



March 5, 2024

RE: Support for H7219 - “Relating to Health and Safety - Prevention and Suppression of Contagious Diseases - HIV/AIDS”

To the House Judiciary Committee,

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

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

CHLP would like to express our strong support of H7219, which ensures that individuals convicted of commercial sexual activity are provided the option to consent to an HIV test. We believe HIV testing should never be mandated by law and that testing should only be administered after obtaining an individual's informed consent. Mandatory testing laws eliminate a person's basic right to decide when, where, or whether to submit to an HIV test and receive care. These laws exacerbate the alienation of communities that mistrust the criminal legal and healthcare systems and undermine a public health response to the HIV epidemic.

Currently, Rhode Island law requires all persons convicted under any commercial sexual activity statute to be compulsorily tested for HIV. There are a number of concerns that arise when individuals are subject to this type of mandatory HIV testing.

Privacy and Confidentiality

¹ The Center for HIV Law and Policy (CHLP), *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, <https://www.hivlawandpolicy.org/resources/hiv-criminalization-united-states-sourcebook-state-and-federal-hiv-criminal-law-and> (last visited March 5, 2024).

Typically, HIV tests are private and confidential and any disclosure is only made with informed consent. When an HIV test is mandated, it does not receive the same level of confidentiality. In Rhode Island, once a mandatory HIV test is administered, results can be disclosed to the courts pursuant to § 40.1-5-26 (b) (7). These records could be used to obtain a criminal conviction if an individual is later charged with “exposure of another to infection” under § 23-11-1. A person may be charged according to § 23-11-1 if they “knowingly, while in the infectious condition” expose another to infection.² Although it is not specifically included in the statute's definition of STIs, it remains ambiguous whether HIV is a criminalized condition. Prosecutors could use test results obtained under § 40.1-5-26 (b) (7) to prove that an individual knew their positive HIV status, exposing individuals to further criminal legal system involvement. This break in confidentiality severely undermines any trust between healthcare providers and patients. The negative consequences of this confidentiality violation are further compounded by the fact that compulsory testing has a deterrent effect on future testing and could lead to a discriminatory application of the law for people living with HIV.

Routes and Risks of Transmission

Mandatory testing laws are not tailored to account for the realities regarding the routes and risks of transmission of HIV. Under Rhode Island’s commercial sexual activity law an individual will be mandated to submit to an HIV test regardless of whether any sexual contact occurred. Specifically, loitering to engage in prostitution and solicitation are encompassed in the commercial sexual activity statute; thus, the law penalizes merely an attempt to engage in a conversation regarding sex work or some other commercial sexual activity. There is no requirement that there be an identifiable exposure capable of transmitting HIV before mandating testing. Instead of being based on an actual risk of transmission, essentially, Rhode Island’s mandatory testing law eliminates consent requirements based upon the mere possibility of exposure and transmission that follows from the individual's identification as a member of a “high-risk” group. This type of mandatory testing law is illustrative of the stigma and discrimination surrounding sex work and demonstrates how these laws can target individuals

² Leading public health organizations and advocates have denounced laws that criminalize people living with STIs, including HIV, as stigmatizing and counterproductive. See, e.g., The White House, *Remarks by President Biden to Commemorate World AIDS Day, Launch the National HIV/AIDS Strategy, and Kick Off the Global Fund Replenishment Process* (Dec. 1, 2021), available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/12/01/remarks-by-president-biden-to-commemorate-world-aids-day-launch-the-national-hiv-aids-strategy-and-kick-off-the-global-fund-replenishment-process/> (calling for an end to HIV criminalization laws that “perpetuate discrimination, exacerbate disparities, discourage HIV testing, and take us further away from our goal”); Centers for Disease Control and Prevention, *HIV Criminalization and Ending the HIV Epidemic in the U.S.* (Dec. 18, 2023), <https://www.cdc.gov/hiv/policies/law/criminalization-ehe.html> (urging states to reform or repeal “outdated laws and practices” related to HIV criminalization and noting that these laws worsen stigma and may decrease testing and care engagement); American Medical Association, *Discrimination and Criminalization Based on HIV Seropositivity H-20.914*, <https://policysearch.ama-assn.org/policyfinder/detail/HIV?uri=%2FAMADoc%2FHOD.xml-0-1254.xml> (last visited Jan. 23, 2024) (calling out the stigma created by HIV criminalization statutes and advocating for the “repeal of legislation that criminalizes non-disclosure of [HIV] status for people living with HIV”).

based solely on their perceived health status. Additionally, ignoring the scientific reality of risks and routes of transmission of HIV, exacerbates misinformation on HIV and undermines ongoing HIV prevention education.

State Resources

Rhode Island's "Special Legislative Study Commission Ensuring Racial Equity and Optimizing Health and Safety Laws Affecting Marginalized Individuals" issued a report in 2023 recommending the removal of mandated testing. Mandated testing creates additional time and financial burdens. Mandating testing, when there is neither sexual contact nor an actual risk of HIV transmission, is an unnecessary use of state resources. These resources would be better allocated for educating communities on prevention methods and providing community support to vulnerable populations.

Undermines Public Health Goals

Mandatory testing laws undermine public health goals. Mandatory HIV testing laws in Rhode Island allow the court to access personal health information, therefore, undermining public health goals such as increased compliance with patient care and reducing HIV transmission rates. Forcing a person to take any health screening test violates patient and bodily autonomy, consent, and informed health decision-making. Especially among communities with high medical mistrust, compulsory testing makes people less likely to engage in care and adopt any preventative measures to ensure they do not transmit HIV to others. Compulsorily testing individuals, could further discourage folks from accessing care in the future. Moreover, mandatory testing does nothing to increase the resources available to improve engagement on the care continuum and promote the well-being of people living with HIV. Consequently, due to the myriad of ethical issues surrounding mandatory testing, many public health organizations, including the World Health Organization (WHO) and the Joint United Nations Programme on HIV/AIDS (UNAIDS), oppose mandatory HIV testing, citing the need to center a human rights approach to HIV testing that is based in ethical principles.³

Conclusion

H7219 maintains existing access to HIV testing, counseling, and treatment for persons convicted of commercial sexual activity but ensures that testing cannot be done without consent. All persons convicted of commercial sexual activity will still be provided the option to be tested for HIV. By passing H7219, Rhode Island would join other states in modernizing HIV testing protocol for persons arrested for commercial sexual activity. Colorado and Nevada repealed their mandatory testing laws entirely in 2016 and 2021 respectively; Virginia passed legislation in 2021 that replaced its testing requirement with optional testing and access to services, as is proposed here. Please support modernizing Rhode Island's commercial sexual activity and HIV laws by passing H7219.

³ Joint United Nations Programme on HIV and AIDS (2004), https://data.unaids.org/una-docs/hivtestingpolicy_en.pdf

Sincerely,

A handwritten signature in black ink, appearing to read 'J Hicks', with a stylized flourish at the end.

Jada Hicks
Staff Attorney
The Center for HIV Law and Policy