want to know. There is debate around whether partners have a right to know if their partner is HIV+, in order to be able to make a fully informed decision about what sexual behavior to engage in. Some HIV+ persons believe that if they only have protected sex, there is no need for disclosure, especially with casual partners, and that encouraging disclosure only serves to further stigmatize HIV+ persons. These issues can be complicated by complex gender role norms and local laws—23 [sic] states have laws that make it a crime for a person to engage in certain risk behaviors without disclosing their HIV status.”

No 10. Wdxcyber.com (2 lines)

“It is important to note that you are obliged to tell your partner about your status before any sexual activity occurs. In some US states, this is the law.”

A photograph of an African American man accompanied the text - the first such image to appear on any of the top U.S. sites in relation to HIV disclosure.

The middle ground for advice was occupied by websites such as the Florida Department of Health’s Dohfla.org, the HIV advocacy website Poz.com, and eHow.com, a general advice website. These sites offered formal advice on HIV disclosure and the law as well as a link to inSpot.org for partner notification. InSpot is a sexual health site that allows people with STIs to notify partners by sending an anonymous e-card to the recipient’s address. The site has a variety of messages to suit the sender’s style, gender, or type of sexual encounter. Two of
these messages read: “I got diagnosed with an STD and you might have been exposed. Get checked out” and more explicitly, “I got screwed while screwing, you might have too.” The e-card option guaranteed anonymity for the sender but lacked hardcopies that could be printed out for proof of disclosure.

With ten lines of primary text, eHow.com was the most informative of the intermediate sites in defining willful exposure as a crime, discussing state laws, and providing a link to inSpot. Two intermediate sites (Aidsmeds.com and Mdjunction.com) offered identical advice, which consisted of advising users to contact their respective health departments. With ten lines of advice, Thewellproject.com advised readers that disclosure of a positive HIV diagnosis to sexual partners was a legal requirement, and that non-disclosure was a felony crime in many states. Despite being a California-based health resource for women, the site did not have advice on legal issues facing California women, such as mandatory HIV testing of sex workers, laws that target female sex workers for criminal non-disclosure, and prosecutions that frame HIV-infected women as prostitutes.

The least helpful sites also provided few lines of text. For example, with only two lines on HIV disclosure and the law apiece, the women’s resource site Wdxcyber.com, the HIV advocacy site Friendsofaids.org, and the general medical website Webmd.com were the least explanatory of all websites in the sample. These forums issued a formal warning about the risks of prosecution without useful tips on how to disclose in order to avoid legal trouble. Elaboration would have helped Internet users to understand the legal complexities of non-disclosure, especially on questions such as: Is “knowingly” the same as “intentionally?” Does kissing or oral sex count as sex for legal purposes? How do I avoid being rejected, injured, or “outed” if I disclose?

It is worth reiterating that the highly ranked US websites were not always the best sources for information on disclosure and the law. Some lower-ranked sites were more informative but were too far down the list to be read by most Internet users. Some overseas sites were excellent purveyors of advice even if their legal sections were too parochial for U.S. use. For example, the Canadian website Positiveside.ca advised users about obtaining proof of disclosure by inviting a friend, medical provider, or counselor to be present during the act of disclosure (e.g., by taking the disclosee to a doctor’s appointment) or by keeping written evidence of disclosure from the Internet or in a personal diary in order to prevent any he said/he said scenarios in court. The text was accompanied by an image of a naked man in handcuffs and a warning that: “Even if you told a person before sex that you are HIV positive, the person might lie and say that you did not. Judges and juries have decided many of the legal cases about HIV, sex and disclosure based on credibility – whom they believed or didn’t believe. In a court case, it is important to have evidence to show that you disclosed and that the other person knew your HIV status.”

Whose responsibility?

