



Talking Points

SB 239 TALKING POINTS

TOPLINE: To effectively combat the HIV epidemic, California's number one priority must be to create an environment in which all people want and have access to HIV testing, treatment, and other prevention options.

Elevator Pitch

- California has several laws that target people living with HIV for criminal prosecution and punishment based on their HIV status.
- Criminalization does not protect people from acquiring HIV; these laws actually hinder HIV prevention efforts.
- These laws further stigmatize and marginalize people living with HIV (PLWH).
- It is time to modernize California's laws to bring them in line with current science; the criminal law should address HIV as it addresses other serious communicable diseases.
- A bill, SB 239, has been introduced that will fix California's outdated and ultimately counter-productive HIV criminalization laws.

These laws are outdated

- Since these laws were passed (most in 1988, one in 1998), we have seen many scientific advances in the field of HIV treatment and prevention.
 - Effective treatments dramatically lengthen and improve the quality of life for people living with HIV, and those successfully treated have a near normal life expectancy.
 - HIV is harder to transmit sexually than most people believe, with a less than 2% per-act risk of transmission arising from even the riskiest of sexual activities.
 - A person living with HIV on successful treatment is essentially non-infectious (two studies: no transmissions where HIV+ partner had a suppressed viral load).
 - HIV-negative individuals taking pre-exposure prophylaxis (PrEP) as prescribed are protected from acquiring HIV almost 100% of the time (studies prove).

These laws are bad for public health

- There is no evidence that laws specifically targeting people living with HIV actually help to reduce the number of new cases of HIV.
- These laws create a disincentive to testing, by punishing people who get tested and know their HIV status and privileging those who remain unaware.
- These laws create mistrust of health professionals, making people who test HIV positive less likely to cooperate with partner notification, treatment adherence and other prevention programs.



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- These laws exacerbate the social stigma that accompanies an HIV diagnosis, which experts agree is one of the biggest obstacles to ending the HIV epidemic.

Who is harmed most?

- 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”), may be even more disproportionately affected by these laws.
- Forced disclosure of one’s HIV-positive status carries significant risks, including potential intimate partner violence, loss of housing or custody of one’s children, and other forms of discrimination.
- These laws most severely affect the disenfranchised, the poor, and people of color, who comprise a disproportionate number of people living with HIV.
 - 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.
 - Although foreign-born individuals are underrepresented among those criminalized based on HIV status, felony charges can result in dire consequences, including deportation proceedings for those who are undocumented.

The solution

SB 239 will...

- continue to impose criminal punishment for individuals living with HIV who intentionally try to transmit HIV;
- ensure that scientific advances inform our laws;
- bring HIV on par with other infectious or communicable diseases, and get rid of an HIV-specific law that serves only to stigmatize people living with HIV;
- eliminate extra punishment for people living with HIV convicted of solicitation/prostitution (even when transmission is not possible);
- continue to impose a penalty enhancement for individuals who transmit HIV as a result of a sexual offense; and
- save taxpayers money (cost of incarcerating a person living with HIV has a potential cost over \$81,000 per year).

SB 239 will not...

- increase penalties for intentional transmission of other infectious or communicable diseases; or
- endanger the safety of blood, tissue, sperm, and breast milk donations.

The National Alliance of State and Territorial AIDS Directors (NASTAD), U.S. Department of Justice (DOJ), HIV Medicine Association, American Psychological Association, AIDS United,



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and others agree that outdated HIV criminalization laws must be replaced with laws promoting public health.

Blood donation

- SB 239 would eliminate an unnecessary and draconian law enacted to address a problem that does not exist and instead serves only to further stigmatize people living with HIV.
 - There is currently a law that makes it a crime to donate blood, tissue, breast milk or sperm if you are HIV positive.
 - This law has never been used for good reason: there is no risk of HIV transmission through these donations, because safeguards, such as HIV testing, are in place to ensure they do not contain HIV.
 - Technology can detect HIV in a blood donation within 9 to 11 days of exposure with near 100% accuracy.

Disclosure: Why doesn't the bill require disclosure prior to exposure?/Why doesn't the bill punish "exposure without disclosure"?

- Current law punishes intent to transmit, not nondisclosure. SB239 merely clarifies that taking steps to reduce the risk of transmission -- such as being on treatment or using a condom -- is incompatible with intent to transmit.
- This bill preserves criminal penalties for intentional transmission of HIV and other serious communicable diseases.
- Sexual health is a shared responsibility. Criminal law is used when one person is to blame; public health deals with mutual obligations, such as encouraging candor between sexual partners.
- Other things – condom use, access of treatment, frequency of testing -- are more indicative of risk than HIV status, but we don't require disclosure of any of those things.
- However, current law imposes felony charges on activities where no risk of transmission occurred.



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Sex work (if asked by interviewer)

- SB 239 would eliminate extra punishment for people living with HIV who engage in consensual sexual activity.
 - The risk of transmitting HIV through sex is the same regardless of someone's occupation.
 - Criminalizing sex workers living with HIV does not improve public health; in fact, it discourages testing and treatment, and further stigmatizes and isolates an already marginalized group.
 - Under current law, sex workers can be prosecuted even when no conduct has occurred that could result in transmission of HIV.
 - The criminal law that applies to people living with HIV or any other serious communicable disease would apply to sex workers (and their clients) as well.

Reports of "AIDS Monsters"

- Don't believe everything you read. Media reports on this topic are notoriously sensationalized and inaccurate.
- Cases involving the actual intent to transmit are exceedingly rare. People who have examined this closely have uncovered only two cases ever.
- In the highly unlikely event that one of these cases were to arise in California, general criminal laws could be used to prosecute and obtain a felony conviction.

Eliminating HIV/AIDS Testing

- HIV education and testing is best undertaken by individuals voluntarily engaging in such activities.
- You don't decrease stigma around HIV by making those who happen to interact with the criminal justice system for some other reason "bad" and the only people who are required to get tested or engage in HIV/AIDS education.
- The bill stops testing or "educating" people at the point of a gun (forcing them against their will), because that is not a recipe for long-term engagement with the healthcare system, which is needed for those living with HIV.
- Take money saved by eliminating compelled testing/education for those arrested and put it toward voluntary testing and education programs for anyone at higher risk.