

Hepatitis C and the Criminal Legal System

Discrimination, stigma, incarceration, and lack of treatment.

Elizabeth Paukstis, M.A., J.D.

Public Policy Director

National Viral Hepatitis Roundtable

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Challenges facing people with or at risk for HCV

- Laws that enhance penalties for people with HCV
- Illegality or lack of syringe services programs (SSPs)
 - Injection drug use is primary cause of new HCV infections
 - Drug use or possession can lead to incarceration
- Unavailability of treatment once incarcerated
- Collateral consequences once incarcerated or convicted

Discrimination

Many laws that criminalize HIV status also criminalize HCV status.

- *Example: Indiana code § 35-42-2-1*
- **Battery** is normally a class B **misdemeanor**, but:
- (f) Battery is a **Class 6 felony** if the accused in a rude, angry, or insolent manner places bodily fluid/waste on another person AND knew or recklessly failed to know that his or her bodily waste or fluid was infected with hepatitis
- (h) Battery is a **Class 5 felony** if the accused in a rude, angry, or insolent manner places bodily fluid/waste on another person AND knew or recklessly failed to know that his or her bodily waste or fluid was infected with hepatitis AND places the bodily fluid/waste on a public safety official
- Class 6 felony: **6 months to 2.5 years** (advisory 1 year) and may be fined up to \$10K
- Class 5 felony: **1-6 years** (advisory 3 years) and may be fined up to \$10,000

Stigma

Laws that punish people who inject drugs punish many who have or at risk for HCV.

- Possession of drug paraphernalia (i.e. syringes)
- Possession of heroin
 - Penalty increases depending on amount
 - Penalty increases if government can prove intent to sell

Incarceration

A disproportionate number of incarcerated people have HCV.

- Approximately 1 in 3 individuals in U.S. jails and prisons has HCV.
- In state prisons, which house about 90 percent of all incarcerated people, an estimated 17 percent of inmates are infected (compared to about 1 percent of the non-incarcerated population).

Sources: Bureau of Justice Statistics, National Prisoner Statistics, 2004-2014. Updated Sept. 2015; Beckman, et al. New Hepatitis C Drugs Are Very Costly And Unavailable To Many State Prisoners. HEALTH AFF 2016;35:893-1901.

Lack of treatment

Very few incarcerated people with HCV receive treatment.

Health Affairs study (October 2016):

- 32 states (65 percent) do not perform routine opt-out testing of inmates
 - Main criteria for testing: abnormal labs, HIV, or reported substance use
- Only 17 states (35 percent) perform routine opt-out testing
- In 41 states reporting data, 106,266 of their inmates were known to have HCV on or about January 1, 2015
- **Less than one percent (0.89 percent) of those known to have HCV were receiving some type of treatment**
- States reporting financial data spent a median \$76,085 on Solvadi and a median \$63,509 on Harvoni

Source: Beckman, et al. New Hepatitis C Drugs Are Very Costly And Unavailable To Many State Prisoners. *HEALTH AFF* 2016;35:893-1901.

MISSISSIPPI: A CASE STUDY

Mississippi by the numbers

- Estimated number of people living with HCV antibodies (2010): 35,200
- Number of deaths related to HCV (2014): 171
- Estimated number of HCV-infected people on Medicaid or in prison (2016): 3,000
- Estimated number of HCV-infected inmates (2013): 406
- Number of syringe service programs (SSPs): 0
- *Note:* Mississippi is one of several states that does not consistently report HCV data to the CDC.

Sources: HepVu (www.hepvu.org). Emory University, Rollins School of Public Health, in partnership with Gilead Sciences, Inc.; Jimmie E. Gates, The Clarion-Ledger, "Mississippi Has 300 Inmates with Hepatitis C," May 26, 2016; The Council of State Governments, 2013 Corrections Comparative Data Report, <https://www.scribd.com/document/274299046/2013-Corrections-Comparative-Data-Report>; amfAR Opioid & Health Indicators Database, Mississippi Opioid Epidemic, www.opioid.amfAR.org.

Syringe exchange

“In the United States, where most new HCV infections are associated with injection drug use, syringe exchange programs have particular promise to interrupt transmission.” – National Academies of Science, Engineering, and Medicine (2017)

But...

- In Mississippi, anyone who uses or possesses a syringe is guilty of a misdemeanor and may be incarcerated for up to 6 months, or fined up to \$500, or both.

Sources: The National Academies of Sciences, Engineering, and Medicine, Committee on a National Strategy for the Elimination of Hepatitis B and C, A National Strategy for the Elimination of Hepatitis B and C: Phase II Report (March 2017), <http://www.nationalacademies.org/hmd/Activities/PublicHealth/NationalStrategyfortheEliminationofHepatitisBandC.aspx>; Miss. Code Ann. § 41-29-139 (2017).

Criminalization of HCV

Once incarcerated, HCV-infected people run the risk of being charged with “endangerment by bodily substance.”

- An HCV-infected person who “attempts to cause or knowingly causes a corrections employee, a visitor to a correctional facility or another prisoner or offender to come into contact with blood, seminal fluid, urine, feces or saliva” is guilty of a **felony**.
- Mandatory minimum: 3 years in prison
- Can be imprisoned for up to 10 years, fined \$10,000, or both.
- *Note:* Contact with seminal fluid, urine, feces, or saliva does not transmit HCV.

Source: Miss. Code Ann. § 97-27-14 (2017).

Imprisoned and untreated

Mississippi has...

- At least 400 incarcerated people with HCV
- No opt-out testing (so number of infected is likely higher)
- Fewer than 1 percent of known HCV-infected inmates (0.14 – 0.45%) receiving curative treatment

Sources: The National Academies of Sciences, Engineering, and Medicine, Committee on a National Strategy for the Elimination of Hepatitis B and C, A National Strategy for the Elimination of Hepatitis B and C: Phase II Report (March 2017),

<http://www.nationalacademies.org/hmd/Activities/PublicHealth/NationalStrategyfortheEliminationofHepatitisBandC.aspx>; Miss. Code Ann. § 41-29-139 (2017).

Punishment post-incarceration

Once incarcerated or convicted, Mississippians will face...

- Barriers to education
- Barriers to employment
- Disenfranchisement
 - Anyone convicted of any of the following crimes **permanently loses the right to vote**: arson, armed robbery, bigamy, bribery, embezzlement, extortion, felony bad check, felony shoplifting, forgery, larceny, murder, obtaining money or goods under false pretenses, perjury, rape, receiving stolen property, robbery, theft, timber larceny, unlawful taking of motor vehicle, statutory rape, carjacking, larceny under lease or rental agreement
 - Voting rights may be restored upon pardon from the governor or by passage of an “individual suffrage bill” by a state legislator

Sources: Miss. Code Ann. § 23-15-11 (2017); <http://www.sos.ms.gov/Elections-Voting/Documents/SummaryofAttorneyGeneralOpinionsonElectionIssues2.pdf>;
http://www.sos.ms.gov/Elections-Voting/Documents/Voter_Registration.pdf.

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