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AUTHORS

Ayako Miyashita Ochoa, JD

Luisita Cordero, MA

Craig Pulsipher, MPP/MSW

Christian P. Paneda

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ABOUT THE CALIFORNIA HIV/AIDS POLICY RESEARCH CENTERS

The California HIV/AIDS Policy Research Centers are funded by the California HIV/AIDS Research Program to bring the most relevant and timely evidence to bear on HIV/AIDS policy making in order to further California's efforts to develop and maintain efficient, cost-effective, and accessible programs and services to people with or at risk for HIV/AIDS.

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CHAPTER 1

HIV Testing and Linkages to Care

The following publication summarizes California laws related to HIV/AIDS. This document is intended to provide an overview of the current state of the law as of the date of publication. Statutes are provided as references; refer to California Legislative Information (<http://leginfo.legislature.ca.gov>) for more information.

Mandatory HIV Testing

While HIV test results may not be used to determine eligibility for insurance or employment,¹ there is an exception for life and disability income insurance.² Thus, some individuals seeking life and disability income insurance may be required to provide HIV test results.

Outside of the criminal context, mandatory HIV testing is limited to narrow and specific circumstances. For example, mandatory HIV testing is required for professional boxers or martial arts fighters applying for or renewing a license.³ An infant under 12 months of age⁴ that is in the temporary custody of the state, is in the process of becoming, or has already become a dependent child of the court may also be mandatorily tested if the attending physician or surgeon believes testing is necessary to providing appropriate care.⁵

For more information on mandatory HIV testing in the criminal context, see Chapter 3.

Mandatory Offer of HIV Testing

The Centers for Disease Control and Prevention (CDC) recommends that individuals between the ages of 13 and 64 get tested for HIV at least once as part of routine health care; however, this standard does not call for mandatory testing. California has aimed to increase HIV testing through law, policy, and practice by decreasing barriers to testing, promoting opt-out HIV testing as opposed to opt-in testing. More recent legislation includes mandates for providers to *offer* an HIV test. These strategies have been used to increase HIV testing among the following populations:

- pregnant women,⁶
- individuals obtaining a marriage license,⁷
- individuals that are having their blood drawn in the course of seeking primary care services,⁸ and
- individuals being seen at one of four (4) emergency departments in hospitals across California that are currently piloting a project to conduct routine offering of an HIV test.⁹

Informed Consent Standard

Voluntary testing with informed consent continues to be the law in California. Informed consent requires providers to offer specific information prior to conducting HIV testing for a patient. This includes informing the patient of the following:

- the test is planned,
- information about the test,
- that numerous treatment options are available for a patient who tests positive for HIV,

- that a person who tests negative should continue to be routinely tested, and
- they have the right to decline the test.¹⁰

A patient can provide oral or written consent which the provider is required to document in writing in the patient's medical record.¹¹ If a patient declines the test, the medical care provider shall note it in the patient's file.¹²

Linkages to Care

After a person has been tested for HIV, the medical care provider or person who administered the test must provide specific information and counseling related to HIV.¹³ If the person tests positive, they must be informed that many treatment options are available and the provider or person who administered the test must identify follow-up testing and care, including contact information for medical and psychological services.¹⁴ If a person tests negative and is considered to be at high risk for HIV infection, they should be advised about the limits of current testing technology and the need for periodic retesting due to the window period.¹⁵ They must also receive information on how to prevent or reduce the risk of contracting HIV, including information about pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP). The medical care provider or person administering the test may also offer or provide a referral for HIV prevention counseling.¹⁶

¹ Cal. Health & Safety Code § 120980(f).

² Cal. Insurance Code §§ 799-799.10.

³ Cal. Business & Professions Code § 18712.

⁴ Cal. Welfare & Institutions Code § 369.

⁵ *Id.*

⁶ Cal. Health & Safety Code § 125107.

⁷ Cal. Family Code § 358.

⁸ Cal. Health & Safety Code § 120991.

⁹ Cal. Health & Safety Code § 120992.

¹⁰ Cal. Health & Safety Code § 120990(a).

¹¹ Cal. Health & Safety Code § 120990(c).

¹² Cal. Health & Safety Code § 120990(a).

¹³ Cal. Health & Safety Code § 120990(h).

¹⁴ *Id.*

¹⁵ State of California, Health and Human Services Agency, California Department of Public Health, *2014 HIV Testing Law in Healthcare Settings Fact Sheet – June 2014*, available at [https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/AB%20446%20\(2013\)%20HIV%20Testing.pdf](https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/AB%20446%20(2013)%20HIV%20Testing.pdf) (providing guidance on how to describe the window period required for verification of HIV test results).

¹⁶ *Id.* at 12.

CHAPTER 2

HIV Privacy and Confidentiality

Laws relating to HIV privacy and confidentiality in California can be found in the California Civil Code, Health and Safety Code, California Constitution, tort law, and the Confidential Medical Information Act (CMIA). Federal protections include the right to privacy under the U.S. Constitution and the Health Insurance Portability and Accountability Act (HIPAA). The HIPAA Privacy Rule protects the confidentiality of medical test results and records and sets the conditions for disclosing such records without a patient's prior written consent.

Constitutional Right to Privacy

The U.S. Supreme Court recognized a right to privacy¹ and made such a right applicable to states.² The right to privacy ensures that the state and federal government must respect your right to information privacy, including information regarding your HIV-positive status. To determine if a government can disclose a person's HIV-positive status, the court balances the government's interest against the individual's interests.³ The results of cases where individuals wanted to stop the government from disclosing their HIV status tend to favor the government. Courts have paid particular attention to the government's interest in ensuring public health and/or public safety.⁴

California's constitutional right to privacy⁵ is broader than the federal constitutional right to privacy.⁶ To make a claim against a government entity, whether state or local, in California, an individual must show the following:

- a legally protected privacy interest,
- a reasonable expectation of privacy in the circumstances, and
- conduct that constitutes a serious invasion of privacy.⁷

The result in California's cases have varied according to (1) whether the circumstances of disclosure meant the plaintiff should have had a higher or lower expectation of privacy; and (2) the relevance of the plaintiff's HIV status to the particular set of circumstances.

Right to Privacy under Civil Law

Individuals whose HIV status is revealed against their will or without their consent can sue another individual or entity under civil law. This would be considered a tort claim based on the violation of privacy. There are several types of privacy violations recognized under tort law.⁸ The most relevant claim is *public disclosure of private facts* where the plaintiff must show:

- public disclosure
- of private fact/s
- considered offensive and objectionable to the reasonable person
- that are not a legitimate public concern.⁹

Confidentiality of HIV-Related Medical Records

Generally, disclosure of HIV test results is not permitted without the written consent of the person. This is the rule in the context of public health, health care, medical records and research-related records. State laws, however, carve out exceptions to this general rule. Understanding the

law regarding confidentiality thus requires understanding the scope of these exceptions.

