

Virtual Learning Series: HIV Cluster Response

Addressing Community Concerns: Data Release and
HIV Criminalization Considerations & HIV Stigma

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October 5, 2021

Texas

Part 3



Expectations and Logistics



- Participation
 - Participants will be muted to limit background noise, but you may unmute yourself during discussion or Q&A if you want to talk
 - Will have some interactive components during the webinar
- Asking questions
 - Please submit questions in the chat box and/or can ask verbal questions during Q&A times
- Maintaining a safe space for discussion
- Webinar will be recorded for internal reference and hosted on the Texas Department of State Health Services website
- **For IT issues:** please email aetcinfo@uthscsa.edu

Virtual Learning Series

Public Health Surveillance Basics &
Using Surveillance Data to *Detect* HIV Clusters

Part 1
Aug. 3,
2021

Health Department, Provider, and Community
Collaboration to *Respond* to HIV Clusters

Part 2
Aug. 10,
2021

Addressing Community Concerns: Data Release and HIV
Criminalization Considerations & HIV Stigma

Part 3
Aug. 17,
2021

Three-Part Webinar Series Objectives

- Understand the history and concepts behind public health surveillance including ethics, consent, and data protection for HIV surveillance data
- Explain the basic process, benefits, and drawbacks of HIV cluster response
- Effectively communicate with community members/clients/patients about common cluster response concerns

Objectives for Today

1. Learn about how Texas cluster response works
2. Explain common data privacy concerns related to health department HIV data
3. Gain an overview of HIV data release statutes and related laws in Texas
4. Consider ways to approach HIV cluster detection without compounding stigma
5. Practice ways to effectively communicate with community members/clients about common cluster response concerns related to data privacy and immigration

