

Southern Nevada Health District

- One of the ten largest local health department in US
- Over 800 employees
- Serves 2.2 million residents & 41 million visitors to Las Vegas & Clark County
- Statutorily created as a local government. NRS 439.362
- In-house counsels

Health Department Counsel

Organizational priorities: Prevent, Treat, and Control Communicable Diseases

Important Relationships between disease investigation staff, clinical staff, and attorneys

If attorneys understand staff priorities, they can better assist the mission

Prior to Law Change

Felony Crime:

Intentional Transmission of HIV in Nevada

- Prior to the law change, this was a way for prosecutors to “overcharge.”
- Usually used in solicitation cases or other sex related crimes
- Nevada law used to require proof from “State Board of Health” to demonstrate HIV positive status.
- Actual “intentional” was not required as an aspect of the law.

SNHD's Practice regard HIV Testing Results & Medical Records

- Only provide records with a HIPAA-compliant signed authorization
- Deny Informal Law Enforcement Requests
- Deny Administrative Subpoenas
- Deny DA Issued Subpoenas
- Decline to Comply with Ex Parte Courts & File Motion to Quash

2021 SB 275 HIV Modernization Bill

- Removed Intentional Transmission of HIV from criminal statute
- No longer a felony

Strategies and Lessons for Protecting HIV Data, Ensuring Data Privacy, and Assessing HIV Criminalization Laws and Policies at the State and Local Level

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Disclaimer

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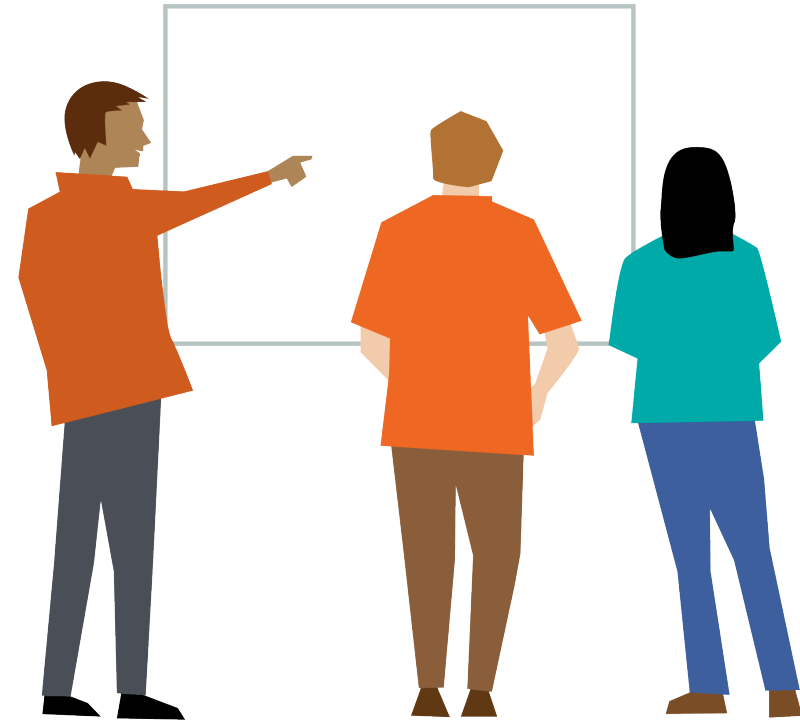
Funding Disclaimer

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Roadmap

- Overview of Legal and Policy Assessment Tool
- Overview of State Training Content
- Summary of Learnings from Trainings



ChangeLab Solutions

Mission

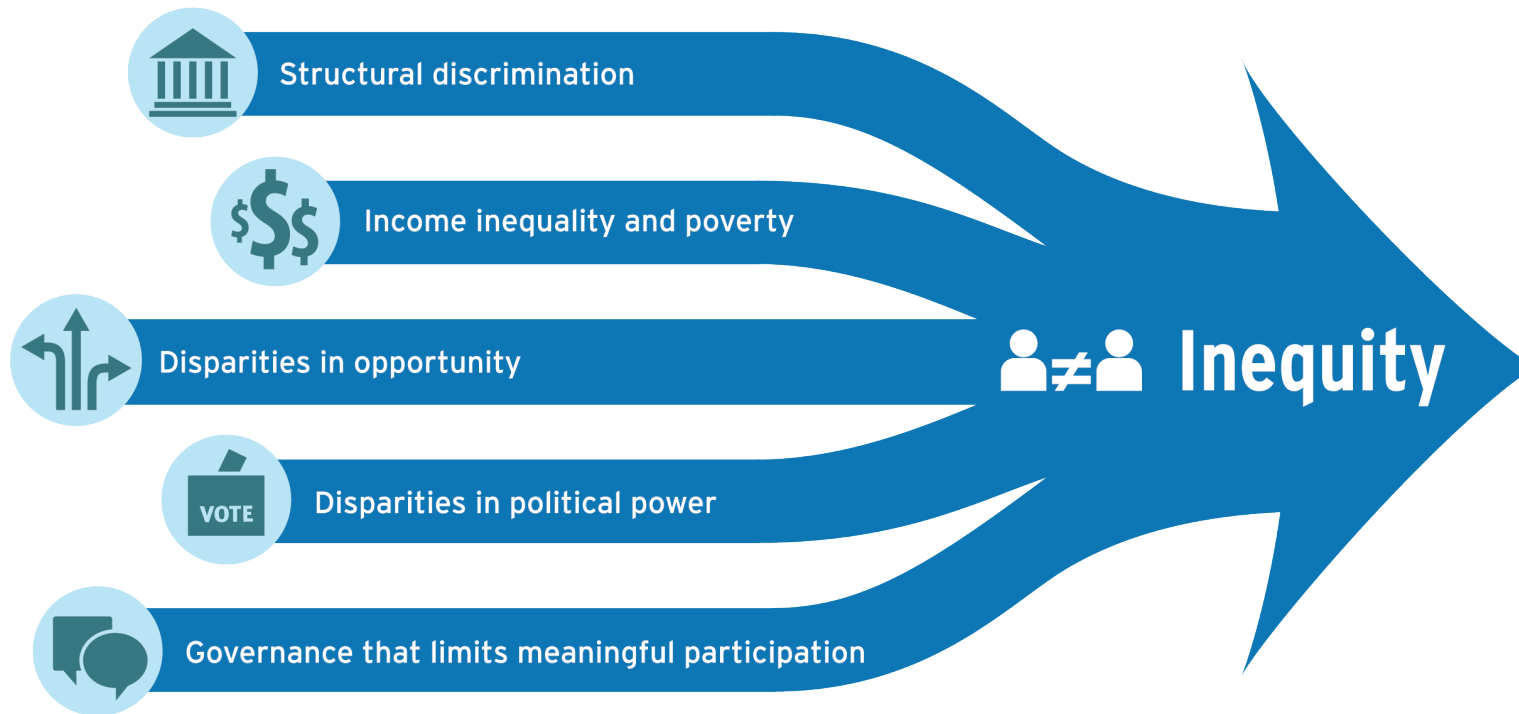
- Healthier communities for all through equitable laws & policies

