



January 23, 2024

Senator Liz Krueger
Chair
Finance Committee
financechair@nysenate.gov

Assemblywoman Helene E. Weinstein
Chair
Standing Committee on Ways and Means
wamchair@nyassembly.gov

RE: New York State Executive Budget's Proposed Changes to Laws Affecting People Living with Sexually Transmitted Infections.

Dear Chairpersons Krueger and Weinstein,

The Center for HIV Law and Policy (CHLP) is an abolitionist legal and policy organization fighting to end the stigma, discrimination, and violence towards our communities experiencing racial oppression, patriarchal violence, and/or economic divestment. Our work focuses on people living with and deeply affected by HIV and other stigmatized health conditions. We utilize legal advocacy, high-impact policy and research initiatives, and multi-issue partnerships, networks, and resources as concrete ways to support our communities working to decriminalize HIV and other stigmatized health conditions.

Through our Positive Justice Project, we analyze and advocate against the diverse forms of criminalization of people living with HIV and other sexually transmitted infections (STIs).¹ We have collaborated with federal, statewide, and local coalitions of grassroots activists, including in our home state of New York, to modernize these laws to reflect scientific developments, remove stigmatizing and counterproductive language, and center the dignity of people living with these conditions.

We offer the following testimony regarding proposed changes to laws related to STIs included in Governor Hochul's proposed Fiscal Year 2025 New York State Executive Budget. We are pleased to support her repeal of N.Y. Pub. Health Law § 2307 (Section 2307), which imposes criminal penalties on people living with STIs. However, repeal alone does not go far enough. We urge the Legislature to provide retroactive relief for individuals convicted under Section 2307 and to bar the criminalization of people living with STI in future laws. We further implore the Legislature to reject the proposed changes to HIV testing in N.Y. Pub. Health Law § 2781 (Section 2781), which would allow for testing without oral advice or consent.

¹ The Center for HIV Law and Policy (CHLP), *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, <https://www.hivlawandpolicy.org/resources/hiv-criminalization-united-states-sourcebook-state-and-federal-hiv-criminal-law-and> (last visited Jan. 23, 2024).

1. *Although the repealing of Section 2307 marks a critical step in reducing the criminalization of people living with STIs, the wide-reaching consequences of STI criminalization, especially for Black and brown LGBTQ folks in New York, demand the creation of an automatic record expungement process and a statutory prohibition on the use of STI status as an element of a crime.*

Section 2307 imposes archaic criminal penalties on any person who knows they are living with an STI and has sex with another person.² Section 2307 originates from a 1909 law aimed at preventing the spread of STIs among military service members. Following its broadening to apply to the public in 1946,³ it has not been amended since 1953.⁴ Persons convicted under Section 2307 may face up to one year in prison and a \$1,000 fine.⁵

The harsh consequences of a conviction under Section 2307 extend beyond incarceration and fines. Individuals convicted maintain the misdemeanor on their criminal record forever.⁶ A criminal conviction can negatively affect an individual's ability to obtain employment, find housing, and pursue an education.⁷ For example, a misdemeanor conviction in New York can bar you from obtaining a variety of licenses necessary for employment, including licenses related to being a security guard to a radiologist.⁸ Moreover, misdemeanor convictions are associated with a 16 percent reduction in one's annual earnings.⁹ And for immigrants, a conviction could result in deportation or other negative immigration consequences.¹⁰

² N.Y. Pub. Health Law § 2307 (2023). Although the statute does not define “infectious venereal disease,” the Public Health Code defines “communicable disease” as “infectious, contagious or communicable disease” and provides the New York Commissioner of Health the authority to promulgate a list of sexually transmitted diseases (STDs). N.Y. Pub. Health Law §§ 2, 2311, (2016); N.Y. Comp. R. & Regs. 10 § 23.1 (2016) (listed STDs include chlamydia trachomatis infection, gonorrhea, syphilis, non-gonococcal urethritis, non-gonococcal [mucopurulent] cervicitis, trichomoniasis, lymphogranuloma venereum, chancroid, granuloma inguinale, human papilloma virus [HPV], genital herpes simplex, pelvic inflammatory disease [PID] gonococcal/non-gonococcal, yeast [candida] vaginitis, bacterial vaginosis, pediculosis pubis, scabies).