Where We're Headed Agenda for Today

- 
- Texas Health Department's Current Cluster Response Work

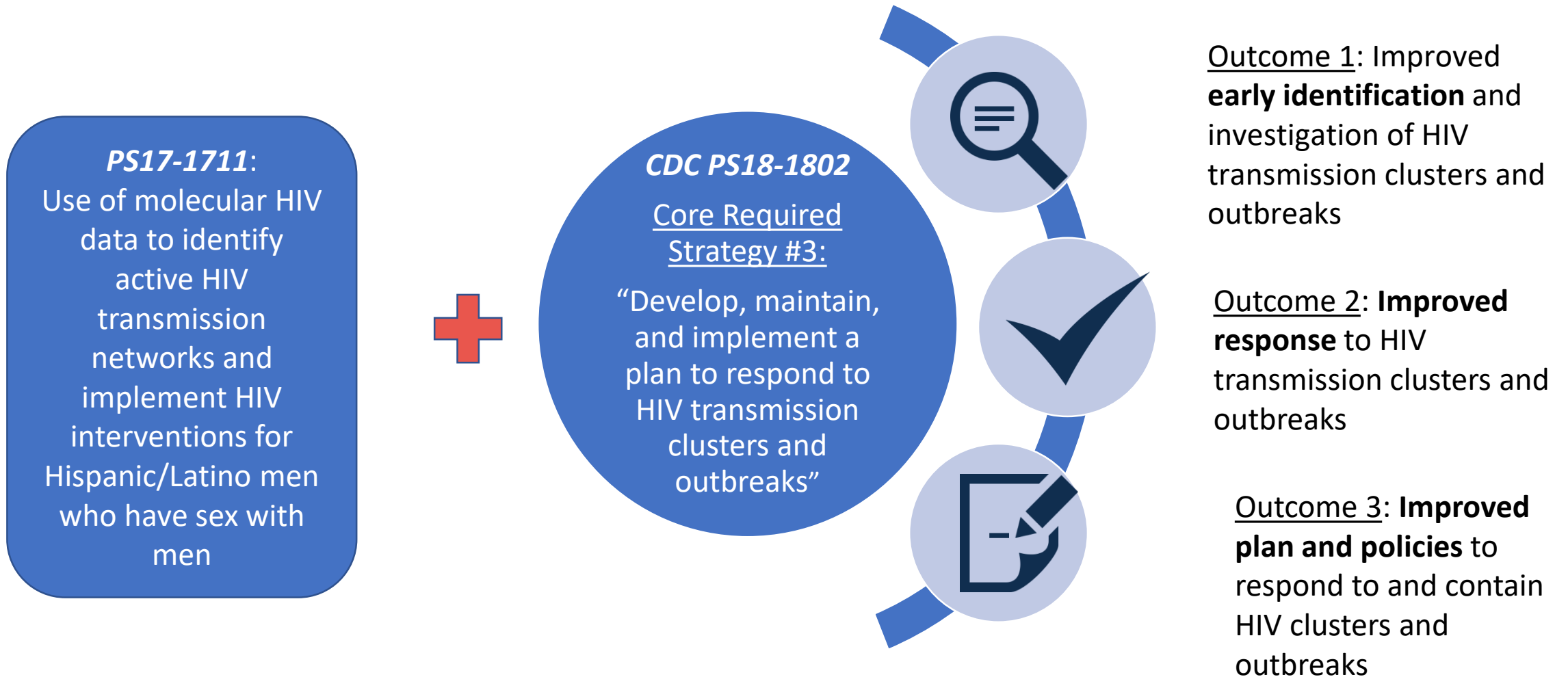
- 
- HIV Cluster Response and Stigma

- 
- Policy/Legal Considerations: Data Release

- 
- Wrap Up

Texas Department of State Health Services
(DSHS) Presentation on Current Cluster
Response Work
(CDC PS17-1711)

HD Funding for Cluster Detection and Response



TX DSHS' Project Conéctate (PS17-1711) Activities

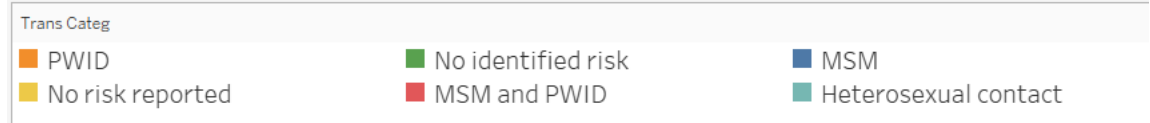
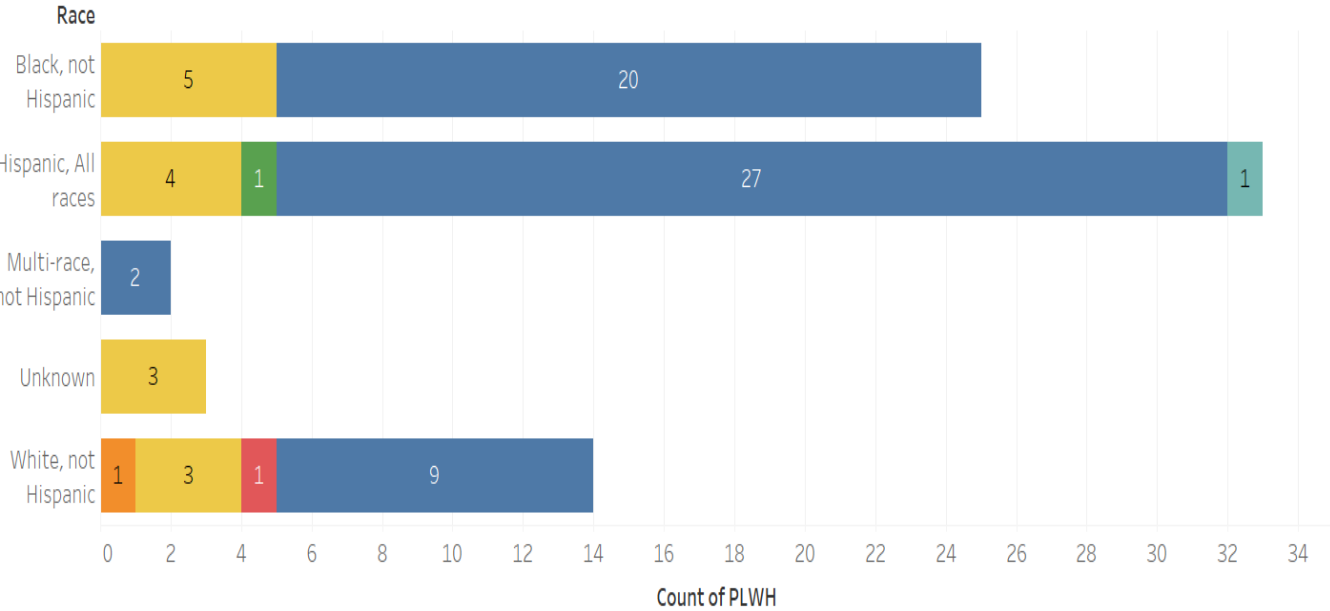
- Develop interviews and surveys to **prioritize social and structural factors affecting HIV related services** for H/L MSM, transgender, and transmission networks.
- **Identify best practices** for H/L MSM, transgender, and transmission networks to promote:
 - HIV counseling & testing
 - TasP – Linkage and re-engagement of PLWH
 - PrEP – HIV negative priority populations
- **Enhance culturally informed HIV related services** for H/L MSM, transgender, and their social networks.
- **Met with HIV Syndicate** for MHS-related activities
 - Discussed grant application
 - Reviewed and provided input into materials and scripts

