



State Senator Scott Wiener, 11th Senate District

Senate Bill 239 – HIV Decriminalization

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 HIV and disproportionately impact women and people of color.

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 Lastly, SB 239 would repeal outdated laws regarding donation of blood, tissue, or, in certain circumstances, semen or breast milk, by those living with HIV.

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)
- Los Angeles LGBT Center
- LA HIV Law and Policy Project
- Transgender Law Center
- MALDEF
- Sex Workers Outreach Project (SWOP)

- Erotic Service Providers Legal, Education and Research Project (ESPLERP)
- Free Speech Coalition

FOR MORE INFORMATION

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