³ The Center for HIV Law and Policy, *CHLP and TransEquity Host Community Conversation on HIV Criminalization in Brooklyn* (Oct. 24, 2023), <https://www.hivlawandpolicy.org/news/chlp-and-transequity-host-community-conversation-hiv-criminalization-brooklyn>.

⁴ N.Y. Pub. Health Law § 2307 (2023).

⁵ N.Y. Penal Law §§ 55.10(2)(b); 55.05(2)(a); 70.15(1); 80.05(1) (2015).

⁶ See generally N.Y. Crim. Proc. Law § 160.59 (providing an overview of the process of sealing certain convictions, including misdemeanor convictions).

⁷ The Center for American Progress, *A Criminal Record Shouldn't Be a Life Sentence to Poverty* (May 28, 2021), <https://www.americanprogress.org/article/criminal-record-shouldnt-life-sentence-poverty-2/>; Simone Ispa-Landa & Charles E. Loeffler, *Indefinite Punishment and the Criminal Record: Stigma Reports Among Expungement-Seekers in Illinois*, 0 *Criminology* 1, 1 (2016).

⁸ National Inventory of Collateral Consequences of Conviction, *Collateral Consequences Inventory*, <https://niccc.nationalreentryresourcecenter.org/consequences> (last visited Jan. 23, 2024).

⁹ The Brennan Center, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, (Sep. 15, 2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.

¹⁰ See UCLA School of Law The Williams Institute, *HIV Criminalization in California: What We Know*, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-What-We-Know-2017.pdf> (“Based on the data available, it did appear that there were some individuals who had deportation proceedings brought immediately after an HIV-specific criminal incident”).

Across the nation, many laws similar to Section 2307 have been driven by racist, sexist, and homophobic attitudes towards the folks disparately affected by HIV and other STIs.¹¹ Consequently, the enforcement of laws criminalizing people living with HIV and other STIs disproportionately impact Black, Latinx, and LGBTQ+ folks.¹² The generally increased policing and prosecution of Black and brown and working class communities further compounds these disparities in HIV criminalization enforcement.¹³ The same is true in New York - members of vulnerable communities, especially Black and brown LGBTQ+ folks, are disproportionately prosecuted under Section 2307.

Despite the relatively limited number of prosecutions, Section 2307 remains a threat to people living with STIs.¹⁴ This law impacts the sense of freedom people living with STIs, particularly those who are also members of other marginalized communities, experience in the pursuit of their romantic and sexual choices.

Section 2307 disincentivizes getting tested for STIs, as only people who are aware of their status are vulnerable to criminal sanctions. Self initiated-testing for STIs is a central component for our attempts to stem the spread of STIs.¹⁵ Accordingly, the existence of Section 2307 undermines public health efforts by discouraging people from getting tested.¹⁶ Moreover, carceral penalties for people living with STIs exacerbates stigma, inhibiting honest conversations about sexual health and discouraging people from accessing care.¹⁷

¹¹ Edwin J. Bernard et al., *Punishing Vulnerability Through HIV Criminalization*, 112 Am. J. Pub. Health S395_S397 (2022) (“[W]e observe that HIV criminalization serves as a proxy for discrimination based on class, ethnicity, gender identity, migrant status, race, sex, sexual orientation, and other markers of social vulnerability. The most aggressive push to criminalize people living with HIV tends to occur at the intersection of several stigmatized identities”).

¹² UCLA School of Law Williams Institute, *HIV Criminalization and Race*, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Crim-and-Race-Infographic.pdf> (last visited Jan. 23, 2024).

¹³ See Elizabeth Hinton et al., Vera Institute, *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System* (May 2018), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>; Delores Jones-Brown & Jason M. Williams, *Over-policing Black bodies: the need for multidimensional and transformative reforms*, 19 J. of Ethnicity in Crim. Justice 181, 181 (2021) (introducing the special issue detailing the diverse ways Black and brown people are disparately criminalized through policing and prosecution); Rashawn Ray, Interdisciplinary Association for Population Health Science, *400 Years of Chains: The Over-policing of Black Bodies and the Devaluing of Black Pain*, <https://iaphs.org/400-years-of-chains-the-over-policing-of-black-bodies-and-the-devaluing-of-black-pain/> (last visited Jan. 23, 2024) (providing historical context for the over-policing of Black communities).

