



February 21, 2024

Rande Worthen
Chair
House Judiciary - Criminal Committee
2300 N. Lincoln Blvd., Room 302
Oklahoma City, OK 73105

Collin Duel
Vice Chair
House Judiciary - Criminal Committee
2300 N. Lincoln Blvd., Room 246
Oklahoma City, OK 73105

Re: Opposition to House Bill 3098 (HB 3098) - Crimes and punishments; specifying additional infectious diseases

Dear Chair Worthen and Vice Chair Duel,

The Center for HIV Law and Policy (CHLP) is a 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. 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 write to express our strong opposition to House Bill 3098 (HB 3098), which was introduced by Rep. Hasenbeck.² The bill would expand the number of diseases criminalized under Oklahoma Statutes Title 21, Section 1192 (Section 1192).³ In addition to exposing the majority of Oklahomans to the lasting consequences of a criminal conviction, HB 3098 would provoke disastrous public health consequences and impose extensive fiscal obligations to Oklahoma. Instead of increasing criminal penalties and exacerbating stigma, Oklahoma should address its staggering rates of sexually transmitted infections (STIs) by improving prevention, testing, and

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/hivcriminalization-united-states-sourcebook-state-and-federal-hiv-criminal-law-and> (last visited Feb. 20, 2024).

² Okla. 59th Legislature, House Bill 3098 (2024).

³ Okla. Stat. tit. 21, § 1192 (2024).

treatment support for people impacted by these conditions. As such, we ask the House Judiciary - Criminal Committee to reject HB 3098.

Under Section 1192, people living with smallpox, syphilis or gonorrhea currently face the threat of felony punishment for intentionally or recklessly transmitting these diseases to others. As the statute and case law provide little guidance on the specific behaviors that are criminalized, people with these conditions may be criminalized for any behavior, regardless of actual risk of transmission. Furthermore, disclosure of one's condition is not a defense to prosecution. Convictions are punishable by between two and five years imprisonment. HB 3098 would add chlamydia, Hepatitis B virus, genital herpes, human papillomavirus, and trichomoniasis to the list of conditions that are punishable under Section 1192.

Section 1192 is an old law. Since its enactment in 1910, the prevention and treatment of the conditions included in Section 1192 have significantly evolved. Indeed, in 1980, the World Health Organization declared smallpox eradicated.⁴ Furthermore, the modern treatments for syphilis and gonorrhea both involve single injections of antibiotics.⁵

Despite Section 1192's antiquated approach, HB 3098 would dramatically expand the number of people who are liable to criminal prosecution under Section 1192. The proposed additional conditions are very common. For example, in 2021, there were 20,709 cases of chlamydia reported in Oklahoma.⁶ Moreover, “[human papillomavirus] is so common that nearly all sexually active men and women get the virus at some point in their lives.”⁷ Genital herpes is also common, with about one in every eight people being infected with herpes simplex 1, one of the viruses that causes genital herpes.⁸ As such, the bill would almost certainly expose most Oklahomans to criminal penalties under Section 1192.

HB 3098 would also impose additional financial costs on Oklahoma by expanding the number of people who are involved in the criminal legal system. Every year, it costs Oklahoma more than \$23,000 for every person it incarcerates.⁹ In contrast, for example, the estimated lifetime medical cost to treat an STI for men and women, respectively, was \$46 and

⁴ Centers for Disease Control and Prevention (CDC), *History of Smallpox* (Feb. 20, 2021), available at <https://www.cdc.gov/smallpox/history/history.html>.

⁵ CDC, *Syphilis Treatment and Care* (Aug. 11, 2023), available at <https://www.cdc.gov/std/syphilis/treatment.htm>; CDC, *Gonorrhea Treatment and Care* (Dec. 1, 2022), available at <https://www.cdc.gov/std/gonorrhea/treatment.htm>.

⁶ CDC, *Spotlight on Sexually Transmitted Infections & Prevention: Oklahoma* (Aug. 2023), available at <https://www.cdc.gov/std/dstdp/sti-funding-at-work/jurisdictional-spotlights/oklahoma.pdf>.

⁷ CDC, *Human Papillomavirus (HPV) Statistics* (Apr. 5, 2021), available at <https://www.cdc.gov/std/hpv/stats.htm>.

⁸ CDC, *Genital Herpes – CDC Detailed Fact Sheet* (Jul. 22, 2021), available at <https://www.cdc.gov/std/herpes/stdfact-herpes-detailed.htm#:~:text=Genital%20herpes%20infection%20is%20common,States%20in%20a%20single%20year.&text=Nationwide%2C%2011.9%20%25%20of%20persons%20aged,%25%20when%20adjusted%20for%20age>.

⁹ Prison Fellowship, *Oklahoma*, available at

<https://www.prisonfellowship.org/about/justicereform/legislation/state-issues/oklahoma/> (last visited Feb. 20, 2024).

\$262 for chlamydia and \$5 and \$36 for trichomoniasis.¹⁰ Incarcerating a person living with trichomoniasis would be 9,200 times more expensive than simply treating the condition. Thus, compared to encouraging testing and treatment, Oklahoma’s passage of HB 3098 would be financially irresponsible.