Vision

We envision healthy, equitable communities where every person is economically secure and can attain their full health potential because

- Laws and policies are equity-focused, inclusive, and just;
- Systems and institutions, including government, facilitate meaningful participation and work to eliminate unjust disparities; and
- Investments prioritize people and places most affected by injustices and inequities.

Undoing the Drivers of Health Inequity



Explore the [Drivers of Health Inequity web tool](#) to learn more.



Overview of Legal and Policy Assessment Tool



ChangeLab Solutions

HIV Criminalization Legal and Policy Assessment Tool

Legal, Health, and Equity Considerations
Related to HIV Criminalization, Public
Health Surveillance, and Data Privacy

Purpose of toolkit

- Designed for public health professionals, policymakers, legal counsel, state and local health departments
- Assess their jurisdiction's laws related to HIV surveillance, privacy, and criminalization of HIV infection and related risk behaviors
- Identify opportunities to strengthen legal and policy protections for people living with HIV
- <https://www.cdc.gov/hiv/policies/law/hiv-criminalization-legal-and-policy-assessment-tool.html>



INTRODUCTION AND BACKGROUND



ASSESSING THE LEGAL AND POLICY LANDSCAPE



APPENDIX III: FINDING THE LAW

To assess HIV laws and policies in your jurisdiction, you will need to find relevant laws and record key aspects of those laws. This appendix provides a high-level introduction on how to execute these legal research steps. This content will likely be a review for individuals with legal research expertise.

Refresher: What Are Laws and Policies?

The terms *law* and *policy* are often used interchangeably. Throughout this document, *policy* means a written statement of a public agency's or organization's position, decision, or course of action. In contrast, *law* refers specifically to the codification and institutionalization of a policy by a government in the form of an ordinance, statute, or regulation. Thus, all laws are policies, but not all policies are laws. Note that law can also include constitutional provisions and judicial opinions (also known as case law).^{295, 297, 298}

Legislation (e.g., state statutes and local ordinances)

Legislation is a law drafted and adopted by a legislative body, like Congress, a state legislature, or a city council. The terminology for adopted legislation differs according to the level of government. At the federal and state levels, legislation that has been enacted and codified is known as a *statute*. Federal statutes can be found in the United States Code, and state statutes can be found in state codes, which are available on legal research services and, often, on state legislatures' websites. At the local level, legislation that has been enacted and codified is known as an *ordinance*. Local ordinances can be found in county or municipal codes, which are available from legal research services like Municode

and, often, on city or county websites. Legislation is not static but, rather, changes over time as legislative bodies amend or repeal statutes or ordinances.

Regulations (e.g., administrative codes)

A regulation is a law drafted and finalized by an administrative agency, like the federal Food and Drug Administration or a state or local health department. Regulations often fill in the details of broad-brush legislation, including rules for how a statute or ordinance will be implemented or carried out.^{299, 300, 301} Accordingly, legislation and regulations often interact, and both must be researched to understand how a particular issue area is being governed.^{302, 303, 304}

You may sometimes hear the term *rule* in addition to regulation. These terms mean the same thing and can be used interchangeably. The terminology for regulations does not differ according to the level of government; however, regulations are much less common at the local level compared with federal or state levels because local authority to adopt regulations varies widely across jurisdictions. Regulations that have been finalized are codified in federal, state, or local regulatory codes – which are often referred to as *administrative codes*. Regulatory codes can be searched via legal research services and, often, on government websites.^{305, 306, 307, 308}