¹⁴ *United States v. Kelly*, 609 F. Supp. 3d 85 (E.D.N.Y. 2022); The Law Offices of Jeffrey Lichtman, *Jury Verdict in Favor of Woman Infected With Herpes*, <https://jeffreylightman.com/jury-verdict-in-favor-of-woman-infected-with-herpes/> (last visited Jan. 23, 2024).

¹⁵ Center for Disease Control and Prevention (CDC), *The Role of HIV Self-Testing in Ending the HIV Epidemic*, <https://www.cdc.gov/hiv/pdf/policies/data/cdc-hiv-self-testing-issue-brief.pdf>.

¹⁶ CDC, *HIV Criminalization and Ending the HIV Epidemic in the U.S.* (Jan. 19, 2023), <https://www.cdc.gov/hiv/policies/law/criminalization-ehe.html>.

¹⁷ CHLP, *Stigma*, <https://www.hivlawandpolicy.org/issues/stigma>, (last visited Jan. 23, 2024); Anna North, Vox, *These laws were meant to protect people from HIV. They've only increased stigma and abuse*, (Oct. 10, 2019 11:27AM), <https://www.vox.com/the-highlight/2019/10/3/20863210/hiv-aids-law-iowa-criminalization>; Amy Baugher et al., *Black men who have sex with men living in states with HIV criminalization laws report high stigma*, 23 U.S. cities, 2017, 35 AIDS 1637, 43 (2021) (finding HIV criminalization increased stigma among Black same gender loving men in particular).

As such, we commend the proposed repeal of Section 2307. The proposal aligns with the recommendations of leading local, state, federal, and national organizations and leaders, including President Biden, who have called for the repeal of laws similar to Section 2307.¹⁸ However, we urge the Legislature to add a provision requiring the automatic expungement of the records of people previously convicted under Section 2307.¹⁹ Expungement is the only way to end the continuing harms caused by Section 2307 to primarily Black and brown LGBTQ+ folks. Furthermore, we ask the Legislature to ban any future use of one's STI status as an element of a crime.²⁰ The prohibition would ensure people living with STIs are able to live unencumbered by fears of future criminalization of their STI status, which may last for their entire lives.

2. *The proposed changes to the HIV testing notice protocols effectively ends active and knowing consent in NY.*

The proposed striking of the requirements for oral notice and reception of consent by medical staff prior to conducting an HIV test eviscerates a person's ability to knowingly and willingly control all aspects of their medical care. The revised provision instead allows for indirect "notice."²¹ The required notice may be provided by as little as "displayed signage, or by electronic means or other appropriate form of communication."

The proposal represents an attempt to address a problem without confirming scientifically that the change represents a solution, while concurrently vitiating New Yorkers' rights to make informed medical decisions. If the issue is that people are not getting tested and/or they are receiving simultaneous diagnosis of HIV and AIDS, there is no proof that removing the oral advisement requirement will improve testing rates (and more importantly improve treatment outcomes). There are, however, other proven ways of improving HIV testing uptake and subsequent treatment, such as peer-based education and support programs not embraced by these changes.²²

¹⁸ The White House, *Remarks by President Biden to Commemorate World AIDS Day, Launch the National HIV/AIDS Strategy, and Kick Off the Global Fund Replenishment Process* (Dec. 1, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/12/01/remarks-by-president-biden-to-commemorate-world-aids-day-launch-the-national-hiv-aids-strategy-and-kick-off-the-global-fund-replenishment-process/>; American Medical Association, *Discrimination and Criminalization Based on HIV Seropositivity H-20.914*, <https://policysearch.ama-assn.org/policyfinder/detail/HIV?uri=%2FAMADoc%2FHOD.xml-0-1254.xml> (last visited Jan. 23, 2024); UNAIDS, *GLOBAL AIDS STRATEGY 2021–2026. END INEQUALITIES. END AIDS.*, https://www.unaids.org/sites/default/files/media_asset/global-AIDS-strategy-2021-2026_en.pdf (last visited Jan. 23, 2024).

¹⁹ REPEAL STI Discrimination Act, A3347 (2024).

²⁰ *Id.* The bill provides the following language:

A person living with a sexually transmitted infection who has sexual contact or other activity with another person has not engaged in conduct or activity that creates criminal liability for any offense where their status as a person with a sexually transmitted infection is a factor. For the purposes of this subdivision, a sexually transmitted infection is transmitted primarily if not exclusively through sex or intimate physical contact

²¹ FY 2025 NEW YORK STATE EXECUTIVE BUDGET, Part T, <https://www.budget.ny.gov/pubs/archive/fy25/ex/artvii/hmh-bill.pdf>.