Texas' Project Conéctate (PS17-1711) Activities

- Interview all PLWH in the cluster
- Retest everyone in the cluster risk network
- Medical record abstractions at location of care
- PrEP/Linkage to care
- Incentives to encourage participation
- Special Evaluation Project
 - Provider education
 - Assessment of genotype reporting in underserved populations throughout the state

Texas' Molecular Clusters- May 2021 Analysis

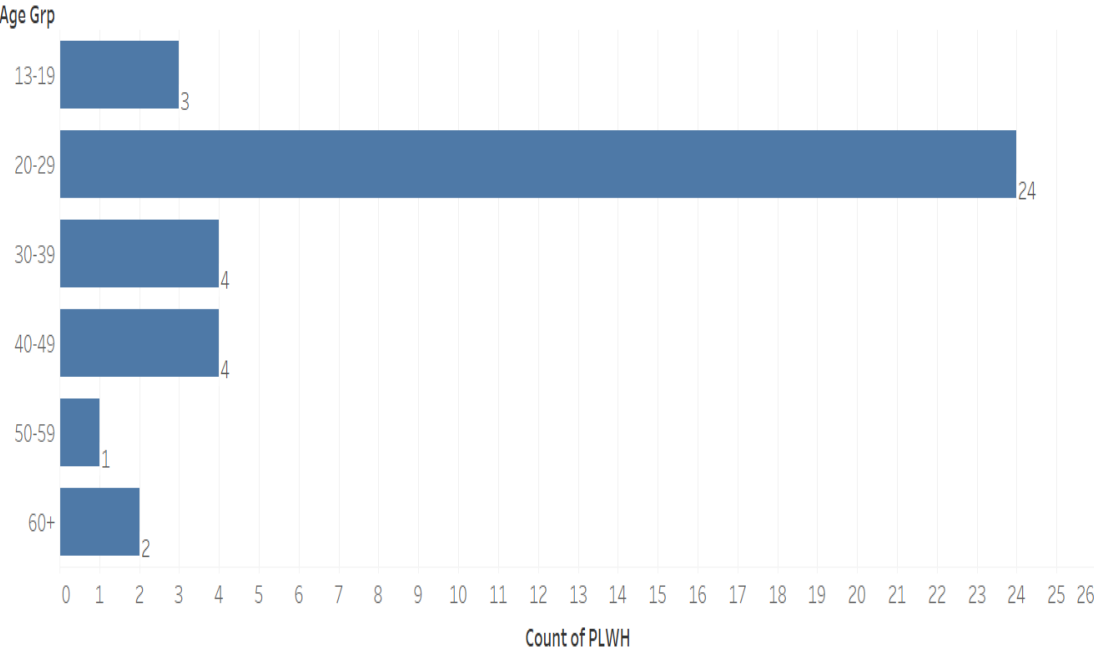
Race/Ethnicity by Transmission Risk



Number of Clusters Detected
9

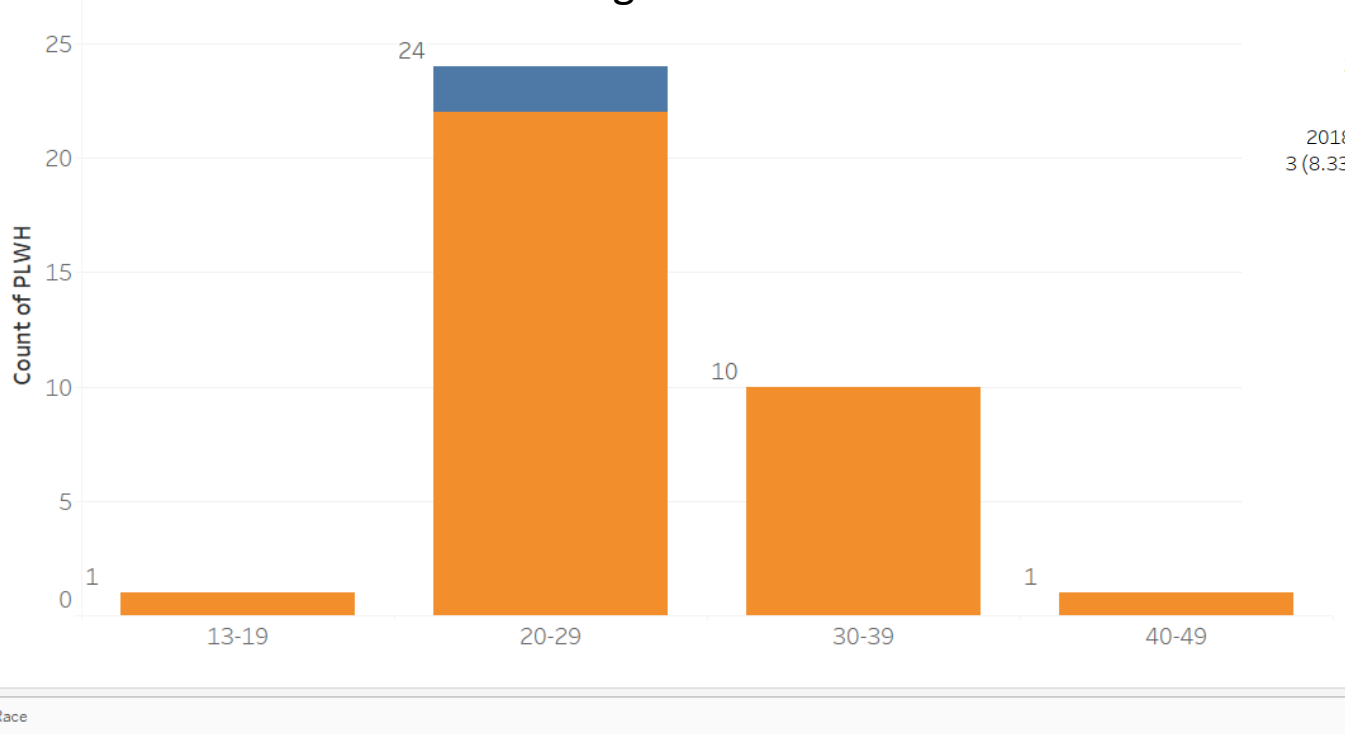
New Diagnoses in the Past 12 months in priority clusters
38

