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DRAFT

MEMORANDUM

TO:	Equality California/Silver State Equality
FROM:	Justin Becker S. Patrick Kelly Brady K Mickelsen Leo P. Zehren
CC:	Benson R. Cohen
RE:	HIV Decriminalization
DATE:	May 8, 2020

I. Introduction

We have been informed from representatives of Equality California/Silver State Equality ("Silver State Equality") that Silver State Equality is considering presenting legislators in the Nevada State Assembly or the Nevada State Senate (the "Nevada Legislature") with a draft bill that would revise and modernize the current HIV/AIDS criminalization laws of the State of Nevada.

This memorandum provides a summary of our review of: (1) the Laws of the State of Nevada to confirm what provisions are likely to be impacted in connection with the implementation of any modernization and reform efforts related to HIV/AIDS criminal laws, including any relevant Laws that would need to be updated to implement the modernization and reforms; and (2) the Laws described in Section III.3 for purposes of referencing those provisions that provided for HIV/AIDS criminalization modernization and reform, which such review included both on the substance of each relevant Law and summaries of the arguments raised for and against enactment of such Laws.

II. Executive Summary

This memorandum is divided into the following sections: (1) the current state of relevant Nevada Law; (2) modernization and reform efforts related to relevant Nevada Law; (3) a review of similar reform efforts in other states – both on the substance of the statutes as reformed and in

the arguments raised for and against enactment of such reforms; and (4) sections of the Nevada code that are likely targets for amendment to reform and modernize Nevada's HIV/AIDS criminalization laws.

This memorandum does not propose particular statutory language. We are available (following conferral with Silver State Equality on its desired approach) to prepare a follow up "bill draft memo" setting forth proposed statutory language and a brief description of the merits of a proposed bill.

III. Necessary Information

To assess whether this would be viable legislation to pursue in Nevada, the following information is necessary:

1. Current state of Nevada law regarding HIV criminalization.

a. General

In Nevada, it is a Class B Felony for a person living with HIV who knows their status to "intentionally, knowingly, or willfully engag[e] in conduct in a manner that is intended or likely to transmit the disease to another person."[1] Conduct "likely to transmit" HIV is not defined, but includes engaging in activities such as sexual intercourse based on a concurrent reading of Nevada's criminal statutes related to sex work and HIV status (discussed in the section below). The intent to expose another to HIV and/or actual transmission is a required element of the crime.

Nevada law provides an affirmative defense to criminal liability. The affirmative defense is if the person subject to the possible HIV exposure: 1) knew the HIV status of the HIV-positive individual; 2) knew that the conduct in which they engaged could result in HIV exposure; and 3) voluntarily engaged in the conduct.[2] All three elements must be satisfied. The use of a condom without disclosure of the individual's HIV status does not satisfy the defense.

b. Sex Work

The engagement of prostitution in Nevada is legal if done in a licensed "house of prostitution."[3] Sex workers must be tested monthly for HIV and sexually transmitted infections and are required to wear latex condoms.[4] If a sex worker becomes HIV positive and receive notice of their status, they can no longer engage in licensed sex work.[5] If the individual continues to engage in sex work, it is a Class B felony, punishable by two to ten years in prison and/or a fine of up to $10,000.[6]

[1] NRS § 201.205(1).
[2] NRS § 201.205(2).
[3] NRS §§ 201.354, 193.150. Only certain counties permit sex work. These include Elko, Humboldt, Lyon, and White Pine.
[4] NAC §§ 441A.800-815
[5] NRS § 201.358
[6] NRS § 201.358

If a person engages in unlicensed sex work, and they are arrested, the individual must be tested for HIV.[7] If they test positive, they are required to pay $100.[8] Like a licensed sex worker, if the unlicensed individual receives notice that they are positive and engages in sex work after receiving notice, it is a Class B felony, punishable by two to ten years in prison and/or a fine of up to $10,000.[9]

c. Transmission Prevention

A health authority in Nevada may require medical examination of a person they, "reasonably suspect[ ] has a communicable disease in an infectious state."[10] "Communicable disease" is defined as, "a disease which is caused by a specific infectious agent or its toxic products, and which can be transmitted, either directly or indirectly, from a reservoir of infectious agents to a susceptible host organism."[11] This includes infectious diseases, which is defined under Nevada law to include HIV and AIDS.[12]

A health authority in Nevada may also require isolation, quarantine, or treatment of any person if they believe, "such action is necessary to protect the public health."[13] Persons subject to isolation or quarantine must undergo medical examination.[14] Restricted individuals have the right to notice, a hearing before the district court, legal representation and to be present and testify by telephonic or videoconference.[15] At the hearing the health authorities must establish by clear and convincing evidence that the person has been infected with or exposed to a communicable disease, or is likely to be an immediate threat to the health of the public.[16]

Compliance with any of these public health measures may be enforced by injunction.[17] Any violation of these public health measures is a misdemeanor, punishable by six months' imprisonment and a $1,000 fine.[18] A person with an HIV or AIDS diagnosis who does not comply with orders from health authorities, or who engages in behavior known to transmit HIV, may be subject to confinement in addition to criminal penalties.[19]

d. Prisoners

If a prisoner uses or discharges bodily fluid with the intent to have the bodily fluid come into physical contact with any portion of another person's body, whether or not physical contact occurs, the person may be subject to certain criminal penalties, and is considered a gross misdemeanor or

[7] NRS § 201.356(1).
[8] NRS § 201.356(1).
[9] NRS § 201.358.
[10] NRS § 441A.160.
[11] NRS § 441A.040.
[12] NRS §§ 441A.063, 441A.775.
[13] NRS § 441A.160.
[14] NRS § 441A.630.
[15] NRS §§ 441A.620, 441A.600, 441A.680.
[16] NRS § 441A.700.
[17] NRS § 441A.900.
[18] NRS §§ 441A.910, 193.150.
[19] NRS § 441A.300.

category D felony, depending on the number of offenses.[20] However, if the prisoner knows at the time of the offense that they have a communicable disease that causes or is reasonably likely to cause substantial bodily harm (e.g., HIV or AIDS), the individual could be subject to life in prison with the possibility of parole, or 25 years with the possibility of parole and a fine of not more than $50,000.[21] Therefore, if a prisoner spits on a prison guard and the prisoner knows that they are HIV positive, that prisoner could be subject to life in prison.

2. **Reform Efforts.**

In 2019, the Nevada Senate introduced S.B. 284 with the purpose to reform Nevada's HIV criminalization laws.[22] The Senate and Assembly passed the bill and the Governor signed it into law on May 17, 2019.[23] The bill thus became effective as of July 1, 2019. The law mandates the establishment of the "Advisory Task Force on HIV Exposure Modernization" (the "Task Force").[24] Under the law, the Task Force must review current Nevada law and the laws of other jurisdictions, and based on that review provide recommendations to the legislature and executive by September 1, 2020.

In the preamble of S.B. 284, the Nevada state government recognized that HIV-specific laws do not reduce risk-taking behavior or increase disclosure of one's HIV status, and that such laws may reduce the willingness to get tested.[25] The preamble thus states that current Nevada law may increase, rather than decrease the transmission of HIV because it may impose penalties on people with HIV who know their status and alter the behavior of individuals who may not know their status thereby potentially exposing others to HIV.[26] Moreover, the government recognized that the Nevada laws were enacted prior to the advent of antiretroviral medications, and that such medications can reduce HIV to undetectable levels reducing the risk of transmitting HIV to "near zero."[27]

The Governor is required to appoint up to 15 members to the Task Force, with a majority of the members consisting of individuals who either are 1) persons living with or affected by HIV or AIDS; or 2) persons in occupations, organizations, or communities that are more affected or more at risk of being affected by the current Nevada HIV criminalization laws.[28] Two Nevada state legislators may also serve on the Task Force. Membership on the Task Force is voluntary, and the Task Force has not been appropriated any state funding. Instead, it is authorized to seek gifts, grants, and donations to assist in carrying out its duties.[29]

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[20] NRS § 212.189.
[21] *Id.*
[22] Michael Lyle, Panel to take on reforming Nevada's antiquated HIV criminalization laws, NEVADA CURRENT (May 10, 2019), https://www.nevadacurrent.com/blog/panel-to-take-on-reforming-nevadas-antiquated-hiv-criminalization-laws/.
[23] S.B. 284, 80th Leg. (Nev. 2019).
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*

The Senate passed the bill unanimously. The Assembly voted 37-3, with Republican Assemblymen Chris Edwards, John Ellison, and Jim Wheeler opposed.

3. A review of other states that have undertaken similar reform efforts.

Over the last twenty-five years, seven states have made significant reforms to criminal statutes affecting people living with HIV ("PLHIV").[30] In chronological order of the passage of reform, the states are: Texas, Illinois, Iowa, Colorado, California, Michigan, and Washington.[31] We provide below a brief summary of these states' reform efforts.

i. Texas

SB 1076, 73rd Regular Session, 1993 – On September 1, 1994, Texas became the first state to repeal its HIV-specific criminal statute addressing exposure and transmission.[32] Prior to repeal, the statute made it a third degree felony for PLHIV to transfer their bodily fluids intentionally to an individual without consent.[33] Violation of the law was punishable by a maximum of ten years in prison and a $10,000 fine. Repeal of the statute was included in a large omnibus bill that amended several offenses and punishments under the state's Penal Code.[34]

ii. Illinois

SB 3673, 97th General Assembly, 2012 – The act amended the existing state statute concerning criminal liability for the transmission of HIV. The amendment required the following to impose criminal liability on an individual: (i) specific intent to transmit HIV; (ii) knowledge of HIV status; (iii) and engagement in sexual activity with another without the use of a condom (previously required only engagement in intimate contact).[35] The amendment also authorized prosecutors to subpoena records, including medical records, and to review such records only after a finding by the court that the records are relevant to the offense.[36] Although the requisites for criminal liability were amended, violation of the statute remains a Class 2 felony punishable by three to seven years in prison.

iii. Iowa

SF 2297, 85th General Assembly, 2014 – The act repealed and replaced Iowa's HIV criminal transmission law. The repealed law made it a Class B felony, punishable by up to twenty-five years in prison, for PLHIV who know their status to expose the body of another to their bodily

[30] The Center for HIV Law and Policy, *Timeline of State Reforms and Repeals of HIV Criminal Laws* (2020), https://www.hivlawandpolicy.org/sites/default/files/CHLP%20HIV%20Criminal%20Law%20Reform%20Timeline%20032420.pdf.
[31] *Id.*
[32] S.B. 1076, 73 Reg. Sess. (Tex. 1993).
[33] TEX. PEN. CODE ANN. § 22.012 (1987).
[34] Bill Analysis, S.B. 1076, 73 Reg. Sess. (Tex. 1993).
[35] S.B. 3673, 97 Gen. Assembly (Ill. 2012).
[36] S.B. 3673, 97 Gen. Assembly (Ill. 2012).

fluid intentionally in a manner that could result in the transmission of HIV.[37] Individuals convicted under the law were required to register as sex offenders.

The repealed law was replaced with a broader, refined law that criminalized certain acts related to the transmission of contagious or infectious disease, including hepatitis, meningococcal disease, HIV, and tuberculosis.[38] Under the new law, punishment varies based on the defendant's intent and whether the disease was actually transmitted.[39] For example, it is a Class B felony for a PLHIV to expose another individual to HIV with the intent of transmitting the virus, but only if the act results in actual transmission. The Class B felony remains punishable by up to twenty-five years in prison. Importantly, however, the law did not require individuals to register as a sex offender. If the act did not result in transmission, it is a Class D felony punishable by up to five years in prison and a $7,500 fine.[40] It is also a Class D felony—punishable by five years' imprisonment and a $7,500 fine—for a PLHIV to expose another to HIV while acting with reckless disregard as to whether transmission occurs, and the act results in transmission.[41] If the same reckless disregard offense occurs, but the act does not result in transmission, it is a "serious misdemeanor" that is punishable by up to one year in prison and a $1,875 fine.[42]

The new, revised statute also introduced an affirmative defense, precluding criminal liability if the exposed individual knew of the defendant's HIV status and consented to the exposure.[43] Moreover, one can provide they did not have the requisite mental state, if the defendant takes reasonable steps to prevent transmission or discloses their status to the claimant and offers to take such reasonable measures.[44] In addition, the law precludes the establishment of intent based only on evidence that the defendant was aware of their status and engaged in an act or acts that exposed another individual to the disease, regardless of the frequency of such actions.[45]

iv. Colorado

SB 146, 2016 Regular Session, May 2016 – Colorado's criminal code does not provide for HIV-specific offenses related to exposure or transmission. Instead, the law requires enhanced mandatory sentences for certain offenses committed by PLHIV. Certain amendments were made to Colorado law related to the enhanced sentencing guidelines.