Toolkit Content

The toolkit is divided into three sections

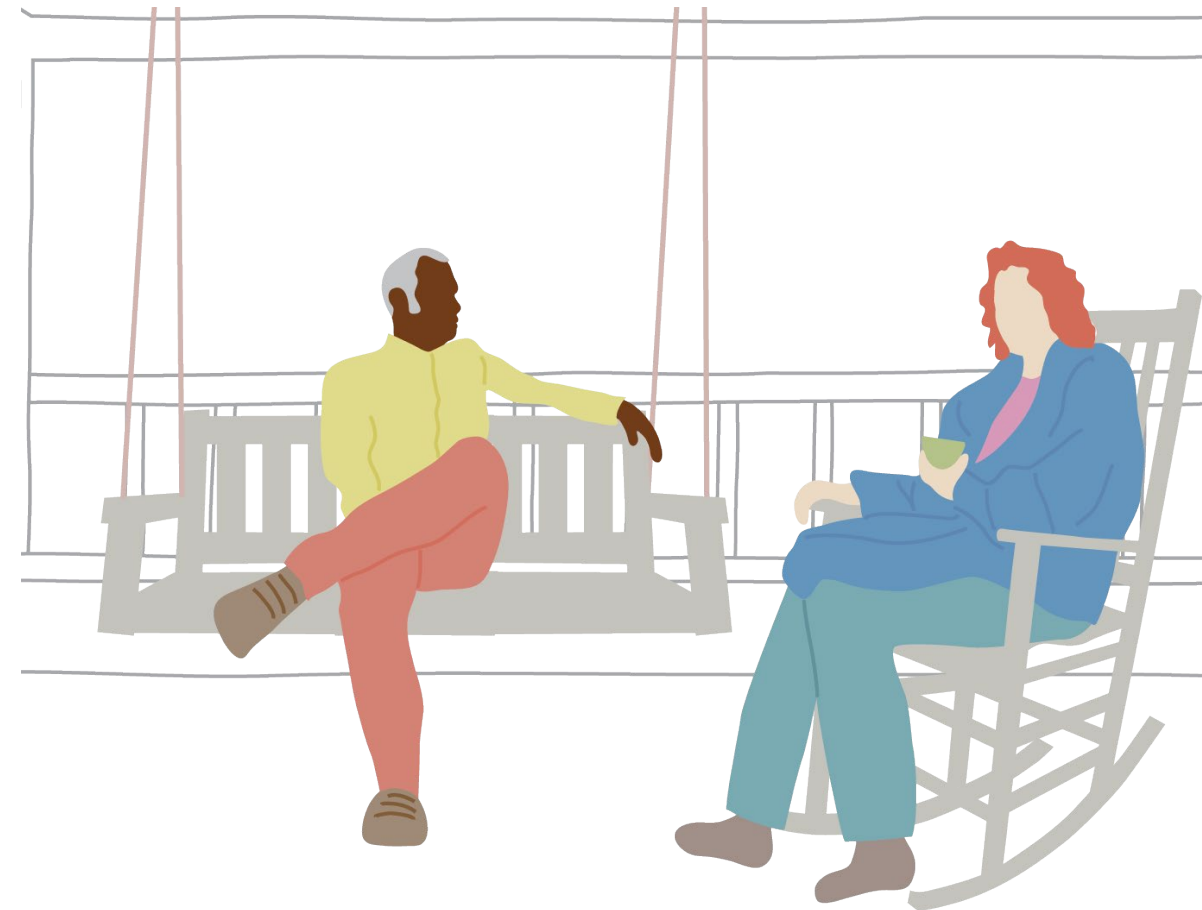
Health data privacy laws & policies

- Confidentiality of general health information, public health data, and HIV-related data
- Landscape of state and local health department policies, practices, and procedures
- Questions on how disclosure is defined, what data is required to be disclosed, how is disclosure regulated, and who has access to data



State public health surveillance & HIV testing laws

- HIV testing, HIV-specific surveillance and reporting, general disease reporting
- Questions on testing requirements, how testing results are shared, who is required to report test results, and what legal protections apply to testing results



HIV criminalization laws

- State laws criminalizing conduct related to HIV
- Reflective of current scientific information on transmission and prevention
- Penalties for violating criminalization laws
- Requirements for disclosure of HIV status



Considerations and resources for implementation & enforcement

- What is the **landscape** with respect to implementation and enforcement?
- What **additional resources** are available to support implementation and enforcement?



How Health Departments Can Use this Tool

- Identify key questions and considerations in evaluating local and state laws, policies, and practices
- Questions are designed to help public health professional, policymakers, and partners analyze how HIV-related laws may benefit or inhibit health equity



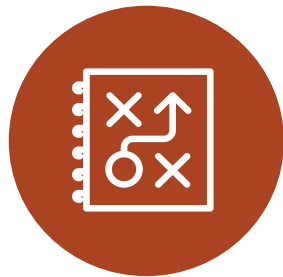
State Trainings



5 states* to operationalize toolkit



Audience: Public health and partner CBOs



Goals: Support existing work, facilitate conversation, develop action-oriented steps

Partners



ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS



The Network
for Public Health Law

Training Content



Legal Research
and Analysis



HIV Data
Privacy



HIV Testing and
Surveillance



HIV
Criminalization



Additional Resources:

Activities: Legal Reading and Analysis

STRUCTURE OF GOVERNMENT
Exploring the Fabric and Framework of Public Health Powers

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Center for State, Tribal, Local and Territorial Support

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PUBLIC HEALTH LAW
Past Present