New Diagnoses in the Past 12 Months by Age at Diagnosis

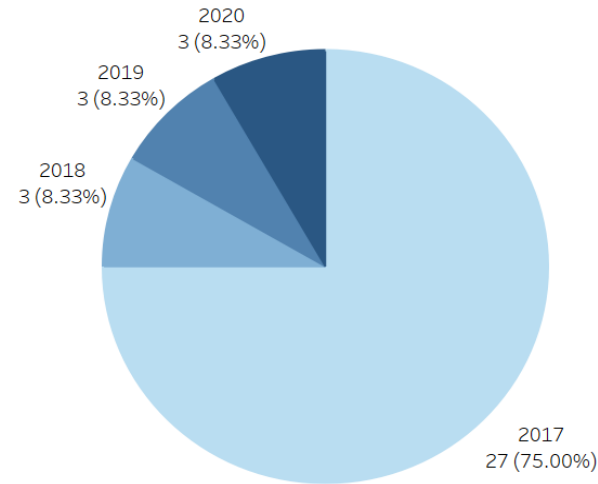


Texas's Project Conéctate Cluster Investigation- Cluster 1 Example

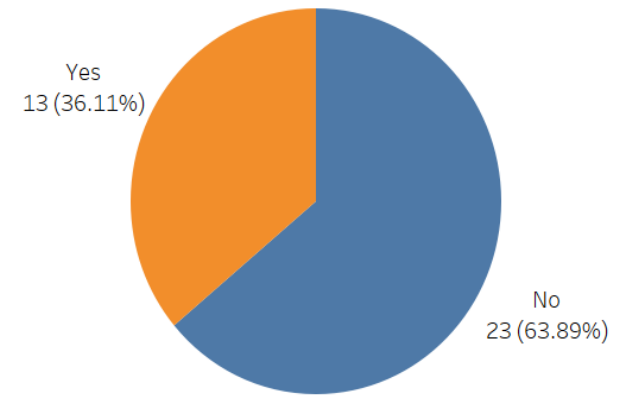
Current Age of Cluster Cases



Year of Diagnosis



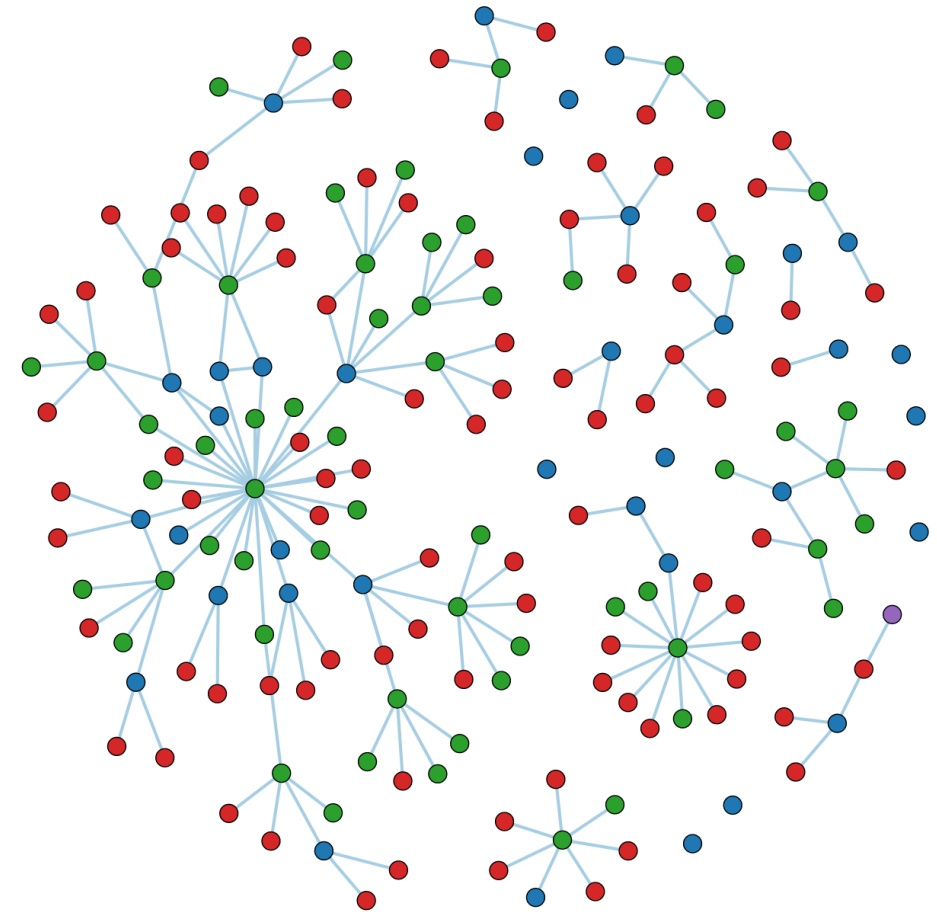
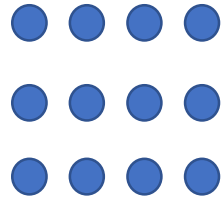
Viral Suppression






Number of molecular cluster members = 36; Hispanic/Latino MSM in the cluster = 31

Texas's Project Conéctate Cluster Investigation- Cluster 1 Example

Current* number of molecular cluster members = 36; Hispanic/Latino MSM in the cluster = 31



Cluster 1 at cluster
detection
(02/21/2019)

-  Molecular Cluster
-  Transmission Cluster
-  Risk Network

Cluster 1 after public health follow up (partner services
desktop review, re-interview and follow up 03/01/2021)

* As of May 2021

Texas's Project Conéctate (PS17-1711): Case Study 1



About the Client

- Latinx
- Cisgender Male
- Previous Positive

Outcomes

- Out of care since released from prison in 2015
- Client did not answer any phone or text message contacts
- FHA conducted a field visit and got in touch with client
- Client had been unable to obtain a Texas ID
 - Unable to receive Ryan White benefits without identification
- FHA used community resource to assist client with expired ID
- FHA organized transportation to get the client a new ID
- Client re-established provider care
- Client now medically adherent and working to reach viral suppression

Texas's Project Conéctate (PS17-1711): Case Study 2

About the Client

- Latinx
- Cisgender Male
- Male sexual partners
- 20-29 years old
- Identified as a risk network member



Outcomes

- Reluctant to initially engage with the FHA for testing or interview
- FHA was able to convince the client to visit his own provider for testing
- Client tested positive for HIV
- Client was very grateful to the FHA for now knowing his status and connecting to care
 - Happy to have someone with him through the process
- Client has reached an undetectable viral load and continues in medical care

Mentimeter Activity

When health departments reach out to people who are part of an HIV cluster, should the HD tell them that they were identified as part of a cluster?

Under what circumstances do you think health departments should tell people that they are part of a cluster?

- Go to a browser and enter menti.com
- Enter the number on your screen



HIV Cluster Response and Stigma

Different Levels of Stigma

Understanding Stigma

INSTITUTIONAL

Developing programs that are inaccessible to clients (no transportation services, only operate during traditional work hours)

OUTCOME

Disincentivizes people from seeking services in these spaces

COMMUNITY

Producing negative judgements about people living HIV

OUTCOME

Excluding people from social spaces, not caring for people with HIV out of fear of becoming HIV positive

INDIVIDUAL

Applying negative ideas and stereotypes about people with HIV to themselves

OUTCOME

Feelings of shame, fear of disclosure, isolation and despair.