Under the amended law,[46] if a PLHIV (i) is convicted of a sex offense involving penetration, (ii) was aware of his or her HIV status at the time of the offense, and (iii) transmission of HIV actually occurred, the sentencing judge is required to impose an incarceration term between the

[37] IOWA CODE § 709C.1 (2014).
[38] S.F. 2297, 85 Gen. Assembly (Iowa, 2014).
[39] IOWA CODE §§ 709D.3(1), 902.9(1)(b) (2016).
[40] *Id.* at §§ 709D.3(2), 902.9(1)(e).
[41] *Id.* at §§ 709D.3(3), 902.9(1)(e).
[42] *Id.* at §§ 709D.3(4), 903.1(1)(b).
[43] *Id.* at § 709D.3(8).
[44] *Id.* at § 709D.3(7).
[45] IOWA CODE § 709D.3(6) (2016).
[46] S.B. 146, 2016 Reg. Sess. (Colo. 2016).

upper limit authorized for the underlying offense and life.[47] The definition of "sexual penetration" under the law includes penile-vaginal sex, oral sex, oral stimulation of the anus, or anal sex.[48] Intent to transmit HIV is not required and the act does not address risk reduction measures.

Prior to the May 2016 amendments, the enhanced mandatory sentences were required even if transmission did not occur.[49] Further, under the former law, if the defendant was aware of his or her HIV status prior to committing the offense, the sentencing judge was required to impose a punishment at least three times the upper limit authorized for the underlying offense.[50] The amendments also removed the felony penalty for PLHIV engaging in sex work with knowledge of their status and mandatory HIV testing for sex workers.[51]

v. California

SB 239, 2017-2018 Regular Session, 2017 – California introduced a bill to repeal and amend provisions of the law that punished specified acts more harshly when those acts are committed by someone who has been diagnosed with HIV or AIDS. It also repealed the portions of law that enhanced transmission of disease into a felony punishable by time in state prison if done with intent.[52] The bill was drafted by the American Civil Liberties Union (ACLU) of California, APLA Health, Black Aids Institute, Equality California, Lambda Legal, and Positive Women's Network — USA. Senator Scott Wiener (D-San Francisco) carried the bill, and Governor Brown signed it in 2017.

The bill also created a new misdemeanor — amended into the bill by the Assembly — that prohibits intentional transmission of any infectious or communicable disease, including but not limited to HIV and AIDS. The new misdemeanor is punishable by six months in county jail and requires that: (i) the defendant knows that they have an infectious or communicable disease; (ii) the defendant acts with specific intent, as defined, to transmit the disease or have a third party transmit the disease; (iii) the defendant or third party engages in conduct that poses a substantial risk of submission; (iv) the disease is transmitted; and (v) the person infected does not know that the defendant was infected. A lesser 90-day jail sentence can be imposed for someone who intends to transmit the disease but fails. Attempting to prevent transmission is an affirmative defense against intent, but failure to use preventative measures is insufficient to prove intent. Conduct with a low or negligible risk of transmission does not qualify as conduct posing a substantial risk. A similar misdemeanor occurs if a health officer orders someone not to engage in particular conduct that poses substantial risk of transmission of the disease, and the defendant engages in the conduct within 96 hours of being instructed not to do so.[53]

[47] COLO. REV. STAT. §§ 18-3-415.5(1), 415.5(5) (2016).
[48] *Id.* at § 18-3-401(5).
[49] *Id.* at T. § 18-1.3-401(5)(b) (amended 2016, current version at COLO. REV. STAT. § 18-3-415.5(5)(b) (2016)).
[50] *Id.*
[51] COLO. REV. STAT. §§ 18-7-201.5, 18-7-201.7(2) (repealed in 2016).
[52] These descriptions are taken from the Assembly floor third reading analysis of SB 239 available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB239# (last accessed Apr. 5, 2020).
[53] *Id.*

The bill also allows people previously convicted of certain crimes to have their conviction or convictions vacated if those crimes were repealed under the bill. Certain convictions for those crimes were immediately vacated and the sentences reversed.[54]

The bill does not change the law that imposes a three-year sentence enhancement if a person commits specified sex crimes, as defined under CA law, while being HIV-positive.[55]

vi. Michigan

HB 6020, 2018 Regular Session, 2018 – Prior to being amended by the act, Michigan's HIV criminalization law made it a Class F felony, punishable by up to four years in prison, for PLHIV who knew their HIV status to engage in sexual penetration without disclosing their status.[56] "Sexual penetration" was defined to include sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion of any part of a person's body or of any object into the genital or anal openings of another person's body.[57] Specific intent to transmit the disease was not required under the former law.

Under the revised law, a PLHIV who knows their status only commits this felony if they engage in vaginal or anal intercourse without disclosing their HIV status if they have the specific intent to transmit the disease.[58] If convicted, the defendant can face up to four years in prison. Actual transmission of the virus is not required for a PLHIV to be convicted.

H.B. 6020 also amended the law to create a separate offense for recklessly exposing another to HIV. It is a felony, punishable by up to four years in prison, for PLHIV to act with reckless disregard when engaging in vaginal or anal intercourse by not disclosing their status, if actual transmission occurs.[59] If PLHIV commits this offense but transmission does not occur, they are guilty of a misdemeanor that is punishable by up to one year in prison and a fine of $1,000.[60] Strict adherence to a treatment plan may serve as a defense to a reckless exposure offense, but only if it can be demonstrated that the defendant is medically suppressed (i.e., undetectable).[61]

vii. Washington

H.B. 1551, 2019-2020 Regular Session, 2020 – The act amended the former criminal HIV exposure law to require specific intent to transmit HIV and transmission of HIV.[62] In addition, the act modified the penalty for HIV exposure from a felony to a misdemeanor and removed the requirement that those convicted under the statute register as sex offenders.[63] Further, the amended law provides for affirmative defenses against prosecution, including disclosure of HIV status and the use of practical means to prevent transmission. Prior to H.B. 1551, violation of

[54] *Id.*
[55] *Id.*
[56] MICH. COMP. LAWS ANN. § 333.5210(1) (1979), repealed by 1988 Mich. Legis. Serv. 490, eff. Mar. 28, 2019.
[57] *Id.* at §333.5210(2), repealed by 1988 Mich. Legis. Serv. 490, eff. Mar. 28, 2019.
[58] MICH COMP. LAWS ANN. § 333.5210 (2019).
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] H.B. 1551 § 5, 2019-2020 Reg. Sess. (Wash. 2020).
[63] *Id.*

Washington's HIV criminal exposure law was a felony offense punishable by up to life in prison.[64] The former law did not require specific intent to transmit HIV nor for transmission to occur.

Under the amended law, PLHIV who misrepresent their HIV status to a sexual partner and intend to transmit HIV are guilty of a gross misdemeanor if transmission occurs.[65] The modified law also makes it a felony for transmitting HIV to a child or vulnerable adult.[66] This felony conviction still requires registration as a sex offender.

b. In those states that have passed similar laws what were the arguments, for and against, the legislation?

Arguments for and against amendments to or repeal of HIV exposure law in the states referenced above are summarized below.

i. Arguments For

a. Texas

- The amendments to the Texas HIV criminal exposure law were inconspicuously added to a voluminous omnibus bill by a single state representative; there does not appear to have been debate around the repeal.[67]

b. Illinois

- It is often difficult for prosecutors to prove that a defendant knew of his or her HIV status without access to the individual's medical records.[68]

- Protection against prosecutorial abuse is provided by the requirement that the court review the subpoenaed records in camera for relevance prior to providing the documents to the prosecutor.[69]

[64] WASH. REV. CODE § 9A.36.011 (2016).
[65] H.B. 1551 § 5, 2019-2020 Reg. Sess. (2020).
[66] *Id.*
[67] The Center for HIV Law and Policy, *Timeline of State Reforms and Repeals of HIV Criminal Laws* (2020), https://www.hivlawandpolicy.org/sites/default/files/CHLP%20HIV%20Criminal%20Law%20Reform%20Timeline%20032420.pdf.

[68] Brianna Ehley, *Quinn Gets Bill Giving Courts Access to HIV Results*, 2012 St. Louis Post-Dispatch (2012), https://www.stltoday.com/news/local/illinois/quinn-gets-bill-giving-courts-access-to-hiv-results/article_bbb8a3a6-a6bc-11e1-9409-001a4bcf6878.html.

[69] AIDS Found. Chi., How Illinois' HIV Criminalization Law Has Changed (2012), https://www.aidschicago.org/page/news?id=522.

- The act significantly narrows the situations that could result in prosecution for transmission (*e.g.*, prosecutors cannot charge individuals for activities that will not transmit HIV).[70]

c. Iowa[71]

- The current prognosis for individuals recently diagnosed with HIV makes it inappropriate to maintain criminal laws that embody the idea that PLHIV are carrying a deadly weapon.

- The updated statute can help with public health efforts to identify and treat people with HIV. Criminal statutes can work against public health measures that require trust of health officials to keep sensitive information confidential.

- Changing the law will ease the stigma related to HIV and encourage people to get treatment earlier, which can help stop the spread of the virus.

d. Colorado

- Criminal law is a clumsy and ineffective tool for protecting public health.[72]

e. California

According to the California Legislative Analyst (a non-partisan office supporting the legislature), "Supporters argue that this bill updates laws that unfairly target people living with HIV for criminal prosecution based on their HIV status and ensures that California law reflects the current scientific understanding of HIV, addresses exposure to HIV in the same manner as exposure to other serious communicable diseases, and promotes public health by reducing HIV related stigma and discrimination."[73]

The legislation author's arguments for the bill, circulated to members by the Legislative Analyst, state that:

> [T]here is no evidence that laws criminalizing sexual activity on the part of people living with HIV accomplish their intended goal of improving public health. In 1988, when most California laws that made HIV transmission a felony were passed, there were no effective treatment [sic.] for HIV and discrimination towards people living with HIV was extremely high. A 2017 analysis from the Centers for Disease Control and Prevention

[70] *Id.*

[71] Gillian Mohney, *Controversial HIV Law in Iowa Could Be Changed*, 2014 ABC News (2014), https://abcnews.go.com/Health/controversial-hiv-law-iowa-changed/story?id=23071540.

[72] Victoria Law, Activists Win Legislative Overhaul of Colorado's HIV Criminalization Laws, Await Governor's Signature (2016), https://www.thebody.com/article/activists-win-legislative-overhaul-of-colorados-hi.

[73] This text is taken from the Assembly floor third reading analysis of SB 239 available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB239# (last accessed Apr. 5, 2020).

(CDC) "found no association between HIV or AIDS diagnosis rates and criminal exposure laws across states over time, suggesting that these laws have had no detectable HIV prevention effect." Instead, research suggests that these laws may act as a disincentive for testing and disclosure of HIV status and may create a barrier to those seeking care. According to the National Association of County and City Health Officials, "Disease-specific laws and policies that result in criminal prosecution fuel stigma and discrimination against persons living with communicable diseases… Ending the stigma and discrimination faced by people living with communicable diseases is an important step to improving individual health and protecting the public's health." The author argues that HIV criminalization laws only increase stigmatization of people living with HIV and disproportionately impact women and people of color.

