

GENERAL OFFICE MEMORANDUM 18-001

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE   
Chief Deputy District Attorney

SUBJECT: CHANGES IN HIV LAWS, EFFECTIVE JANUARY 1, 2018

DATE: JANUARY 2, 2018

On October 6, 2017, Governor Brown approved Senate Bill 239 (SB 239) that significantly changed the laws involving human immunodeficiency virus (HIV). Relevant to criminal prosecution, SB 239 repealed the following provisions:

**Health and Safety section 120291, subdivision (a)**, making it a felony to expose another person to HIV by engaging in unprotected sexual activity under specified circumstances.

**Penal Code section 647f**, making it a felony for any person who is convicted of prostitution where a fact-finder found true the allegation that he or she had knowledge of a positive HIV test result from a prior prostitution or enumerated sex offense conviction.

**Health and Safety Code section 1621.5**, making it a felony for any person to donate blood, tissue, or under specified circumstances, semen or breast milk, if the person knows that he or she has AIDS, or that he or she has tested reactive to HIV.

**Health and Safety Code section 120290**, making it a misdemeanor for a person who is afflicted with a contagious, infectious, or communicable disease to willfully expose himself or herself to another or willfully exposes another person afflicted with the disease to someone else.

In lieu of the above provisions, SB 239 added a new version of Health and Safety Code section 120290 to make it a misdemeanor, under specified circumstances, for any person to intentionally transmit or attempt to transmit a contagious, infectious, or communicable disease, including HIV. (Health & Saf. Code § 120290, subds. (a) (1), (g) (1), (g) (2).) This new version also makes it a misdemeanor to willfully fail to follow within 96 hours a health officer's instruction "not to engage in particularized conduct that poses a substantial risk of transmission of an infectious or communicable disease." (Health & Saf. Code § 120290, subds. (a) (2), (g) (1).) It further prohibits disclosure to the public the "identifying characteristics" of complaining witnesses and defendants charged under this section. (Health & Saf. Code § 120290, subds. (h) (1) - (h) (4).) "Identifying characteristics" as used under this section "includes, but is not limited to, the name or any part of the name, address or any part of the address, city or unincorporated area of residence, age, marital status, relationship of the defendant and the complaining witness, place of

employment, or race or ethnic background.” (Health & Saf. Code § 120290, subd. (h) (5).) To protect the anonymity of complaining witnesses and defendants, this section requires the use of pseudonyms in lieu of their true names. (Health & Saf. Code § 120290, subds. (h) (1), (h) (4).)

SB 239 also added provisions to the Penal Code to invalidate and to vacate all convictions under Penal Code section 647f, and to allow for resentencing of those who currently are serving a sentence under this section. (Pen. Code §§ 1170.21, 1170.22.)

SB 239 further repealed provisions mandating AIDS education for those convicted or placed on diversion for prostitution, lewd acts, or other enumerated drug offenses, mandating AIDS education and testing for first time prostitution offenders, and mandating collection of fines to fund AIDS education programs. (See repealed Pen. Code §§ 1001.10, 1001.11, 1202.6, and 1463.23.) Under SB 239, a new version of Penal Code section 1202.6 is added to continue allowing first-time prostitution offenders to participate in a work program, in a drug diversion program, or in both programs.

SB 239, however, does not affect the three-year sentence enhancement under Penal Code section 12022.85 for those who commit specified sex crimes while being infected with AIDS or while being HIV positive. SB 239 also does not alter prosecutors’ obligation under Penal Code sections 1524.1, 1202.1 and Health and Safety Code section 121055, to advise victims of specified sexual assault offenses of the right to HIV/AIDS testing and disclosure of test results. Thus, the Office policies regarding this obligation remain unchanged. (See LPM §§ 9.18-9.18.03, 12.21-12.21.03, 24.02.05.)

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