



Senator Scott Wiener & Assemblymember Todd Gloria



Senate Bill 239 – Modernization of HIV Criminal Law

SUMMARY

Senate Bill 239 would end the targeting of people living with human immunodeficiency virus (HIV) for unreasonable criminal prosecution by bringing parity with existing laws regarding other communicable diseases. SB 239 would replace fear-based, stigmatizing laws criminalizing HIV-status with evidence-based laws that will protect public health.

BACKGROUND/EXISTING LAW

Beginning over twenty-five years ago, several laws were passed in California that criminalized behaviors of people living with HIV or added penalties to existing crimes for those with HIV. These laws were based on fear and the limited medical science of the time. In 1988, when most of these laws were passed, there were no effective treatments for HIV and discrimination towards people living with HIV was extremely high.

PROBLEM

In the decades since these laws were passed, societal and medical understanding of HIV has greatly improved, and there are now effective treatments that lengthen and improve the quality of life for people living with HIV. Furthermore, there is no evidence that laws criminalizing sexual activity on the part of people living with HIV accomplish their intended goal of improving public health. In fact, research suggests that these laws may act as a disincentive for testing and disclosure of HIV status and may create a barrier to those seeking care. Today, HIV criminalization laws only increase stigmatization of people living with HIV and disproportionately impact women and people of color. Treating HIV the same as other communicable diseases will reduce the stigma associated with this disease and will improve public health by removing barriers to testing and treatment. Numerous experts agree that outdated HIV criminalization laws must be replaced with laws promoting public health.

SOLUTION

SB 239 would bring parity with existing laws regarding other communicable diseases by making it a misdemeanor, rather than a felony, to transmit any disease that is determined to have significant, long-term consequences on the physical health and life activities of the person infected. To be charged with the misdemeanor, the defendant must have: (1) known that he or she has the communicable disease at issue; (2) acted with the specific intent to transmit the disease to another person; (3) engaged in conduct that poses a substantial risk of transmission; and (4) actually transmitted the communicable disease to the other person.

SB 239 would also repeal other provisions of law that add penalties to sex workers living with HIV and require a defendant convicted for a violation of soliciting or engaging in prostitution for the first time to submit to HIV testing. Lastly, SB 239 would repeal outdated laws regarding donation of blood, tissue, or, in certain circumstances, semen or breast milk, by those living with HIV.

STATUS

- Passed out of Senate Public Safety: 5-2
- Passed out of Senate Appropriations: 5-2

CO-AUTHORS

- Senator Atkins
- Senator Mitchell
- Senator Skinner
- Assemblymember Chiu
- Assemblymember Eggman

SUPPORT

- Equality California (co-sponsor)
- ACLU of California (co-sponsor)
- APLA Health (co-sponsor)
- Black AIDS Institute (co-sponsor)
- Lambda Legal (co-sponsor)
- Positive Women's Network–USA (co-sponsor)
- A New Path

- A New Way of Life – Reentry Project
- ACCESS – Women’s Health Justice
- Act for Women and Girls
- AIDS Legal Referral Panel (ALRP)
- AIDS Project East Bay
- Alliance for Boys and Men of Color
- Asian Law Alliance
- Bay Area Lawyers for Individual Freedom (BALIF)
- Being Alive
- Black Women for Wellness
- Californians for Safety and Justice
- California IHSS Consumer Alliance (CICA)
- California Immigrant Policy Center (CIPC)
- California Immigrant Youth Justice Alliance (CIYJA)
- California Pan-Ethnic Health Network
- California Partnership
- California Women’s Law Center
- Center for HIV Law and Policy
- Center for LGBTQ and Gender Studies in Religion
- Child Care Law Center
- Citizens for Choice
- Consumer Attorneys of California
- Courage Campaign
- Desert AIDS Project
- East Bay Community Law Center (EBCLC)
- Equality Federation
- Equal Justice Society
- Fellowship of Affirming Ministries
- Forward Together
- Free Speech Coalition
- Friends of Project 10
- GLMA Health Professionals Advancing LGBT Equality
- Groundspark
- GSA Network
- Harm Reduction Coalition
- HMM Indiana
- HIVE (UCSF)
- HIV Medical Association
- Human Rights Watch
- Imperial Valley LGBT Center
- LA LGBT Center
- If/When/How (Law Students for Reproductive Justice)
- Justice Now
- LA HIV Law & Policy Project
- Latino Equality Alliance
- Mexican American Legal Defense and Educational Fund
- NARAL Pro Choice
- National Alliance of State and Territorial AIDS Directors (NASTAD)
- National Black Justice Coalition
- National Compadres Network
- National Council of Jewish Women
- National Day Laborer Organizing Network
- National Immigration Law Center
- North County LGBTQ Resource Center
- Pacific Pride Foundation
- Pangea Legal Services
- Planned Parenthood Affiliates of California
- PolicyLink
- Project Inform
- Queer Life Space
- Rainbow Community Center
- Sacramento LGBT Center
- San Diego LGBT Center
- SF AIDS Foundation
- San Jose LGBT Center (Bill DeFrank)
- Sero Project
- SF LGBT Center
- The Spahr Center
- St. John’s Well Child & Family Center
- Stonewall Democratic Club
- SWOP – LA
- The LGBT Center Orange County
- The LGBT Center Long Beach
- The TransLatin@ Coalition
- The St. James Infirmary
- Trans Student Educational Resources
- Transgender Law Center
- Voices for Progress
- Western Center on Law and Policy
- Western Regional Advocacy Project (WRAP)
- Women’s Foundation of CA

FOR MORE INFORMATION

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