The author states that, consistent with guidelines from the United States Department of Justice, this bill would maintain criminal penalties for individuals who intentionally transmit or attempt to transmit HIV, or any other serious infectious or communicable disease, to another person, and would bring parity with existing laws regarding other communicable diseases by making it a misdemeanor, rather than a felony, to transmit any disease that is determined to have significant public health implications. Furthermore, this bill also clarifies that taking practical means to prevent transmission – such as using a condom or being on treatment – is incompatible with the intention to transmit HIV or any other infectious or communicable disease. Finally, this bill would also repeal other outdated provisions of law that significantly increase penalties for sex workers living with HIV, and unnecessary laws regarding donation of blood, tissue, or, in certain circumstances, semen or breast milk, by those living with HIV. The author argues that these changes will ensure that California law reflects a science-based understanding of HIV prevention, treatment, and transmission.

According to the CDC, the risk of getting HIV varies widely depending on the type of exposure or behavior (such as sharing needles or having sex without a condom). Some exposures to HIV carry a much higher risk of transmission than other exposures. For some exposures, while transmission is biologically possible, the risk is so low that it is not possible to put a precise number on it. However, the CDC notes that repeated low risk exposures can add up to a high lifetime risk of HIV. The CDC publishes a chart that lists the risk of transmission of HIV from an infected source per 10,000 exposures. The risk from an infected blood transfusion is 92.5%; from needle-sharing during injectable drug use 0.6%; from a needle-stick 0.2%; from various specified sexual behaviors 0.04% to 1.4%; and, from biting or spitting negligible (technically possible but unlikely and not well documented).[74]

f. Michigan[75]

[74] This text is taken from the Assembly floor third reading analysis of SB 239 available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB239# (visited Apr. 5, 2020).
[75] Legislative Analysis, H.B. 6020, 99 Reg. Sess. (Mich. 2018), http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6016-7A8AE83A.pdf.

- Several of the laws were passed when there was no effective treatment for HIV and when fear of, and discrimination against, HIV-infected individuals were widespread. These laws should be updated in light of increased knowledge of sexually transmitted infections and treatments that make HIV a chronic condition rather than a death sentence.

- The amendments would do a better job of incentivizing rather than punishing responsible behavior than current law. Current law incentivizes willful ignorance or refusing to be tested because only knowledge of HIV status triggers the penalty.

g. Washington

- Current penalties do not have an effect on reducing transmissions or improving public health.[76]

- Laws have not caught up with scientific and medical advances that have allowed PLHIV to have near normal life expectancies.[77]

- Failure to modify these laws will continue the stigma surrounding HIV and impede advances in public health.[78]

ii. Arguments Against

a. Texas

- The amendments to the Texas HIV criminal exposure law were inconspicuously added to a voluminous omnibus bill by a single state representative; there does not appear to have been debate around the repeal specifically.[79]

b. Illinois[80]

- Granting prosecutors access to medical records may deter individuals from testing for HIV for fear of future prosecution if they learn their status.

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[76] HIV Justice Network, *US: Washington Legislators Approve Bill Reducing the Severity of Charges in Cases of Alleged HIV Transmission*, HIV JUST. NETWORK, Mar. 03, 2020, http://www.hivjustice.net/storify/us-washington-legislators-debates-bill-aiming-to-reduce-the-severity-of-charges-in-cases-of-alleged-hiv-transmission/.

[77] House Bill Report, H.B. 1551, 2019-2020 Reg. Sess. (Wash. 2020), http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/House/1551-S.E%20HBR%20APH%2020.pdf?q=20200214132900.

[78] *Id.*

[79] The Center for HIV Law and Policy, *Timeline of State Reforms and Repeals of HIV Criminal Laws* (2020), https://www.hivlawandpolicy.org/sites/default/files/CHLP%20HIV%20Criminal%20Law%20Reform%20Timeline%20032420.pdf.

[80] AIDS Found. Chi., How Illinois' HIV Criminalization Law Has Changed (2012), https://www.aidschicago.org/page/news?id=522.

- Former partners of PLHIV can press charges for criminal transmission in retaliation when a relationship ends. Continuing to allow prosecutions for HIV exposure, rather than a complete repeal of the law, is not sufficient to protect against this risk.

- Obtaining reliable evidence that a condom was not used and that the defendant did not disclose his or her HIV status before sexual activity is difficult due to the private nature of the underlying activity.

- The law still does not require actual transmission of HIV for an individual to be guilty.

c. Iowa

- Whether a victim contracted the actual disease should not be a consideration when deciding whether an individual should be convicted of the crime.[81]

- The new law continues to impose inappropriately long prison sentences for HIV crimes.[82]

- Rather than helping to reduce stigma, the new law criminalizes additional stigmatized conditions beyond HIV, such as hepatitis, meningococcal disease, and tuberculosis.[83]

d. Colorado

- The amendments do not take into account the effectiveness of practical measures to prevent transmission or the scientific evidence regarding the viable routes of transmission.[84]

e. California

- According to the California Legislative Analyst (a non-partisan office supporting the legislature), "[o]pponents argue that this bill eliminates precautions that safeguard public health and substitutes provisions that are both inadequate and unscientific, fails to provide disincentives to irresponsible willful or negligent behavior, and does not take into account scientific advances that determine the degree of HIV communicability."[85]

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[81] Gillian Mohney, *Controversial HIV Law in Iowa Could Be Changed*, 2014 ABC News (2014), https://abcnews.go.com/Health/controversial-hiv-law-iowa-changed/story?id=23071540.

[82] THE CTR. FOR HIV LAW & POLICY, STATEMENT IN RESPONSE TO IOWA BILL SF 2297 AND CRIMINALIZATION OF HIV, HEPATITIS, MENINGOCOCCAL DISEASE AND TUBERCULOSIS (2014), https://www.hivlawandpolicy.org/news/statement-response-iowa-bill-sf-2297-and-criminalization-hiv-hepatitis-meningococcal-disease.

[83] *Id.*

[84] STEPHANIE PAPPAS, HIV LAWS THAT APPEAR TO DO MORE HARM THAN GOOD (2018), https://www.apa.org/monitor/2018/10/ce-corner.

[85] This text is taken from the Assembly floor third reading analysis of SB 239 available at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB239# (last accessed Apr. 5, 2020).

- An individual who consents to engage in sexual intercourse with someone may not have consented had the individual known the HIV status of the PLHIV.[86]

- If a person does contract HIV from a PLHIV, reducing the sentence does not seem appropriate because the PLHIV has transmitted a disease that is incurable.[87] The severity of the crime no longer meets the severity of the punishment.[88]

f. Michigan[89]

- The possible outcomes caused by violation of the current law—a chronic condition, even assuming that HIV medications continue to work—demand a more severe penalty. A misdemeanor conviction and a $1,000 fine does not balance with a lifetime incurable condition.

g. Washington

- The modifications to the law diminish the significance of the impact on a person who is unknowingly infected.[90]

- There are very few cases where this felony assault statute for transmitting HIV has been applied. That is because the law sets a very high standard already. Only when individuals have intent to inflict great bodily harm can they be charged with this crime. The proposed bill lowers the penalty, but widens the net to include situations that otherwise would not have been covered. The proposed bill creates inequality.

- Under this bill, someone who steals a candy bar is guilty of the same gross misdemeanor as someone who transmits HIV by misrepresenting his or her HIV status. In those extreme cases where someone knows the dangers of transmitting HIV and intends to transmit the virus, there should be a higher penalty.[91]

c. In those states that have passed similar laws what was the partisan breakdown of the votes taken associated with the legislation? [92]

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[86] Dini Harsono, et al., *Criminalization of HIV Exposure: A Review of Empirical Studies in the United States*, 21 AIDS & Behav. 27, 27-50 (2017), https://link.springer.com/article/10.1007/s10461-016-1540-5.
[87] Kathleen Gray, *How new bills could change Michigan's HIV laws* (2018), https://www.freep.com/story/news/local/michigan/2018/05/24/michigan-hiv-aids-laws/638469002/.
[88] *Id.*
[89] Legislative Analysis, H.B. 6020, 99 Reg. Sess. (Mich. 2018), http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6016-7A8AE83A.pdf.

[90] Rachel La Corte, *From Felony to Misdemeanor: Bill Would Ease Penalty in Washington for Exposing a Partner to HIV*, THE SEATTLE TIMES, Feb. 22, 2020, https://www.seattletimes.com/seattle-news/washington-lawmakers-consider-lighter-penalties-for-exposing-a-partner-to-hiv/.

[91] House Bill Report, H.B. 1551, 2019-2020 Reg. Sess. (Wash. 2020), http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/House/1551-S.E%20HBR%20APH%2020.pdf?q=20200214132900.

[92] California Legislative Information, *SB239 Infectious and Communicable Diseases: HIV and AIDS: criminal penalties* (2018), http://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201720180SB239.

Illinois and Iowa passed the reform bills unanimously.[93] The partisan breakdown of the remaining states discussed in the section above was as follows:

California[94]			
	Aye	No	No Vote
i. Senate Public Safety	5 (D)	2 (R)	0
ii. Senate Appropriations	5 (D)	2 (R)	0
iii. Senate Floor	24 (D)	12 (R)	2 (1D 1R)
iv. Assembly Health	11 (D)	3 (R)	1 (R)
v. Assembly Public Safety	5 (D)	2 (R)	0
vi. Assembly Appropriations	9 (D)	5 (R)	3 (D)
vii. Assembly Floor	52 (49D 3R)	19 (2D 17R)	8 (3D 5R)
viii. Senate Floor	24 (24D)	12 (12R)	4 (3D 1R)

Colorado[95]			
	Aye	No	No Vote
i. Colorado House	36 (31D 5R)	29 (3D 27R)	0
ii. Colorado Senate	20 (18D 2R)	15 (15R)	0

[93] Cite.

[94] California Legislative Information, *SB239 Infectious and Communicable Diseases: HIV and AIDS: criminal penalties* (2018), http://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201720180SB239. The Legislative Analyst lists which way each member votes on a piece of legislation (Aye, No, or No Vote Recorded). Using publicly available sources, we have identified which members belonged to each party.

[95] Colorado votes accessible at https://leg.colorado.gov/content/sb16-146vote0c1e0a

Michigan[96]			
	Aye	No	No Vote
i. Michigan House	96 (45D 51R)	13 (1D 12R)	1 (D)
ii. Michigan Senate	33 (11D 22R)	5 (R)	0

Texas[97]			
	Aye	No	No Vote
i. Texas House	123 (82D 41R)	17 (2D 15R)	1
ii. Texas Senate	31 (11D 20R)	0	0

Washington[98]			
	Aye	No	No Vote
i. Washington House	57 (D)	40 (R)	0
ii. Washington Senate	26 (D)	23 (3D 20R)	0

d. In those states that have passed similar laws, who were the opponents of the legislation? Who were the proponents of the legislation?

[96] Michigan votes accessible at https://www.michiganvotes.org/RollCall.aspx?ID=776930.
[97] Texas votes accessible at https://legiscan.com/TX/votes/SB1076/2017.
[98] Washington votes accessible at https://www.washingtonvotes.org/2019-HB-1551.

Texas – Proponents
As the amendments to the Texas HIV criminal exposure law were inconspicuously added to a voluminous omnibus bill by a single state representative, there does not appear to have been debate around the repeal specifically.
Texas – Opponents
As the amendments to the Texas HIV criminal exposure law were inconspicuously added to a voluminous omnibus bill by a single state representative, there does not appear to have been debate around the repeal specifically.

Illinois – Proponents			
AIDS Foundation Chicago (supported in part and opposed in part)	Thomas Gibbons, Madison County State Attorney		
Illinois – Opponents			
AIDS Foundation Chicago (supported in part and opposed in part)			

Iowa – Proponents			
Iowa Nurses Association	Iowa Medical Society	Iowa Association for Justice	Interfaith Alliance of Iowa Action Fund
Iowa Annual Conference of United Methodist Church	Iowa Attorney General Department of Justice	ACLU of Iowa	Iowa Coalition Against Sexual Assault
League of Women Voters of Iowa	Family Planning Council of Iowa	Iowa Public Health Association	One Iowa
Community HIV/Hepatitis Advocates of Iowa Network (CHAIN)	Lambda Legal	Dr. Jeffrey Meier (Associate Professor of Internal Medicine at the University of Iowa)	
Iowa – Opponents			
Sidley's research did not identify any explicit opponents of S.F. 2297.			

