

**NEW JERSEY’S PASSAGE OF S-3707: A SUCCESSFUL  
DESTIGMATIZATION OF HIV OR A PERFORMATIVE STEP IN  
THE RIGHT DIRECTION?**

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ABSTRACT

*In light of New Jersey’s recent passage of Senate Bill S-3707, marking the repeal of the state’s HIV-specific criminal statute, New Jersey residents living with HIV are now prosecuted under the state’s endangerment statute. This repeal, although long overdue, is certainly a step in the right direction, however, it does nothing to address its legislative intent of destigmatizing HIV. Instead, to accomplish this goal, New Jersey should prioritize a two-prong approach: (1) improve HIV education efforts throughout the state, and (2) issue prosecutorial guidance on the endangerment statute under which persons living with HIV will continue to be prosecuted.*

TABLE OF CONTENTS

I.	INTRODUCTION .....	180
II.	UNDERSTANDING HIV AND ITS HISTORY IN NEW JERSEY .....	182
	A. <i>What Is HIV?</i> .....	182
	B. <i>HIV Demographics in New Jersey</i> .....	182
	C. <i>History of HIV Criminalization in New Jersey</i> .....	183
	D. <i>The Passage of S-3707</i> .....	184
III.	THE PASSAGE OF S-3707 DOES NOT ACCOMPLISH NEW JERSEY’S GOAL OF DESTIGMATIZING HIV.....	186
	A. <i>New Jersey’s HIV Education Is Inadequate</i> .....	186
	B. <i>Criminalizing PLHIV Further Stigmatizes HIV</i> .....	189
IV.	SOLUTIONS FOR NEW JERSEY TO DESTIGMATIZE HIV .....	193
	A. <i>Improving HIV Education Efforts</i> .....	193
	1. K-12 Education .....	193
	2. Supplementing Statewide Education Efforts.....	195

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	<i>B. Issuing Prosecutorial Guidance on the Endangerment Statute Under Which PLHIV Will Continue to Be Prosecuted.....</i>	196
V.	CONCLUSION.....	198

## I. INTRODUCTION

On January 11, 2022, the New Jersey legislature passed Senate Bill S-3707, repealing section 2C:34-5 of the New Jersey Statutes,<sup>1</sup> which served as New Jersey's HIV- and STI-specific criminal law.<sup>2</sup> The bill, which was signed by New Jersey Governor Phil Murphy on January 18, 2022,<sup>3</sup> and sponsored by Senators Joe Vitale and M. Theresa Ruiz,<sup>4</sup> effectively repealed the statute, titled "Diseased person committing an act of sexual penetration," which made it a third-degree felony for persons living with HIV ("PLHIV") to have oral, vaginal, or anal sex without the informed consent of their partner regarding their status.<sup>5</sup> The passage of S3707 further created section 2C:24-7.1, which prohibits disclosure of personal identifying information during prosecution.<sup>6</sup>

This rather revolutionary decision, as New Jersey is only the third state to repeal its HIV-specific criminal law,<sup>7</sup> seemed to be an initial victory for PLHIV in New Jersey. However, as revealed by the New Jersey Senate Budget and Appropriations Committee's statement on S-3707, the state's repeal of its HIV-specific statute continues to allow felony prosecution under the state's criminal endangerment law.<sup>8</sup> The statute provides that it is a crime in the third degree to knowingly expose another to a substantial risk of death and a crime in the fourth degree to

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1. N.J. STAT. ANN. § 2C:34-5 (repealed 2022).

2. *New Jersey Legislators Vote to Strike State's HIV-Specific Criminal Law, but Retain Felony Prosecutions*, CTR. FOR HIV L. & POL'Y (Jan. 14, 2022) [hereinafter *New Jersey Legislators Vote*], <https://www.hivlawandpolicy.org/news/new-jersey-legislators-vote-strike-states-hiv-specific-criminal-law-retain-felony-prosecutions>.

3. Press Release, State of New Jersey, Governor Murphy Signs Legislation Decriminalizing Sexual Activity by Persons Infected with HIV (Jan. 18, 2022), <https://www.nj.gov/governor/news/news/562022/20220118d.shtml>.

4. *Senate Passes Vitale-Ruiz Bill to Modernize NJ Statutes Related to HIV/AIDS Transmission*, INSIDER NJ (Jan. 11, 2022, 1:36 PM), <https://www.insidernj.com/press-release/senate-passes-vitale-ruiz-bill-modernize-nj-statutes-related-hiv-aids-transmission/>.

5. § 2C:34-5.

6. § 2C:24-7.2; S. Budget & Appropriations Comm. Statement on S3707, 2020-21 Sess. (N.J. 2022).

7. *New Jersey Legislators Vote*, *supra* note 2.

8. S. Budget & Appropriations Comm. Statement on S3707, *supra* note 6.

knowingly expose another to a substantial risk of serious bodily injury.<sup>9</sup> Despite the Senate Committee's noble, well-intended purpose of destigmatizing HIV within New Jersey, the passage of S-3707 may have been nothing more than a performative step in the right direction. Even worse, the bill may actually broaden potential criminal liability, as the "exposure" outlined by section 2C:24-7.1 extends beyond sexual contact and instead appears to cover all other potential forms of conduct.<sup>10</sup>

Although supporters of S-3707's passage cite a 2021 statement from former New Jersey Acting Attorney General Andrew J. Bruck directing that prosecution is unwarranted in cases that do not involve coercion, an intent to transmit, or in which a person's viral load is under control through a prescribed treatment, the statement regardless suggests that attempted murder charges may be appropriate in a case of intentional transmission.<sup>11</sup> However, with current New Jersey Attorney General Matthew J. Platkin having assumed office in February of 2022,<sup>12</sup> prosecutorial discretion in light of the passage of S-3707 and the fate of PLHIV in New Jersey appears to be in an unnerving state of uncertainty.

As such, although the impact of S-3707 on PLHIV remains to be seen considering its recency—and thus cannot yet be analyzed—what can, and *should*, be inspected is the legislative purpose behind its passage. This Note aims to deconstruct the Senate Committee's proclaimed purpose of reducing stigma for PLHIV, with the ultimate conclusion that S-3707's repeal of New Jersey HIV-specific criminal law fails to achieve its purported purpose. Instead, as New Jersey continues to move closer to decriminalizing HIV altogether, the New Jersey Legislature can immediately implement a two-prong approach to accomplish its goal. Namely: (1) improve HIV-education efforts throughout the state, and (2) issue prosecutorial guidance on the endangerment statute under which persons living with HIV will continue to be prosecuted.<sup>13</sup>

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9. § 2C:24-7.1 (2023).