The Experience of Stigma: The Stigma Index

Examples from Louisiana report (<https://www.stigmaindex.org/country-report/usa-louisiana/>)

- The most common stigma experiences were being gossiped about followed by being verbally insulted/harassed/threatened
- Participants experienced layered stigma
- Main reasons for experienced stigma/discrimination were related to misunderstandings of HIV, shame, and fear of HIV being contagious
- **The greatest amount of support was provided by social/healthcare workers and other persons living with HIV, but they were also the same groups that inflicted stigma/discrimination**

From People Living with HIV Stigma Index: <https://www.stigmaindex.org/>

Cluster Response and Stigma

- Be cognizant of using non-stigmatizing, people-first language
- “Humanizing” surveillance and HIV-related data – it’s about the people behind the numbers
- Calling people “vectors of disease” makes them feel belittled and seen as public health issues rather than full humans

People, Not Clusters

- Important to know why various organizations and individuals object to molecular HIV surveillance
 - “...the amplified targeting and stigmatization of our communities, who are already oppressed and marginalized”
- Health departments are required to detect and respond to clusters with the CDC funding they receive
- Criminalization as the key concern
 - CDC editorial that discusses the need for reforming and rescinding laws that do not align with science

Guest editorial: [We are People, Not Clusters!, Edwin J. Bernard et al., American Journal of Bioethics \(2020\) | The Center for HIV Law and Policy](#)

CDC editorial: [https://www.thelancet.com/journals/lanhiv/article/PIIS2352-3018\(20\)30333-7/fulltext#%20](https://www.thelancet.com/journals/lanhiv/article/PIIS2352-3018(20)30333-7/fulltext#%20)

Terminology for Community Communications

Scientific term	Lay audience term – some suggestions
Surveillance data	Public health data
Molecular cluster	Group of similar virus strains, Transmission network/ Shared/Growing network
Molecular analysis	Laboratory analysis, analysis of sequence data reported to health departments
Time-space cluster	Increase in diagnoses, (other ideas?)
Investigation	Public health response, follow-up, Effort to understand why transmission is occurring

Suggested Terminology from Syndicate Survey

Scientific term/idea	Lay audience suggested wording
HIV Cluster response	HIV/Sexual Networks Molecular Surveillance Related Positivity Event HIV Connection Support HIV Cluster Investigation HIV Transmission Response Targeted Response Community Spread High Incidence HIV Prevention Response HIV Cluster Response

Additional Resources on Stigma

- Web Resources
 - [Talking Points: The Resource Guide for Facilitating Stigma Conversations](#) (NASTAD)
 - [HIV Stigma and Discrimination](#) (Avert)
 - [HIV Communication: Using Preferred Language to Reduce Stigma](#) (Sero Project)
 - [HIV Language Guide](#) (NIAID)
- Trainings
 - [Undoing Racism](#) (The People's Institute for Survival and Beyond)
 - [Deconstructing Homophobia and Transphobia](#) (California PTC)

Mentimeter Activity

What phrase or wording would you recommend using to best describe cluster detection and response activities to community members?

- Go to a browser and enter menti.com
- Enter the number on your screen



Thank You

For questions contact:

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Policy/Legal Considerations: Data Release

Dori Molozanov, JD

Topics

- HIV criminalization
- Texas laws related to release of health department data (including HIV testing data)
- Implications for molecular sequence data
- Data protections
- Immigration and data release

Community, Health Department, and Provider Legal Concerns

- Release of:
 - HIV test results
 - Connection to others in a cluster
- Release to:
 - Legal system
 - Family, friends, sex and needle sharing partners
 - Employer
 - Landlord

HIV Criminalization in Texas

- Texas repealed its HIV-specific criminal transmission statute in 1994
- There are no public health laws criminalizing exposure to or transmission of HIV
- PLWH may still be prosecuted under general criminal laws
 - Aggravated assault – 2nd degree felony, up to 20 years in prison
- HIV status may be considered in sentencing
 - “potential long-term effect of injury”

Case Law: HIV Criminalization in Texas

- Seminal fluid of PLWH may constitute deadly weapon to support conviction for aggravated assault. Mathonican v. State, 194 S.W.3d 59 (Tex. App. 2006).
- Evidence that defendant is living with HIV is a “viable concern” at the punishment stage of an aggravated assault trial and may be considered by the jury as a potential “long-term effect of the injury” for sentencing purposes. Suarez v. State, No. 14-03-00441-CR, 2004 WL 1660938 (Tex. App. July 27, 2004).
- HIV status is relevant victim impact evidence reflecting the “defendant’s personal responsibility and moral guilt” and may be considered in sentencing. Martinez v. State, No. 05-03-01243-CR, 2004 WL 2378359 (Tex. App. Oct. 25, 2004).

