

HIV-Positive Persons' Awareness and Understanding of Their State's Criminal HIV Disclosure Law

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Abstract Commentary on the potential impact of HIV-specific disclosure laws on persons living with HIV has been critical, plentiful, and enduring. Yet empirical information with which to answer even the most basic questions about these laws, such as whether HIV-positive persons living in a state with a disclosure law are aware of the law, is absent. This study reports on data gathered from a statewide sample of 384 HIV-positive persons living in a state with an HIV disclosure law. Participant awareness and understanding of the law were assessed. Data on the sources from which participants received information on the law and the perceived helpfulness of these sources were also collected. Analyses were conducted to identify associations between participant awareness or understanding of the law and demographic characteristics of participants or information sources encountered. The majority of participants were aware that their state had enacted an HIV-specific disclosure law. Understanding of the law was good, although there was substantial confusion over several provisions. The most prevalent and most helpful sources of information on the law were AIDS-related resources as opposed to mass media. Forty-two percent of the participants learned about the law when first diagnosed with HIV. Sixty-two percent of the participants reported that their case manager had told them about the law.

Keywords Structural HIV prevention interventions · HIV disclosure · Criminal law · Public health

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Introduction

The 1990 Ryan White Act strongly encouraged US states to be prepared to use criminal laws to prosecute HIV-positive persons who knowingly exposed others to the virus through sexual activity. The Act did so by making receipt of certain funds contingent on states certifying that they had a legal mechanism with which to address criminal exposure to HIV (42 U.S.C. 300ff-47 (2000)). In response, just over half of the US states certified that their existing state criminal laws were adequate. The rest cited HIV-specific criminal laws (Wolf and Vezina 2004).

Today, 24 US states have HIV-specific laws that make it a crime for an HIV-positive person to engage in sexual activity with a partner who has not been informed of the other's HIV-positive status.¹ All but one of these laws makes the crime a felony (Md. Health-General Code Ann. § 18-601.1). Four of these laws require that the HIV-positive person intended to infect the partner (Cal Health and Saf Code § 120291; K.S.A. § 21-3435; 21 Okl. St. § 1192.1; Wash. Rev. Code Ann. § 9A.36.011). Penalties range from less than 12 months in jail or a fine of \$2500, or both, for non-disclosed exposure without malice (Va. Code Ann. § 18.2-11, 2005), to up to 30 years in prison for the same crime (Ark. Code Ann. § 5-4-401).

¹ Ark. Code Ann. § 5-14-123; Cal. Health & Saf. Code § 120291; Fla. Stat. § 384.24; Ga. Code Ann. § 16-5-60; Idaho Code § 39-608; 720 ILCS 5/12-16.2; Ind. Code Ann. § 16-41-7-1; Iowa Code § 709C.1; Kan. Stat. Ann. § 21-3435; La. Rev. Stat. § 14:43.5; Md. Code Ann. § 18-601.1; Mich. Comp. Law Serv. § 333.5210; Miss. Code Ann. § 97-27-14; Mo. Rev. Stat. § 191.677; Nev. Rev. Stat. § 201.205; N.J. Stat. § 2C:34-5; N.D. Cent. Code, § 12.1-20-17; Ohio Rev. Code Ann. § 2903.11; 21 Okla. Stat. § 1192.1; S.C. Code Ann. § 44-29-145; S.D. Codified Laws § 22-18-31; Tenn. Code Ann. § 39-13-109; Va. Code Ann. § 18.2-67.4:1; Wash. Rev. Code Ann. § 9A.36.011.

Commentary on the potential impact of HIV-specific disclosure laws has been plentiful (see e.g. Bennett et al. 2000; Closten et al. 1994; Gostin 2001; Gostin 2004; Lazzarini et al. 2002) and often critical (see e.g. Galletly and Pinkerton 2006; Hermes 2002; Wolf and Vezina 2004). Academic and legislative interest in these laws has also been enduring. New articles on the laws are published annually (see e.g. Burris et al. 2007; Galletly and Pinkerton 2006; Wolf and Vezina 2004), while lawmakers regularly introduce bills to amend existing disclosure laws or to enact similar or related statutes in states that do not already have them (see e.g. 2003 NE L.B. 872; 2004 AL H.B. 146; 2005 NH L.S.R. 123; 2006 MD H.B. 1529; 2007 NY A.B. 2707; 2008 SD S.B. 65).