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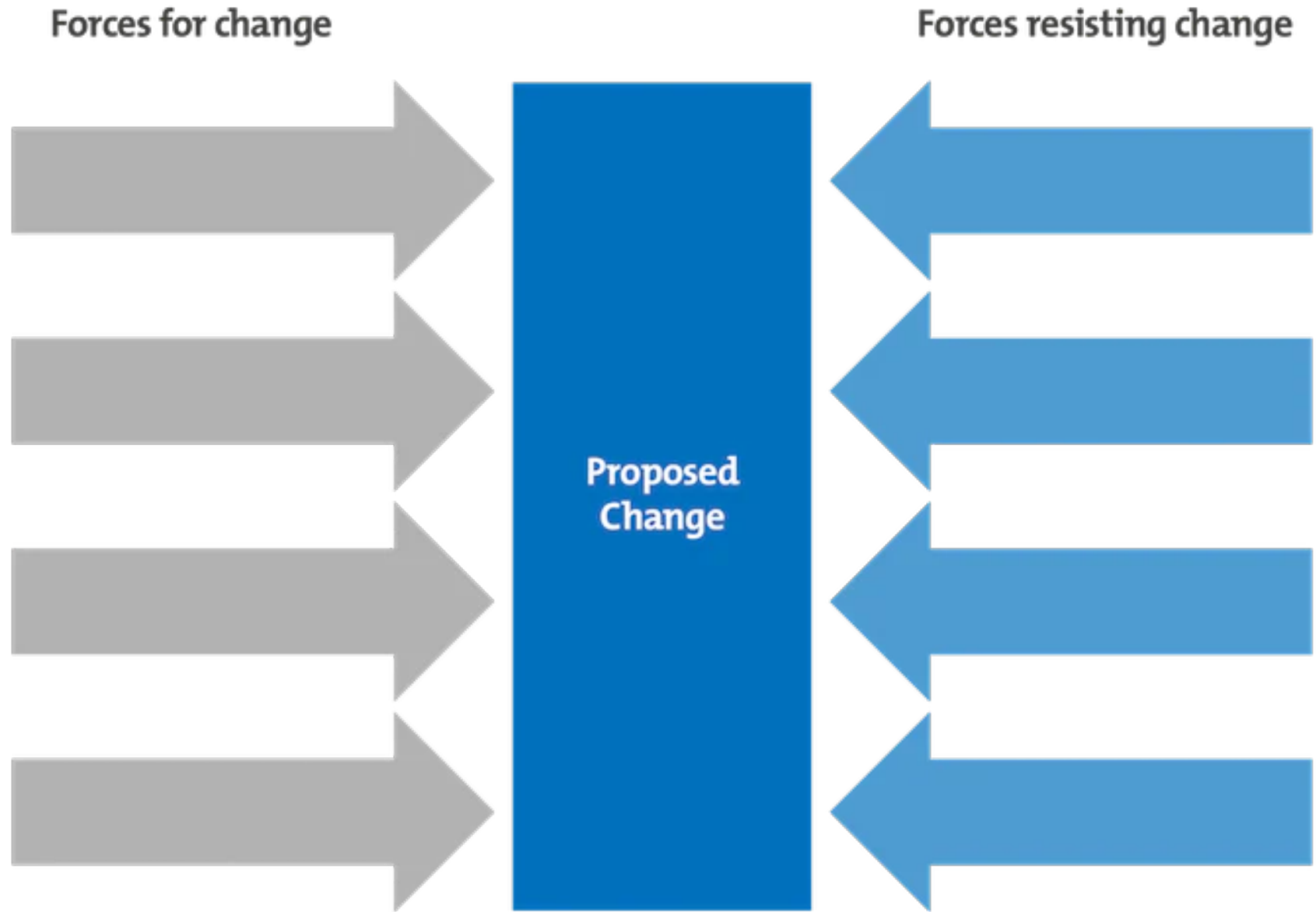
What Legal Powers Do Health Departments Have?
Overview of Administrative Law: Part 1

ChangeLabSolutions | CDC | Center for Disease Control and Prevention
Center for State, Tribal, Local and Territorial Support

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View courses at
www.publichealthlawacademy.org

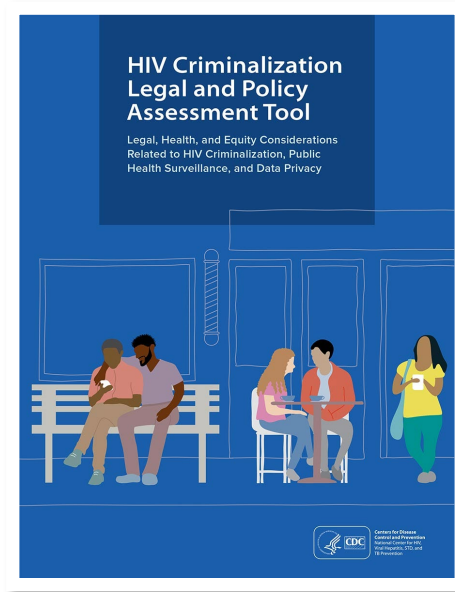
Activities: Force Field Analysis



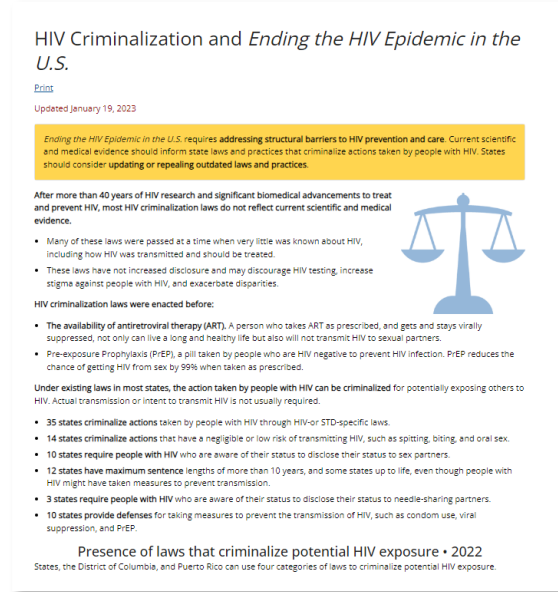
Learnings

- Gives states a reason to **dedicate time** to the work and **come together**
- Support from **multiple orgs** helps demonstrate **importance of HIV decriminalization**
- Non-legal attendees **feel empowered** to think more about law and policy, supporting more **concrete conversations and next steps**