10. *Id.*; see also *New Jersey Legislators Vote*, *supra* note 2.

11. Memorandum from Andrew J. Bruck, Acting Att'y Gen., N.J. Off. of Att'y Gen., to Dir., Div. of Crim. Just., et al. (Oct. 6, 2021), [https://www.nj.gov/oag/dcj/agguide/pdfs/2021-1006\\_Attorney-General-HIV-Charging-Guidance.pdf](https://www.nj.gov/oag/dcj/agguide/pdfs/2021-1006_Attorney-General-HIV-Charging-Guidance.pdf).

12. *Governor Murphy Announces Matt Platkin to Serve as New Jersey Attorney General*, STATE OF N.J. (Feb. 3, 2022), <https://nj.gov/governor/news/news/562022/approved/20220203b.shtml>.

13. Although New Jersey deserves some praise for repealing its HIV-specific criminal law, as it is one of only three states to repeal its outdated statute, this Note aims to simply provide alternatives to the New Jersey legislature to destigmatize HIV more successfully. I also recognize that I am in no way speaking for PLHIV; I simply hope to shed light on this issue and provide approaches for the state to better meet the needs of its residents living with HIV based on the voices and perspectives of PLHIV and other scholars.

Part II of this Note will address important background information on HIV, HIV demographics in New Jersey, the history of HIV criminalization in New Jersey, and the recent passage of Senate Bill S-3707. Part III will address issues in New Jersey's present HIV-educational offerings, both in the K-12 classroom setting and its statewide HIV initiatives, and problems with HIV criminalization—namely that it is not linked with destigmatizing HIV and instead directly opposes this goal. Part IV will detail the solutions that New Jersey can implement in order to better accomplish the state's purported goal of destigmatizing HIV.

## II. UNDERSTANDING HIV AND ITS HISTORY IN NEW JERSEY

### A. *What Is HIV?*

HIV, or human immunodeficiency virus, is a virus which attacks the body's immune system and, when not treated, can potentially lead to what is commonly known as AIDS, or acquired immunodeficiency syndrome.<sup>14</sup> Although there is presently no effective cure, with proper medical care, HIV can be managed through antiretroviral therapy, or ART.<sup>15</sup> PLHIV who take ART as prescribed can reduce the amount of HIV in their blood, referred to as one's viral load, and when this viral load is so low that a standard lab cannot detect it, it is referred to as an undetectable viral load.<sup>16</sup> PLHIV with an undetectable viral load will not transmit HIV to their HIV-negative sexual partners.<sup>17</sup>

### B. *HIV Demographics in New Jersey*

As of 2020, there were 35,136 people living with HIV in the state of New Jersey, which equates to approximately 468 persons per 100,000 state residents.<sup>18</sup> This is proportionately higher than the United States

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14. *About HIV*, CTR. FOR DISEASE CONTROL & PREVENTION (June 30, 2022), <https://www.cdc.gov/hiv/basics/whatishiv.html>; *see also Essential Health Information About HIV/AIDS*, NAT'L PREVENTION INFO. NETWORK (Feb. 19, 2021), <https://npin.cdc.gov/pages/hiv-aids-basics>.

15. *HIV Treatment*, CTR. FOR DISEASE CONTROL & PREVENTION (July 14, 2022), <https://www.cdc.gov/hiv/basics/livingwithhiv/treatment.html>; *What Are HIV and AIDS*, HIV.GOV (Jan. 13, 2023), <https://www.hiv.gov/hiv-basics/overview/about-hiv-and-aids/what-are-hiv-and-aids>.

16. *What Are HIV and AIDS?*, *supra* note 15.

17. *Id.*

18. *Local Data: New Jersey*, AIDSVU, <https://aidsvu.org/local-data/united-states/northeast/new-jersey/> (last visited Sept. 25, 2023). It is worthwhile to note that these demographics, and those that follow, reflect only those diagnosed and do not reflect the

average, which, as of 2020, was 382 persons per 100,000 individuals.<sup>19</sup> Of the 35,136 PLHIV reported in New Jersey, according to AIDSVu, Black individuals represent 42.6% of those reported, and Hispanic/Latinx individuals represent 30.6%.<sup>20</sup>

### C. History of HIV Criminalization in New Jersey

Until March 19, 2022, PLHIV in New Jersey who engaged in sexual activity without informing their partner of their status could be prosecuted under section 2C:34-5 of the New Jersey Statutes, the state's HIV- and STI-specific criminal law.<sup>21</sup> The provision, which was enacted in 1997,<sup>22</sup> made it a third-degree crime for an individual living with HIV to engage in "an act of sexual penetration"<sup>23</sup> without the informed consent of their partner.<sup>24</sup>

New Jersey courts especially justified prosecution under ideologies of informed consent, and these attitudes were reflected across the civil and criminal court contexts. For example, in *F.S. v. L.D.*,<sup>25</sup> the New Jersey Superior Court, Appellate Division, stated:

[I]t is difficult to imagine a more "particularly reprehensible" act. D.'s actions constituted a profound violation of S.'s fundamental right to self-determination. By unilaterally deciding not to inform her of his HIV-positive status, D. deprived S. of her right to choose whether or not to assume the risk, no matter how slight, of being infected . . . . Indeed, the degree of public disapproval of D.'s actions is such that the Legislature has criminalized the conduct . . . .<sup>26</sup>

In October of 2021, former Acting Attorney General Andrew J. Bruck issued a memorandum to the Director of the New Jersey Division of

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number of individuals living undiagnosed with HIV in the New Jersey and the United States as a whole.

19. *Id.*

20. *Id.*

21. *New Jersey Legislators Vote*, *supra* note 2.

22. In former New Jersey Attorney General Andrew J. Bruck's memorandum to the Division of Criminal Justice and all New Jersey county prosecutors, he explained that the passage of this statute was a result of doctors and researchers grappling with finding effective medical treatments for HIV. *See* Memorandum from Andrew J. Bruck, *supra* note 11.

23. N.J. STAT. ANN. § 2C:34-5 (repealed 2022). It is worth noting the statute failed to define an "act of sexual penetration." *Id.*

24. *Id.*; *see also* Memorandum from Andrew J. Bruck, *supra* note 11, at 1.

25. 827 A.2d 335 (N.J. Super. Ct. App. Div. 2003).

26. *Id.* at 339.