In the News: HIV Criminalization in Texas

Man claiming HIV is accused of biting Kroger guard during scuffle

May 30, 2008

Source: Dallas Morning News

A man claiming to have HIV is accused of trying to steal sausage from a Kroger store and biting a security guard during the robbery.

PT, 26, who remained in custody Friday morning, has been charged with aggravated robbery, the Dallas County sheriff's office said. His bond was set at \$100,000.

The aggravated robbery charge is more serious than a robbery charge because the suspect used "his infection as a weapon," said Dallas police Senior Cpl. Kevin Janse.

mrt★

Midland man receives 120 years for transmitting HIV virus to four women

By Tyler White | twhite@mrt.com Published 1:45 pm CDT, Thursday, August 29, 2013



Man Convicted of Spreading HIV Gets 45 Years

By Stacy Morrow • Published May 28, 2009 • Updated on May 30, 2009 at 9:45 am



A Collin County jury sentenced an HIV-positive Frisco man to 45 years in prison after deciding that he purposely infected six women with the virus.

National Landscape: Data Release for Law Enforcement is an Exception to Confidentiality

HIV Confidentiality
Statutes: Prohibit
Release of HIV Data
without Consent

EXCEPT

- For adjudication of criminal or civil matter
- To respond to a public health emergency
- To enforce public health laws
- In response to a court order or subpoena (broad authority)

Some state statutes explicitly prohibit the release of any data for law enforcement purposes, which is the most protective approach. However, most state statutes compel the release for law enforcement in some circumstances.

5-MINUTE BREAK



Texas State Laws

§ 81.046

§ 81.101

§ 81.103

Disclosure of HD Communicable Disease Data

Disclosure to federal, county, or district courts:

- **Purpose for disclosure:** Compliance with statutes and regulations relating to the control and treatment of communicable diseases, or under another law that expressly authorizes disclosure.
- **Types of data that may be released:** Medical and epidemiological information, including information linking a person who is exposed to a person with a communicable disease, concerning any reportable disease.

Texas Health & Safety Code Ann. § 81.046(c)(3)

Disclosure of HD Communicable Disease Data

Disclosure to law enforcement and first responders during public health disaster, including disease outbreak:

- **Purpose for disclosure:** Protecting the health or life of a first responder or the person identified in the information disclosed.
- **Types of data that may be released:** All information relating to cases or suspected cases of reportable diseases and health conditions.
 - Only the minimum necessary information may be released, as determined by the health authority or state/local health department.

Texas Health & Safety Code Ann. § 81.046(f)

Disclosure of HD Communicable Disease Data

- Confidentiality law does not specify whether a court order or subpoena is required for disclosure.
- Judge may issue protective order or limit disclosure before information is entered into evidence or otherwise disclosed in court proceeding.
- Health department staff may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of records, report, or other information about a person examined or treated for a reportable disease by a health department without that person's consent.

Tex. Health & Safety Code Ann. § **81.046**

Disclosure of HIV Test Results

A **test result** is defined as:

“any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.”

Texas Health & Safety Code Ann. § **81.101**

Disclosure of HIV Test Results

HIV test results may be disclosed to:

- A county or district court to comply with statutes and regulations relating to the control and treatment of communicable diseases
- The spouse of the person tested
- Police officers, firefighters, EMS, paramedic, correctional officers and certain other employees, and other emergency response personnel who have experienced exposure in the course of their employment

Tex. Health & Safety Code Ann. § **81.103**

Limits to Disclosure of HIV Test Results

HIV test results may not be disclosed in connection with law enforcement/medical personnel exposure until:

- Person requesting the results submits an affidavit to public health authority for review of whether the incident is deemed a potential exposure
 - *Affidavit: a written statement confirmed by oath or affirmation, for use as evidence in court*

Tex. Health & Safety Code Ann. § 81.103

Disclosure of Court-Ordered HIV Testing

- A person who is indicted under certain criminal statutes may be ordered by a court to undergo HIV testing
 - Continuous sexual abuse of young child or children (Tex. Penal Code Ann. § 21.02)
 - Indecency with a child (Tex. Penal Code Ann. § 21.11)
 - Sexual assault (Tex. Penal Code Ann. § 22.011)
 - Aggravated sexual assault (Tex. Penal Code Ann. § 22.021)
- HD may disclose court-ordered test results, which may then be disclosed to alleged victim

Tex. Health & Safety Code Ann. § **81.103**; Tex. Code Crim. Proc. Ann. art. 21.31

Disclosure of HIV Test Results

- The law does not specify whether disclosure to courts for the purposes of enforcing public health laws requires a court order or subpoena.
- A judge may issue a protective order or take other action to limit disclosure before the information is entered into evidence or otherwise disclosed in a court proceeding.
- Court-ordered mandatory testing may be disclosed to alleged victims following indictment for certain sex-based crimes.

