

Criminalization of HIV/AIDS Under California Laws



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General Criminal Statutes

Among published cases, the earliest criminal case addressing unprotected sexual activity involving an HIV-positive individual was in **1988** (attempted murder).

General criminal statutes were in use until **1991**, and these cases were most often prosecuted under Penal Code section 245 (assault with a deadly weapon). HIV was considered the “deadly weapon.”



California Health and Safety Code § 120290

Willful exposure of self or another to a contagious, infectious, or communicable disease.

- Enacted in 1939 and no published criminal cases
- Cited in civil proceedings (indicating a duty to disclose and liability for negligent transmission of HIV)
- Punishment: Misdemeanor



California Health and Safety Code § 120291

- Unprotected sexual activity by one who knows self to be infected by HIV; non-disclosure of HIV-positive status; specific intent to infect the other person with HIV
- Enacted in 1998 with no published criminal cases. Traditional legal research and FOIA requests indicate there have been 2 convictions under this statute
- Punishment: Felony punishable by imprisonment in the state prison for three, five, or eight years



California Health and Safety Code § 1621.5

- Knowing donation of blood, body organs, tissue, semen or breast milk by person with AIDS or person who has tested reactive to HIV
- Enacted in 1988 and no published criminal cases have been found under this provision
- Punishment: Felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years



California Penal Code § 647f

- Sentence enhancement for previous convictions for solicitation and positive HIV test result
- Enacted in 1988 and 2 published criminal cases
- Punishment: Felony (16 months, 2 or 3 years)



California Penal Code § 12022.85

- Sentence enhancement for specified violations while HIV-positive
 - Includes rape, unlawful intercourse with a person under 18 years of age, rape of a spouse, sodomy, and oral copulation
- Enacted in 1988 and 4 published criminal cases.
- Punishment: Three-year sentence enhancement for each violation in addition to the sentence provided for the violation



Decriminalization Efforts

- Problems with HIV criminalization laws
 - Contributes to HIV-related stigma
 - Negatively impacts LGBT populations
 - All do not follow standard criminal law principles of requiring intent to harm
 - Results in disproportionate penalties
 - Defeats public health messages about HIV
 - Are unsupported by research





Role of Advocacy

- California Statewide Coalition
 - Made up of advocacy organizations and advocates, service providers, and a research institution.
 - In-person meetings held in Oakland and Los Angeles.
 - Statewide call held 1st Wednesday of month from 10:30am-12pm.
 - Interests represented in Sacramento by Equality California.



Role of Advocacy

- Public Education and Engagement
 - Educate stakeholders and the public on existing laws that criminalize behavior of PLHIV.
 - Center experiences of communities most impacted by the criminal justice system- trans people, communities of color- in advocacy efforts around proposed changes.



Proposed changes in CA

- Adopt DOJ's Best Practices recommendations to reform HIV-specific criminal laws
 - Eliminate HIV-specific criminal penalties.
 - Require knowledge, intent, conduct that poses a risk of transmission, and actual transmission.
 - Modernize outdated CA law with *contemporary scientific knowledge* of acquisition and transmission of HIV.



Proposed changes in CA

- Blood, tissue, organ, semen, breast milk.
 - Repeal sections that make donation punishable by felony.
 - Allow organ donation between PLHIV.
 - Amend stigmatizing language.
- Solicitation while HIV-positive.
 - Repeal felony sentence enhancement for solicitation while HIV-positive.
 - Amend required HIV testing & distribution of test results to court & state
 - Offer free HIV test
 - Continue to require culturally competent HIV and AIDS prevention education program.



Proposed changes in CA

- HIV exposure and testing.
 - Repeal felony HIV exposure statute & accompanying testing provision.
 - Modernize exposure statute to require actual transmission, no practical means to prevent transmission were used.
- Sex offense committed while HIV-positive.
 - Repeal existing 3 year enhancement that is specific to PLHIV.
 - Require transmission for existing 5 year sentence enhancement if 'great bodily injury' results from sex offense.



How to be involved

- Join statewide Google group to stay up-to-date on information
 - californiahivdecriminalization@googlegroups.com
- Attend upcoming HIV Criminalization (title x) event, hosted by Bay Area PWN-USA
 - March 10th, 11am-2pm, 1000 Broadway suite 310 A & B in Oakland