Public HIV-related records with identifying information are confidential and may not be disclosed, except with written authorization of the persons named in the record.¹⁰

For minors below 12 years old, the parent, guardian or other person lawfully authorized to make health care decisions on their behalf must generally provide written authorization for a physician to disclose the minor child's test results.¹¹

Some common exceptions to the written authorization requirement apply to physicians who ordered an HIV test.¹² They may record the result and/or disclose it to other providers working to provide care or treatment to the patient.¹³ Test results can also be shared with a patient's legal representative(s).¹⁴ Another exception includes circumstances when emergency response employees and their designated officers, all of whom are subject to confidentiality requirements, may have been exposed to HIV.¹⁵ The more notable exceptions are described further.

Partner Notification Exception

As long as the patient's identity is kept confidential, a physician or surgeon may disclose the results of a confirmed HIV-positive test result to the patient's spouse, sexual or hypodermic needle-sharing partner(s) to facilitate medical diagnosis and care or to prevent transmission.¹⁶ A physician or surgeon is allowed to make this disclosure but is not required to do so.¹⁷ If a physician or surgeon decides to move forward with disclosure, before such disclosure, the physician or surgeon must have first done the following:

- discussed the result with the patient and offered counseling,
- attempted to get the patient's consent to notify potentially affected contacts, and
- informed the patient of intent to notify the affected individuals.¹⁸

Physicians or surgeons may opt for a local health officer or agency staff to conduct partner notifications.¹⁹ These services may alert spouses, sexual or hypodermic needle-sharing partner(s) about potential exposure without disclosing the identity of the HIV-positive person.²⁰ Information of partners contacted will be kept confidential.²¹ After referring partners to appropriate care, records are expunged by the local health officer.²²

Public Health-Related Disclosures

In general, the identity of a person being tested for HIV is protected from disclosure in the course of any state, county, city, or other local civil, criminal, administrative, legislative, or other proceedings.²³ Exceptions to this law are many. They include the following:

- cases where there is written consent from the person,
- disclosure of HIV-positive test results for mandated reporting to local health officers,
- reporting HIV-positive test results in the context of blood donation, and
- when state or local public health agencies find disclosure necessary for disease investigation, surveillance, and control.²⁴

State and local health department employees and contractors must sign confidentiality agreements and understand the penalties if they engage in the unauthorized breach of confidentiality.²⁵ When there is a disclosure that is not permitted in exceptions described in the law, penalties include possible criminal prosecution and/or fines.²⁶ The severity of the

punishment depends on whether the disclosure was done negligently, willfully, or maliciously.²⁷

Research-Related Disclosures

The information of persons obtained through an HIV/AIDS-related study and kept in research records is confidential and may not be disclosed without the person's prior written consent.^{28,29} Given the critical need for HIV-related research, confidentiality of individuals' identities in the context of research is protected to a greater degree. Confidential research records may not be used to pursue a criminal charge against a research subject until after a showing of good cause in a court proceeding.³⁰ The identity of persons included in research records is generally protected during financial audits and program evaluations.³¹ There are three more exceptions for disclosure of research-related records, determined on a case-by-case basis. Disclosure without prior consent is permitted in these circumstances:

- if it is required by a duty to report HIV test results to the California Department of Public Health (CDPH) or the U.S. CDC,
- when medical personnel need the information to help a research subject in a medical emergency, and
- during a special investigation by CDPH.³²

Any disclosure authorized by a research participant must be accompanied with specific language outlined in the law.³³ If there is a disclosure that is not otherwise permitted under the law, the penalties include possible criminal penalties and/or fines.³⁴ Again, the punishment depends on whether the disclosure was done negligently, willfully, or maliciously.³⁵

Online Posting of HIV Test Results

While electronic health records are common and patients can view much of their health record through online platforms, there remain specific rules on the disclosure of HIV test results. To post HIV antibody test results on the internet or by electronic means, healthcare providers must first decide if this type of disclosure is an appropriate means and have discussed the test results with the patient in person, by telephone, or by other means of oral communication.³⁶ These prerequisites do not apply to patients that request the disclosure nor to individuals that get tested anonymously and follow a secure protocol to access a single set of test results.³⁷

Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule

This federal law requires healthcare providers who transmit information electronically, health plans, health care information clearinghouses, and their business associates--all collectively referred to as "covered entities"³⁸--to observe privacy and security standards for handling medical information.³⁹ The privacy rule governs the disclosure of protected health information, which includes information on a person's physical or mental condition, the health care provided to the person, payments related to those services, and other information that can be used to identify the individual.⁴⁰ Aside from giving individuals the right to timely access to their health information,⁴¹ HIPAA also enables individuals to make corrections to their health record and, upon request, know who has accessed their records within the prior six years.⁴²

Except when required for patient treatment and care coordination, their health care operations, and public health or safety purposes,⁴³ covered entities may not disclose protected health information without the patient's written authorization.⁴⁴ With an individual's oral consent, information may be shared with family, friends, and those involved in the patient's care and treatment and payment for those services.⁴⁵ An individual may file a complaint with the federal government for a HIPAA violation,⁴⁶ but only the government may pursue civil and criminal

penalties⁴⁷ for violations of patients' privacy rights. HIPAA does not allow patients to sue healthcare providers or other covered entities if their health information was disclosed without authorization.⁴⁸

Confidential Medical Information Act (CMIA)

Unlike HIPAA, California's CMIA allows a patient to personally take legal action for unauthorized disclosures of medical information.⁴⁹ The law covers unauthorized disclosure(s) of patients' medical history, conditions, and treatment, coupled with information that may reveal their identity--such as name, address, social security number, or other items that can be combined with publicly available information to identify them.⁵⁰ CMIA applies to health care providers like licensed physicians or clinics, health care service plans like Health Maintenance Organizations (HMOs), and contractors, such as a medical group.⁵¹ A patient may sue for nominal damages of \$1,000 without proof of any harm. For violations leading to economic loss or personal injury, a person may pursue actual damages, compensatory damages, as well as punitive damages up to \$3,000, attorney's fees up to \$1,000, and litigation costs.⁵²

Whether from negligence or willful disclosure, CMIA violations can be punished as misdemeanors and may also result in an administrative fine to the government at rates from \$2,500 to \$25,000 per violation.⁵³ A person or organization that violates CMIA and is motivated by financial gain may face fines of \$5,000 to \$250,000 and may have to surrender those gains.⁵⁴

Similar to exceptions under HIPAA, under CMIA, medical information may be shared with other health care providers or plans involved in the patient's diagnosis or treatment, including in medical emergencies; researchers, medical examiners, health care licensing bodies; and public health authorities engaged in reporting and control of illness and injury, among others.^{55,56} Authorized recipients of patient medical information may not disclose it further without new authorization.

¹ *Griswold v. Connecticut*, 381 U.S. 479 (1965).

² *Roe v. Wade*, 410 U.S. 113 (1973).

³ *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977).

⁴ AIDS Legal Referral Panel (ALRP), *AIDS Law Manual*, "Confidentiality," Ch. 16, p. 17 (citing Norman Viera, "Unwarranted Government Disclosures," *Wayne Law Review* 2001); *Harris v. Thigpen*, 941 F.2d 1495 (1991).

⁵ Cal. Const. art. 1, § 1.