Colorado – Proponents			
Colorado Organizations Responding to AIDS	Colorado Department of Public Health and Environment	Colorado Association of Local Public Health Officials	Colorado Mod Squad
Positive Women's Network Colorado			
Colorado – Opponents			
Sidley's research did not identify any explicit opponents of S.B. 146.			

California – Proponents			
A New Path	Californians for Safety and Justice	Human Rights Watch	Public Interest Law Project
A New Way of Life Re-Entry Project	Center for Health Justice, Inc.	If/When/How: Immigration Equality Action Fund	Queer Life Space

ACCESS Women's Health Justice	Center for HIV Law and Policy	Imperial Valley LGBT Resource Center	Root & Rebound
ACT for Women and Girls	Center for LGBTQ and Gender Studies in Religion	Justice NOW	Sacramento LGBT Community Center
Adolescent Counseling Services	Center of Excellence for Transgender Health	Lambda Legal	San Diego LGBT Community Center
Adult Performer Advocacy Committee	Centro Legal de la Raza	Latino Equality Alliance	San Francisco AIDS Foundation
AIDS Legal Referral Panel	Citizens for Choice	Lawyering for Reproductive Justice	SCOPE LA
AIDS Project of the East Bay	Consumer Attorneys of California	Lawyers Committee for Civil Rights of the San Francisco Bay Area	SERO Project Sex Workers Outreach Project of Los Angeles
Alliance for Boys and Men of Color	Courage Campaign	Legal Services for Prisoners with Children	Spahr Center
American Civil Liberties Union of California	Desert AIDS Project	LGBT Center of Orange County	St. John's Well Child & Family Center
APLA Health	Drug Policy Alliance	LGBTQ Center of Long Beach	Stonewall Democratic Club
Asian Americans Advancing Justice	East Bay Community Law Center	Life Group LA	Tarzana Treatment Centers, Inc.
Asian Law Alliance	East Los Angeles Women's Center	Los Angeles HIV Law & Policy Project	Trans Latin@ Coalition
Asian Pacific Environmental Network	Equal Justice Society	Los Angeles LGBT Center	Trans Student Educational Resources
Bay Area Lawyers for Individual Freedom	Equality California	MALDEF	Transgender Gender Variant Intersex Justice Project
Being Alive	Equality Federation	NARAL Pro-Choice California	Transgender Law Center
Billy DeFrank LGBTQ Community Center	Fellowship of Affirming Ministries	National Alliance of State & Territorial AIDS Directors	Trevor Project
Black Aids Institute	Forward Together	National Black Justice Coalition	Voices for Progress Education Fund

Black Women for Wellness	Free Speech Coalition	National Compadres Network	Western Center on Law and Poverty
Brown Boi Project	Friends Committee on Legislation of California	National Council of Jewish Women, CA	Western Regional Advocacy Project
California Attorneys for Criminal Justice	Friends of Project 10 Inc.	National Day Laborer Organizing Network	Women's Foundation of California
California Communities United Institute	Gender & Sexualities Alliance Network	National Health Law Project	
California Immigrant Policy Center	Gender Health Center	National Immigration Law Center	
California Immigrant Youth Justice Alliance	GLMA: Health Professionals Advancing LGBT Equality	Our Family Coalition	
California In-Home Supportive Services Consumer Alliance	GroundSpark	Pacific Pride Foundation	
California Latinas for Reproductive Justice	Harm Reduction Coalition	Pangea Legal Services	
California Pan-Ethnic Health Network	HIV Medical Association	Planned Parenthood Affiliates of California	
California Partnership	HIV Modernization Movement – Indiana	PolicyLink	
California Public Defenders Association	HIVE	Positive Women's Network – USA	
California Women's Law Center	Holman United Methodist Church	Project Inform	
California – Opponents			
California Right to Life Committee			

Michigan – Proponents			
Michigan Primary Care Association	Gilead Sciences	Michigan Association of Health Plans	Michigan Department of Health and Human Services
Michigan State Medical Society	ACLU of Michigan	Community AIDS Resource and Education Services	Michigan AIDS Council
American College of Obstetrics and Gynecologists	Michigan Academy of Family Physicians	Michigan Coalition for HIV Health and Safety	
Michigan – Opponents			
Sidley's research did not identify any explicit opponents of H.B. 6020.			

Washington – Proponents			
Washington Association of Local Public Health Officials	Lifelong AIDS Alliance	Washington HIV Justice Alliance	Public Health Seattle and King County
Washington – Opponents			
Washington Association of Prosecuting Attorneys			

e. Was there determined to be any fiscal burden associated with the legislation?

i. Texas

The fiscal impact of repeal under the Texas statute was not discussed specifically due to the nature of the omnibus bill. Instead, the legislature's fiscal analysis focused on the overall cost of implementing all of the revisions to the Penal Code, which included a new category of offenses ("state jail felony") that required the building of a significant number of state jail beds.[99]

[99] *See, e.g.*, Tex. Legislative Bd., Fiscal Note, S.B. 1076, 73 Reg. Sess. (Tex. 1993).

ii. Illinois

No fiscal analysis was conducted or published for SB 3673.

iii. Iowa

As the revised statute expanded the criminal offense to apply to diseases other than HIV, including hepatitis, it was assumed that the number of convictions would increase in comparison to the former law.[100] The fiscal impact to the state's Judicial Branch was indeterminate, but noted potential increases in costs for indigent and non-indigent cases and probation supervision. The overall fiscal impact of the revised statute was estimated to be an increased cost to the state's General Fund of $24,100 in FY 2015 and $109,600 in FY 2016. The significant increase in FY 2016 is based on projected increases in the number of individuals convicted and imprisoned.

iv. Colorado

S.B. 146 was expected to generate less than $5,000 in fines per fiscal year for FY 2016-2017 and FY 2017-2018.[101] The only identified fiscal burden was "workload increases," but no monetary value was attached to that expenditure. The fiscal note projected a reduction in future costs for the Department of Corrections by an indeterminate amount due to lower minimum terms for indeterminate sentencing for sex offenses committed by a PLHIV.

v. California

In California, the Legislative Analyst's Office, a non-partisan office supporting the legislature, citing the Assembly Appropriations Committee found two minor fiscal burdens and one fiscal savings:[102]

> Potential minor cost savings, likely in the range of $100,000 General Fund (GF) annually, to the Department of Corrections and Rehabilitation, to the extent individuals would have been incarcerated in state prison in absence of the repeal of felony statutes. HIV-specific felony prosecutions are rare; only one person was sentenced to state prison in 2015 under the statutes being repealed.
>
> Minor and absorbable costs to Judicial Council to create and process forms to vacate convictions and recalculate, if applicable, remaining sentences (GF).

[100] Beth Lenstra, Iowa Legislative Services Agency, Fiscal Services Division, *Fiscal Note: SF 2297 – Contagious or Infectious Disease Transmission* (2014), https://www.legis.iowa.gov/docs/publications/FN/965348.pdf.
[101] Kerry White, Colorado Legislative Council Staff, *Final Fiscal Note for SB16-146 – Modernize Statutes Sexually Transmitted Infections* (2016), http://leg.colorado.gov/sites/default/files/documents/2016A/bills/fn/2016a_sb146_f1.pdf.
[102] California Legislative Information, *SB239 Infectious and Communicable Diseases: HIV and AIDS: criminal penalties, Bill Analysis* (2018), http://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201720180SB239.

Costs to Department of Justice in the range of $100,000 to modify individual records, as required pursuant to provisions that dismiss charges, vacate convictions, and deem arrests never to have occurred (GF).

vi. Michigan

The House Fiscal Agency found that H.B. 6020 would have an indeterminate fiscal impact on the state and local governments. The Agency noted that the fiscal impact would depend on the number of persons convicted under provisions of the bill.[103] The Senate Fiscal Agency agreed that the bill would have an indeterminate, though likely minimal, fiscal impact on state and local governments.[104]

vii. Washington

The fiscal impact of the bill on the judiciary was indeterminate, but expected to be minimal.[105] The Department of Health reported no fiscal impact from the bill. The Department of Corrections reported that the fiscal impact was indeterminate, but assumed to be greater than $50,000 per fiscal year. The fiscal impact on local governments was indeterminate and subject to variables that could not be estimated with certainty, including potential increases in jail bed numbers and decreases in the number of felony cases.

4. **Changes to Statutes**

This section focuses on changes to California Statutes. If requested, we can provide the analysis for changes to other states' statutory language.

The analysis provided below summarizes the revisions to SB 239 section by section. The complete language of the bill is included in the chart that follows.

a. Changes to California Statutes

Section 1 of SB 239 revised some portions of law relating to blood donation.[106]

Section 2 of SB 239 repealed California Health and Safety Code Section 1621.5, which previously made it a felony for someone with HIV or AIDS to donate blood, tissue, or semen.

Section 3 of SB 239 amended certain treatment of use of human tissues (organs, sperm, breast milk, etc.) that may contain transmissible diseases, including HIV or AIDS.[107] The main changes

[103] Robin Risko, *House Fiscal Agency, Legislative Analysis* (2018), http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6020-42C89C88.pdf.
[104] Abbey Frazier, *Senate Fiscal Agency, Bill Analysis* (2018), http://www.legislature.mi.gov/documents/2017-2018/billanalysis/Senate/pdf/2017-SFA-6020-F.pdf.
[105] Bryce Anderson, *Multiple Agency Fiscal Note Summary: HB 1551 – Communicable Disease Control* (2019), https://fnspublic.ofm.wa.gov/FNSPublicSearch/GetPDF?packageID=55791.
[106] Cal. Health & Safety Code § 1603.3
[107] Cal. Health & Safety Code § 1644.5

to this section are the incorporation of the recommendations of the most relevant and up-to-date guidelines published by the American Society for Reproductive Medicine.

Section 4 of SB 239 repealed the section of the California Health and Safety Code that made it a misdemeanor to expose anyone to any contagious disease.[108]

Section 5 of SB 239 added a new misdemeanor, discussed above in section III.3.v, for transmitting contagious diseases including HIV and AIDS, treating them all the same.[109] The law now requires specific intent to transmit the disease and has a maximum sentence of 6 months in county jail. A lesser 90-day jail sentence can be imposed for someone who intends to transmit the disease but fails. A similar misdemeanor occurs if a health officer orders a person not to engage in particular conduct that poses substantial risk of transmission of the disease, and the individual engages in the conduct within 96 hours of being instructed not to do so.

Section 6 of SB 239 repealed prior statutory language that rendered the engagement in unprotected sexual activity while a person has HIV or AIDS with the specific intent of transmitting the disease a felony to be punishable by up to eight years in prison.[110]

Section 7 of SB 239 repealed law that allowed a court to order the release of the HIV or AIDS testing results for someone investigated for the felony of attempting to transmit HIV or AIDS which itself was repealed.[111]

Section 8 of SB 239 repealed a section of the Penal Code relating to prostitution.[112] It previously stated that if a person had been convicted of prostitution and had tested positive for HIV/AIDS as part of that conviction (since testing was mandated as part of the conviction), and been informed of that positive result (as they were required to be by the court), then in any subsequent plea or charge of prostitution that person should be charged with the prior conviction and positive test result. That charge of previously having tested positive in connection with a prostitution charge was itself a separate felony.

Section 9 of SB 239 made minor conforming changes to the section of the Penal Code describing legislative intent related to pretrial and post-trial diversion programs.[113]

Section 10 of SB 239 made minor conforming changes to the definition of pretrial diversion programs to reflect the fact that two of the following sections were being repealed by this bill.[114]

[108] Cal. Health & Safety Code § 120290
[109] Cal. Health & Safety Code § 120290
[110] Cal. Health & Safety Code § 120291
[111] Cal. Health & Safety Code § 120292
[112] Cal. Pen. Code § 647f
[113] Cal. Pen. Code § 1001
[114] Cal. Pen. Code § 1001.1

Section 11 of SB 239 repealed a section of the Penal Code requiring people convicted of certain offenses, including prostitution, to take an HIV/AIDS education program to be eligible for probation or placement in a drug diversion program.[115]

Section 12 of SB 239 repealed a related section requiring county health departments to select an agency to provide HIV/AIDS education programs to people required to have one in order to go on probation or drug diversion under California Penal Code Section 1001.10 which was repealed by this bill.[116]

Section 13 of SB 239 added a provision to the Penal Code to invalidate and vacate any prior conviction under California Penal Code Section 647f and deem any arrest or charge as to not have occurred.[117] Any prior arrest, charge, or conviction cannot be used against the arrestee or defendant.