List of Resources



[HIV Criminalization Legal and Policy Assessment Tool](#)



[HIV Criminalization and Ending the HIV Epidemic in the U.S.](#)

HIV Criminalization Legal and Policy Assessment Tool

Legal, Health, and Equity Considerations
Related to HIV Criminalization, Public
Health Surveillance, and Data Privacy



Acknowledgement

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Thank you!

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Legal and Ethical Considerations for HIV Data Sharing

Consent and HIV testing

Consent to HIV testing

- Governed by laws prohibiting assault and battery
- State law may vary about opt in/opt out testing

Consent to share data

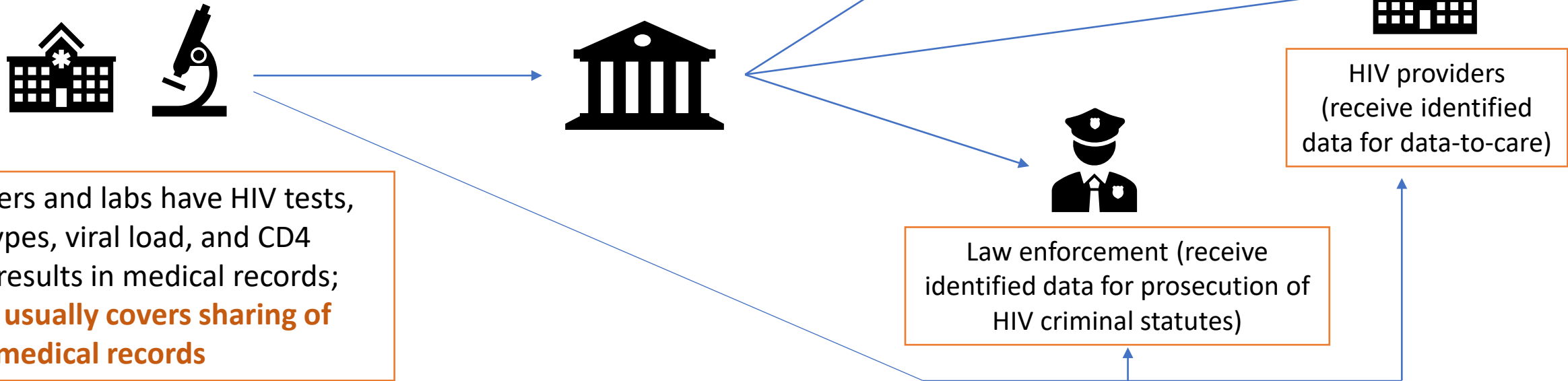
- Separate from consent to undergo medical procedure
- Governed by HIPAA and/or state law
- Consent typically not needed to share HIV surveillance data

Governmental Public Health Data Protections

Providers and labs MUST report certain HIV data (e.g., tests, genotypes, viral load, and CD4 counts) to state and/or local health departments; **these case reports are usually not governed by HIPAA**

Health department data sharing governed by state laws with **exceptions to confidentiality for both public health and non-public health activities**

Providers and labs have HIV tests, genotypes, viral load, and CD4 count results in medical records; **HIPAA usually covers sharing of these medical records**



How to Determine How Protective My State Laws Are with Regard to HIV Surveillance Data?

U.S. HIV Data Protection Landscape

Last Updated: Mar 3, 2023

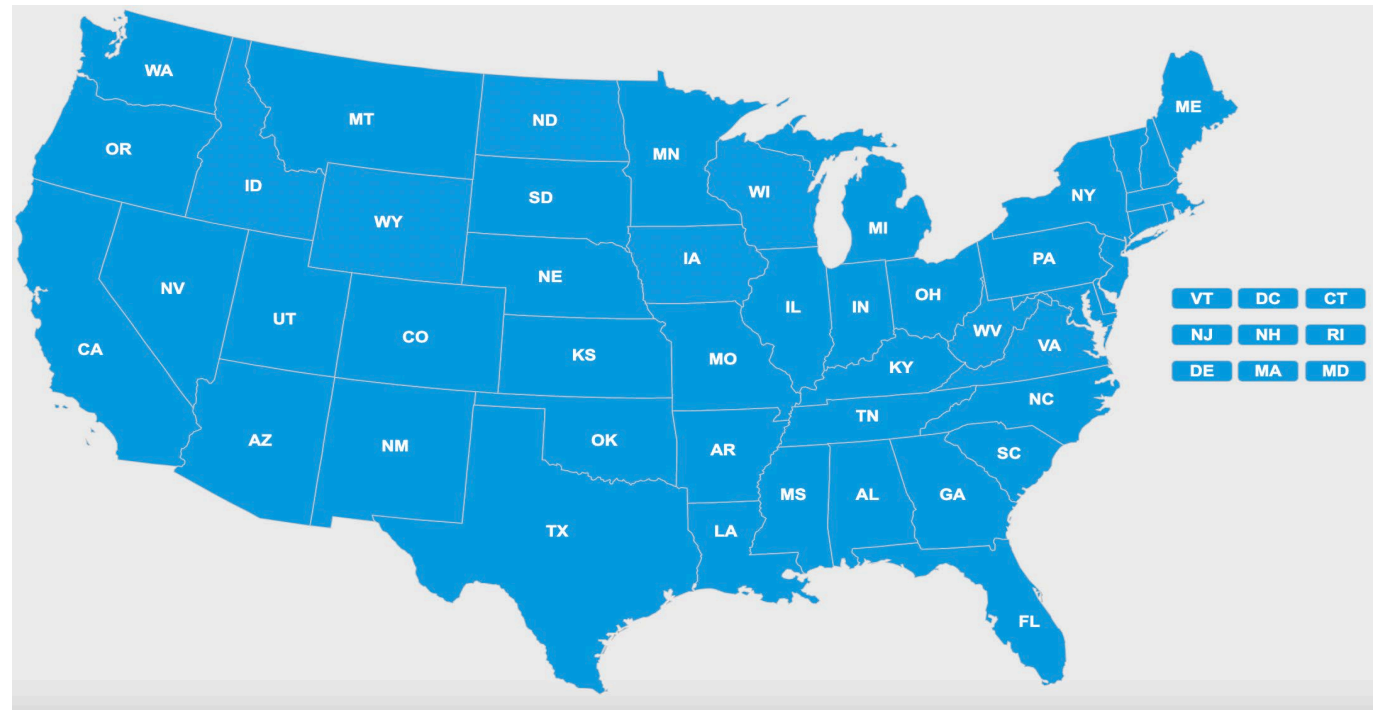
Does the state have a law criminalizing transmission of or exposure to HIV?
 Yes No