Criminal Justice, the Executive Director of the New Jersey Office of Public Integrity and Accountability, the New Jersey Insurance Fraud Prosecutor, and all county prosecutors providing guidance on prosecution under the statute.<sup>27</sup> In the letter, Bruck advised prosecutors to consider the following factors when determining whether or not to prosecute PLHIV under the state's, now repealed, HIV-specific criminal statute: "[w]hether the individual forced or coerced their partner to engage in sexual activity; [w]hether the individual engaged in sexual activity *for the purpose* of transmitting HIV to their partner; and/or [w]hether the individual was adhering to a medically appropriate HIV treatment plan at the time of the sexual activity."<sup>28</sup>

Bruck's guidance justified the call for a more lenient approach to the statute by citing the effectiveness of ART treatments for PLHIV, leading to the extreme unlikelihood of transmission through sexual contact and stating that it would be "virtually impossible to imagine a scenario where it would be appropriate for a prosecutor to charge an individual . . . when that person's HIV viral load was undetectable at the time of the sexual activity and no aggravating factors existed."<sup>29</sup> Although this guidance was certainly long overdue, it unfortunately came too late—being written over two decades after the statute was enacted and only a few months before it was ultimately repealed.<sup>30</sup>

#### D. *The Passage of S-3707*

Ultimately, the passage of S-3707—primarily sponsored by Senators Vitale and Ruiz, as well as former Assembly-members Vainieri, Huttie, Downey, and Zwicker—rendered these guidelines obsolete.<sup>31</sup> Senator Vitale, in explaining the importance of the bill and its repeal of section 2C:34-5, cited conversations with advocates to improve New Jersey's harm-reduction system of care, stating that the purpose of the bill was to

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27. Memorandum from Andrew J. Bruck, *supra* note 11; *see also* US: New Jersey's Acting Attorney General Issues Science-Informed Prosecutorial Guidance for Application of HIV Criminalisation Law, HIV JUS. NETWORK (Oct. 7, 2021), <https://www.hivjustice.net/news-from-other-sources/us-new-jerseys-acting-attorney-general-issues-new-guidance-on-hiv-criminalisation-informed-by-science/>.

28. Memorandum from Andrew J. Bruck, *supra* note 11, at 2.

29. *Id.* at 1–2.

30. *See id.* at 1.

31. *Senate Passes Vitale-Ruiz Bill to Modernize NJ Statutes Related to HIV/AIDS Transmission*, INSIDER NJ (Jan. 11, 2022, 1:36 PM), <https://www.insidernj.com/press-release/senate-passes-vitale-ruiz-bill-modernize-nj-statutes-related-hiv-aids-transmission/>; *Bill S3707 ScaSca (2R)*, N.J. LEGIS., <https://www.njleg.state.nj.us/bill-search/2020/S3707> (last visited Sept. 25, 2023).

“protect and destigmatize individuals living with HIV” in the state.<sup>32</sup> Upon signing S-3707, Governor Murphy echoed this sentiment, specifically referring to the devastating impact that the statute had on the state’s LGBTQ+ community and communities of color, not only in terms of prosecution but also for its historic toll on PLHIV.<sup>33</sup> Murphy further stated that repealing the outdated law would effectively eliminate the stigma and fear associated with testing for HIV and bolster state efforts to end the HIV/AIDS epidemic.<sup>34</sup> The Senate Committee’s statement further supported this goal, hoping to “eliminate a crime that is solely applicable to individuals living with HIV” and to “reduce the stigma suffered by these individuals.”<sup>35</sup>

However, as the Senate Committee itself proclaims, prosecution for PLHIV is still a reality. As the statement suggests, an avenue for prosecution is maintained in situations involving the transmission of HIV or other diseases.<sup>36</sup> More specifically, under section 2C:24-7.1 of the New Jersey Statutes, which followed Senate Bill S-2940, PLHIV can and will continue to be prosecuted under its broad application toward persons who engage in any type of conduct which creates a substantial risk of bodily injury to another person.<sup>37</sup> The statute reads, in part:

A person commits a disorderly persons offense if he recklessly engages in conduct which creates a substantial risk of bodily injury to another person. A person commits a crime of the fourth degree if he knowingly engages in conduct which creates a substantial risk of serious bodily injury to another person. A person commits a crime of the third degree if he knowingly engages in conduct which creates a substantial risk of death to another person.<sup>38</sup>

The Senate Committee notes lessened sentencing under the endangerment statute.<sup>39</sup> However, potential penalties range from a disorderly persons offense to a crime of the second degree for endangering another person by reckless conduct.<sup>40</sup> Although this statute has yet to be utilized to prosecute PLHIV for risk of transmission due to the recent

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32. Press Release, State of New Jersey, *supra* note 3.

33. *Id.*

34. *Id.*

35. S. Budget & Appropriations Comm. Statement on S3707, *supra* note 6, at 1.

36. *Id.*

37. *Id.*

38. N.J. STAT. ANN. § 2C:24-7.1(a) (2023).

39. S. Budget & Appropriations Comm. Statement on S3707, *supra* note 6, at 1–2.

40. *Id.* (explaining that the harshness of penalty is dependent on the “person’s culpability and whether the victim has a developmental disability”).

passage of S-3707, it raises significant questions: what will its impact be and might PLHIV face greater prosecution under this broader statute?

### III. THE PASSAGE OF S-3707 DOES NOT ACCOMPLISH NEW JERSEY'S GOAL OF DESTIGMATIZING HIV

Despite New Jersey's self-congratulation for the overdue repeal of its HIV-specific criminal statute, and its overall liberal attitude towards PLHIV, there are two present issues that must be addressed: (1) its present HIV-education initiatives, and (2) the fact that the state is going to continue criminalizing HIV despite the repeal of its HIV-specific law.

#### A. *New Jersey's HIV Education Is Inadequate*

Although New Jersey health officials highlight downward trends in new cases of HIV/AIDS within the state, with future goals of reducing the number of new transmissions by 75% in 2025 with partial credit to its education initiatives,<sup>41</sup> this does nothing to decrease the present stigma for the 36,808 PLHIV currently living in New Jersey.<sup>42</sup>

New Jersey currently mandates instruction on HIV through its "Curriculum Framework."<sup>43</sup> More specifically, under New Jersey's standards for Comprehensive Health and Physical Education, numbers 2.1 to 2.4 specify "content knowledge and health skills related to human sexuality and prevention of HIV, sexually transmitted diseases (STDs) and pregnancy."<sup>44</sup>

Although this is, of course, more favorable than an alternative in which HIV education is not at all a part of the curriculum, as "only 38 states and the District of Columbia mandate sex education and/or HIV

41. Lilo H. Stainton, *AIDS Cases Drop in New Jersey*, NJ SPOTLIGHT NEWS (Dec. 5, 2022), <https://www.njspotlightnews.org/2022/12/hiv-aids-spread-declined-nj-plan-to-end-epidemic/>; N.J. DEP'T OF HEALTH, A STRATEGIC PLAN TO END THE HIV EPIDEMIC IN NEW JERSEY BY 2025, at 7 (Nov. 8, 2021), <https://www.nj.gov/health/hivstdtb/hiv-aids/Ending%20the%20HIV%20Epidemic%20in%20New%20Jersey%20Plan.pdf>.