Yet, empirical research on these laws is scarce. To our knowledge, there have been only two empirical studies addressing HIV disclosure laws. One study reviewed HIV-specific criminal laws and tracked prosecutions for undisclosed exposure to HIV (Lazzarini et al. 2002). The second study compared the safer sex and serostatus disclosure behaviors of persons with or at risk of HIV infection who lived in two separate states, one with a HIV-specific disclosure law (Illinois) and one without (New York) (Burris et al. 2007). The authors concluded that the presence of an HIV-specific exposure law had minimal effect on safer sex or disclosure behavior.

In the present study, a statewide sample of persons living with HIV (PLWH) in a state that enacted an HIV-specific disclosure law were asked whether they were aware that their state had such a law. Participants who were aware of the law were queried further to establish their understanding of the law and to identify the sources from which they received information about the law. Participants rated the perceived helpfulness of these information sources. Participants also were asked to identify where they first heard about the state's criminal HIV disclosure law.

Methods

Participants

Participants were 384 HIV-positive men and women living in a state that, in 1989, enacted a law requiring HIV-positive persons to disclose their serostatus to prospective sex partners. An additional 12 persons completed surveys but did not meet study inclusion criteria because they were not HIV-positive or did not know their HIV status, did not report that they were state residents, or were under 18 years old.

Of the 384 eligible participants, just over half were African American (54.3%) and just over one-third (35.3%)

were female (see Table 1). 201 participants (54.3%) were men who have had sex with men (MSM). Participants' ages ranged from 19 to 70 years of age. The mean age was 43 ($SD = 10.28$). Most participants (84.3%) had received a high school degree or its equivalent. Over half (63.9%) of the participants reported that their monthly income was less than \$1000. Date of HIV diagnosis ranged from June 1981

Table 1 Participant demographics and awareness of the state law

Characteristic	<i>N</i> (%) ^a	Aware of state HIV disclosure law
Gender		
Female	133 (35.3)	99 (74.4)
Male	241 (63.9)	184 (76.3)
Transgender	3 (0.8)	3 (100)
Age		
Under 30	61 (15.9)	42 (68.9)
30–39	72 (18.8)	52 (72.2)
40–49	159 (41.4)	127 (79.9)
50 and over	92 (24.0)	71 (77.2)
Race		
Black	202 (54.3)	158 (78.2)
Hispanic	15 (4.0)	10 (66.7)
White	120 (32.3)	88 (73.3)
Other	35 (9.4)	26 (74.3)
Sexual orientation		
MSW	38 (10.3)	26 (68.4)
WSM	111 (30.0)	83 (74.8)
MSM or MSM&W	201 (54.3)	156 (77.6)
WSW or WSW&M	20 (5.4)	16 (80.0)
Income^b		
<\$1000 per month	243 (63.9)	175 (72.0)
>\$1000 per month	137 (36.1)	113 (82.5)
Education		
Did not complete high school	60 (15.7)	44 (73.3)
High school graduate	104 (27.2)	75 (72.1)
Some college	139 (36.4)	110 (79.1)
College graduate	79 (20.7)	61 (77.2)
Date of HIV ± diagnosis		
Pre 2000	226 (60.8)	174 (77.0)
2000 and beyond	146 (36.1)	108 (74.0)
Months lived in state^c		
<10 years	84 (21.9)	56 (66.7)
10–19 years, 11 months	30 (7.8)	21 (70.0)
20–29 years, 11 months	63 (16.4)	45 (71.4)
30-plus years	207 (53.9)	170 (82.1)

^a Number of participants varies due to missing data

^b $P = .05$

^c $P = .01$

to June 2006. The median diagnosis date was January 1997.

Procedures

Data were collected between May 2005 and December 2007. Participants were recruited through AIDS Service Organizations (ASO's) located in 7 of 8 state HIV/AIDS service provision sectors. (One sector was omitted due to the comparatively small number of PLWH in this region). The number of data collection sessions conducted in each sector was based on the proportion of persons living with HIV in that sector when compared to state HIV prevalence as a whole. The data collection sessions were conducted for the purpose of this study alone. Representatives of the ASO's worked in conjunction with the Project Coordinator to design and implement a participant recruitment plan. Recruitment strategies included posting and/or distributing project flyers at places where HIV-positive persons might frequent such as area clinics, clubs, and festivals, etc., posting advertisements on HIV-related statewide list serv's, announcing the opportunity at HIV-related functions such as HIV support groups and statewide planning committee meetings, and encouraging persons who work with PLWH such as case managers to mention the opportunity to their clients. Additional data collection sessions were conducted at the annual statewide retreat for PLWH in Spring, 2006 and Spring, 2007. Each year the state department of health funds a limited number of PLWH to attend the retreat and priority is given to individuals who have not previously attended. Posters, flyers, and announcements at group meals were used to recruit participants at the retreat.