Advice on U.S. websites was often brief and legalistic (e.g., “State laws make it illegal to knowingly infect others”) with an explicit emphasis on individual responsibility. Some advocacy sites had conflicting advice on whether or not to follow U.S. law for disclosing a positive HIV diagnosis to sexual partners. For example, ambivalence toward the law was evident in this text from Aidsmeds.com: “For those who are single and are HIV positive, if
and when to disclose can be addressed in different ways. Some people prefer to get the issue out into the open immediately. Others prefer to wait and see if the relationship is going to develop beyond a first date or casual dating. Still others feel that as long they're having safer sex, the risk is minimal to the other person, so why even bring the subject up?” The site offered a stepwise process to calculate the risk of rejection but fell short on offering helpful tips about how to disclose, obtain proof of disclosure, and avoid “he said/she said” scenarios that could end in litigation.

Conflicting advice sometimes appeared on web pages and links that were authored by different people over a period of years. Taking Thebody.com as an example, a 2002 item titled “Should you disclose your HIV status to a potential sexual partner?” offered timely warnings about criminalization while also stating: “Disclosure is not easy for everyone, and in certain situations is not an option (such as where disclosing could cause physical injury to yourself).” By 2011, sites such as Poz.com and Thebody.com had abandoned this position, adopted a defensive tone over the proliferation of HIV-specific laws, and urged members to watch out for potential legal problems. This stance appeared in statements such as: “I guess we should all start making any sexual partners [use a condom] or sign a consent form saying they understand the risks” (Poz.com), and: “Most of us are caring, law-abiding human beings who want to be good citizens. So we're stuck in that rock and hard place where we have to figure out, ‘How do I prove I didn't break that law?’ ... It really is bizarre what we have to go through to protect ourselves” (Thebody.com). The legal mandate of individual responsibility was certainly irksome to some people who had shouldered the burden of disclosure from the outset. An advocate protested: “Given this new reality [the effectiveness of ARV drugs in reducing HIV transmission], I am reconsidering my options. [F]or once it would be nice if my prospective partners took responsibility for their own health and asked me if I had HIV so that I wouldn’t have to carry the burden of telling them first” (Vanessa Johnson, Thebody.com). This defiance was tempered by surrender to U.S. law and regret that the mutual responsibility model had never appeared to be a viable option.

Websites that advocated mutual responsibility were fewer in number. The U.K site International Planned Parenthood Fund (IPPF.org) was a notable exception. In the 2010 report Happy, Healthy and Hot, the IPPF [43] took a bold stand by stating: “Young people living with HIV have the right to decide if, when, and how to disclose their HIV status” (p. 3), and further, “Some countries have laws that violate the right of young people living with HIV to decide whether to disclose or face the possibility of criminal charges” (p. 6). These statements provoked outrage from conservative websites such as Concerned Women for America (CWFA.org) and Red State (Redstate.com), which complained of radical extremism and hippy sensibilities from the 1970s. On Poz.com, the opening salvo of a U.S-European forum also hinted at opposition to the individual responsibility model for disclosure. Here, the convener challenged the panel by asking: “Who’s responsible for new infections? Criminalization says it’s the [Person with AIDS]. Prevention says both partners. Right now, criminalization is winning.” The cultural divide between Europeans and the U.S. was revealed in vigorous discussions about the rights and wrongs of criminalization for non-disclosure, especially in prosecuting Black men “for having sex with White women... . The case of Nushawn Williams is like a dark cloud hanging over this whole discussion.” This flashpoint was evident in statements about criminalization being punitive and “useless” for HIV prevention (Europe) compared to being “inevitable” or “just retribution” for a
wronged partner (U.S.). Even among advocates on the panel, the shared responsibility model was being debated in relation to disclosure and U.S. law.

**Discussion**

The results of this study indicate that highly ranked websites (i.e., medical or HIV sites that attract large audiences) are more likely to be consulted than sites that appear lower in the ranking hierarchy. This finding has implications for the accessibility of Internet advice on HIV disclosure and the law. First, information on the legal aspects of disclosure was missing from one third of the top ranked websites, suggesting that Internet users might be poorly served when they seek critical advice on disclosure in an era of HIV criminalization. Second, the quality of advice from these websites did not match their priority rankings. For example, the well-known U.S. POZ.com (an advocacy website), which offered advice from a friendly, consumer-oriented perspective, earned a lower Google ranking than suggested by the popularity of POZ magazine, a waiting room staple in HIV clinics in the United States.