⁶ *Committee to Defend Reproductive Rights v. Myers*, 29 Cal.3d 252 (1981).

⁷ *Hill v. National Collegiate Athletic Assn.*, 7 Cal.4th 1 (1994); *Heller v. Norcal Mutual Ins. Co.*, 8 Cal.4th 30 (1994).

⁸ William L. Prosser, *Privacy*, 48 Calif. L. Rev. 383 (1960).

⁹ *Forsher v. Bugliosi*, 26 Cal.3d 792 (1980).

¹⁰ Cal. Health & Safety Code § 121025.

¹¹ Cal. Health & Safety Code § 121020.

¹² Cal. Health & Safety Code § 120985.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Cal. Health & Safety Code § 121010.

¹⁶ Cal. Health & Safety Code § 121015.

¹⁷ Cal. Health & Safety Code § 121015(c).

¹⁸ Cal. Health & Safety Code § 121015(b).

¹⁹ Cal. Health & Safety Code § 121015(d).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Cal. Health & Safety Code § 121025(a).

- ²⁴ Cal. Health & Safety Code § 121025(b).
- ²⁵ Cal. Health & Safety Code § 121022.
- ²⁶ Cal. Health & Safety Code § 121025(e).
- ²⁷ *Id.*
- ²⁸ Cal. Health & Safety Code § 121075.
- ²⁹ Cal. Health & Safety Code § 121080.
- ³⁰ Cal. Health & Safety Code § 121100.
- ³¹ Cal. Health & Safety Code § 121085.
- ³² Cal. Health & Safety Code § 121090.
- ³³ *Id.*
- ³⁴ Cal. Health & Safety Code § 121110.
- ³⁵ *Id.*
- ³⁶ Cal. Health & Safety Code § 123148(f).
- ³⁷ Cal. Health & Safety Code § 123148(f)(1).
- ³⁸ 45 C.F.R. § 160.103.
- ³⁹ 45 C.F.R. § 164.302.
- ⁴⁰ 45 C.F.R. § 160.103.
- ⁴¹ 45 C.F.R. § 164.524.
- ⁴² 45 C.F.R. § 164.528.
- ⁴³ 45 C.F.R. § 164.502.
- ⁴⁴ 45 C.F.R. § 164.508.
- ⁴⁵ 45 C.F.R. § 164.510(b).
- ⁴⁶ 45 C.F.R. § 160.306.
- ⁴⁷ 42 U.S.C. §§ 1320d-5 and 1320d-6.
- ⁴⁸ Chris Dimick, "HIPAA Violation? Sue Me," *Journal of AHIMA*, (March 1, 2011), available at <https://journal.ahima.org/2011/03/01/hipaa-violation-sue-me/>; Kane Russell Coleman Logan, *Is there a Private Cause of Action for HIPAA Violations?* (January 28, 2016), available at <https://www.lexology.com/library/detail.aspx?g=a5bc1a0f-557a-4bf1-8cd3-1498c872a4dc>
- ⁴⁹ Cal. Civil Code § 56.35.
- ⁵⁰ Cal. Civil Code § 56.05(j).
- ⁵¹ Cal. Civil Code § 56.10(a).
- ⁵² Cal. Civil Code § 56.35.
- ⁵³ Cal. Civil Code § 56.36(c).
- ⁵⁴ *Id.*
- ⁵⁵ Cal. Civil Code §§ 56.10-56.16.
- ⁵⁶ Cal. Civil Code § 56.10.

CHAPTER 3

HIV Criminalization and Criminal Laws

Mandatory HIV Testing in the Criminal Context

In the criminal context, there are various circumstances under which a person may be required to take an HIV test without their consent. For example, an HIV test without an individual's consent can occur if a person is convicted of specific sex offenses, including minors placed in custody or sentenced to probation for specific sex offenses,¹ or if a person is charged with a specific sex offense(s) and a victim requests testing and a court grants the request.²

Generally, police and staff working at a jails and prisons cannot require a person to undergo an HIV test without a court order. There are specific situations described under the law when a court order may be granted.³ A key example is in the circumstance where an arrestee has exposed any peace officer, firefighter, custodial officer, custody assistant, non-sworn employee of a law enforcement agency, or emergency medical personnel, acting within the scope of his or her duties, to the arrestee's blood or body fluids.⁴ A court may order an HIV test against the wishes of the person.

Additionally, a chief medical officer of a custodial facility has the ability to test an inmate, a person arrested or taken into custody, or a person on probation or parole to be tested without consent if s/he deems it necessary. This is based on an analysis such as the following:

- the person appears to be exhibiting clinical symptoms of HIV/AIDS, or
- the person has exposed custodial and law enforcement personnel or another inmate, as alleged in a report to the chief medical officer, to bodily fluids in a manner that represents a significant risk that HIV was transmitted.⁵

The California Department of Public Health is also permitted to conduct periodic anonymous testing of all or portions of the inmate population or persons under custody within a city or county.⁶

Disclosure of HIV-Positive Status in the Criminal Context

A person living with HIV is not required to disclose their HIV-positive status when stopped by the police nor do they have to report what medications they might be taking.⁷ If law enforcement officers were to find out about a person's HIV-positive status from a complaining witness or some other means besides testing the person or obtaining public health records, there is little one can do to address these disclosures through the law. Rules related to privacy and confidentiality often hinge on the established rights of those being voluntarily tested for HIV or HIV test results held in public health records.⁸ These same laws and protections likely do not apply in the criminal context. Additionally, if a person chooses to disclose their HIV-positive status to another inmate, there are no legal protections should that other inmate choose to disclose that information to others.

While confined, a person may choose to, and, frankly, may need to, disclose their HIV-positive status to seek care or stay engaged in care during confinement. The risk of doing so involves further disclosure that is required under the law. Medical personnel at local or state detention facilities must notify the officer in charge of the facility if they know an inmate is living with HIV.⁹ The officer in charge is then required to notify any people who have or may have direct contact with this person.¹⁰ This includes employees, medical personnel, contract personnel, and volunteers providing services at the facility.¹¹

HIV Criminalization Laws

HIV Criminalization is the use of laws to specifically target people living with HIV with criminal penalties. After much advocacy¹² and research¹³ was conducted on the impact of these laws on people living with HIV, California became one of the first states to overhaul its HIV Criminalization laws—both repealing and modernizing laws out of date with the science of HIV.¹⁴ Changes implemented on January 1, 2018 include:

- elimination of the HIV-specific exposure law that could trigger a felony prosecution under certain circumstances, now treating HIV exposure and transmission in a manner similar to all other communicable diseases,¹⁵
- an update to include consideration of “practical means” taken to reduce the risk of transmission, including using a condom and taking medications to treat HIV,¹⁶
- elimination of felony for donating blood, tissue and/or semen while living with HIV,¹⁷
- elimination of felony solicitation charge for people living with HIV,¹⁸
- elimination of mandatory HIV testing for all those convicted of prostitution charges,¹⁹
- elimination of mandatory AIDS education for those convicted of felony solicitation,²⁰ and
- invalidation of prior sentence(s) for felony solicitation.²¹

With these changes to existing law, HIV is now treated like any other communicable disease. Laws regarding intentional transmission of HIV make clear that criminal punishment is only appropriate when the government can show the following:

- the person had knowledge of their infectious disease,
- they acted with specific intent to transmit it,
- they engaged in activity with a substantial risk of transmission, and
- they transmitted the infection to another person.²²

This crime is punishable as a misdemeanor and can result in imprisonment in county jail for no more than six months.²³ If HIV is not transmitted, however, and the person is found to have engaged in all the behaviors listed above, it can result in imprisonment in county jail for no more than 90 days.²⁴ Health officers continue to have the ability to use the law to address individuals who engage in behaviors in direct contradiction to orders they may issue to protect public health.²⁵

¹ Cal. Penal Code § 1202.1

² Cal. Health & Safety Code § 121055.