Participants completed an anonymous, self-report questionnaire that assessed, among other topics, participant awareness and understanding of the state's HIV disclosure law, sources from which participants received information about the law (if any), and their satisfaction with these sources. Participants completed the pen-and-paper questionnaire during one of ten data collection sessions conducted throughout the state or at data collection sessions conducted at a state health department retreat for persons living with HIV. The questionnaire took 30–40 min to complete. Each data collection session concluded with a 20–30 min presentation by study staff and/or a project attorney on the state's HIV disclosure law. Participants also received a brochure describing both the state's disclosure statute and state laws protecting the confidentiality of HIV-related information. Participants were given a \$40 gift card to compensate them for their time, transportation expenses, and effort. The study protocol and materials were approved by the Medical College of Wisconsin Institutional Review Board.

Measures

Demographics

Respondents were asked to indicate their age, racial/ethnic background, gender, month and year of HIV-positive diagnosis, gender of sexual partners, relationship status, highest education level attained, income, length of residence in state (if a state resident), zip code, and whether they lived in a rural, suburban or urban setting.

Awareness and Understanding of the Law

Awareness of the state's HIV disclosure law was indicated by an affirmative response to the question: "To the best of your knowledge, does [the state] have a law that requires HIV-positive persons to tell their sex partners that they have HIV?"

Participant understanding of the law was assessed with a 26-item scale asking participants to identify if the circumstances described in each item would require an HIV-positive person to disclose his or her serostatus to avoid breaking the law. Scale items followed two question stems: "which of the following sexual activities ...[legally] require[s] disclosure?" and "Do you think an HIV-positive person is *required, by law*, to tell their sex partner that they have HIV if..." Participants were asked, for example, if seropositive status disclosure is required prior to engaging in condom-protected sex or if an HIV-positive person must disclose to a partner who does not inquire about HIV-serostatus. (In this state, the correct answer was "yes" for both questions.) Correct answers were assigned 1 point and incorrect answers were assigned 0 points. The reliability of the understanding scale was strong (Cronbach's alpha = 0.88).

Helpfulness of Sources of Information on the Law

The study questionnaire listed the following possible sources of information on the law: television, radio, newspapers and magazines, the Internet or world-wide web, HIV/AIDS related reading materials, medical personnel, HIV support groups, AIDS service organizations (ASOs), state or local health departments, and family, friends or acquaintances. Participants who were diagnosed with HIV infection after the spring 1989 enactment of the state HIV disclosure law were also asked if they were told about the law when they received their first HIV-positive test result. Participants who reported that they had a case manager were asked if their case manager told them about the law.

Participants who were aware of the law were asked to indicate all of the sources from which they had received

Table 2 Sources of information about the state's HIV disclosure law

Source	Received information from this source (%) ^a	Mean helpfulness rating ^b
HIV-specific sources		
HIV support groups	79.8	2.81
AIDS service organizations	79.5	2.73
HIV/AIDS-related reading materials	76.0	2.63
Medical/public health professionals		
Medical personnel	72.9	2.61
State or local health department	70.5	2.47
Family, friends, and acquaintances	58.2	2.37
General media		
Newspapers or magazines	53.4	2.28
Television	47.6	2.23
Internet/world-wide web	45.5	2.47
Radio	41.2	2.01

^a Percent of participants who heard about state's HIV disclosure law from each source (participants may have reported multiple information sources)

^b Helpfulness was rated on a 3-point Likert scale (3 = "very helpful", 2 = "somewhat helpful", 1 = "not helpful")

information on the law and to rate the helpfulness of each source on a 3-point Likert scale (3 = "very helpful"; 2 = "somewhat helpful"; 1 = "not helpful") (see Table 2). Participants could enter additional sources and helpfulness ratings on an item listed as "other sources." Participants who were aware of their state's HIV disclosure law were also asked to identify, in a "fill-in" item, where they *first* heard about the law.