Section 14 of SB 239 added a provision to the Penal Code to say that any person convicted under California Penal Code Section 647f who is serving a sentence may petition the trial court to recall or dismiss their sentence and the court shall either release them or resentence them on the remaining counts to an equal or lesser term.

Section 15 of SB 239 amended Section 1202.1 of the Penal Code, the section dealing with mandatory testing for HIV and/or AIDS, to remove references to California Penal Code Section 647f which was repealed by SB 239.

Section 16 of SB 239 repealed a section of the Penal Code requiring anyone convicted for prostitution for the first time to have AIDS education prior to any diversion program and have a test for HIV and/or AIDS, which was distributed to the court, district attorneys, the State Department of Health, and others.[118]

Section 17 of SB 239 added a section to the Penal Code stating that anyone convicted of prostitution for the first time should be sent to a diversion program or drug diversion program.[119]

Section 18 of SB 239 repealed a section of the Penal Code that allocated money from specified fines to the AIDS education programs required by the versions of Sections 1001.10 and 1001.11 repealed by this bill.[120]

Section 19 of SB 239 is a standard provision in California laws related to local government funding and constitutionally prohibited state mandates for local government funding and lays out the reason this bill is exempt from the prohibition. To the extent that Nevada has a similar requirement, there will be a standard clause used in all such bills.

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[115] Cal. Pen. Code § 1001.10
[116] Cal. Pen. Code § 1001.11
[117] Cal. Pen. Code § 1170.21
[118] Cal. Pen. Code § 1202.6
[119] *Id.*
[120] Cal. Pen. Code § 1463.23

b. Corresponding Nevada Statutes

Text of XX	California Statute (XX Code)	Corresponding Nevada Statute
SECTION 1. Section 1603.3 of the Health and Safety Code is amended to read: 1603.3. (a) Before donation of blood or blood components, a donor shall be notified in writing of, and shall have signed a written statement confirming the notification of, all of the following: (1) That the blood or blood components shall be tested for evidence of antibodies to HIV. (2) That the donor shall be notified of the test results in accordance with the requirements described in subdivision (c). (3) That the donor blood or blood component that is found to have the antibodies shall not be used for transfusion. (4) That blood or blood components shall not be donated for transfusion purposes by a person if the person may have reason to believe that he or she has been exposed to HIV or AIDS. (5) That the donor is required to complete a health screening questionnaire to assist in the determination as to whether he or she may have been exposed to HIV or AIDS. (b) A blood bank or plasma center shall incorporate voluntary means of self-deferral for donors. The means of self-deferral may include, but are not limited to, a form with checkoff boxes specifying that the blood or blood components are for research or test purposes only and a telephone callback system for donors to use in order to inform the blood bank or plasma center that blood or blood components donated should not be used for transfusion. The blood bank or plasma center shall inform the donor, in a manner that is understandable to the donor, that the self-deferral process is available and should be used if the donor has reason to believe that he or she is infected with HIV. (c) Blood or blood components from any donor initially found to have serologic evidence of antibodies to HIV shall be retested for confirmation. Only if a further test confirms the conclusion of the earlier test shall the donor be notified of a reactive result by the blood bank or plasma center.	Cal. Health & Safety Code § 1603.3	Nevada statutes on blood donation do not mention HIV or AIDS (*see* Nevada Revised Statutes (NRS) 460.010-460.040). Nevada Administrative Code (NAC) 441A.450 does reference blood donation in the context of HIV: "If a case reported pursuant to subsection 1 has donated or sold blood, plasma, sperm or other bodily tissues during the year preceding the diagnosis, the health authority shall make reasonable efforts to notify the recipient of his or her potential exposure to the human immunodeficiency virus infection (HIV) or acquired immune deficiency syndrome (AIDS)."

The department shall develop permissive guidelines for blood banks and plasma centers on the method to be used to notify a donor of a test result. (d) Each blood bank or plasma center operating in California shall prominently display at each of its collection sites a notice that provides the addresses and telephone numbers of sites, within the proximate area of the blood bank or plasma center, where anonymous HIV antibody testing provided pursuant to Chapter 3 (commencing with Section 120885) of Part 4 of Division 105 may be administered without charge. (e) The department may promulgate any additional regulations it deems necessary to enhance the safety of donated blood and blood components. The department may also promulgate regulations it deems necessary to safeguard the consistency and accuracy of HIV test results by requiring any confirmatory testing the department deems appropriate for the particular types of HIV tests that have yielded "reactive," "positive," "indeterminate," or other similarly labeled results. (f) Notwithstanding any other provision of law, civil liability or criminal sanction shall not be imposed for disclosure of test results to a local health officer if the disclosure is necessary to locate and notify a blood or blood components donor of a reactive result if reasonable efforts by the blood bank or plasma center to locate the donor have failed. Upon completion of the local health officer's efforts to locate and notify a blood or blood components donor of a reactive result, all records obtained from the blood bank or plasma center pursuant to this subdivision, or maintained pursuant to this subdivision, including, but not limited to, any individual identifying information or test results, shall be expunged by the local health officer.		
SEC. 2. Section 1621.5 of the Health and Safety Code is repealed.	Cal. Health & Safety Code § 1621.5	Nevada does not have a similar provision to California's Section 1621.5. HIV is not called out explicitly in Nevada's public health and infectious disease containment statutes. Under NRS 441A.180, it is a misdemeanor for a person with any communicable disease to act in a manner likely to expose others to the disease, if the person has previously been warned by a health authority. **NRS 441A.180 Contagious person to prevent exposure to others; warning by health authority; penalty.** 1. A person who has a communicable disease in an infectious state shall not conduct himself or herself in any manner likely to

		expose others to the disease or engage in any occupation in which it is likely that the disease will be transmitted to others. 2. A health authority who has reason to believe that a person is in violation of subsection 1 shall issue a warning to that person, in writing, informing the person of the behavior which constitutes the violation and of the precautions that the person must take to avoid exposing others to the disease. The warning must be served upon the person by delivering a copy to him or her. 3. A person who violates the provisions of subsection 1 after service upon him or her of a warning from a health authority is guilty of a misdemeanor.
SEC. 3. Section 1644.5 of the Health and Safety Code is amended to read: 1644.5. (a) Except as provided in subdivision (c) or (d), tissues shall not be transferred into the body of another person by means of transplantation, unless the donor of the tissues has been screened and found nonreactive by laboratory tests for evidence of infection with human immunodeficiency virus (HIV), agents of viral hepatitis (HBV and HCV), and syphilis. For tissues that are rich in viable leukocytes, the tissue shall be tested for evidence of infection with human T-lymphotropic virus (HTLV) and found nonreactive. The department may adopt regulations requiring additional screening tests of donors of tissues when, in the opinion of the department, the action is necessary for the protection of the public, donors, or recipients. (b) Notwithstanding subdivision (a), infectious disease screening of blood and blood products shall be carried out solely in accordance with Article 2 (commencing with Section 1602.5) of Chapter 4. (c) All donors of sperm shall be screened and found nonreactive as required under subdivision (a), except in the following instances: (1) A recipient of sperm, from a sperm donor known to the recipient, may waive a second or other repeat testing of that donor if the recipient is informed of the requirements for testing donors under this section and signs a written waiver. (2) A recipient of sperm may consent to therapeutic insemination of sperm or use of sperm in other assisted reproductive technologies even if the sperm donor is found reactive for hepatitis B, hepatitis C, syphilis, HIV, or HTLV if the sperm donor is the spouse of, partner of, or designated donor for that recipient. The physician providing insemination or assisted reproductive technology services shall advise	Cal. Health & Safety Code § 1644.5	Nevada's statutes related to blood, organ and tissue donations do not currently explicitly reference HIV or AIDS. Provisions related to these donations can be found at NRS Chapter 460 – Human Blood, Blood Products and Body Parts

the donor and recipient of the potential medical risks associated with receiving sperm from a reactive donor. The donor and the recipient shall sign a document affirming that each person comprehends the potential medical risks of using sperm from a reactive donor for the proposed procedure and that each consents to it. Copies of the document shall be placed in the medical records of the donor and the recipient. (3) (A) Sperm whose donor has tested reactive for syphilis may be used for the purposes of insemination or assisted reproductive technology only after the donor has been treated for syphilis. Sperm whose donor has tested reactive for hepatitis B may be used for the purposes of insemination or assisted reproductive technology only after the recipient has been vaccinated against hepatitis B. (B) (i) Sperm whose donor has tested reactive for HIV or HTLV may be used for the purposes of insemination or assisted reproductive technology for a recipient testing negative for HIV or HTLV only after the donor's sperm has been effectively processed to minimize the likelihood of transmission through the sperm for that specific donation and if informed and mutual consent has occurred. (ii) The department shall adopt regulations regulating facilities that perform sperm processing, pursuant to this subparagraph, that prescribe standards for the handling and storage of sperm samples of carriers of HIV, HTLV, or any other virus as deemed appropriate by the department. The department may propose to adopt, as initial regulations, the most relevant and up-to-date recommendations published by the American Society for Reproductive Medicine. Notice of the department's proposed adoption of the regulations shall be posted on the department's Internet Web site for at least 45 days. Public comment shall be accepted by the department for at least 30 days after the conclusion of the 45-day posting period. If a member of the public requests a public hearing during the 30-day comment period, the hearing shall be held prior to the adoption of the regulations. If no member of the public requests a public hearing, the regulations shall be deemed adopted at the conclusion of the 30-day comment period. Comments received shall be considered prior to the adoption of the final initial regulations. The department may modify any recommendations published by the American Society for Reproductive Medicine. Adoption of initial regulations by the department pursuant to this subdivision shall not be subject to the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of		

Title 2 of the Government Code and written responses to public comments shall not be required. Updates to the regulations shall be adopted pursuant to the same process. Until the department adopts these regulations, facilities that perform sperm processing pursuant to this section shall follow facility and sperm processing recommendations for the reduction of viral transmission developed by the American Society for Reproductive Medicine. This section does not prevent the department from monitoring and inspecting facilities that process sperm to ensure adherence to the regulations, or, until regulations are adopted, to the recommendations set forth by the American Society for Reproductive Medicine. (iii) Before insemination or other assisted reproductive technology services are performed, the physician providing the services shall inform the recipient of sperm from a spouse, partner, or designated donor who has tested reactive for HIV or HTLV of all of the following: (I) That sperm processing may not eliminate all of the risks of HIV or HTLV transmission. (II) That the sperm may be tested to determine whether or not it is reactive for HIV or HTLV. (III) That the recipient shall provide documentation to the physician providing insemination or assisted reproductive technology services prior to treatment that she has established an ongoing relationship with another physician to provide for her medical care during and after completion of fertility services. (IV) The most relevant and up-to-date recommendations published by the American Society for Reproductive Medicine regarding follow-up testing for HIV and HTLV after use of sperm from an HIV or HTLV reactive donor and have the recommendations regarding follow-up testing be documented in the recipient's medical record. (iv) The physician providing insemination or assisted reproductive technology services shall also verify, and document in the recipient's medical record, that the donor of sperm who tests reactive for HIV or HTLV is under the care of a physician managing the HIV or HTLV. (v) The physician providing insemination or assisted reproductive technology services shall recommend to the physician who will be providing ongoing care to the recipient recommended follow-up testing for HIV and HTLV according to the most relevant and up-to-date guidelines published by the American Society for Reproductive Medicine, which shall be documented in the recipient's medical record.		

