

The Honorable Kathy Hochul
Governor of the State of New York
New York State Capitol
Albany, NY 12224

The Honorable Andrea Stewart-Cousins
Majority Leader
New York State Senate
Albany, NY 12247

The Honorable Carl E. Heastie
Speaker
New York Assembly
Albany, NY 12248

Re: Coalition of Advocates Urges Passage of HMH Part T (7) §9 and full adoption of the REPEAL STI Discrimination Act (A03347/S4603)

The undersigned organizations are civil rights organizations, Black, Brown, and Asian empowerment groups, LGBTQ+ equity groups, harm reduction groups, immigrant rights organizations, and others who work to elevate those living with HIV and AIDS and/or other sexually transmitted infections (STIs). We urge the legislature to include in their budgets HMH Part T §9 in the state budget repealing Section 2307 of the Public Health Law. Moreover, we urge the legislature to fully align with public health and health equity policies by including the entirety of [A3347/S4603](#), the REPEAL STI Discrimination Act (hereinafter REPEAL Act) introduced by Assemblymember Jessica Gonzalez-Rojas and Senator Brad Hoylman-Sigal, in their one-house budgets.

PHL §2307 is broad and unjust

Public Health Law 2307 (PHL §2307) makes it a misdemeanor for a person who knows they currently have a sexually transmitted infection to have sexual intercourse with another person. Persons convicted face up to one year in jail and a \$1,000 fine.

PHL §2307 is an unjust, constitutionally dubious law; it is indiscriminately broad with virtually no defenses. Neither intent to transmit nor actual transmission of an STI is necessary for violation of the law. It also does not matter if you disclose your status to your partner, if your partner consents, or if you use protection.

PHL §2307 undermines public health goals

A cornerstone of modern epidemiology is that widespread testing is essential to treating and reducing transmission of all diseases; yet PHL §2307 disincentivizes testing for

some diseases as knowledge of one's status could lead to prosecution. There is no current research available that shows that laws criminalizing diseases have an effect on transmission rates or encourage treatment or disclosure of one's status. Health status criminalization directly conflicts with public health goals and weakens effective public health responses by promoting stigma and shame that can delay or deter treatment.

PHL §2307 perpetuates racial and LGBTQ+ injustice

PHL §2307 has a disproportionate impact on communities of color, especially LGBTQ+ communities of color. The law reflects oversized fear, stereotyping of those affected by the disease, as well as the assignment of blame to already-marginalized members of society, such as low income New Yorkers, sex workers, Black and brown communities, transgender people, and new immigrants. These communities already encounter significant barriers to accessing employment, housing, and other necessities of life, which are only exacerbated by a criminal record. When a disease can be sexually transmitted, moral panic and stereotypes about the sexual practices of these groups can lead to laws that punish and condemn them, rather than provide care. These criminal laws are based on an outdated understanding of the routes and risks of transmission and reflect invidious discrimination against people living with HIV and other stigmatized diseases.

PHL §2307 does not follow modern medicine

In addition, New York's HIV and STI criminalization law, Public Health Law §2307, is at odds with modern public health policy and is a harmful relic of the past. The law first came into effect in 1909 to control the spread of venereal disease in the armed forces. During the World War II era, combatting STIs became a national priority because contemporary medical treatment for STIs incapacitated soldiers for months. In 1946, the legislature made the law applicable to the general public for the first time. Seventy-six years later the law, now based on obsolete medicine and history, remains an unchanged relic.

Notably, in 2021 in New York City, 87% of people living with HIV receiving treatment were virally suppressed. This means that many people living with HIV are virtually incapable of transmitting HIV to another person via sexual contact. This progress was possible not through criminalization, but through public health approaches. Leading harm reduction and public health organizations recognize the best way to further combat HIV and STI transmission is through testing and destigmatization. The American Medical Association, the Center for Disease Control, the White House, and the United Nations all oppose health status criminalization.¹

¹ See CHLP, *The AMA Adopts a Resolution Opposing HIV Criminalization (2014)*, The Center for HIV Law and Policy, June 9, 2014, <https://www.hivlawandpolicy.org/news/ama-adopts-resolution-opposing-hiv-criminalization-2014>; and

The Legislature must fully adopt the provisions of the REPEAL STI Discrimination Act

We also urge the legislature to go further and fully adopt the other two provisions in the REPEAL STI Discrimination Act to prohibit health status as a basis for liability and to allow for expungement of past convictions under PHL §2307.