Results

Awareness and Understanding of the State's HIV Disclosure Law

The majority of participants (76% of the sample or 292 people) were aware that their state had an HIV disclosure law (see Table 1). An additional 74 participants (19.3%) reported that they were unsure whether such a law existed in their state. Only 18 participants (4.7%) responded that they believed their state did not have an HIV disclosure law. Awareness of the law was associated with months lived in the state (Mann–Whitney $U = 58.26$; $P = .01$) and income ($\chi^2 = 4.00$; $P = .046$). Associations between awareness of the law and other demographic variables were not significant.

Participant understanding of the disclosure law was generally good. The median understanding score was 23 out of a possible 26 points. The minimum score was 6 (2 participants), and the maximum score was 26 (5 participants) (see Table 3). Understanding was not significantly associated with any demographic variables, possibly due to ceiling effects (discussed below).

The understanding scale item most often answered incorrectly asked participants to recognize the maximum

penalty for violating the law, either "less than five years in prison" or "five or more years in prison." Well over half of the participants (70.2%) incorrectly identified "less than five years" as the maximum penalty. The next two most difficult items asked whether the law requires HIV-positive persons to disclose their positive serostatus prior to mutual masturbation (the correct answer is "yes") and whether the law requires HIV-positive persons to disclose prior to inserting a sex toy or other object in a partner's anus or vagina (again the correct answer is "yes"). Nearly half (45.5%) of the participants answered the mutual masturbation item incorrectly. Slightly fewer participants (42.8%) answered the second item incorrectly.

Sources of Information on the Law

Nearly all aware participants (94%) reported that they had heard about the law from more than 1 source. The median number of information sources was 8. Understanding of the law was not significantly correlated with the number of sources ($r = -.105$; $P = .074$). The most frequently cited sources of information on the law were associated with HIV-specific resources: support groups for PLWH, AIDS service organizations (ASOs), and HIV/AIDS reading material. General media sources such as the radio, the Internet, television, and newspapers/magazines were the least frequently cited (see Table 2).

Of the 224 participants who were aware of the law and who were diagnosed with HIV infection after the law was enacted in April 1989, 42% reported that they were told about the law when first diagnosed. Persons who were diagnosed after the law was enacted but before the year 2000 were much less likely to have been told about the law when first diagnosed than those diagnosed in 2000 or later (25.0% vs. 60.2%, respectively; $\chi^2 = 28.430$; $P = .000$).

Table 3 Measures of participant understanding of the state law

	# (%) correct ^a
Is disclosure required by law when the HIV+ person...?	
...is married to partner	270 (92.5%)
...is not married to partner	256 (87.7%)
...is on antiretroviral therapy	231 (79.1%)
...is not on antiretroviral therapy	229 (78.4%)
...does not know partner's HIV status	256 (87.7%)
...is diagnosed less than 90 days before event	256 (87.7%)
...is diagnosed more than 90 days before event	270 (92.5%)
...has AIDS	261 (89.4%)
Is the HIV+ person required to disclose if the sex partner...?	
...also has HIV	237 (81.2%)
...does not have HIV	251 (86.0%)
...asks the HIV+ person about his/her status	268 (91.8%)
...also has HIV	237 (81.2%)
Is the HIV+ person required to disclose if both partners...?	
...are men	252 (86.3%)
...use condoms	241 (82.5%)
Which behaviors require prior serostatus disclosure?	
Unprotected anal or vaginal intercourse	273 (93.5%)
Condom-protected anal or vaginal intercourse	247 (84.6%)
The HIV+ person gives oral sex	219 (75.0%)
The HIV+ person receives oral sex	249 (85.3%)
The HIV+ person inserts finger(s) inside sex partner's vagina or anus	192 (65.8%)
The HIV+ person inserts object inside sex partner's vagina or anus	167 (57.2%)
Deep kissing or French kissing	159 (54.5%)
When does the law apply?	
The HIV+ person forces another to have sex	253 (86.6%)
The HIV+ person lies about sero-positive status to have sex	270 (92.5%)
The HIV+ person does not disclose and the sex partner becomes infected	269 (92.1%)
The HIV+ person tries to infect partner	266 (91.1%)
The sex partner is less than 18 years old	255 (87.3%)

^a With the exception of the item asking if disclosure is required prior to French or deep kissing, the correct answer to all of the items is 'yes'

Persons living in rural settings were less likely to have been told about the law when first diagnosed than persons living in urban or suburban settings ($\chi^2 = 6.277$; $P = .043$).

