



September 25, 2017

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol, First Floor
Sacramento, California 95814

TO ENROLLED BILL FILE

RE: SB 239 (Wiener & Gloria) – Request for Signature

Dear Governor Brown:

We, the undersigned, urge you to sign SB 239 into law when it reaches your desk. SB 239, by Senator Scott Wiener and Assemblymember Todd Gloria, updates several outdated criminal laws that unfairly target people living with HIV and ensures that California law reflects the current scientific understanding of HIV. Consistent with guidance from the U.S. Department of Justice, the bill maintains criminal penalties for individuals who intentionally transmit or attempt to transmit HIV, or any other serious communicable disease, to another person. The bill also contains provisions that allow a health officer or their designee to use their authority to control the spread of dangerous communicable diseases, such as Ebola, in exigent circumstances. As medical professionals and public health officials, we believe SB 239 is critical to improving public health and protecting people living with HIV from unfair prosecution. SB 239 will make California a leader in the national movement to reform outdated HIV criminal laws.

During the 1980s and 1990s, fear and ignorance about HIV and its transmission routes and risks led California to enact several laws that criminalized behaviors of people living with HIV or added penalties to existing crimes for those living with the disease. 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.¹ These laws uniquely singled out HIV and did not include other communicable diseases; they did not require actual transmission of HIV; and, in some cases, they did not require actual exposure or conduct that would be likely to transmit the disease. According to the Williams Institute at the UCLA School of Law, of the 800 individuals who have come into contact with California's criminal justice system for HIV-related crimes between 1988 and June 2014, nine out of ten convictions required no proof of exposure to HIV and none required actual transmission.² These laws codified into California law the high level of fear and lack of medical knowledge of the early AIDS epidemic.

Since these laws were passed, effective treatments have been developed that dramatically lengthen and improve the quality of life for people living with HIV.³ Research also demonstrates that people living with HIV on successful treatment are essentially non-infectious. According to Dr. Carl Dieffenbach, Director of the Division of AIDS at the National Institutes of Health, "Once you begin therapy and you stay on therapy, with full virologic suppression, you are not capable of transmitting HIV to a sexual partner."⁴ In addition, it has recently been established that when HIV-negative individuals regularly take certain HIV medications, known as pre-exposure prophylaxis (PrEP), they can almost entirely eliminate the risk of acquiring HIV.⁵ These scientific advances, as well as modern understanding of which activities actually pose a risk of transmission, should inform our laws and the manner in which we address our public health response to HIV.

SB 239 is part of a broader national effort to reform HIV-specific criminal laws across the country. In September 2011, Rep. Barbara Lee introduced the Repeal Existing Policies that Encourage and Allow Legal (REPEAL) HIV Discrimination Act, which encourages state and federal legislators to work together to modernize outdated laws relating to HIV.⁶ Endorsers of the REPEAL Act include the Human Rights Campaign, AIDS United, National Alliance of State and Territorial AIDS Directors, HIV Medicine Association, and the American Psychological Association. Reform of HIV criminal laws is also part of the National HIV/AIDS Strategy, a five-year plan that details priorities and actions to guide the national response to the HIV

¹ Associated Press. (1985, December 20). Poll indicates majority favor quarantine for AIDS victims. *The New York Times*. Retrieved from <http://www.nytimes.com/1985/12/20/us/poll-indicates-majority-favor-quarantine-for-aids-victims.html?mcubz=1>

² Hasenbush, A., & Zandoni, B. (2016). *HIV criminalization in California: evaluation of transmission risk*. Williams Institute, UCLA School of Law.

³ Antiretroviral Therapy Cohort Collaboration. (2017). Survival of HIV-positive patients starting antiretroviral therapy between 1996 and 2013: a collaborative analysis of cohort studies. *The Lancet HIV*.

⁴ Prevention Access Campaign (Producer). (2016, September 7). Dr. Carl Dieffenbach, NIH makes it clear: a person with HIV on successful treatment is "no longer infectious" [Video file]. Retrieved from <https://vimeo.com/181872696>

⁵ Grant, R. M., Anderson, P. L., McMahan, V., Liu, A., Amico, K. R., Mehrotra, M., ... & Buchbinder, S. (2014). Uptake of pre-exposure prophylaxis, sexual practices, and HIV incidence in men and transgender women who have sex with men: a cohort study. *The Lancet Infectious Diseases*, *14*(9), 820-829.

⁶ REPEAL Act, H.R. 3053, 112th Cong. (2011).

epidemic.⁷ Several other states have recently passed bipartisan legislation to modernize their HIV criminal laws.^{8,9}

Updating California's HIV criminal laws is a key component of the California Department of Public Health's *Laying a Foundation for Getting to Zero: California's Integrated HIV Surveillance, Prevention, and Care Plan*. This plan establishes the blueprint for "Getting to Zero" in California, meaning a time when there are zero new HIV infections, zero HIV-related deaths, and zero HIV stigma. According to the plan, California's criminal laws must be modernized "to eliminate HIV-specific statutes and ensure that any prosecution on the basis of HIV requires: 1) proof of an intent to harm; 2) conduct that is likely to result in that harm; 3) proof that the conduct of the accused in fact resulted in the alleged harm; and 4) punishment that is proportionate to the actual harm caused by the defendant's conduct."¹⁰ SB 239 is consistent with these principles.