The discrepancy between quality of information and ranking score highlights a growing problem for Internet searches in the age of personalization. Unless users enter a web address themselves, then they are beholden to search engines that prioritize sites according to popularity (the highest number of hits) and commercial value (advertising links), and also to websites that use metatags to increase their visibility [42]. Google’s ranking algorithm tailors Internet results according to a user’s search history so that retrievals can vary greatly from one person or computer to another. Another complicating factor is that Internet searches produce an abundance of media stories, scientific articles, legal caches, blogs, and sundry posts on HIV disclosure and the law; in other words, a surfeit of information that has to be sifted through in order to reach the desired destination. This abundance is not only eye opening but also instructive about the risks of prosecution for HIV-related offenses. For example, the present author’s searches for websites on HIV disclosure produced media headlines such as “Man charged with failing to disclose HIV status to partner,” “Man charged with murder for spreading HIV,” and “Iowa man sentenced to 25 years in prison for failure to disclose.” These results were as ubiquitous as they were alarming and served as a clarion call to Internet users about the risks of non-disclosure.

The lack of information on HIV disclosure and the law on many U.S. websites can be compared to the comprehensive information on sites in the U.K., Australia, and Canada. The brevity of U.S. advice on the legal aspects of HIV disclosure was also at odds with the amount of advice on other HIV-related topics on the U.S. sites, including when and how to disclose to family members. One explanation for the deficit of legal information relates to the practical difficulties of addressing the legal background of 50 states that have diverse criminal codes and statutes for non-disclosure as a crime. Although the problem could easily be remedied by providing a link to each state’s HIV laws, most U.S. sites avoided the issue by referring users to state health departments or by making brief statements about non-disclosure as a crime. Websites from countries with a single legal system (e.g., England, Canada, Australia) did not encounter this problem. Users in these countries generally have greater access to official information and expertise provided specifically for HIV-related websites. However, the issue of quality is a vexed one for the Internet regardless of mitigating factors
such as a country’s system of laws or integrated advice. Purcell, Wilson, and Delamothe [44] noted that many popular websites fail to satisfy the informational needs of users who seek advice for health problems, a troubling finding when health consumers are expected to be both proactive and self-empowered in the Internet age [45].

Internet users are often portrayed as self-empowered seekers of information. However, the ideal of self-empowerment can be difficult to achieve when it comes to eliciting information about a partner’s STI history [46]. Although the proactive approach to information seeking was the basis for the mutual responsibility model for HIV prevention in the 1980s, the present study found that present models of information-sharing were unidirectional – from HIV-infected people to their sexual partners – as required by U.S. law. One caveat to this finding was that advocacy-minded U.S. websites tended to advise HIV-infected people to obtain proof of disclosure to guard against prosecution in contested cases. The fact that most websites in the present study fully endorsed the individual responsibility model for HIV-infected users suggests a natural evolution of events in terms of public sentiment and the law - a trend recently bolstered by CDC policies to ensure that HIV-infected people disclose to sexual partners [47]. Despite this evolution, the ambivalence of some websites suggests that advocates have not endorsed fully the flight from mutual responsibility or accepted the legal premise that non-disclosure is responsible for spreading HIV.