²² Sean D. Young et al., *A Peer-Led Online Community to Increase HIV Self-Testing among African American and Latinx MSM: A Randomized Controlled Trial*, 90 J. Acquired Immune Deficiency Syndrome

Permitting the use of indirect notice of testing practically abolishes informed consent. The New York State Department of Health publishes the Patients' Bill of Rights, which mandates that every patient must "[r]eceive all the information that you need to give informed consent for any proposed procedure or treatment."²³ The removal of the oral advisement and consent requirement effectively deprives patients of critical information and instead assumes that consent was given when no objection is raised to a blood draw. Without the information being properly delivered, patients are denied the right to make an informed decision regarding their treatment.

Permitting nonconsensual testing would undermine prevention and care efforts by exacerbating pre-existing medical mistrust. In order to combat Black and brown LGBTQ+ people continuing to have disparate rates of HIV diagnoses, encouraging and facilitating engagement with HIV prevention and care is critical.²⁴ However, many members of the Black, brown, and LGBTQ+ communities, particularly those with intersectional identities, have high rates of medical mistrust.²⁵ This is due not only to historical atrocities but also has been exacerbated by ongoing discrimination in and outside the health care system.²⁶ Covertly testing individuals, particularly those from communities that have high medical mistrust, could further discourage these folks from accessing care in the future. Moreover, merely knowing one's status is not enough; people should feel encouraged to engage in the lifetime of care necessary to become and remain virally undetectable, as well as attend ongoing preventative care that leads to positive health outcomes in general. Rather than being a step in the direction of ending the mistrust between doctor and patient, the changes represent several steps back.

Accordingly, we urge the Legislature to reject the proposal to modify the consent requirements for HIV testing. In addition to being an unproven and unnecessary modification, the weakening of consent procedures would disproportionately affect vulnerable communities by undermining trust in healthcare and exposing them to collateral consequences.

3. Conclusion

20 (2022); Victoria Frye et al., *TRUST: Assessing the Efficacy of an Intervention to Increase HIV Self-Testing Among Young Black Men Who have Sex with Men (MSM) and Transwomen*, 25 *AIDS & Behavior* 1219 (2020).

²³ New York State Department of Health, *New York State Hospital Patients' Bill of Rights* (Aug. 2019), <https://www.health.ny.gov/publications/1500/>.

²⁴ New York State Department of Health, *New York State HIV/AIDS Annual Surveillance Report* (Dec. 2022), https://www.health.ny.gov/diseases/aids/general/statistics/annual/2022/2022_annual_surveillance_report.pdf.

²⁵ Amanda B. Cox et al., *Medical Mistrust Among a Racially and Ethnically Diverse Sample of Sexual Minority Men*, 10 *LGBT Health* (2023); Alaina Brenick et al., *Understanding the Influence of Stigma and Medical Mistrust on Engagement in Routine Healthcare Among Black Women Who Have Sex with Women*, 4 *LGBT Health* (2017).

²⁶ Mohsen Bazargan et al., *Discrimination and Medical Mistrust in a Racially and Ethnically Diverse Sample of California Adults*, 19 *Annals of Family Medicine* 4 (2021); The Center for American Progress, *Discrimination Prevents LGBTQ People From Accessing Health Care* (Jan. 18, 2018), <https://www.americanprogress.org/article/discrimination-prevents-lgbtq-people-accessing-health-care/>; Simar Singh Bajaj, & Fatima Cody Stanford, *Beyond Tuskegee — Vaccine Distrust and Everyday Racism*, 384 *NEJM* (2021).



As an abolitionist legal and policy organization, we understand the role of laws in perpetuating the oppression of marginalized communities, particularly folks living with HIV and other STIs. Accordingly, while we support the repeal of Section 2307, we urge the Legislature to ameliorate any past and potential future harm caused by Section 2307 by requiring automatic expungement of convictions and banning STI status as an element of any criminal offense in the future. Additionally, we urge the Legislature to support the ability of New Yorkers to make informed choices about their healthcare and reject the proposed changes to Section 2781.

Sincerely,

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The Center for HIV Law and Policy