(vi) If the recipient becomes HIV or HTLV positive, the physician assuming ongoing care of the recipient shall treat or provide information regarding referral to a physician who can provide ongoing treatment of the HIV or HTLV. (4) A recipient of sperm donated by a sexually intimate partner of the recipient for reproductive use may waive a second or repeat testing of that donor if the recipient is informed of the donor testing requirements of this section and signs a written waiver. For purposes of this paragraph, "sexually intimate partner of the recipient" includes a known or designated donor to whose sperm the recipient has previously been exposed in a nonmedical setting in an attempt to conceive. (d) Subdivision (a) does not apply to the transplantation of tissue from a donor who has not been tested or, with the exception of HTLV, has been found reactive for the infectious diseases listed in subdivision (a) or for which the department has, by regulation, required additional screening tests, if all of the following conditions are satisfied: (1) The physician and surgeon performing the transplantation has determined any one or more of the following: (A) Without the transplantation the intended recipient will most likely die during the period of time necessary to obtain other tissue or to conduct the required tests. (B) The intended recipient already is diagnosed with the infectious disease for which the donor has tested positive. (C) The symptoms from the infectious disease for which the donor has tested positive will most likely not appear during the intended recipient's likely lifespan after transplantation with the tissue or may be treated prophylactically if they do appear. (2) The physician and surgeon performing the transplantation has ensured that an organ from an individual who has been found reactive for HIV may be transplanted only into an individual who satisfies both of the following: (A) The individual has been found reactive for HIV before receiving the organ. (B) The individual is either participating in clinical research approved by an institutional review board under the criteria, standards, and regulations described in subsections (a) and (b) of Section 274f-5 of Title 42 of the United States Code, or, if the United States Secretary of Health and Human Services determines under subsection (c) of Section 274f-5 of Title 42 of the United States Code that participation in		

this clinical research is no longer warranted as a requirement for transplants, the individual is receiving the transplant under the standards and regulations under subsection (c) of Section 274f-5 of Title 42 of the United States Code. (3) Consent for the use of the tissue has been obtained from the recipient, if possible, or if not possible, from a member of the recipient's family, or the recipient's legal guardian. For purposes of this section, "family" means spouse, adult son or daughter, either parent, adult brother or sister, or grandparent. (e) The penalties prescribed in Section 120290 do not apply to a sperm donor covered under subdivision (c) or an organ or tissue donor who donates an organ or tissue for transplantation or research purposes. (f) Human breast milk from donors who test reactive for agents of viral hepatitis (HBV and HCV), HTLV, HIV, or syphilis shall not be used for deposit into a milk bank for human ingestion in California.		
SEC. 4. Section 120290 of the Health and Safety Code is repealed.	Cal. Health & Safety Code § 120290	**NRS 441A.180 Contagious person to prevent exposure to others; warning by health authority; penalty.** 1. A person who has a communicable disease in an infectious state shall not conduct himself or herself in any manner likely to expose others to the disease or engage in any occupation in which it is likely that the disease will be transmitted to others. 2. A health authority who has reason to believe that a person is in violation of subsection 1 shall issue a warning to that person, in writing, informing the person of the behavior which constitutes the violation and of the precautions that the person must take to avoid exposing others to the disease. The warning must be served upon the person by delivering a copy to him or her. 3. A person who violates the provisions of subsection 1 after service upon him or her of a warning from a health authority is guilty of a misdemeanor.
SEC. 5. Section 120290 is added to the Health and Safety Code, to read: 120290. (a) (1) A defendant is guilty of intentional transmission of an infectious or communicable disease if all of the following apply: (A) The defendant knows that he or she or a third party is afflicted with an infectious or communicable disease. (B) The defendant acts with the specific intent to transmit or cause an afflicted third party to transmit that disease to another person.	Cal. Health & Safety Code § 120290	**NRS 201.205 Penalty; affirmative defense.** 1. A person who, after testing positive in a test approved by the State Board of Health for exposure to the human immunodeficiency virus and receiving actual notice of that fact, intentionally, knowingly or willfully engages in conduct in a manner that is intended or likely to transmit the disease to another person is guilty of a category B felony and shall be punished by imprisonment

(C) The defendant or the afflicted third party engages in conduct that poses a substantial risk of transmission to that person. (D) The defendant or the third party transmits the infectious or communicable disease to the other person. (E) If exposure occurs through interaction with the defendant and not a third party, the person exposed to the disease during voluntary interaction with the defendant did not know that the defendant was afflicted with the disease. A person's interaction with the defendant is not involuntary solely on the basis of his or her lack of knowledge that the defendant was afflicted with the disease. (2) A defendant is guilty of willful exposure to an infectious or communicable disease if a health officer, or the health officer's designee, acting under circumstances that make securing a quarantine or health officer order infeasible, has instructed the defendant not to engage in particularized conduct that poses a substantial risk of transmission of an infectious or communicable disease, and the defendant engages in that conduct within 96 hours of the instruction. A health officer, or the health officer's designee, may issue a maximum of two instructions to a defendant that may result in a violation of this paragraph. (b) The defendant does not act with the intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) if the defendant takes, or attempts to take, practical means to prevent transmission. (c) Failure to take practical means to prevent transmission alone is insufficient to prove the intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a). (d) Becoming pregnant while infected with an infectious or communicable disease, continuing a pregnancy while infected with an infectious or communicable disease, or declining treatment for an infectious or communicable disease during pregnancy does not constitute a crime for purposes of this section. (e) For purposes of this section, the following definitions shall apply: (1) "Conduct that poses a substantial risk of transmission" means an activity that has a reasonable probability of disease transmission as proven by competent medical or epidemiological evidence. Conduct posing a low or negligible risk of transmission as proven by competent medical or epidemiological evidence does not meet the definition of conduct posing a substantial risk of transmission.		in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, or by a fine of not more than $10,000, or by both fine and imprisonment. 2. It is an affirmative defense to an offense charged pursuant to subsection 1 that the person who was subject to exposure to the human immunodeficiency virus as a result of the prohibited conduct: (a) Knew the defendant was infected with the human immunodeficiency virus; (b) Knew the conduct could result in exposure to the human immunodeficiency virus; and (c) Consented to engage in the conduct with that knowledge. (Added to NRS by 1993, 1943; A 1995, 1199) **NRS 441A.180 Contagious person to prevent exposure to others; warning by health authority; penalty.** 1. A person who has a communicable disease in an infectious state shall not conduct himself or herself in any manner likely to expose others to the disease or engage in any occupation in which it is likely that the disease will be transmitted to others. 2. A health authority who has reason to believe that a person is in violation of subsection 1 shall issue a warning to that person, in writing, informing the person of the behavior which constitutes the violation and of the precautions that the person must take to avoid exposing others to the disease. The warning must be served upon the person by delivering a copy to him or her. 3. A person who violates the provisions of subsection 1 after service upon him or her of a warning from a health authority is guilty of a misdemeanor.

(2) “Infectious or communicable disease” means a disease that spreads from person to person, directly or indirectly, that has significant public health implications. (3) “Practical means to prevent transmission” means a method, device, behavior, or activity demonstrated scientifically to measurably limit or reduce the risk of transmission of an infectious or communicable disease, including, but not limited to, the use of a condom, barrier protection or prophylactic device, or good faith compliance with a medical treatment regimen for the infectious or communicable disease prescribed by a health officer or physician. (f) This section does not preclude a defendant from asserting any common law defense. (g) (1) A violation of paragraph (1) of subdivision (a) or paragraph (2) of subdivision (a) is a misdemeanor, punishable by imprisonment in a county jail for not more than six months. (2) A person who attempts to intentionally transmit an infectious or communicable disease by engaging in the conduct described in subparagraphs (A), (B), (C), and (E) of paragraph (1) of subdivision (a) is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than 90 days. (h) (1) When alleging a violation of subdivision (a), the prosecuting attorney or the grand jury shall substitute a pseudonym for the true name of a complaining witness. The actual name and other identifying characteristics of a complaining witness shall be revealed to the court only in camera, unless the complaining witness requests otherwise, and the court shall seal the information from further disclosure, except by counsel as part of discovery. (2) Unless the complaining witness requests otherwise, all court decisions, orders, petitions, and other documents, including motions and papers filed by the parties, shall be worded so as to protect the name or other identifying characteristics of the complaining witness from public disclosure. (3) Unless the complaining witness requests otherwise, a court in which a violation of this section is filed shall, at the first opportunity, issue an order that prohibits counsel, their agents, law enforcement personnel, and court staff from making a public disclosure of the name or any other identifying characteristic of the complaining witness. (4) Unless the defendant requests otherwise, a court in which a violation of this section is filed, at the earliest opportunity, shall issue an order that		

counsel and their agents, law enforcement personnel, and court staff, before a finding of guilt, not publicly disclose the name or other identifying characteristics of the defendant, except by counsel as part of discovery or to a limited number of relevant individuals in its investigation of the specific charges under this section. In any public disclosure, a pseudonym shall be substituted for the true name of the defendant. (5) For purposes of this subdivision, "identifying characteristics" 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 complaining witness, place of employment, or race or ethnic background. (i) (1) A court, upon a finding of probable cause that an individual has violated this section, shall order the production of the individual's medical records or the attendance of a person with relevant knowledge thereof, so long as the return of the medical records or attendance of the person pursuant to the subpoena is submitted initially to the court for an in-camera inspection. Only upon a finding by the court that the medical records or proffered testimony are relevant to the pleading offense, the information produced pursuant to the court's order shall be disclosed to the prosecuting entity and admissible if otherwise permitted by law. (2) A defendant's medical records, medications, prescriptions, or medical devices shall not be used as the sole basis of establishing the specific intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a). (3) Surveillance reports and records maintained by state and local health officials shall not be subpoenaed or released for the purpose of establishing the specific intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a). (4) A court shall take judicial notice of any fact establishing an element of the offense upon the defendant's motion or stipulation. (5) A defendant is not prohibited from submitting medical evidence to show the absence of the stated intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a). (j) Before sentencing, a defendant shall be assessed for placement in one or more community-based programs that provide counseling, supervision, education, and reasonable redress to the victim or victims. (k) (1) This section does not apply to a person who donates an organ or tissue for transplantation or research purposes.		

(2) This section does not apply to a person, whether a paid or volunteer donor, who donates breast milk to a medical center or breast milk bank that receives breast milk for purposes of distribution.		
SEC. 6. Section 120291 of the Health and Safety Code is repealed.	Cal. Health & Safety Code § 120291	Nevada does not have a separate provision or sentence enhancement specifically addressing unprotected sexual activity with an individual who has HIV. NRS 201.205 and 441A.300 could apply in this circumstance. **NRS 201.205 Penalty; affirmative defense.** 1. A person who, after testing positive in a test approved by the State Board of Health for exposure to the human immunodeficiency virus and receiving actual notice of that fact, intentionally, knowingly or willfully engages in conduct in a manner that is intended or likely to transmit the disease to another person is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, or by a fine of not more than $10,000, or by both fine and imprisonment. **NRS 441A.300 Confinement of person whose conduct may spread acquired immunodeficiency syndrome.** A person who is diagnosed as having acquired immunodeficiency syndrome who fails to comply with a written order of a health authority, or who engages in behavior through which the disease may be spread to others, is, in addition to any other penalty imposed pursuant to this chapter, subject to confinement by order of a court of competent jurisdiction. (Added to NRS by 1989, 297)
SEC. 7. Section 120292 of the Health and Safety Code is repealed.	Cal. Health & Safety Code § 120292	Nevada has strong protections for health information, but there are limited instances in which results may be disclosed to certain individuals for public health and safety reasons. **NRS 441A.230 Disclosure of personal information prohibited without consent.** Except as otherwise provided in this chapter and NRS 439.538, a person shall not make public the name of, or other personal identifying information about, a person infected with