42. *County and Municipal HIV/AIDS Statistics, 2021*, N.J. DEP'T OF HEALTH, <https://www.nj.gov/health/hivstdtb/hiv-aids/statmap.shtml> (last visited Sept. 25, 2023). It is worth noting that this statistic is from 2021, so it is unclear whether the number has increased or decreased.

43. *New Jersey's Sex Education Snapshot*, SIECUS (May 21, 2021), [https://siecus.org/state\\_profile/new-jersey-state-profile/#:~:text=The%20Curriculum%20Framework%20aligns%20with,%2C%20contraception%2C%20gender%20assumptions%2C%20sexual](https://siecus.org/state_profile/new-jersey-state-profile/#:~:text=The%20Curriculum%20Framework%20aligns%20with,%2C%20contraception%2C%20gender%20assumptions%2C%20sexual).

44. *Prevention Education Through the School Curriculum*, N.J. DEP'T OF EDUC., [https://www.nj.gov/education/safety/wellness/prevention/curr.shtml#:~:text=Mandated%20Instruction%20For%20Public%20Schools&text=Included%20in%20the%20six%20standards,diseases%20\(STDs\)%20and%20pregnancy](https://www.nj.gov/education/safety/wellness/prevention/curr.shtml#:~:text=Mandated%20Instruction%20For%20Public%20Schools&text=Included%20in%20the%20six%20standards,diseases%20(STDs)%20and%20pregnancy) (last visited Sept. 25, 2023).



education,”<sup>45</sup> the quality of this education should be called into question. Per the Sexuality Information and Education Council of the United States (“SIECUS”), advocates of comprehensive sex education in New Jersey have staunchly criticized the state for its curriculum (which stresses abstinence) as well as the lack of training for teachers and a lack of accountability regarding updated requirements.<sup>46</sup>

Further, the Sex Ed Subcommittee of the Thrive NJ Coalition, a statewide coalition of organizations working together to promote sexual and reproductive health and rights throughout the state of New Jersey,<sup>47</sup> published a “Sex Ed Report Card” for New Jersey’s current curriculum. New Jersey received a grade of an “A” in parental support, a “B” in state law, and consistent “Cs” for the following categories: curricula, consistency, time allotted, educator training, content, and inclusion.<sup>48</sup> The Sex Ed Subcommittee also made a series of what it considered to be “key recommendations” for New Jersey to move forward in improving its current system of sex education, such as to “[c]ollaborate with parents,” “[p]rovide statewide standards that include specific content guidelines about LGBTQ issues,” and “strengthen accountability measures for sex education standards.”<sup>49</sup>

As reflected by the Sex Ed Subcommittee’s report, grades, and subsequent recommendations, a key area of concern is consistent, inclusive curriculum. Although New Jersey has state-mandated health classes in place, they are loosely followed in practice.<sup>50</sup> Many parents and teachers alike responded in outrage to New Jersey’s updated health education standards in 2020, which among other additions, include state-

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45. *General Requirements for Sex and HIV Education*, GUTTMACHER INST. (Sept. 1, 2023), <https://www.guttmacher.org/state-policy/explore/sex-and-hiv-education>. With that being said, only ten states in the United States mandate HIV education specifically. *Id.*

46. *New Jersey’s Sex Education Snapshot*, *supra* note 43.

47. THRIVE NJ, <https://www.thrive-nj.com/> (last visited Sept. 25, 2023).

48. SEX ED SUBCOMM. THRIVE NJ COALITION, NEW JERSEY’S SEX ED REPORT CARD 3 (2019), [https://web.archive.org/web/20230128232103/https://www.sexednj.org/uploads/1/2/4/4/124458869/new\\_jerseys\\_sex\\_ed\\_report\\_card\\_1.pdf](https://web.archive.org/web/20230128232103/https://www.sexednj.org/uploads/1/2/4/4/124458869/new_jerseys_sex_ed_report_card_1.pdf). Although the report did not specifically reference HIV, it did criticize New Jersey’s sex education system as a whole—which as demonstrated prior, includes education on HIV—and as such, these criticisms can demonstrate areas of potential reform. *Id.* at 4.

49. *Id.* at 14.

50. Mary Ann Koruth, *Here’s How Some NJ Schools Will Teach Sex Education. Will They Avoid State Discipline?*, NORTHJERSEY.COM (Sept. 22, 2022, 4:26 AM), <https://www.northjersey.com/story/news/education/2022/09/22/nj-sex-education-curriculum-how-schools-will-teach-avoid-discipline/69510211007/>; *see also* Tracey Tully, *Sex Ed Emerges as Core Issue for N.J. Republicans as Midterms Approach*, N.Y. TIMES (Sept. 2, 2022), <https://www.nytimes.com/2022/09/02/nyregion/sex-ed-new-jersey-midterms.html>.

mandated curricula that introduces concepts of sex, gender, and “mature terminology” at an earlier grade level than the prior standards had mandated.<sup>51</sup> The response of school districts varied from complying with the law with no issue, to changing the structure of classes to appease parents (such as the Hoboken school district’s consideration of “family night[s]” to teach some of its health classes), to simply not addressing many of the changes from the 2020<sup>52</sup> health standards.<sup>53</sup>

Further, although New Jersey has engaged in statewide initiatives to increase information on HIV, most of this disseminated information has been narrowly focused on prevention for those undiagnosed with HIV and providing treatment information for PLHIV and medical professionals rather than providing any historical perspective on the stigmatization of HIV that PLHIV continue to experience today.

New Jersey has engaged in several education and training efforts. For example, the Division of HIV, STD, and TB Services (“DHSTS”) has partnered with Jefferson Health and the Northeast/Caribbean AIDS Education and Training Center to create the HIV Training and Capacity Development (“TACD”) Program as part of its HIV Community Support and Development Initiative (“HCSDI”).<sup>54</sup> Although this at first glance appears to be an important pathway to destigmatizing HIV, further inspection leaves much to be desired.