³ Cal. Health & Safety Code § 121055; See also Cal. Penal Code 1524.1(b).

⁴ Cal. Health & Safety Code § 121060.

⁵ Cal. Penal Code §§ 7500-7519; Cal. Health & Safety Code § 121070.

⁶ Cal. Penal Code § 7553.

⁷ *Kastigar v. U.S.*, 406 U.S. 441, 462 (1972) (explaining that you are only compelled to talk when summoned with a court order).

⁸ Cal. Health & Safety Code §§ 121070 and 121025.

⁹ *Id.* at 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² See Equality California, Californians for HIV Criminalization Reform, available at <https://www.eqca.org/chcr/> (last accessed March 9, 2019).

¹³ Amira Hasenbush, Ayako Miyashita & Bianca D.M. Wilson, HIV Criminalization in California: Penal Implications for People Living with HIV, The Williams Inst. of Cal. L.A. Sch. of Law (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-Updated-June-2016.pdf>.

¹⁴ CA Senate Bill 239, Section 1, Session 2017-2018, available at https://leginfo.legislature.ca.gov/face/billTextClient.xhtml?bill_id=201720180SB239 (last accessed on March 8, 2019).

¹⁵ Cal. Health & Safety Code § 120290.

¹⁶ Cal. Health & Safety Code § 120290(b).

¹⁷ Cal. Health & Safety Code § 1621.5 (repealed by S.B. 239, § 8, eff. Jan. 1, 2018).

¹⁸ Cal. Penal Code § 647 f (repealed by S.B. 239, § 8, eff. Jan. 1, 2018).

¹⁹ Cal. Penal Code § 1202.1 (modified by S.B. 239, § 8, eff. Jan. 1, 2018); Cal. Penal Code § 1202.6 (repealed by S.B. 239, § 8, eff. Jan. 1, 2018).

²⁰ Cal. Penal Code § 1001.10-1001.11 (repealed by S.B. 239, § 8, eff. Jan. 1, 2018).

²¹ Cal. Penal Code § 1170.21.

²² Cal. Health & Safety Code § 120290.

²³ Cal. Health & Safety Code § 120290(g)(1).

²⁴ Cal. Health & Safety Code § 120290(g)(2).

²⁵ Cal. Health & Safety Code § 120290(a)(2).

CHAPTER 4

HIV Discrimination

State-Based Protections

California has a number of state laws that protect people from being discriminated against on the basis of their HIV-positive status. In many instances, California law provides for remedies broader than those offered under federal law. This means that winning a case allows the person to recover damages, and in some cases, more costs and damages. For example, nominal damages,¹ awards for punitive damages², and attorney's fees³ are some of the allowable costs included in California law. Non-discrimination provisions are increasingly being incorporated into different laws, broadening non-discrimination protections for people living with HIV.⁴

Housing and Employment

Both in employment and housing, HIV is listed as a specific ground for protection.⁵ If a person has been discriminated against on the basis of their HIV-positive status, often the first step is to file a complaint. The California Department of Fair Employment and Housing oversees these complaints regarding HIV-based discrimination.⁶ A complaint must be filed within one year of the last incident, so seeking assistance as soon as possible is important to a legal claim for discrimination.⁷ The role of the Department is to investigate the facts and seek to resolve the issue between the person filing the complaint and the alleged wrongdoer. In some instances where the conflict is not resolved, the Department will file a lawsuit.⁸ The Department selects only some cases in which to file a lawsuit, and when they do, they are representing the Department, not the individual.⁹ If the Department recovers damages, however, they will be awarded to the individual.¹⁰ Because the Department is selective and they are not representing the individual, it is advised that individuals find an attorney of their own to help them.¹¹

Employers that may have specific information regarding a person's HIV-status must follow special rules related to disclosure.^{12,13} Employers may not discriminate against employees that refuse to sign an authorization to disclose medical information.¹⁴ If a person chooses to sign an authorization, that authorization must be specific, including identifying who will receive that information, limitations on its use, and a specific date after which the permission to release information ends.¹⁵

Public Accommodations

Under California's Unruh Civil Rights Act¹⁶ a person living with a disability is entitled to full and equal access to "accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."¹⁷ Business establishments include including hotels/motels, restaurants, theaters, hospitals, barber and beauty shops, housing accommodations, and retail stores.¹⁸ Because a person living with HIV is regarded as living with a disability, this law's protections apply. Similar to claims under employment and housing, individuals should also file a complaint with the California Department of Fair Employment and Housing within one year of the last incident.¹⁹

Hate Violence and Threats

California has a specific law regarding hate violence and threats motivated by hate. The Ralph Civil Rights Act prohibits individuals from engaging in behaviors such as the following:

- threats, verbal or written,
- physical assault or attempted assault,

- hate-related graffiti, including swastikas and other offensive symbols,
- cross-burning,
- bomb threats,
- arson,
- disturbance of religious meetings, or
- vandalism or property damage.²⁰

Any such acts motivated by bias against individuals living with HIV are covered under this law.²¹ Because violence or threat of violence is also a crime, it is recommended that law enforcement be contacted as soon as the incident takes place. If a person living with HIV would like to file a lawsuit against the perpetrator, they must do so within one year of the day they become aware of the perpetrator's identity, but not more than three years after the date of the injury.²² In addition to granting a victim survivor with damages (e.g. financial compensation), they can also request the court to provide a restraining order.²³

Federal Non-Discrimination Laws

Federal non-discrimination laws include protections for people living with disabilities. Under federal law, similar to state law, living with HIV is regarded as living with a disability.²⁴ Federal disability-related protections in employment²⁵, housing²⁶ and public accommodations²⁷ apply to people living with HIV. In addition to these laws, federal non-discrimination protections for people living with disabilities are extended to a variety of additional contexts: state and local government activities,²⁸ education,²⁹ transportation,³⁰ architectural barriers,³¹ telecommunications,³² employment leave,³³ voting,³⁴ and institutions³⁵ such as jails, prisons, youth correctional facilities.

Because these laws can be difficult to understand, if a person living with HIV believes that they may be experiencing discrimination on the basis of their HIV-positive status, it is very important they find legal help. With each of these laws, the protections vary, there are different federal agencies in charge of implementing the law,³⁶ and there are different rules for filing complaints. Additionally, the types of legal remedies available to the individual differ according to the law. For this reason, it is best to speak to an attorney specializing in disability law. It is important to determine whether an experience a person living with HIV is experiencing may be considered unlawful discrimination and what the legal remedies may be.