May the health department release HIV data in response to requests from courts, law enforcement, or prosecutors?
 Yes No

Does state law explicitly require a court order for release of health department HIV data in response to requests from courts, law enforcement, or prosecutors in all circumstances?
 Yes No

Does state law limit the type of HIV data the health department may release to courts, law enforcement, or prosecutors?
 Yes No

Does state law explicitly require that a defendant be charged with a crime before health department HIV data may be released in connection with criminal matters?
 Yes No



<https://nastad.org/resources/hiv-data-protection-landscape>

Example: Arkansas

Does state law explicitly require a court order for release of health department HIV data in response to requests from courts, law enforcement, or prosecutors in all circumstances?

No. Disclosure is permitted pursuant to a subpoena from a prosecutor. Ark. Code Ann. § 20-15-904(c)(1). This includes investigative subpoenas from prosecutors, which do not require court approval. Weaver v. State, 990 S.W.2d 572, 573 (Ark. Ct. App. 1999).

Does state law limit the type of HIV data the health department may release to courts, law enforcement, or prosecutors?

No. Disclosure may include all information and reports in connection with persons suffering from or suspected to be suffering from HIV or AIDS. Ark. Code Ann. § 20-15-904(c)(1).

Example: Massachusetts

Does the law explicitly permit release of health department HIV data for law enforcement and/or prosecution purposes?

No. There is no explicit authority for the health department to release data related to HIV or other communicable diseases for law enforcement or prosecution purposes.

Disclosure is permitted only when necessary for the state's or local jurisdiction's disease investigation, control, treatment, and prevention purposes, or for research purposes. 105 Mass. Code Regs. 300.120. This provision applies to state and local health departments.

Example: New York

Does the law explicitly permit release of health department HIV data for law enforcement and/or prosecution purposes?

Yes. A court may order disclosure of “confidential HIV-related information” upon an application showing a compelling need for disclosure for the adjudication of a criminal or civil proceeding. Proceedings in connection with the application must be conducted in camera. The person or entity in possession of the information must be given notice of the application and may file a written response to appear in person for the limited purpose of providing evidence on whether the application should be granted or denied. N.Y. Pub. Health Law § 2785. The law does not limit which parties may seek an order for disclosure. This provision applies to any provider of “health or social services” that holds the data, including but not limited to state, county, and local health departments and the state ADAP program. N.Y. Pub. Health Law §§ 2780, 2782(2)(d).