HB 3098’s expansion of Section 1192 would disparately affect young people and Black and Latine Oklahomans and impose lasting and significant consequences. The enforcement of laws that criminalize folks living with stigmatized conditions, such as Section 1192, disproportionately affects Black, Latine, and LGBTQ+ folks.¹¹ With young folks representing a majority of STI diagnoses, HB 3098 would particularly criminalize young Oklahomans.¹² Consequently, HB 3098 would disproportionately deprive young people, especially young Black and Latine Oklahomans, of future opportunities for higher education, employment, housing, and more due to their felony convictions under Section 1192.

Moreover, HB 3098 would worsen public health outcomes by increasing the barriers to prevention, testing, and treatment efforts. Increasing criminal penalties does nothing to lessen the rates of STIs.¹³ Rather, heightened criminalization decreases engagement in care by exacerbating stigma against people living with these conditions.¹⁴ As only folks who are aware of their status are criminally liable, if HB 3098 is passed, more people would defer testing and treatment and refrain from learning their STI status, undermining public health efforts to encourage testing and treatment. Accordingly, leading national and international experts and organizations have resoundingly rejected efforts that increase criminalization, such as HB 3098, as a public health strategy.¹⁵

¹⁰ Sagar Kumar et al., *The Estimated Lifetime Medical Cost of Chlamydia, Gonorrhea, and Trichomoniasis in the United States, 2018*, 48 *SEXUALLY TRANSMITTED DISEASES* 238 (2021).

¹¹ UCLA School of Law Williams Institute, *HIV Criminalization and Race*, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Crim-and-Race-Infographic.pdf> (last visited Feb. 20, 2024); Edwin J. Bernard et al., *Punishing Vulnerability Through HIV Criminalization*, 112 *Am. J. Pub. Health* S395–S397 (2022) (“[W]e observe that HIV criminalization serves as a proxy for discrimination based on class, ethnicity, gender identity, migrant status, race, sex, sexual orientation, and other markers of social vulnerability. The most aggressive push to criminalize people living with HIV tends to occur at the intersection of several stigmatized identities”).

¹² HealthyTeens Oklahoma, *Fast Facts*, available at <https://healthyteensok.org/fast-facts/> (last visited Feb. 20, 2024); CDC, *Adolescents and Young Adults* (Apr. 8, 2021), available at <https://www.cdc.gov/std/life-stages-populations/adolescents-youngadults.htm>.

¹³ Patricia Sweeney et al., *Association of HIV diagnosis rates and laws criminalizing HIV exposure in the United States*, 19 *AIDS* 1483–1488 (2017).

¹⁴ CDC, *HIV Criminalization and Ending the HIV Epidemic in the U.S.* (Dec. 18, 2023), available at <https://www.cdc.gov/hiv/policies/law/criminalization-ehe.html>.

¹⁵ 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), <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/>; American Medical Association, *Discrimination and Criminalization Based on HIV Seropositivity H-20.914*, <https://policysearch.amaassn.org/policyfinder/detail/HIV?uri=%2FAMADoc%2FHOD.xml-0-1254.xml> (last visited Jan. 23, 2024); UNAIDS, *GLOBAL AIDS STRATEGY 2021–2026. END INEQUALITIES. END AIDS.*, available at



Instead of increasing criminalization, Oklahoma should utilize evidence-based public health measures to combat the increasing numbers of new STI diagnoses. Currently, Oklahoma has some of the highest rates of diagnoses for STIs across the United States.¹⁶ To prevent new diagnoses, public health experts universally endorse supportive strategies to increase STI testing, treatment, and prevention.¹⁷

We oppose the use of criminal penalties on people living with STIs, such as Section 1192's penalties. Consequently, we oppose the expansion of Section 1192 to expose more individuals living with STIs to criminal liability. HB 3098 would dramatically and dangerously increase the reach of Section 1192, undermining public health efforts and creating lasting and significant harm to Oklahomans. To move the state forward in its fight to prevent and treat STIs, we strongly urge the Judiciary - Criminal Committee to oppose HB 3098.

Sincerely,

Center for HIV Law and Policy

https://www.unaids.org/sites/default/files/media_asset/global-AIDS-strategy-2021-2026_en.pdf (last visited Jan. 23, 2024); United Nations Development Programme, *UNDP Guidance for Prosecutors on HIV Related Criminal Cases* (Jun. 7, 2021), available at

<https://www.undp.org/publications/undp-guidance-prosecutors-hiv-related-criminal-cases>.

¹⁶ CDC, *2022 STI Surveillance Report*, available at

<https://www.cdc.gov/std/statistics/2022/tables/2022-STI-Surveillance-State-Ranking-Tables.pdf> (last visited Feb. 20, 2024). For example, Oklahoma has the fourth highest rate of syphilis diagnoses, with more than 1,200 reported cases in 2022.

¹⁷ See, e.g., CDC, *Division of STD Prevention Strategic Plan 2022-2026* (Apr. 10, 2023),

<https://www.cdc.gov/std/dstdp/dstdp-strategic-plan-2022-2026.htm>;