		a communicable disease who has been investigated by the health authority pursuant to this chapter without the consent of the person. (Added to NRS by 1989, 300; A 2007, 1978) **NRS 441A.220 Confidentiality of information; permissible disclosure.** All information of a personal nature about any person provided by any other person reporting a case or suspected case of a communicable disease or drug overdose, or by any person who has a communicable disease or has suffered a drug overdose, or as determined by investigation of the health authority, is confidential medical information and must not be disclosed to any person under any circumstances, including pursuant to any subpoena, search warrant or discovery proceeding, except: 1. As otherwise provided in NRS 439.538. 2. For statistical purposes, provided that the identity of the person is not discernible from the information disclosed. 3. In a prosecution for a violation of this chapter. 4. In a proceeding for an injunction brought pursuant to this chapter. 5. In reporting the actual or suspected abuse or neglect of a child or elderly person. 6. To any person who has a medical need to know the information for his or her own protection or for the well-being of a patient or dependent person, as determined by the health authority in accordance with regulations of the Board. 7. If the person who is the subject of the information consents in writing to the disclosure. 8. Pursuant to subsection 4 of NRS 441A.320 or NRS 629.069. [testing and releasing results of persons alleged to have committed a sexual offense to victims and other relevant entities or individuals]. 9. If the disclosure is made to the Department of Health and Human Services and the person about whom the disclosure is made has been diagnosed as having acquired immunodeficiency syndrome or an illness related to the human immunodeficiency virus and is a recipient of or an applicant for Medicaid. 10. To a firefighter, police officer or person providing emergency medical services if the Board has determined that the

		information relates to a communicable disease significantly related to that occupation. The information must be disclosed in the manner prescribed by the Board. 11. If the disclosure is authorized or required by NRS 239.0115 or another specific statute. (Added to NRS by 1989, 299; A 1989, 1476; 1997, 1254; 1999, 1123, 2238, 2245; 2005, 329; 2007, 1277, 1977, 2109; 2017, 4402) **NRS 209.385 Testing offenders for exposure to human immunodeficiency virus; disclosure of name of offender whose tests are positive; segregation of offender; duties of Director.** 1. Each offender committed to the custody of the Department for imprisonment shall submit to such initial tests as the Director determines appropriate to detect exposure to the human immunodeficiency virus. Each such test must be approved by regulation of the State Board of Health. At the time the offender is committed to custody and after an incident involving the offender: (a) The appropriate approved tests must be administered; and (b) The offender must receive counseling regarding the virus. 2. If the results of an initial test are positive, the offender shall submit to such supplemental tests as the Medical Director determines appropriate. Each such test must be approved for the purpose by regulation of the State Board of Health. 3. If the results of a supplemental test are positive, the name of the offender may be disclosed to: (a) The Director; (b) The administrative officers of the Department who are responsible for the classification and medical treatment of offenders; (c) The manager or warden of the facility or institution at which the offender is confined; and (d) Any other employee of the Department whose normal duties involve the employee with the offender or require the employee to come into contact with the blood or bodily fluids of the offender. 4. The offender must be segregated from every other offender whose test results are negative if: (a) The results of a supplemental test are positive; and

		(b) The offender engages in behavior that increases the risk of transmitting the virus as determined by regulation of the Department. 5. The Director, with the approval of the Board: (a) Shall establish for inmates and employees of the Department an educational program regarding the virus whose curriculum is provided by the Division of Public and Behavioral Health of the Department of Health and Human Services. A person who provides instruction for this program must be certified to do so by the Division. (b) May adopt such regulations as are necessary to carry out the provisions of this section. 6. As used in this section, "incident" means an occurrence, of a kind specified by regulation of the State Board of Health or the Department, that entails a significant risk of exposure to the human immunodeficiency virus. (Added to NRS by 1989, 385; A 1993, 6, 516, 517; 1997, 906; 2013, 1168; 2017, 357)
SEC. 8. Section 647f of the Penal Code is repealed.	Cal. Pen. Code § 647f	**NRS 201.358 Engaging in prostitution or solicitation for prostitution after testing positive for exposure to human immunodeficiency virus: Penalty; definition.** 1. A person who: (a) Violates NRS 201.354 [prostitution or solicitation except in a licensed establishment];; or (b) Works as a prostitute in a licensed house of prostitution, ➥ after testing positive in a test approved by the State Board of Health for exposure to the human immunodeficiency virus and receiving notice of that fact is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, or by a fine of not more than $10,000, or by both fine and imprisonment. 2. As used in this section, "notice" means: (a) Actual notice; or

		(b) Notice received pursuant to NRS 201.356. [requiring an individual arrested for prostitution or solicitation of prostitution outside of a licensed establishment to submit to a test for HIV].
SEC. 9. Section 1001 of the Penal Code is amended to read: 1001. It is the intent of the Legislature that this chapter, Chapter 2.5 (commencing with Section 1000) of this title, or any other provision of law not be construed to preempt other current or future pretrial or precomplaint diversion programs. It is also the intent of the Legislature that current or future post trial diversion programs not be preempted, except as provided in Section 13201 or 13352.5 of the Vehicle Code. Sections 1001.2 to 1001.9, inclusive, of this chapter apply only to pretrial diversion programs as defined in Section 1001.1.	Cal. Pen. Code § 1001	Nevada may consider including similar provisions in a bill regarding preemption of pre-prosecution diversion programs initiated under NRS 174.032.
SEC. 10. Section 1001.1 of the Penal Code is amended to read: 1001.1. As used in Sections 1001.2 to 1001.9, inclusive, of this chapter, pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication.	Cal. Pen. Code § 1001.1	It does not appear that the Nevada statute on pre-prosecution diversion programs would require similar modifications. **NRS 174.031 Determination of eligibility; court may order defendant to complete program.** 1. At the arraignment of a defendant in justice court or municipal court, but before the entry of a plea, the court may determine whether the defendant is eligible for assignment to a preprosecution diversion program established pursuant to NRS 174.032. The court shall receive input from the prosecuting attorney and the attorney for the defendant, if any, whether the defendant would benefit from and is eligible for assignment to the program. 2. A defendant may be determined to be eligible by the court for assignment to a preprosecution diversion program if the defendant: (a) Is charged with a misdemeanor other than: (1) A crime of violence as defined in NRS 200.408; (2) Vehicular manslaughter as described in NRS 484B.657; (3) Driving under the influence of intoxicating liquor or a controlled substance in violation of NRS 484C.110, 484C.120 or 484C.130; or (4) A minor traffic offense; and (b) Has not previously been: (1) Convicted of violating any criminal law other than a minor traffic offense; or

		(2) Ordered by a court to complete a preprosecution diversion program in this State. 3. If a defendant is determined to be eligible for assignment to a preprosecution diversion program pursuant to subsection 2, the justice court or municipal court may order the defendant to complete the program pursuant to subsection 5 of NRS 174.032. 4. A defendant has no right to complete a preprosecution diversion program or to appeal the decision of the justice court or municipal court relating to the participation of the defendant in such a program. (Added to NRS by 2017, 3010)
SEC. 11. Section 1001.10 of the Penal Code is repealed.	Cal. Pen. Code § 1001.10	Nevada law does not appear to require the completion of any educational course or program related to HIV or AIDS.
SEC. 12. Section 1001.11 of the Penal Code is repealed.	Cal. Pen. Code § 1001.11	As no educational courses or programs related to HIV or AIDS are required for criminal offenses in Nevada, there is no requirement that counties establish or identify an agency to provide such programs.
SEC. 13. Section 1170.21 is added to the Penal Code, to read: 1170.21. A conviction for a violation of Section 647f as it read on December 31, 2017, is invalid and vacated. All charges alleging violation of Section 647f are dismissed and all arrests for violation of Section 647f are deemed to have never occurred. An individual who was arrested, charged, or convicted for a violation of Section 647f may indicate in response to any question concerning his or her prior arrest, charge, or conviction under Section 647f that he or she was not arrested, charged, or convicted for a violation of Section 647f. Notwithstanding any other law, information pertaining to an individual's arrest, charge, or conviction for violation of Section 647f shall not, without the individual's consent, be used in any way adverse to his or her interests, including, but not limited to, denial of any employment, benefit, license, or certificate.	Cal. Pen. Code § 1170.21	Not applicable for modification of existing Nevada statutes, but should be considered when drafting bill language.

SEC. 14. Section 1170.22 is added to the Penal Code, to read: 1170.22. (a) A person who is serving a sentence as a result of a violation of Section 647f as it read on December 31, 2017, whether by trial or by open or negotiated plea, may petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case. (b) If the court's records show that the petitioner was convicted for a violation of Section 647f as it read on December 31, 2017, the court shall vacate the conviction and resentence the person for any remaining counts. (c) A person who is serving a sentence and resentenced pursuant to subdivision (b) shall be given credit for any time already served and shall be subject to whatever supervision time he or she would have otherwise been subject to after release, whichever is shorter, unless the court, in its discretion, as part of its resentencing order, releases the person from supervision. (d) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement. (e) Upon completion of sentence for a conviction under Section 647f as it read on December 31, 2017, the provisions of Section 1170.21 shall apply. (f) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this section. (g) A resentencing hearing ordered under this section shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution. (h) The provisions of this section apply to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not have been guilty of an offense or would not have been guilty of an offense governed by this section. (i) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of petitions and applications provided in this section.	Cal. Pen. Code § 1170.22	Not applicable for modification of existing Nevada statutes, but should be considered when drafting bill language.
SEC. 15. Section 1202.1 of the Penal Code is amended to read: 1202.1. (a) Notwithstanding Sections 120975 and 120990 of the Health and Safety Code, the court shall order every person who is convicted of,	Cal. Pen. Code § 1202.1	**NRS 441A.320 Testing of person alleged to have committed sexual offense; disclosure of results of test; assistance to victim; payment of expenses; regulations.**

or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of a violation of, a sexual offense listed in subdivision (e), whether or not a sentence or fine is imposed or probation is granted, to submit to a blood or oral mucosal transudate saliva test for evidence of antibodies to the probable causative agent of acquired immunodeficiency syndrome (AIDS) within 180 days of the date of conviction. Each person tested under this section shall be informed of the results of the blood or oral mucosal transudate saliva test. (b) Notwithstanding Section 120980 of the Health and Safety Code, the results of the blood or oral mucosal transudate saliva test to detect antibodies to the probable causative agent of AIDS shall be transmitted by the clerk of the court to the Department of Justice and the local health officer. (c) Notwithstanding Section 120980 of the Health and Safety Code, the Department of Justice shall provide the results of a test or tests as to persons under investigation or being prosecuted under Section 12022.85, if the results are on file with the department, to the defense attorney upon request and the results also shall be available to the prosecuting attorney upon request for the purpose of either preparing counts for a sentence enhancement under Section 12022.85 or complying with subdivision (d). (d) (1) In every case in which a person is convicted of a sexual offense listed in subdivision (e) or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of the commission of a sexual offense listed in subdivision (e), the prosecutor or the prosecutor's victim-witness assistance bureau shall advise the victim of his or her right to receive the results of the blood or oral mucosal transudate saliva test performed pursuant to subdivision (a). The prosecutor or the prosecutor's victim-witness assistance bureau shall refer the victim to the local health officer for counseling to assist him or her in understanding the extent to which the particular circumstances of the crime may or may not have placed the victim at risk of transmission of the human immunodeficiency virus (HIV) from the accused, to ensure that the victim understands the limitations and benefits of current tests for HIV, and to assist the victim in determining whether he or she should make the request.		1. If the alleged victim or a witness to a crime alleges that the crime involved the sexual penetration of the victim's body, the health authority shall perform the tests set forth in subsection 2 as soon as practicable after the arrest of the person alleged to have committed the crime, but not later than 72 hours after the person is charged with the crime by indictment or information, unless the person alleged to have committed the crime is a child who will be adjudicated in juvenile court and then not later than 72 hours after the petition is filed with the juvenile court alleging that the child is delinquent for committing such an act. 2. If the health authority is required to perform tests pursuant to subsection 1, it must test a specimen obtained from the arrested person for exposure to the human immunodeficiency virus and any commonly contracted sexually transmitted disease, regardless of whether the person or, if the person is a child, the parent or guardian of the child consents to providing the specimen. The agency that has custody of the arrested person shall obtain the specimen and submit it to the health authority for testing. The health authority shall perform the test in accordance with generally accepted medical practices. 3. In addition to the test performed pursuant to subsection 2, the health authority shall perform such follow-up tests for the human immunodeficiency virus as may be deemed medically appropriate. 4. As soon as practicable, the health authority shall disclose the results of all tests performed pursuant to subsection 2 or 3 to: (a) The victim or to the victim's parent or guardian if the victim is a child; and (b) The arrested person and, if the person is a child, to the parent or guardian of the child. 5. If the health authority determines, from the results of a test performed pursuant to subsection 2 or 3, that a victim of sexual assault may have been exposed to the human immunodeficiency virus or any commonly contracted sexually transmitted disease, it shall, at the request of the victim, provide him or her with: (a) An examination for exposure to the human immunodeficiency virus and any commonly contracted sexually transmitted disease to which the health authority determines the victim may have been exposed;