The focus of these programs appears to be on New Jersey’s stringent efforts to eradicate HIV rather than on addressing the harsh realities of those living with it. A prime example of this is the TACD’s newsletter, entitled “HIV/AIDS Surveillance Program.”<sup>55</sup> Although the TACD website has not provided an updated report since its June 2020 newsletter,<sup>56</sup> these letters are primarily focused on tracking “[a]dult/[a]dolescent HIV/AIDS cases in each age group, in each racial/ethnic group, and for each HIV/AIDS exposure category by gender

51. Tully, *supra* note 50; see also Melanie Burney, *Revised Sex-Education Standards Are Coming to N.J. Schools in September. Here’s Why They’re Controversial*, PHILA. INQUIRER (Apr. 21, 2022, 5:00 AM), <https://www.inquirer.com/news/sex-standards-education-new-jersey-20220421.html>.

52. Although the New Jersey Board of Education adopted the revised sex-education standards in 2020, the first school year in which they were implemented was the 2022–23 school year. See Tully, *supra* note 50.

53. Koruth, *supra* note 50.

54. *HIV, STD, and TBD Services: Education and Training*, N.J. DEP’T. OF HEALTH, <https://www.nj.gov/health/hivstdtb/hiv-aids/education.shtml> (last visited Sept. 25, 2023).

55. *Id.*

56. *Id.*; See N.J. DEP’T. OF HEALTH DIV. OF HIV, STD & TB SERV., NEW JERSEY HIV/AIDS REPORT 5 (2020), [https://www.nj.gov/health/hivstdtb/hiv-aids/June2020\\_HIV\\_AIDS\\_Report.pdf](https://www.nj.gov/health/hivstdtb/hiv-aids/June2020_HIV_AIDS_Report.pdf) (stating the report is based on cases reported by the DHSTS through June 2020).

for the most recent year, as well as cumulatively.”<sup>57</sup> New Jersey’s TACD program might be “making a list and checking it twice,” so to speak, but how is it serving its residents already living with HIV?

TACD does provide some programming that addresses HIV stigma. For example, it holds a single “HIV Related Stigma and Discrimination” session monthly according to its 2023 agenda.<sup>58</sup> However, this is negligible compared to the abundance of other programming that is presented relating to prevention, as well as education and other related topics.<sup>59</sup> Ergo, this is a small percentage of the programming offered.

Another avenue that New Jersey utilizes is the New Jersey HIV/AIDS Planning Group (“NJHPG”), a statewide planning group for the DHSTS.<sup>60</sup> NJHPG, which is comprised of forty members who are elected from throughout the state, aims to support the DHSTS in the “planning, implementation, and evaluation of HIV prevention, care, and treatment services.”<sup>61</sup> However, by the very nature of its intended purpose, the group is mostly focused on HIV prevention and care, failing to adequately address important issues of education for the public or addressing the stigma PLHIV face.<sup>62</sup>

Overall, although New Jersey does have systems in place for HIV education both in the K-12 academic setting and through statewide state government education initiatives, these systems, ultimately, leave much to be desired.

#### B. Criminalizing PLHIV Further Stigmatizes HIV

Although PLHIV did not face rampant criminalization under the former New Jersey HIV-specific criminal law, the issue of whether PLHIV *should be* criminalized in this fashion, and whether this criminalization stigmatizes HIV, is unresolved. As such, there is a very clear dissonance with S-3707’s purported goal of reducing stigma for

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57. NEW JERSEY HIV/AIDS REPORT, *supra* note 56, at 5.

58. *Calendar*, N.J. TACD, <https://www.njtacd.org/calendar> (last visited Sept. 25, 2023).

59. *See id.* (noting that TACD also hosts “Risk Reduction Counseling,” “Sexuality and Sexual Health,” and “Harm Reduction”).

60. *About New Jersey HIV Planning Group*, N.J. HIV PLAN. GRP., <https://www.njhpg.org/home> (last visited Sept. 25, 2023).

61. *Id.*

62. NJHPG does host an annual Gay Men’s Awareness Day Summit which advertises a safe space for conversations relating to sex positivity and health and wellness. *Welcome Home! New Jersey’s 9th Annual Gay Men’s Awareness Day (GMAD) Summit*, N.J. HIV PLAN. GRP., <https://www.njhpg.org/meeting-and-events/gay-mens-awareness-day-gmad> (last visited Sept. 25, 2023). However, its promotional materials fail to address any specific discussions relating to stigma, and even if these conversations are a part of the summit, it is worth noting that gay men are not the only group impacted by HIV. *Id.*

PLHIV and the ultimate impact on PLHIV, who may very well continue to face prosecution under New Jersey's existing endangerment statute. Although the repeal does make an effort to achieve this goal by no longer explicitly prosecuting HIV by name, its impact is ultimately the same. This appears to be nothing more than a performative step in the right direction and a step which may very well have little to no impact on the prosecution of PLHIV.<sup>63</sup>

Although many scholars have urged for a complete cessation of HIV criminalization,<sup>64</sup> the United States trudges along, making slow progress in decriminalizing HIV. New Jersey is only the third state in the country to repeal its HIV-specific criminal law,<sup>65</sup> and only ten other states have made efforts to, at minimum, reform and make changes to these statutes.<sup>66</sup> Considering this slow progress, New Jersey may very well continue to prosecute PLHIV for a number of years. That being said, sifting through legal scholarship on HIV criminalization shows the evolution of social thought through more easily accessible scientific research, beginning with the emergence of the epidemic in the 1980s and ending with scholarship from this decade, echoing that criminalization is morally wrong and, at minimum, certainly does not destigmatize HIV criminalization.<sup>67</sup>

Legal scholars have taken varying stances on HIV criminalization since the emergence of the epidemic in the 1980s, characterized by several shifts as the epidemic evolved. Upon the emergence of the epidemic in the 1980s and 1990s, PLHIV were initially prosecuted under

63. Although time will certainly reveal the extent to which PLHIV continue to be prosecuted, what can be addressed presently is that S3707 fails to meet the New Jersey legislature's purported goal of reducing stigma for PLHIV.

64. See, e.g., Edwin Cameron et. al, *HIV is a Virus, not a Crime: Ten Reasons Against Criminal Statutes and Criminal Prosecutions*, 11 J. INT'L AIDS SOC'Y (2008) (providing ten reasons why criminal laws and prosecutions are bad strategy in the HIV epidemic); Edwin J. Bernard et. al, *Punishing Vulnerability Through HIV Criminalization*, 112 AM. J. OF PUB. HEALTH S395 (June 2022) (stating that the criminalization of PLHIV is unjust); *HIV Criminalisation is Bad Policy Based on Bad Science*, 5 LANCET HIV E473 (2018) (advocating for the end of overly broad application of criminal law on PLHIV).

65. Devin Hursey, *How New Jersey Became the Third State to Repeal Its HIV Criminalization Law*, THEBODY (Mar. 17, 2022), <https://www.thebody.com/article/new-jersey-third-state-repeal-hiv-criminalization-law>.