¹ Cal. Civil Code § 52(a).

² Cal. Civil Code § 52(b).

³ Cal. Civil Code §§ 52(a) and 52(b)(3).

⁴ See California Community Care Facilities Act, Cal. Health & Safety Code §§ 1500 - 1567.87.

⁵ See California Fair Employment and Housing Act, Cal. Government Code § 12926.1(c).

⁶ See Cal. Department of Fair Employment and Housing, Discriminations Laws regarding People with Disabilities, available at <https://www.dfeh.ca.gov/people-with-disabilities/>.

⁷ Cal. Code of Regulations § 10006.

⁸ Cal. Government Code §§ 12930(f) - 12930(h).

⁹ Cal. Government Code § 12930(f)(3).

¹⁰ *Id.*

¹¹ See Cal. Department of Fair Employment and Housing, Employment FAQs: Does DFEH Represent Complainants?, available at <https://www.dfeh.ca.gov/resources/frequently-asked-questions/employment-faqs/>.

- ¹² Cal. Civil Code § 56.20.
- ¹³ Cal. Civil Code § 56.26.
- ¹⁴ Cal. Civil Code § 56.20(b).
- ¹⁵ Cal. Civil Code §§ 56.21(d) - 56.21(h).
- ¹⁶ Cal. Civil Code §§ 43 - 53.7.
- ¹⁷ Cal. Civil Code § 51(b).
- ¹⁸ See https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH_UnruhFactSheet.pdf.
- ¹⁹ Cal. Code of Regulations § 10006.
- ²⁰ Cal. Civil Code § 51.7(b); See also Cal. Department of Fair Employment and Housing, Hate Violence, available at <https://www.dfeh.ca.gov/hate-violence/>.
- ²¹ Cal. Civil Code § 51.7(b).
- ²² Cal. Government Code § 12960(d)(3).
- ²³ Cal. Civil Code § 52(c)(3).
- ²⁴ See *Bragdon v. Abbott*, 524 U.S. 624 (1998)(finding HIV to be a disability under the Americans with Disabilities Act).
- ²⁵ Americans with Disabilities Act (ADA) Title I, 42 U.S.C. §§ 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.
- ²⁶ Fair Housing Act and Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.
- ²⁷ Americans with Disabilities Act, Title III, 42 U.S.C. §§ 12101 et seq.
- ²⁸ ADA Title II, 42 U.S.C. §§ 12101 et seq.
- ²⁹ Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq.
- ³⁰ Air Carrier Access Act, 49 U.S.C. § 41705; ADA Title II, 42 U.S.C. §§ 12101 et seq.
- ³¹ Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151 et seq.
- ³² Telecommunications Act, § 255 and 251(a)(2) of the Communications Act of 1934, 47 U.S.C. §§ 255, 251(a)(2); Americans with Disabilities Act Title IV, 42 U.S.C. §§ 12101 et seq.
- ³³ Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et. seq.
- ³⁴ Voting Accessibility for the Elderly and Handicapped Act of 1984, 42 U.S.C. §§ 1973ee et seq.; National Voter Registration Act, 42 U.S.C. §§ 1973gg et seq.
- ³⁵ Civil Rights of Institutionalized Persons Act, 42 U.S.C. §§ 1997 et seq.
- ³⁶ U.S. Department of Justice, Civil Rights Division, A Guide to Disability Rights Laws, July 2009, available at <https://www.ada.gov/cguide.htm#anchor63109>.

CHAPTER 5

Needle and Syringe Exchange Programs

History of Pharmacy Sale of Syringes

California's non-prescription sale of hypodermic needles and syringes (NPSS) efforts were first launched in 2005 under the Disease Prevention Demonstration Project.¹ The pilot program allowed the non-prescription sale of up to 10 needles or syringes to adults by pharmacies registered with the local government.² Within five years, the program expanded to 15 counties and four cities in California³ and legislation in 2011 raised the cap on the allowed number of non-prescription needles or syringes for personal use to 30.⁴ Beginning in 2015, the numerical limit was removed entirely.⁵

Current Law on Non-Prescription Sale of Syringes

To prevent HIV, viral hepatitis, and other infections among persons using hypodermic needles and syringes, physicians or pharmacists may supply or sell them to an adult 18 years of age or older without a prescription and for personal use.⁶

At the time of sale or supply, a pharmacy must counsel consumers in person or give them written information on how to do the following:

- access drug treatment,
- access HIV and hepatitis C testing and treatment, and
- dispose of sharps waste safely.⁷

Pharmacies must provide consumers with one or more of the following safe disposal options:

- onsite needle and syringe collection and disposal that meets federal standards for collection and disposal of medical sharps waste,
- sharps containers that meet federal standards, and
- mail-back sharps containers authorized by the U.S. Postal Service that meet state and federal standards, along with tracking forms to verify destruction at a disposal facility.⁸

Pharmacies must also store hypodermic needles and syringes so that only authorized persons can access them.⁹ They are not required to log these over-the-counter needle and syringe sales nor to check customer identification.¹⁰

Local Laws and Requirements

Current law does not require local governments to authorize pharmacies for the non-prescription sale of syringes and hypodermic needles. It does not require local health departments to register pharmacies, compile a list of pharmacies that provide NPSS, provide pharmacies with educational materials on proper disposal of needles and syringes, HIV and viral hepatitis treatment, and drug treatment.¹¹ These responsibilities do not fall to local health departments. Such information is now available on the California Department of Public Health (CDPH), Office of AIDS website.¹²

Clean Needle and Syringe Exchange Programs

The California legislature authorizes any city or county to have a clean needle and syringe

exchange program, if established by its respective county board of supervisors or city council and mayor, along with the local health office.¹³ CDPH may authorize entities meeting a set of minimum standards¹⁴ to offer hypodermic needle and syringe exchange programs (SEPs) for a two-year period, in places it deems at risk for the rapid spread of HIV, viral hepatitis, or other grave infections.