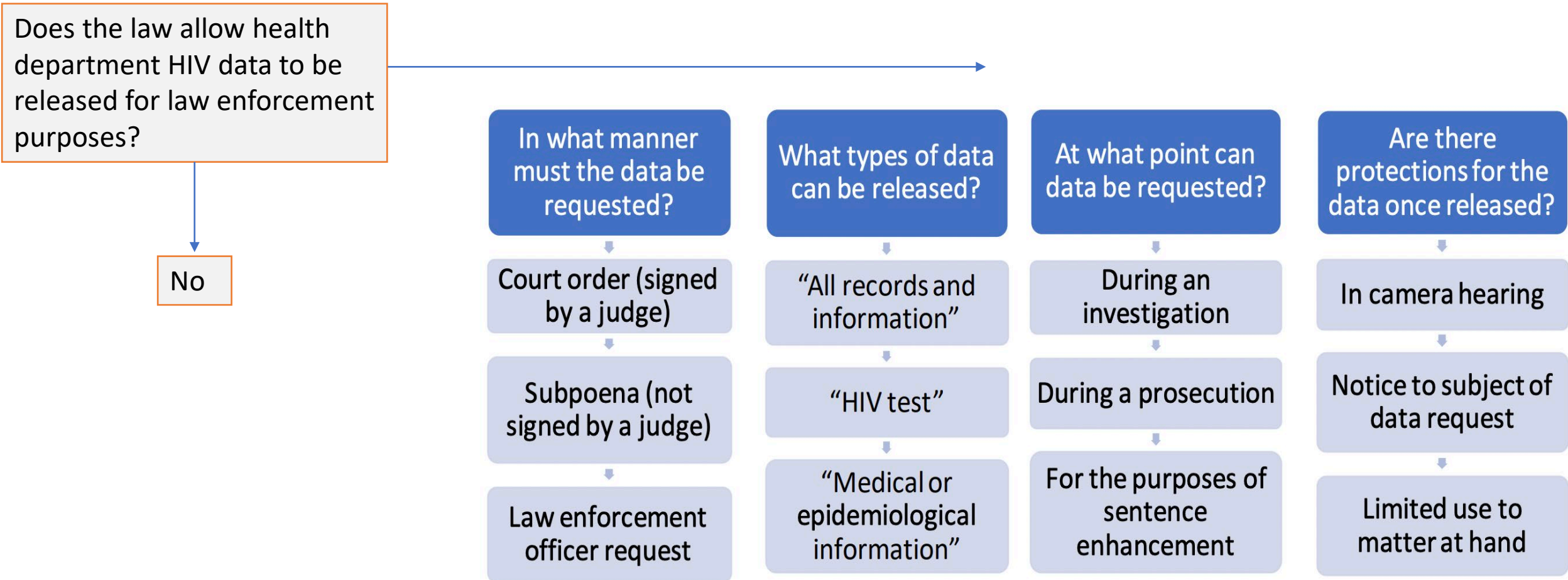
Does state law explicitly require a court order for release of health department HIV data in response to requests from courts, law enforcement, or prosecutors in all circumstances?

Yes. Disclosure is permitted only pursuant to a court order. N.Y. Pub. Health Law § 2785.

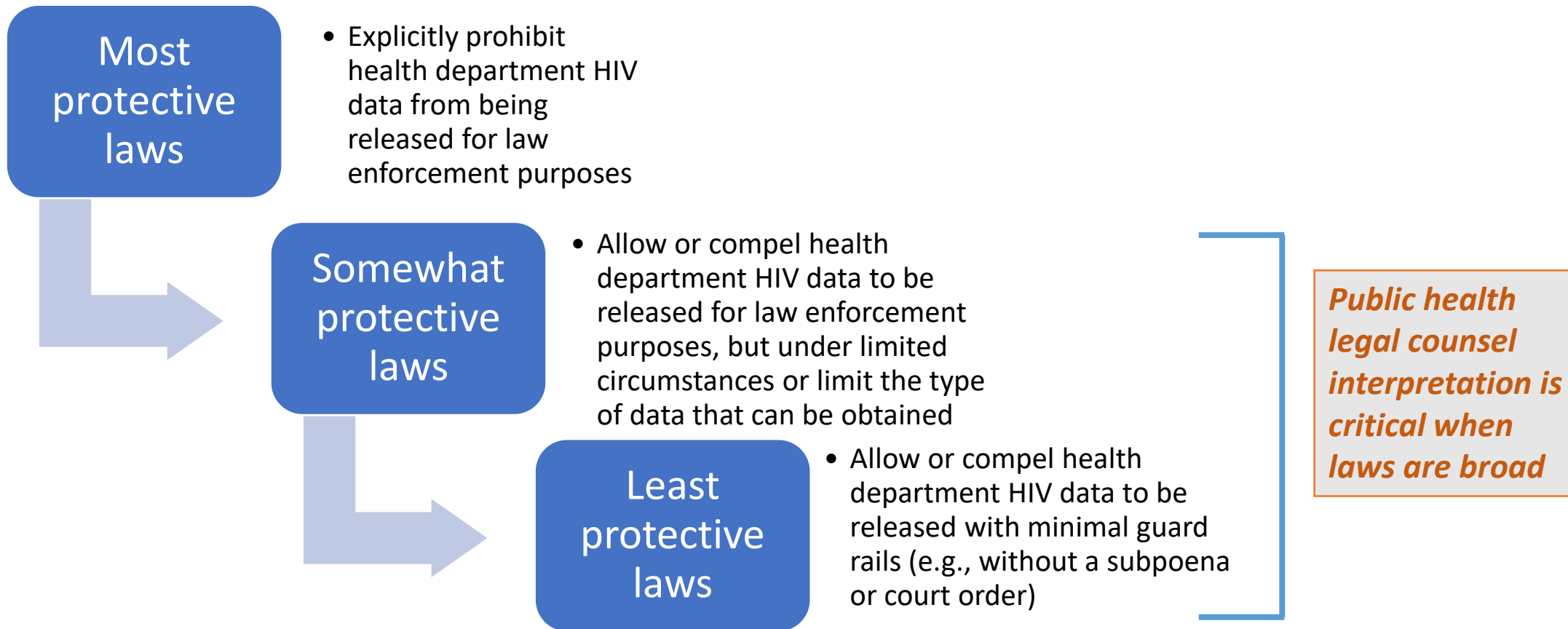
Does state law limit the type of HIV data the health department may release to courts, law enforcement, or prosecutors?

Yes. Disclosure of “confidential HIV-related information” is limited to information concerning whether an individual has been the subject of an “HIV-related test” or has HIV infection, an HIV-related illness, or AIDS, or information which identifies or reasonably could identify an individual as having one or more of such conditions, including information pertaining to such individual’s contacts. An “HIV-related test” is any lab test approved for the diagnosis of HIV. N.Y. Pub. Health Law §§ 2780, 2785. This applies to information held by any provider of “health or social services,” including but not limited to state, county, and local health departments and the state ADAP program. N.Y. Pub. Health Law §§ 2780, 2782(2)(d).

