



MODERNIZING CALIFORNIA HIV CRIMINALIZATION LAWS

SUMMARY

Several California criminal laws specifically target people living with HIV. SB 239 (Wiener & Gloria) eliminates this form of HIV exceptionalism by incorporating the current scientific understanding of HIV, addressing exposure to HIV in the same manner as exposure to other serious communicable diseases, and eliminating extra punishment for people living with HIV who engage in consensual sexual activity.

BACKGROUND

Modernization of outdated laws is necessary. Most California HIV criminalization laws were passed in 1988, with limited medical understanding of HIV and tremendous fear surrounding the disease. Little was known about the virus, there were no effective treatments, and stigmatizing people living with HIV was politically expedient.

In the years since, societal and medical understanding of HIV/AIDS has greatly improved. There are now effective medications that greatly lengthen and improve the quality of life for people living with HIV—treatment that also nearly eliminates the possibility of transmission. In addition, HIV-negative individuals can take similar medications to prevent acquisition of HIV. California law should reflect the current landscape of HIV prevention, care and treatment.

Current law hurts more than it helps. Research indicates that HIV-specific laws do not influence people's behaviors or reduce the number of new infections. Criminalization serves only to fuel continued stigma and discrimination against people living with HIV.

These laws work against public health. They provide an incentive not to know your HIV status because you can only be prosecuted if you know you are HIV-positive. They create mistrust of public health professionals, making people who have tested HIV-positive less likely to cooperate with partner notification, treatment adherence and prevention programs. And they place HIV-negative people in harm's way by making them believe they can engage in risky behaviors without the risk.

Addressing HIV the same as other communicable diseases benefits public health because it reduces the stigma associated with this particular disease,

thereby addressing barriers to testing and treatment. The National Alliance of State and Territorial AIDS Directors (NASTAD), U.S. Department of Justice (DOJ), HIV Medicine Association, American Psychological Association, AIDS United, and others agree that outdated HIV criminalization laws must be replaced with laws promoting public health.

HIV criminalization laws disproportionately impact vulnerable populations. Ninety percent of HIV-related prosecutions in California take place under the statute that transforms misdemeanor solicitation into a felony. Though only 13% of the people living with HIV in California are women, 43% of the people criminalized under HIV specific laws are women. Transgender women, who are subject to police profiling as sex workers (i.e., "walking while trans"), are even more disproportionately affected by these laws.

Furthermore, 51% of people living with HIV in California are Black or Latino/a, but 67% of people criminalized under HIV specific laws are Black or Latino/a. And though foreign-born individuals are underrepresented among those criminalized based on their HIV status, felony charges can result in dire consequences, including deportation proceedings for those who are undocumented.

SOLUTION

- Place HIV on par with other serious communicable diseases.
- Promote public health by reducing stigma, acknowledging shared responsibility for health, and eliminating barriers to testing and care.
- Maintain criminal penalties for people who intentionally harm others.

SPONSORS

APLA Health
ACLU of California
Black AIDS Institute
Equality California
Lambda Legal
Positive Women's Network - USA

CONTACT

Jo Michael, Equality California
jo@eqca.org; (619) 204-4995

Becca Cramer, ACLU of California
bcramer@acluca.org; (916) 442-1036 x601