66. As of 2023, thirty states still have HIV-specific criminal laws and/or sentence enhancements applicable only to PLHIV. See CTR. FOR HIV LAW & POL'Y, *HIV Criminalization in the United States: An Overview of the Variety and Prevalence of Laws Used to Prosecute & Punish People Living with HIV (PLHIV) in the US* (June 2022).

67. Although the academic and legal scholarship on HIV and criminalization reflects this pattern on the macro-level, I acknowledge that, on a micro-level, there are outlier scholars who have taken different stances than the general timeline reflected.

general criminal statutes as opposed to HIV-specific statutes.<sup>68</sup> In response, in the 1990s, some legal scholars advocated for the prosecution of PLHIV under HIV-specific criminal statutes.<sup>69</sup> For example, in a 1999 article, Amy Lynn McGuire advocated for the cessation of prosecution of PLHIV under traditional criminal law statutes and instead advocated that states adopt HIV-specific statutes to govern the prosecution of intentional transmission.<sup>70</sup> She further criticized HIV-specific statutes as potentially being inadequate, specifically mentioning those that only require disclosure of HIV status as not being “sufficient in protecting powerless victims.”<sup>71</sup>

With time, legal scholars turned to criticizing HIV-specific statutes. Some scholars criticized the specific nature of these statutes and proposed changes. For example, in 2012, Rutgers Law School Professor Margo Kaplan criticized the state of HIV-specific statutes, specifically arguing for the following changes:

- (1) the actus reus should be defined in terms of substantial and unjustifiable risk, rather than serostatus and sexual activity; (2) the mens rea should be defined in terms of mental state as to transmission rather than mere knowledge of serostatus; and (3) a defendant should not be liable for the degree of risk to which her partner consented.<sup>72</sup>

Similarly, in a 2014 article, Joseph Allen Garmon called for statutory changes in HIV prosecution in response to medical breakthroughs.<sup>73</sup> In

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68. Teresa Wiltz, *HIV Crime Laws: Historical Relics or Public Safety Measures?*, PEW TRUSTS: STATELINE (Sept. 6, 2017, 12:00 AM), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/09/06/hiv-crime-laws-historical-relics-or-public-safety-measures>. However, some states were quick to pass HIV-specific criminal statutes, such as Florida, Tennessee, and Washington, who all published the nation's first HIV-specific criminal laws in 1986. J. Stan Lehman et al., *Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States*, 18 AIDS & BEHAV. 997, 999 (2014).

69. See, e.g., Amy L. McGuire, Comment, *AIDS as a Weapon: Criminal Prosecution of HIV Exposure*, 36 HOUS. L. REV. 1787, 1790 (1999) (arguing that HIV-specific statutes are better equipped to establish illegal behavior connected with the spread of HIV than traditional criminal statutes). It is important to note that in the early stages of legal scholarship regarding HIV transmission and criminalization, some scholars did take an early stand against criminalization. See, e.g., J. Kelly Strader, *Criminalization as a Policy Response to a Public Health Crisis*, 27 J. MARSHALL L. REV. 435, 445–47 (1994).

70. See McGuire, *supra* note 69, at 1815.

71. *Id.* at 1815–16.

72. Margo Kaplan, *Rethinking HIV-Exposure Crimes*, 87 IND. L.J. 1517, 1521 (2012).

73. Joseph Allen Garmon, Comment, *The Laws of the Past Versus the Medicine of Today: Eradicating the Criminalization of HIV/AIDS*, 57 HOW. L.J. 665, 696 (2014).

his criticism, he specifically noted the missing intent element of many states' HIV-specific statutes<sup>74</sup> and ultimately called for the revisions and redactions of the HIV-specific state statutes of the time.<sup>75</sup>

More recently, scholars have shifted from trying to find the most ethical vehicle for prosecuting HIV transmission under HIV-specific statutes and have instead turned to criticizing HIV prosecution altogether, advocating instead for alternatives to criminalization.

Courtney K. Cross, Assistant Professor of Clinical Legal Education at University of Alabama School of Law, suggests an alternative to continual changes to criminal statutes in an effort to mitigate prosecution: the adoption of state-led comprehensive responses to HIV informed by harm reduction.<sup>76</sup> She notes that states continuing to criminalize the behavior of PLHIV rather than shifting focus to expanding social and medical services are ultimately relying on the "overused and counterproductive" tool of these harsh criminal statutes, whether HIV-specific or otherwise.<sup>77</sup>

Cross argues that criminalization not only fails to meet the goals that states often purport to be pursuing, but that it has the serious potential to increase the spread of HIV.<sup>78</sup> She explains that by having these statutes focus on criminalizing behaviors that pose little risk of transmission, and punishing those who cannot and do not infect others, states are effectively disincentivizing HIV testing.<sup>79</sup>

Similarly, Dr. Angela Perone, Assistant Professor at the School of Social Welfare at U.C. Berkeley, staunchly criticized prosecution of PLHIV and its particularly harsh impact on marginalized communities.<sup>80</sup> She therefore suggested a number of proactive approaches for states to utilize instead of punitive criminalization, such as increasing education and beginning public health initiatives in marginalized communities with larger numbers of PLHIV.<sup>81</sup>

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74. *Id.* at 673.

75. *Id.* at 699; *see also* Carol L. Galletly et al., *New Jersey's HIV Exposure Law and the HIV-Related Attitudes, Beliefs, and Sexual and Seropositive Status Disclosure Behaviors of Persons Living With HIV*, 102 AM. J. PUB. HEALTH 2135, 2135 (2012) (criticizing New Jersey's HIV-specific statute and subsequent attitudes, beliefs, and stigmas of PLHIV).

76. Courtney K. Cross, *Sex, Crime, and Serostatus*, 78 WASH. & LEE L. REV. 71, 72 (2021).

77. *Id.* at 71.

78. *Id.* at 71–72.

79. *Id.*

80. Angela Perone, *From Punitive to Proactive: An Alternative Approach for Responding to HIV Criminalization that Departs from Penalizing Marginalized Communities*, 24 HASTINGS WOMEN'S L.J. 363, 394 (2013).

81. *Id.*

As reflected by evolving legal scholarship signaling much better alternatives to prosecution, an increasing number of experts are finding that criminalization is not the proper response to prevent HIV. Ergo, although New Jersey's passage of S-3707 was long overdue, continued prosecution for the transmission of HIV directly opposes the destigmatization efforts of the state for PLHIV.