More than half (62%) of the 272 aware respondents who reported having a case manager indicated that their case manager had discussed the law with them. Similar to those who reported being told about the law when first receiving their HIV-positive test result, persons who were diagnosed after the law was enacted but before the year 2000 were much less likely to have been told about the law by a case manager than those diagnosed in 2000 or later (57% vs. 74%, respectively; $\chi^2 = 6.06$; $P = .014$).

Helpfulness of Information Sources

The information sources rated as most helpful were HIV support groups, ASOs, and case managers. As shown in Table 2, mean helpfulness ratings were positively

correlated with how frequently an information source was accessed (i.e., the most frequently accessed sources were also the most helpful), with the exception of the Internet, which was rated as more helpful than some more frequently accessed information sources. The sources of information rated as least helpful were newspapers and magazines, television, and radio. Participants were generally satisfied with the information they received: no source received a mean rating below 2.0 ("somewhat helpful").

Where First Informed

Ninety-one percent of the 292 participants who were aware of the law responded to a "fill in" survey item asking them to indicate where they first heard about the law. The three most often cited introductory sources were ASOs (15.1% of participants), medical personnel (9.8%), and HIV support groups (9.4%). Other reported introductory sources

included “HIV 101” classes or facilitator training (5.7%), jail, prison, or police (2.6%), and addiction treatment centers (1.1%).

Discussion

The present study demonstrated that among HIV-positive persons living in a state with an HIV disclosure law, awareness of the law was quite common and understanding of the law was quite good. The majority of participants were aware of the law, and over half of the “law-aware” participants were able to recognize some of the most illogical provisions of the law, such as that positive serostatus disclosure is required prior to an HIV-positive person masturbating a partner. Furthermore, awareness and understanding of the law appeared to cut across racial, gender, educational, and geographic lines. Although persons with monthly incomes over \$1000 and those who had resided in the state for a longer period of time were more likely than others to be aware of the law, there were no significant differences in awareness or understanding by other demographic characteristics.

That disclosure law awareness rates were quite high with this sample is not surprising when considered in light of how many separate sources of information on the law individual participants encountered. The median number of information sources encountered was 8.

The information sources rated as most helpful, such as HIV support groups and ASOs, were associated with HIV-specific services or resources. In contrast, sources rated as the least helpful, including radio and TV, addressed a much wider audience. Participants’ helpfulness ratings may reflect their confidence in the accuracy of information

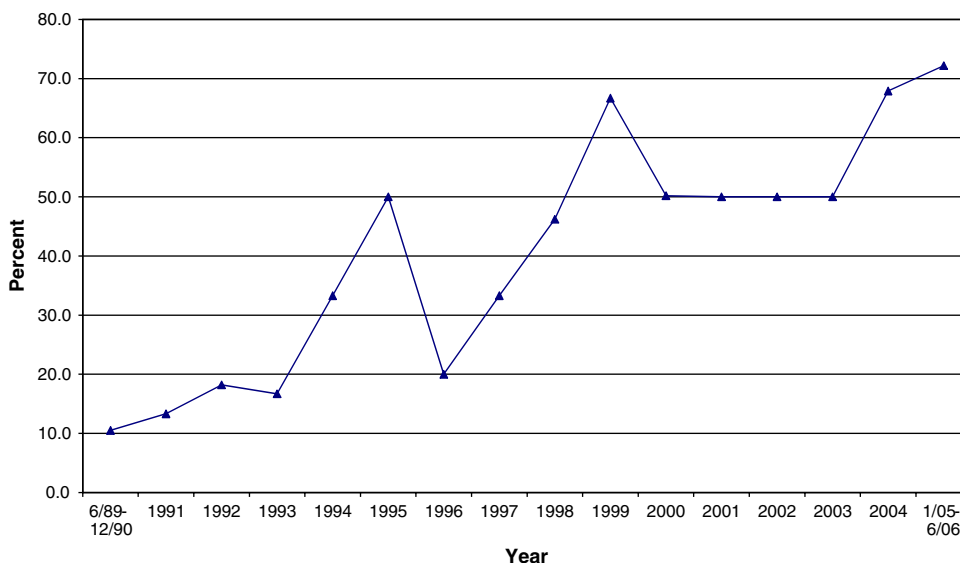
provided through HIV-specific resources. Persons with HIV may also appreciate receiving information about the law from individuals perceived as allies or at least not antagonists.

