



California Changed its HIV Criminal Law in 2017



In 2017, Governor Brown signed California Senate Bill 239 into law. It reduced and repealed punishments for violations of California's HIV exposure laws.

## BEFORE 2017

People living with HIV (PLHIV) could be convicted of a felony, with prison sentences of 3 to 8 years, for not disclosing their HIV status prior to having anal or vaginal sex without a condom.

Soliciting or engaging in sex work was a felony, with imprisonment for up to 3 years, if a person had a prior conviction for prostitution or a sex offense and had previously tested positive for HIV.

Test results obtained from mandatory testing following a prostitution conviction could be used by prosecutors to establish a defendant's knowledge of their status for subsequent prosecutions.

Blood, organ, tissue, or semen donation while aware of one's status was a felony, punishable by 2 to 6 years.

Transmission was not required for prosecution for any of the above offenses.

PLHIV faced a sentence increase of 3 additional years for nonconsensual sex offenses.

## WHAT CHANGED?

**The law treats "intentional transmission of an infectious or communicable disease" as a misdemeanor punishable by up to 6 months' imprisonment.** Prosecutors must prove a person acted with a "specific intent" to transmit, that their conduct posed a substantial risk of transmission, and that transmission occurred as a result.

**It is a defense if a person took, or attempted to take, measures to prevent transmission.** However, failing to take preventative measures is not enough for prosecutors to prove a person had specific intent to transmit a disease (a required element of the offense).

**The law clarifies that people living with HIV or other communicable diseases cannot be prosecuted for not taking medications during pregnancy.**

**Sex workers living with HIV no longer are subject to felony prosecution.** The new law vacates previous felony convictions for soliciting or engaging in sex work while living with HIV, and people serving sentences can request the dismissal of their sentence.

**Prostitution convictions no longer trigger mandatory HIV testing.**

**It is no longer a felony for PLHIV to donate blood, tissue, semen, or breast milk** (donations still undergo testing).

## WHO IS STILL AT RISK?

**PLHIV may still face prosecution under California's general criminal laws.** There were occasional prosecutions for, e.g., criminal threats, before the 2017 reform and no new laws preclude this.

**The new law left sentence enhancements for sex offense convictions unchanged**—enhancements which increase a sentence by an additional 3 years per offense regardless of intent, transmission risk, or whether transmission occurred.

To read the full text of the current law, as well as additional analysis, please visit [www.hivlawandpolicy.org/states/california](http://www.hivlawandpolicy.org/states/california).