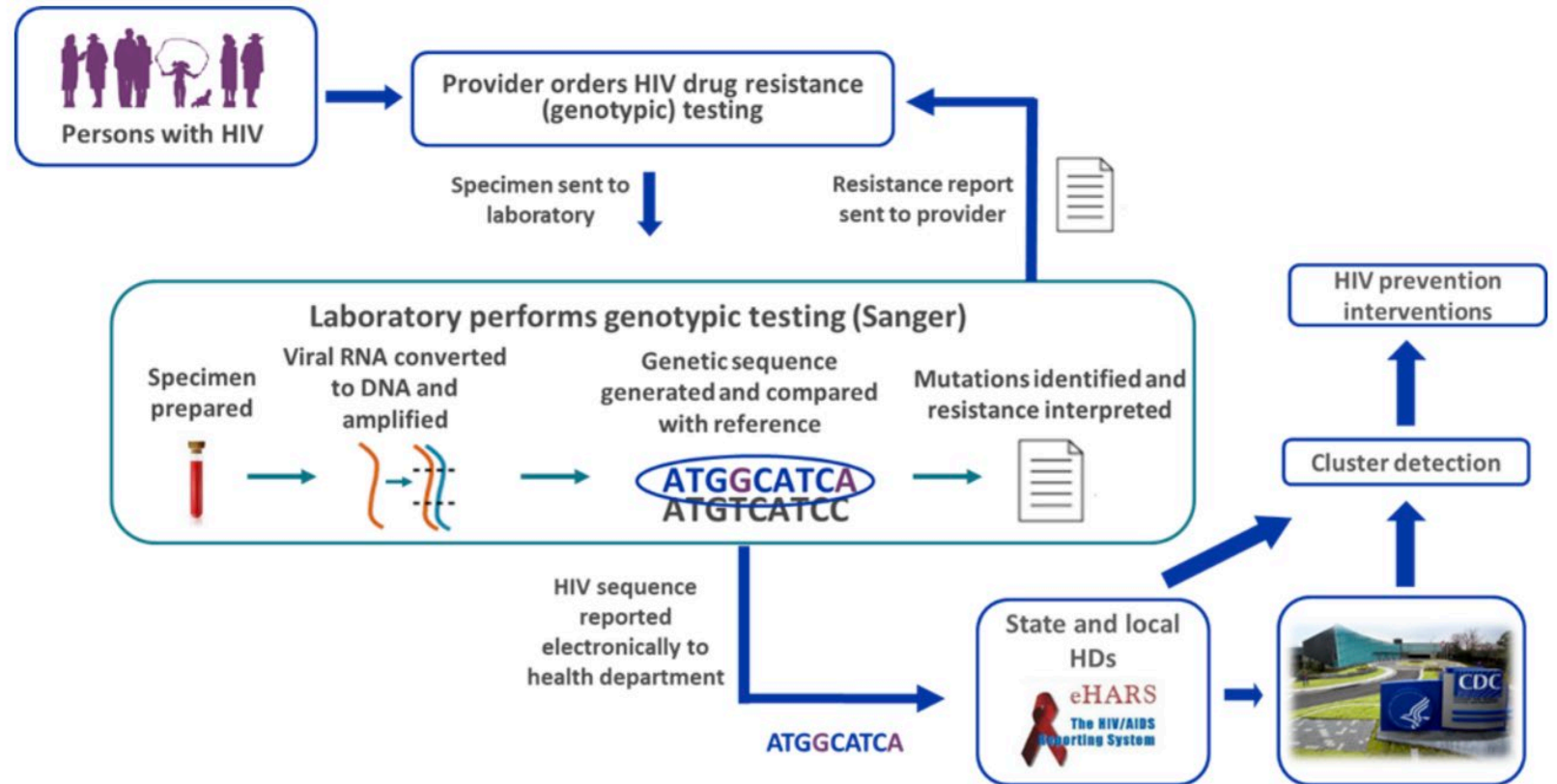
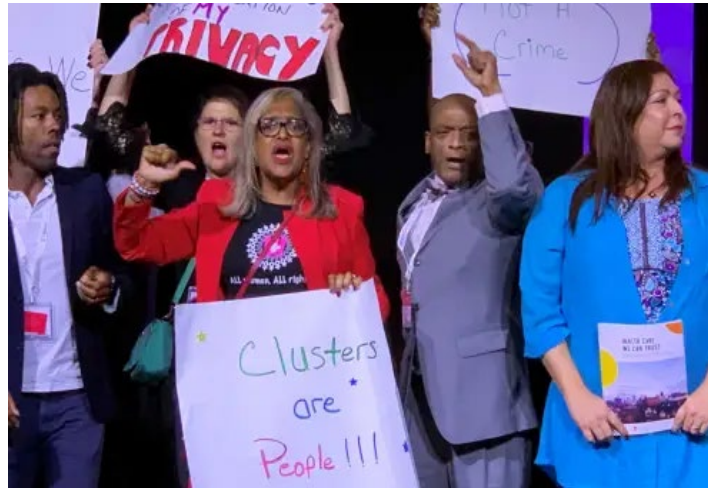
The Range of Legal Protections



State Laws Vary in How Protective They Are of Health Department HIV Data



HIV Cluster Detection Data: Law, Ethics, Public Health, and Community Trust Collide



Source: Centers for Disease Control and Prevention

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Consultant to NASTAD, www.nastad.org

THANK YOU