A prospective SEP must provide either through direct services or through referrals the following services:

- drug abuse treatment,
- screening for HIV, hepatitis, and other sexually transmitted infections,
- hepatitis A and B vaccination,
- housing services for the homeless, victims of domestic violence, or similar,
- educational services and materials for sexual risk reduction,
- to begin needle and syringe exchange services within three months of authorization,
- enough funding, at acceptable participation levels, to provide needle and exchange services for all participants and safe recovery and disposal for their used syringes and sharps waste, and
- collect data to evaluate program impact.¹⁵

CDPH can only authorize an SEP program after consulting with the local health office, local law enforcement, and the public.¹⁶ Staff and volunteers distributing such paraphernalia as part of authorized SEPs are insulated from criminal prosecution.¹⁷

Before authorization expires, an SEP may be renewed again after consultation with the local health officer and law enforcement.¹⁸ The public and local government must have the opportunity to give input on the program's effect on public welfare every two years at an open meeting.¹⁹ Both the department and local health officer must present biennial reports on the needle and syringe exchange programs.²⁰

Pending Litigation on Syringe Exchange Programs

Since February, 2016, the Orange County Needle Exchange Program (OCNEP) had been operating a mobile needle exchange program every Saturday at the Santa Ana Civic Center. It was the only such program in Orange County.²¹ It was re-authorized by the CDPH in January, 2018, but Santa Ana city officials rejected OCNEP's permit application.²² OCNEP's mobile needle exchange program was approved by the CDPH to begin in August, 2018, despite objections from city officials. Litigation ensued.²³

In November, 2018, a San Diego Superior Court granted an injunction blocking the OCNEP from operating a mobile needle exchange program in Orange County and in the cities of Costa Mesa, Anaheim, and Orange.²⁴ These local jurisdictions and the Orange County Flood District sued to stop OCNEP from conducting mobile needle exchange services in their cities, including Santa Ana.²⁵ The judge noted that while OCNEP gave "substantial evidence to support the social utility" of a needle exchange program, he was swayed by the plaintiff County and city jurisdictions' argument that inadequate recovery of used syringes and needles posed a greater risk to public safety.²⁶

Safer Drug Consumption Sites

Overdose prevention programs, also commonly referred to as supervised drug consumption facilities (SCFs), supervised consumption services (SCS), safer or supervised injection facilities (SIFs), are one strategy to address HIV risk among people who inject drugs. Some 120 such programs operate in ten countries²⁷ and have existed in Europe for the last 30 years.²⁸ Evidence-based studies²⁹ show these programs are associated with a reduced number of deaths, calls to emergency rooms and ambulances, higher uptake of drug treatment, no increase in drug use or drug dealing, reduced disposal of syringes in streets, and fewer people using drugs in public.^{30,31} With regard to HIV risk, it is estimated that a single safe injection site in San Francisco, California, could prevent 3.3 new HIV transmissions per year. This would save the State of California roughly \$3.5 million per year in expenses related to healthcare, emergency services and crime.³² Overdose prevention projects thus complement existing prevention, treatment, and harm reduction measures.

In California, legislators passed Assembly Bill 186 in the 2017-2018 legislative session establishing overdose prevention programs in the City and County of San Francisco. The bill was vetoed last September, 2018, by then-Governor Jerry Brown.³³ Assembly Bill (AB) 362, introduced in the 2019-2020 legislative session, is another attempt to pass legislation in California that authorizes the City and County of San Francisco to pilot and evaluate an overdose prevention program.³⁴ Passage of this bill would allow drug users to consume pre-obtained drugs in a hygienic space supervised by health care professionals, get sterile supplies and obtain referrals to substance use treatment and other medical and social services.³⁵

No sites have been formally authorized to operate in the United States. Given the risk of criminal and civil liability that could be imposed by the federal government upon state or local jurisdictions wishing to establish programs, the stakes of doing so are exceedingly high.³⁶ In addition to federal laws that may hinder activities, current state law makes it a crime to knowingly be in a room where controlled substances are being used unlawfully.³⁷ The bill would, thus, protect property owners, managers, employees, volunteers, and program participants from state criminal and civil liability and from being subjected to professional discipline solely for efforts to support the operation of an authorized overdose prevention site.³⁸ It is important to note, however, that this bill would not protect individuals from being subject to federal laws which may prohibit certain conduct required to operate a site. Before approving such a program, the City and County of San Francisco would have to give the public and local law enforcement and health officials an opportunity to comment in an open meeting.³⁹

Under the terms of the proposed bill, among other requirements, an entity seeking to conduct an overdose prevention program must show it can do the following:

- provide a hygienic site staffed by health care professionals trained in overdose recognition and reversal,
- provide sterile consumption supplies, collect used supplies, and provide safe disposal,
- educate participants on HIV and viral hepatitis risk, proper needle and syringe disposal, and overdose prevention,
- facilitate access and give referrals to providers of naloxone or other overdose reversal medication, and
- provide reasonable security at the site and facilitate communication with local authorities and the community.⁴⁰

It remains to be seen how California, under the leadership of newly-elected Governor Newsom, may respond to this bill in the current legislative term.

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- ¹ Cal. Senate Bill 1159, Session 2003-2004; Cal. Health & Safety Code § 121285(a).
- ² Cal. Senate Bill 1159, Section 1, Session 2003-2004; *See also* Cal. Department of Public Health, *SB 1559 Report: An Evaluation of Over-the-Counter Sale of Sterile Syringes in Cal.* (July 2010), p. 15.
- ³ *Id.* at 8.
- ⁴ Cal. Senate Bill 41, Section 6, Session 2011-2012.
- ⁵ Cal. Business & Professions Code § 4145.5(b); Cal. Assembly Bill 1743 (2014), Section 4, Session 2013-2014.
- ⁶ Cal. Business & Professions Code § 4145.5(b).
- ⁷ Cal. Business & Professions Code § 4145.5(f).
- ⁸ Cal. Business & Professions Code § 4145.5(e).
- ⁹ Cal. Business & Professions Code § 4145.5(d).
- ¹⁰ Cal. Business & Professions Code § 4145.5(b); *See also* Cal. Department of Public Health Office of AIDS, *Nonprescription Syringe Sale in Cal. Legislation and Requirements Fact Sheet* (October 2014).
- ¹¹ *Id.*
- ¹² *Id.*
- ¹³ Cal. Health & Safety Code § 121349(b).
- ¹⁴ Cal. Health & Safety Code § 121349.1.
- ¹⁵ Cal. Health & Safety Code § 121349(d).
- ¹⁶ Cal. Health & Safety Code § 121349(c).
- ¹⁷ Cal. Health & Safety Code § 11364.7(a).
- ¹⁸ Cal. Health & Safety Code § 121349(c).
- ¹⁹ Cal. Health & Safety Code § 121349.3.
- ²⁰ *Id.*
- ²¹ Mary Carreon, "Santa Ana Shuts Down the Only Needle Exchange Program in Orange County," *OC Weekly*, February 1, 2018.
- ²² *Id.*
- ²³ *See* Complaint, *City of Newport Beach v. Cal. Department of Public Health*, 2018 WL 4362389 ([Cal.Super.](#) 2018); *See also* Ben Brazil, "Cities Weigh Options after State Approves Orange County Needle Exchange Program," *Los Angeles Times (Online)*, August 3, 2018.
- ²⁴ Luke Money, "Court Ruling Blocks Proposed Needle Exchange Program," *Los Angeles Times (Online)*, November 27, 2018.
- ²⁵ *Id.*
- ²⁶ *Id.*
- ²⁷ Drug Policy Alliance, *Supervised Consumption Services*, August 2018, available at http://www.drugpolicy.org/sites/default/files/supervised-consumption-services-opp_0.pdf.
- ²⁸ European Monitoring Centre for Drugs and Drug Addiction, *Drug Consumption Rooms: An Overview of Provision and Evidence*, June 2018, available at http://www.emcdda.europa.eu/topics/pods/drug-consumption-rooms_en.
- ²⁹ Alex Kral and Peter Davidson (2017), "Addressing the Nation's Opioid Epidemic: Lessons from an Unsanctioned Supervised Injection Site in the U.S.," *American Journal of Preventive Medicine*, Vol. 53(6) 919-922.
- ³⁰ A. Miyashita, R. Gamboa, A. Leibowitz, I Holloway, *HIV and Safer Drug Consumption Programs in Cal.*, Cal. HIV/AIDS Policy Research Center (March 2018).
- ³¹ Drug Policy Alliance, *Cal. Legislature To Consider Allowing Pilot Overdose Prevention Projects*, February 2019.
- ³² Irwin Amos, E. Jozaghi, R.N. Bluthenthal, A.H. Kral (2017), "A Cost-Benefit Analysis of a Potential Supervised Injection Facility in San Francisco, Cal., USA," *Journal of Drug Issues*, Vol. 47(2) 164-184.
- ³³ Edmund G. Brown, Office of Governor, *Letter to Members of the Cal. State Assembly*, available at <https://www.gov.ca.gov/wp-content/uploads/2018/09/AB-186-veto-9.30.pdf> (last accessed on March 8, 2019).
- ³⁴ CA Assembly Bill 362, Section 1, Session 2019-2020, available at http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB362 (last accessed on March 8, 2019).
- ³⁵ *Id.*
- ³⁶ U.S. Department of Justice, *Statement of the U.S. Attorney's Office concerning Proposed Injection Sites*, (District of Vermont, 2017), available at <https://www.justice.gov/usao-vt/pr/statement-us-attorney-s-office-concerning-proposed-injection-sites> (last accessed March 8, 2019).
- ³⁷ Cal. Assembly Bill 362, Session 2019-2020, Legislative Counsel's Digest.
- ³⁸ Cal. Assembly Bill 362, Section 1, Session 2019-2020.
- ³⁹ *Id.*
- ⁴⁰ *Id.*