#### IV. SOLUTIONS FOR NEW JERSEY TO DESTIGMATIZE HIV

As New Jersey attempts to become closer to completely destigmatizing HIV, legislators should implement a two-prong policy directive throughout the state to better achieve this goal: (1) improve HIV-education efforts throughout the state, and (2) issue prosecutorial guidance on the endangerment statute under which persons living with HIV will continue to be prosecuted.

##### A. *Improving HIV Education Efforts*

The first proposed solution is a two-prong approach to improving New Jersey's present HIV-education efforts: (1) making changes to its current K-12 health education system to allow more uniform, comprehensive HIV education, and (2) making adjustments to its HIV prevention initiatives to include education offerings on stigma and bias.

##### 1. K-12 Education

The first proposed solution is a statewide effort to increase public health education regarding both HIV and transmission. By increasing access to information regarding HIV transmission, New Jersey legislators could effectively accomplish their purported goal of destigmatizing HIV.

New Jersey may first accomplish this goal through improved K-12 curriculum on HIV and transmission. If legislators were to mandate an inclusive and uniform sex-education curriculum across the state that openly discusses HIV and sheds light on its history of bias in the nation, New Jersey would more effectively accomplish its goal of destigmatizing HIV.

Adopting comprehensive sex education has been linked with reducing stigma around sexual behaviors in general, with a 2020 literature review of comprehensive sex education programs<sup>82</sup> finding that

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82. Eva S. Goldfarb & Lisa D. Lieberman, *Three Decades of Research: The Case for Comprehensive Sex Education*, 68 J. ADOLESCENT HEALTH 13 (2020).

inclusive and affirming approaches to human sexuality increased appreciation for gender and sexual diversity—including lowering rates of homophobia.<sup>83</sup>

What changes should New Jersey make in order to require more consistent and inclusive sex education that in turn destigmatizes HIV? Firstly, as recommended by the Thrive NJ Sex Ed Subcommittee, the state should provide recommended curricula for sex education for all schools at every grade level. This would ensure consistency between schools, as well as provide guidance for educators to cover developmentally appropriate content in their classrooms. This can also be achieved by the state itself providing easily accessible sources of high-quality sex education materials, serving as a resource for teachers, parents, and students alike.<sup>84</sup>

Second, the state must strengthen accountability measures for school districts who do not comply. Due to varying levels of decision making and content from district to district (and even school to school), there is significant variation in how sex education is actually provided despite New Jersey's comprehensive sex education standards. With that said, as recently as September of 2022, New Jersey has begun to crack down on schools who refuse to comply.<sup>85</sup> Following pushback from schools, the New Jersey Department of Education warned that districts who do not implement the changes reflected in the updated standards will be subject to "disciplinary action."<sup>86</sup> However, time will tell how effective this threat will be and what this action will entail.

Lastly, the state should supplement its HIV education by adding curricula on its history of stigma and bias toward PLHIV. Although New Jersey's present standards address HIV, it is primarily in the context of abstinence. Per the standards, "any materials . . . concerning methods for the prevention of acquired immune deficiency syndrome (HIV/AIDS) . . .

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83. *Id.* at 16; see also Maggie Davis, et al., *Policies That Reduce Stigma Are Critical to Ending the HIV Epidemic*, ASTHO (Dec. 14, 2022), <https://www.astho.org/communications/blog/policies-that-reduce-stigma-are-critical-to-ending-the-hiv-epidemic/>.

84. Such content is already being developed by Thrive NJ, so it would be easy for the state to partner with this organization in order to provide such a database. See NEW JERSEY'S SEX ED REPORT CARD, *supra* note 48, at 15.

85. Mary Ann Koruth, *School Districts That Don't Teach New Sex Ed Standards Will Be Disciplined*, State Says, NORTHJERSEY.COM (Sept. 20, 2022, 4:25 AM), <https://www.northjersey.com/story/news/education/2022/09/20/nj-sex-education-standards-discipline-schools/69497535007/>; see also Josh Bakan, *N.J. Vows to Discipline Schools That Don't Teach New Sex-Ed Curriculum*, PATCH (Sept. 21, 2022, 3:47 PM), <https://patch.com/new-jersey/across-nj/nj-vows-discipline-schools-dont-teach-new-sex-ed-curriculum>.

86. Koruth, *School Districts*, *supra* note 85.



shall stress that abstinence from sexual activity is the only completely reliable means of eliminating the sexual transmission of HIV/AIDS.”<sup>87</sup>

Nowhere in the standards is there any criteria for or recommendation to discuss the stigma and bias against PLHIV.<sup>88</sup> Although HIV prevention is an important discussion in the sex-education curriculum, the present conversations stressing abstinence may very well create fear in youth that ultimately villainizes and stigmatizes HIV and PLHIV. Instead, these conversations must be paired with accurate information on its treatment and the stigmas that PLHIV have historically faced and continue to face today.<sup>89</sup>

Therefore, by New Jersey supplementing its sex-education curriculum for K–12 students—specifically reframing its HIV-education curriculum and having disciplinary measures in place to ensure cooperation across the state’s 593 school districts—it may better accomplish its goal of destigmatizing HIV.<sup>90</sup>

## 2. Supplementing Statewide Education Efforts

Further, although New Jersey is excelling in treating and preventing HIV, it is failing to destigmatize it through its current programs. Instead, in addition to its prevention and treatment initiatives, New Jersey must bolster them with HIV education and bias training for the general masses.

If New Jersey wishes to keep the TACD program focused on HIV prevention and catered toward HIV professionals, then it must create a new taskforce under HCSDI that focuses on disseminating HIV education and bias training toward the general public. Although opponents may argue that New Jersey accomplishes this through its requirement of HIV discussion in sex education school courses, as

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87. N.J. DEP’T ED., 2020 NEW JERSEY STUDENT LEARNING STANDARDS-COMPREHENSIVE HEALTH AND PHYSICAL EDUCATION 23 (2020), <https://www.nj.gov/education/cccs/2020/2020%20NJSL-CHPE.pdf>.

88. *See id.*

89. It is worth noting that a pending Senate Bill, 3106, aims to require each school district to incorporate age-appropriate anti-bias instruction as part of the New Jersey Student Learning Standards in Comprehensive Health and Physical Education. S. 3106, 220th Leg., Reg. Sess. (N.J. 2022). The bill calls for instruction that highlights and promotes diversity, equity, inclusion, tolerance, and belonging on a variety of topics, including gender and sexual orientation; disabilities; race and ethnicity; and religious tolerance. *Id.* at 2. The bill also calls for information to be provided to students on how people form implicit and unconscious biases. *Id.* Although the bill does not specifically address HIV, the passage of Senate Bill 3106 could very well be an important step in aiding New Jersey to inch closer to its goal of destigmatizing HIV. *See id.*

90. *New Jersey Public Schools Fact Sheet*, N.J. DEP’T. OF ED., <https://www.nj.gov/education/doedata/fact.shtml> (last visited Sept. 25, 2023).

established, these courses are not taught uniformly and New Jersey has only recently begun taking a stand against disobedient districts. Further, information on HIV, as well as historical context regarding the discrimination of PLHIV, has evolved tremendously over the past three to four decades and is continuing to do so.