The present study found one-size-fits-all advice on many U.S. sites. This uniformity neglected the special risks of prosecution for African Americans who are HIV-infected in disproportionate numbers compared to other citizens. Research by Stein et al. [48] found that Black men were over three times less likely to disclose to sexual partners than Whites and Hispanics and were twice as reluctant as Black women to do so. In the United Kingdom, Elford et al. [49] reported that Africans were significantly less likely than gay men to disclose to sexual partners about being HIV-infected. The Serovich et al. [40] study of HIV disclosure patterns found that non-disclosure rates were high (<50%) regardless of racial differences, and that the act of disclosure is difficult and socially fraught for many people. African American men’s avoidance of disclosure may account, in part, for racial disparities in criminal prosecutions for HIV-related crimes although the reverse might also be true: Black men, who are historically portrayed in terms of a “monstrous masculinity” [3] might be reluctant to disclose if they fear being targeted for prosecution by health officials and the police. Such men need tailored advice on how to disclose, why they should disclose, and how to obtain proof of disclosure in order to avoid prosecution. It is possible that such advice is being delivered at time of diagnosis or in informal or community forums. However, the men’s reluctance to disclose as identified by Stein et al [48] and even greater reluctance to be tested for HIV as evident from “take the test, risk arrest” warnings that circulate among African American men [50], suggest that the anonymity of the Internet could be useful for reaching this audience, and for providing life-saving information that is also an “insurance policy” against prosecution.

Finally, there is the question of where HIV-infected people are likely to seek advice for disclosure. As noted, HIV-infected people are usually counseled in a health setting at the time of their initial diagnosis. This counseling might be followed up by additional advice on HIV disclosure at the same site at a later date. However, it is difficult to remember advice being delivered in highly emotionally charged situations, and a significant proportion of HIV-
infected people are lost to follow-up care after being diagnosed [51]. It is here that the
Internet can fill an important role in providing supplementary information on HIV disclosure
and the law, and it is imperative that excellent, post-diagnosis advice is available for people
who seek anonymity while coming to terms with a life-changing condition. The advice
should, at a minimum, provide a confidential helpline for Internet users who fear being
prosecuted for non-disclosure, links to information on relevant laws of their state, and also
offer e-referrals to legal professionals or local AIDS service agency employees who could
then explain these laws in detail.

The findings of this study should be interpreted with caution. It is possible that the
Internet searches yielded data that would be different if performed at a different time and
place. The search engine’s personalized algorithm guarantees that Internet results always will
be somewhat idiosyncratic, although the results presented here were generated from four
different computers in an effort to avoid this problem. Second, the searches generated
hundreds of pages of results that had to be culled carefully, sorted, labeled, and then cross-
identified. It is unlikely that a typical individual would take the same trouble to identify
relevant advice on HIV disclosure and the law. Third, there is the danger of subjective
judgments about the quality of advice, especially in a sole-rater content analysis. In order to
avoid this problem, the present author compared the data in each category in a reiterative,
line-by-line basis until satisfied that the scores were distributed fairly. However, it should be
acknowledged that the sole-rater content analysis is a limitation of the study, and that an inter-
rater system would have enhanced the reliability of the results.

The social science implications of the present study are threefold. First, racial differences
and race-based stereotyping, especially as they pertain to stigma and HIV serostatus
disclosure, present a challenge for public health goals to expand HIV testing [52]. The results
presented here suggest that African American men, who are often targeted for prosecution,
have little access to culturally-relevant information on the why, where, when, and how of
disclosure, or to dedicated websites that promote their legal rights while also advocating HIV
testing to protect their own and their partners’ health. This deficit should be addressed as a
matter of urgency. Second, the lack of culturally relevant information, together with media
hyperbole about cases involving African American men, are likely to stymie national goals
for expanded HIV testing. If Internet users are exposed to sensational media reports, and if
website information is lacking or consists mainly of terse “it’s the law” declarations, then
users are likely to become more fearful than informed about the topic. U.S. websites should
address disclosure and the law in friendly, personalized terms in order to empower people to
disclose to sexual partners while ensuring their own safety in potentially awkward, perhaps
dangerous situations. Following the Canadian, U.K., and Australian models, this information
could come from a central clearing house that provides accurate, consistent, and well written
material as a public service. Third, the present study highlighted how HIV stigma drove U.S.
legal policy, more recently in relation to minority ethnic status. Since multiple stigmas affect
the most vulnerable populations, and HIV criminalization has gathered pace in recent years,
community websites could make a better effort at offering tailored advice for at-risk
populations, and could also engage in legal advocacy to help reduce the stigma of being HIV-
infected as presently conceived in U.S. law.
References


Internet advice on disclosure of HIV status to sexual partners ...