Tex. Health & Safety Code Ann. § 81.103

Comparing the Statutes

HD Communicable Disease Data (Tex. Health & Safety Code Ann. § 81.046)

- Applies only to HD data
- Applies to many types of data
- Applies to all reportable diseases
- No specified penalties for unlawful disclosure
- Disclosure to court (incl. federal): enforcement of communicable disease laws OR under any law authorizing disclosure
- HD staff may not be examined in court

HIV Test Results (Tex. Health & Safety Code Ann. § 81.103)

- Applies to anyone who has data
- Applies to HIV test results only
- Applies only to HIV data
- Misdemeanor penalties for unlawful disclosure
- Disclosure to court (state only): enforcement of communicable disease laws only
- Additional disclosures permitted: spouse, alleged victims, etc.

Confidentiality and Release of Data: Key Points

- Court-ordered test results may be disclosed in the course of prosecutions
- Cluster data **could theoretically be disclosed** for the purposes of enforcing communicable disease laws and regulations, none of which includes laws that impose criminal penalties for exposure or transmission
- However, the law does not **explicitly** authorize use of health department HIV data in connection with **criminal prosecutions**
- The TX DSHS could **not find any instances** where surveillance data were released for criminal prosecutions

Implications for Molecular Sequence Data

Limiting Principles of Data Release

Statutory

- Limits on types of data that can be disclosed in criminal matters (i.e., diagnostic testing only, excluding certain types of data, excluding data that identifies any other person)

Legal Relevance

- Current limitations of molecular sequence data make it unhelpful for criminal exposure elements
- Even if data is currently relevant for exculpatory purposes, the health department is not likely or best source of that data

Policy and Procedural

- Data release can and should be structured in a limited way

The Role of Public Health Legal Counsel

- Most states route requests for HIV data for law enforcement purposes to legal counsel
 - Texas: requests are reviewed by DSHS and the State Legal Department
- Legal counsel review the request to ensure it complies with state law and either reject the request or work with the health department to comply with the request
 - Usually release of requested records; sometimes testimony from health department staff
- Even where statutes are broad as to data that may be released, many legal counsel and health departments operate under a principle of limited release

Considerations for Data Protection

- Communicate with legal counsel about their policies and procedures for review of data release requests
- Identify opportunities to examine public health data release provisions in criminalization modernization efforts
- Proactively identify educational opportunities with public health legal counsel who may not be aware of changes in HIV surveillance technology and data
- Engage communities in dialogue about your state's HIV data protections and concerns about data release for law enforcement purposes

Immigration and Data Release

- We do not know of any instance where HIV health department data has been requested by immigration authorities
 - July 2019 executive order directing federal agencies to provide Department of Commerce with citizenship data highlights priority data sets – does not include surveillance data collected by CDC or data collected in connection with RW program
- Health department data would have limited relevance for immigration enforcement:
 - Ryan White Programs and prevention programs are not collecting immigration data
 - The “public charge” rule does not include use of public health services as negative weight
- It is our public health responsibility to address community concerns about accessing services for fear of triggering immigration enforcement

Public Charge Resources

- **USCIS:** [Final Rule on Public Charge Admissibility](#)
- **Legal services directories:**
 - [ImmigrationLawHelp.org](#) (non-profit legal aid)
 - [Immigration Advocates Network](#) (non-profit legal aid)
 - [AILA Immigration Lawyer Search](#)
- **General resources about immigrant access to public benefits:**
 - [National Immigration Law Center](#) (NILC)
Including: [Overview of Immigrant Eligibility for Federal Programs](#)
 - [Immigrant Legal Resource Center](#) (ILRC)
 - [The Center for Law and Social Policy](#) (CLASP)
- **Client outreach and education:**
 - [NILC](#) and [ILRC](#) provide a number of useful resources with messaging documents for communities impacted by the rule, available in both English and Spanish
 - NILC: [Let's Talk About Public Charge](#)
 - NILC: [How to Talk with Immigrants and Their Families About Public Charge Determinations Made Abroad](#)
 - Protecting Immigrant Families: [Know Your Rights](#)

Mentimeter Activity

- What remaining questions do you have about HIV criminalization?
 - In Texas or generally

- Go to a browser and enter menti.com
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