While repealing PHL §2307 is a positive initial first step, it does not fully address all the legal mechanisms that have been used to criminalize individuals living with STIs. The penal law must be amended to foreclose health status as a basis for liability to ensure health status is not prosecuted under statutes such as assault or bioterrorism, as it is in other jurisdictions.² For example, in Alabama a 32-year-old woman was charged with felony assault after she allegedly spat on someone knowing she had a communicable disease despite the fact that it is almost statistically impossible to transmit through that avenue.³ In more extreme cases such as in Michigan, HIV has been utilized under bioterrorism statutes. HIV is treated as a "deadly weapon" and the transmission or potential transmission of HIV is equated with an act of bioterrorism.⁴ Criminal statutes are routinely weaponized this way across the country against health status.⁵ As explained above, such criminalization of health status not only violates the principles of justice and equality but also can lead to adverse public health outcomes. By foreclosing health status as a ground for criminal liability, the legal system will better align with public health goals and human rights standards, fostering a more inclusive and health-focused approach to disease management and prevention.

We also urge the legislature to include provisions that automatically clear prior convictions. Criminal record vacatur is critical for several reasons. Firstly, it addresses the lifelong impact of a criminal conviction on an individual and their family's life as the result of an outdated law. Convictions often carry consequences that extend far beyond the sentence, affecting employment, housing, education, interactions with the family regulation system, benefits, and social relationships. Those most likely to be impacted by the criminal legal system are also most likely to have difficulty accessing these

UNDP and UNAIDS, *Policy Brief: Criminalization of HIV Transmission*, (Dec. 6, 2015), <https://www.undp.org/publications/undp-and-unaids-policy-brief-criminalization-hiv-transmission>.

² Evelyn Mangold, *The Viral Injustice of HIV Criminalization*, *The Regulatory Review* (Feb. 24, 2022), <https://www.theregreview.org/2022/02/24/mangold-viral-injustice-hiv-criminalization/>

³ Melissa Brown, *Woman charged with assault after spitting at police*, *Montgomery Advertiser*, May 8, 2018, <https://www.montgomeryadvertiser.com/story/news/crime/2018/05/08/casie-jane-ellis-charged-bodily-fluid-assault/589978002/>.

⁴ See *People v. Allen*, No. 2009-4960 (Macomb County Ct. Mich. Cir. Ct. June 2, 2010)

⁵ See CHLP, *HIV Criminalization in the United States: A Sourcebook on State and Federal Resources* (Jada Hicks, Sean McCormick, and S. Mandisa Moore-O'Neal, 3d ed., 2024) <https://www.hivlawandpolicy.org/sites/default/files/2024-01/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20Jan24.pdf>.

necessities of life. Criminal records only perpetuate cycles of criminalization and poverty.

By allowing for expungement it would acknowledge and mitigate ongoing hardships and facilitate a more successful reintegration into society. For example, convictions for sex related offenses can be considered “crimes of moral turpitude” by USCIS serving as an absolute bar to any immigration relief for many individuals.⁶

New York’s legislature and executive chamber have recently recognized the redemptive benefits of clearing prior criminal convictions. The CLEAN Slate Act provides broad record sealing provisions, as do the Marijuana Regulation and Taxation Act and the law that repealed the “Walking While Trans.” In passing these initiatives, New York’s leaders recognized the value of a fresh start for individuals, their families, and broader community safety by removing the barriers imposed by criminal records. Vacatur will similarly enhance fairness for New Yorkers criminalized by this century-old statute.

We accordingly urge the legislature to repeal PHL §2307 in the state budget and adopt the full provisions of the REPEAL STI Discrimination Act.

Signed,

Callen-Lorde Community Health Center
Center for HIV Law and Policy (CHLP)
Decrim NY
GMHC
Housing Works
Iris House, Inc.
Lambda Legal
The Legal Action Center
The Legal Aid Society
Make The Road New York
NEW Pride Agenda
New York Civil Liberties Union
Transgender Equity Consulting
Transgender Law Center
Youth Represent

⁶ INA 101(f)(3) and 8 CFR 316.10(b)(2)(i), (iv).