CHAPTER 6

Comprehensive Sexual Health Education

Objectives of Comprehensive Sexual Health Education

For all school districts and charter schools in the state, the 2016 California Healthy Youth Act (CHYA) mandates both comprehensive sexual health and HIV prevention education.¹ CHYA sets out guidelines for content in comprehensive sexual health instruction and HIV prevention education for grades 7 to 12.² School districts must provide comprehensive sexual health and HIV prevention education at least once in middle school and at least once in high school.³ Information provided for by CHYA includes topics such as human development and sexuality, pregnancy, contraception, and sexually transmitted infections (STIs).⁴ Students are also required to learn about HIV/AIDS, transmission methods, risk reduction strategies, and related social and public health issues.⁵ The law respects the rights of parents and guardians to supervise their children's sex education and recognizes their ultimate responsibility for passing on values regarding sexuality to their children.⁶ That said, comprehensive sexual health education must not teach religious doctrine.⁷

Like the law it replaced,⁸ CHYA seeks to provide students with the knowledge and skills to protect themselves from HIV, STIs and unintended pregnancy and to develop healthy attitudes toward adolescent growth, body image, gender, sexual orientation, relationships, marriage, and family.⁹ The law's goals now include:

- promoting the understanding of sexuality as a normal part of human development,
- ensuring comprehensive, accurate, and unbiased sexual health and HIV prevention education for students and clear tools and guidance for educators, and
- providing students with the knowledge and skills needed for healthy, positive, and safe relationships and behaviors.¹⁰

Providing only textbook descriptions or illustrations of the human reproductive system does not qualify as comprehensive sexual health education.¹¹

Instructional Criteria and Content

All required instruction on sexual health and HIV prevention must meet all the following criteria:

- be age-appropriate and medically accurate,
- support and not conflict with the five purposes of the law (as stated above),
- be appropriate for and equally available to students of any race, ethnicity or culture, gender, or sexual orientation—including those living with disabilities or English language learners,
- reject bias against anyone owing to disability, gender, gender expression, gender identity, sexual orientation, nationality, race or ethnicity, or religion,
- affirm people's different sexual orientations and be inclusive of same-sex relationships,
- teach students about gender, gender expression, gender identity, and the harm of negative gender stereotypes,

- encourage communication with parents, guardians, and other trusted adults;
- teach students the value of and prepare them for committed relationships, such as marriage,
- provide the knowledge and skills to form healthy relationships free from coercion, intimidation, or violence, and
- provide the knowledge and skills to make healthy choices about sexuality, including negotiation and refusal skills to counter peer pressure and decision making skills to avoid high-risk activities.¹²

Instruction regarding HIV must cover the following:

- the nature of HIV and other STIs and their physiological effects,
- the routes and relative risks of HIV and STI transmission,
- FDA-approved methods of preventing and reducing the risk of HIV and other STIs, including use of antiretroviral medication (i.e., U=U, PrEP/PEP),
- reducing the risk of HIV transmission from injection drug use by avoiding needle use and sharing, and
- social views of HIV/AIDS and associated myths and stereotypes, with an emphasis on normal life expectancy with successful treatment.¹³

Issues related to pregnancy and sexual health must include information about the following:

- FDA-approved contraceptive methods, including emergency contraception, and a discussion of all possible pregnancy outcomes,
- medically accurate methods of preventing pregnancy and STIs and the value of delaying sexual activity, and
- that abstinence from injection drug use and sex are the only certain ways to avoid STIs and the latter is the only certain way to avoid unintended pregnancy.¹⁴

Topics of Special Consideration

Great efforts have been made to include in the curriculum information regarding sexual harassment, assault, abuse, and human trafficking.¹⁵ As a preventative measure, youth must receive information regarding (1) the nature of human trafficking and reducing risk; (2) techniques to set healthy boundaries, and how to seek help; and (3) how social media and mobile devices are used for human trafficking.¹⁶ Additionally, adolescent relationship abuse and intimate partner violence, including early warning signs, are required to be discussed.¹⁷ Finally, comprehensive sexual health education programs must provide information on how youth can access local resources for testing and treatment for infections, pregnancy prevention and care, help for sexual assault and intimate partner violence and information on the legal rights of youth to access sexual health and reproductive health care.¹⁸

Parental Excuse and School District Notice

At the start of the school year, at enrollment if a student joins a school after the school year has begun, or 14 days before the scheduled instruction if not arranged at the start of the

year, school districts must inform parents and guardians of their right to excuse their child, through an opt-out process, from all or part of the planned sexual health and HIV prevention instruction.¹⁹ Notice to parents must state that the relevant teaching materials are available for their inspection.²⁰ The notice given to parents and guardians must state if instruction is by school district personnel, outside consultants, or through an assembly featuring guest speakers.²¹ Any outside consultants or guest speakers whom districts contract with for instruction of students or training of school personnel must be experts in comprehensive sexual health and HIV prevention education and knowledgeable of the latest, medically accurate research on these topics.²² The notice must include the date of instruction and must inform parents of their right to request a copy of the Education Code's chapter on CHYA.²³ One exception to the opt-out provision is that parents may not selectively opt out of LGBT-related content delivered in the context of comprehensive sexual health education. Doing so would be a violation of various federal non-discrimination laws.²⁴