As domestic funding for HIV prevention and services declines, sources of accurate information on the laws presented by persons who are sympathetic to the experience of PLWH, such as case managers and support groups, may become more scarce. Indeed, in this study younger persons and persons first diagnosed after 2000 (as opposed to before 2000) were significantly less likely to have received information on the law from an HIV support group. This may reflect a decrease in the number of support groups available. HIV service personnel in the state suggest this is the case.

The percentage of persons who reported hearing about the law when they first tested HIV-positive has increased steadily in the 20 years since the law was enacted (see Fig. 1). As routine testing is expanded per Centers for Disease Control recommendations (Centers for Disease Control & Prevention 2006), training for general practitioners on whether and how to discuss the law with newly-diagnosed patients may need to be developed. The results of this study suggest that a training mechanism to prepare rural health professionals to inform newly-diagnosed individuals about the law is already needed.

Many scholars have noted the potential for HIV disclosure laws to create or exacerbate HIV-related stigma (see e.g. Galletly and Pinkerton 2006; Lazzarini et al. 2002; Wolf and Vezina 2004). HIV disclosure laws that potentially punish HIV-positive persons for engaging in consensual sexual activities highlight the distinction between persons with HIV and uninfected persons (whose consensual sexual activities are not subject to criminal

Fig. 1 Percent of participants told about the law at first HIV-positive diagnosis, by date of HIV-positive diagnosis



scrutiny), thereby reinforcing the “us” versus “them” dichotomy that is central to prevailing theories of stigma (e.g., Goffman 1963; Link and Phelan 2001; Scambler and Hopkins 1986; Scambler 2006). The association of HIV infection with criminality also emphasizes that the trait is undesirable and dangerous—i.e., that HIV-positive persons have “spoiled” identities. Moreover, these laws may reinforce the stereotype of the wanton or desperate HIV-positive person who is a threat to society. Further research is needed to determine whether criminal HIV disclosure laws have any unanticipated negative effects on HIV-positive persons.

Study Limitations

The results of this study are limited by several factors. First, the results were based on self-report data which was not (and in many cases could not be) verified externally. The accuracy of self-report data may be compromised by recall biases or participant desire to offer socially desirable responses (Berk et al. 1995; Catania et al. 1990).

A second limitation of the study is that participants formed a convenience rather than a random sample. Although the sample was not significantly different than the population of PLWH in the state in terms of racial composition or age at diagnosis, women were over-represented in the sample. Participant recruitment plans were designed to ensure that the project sample was representative of the wide variety of persons living with HIV in the state on a variety of variables including type of area lived in (i.e. urban, suburban, or rural), income and employment status, and risk group membership. Still there is the possibility that groups of persons along one or more of these or other significant characteristics were under-represented. The generalizability of results is further limited by the nature of criminal HIV disclosure laws, which vary greatly from state to state (Galletly and Pinkerton 2006).

As mentioned above, participant understanding of the state’s disclosure law was generally good. The distribution of understanding scores was positively skewed; the median understanding score was 23 out of a possible 26 points. This high level of understanding may reflect a ceiling effect created by the nature of the law. The HIV-specific disclosure law in this state is so broad that there are few examples of sexual activities not requiring disclosure and the options for items to discriminate between levels of understanding of the law were therefore limited. Because understanding was uniformly high, it was not possible to explore potential correlates of understanding.

Finally, although the survey included items about exposure to various sources of information about the law and the perceived helpfulness of these sources, we did not ask participants from which sources they would have

preferred to receive information. Of note, the most widely utilized information sources were also the most helpful, which suggests that utilization patterns may reflect participants’ preferences, at least in part.

Conclusion

The majority of the HIV-positive participants in this study were aware that their state had enacted a criminal HIV disclosure law and most had received information about the law from multiple sources. For the most part these individuals understood the requirements of the law, despite the fact that some of these requirements were at best tangentially related to HIV transmission risk. These findings suggest that the laws are an inextricable part of the social context of HIV/AIDS in this state.

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