(2) Notwithstanding any other law, upon the victim's request, the local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, as specified in subdivision (g), positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances as follows: (A) To help the victim understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the perpetrator. (B) To ensure that the victim understands both the benefits and limitations of the current tests for HIV. (C) To obtain referrals to appropriate health care and support services. (e) For purposes of this section, "sexual offense" includes any of the following: (1) Rape in violation of Section 261 or 264.1. (2) Unlawful intercourse with a person under 18 years of age in violation of Section 261.5 or 266c. (3) Rape of a spouse in violation of Section 262 or 264.1. (4) Sodomy in violation of Section 266c or 286. (5) Oral copulation in violation of Section 266c or 288a. (6) (A) Any of the following offenses if the court finds that there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the defendant to the victim: (i) Sexual penetration in violation of Section 264.1, 266c, or 289. (ii) Aggravated sexual assault of a child in violation of Section 269. (iii) Lewd or lascivious conduct with a child in violation of Section 288. (iv) Continuous sexual abuse of a child in violation of Section 288.5. (v) The attempt to commit any offense described in clauses (i) to (iv), inclusive. (B) For purposes of this paragraph, the court shall note its finding on the court docket and minute order if one is prepared. (f) Any blood or oral mucosal transudate saliva tested pursuant to subdivision (a) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the person who is tested unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.		(b) Counseling regarding the human immunodeficiency virus and any commonly contracted sexually transmitted disease to which the health authority determines the victim may have been exposed; and (c) A referral for health care and other assistance, ➥ as appropriate. 6. If the court in: (a) A criminal proceeding determines that a person has committed a crime; or (b) A proceeding conducted pursuant to title 5 of NRS determines that a child has committed an act which, if committed by an adult, would have constituted a crime, ➥ involving the sexual penetration of a victim's body, the court shall, upon application by the health authority, order that child or other person to pay any expenses incurred in carrying out this section with regard to that child or other person and that victim. 7. The Board shall adopt regulations identifying, for the purposes of this section, sexually transmitted diseases which are commonly contracted. 8. As used in this section: (a) "Sexual assault" means a violation of NRS 200.366. (b) "Sexual penetration" has the meaning ascribed to it in NRS 200.364. (Added to NRS by 1989, 297; A 1993, 1208; 2003, 1150; 2007, 1278; 2019, 1915) **NRS 201.356 Test for exposure to human immunodeficiency virus required; payment of costs; notification of results of test.** 1. Any person who is arrested for a violation of NRS 201.354 must submit to a test, approved by regulation of the State Board of Health, to detect exposure to the human immunodeficiency virus. The State Board of Health shall not approve a test for use that does not provide the arresting law enforcement agency with the results of the test within 30 days after a person submits to the test. If the person is convicted of a violation of NRS 201.354, the person shall pay the sum of $100 for the cost of the test. 2. The person performing the test shall immediately transmit the results of the test to the arresting law enforcement agency. If the

(g) The local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances. (h) The local health officer and the victim shall comply with all laws and policies relating to medical confidentiality, subject to the disclosure authorized by subdivisions (g) and (i). (i) Any victim who receives information from the local health officer pursuant to subdivision (g) may disclose the information as he or she deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner. (j) Any person who transmits test results or discloses information pursuant to this section shall be immune from civil liability for any action taken in compliance with this section.		results of the test are negative, the agency shall inform the court of that fact. If the results of the test are positive, the agency shall upon receipt: (a) Mail the results by certified mail, return receipt requested, to the person arrested at his or her last known address and place the returned receipt in the agency's file; or (b) If the person arrested is in the custody of the agency, personally deliver the results to him or her and place an affidavit of service in the agency's file. ➥ If before receiving the results pursuant to this subsection, the person arrested requests the agency to inform him or her of the results and the agency has received those results, the agency shall deliver the results to the person arrested, whether positive or negative, and place an affidavit of service in the agency's file. 3. The court shall, when the person arrested is arraigned, order the person to reappear before the court 45 days after the arraignment to determine whether the person has received the results of the test. The court shall inform the person that the failure to appear at the appointed time will result in the issuance of a bench warrant, unless the order is rescinded pursuant to this subsection. If the court is informed by the agency that the results of the person's test were negative, the court clerk shall rescind the order for reappearance and so notify the person. If, upon receiving notice from the agency that the results of the test were positive, the person notifies the court clerk in writing that he or she has received the results, the clerk shall inform the court and rescind the order for reappearance for that determination. 4. The court shall, upon the person's reappearance ordered pursuant to subsection 3, ask the person whether he or she has received the results of the test. If the person answers that he or she has received them, the court shall note the person's answer in the court records. If the person answers that he or she has not received them, the court shall have the results delivered to the person and direct that an affidavit of service be placed in the agency's file. 5. If the person does not reappear as ordered and has not notified the court clerk of his or her receipt of the results of the test in the manner set forth in subsection 3, the court shall cause a bench warrant to be issued and that person arrested and brought before the court as upon contempt. The court shall also proceed in the manner

		set forth in subsection 4 to ensure that the person receives the results of the test. (Added to NRS by 1987, 2027; A 1989, 924)
SEC. 16. Section 1202.6 of the Penal Code is repealed.	Cal. Pen. Code § 1202.6	Nevada law does not appear to require the completion of any educational course or program related to HIV or AIDS. See NRS 201.356 for testing requirements related to prostitution-related violations.
SEC. 17. Section 1202.6 is added to the Penal Code, to read: 1202.6. Notwithstanding Sections 120975, 120980, and 120990 of the Health and Safety Code, upon the first conviction of a person for a violation of subdivision (b) of Section 647, the court shall refer the defendant, where appropriate, to a program under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code or to a drug diversion program, or to both.	Cal. Pen. Code § 1202.6	Offenders are not required to enter a diversion program, but "may be eligible to do so." **NRS 201.354 Engaging in prostitution or solicitation for prostitution: Provision of certain information; criminal penalties; civil penalty; discharge and dismissal.** 1. It is unlawful for any person to engage in prostitution or solicitation therefor, except in a licensed house of prostitution. 2. Any person who violates subsection 1 by soliciting for prostitution: (a) A peace officer who is posing as a child; or (b) A person who is assisting a peace officer by posing as a child, ➥ is guilty of soliciting a child for prostitution. 3. A prostitute who violates subsection 1 is guilty of a misdemeanor. A peace officer who: (a) Detains, but does not arrest or issue a citation to a prostitute for a violation of subsection 1 shall, before releasing the prostitute, provide information regarding and opportunities for connecting with social service agencies that may provide assistance to the prostitute. The Department of Health and Human Services shall assist law enforcement agencies in providing information regarding and opportunities for connecting with such social service agencies pursuant to this paragraph. (b) Arrests or issues a citation to a prostitute for a violation of subsection 1 shall, before the prostitute is released from custody or cited: (1) Inform the prostitute that he or she may be eligible for assignment to a preprosecution diversion program established pursuant to NRS 174.032; and

		(2) Provide the information regarding and opportunities for connecting with social service agencies described in paragraph (a). 4. Except as otherwise provided in subsection 6, a customer who violates this section: (a) For a first offense, is guilty of a misdemeanor and shall be punished as provided in NRS 193.150, and by a fine of not less than $400. **NRS 174.031 Determination of eligibility; court may order defendant to complete program.** 1. At the arraignment of a defendant in justice court or municipal court, but before the entry of a plea, the court may determine whether the defendant is eligible for assignment to a preprosecution diversion program established pursuant to NRS 174.032. The court shall receive input from the prosecuting attorney and the attorney for the defendant, if any, whether the defendant would benefit from and is eligible for assignment to the program. 2. A defendant may be determined to be eligible by the court for assignment to a preprosecution diversion program if the defendant: (a) Is charged with a misdemeanor other than: (1) A crime of violence as defined in NRS 200.408; (2) Vehicular manslaughter as described in NRS 484B.657; (3) Driving under the influence of intoxicating liquor or a controlled substance in violation of NRS 484C.110, 484C.120 or 484C.130; or (4) A minor traffic offense; and (b) Has not previously been: (1) Convicted of violating any criminal law other than a minor traffic offense; or (2) Ordered by a court to complete a preprosecution diversion program in this State. 3. If a defendant is determined to be eligible for assignment to a preprosecution diversion program pursuant to subsection 2, the justice court or municipal court may order the defendant to complete the program pursuant to subsection 5 of NRS 174.032. 4. A defendant has no right to complete a preprosecution diversion program or to appeal the decision of the justice court or

		municipal court relating to the participation of the defendant in such a program. (Added to NRS by 2017, 3010)
SEC. 18. Section 1463.23 of the Penal Code is repealed.	Cal. Pen. Code § 1463.23	No similar provisions were identified in the NRS.
SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution. However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.	Section 6 of Article XIII B of the California Constitution	**NRS 218D.270 Certain legislative measures must include information relating to unfunded mandates.** If any provision contained in a legislative measure will have the effect of requiring one or more local governments to establish, provide or increase a program or service which is estimated to cost in excess of $5,000 per local government and a specified source for the additional revenue to pay the expense is not authorized by a specific statute, the face of the legislative measure must indicate: 1. That the legislative measure contains an unfunded mandate; and 2. Whether the legislative measure was requested by or on behalf of one or more of the local governments that will be required by the legislative measure to establish, provide or increase the program or service. (Added to NRS by 1999, 1181; A 2011, 3193)

c. Proposed Conforming Changes to Nevada Statutes

Conforming changes to Nevada statutes are dependent on Silver State Equality's preferred approach. Statutory language will be proposed in a separate bill draft memorandum following conferral with Silver State Equality, if so requested by Silver State Equality.

IV. Documents and Certain Qualifications

This memorandum is subject to the following qualifications, in addition to qualifications set forth elsewhere herein:

1. We have assumed the authenticity of all materials reviewed.

2. We have made no independent investigation of the facts referred to herein or any other facts and have relied exclusively on the facts as provided in all materials reviewed. We have assumed that all such facts are true on the date hereof (or were true at the relevant historical time) and, if relevant on a continuing basis, will remain true at all other times relevant to this memorandum. We have assumed that there are no documents, facts or understandings among the parties inconsistent with such facts that, if brought to our attention, would lead us to change the analysis or conclusions contained herein.

3. When we make an assumption in this memorandum, we do so with your permission.

4. This memorandum is limited to the analysis and conclusions contained herein as applied to the facts set forth above.

5. This memorandum (and the analysis and conclusions set forth herein) is not a prediction of the outcome of any ruling or other determination by, or view expressed by, any: (i) nation, region, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (ii) federal, state, provincial, local, municipal, foreign or other government; or (iii) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, organization, unit, body or entity and any arbitrator, court or other tribunal) (collectively, "Governmental Entities"), in each case as to the matters addressed herein. Any such outcome or view could differ from the analysis and conclusions set forth herein and could be informed by varying regulatory considerations. This memorandum is not an assurance that the matters addressed herein would avoid being the subject of scrutiny by a Governmental Entity. Such scrutiny by a Governmental Entity could be triggered for various reasons.

6. This memorandum (and the analysis and conclusions set forth herein) is based solely on factual matters in existence or assumed to be in existence as of the date hereof and we assume no obligation to revise or supplement this memorandum (or the analysis and conclusions set forth herein) to reflect any matters that may hereafter come to our attention, or should such factual matters change or should such Laws be changed by action of any Governmental Entity.