California Closer to Modernizing HIV Crime Laws

Lawmakers in both houses passed a bill to update laws and reduce penalties. It now goes to the governor.

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California lawmakers approved a bill that makes it a misdemeanor instead of a felony to intentionally transmit HIV to a partner and to knowingly expose a sexual partner to HIV without disclosing, The Los Angeles Times reports. The bill now goes to the governor to either sign or veto.

The bill, SB 239, was introduced by Senator Scott Wiener (D–San Francisco), who pointed out that current law does not take into consideration modern scientific developments regarding the virus. For example, people who are living with HIV and maintain an undetectable viral load thanks to antiretroviral treatment have virtually zero chance of passing the virus onto their sexual partners. Also, HIV is no longer a death sentence.

According to SB 239, current laws make it a felony punishable by imprisonment for three, five or eight years to expose another person to HIV without disclosing one's status.

"Right now," Wiener told the Times, "HIV is uniquely singled out for harsh treatment as a felony" when compared with other sexually transmitted infections.

Republican Senator Joel Anderson of San Diego responded that tougher penalties should apply to the other infections. "I'm of the mind that if you purposefully inflict another with a disease that alters their lifestyle the rest of their life, puts them on a regimen of medications to maintain any kind of normalcy, it should be a felony," he said. "It's absolutely crazy to me that we should go light on this."

Wiener also noted that criminalization laws do not lower HIV transmission rates—in fact, they stigmatize people living with HIV and encourage others not to get tested.

In April, a POZ Poll asked, "Do you think that intentionally transmitting HIV should be a misdemeanor instead of a felony?" The results so far: 74 percent say it should be a misdemeanor, and 26 percent say it should remain a felony. (Voice your opinion by voting here.)

According to the text of SB 239, the bill would "make the intentional transmission of an infectious

or communicable disease, as defined, a misdemeanor punishable by imprisonment in a county jail for not more than 6 months if certain circumstances apply, including that the defendant knows he or she or a 3rd party is afflicted with the disease, that the defendant acts with the specific intent to transmit or cause an afflicted 3rd party to transmit the disease to another person, that the defendant or the afflicted 3rd party engages in conduct that poses a substantial risk of transmission, as defined, that the defendant or the afflicted 3rd party transmits the disease to the other person, and if the exposure occurs through interaction with the defendant and not a 3rd party, that the person exposed to the disease during voluntary interaction with the defendant did not know that the defendant was afflicted with the disease. The bill would also make it a misdemeanor to attempt to intentionally transmit an infectious and communicable disease, as specified, punishable by imprisonment in a county jail for not more than 90 days.... This bill would make willful exposure to an infectious or communicable disease, as defined, a misdemeanor punishable by imprisonment in a county jail for not more than 6 months, and would prohibit a health officer, or a health officer's designee, from issuing a maximum of 2 instructions to a defendant that would result in a violation of this provision."

The bill is cosponsored by APLA Health, the ACLU of California, Black AIDS Institute, Equality California, Lambda Legal and Positive Women's Network–USA, according to an earlier press release by APLA Health, which serves the HIV and LGBT communities. As POZ previously reported, the cosponsors are part of a coalition called Californians for HIV Criminalization Reform (CHCR). Numerous additional members of CHCR support the legislation.

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