HIV CRIMINALIZATION LAWS IN CALIFORNIA

<table>
<thead>
<tr>
<th>Code Section</th>
<th>Criminalized Conduct</th>
<th>Transmission Required?</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cal Penal Code §647f</td>
<td>Solicitation while HIV-positive</td>
<td>No</td>
<td>Felony: 16+ months</td>
</tr>
<tr>
<td>Cal Health &amp; Safety Code §12022.85</td>
<td>Exposure to HIV with intent to transmit</td>
<td>No</td>
<td>Felony: 3, 5 or 8 years</td>
</tr>
<tr>
<td>Cal Health &amp; Safety Code §1621.5</td>
<td>Blood/tissue donation while HIV-positive</td>
<td>No</td>
<td>3 year sentence enhancement</td>
</tr>
<tr>
<td>Cal Health &amp; Safety Code §120290</td>
<td>Willful exposure to communicable disease</td>
<td>No</td>
<td>Misdemeanor</td>
</tr>
</tbody>
</table>

CRIMINAL OFFENDER RECORD INFORMATION

- Maintained by California Department of Justice
- Record of any contact with the criminal justice system, from arrest through sentencing
  - No data for Cal Health & Safety Code §1621.5
- From the time of their enactment (1988*) through June 2014
- n = 1,174 separate incidents; 800 individuals
**NUMBER OF PEOPLE IMPACTED BY YEAR**

- 1990: 2
- 1991: 2
- 1992: 3
- 1993: 6
- 1994: 23
- 1995: 46
- 1996: 43
- 1997: 61
- 1998: 56
- 1999: 66
- 2000: 66
- 2001: 70
- 2002: 63
- 2003: 51
- 2004: 65
- 2005: 67
- 2006: 46
- 2007: 46
- 2008: 50
- 2009: 34
- 2010: 36
- 2011: 32
- 2012: 28
- 2013: 24
- 2014: 17
- 2015: 5

**ENFORCEMENT BY CALIFORNIA COUNTIES**

- Los Angeles
- Sacramento
- Imperial
- San Diego
- Riverside
- Orange
- San Bernardino
- Kern
- Ventura
- Santa Barbara
- San Luis Obispo
- Tulare
- Kings
- Inyo
- Fresno
- Monterey
- Merced
- Stanislaus
- Santa Clara
- Santa Cruz
- San Mateo
- San Francisco
- Alameda
- San Joaquin
- Marin
- El Dorado
- Solano
- Napa
- Yolo
- Sutter
- Placer
- Nevada
- Butte
- Plumas
- Mendocino
- Humboldt
- Del Norte
- Shasta
- Contra Costa
- 6
- 43
- Incidents (57%)
- 107
- Incidents (9%)
- 1
- 57
- Incidents (1% - 5%)
- 1
- 11
- Incidents (<1%)

**ENFORCEMENT DATA**

- 100% of people charged were convicted
- 98% of convictions required no proof of intent to transmit
- 95% of incidents were based on solicitation or suspected solicitation
- 93% of convictions required no proof of any conduct likely to result in transmission
  - 90% for solicitation
  - 3% for oral sex
DISPARATE ENFORCEMENT AGAINST PEOPLE OF COLOR
Comparison of HIV Prevalence in California with People who had Contact with the Criminal Justice System in California Related to their HIV Status, by Race/Ethnicity and Sex

DISPARATE ENFORCEMENT AGAINST PEOPLE OF COLOR
Charging Rates in Solicitation while HIV-Positive Incidents, by Race/Ethnicity and Sex
IMMIGRATION CONSEQUENCES

Place of Birth of Individuals Impacted by HIV Criminalization Laws in California

IMMIGRATION CONSEQUENCES

- A non-citizen is deportable if found convicted of (8 U.S.C.A. § 1227):
  1. Crime of moral turpitude
     - Solicitation is per se a crime of moral turpitude (Rohit v. Holder)
  2. Multiple crimes
  3. Aggravated felony
  4. Failure to register as a sex offender

- CORI data confirms that foreign born individuals have been subjected to immediate deportation proceedings following HIV-related incident
- Outcome of subsequent immediate deportation proceedings not determinable for lack of access to ICE data

HIV CRIMINALIZATION REFORM

SB 239: HIV crimes repealed

- Felony exposure with intent to transmit
- Felony solicitation while HIV+
- Felony blood, organ, and tissue donation while HIV+
HIV CRIMINALIZATION REFORM

SB 239: HIV crimes reformed

• Makes the intentional transmission of an infectious or communicable disease a misdemeanor, if:
  (1) D knows she or a 3rd party is HIV+
  (2) D acts with specific intent to transmit
  (3) Conduct poses a substantial risk of transmission
  (4) Conduct results in actual transmission
  (5) V did not know D is HIV+

• substantial risk of transmission: an act that has a reasonable probability of transmission as proven by a competent medical or epidemiological evidence; not low or negligible risk conduct

• practical means to prevent transmission: use of a method/device/behavior/activity scientifically proven to limit/reduce risk of transmission, including condoms, PrEP, and being undetectable

QUESTIONS AND COMMENTS