Other Requirements for School Districts

School districts include county boards of education or superintendents of schools, the California School for the Deaf, the California School for the Blind, and charter schools.²⁵ Collaborating with teachers and the Department of Education, these organizational bodies must plan and conduct in-service training for all staff involved in HIV prevention education.²⁶ Such training has to be given periodically to ensure staff stay informed of new, scientific developments on the subject.²⁷ Training on HIV prevention may also expand to include comprehensive sexual health education.²⁸

Youth Sexual Health Rights

Aside from being entitled to receive comprehensive sexual health and HIV prevention education in California school districts, minors have the right to obtain certain forms of medical care or treatment without parental consent.²⁹ Minors may seek the full range of care relating to the prevention, continuation, or termination of pregnancy.³⁰ They may access birth control, prenatal care, and abortion. Minors aged 12 or older may seek medical attention meant to diagnose, treat, or prevent STIs (including PrEP and PEP)³¹ and they can consent to an HIV test.³² Minor youth may also consent to medical care in response to rape,³³ sexual assault,³⁴ and intimate partner violence,³⁵ including collecting medical evidence for such alleged acts. School districts must excuse a student's absence during school hours in order to receive confidential medical care without parental consent.³⁶ Districts must also inform students in grades 7 to 12 of this right.³⁷ If minors seek services confidentially, the California Attorney General has advised school districts that their parents should not be notified in these circumstances.³⁸

In 2013, California lawmakers enacted the Confidential Health Information Act to address privacy concerns of individuals insured as dependents on a parent's or partner's health plan.³⁹ The law allows individuals to submit a "confidential communications request" to their health plan when seeking sensitive services such as PrEP under another person's policy.⁴⁰ While this law cannot guarantee confidentiality (e.g. it can take up to six weeks for the health plan to guarantee that sensitive information will not be shared with the main policy holder) it is an additional tool used to increase confidentiality protections for youth seeking access to sexual health services.

¹ Cal. Education Code § 51934.

² *Id.*

³ Cal. Education Code § 51934(a).

⁴ Cal. Education Code § 51931(b).

⁵ Cal. Education Code § 51931(d).

⁶ Cal. Education Code § 51937.

⁷ Cal. Education Code § 51933(i).

- ⁸ California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act.
- ⁹ Cal. Education Code § 51930(a)
- ¹⁰ *Id.*
- ¹¹ Cal. Education Code § 51932(a).
- ¹² Cal. Education Code § 51933.
- ¹³ Cal. Education Code § 51934(a).
- ¹⁴ *Id.*
- ¹⁵ Cal. Education Code § 51934(a)(10).
- ¹⁶ *Id.*
- ¹⁷ Cal. Education Code § 51934(a)(11).
- ¹⁸ Cal. Education Code § 51934(a)(8).
- ¹⁹ Cal. Education Code § 51938(a).
- ²⁰ Cal. Education Code § 51938(b).
- ²¹ Cal. Education Code § 51938(b).
- ²² Cal. Education Code § 51936.
- ²³ *Id.*
- ²⁴ Cal. Education Code § 220; Cal. Civil Code § 51; Title IX of the Civil Rights Act of 1964, 20 U.S.C. §§ 1681 et seq.
- ²⁵ Cal. Education Code § 51931(g).
- ²⁶ Cal. Education Code §§ 51935(a) and 51935(b).
- ²⁷ Cal. Education Code § 51935(c).
- ²⁸ Cal. Education Code § 51935(d).
- ²⁹ *American Academy of Pediatrics v. Lungren*, 16 Cal.4th 307 (1997); See ACLU, *Questions and Answers for School Districts: California Healthy Youth Act Sexual Health Education Toolkit*, on instruction about local health resources, p. 5.
- ³⁰ Cal. Family Code § 6925
- ³¹ Cal. Family Code § 6926.
- ³² California Health and Safety Code § 121020(a).
- ³³ Cal. Family Code § 6927.
- ³⁴ Cal. Family Code § 6928(b).
- ³⁵ Cal. Family Code § 6930(a).
- ³⁶ Cal. Education Code § 48205.
- ³⁷ Cal. Education Code § 46010.1.
- ³⁸ 87 Ops. Cal. Atty. Gen. 168 (2004).
- ³⁹ Cal. Civil Code § 56.107.
- ⁴⁰ Cal. Civil Code § 56.107(a)(3).

GLOSSARY

Assembly Bill – In California, this is a draft of a proposed law introduced by a member of the Assembly side of the state legislature.

California Legislature – The state legislative branch of California is made up of the California State Assembly (80 members) and the California State Senate (40 members). These two parts of the legislature are also known as the “lower house” and “upper house,” respectively.

Civil Liability – Responsibility for payment of damages (e.g. financial compensation) or a court order that resulted from a lawsuit. Civil liability is different from criminal liability.

Criminal Liability – Responsibility for any illegal behavior that causes any harm or damage to an individual or property. Criminal liability usually indicates a person will be subjected to a criminal penalty (i.e. receive punishment for a crime).

Defendant – The accused party in a court of law

Electronic Health Records (EHR) – The digitized version of a patient’s chart that may include information about medical history, diagnoses, and test results. These confidential records are meant to streamline patient care by making it easier and faster to send information among providers and organizations related to the health care process including clinicians, laboratories, pharmacies, physicians, as well as school and workplace clinics.

Felony – Considered the most serious type of crime that often involves some sort of violence. The legal definition of a felony differs among states. The California Penal Code § 17(a) defines a felony as “a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under the provisions of subdivision (h) of Section 1170.”

HIV Criminalization – The use of laws to specifically target people living with HIV with criminal penalties

Hypodermic Needles – A hollow needle commonly used with a syringe to inject substances into the body or extract fluids from it

Injunction – A judicial process to enforce an order or issue a warning to an individual or entity

Jurisdiction – An official power to make decisions in a legal setting including the extent of that power to make legal decisions and issue judgements

Legislative Session – The period of time in which the legislature convenes for lawmaking

Litigation – The process of taking legal action. Such legal proceedings are between two opposing parties to preserve or defend a legal right. Litigation can be settled by an agreement between the two parties but can also be decided by a hearing decided by a jury or judge in court. Litigation includes all activity that comes before, during and after a lawsuit is filed.

Naloxone – Medication that is used to treat narcotic or opioid overdose. This medication is also known by its brand name “Narcan®.”

Nominal Damages – A relatively small amount of money awarded to the plaintiff during a lawsuit when the individual wins the case but has not suffered significant financial loss

Plaintiff – A party who brings a case or legal action against another party (defendant) in a court of law

Prosecution – The process of holding a criminal trial against an individual who is accused of a crime or accused of breaking the law

Punitive Damages – Also referred to as “exemplary damages”. An amount of money awarded to the plaintiff during a lawsuit to specifically punish the defendant for truly bad behavior

Statutes – A law that is written and passed by a legislative body

Tort – Cases of a civil wrongdoing or wrongful act, regardless of if it was intentional or unintentional, where an individual experiences a loss or harm resulting in civil liability