Although New Jersey can address this information gap in several ways, the most viable is to add a subgroup to its current HCSDI that is focused on education and outreach. Instead of altering the current program's subgroups focused on prevention and treatment, this new group would focus its efforts on spreading information to the general public on HIV and its treatability, as well as addressing the bias and stigma that PLHIV have historically faced and continue to face.

New Jersey can also accomplish its goal of better destigmatizing HIV by adding to its current programs. For example, the TACD program could offer bi-weekly bias trainings for healthcare workers as opposed to its monthly ones. A 2021 study completed in New Jersey found low levels of stigma within the healthcare system which was linked to training on HIV-related stigmas and discrimination received the year prior.<sup>91</sup> This further reinforces the need for bias training, even for healthcare workers, in order for New Jersey to pursue its goal of destigmatizing HIV.

*B. Issuing Prosecutorial Guidance on the Endangerment Statute Under Which PLHIV Will Continue to Be Prosecuted*

Like former New Jersey Attorney General Bruck's issuance of prosecutorial guidance under New Jersey's repealed HIV-specific criminal statute, the second proposed solution is for current Attorney General Matthew J. Platkin<sup>92</sup> to issue guidance against the prosecution of PLHIV under New Jersey's endangerment statute.

Although the prosecution of PLHIV has not yet become an issue because of how recent the passage of S-3707 is, New Jersey must act without delay so it does not *become* a problem. In a state with such centralized prosecutorial guidance and uniformity like New Jersey,<sup>93</sup> guidance to county prosecutors who may be faced with prosecuting PLHIV under the state's endangerment statute for the very first time would be invaluable and help to effectively destigmatize HIV by ceasing prosecution.

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91. See Ann D. Bagchi & William L. Holzement, *HIV-Related Stigma Among Health Care Workers in New Jersey*, 6 STIGMA & HEALTH 200 (2021).

92. See *supra* note 12 and accompanying text.

93. See Ronald F. Wright, *Prosecutorial Guidelines and the New Terrain in New Jersey*, 109 PA. STATE L. REV. 1087, 1088 (2005) (describing how the New Jersey courts and legislature promoted uniform and accountable decisions from state prosecutors).

Therefore, New Jersey Attorney General Matthew J. Platkin should issue a letter to the Division of Criminal Justice and county prosecutors directing them not to prosecute PLHIV under the endangerment statute. As already established,<sup>94</sup> the criminalization of HIV only increases stigmatization, and guidance should be provided to prosecutors directing them against prosecuting PLHIV under the endangerment statute.

First, prosecutors should be directed to exercise their prosecutorial discretion in screening cases to determine when prosecution is unjustified in the interest of both public policy and justice.<sup>95</sup> Given the role of prosecutorial discretion, prosecutors could choose not to prosecute PLHIV under the endangerment statute barring unusual exceptions, which would stop the issues of criminalization and subsequent stigmatization in their tracks.

Second, if the prosecutorial guidance is to incorporate any exceptions in which prosecution of PLHIV under the endangerment statute is warranted, it should do so strictly and carefully, or better yet, list no extenuating circumstances or factors at all. Former Attorney General Bruck's guidance in 2021 included consideration of the following factors in deciding whether to charge an individual under the law: "[w]hether the individual forced or coerced their partner to engage in sexual activity; [w]hether the individual engaged in sexual activity for the purpose of transmitting HIV to their partner; and/or [w]hether the individual was adhering to a medically appropriate HIV treatment plan at the time of the sexual activity."<sup>96</sup>

However, in the new, proposed prosecutorial guidance, these factors should not be listed. Each of these factors is ultimately harmful in its own way and further stigmatizes HIV. The first factor is its own crime, which can be prosecuted regardless of one's HIV status, and the second two listed are ultimately based in fear-mongering generalities and outdated scientific research.

With all of that being said, the proposed guidance should be sure to emphasize, as former Attorney General Bruck's did, that it is "virtually impossible" to imagine a scenario where it would be appropriate to criminalize PLHIV without other aggravating factors unrelated to their

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94. See *supra* discussion in Section II.B.

95. For more information on the role of prosecutorial discretion, see *The Institutional and Functional Role of Prosecutors: Different Models and Practices*, UNODC (Feb. 2020), [https://www.unodc.org/e4j/zh/crime-prevention-criminal-justice/module-14/key-issues/2—the-institutional-and-functional-role-of-prosecutors\\_different-models-and-practices.html](https://www.unodc.org/e4j/zh/crime-prevention-criminal-justice/module-14/key-issues/2—the-institutional-and-functional-role-of-prosecutors_different-models-and-practices.html). See also Anna D. Vaynman & Mark R. Fondacaro, *Prosecutorial Discretion, Justice, and Compassion: Reestablishing Balance in Our Legal System*, 52 STETSON L. REV. 31 (2022).

96. Memorandum from Andrew J. Bruck, *supra* note 11, at 2.

diagnosis.<sup>97</sup> Prosecutorial guidance reminding prosecutors of their discretion in choosing not to prosecute PLHIV under the endangerment statute—despite the New Jersey Senate Committee's statements otherwise—will ultimately prevent PLHIV from being prosecuted under the endangerment statute and accomplish New Jersey's goal of destigmatizing HIV.

#### V. CONCLUSION

Although New Jersey deserves some praise for its overdue repeal of its HIV-specific statute, more work remains to be done. If New Jersey wishes to accomplish its goal of destigmatizing HIV, then a two-prong approach consisting of: (1) improving its current educational offerings, both via K-12 education and its statewide HIV-education initiatives, and (2) issuing prosecutorial guidance to cease the potential prosecution of PLHIV under the state's criminal endangerment statute is better suited to meeting the purported goal of destigmatizing HIV in New Jersey.

Even though New Jersey's passage of S-3707 is an, albeit performative, step in the right direction, HIV is nowhere near destigmatized. New Jersey, therefore, must continue to push forward in improving its HIV-education initiatives and issuing guidance to not allow the prosecution of PLHIV under the state's endangerment statute if it wishes to live up to its word, and more importantly, to make a real difference for its state residents living with HIV.

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97. *Id.*