SB 239 repeals several HIV-specific criminal laws that impose harsh penalties on people living with HIV, including for activities that pose no risk of HIV transmission. Research suggests that HIV-specific criminal laws have done nothing to further public health goals, as they have not been found to influence sexual behaviors that may be related to risk of HIV transmission nor have they been found to reduce new HIV infections.¹¹ A 2017 analysis from the Centers for Disease Control and Prevention "found no association between HIV or AIDS diagnosis rates and criminal exposure laws across states over time, suggesting that these laws have had no detectable HIV prevention effect."¹²

Rather than preventing the spread of HIV, these laws increase stigma and discrimination against people living with HIV, driving them further away from HIV prevention, treatment, and support services. Research demonstrates that criminal laws targeting people living with HIV may deter people from accessing HIV testing and diagnosis in the first place, which stands in direct contrast to public health goals.¹³ HIV-specific criminal laws also lead to inflammatory or ill-informed media coverage that perpetuate misinformation regarding the ways in which HIV is transmitted and further stigmatize people living with the disease. According to the National Association of County & City Health Officials, "Disease-specific laws and policies that result in criminal prosecution fuel stigma and discrimination against persons living with communicable

⁷ White House Office of National AIDS Policy. (2015). *National HIV/AIDS strategy for the United States: updated to 2020*. Retrieved from <https://files.hiv.gov/s3fs-public/nhas-update.pdf>

⁸ Modernize Statutes Sexually Transmitted Infections, S.B. 16-146 (Colo. 2016).

⁹ Criminal Transmission of Contagious or Infectious Diseases, S.F. 2297 (Iowa 2014).

¹⁰ California Department of Public Health, Office of AIDS. (2016). *Laying a foundation for getting to zero: California's integrated HIV surveillance, prevention, and care plan*. Retrieved from https://archive.cdph.ca.gov/programs/aids/Documents/IP_2016_Final.pdf.

¹¹ Harsono, D., Galletly, C. L., O'Keefe, E., & Lazzarini, Z. (2017). Criminalization of HIV exposure: a review of empirical studies in the United States. *AIDS and Behavior*, 21(1), 27-50.

¹² Sweeney, P., Gray, S. C., Purcell, D. W., Sewell, J., Babu, A. S., Tarver, B. A., ... & Mermin, J. (2017). Association of HIV diagnosis rates and laws criminalizing HIV exposure in the United States. *AIDS*, 31(10), 1483-1488.

¹³ Patterson, S. E., Milloy, M. J., Ogilvie, G., Greene, S., Nicholson, V., Vonn, M., ... & Kaida, A. (2015). The impact of criminalization of HIV non-disclosure on the healthcare engagement of women living with HIV in Canada: a comprehensive review of the evidence. *Journal of the International AIDS Society*, 18(1).

diseases...Ending the stigma and discrimination faced by people living with communicable diseases is an important step to improving individual health and protecting the public's health.”¹⁴

In July 2014, the U.S. Department of Justice released a “Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Supported Factors.”¹⁵ This guide was designed to assist states to ensure that their policies reflect contemporary understanding of HIV transmission routes and associated benefits of treatment and do not place unnecessary burdens on people living with HIV. Although the guide was written to address HIV-specific criminal laws, its principles apply to all communicable diseases. Consistent with this guidance, SB 239 maintains criminal penalties for individuals who intentionally transmit or attempt to transmit HIV, or any other serious infectious or communicable disease, to another person. Unlike current law, which potentially results in a longer sentence than certain types of manslaughter, the bill imposes penalties consistent with transmission of other serious communicable diseases. The bill also includes protections to ensure that California's criminal laws are grounded in modern science. In order to be prosecuted for intentional transmission or attempted transmission, the bill requires that individuals engage in conduct likely to result in transmission and clarifies that taking practical means to prevent transmission—such as using a condom or being on treatment—is incompatible with the intention to transmit HIV or any other communicable disease. These changes to current law will ensure that California law reflects a science-based understanding of HIV prevention, treatment, and transmission.

SB 239 contains additional provisions to help control the spread of communicable diseases in exigent circumstances. In California, communicable disease is tracked and controlled at the local level by physician health officers. The Health Officers Association of California supports SB 239 and has worked closely with the authors on the bill language. Under current law, health officers have the authority to issue orders of isolation and quarantine for anyone who poses a threat to public health, whether through bad intentions or through negligence.^{16,17} A violation of such an order is a crime. Because drafting and approving an isolation or quarantine order takes time, SB 239 includes provisions that allow a health officer or their designee to issue a verbal warning in an emergency situation, which will stay in place for a limited amount of time while the official order can be drafted. This will allow the health officers to use their authority to control the spread of dangerous communicable diseases, such as tuberculosis, while still protecting those living with HIV from unnecessary prosecution.

In summary, SB 239 will promote public health by reducing HIV-related stigma and discrimination, eliminating barriers to HIV testing and treatment, and aligning California law

¹⁴ National Association of County & City Health Officials. (2013). *Opposing stigma and discrimination against persons with communicable diseases*. Retrieved from <http://www.naccho.org/uploads/downloadable-resources/Policy-and-Advocacy/13-11-Opposing-Stigma-and-Discrimination-against-Persons-with-Communicable-Diseases-2.pdf>.

¹⁵ U.S. Department of Justice, Civil Rights Division. (2014). *Best practices guide to reform HIV-specific criminal laws to align with scientifically-supported factors*. Retrieved from <https://www.ada.gov/hiv/HIV-guide-reform-crim.pdf>

¹⁶ CAL H&S Code § 120130

¹⁷ CAL H&S Code § 120280

with current HIV science. The bill also preserves adequate public authority to control the spread of communicable diseases. For these reasons, we strongly urge you to sign SB 239 into law.

Sincerely,

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