Losing Control: The Effect of Wyoming's Communicable Disease Laws on Human Trafficking Victims

Brenna Fisher

Follow this and additional works at: https://scholarship.law.uwyo.edu/wlr

Part of the Law Commons

Recommended Citation
Available at: https://scholarship.law.uwyo.edu/wlr/vol20/iss1/6

This Comment is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Wyoming Law Review by an authorized editor of Law Archive of Wyoming Scholarship.
COMMENT

Losing Control: The Effect of Wyoming's Communicable Disease Laws on Human Trafficking Victims

Brenna Fisher*

I. INTRODUCTION..............................................................................68

II. BACKGROUND .............................................................................70
   A. HIV in Wyoming .........................................................................70
   B. Informed Consent in Wyoming ................................................71
   C. Human Trafficking ......................................................................75

III. PROBLEMS WITH HIV TESTING IN WYOMING FOR HUMAN TRAFFICKING VICTIMS .................................................................76
   A. HIV Positive Trafficking Victims May Struggle with Access to Healthcare .........................................................................................77
   B. Victims Face Stigmatization for Trafficking and HIV Positive Status ..............................................................................................78
   C. Lack of Informed Consent Disregards the Trauma Informed Care Model .............................................................................................80
   D. There is No Standard Routinized Testing Procedure for HIV ..........82

IV. A REVIEW OF HIV INFORMED CONSENT AND TESTING LAWS NATIONWIDE ............................................................................83
   A. Case Law .......................................................................................83
   B. Legislation in Other States ..........................................................85
   C. What Wyoming's Laws Currently Accomplish ..............................87

V. LEGISLATIVE SOLUTIONS ..............................................................88
   A. Proposed HIV Testing Legislation ...............................................88
   B. Explicit Informed Consent ...........................................................90
   C. Routinization ................................................................................92
   D. Simplified Post-Test Counseling ................................................94

VI. ADDRESSING CRITICISMS ............................................................97
   A. Reconciling the Contradiction of Streamlined Routinization and Specific Informed Consent .................................................................97
   B. Addressing the Cost of Routinized Testing and Post-Test Counseling .................................................................................................99

VII. CONCLUSION .................................................................................100

* J.D. Candidate, University of Wyoming College of Law, Class of 2021. I would like to express my sincere thanks to Professor Melissa Alexander for her continuous guidance and insight throughout the development of this Comment. I would also like to thank the Honorable Tori Kricken, Lauren McLane, Emily Madden, Keeley Cronin, and the Wyoming Law Review Editorial Board for taking time to provide feedback and suggestions. Lastly, I would like to thank Erin Fisher, Matt Fisher, and Jan Maurer for listening to several one-sided conversations on this topic when this Comment was just a messy idea, and for their endless support during law school.
I. INTRODUCTION

In August 2019, Jeffrey Epstein, a United States billionaire, killed himself in prison after being charged with two sex-trafficking crimes involving underage girls. Just two months earlier, a federal jury convicted Keith Raniere of sex trafficking charges after he conspired with former celebrities to traffic women under the guise of a self-help group. In 2018, Wyoming Highway Patrol Officers arrested a man on his way to traffic two teenage girls at Little America Hotel in Cheyenne. While public outcry and media coverage bring much needed attention to the human trafficking problem, public interest wanes when it comes to tackling the challenges survivors face. When human trafficking victims escape from their captors, they continue to face difficulties, particularly if they test positive for HIV, as the societal stigma of HIV/AIDS still persists. To combat this injustice, Wyoming should pass legislation that guarantees help to trafficking victims as they heal from their abuse. The ideal solution includes healthcare laws that better facilitate victims' recovery and ensures their patient autonomy.


4 See Anne Johnston et al., Framing an Emerging Issue: How U.S. Print and Broadcast News Media Covered Sex Trafficking, 2008-2012, 1 J. OF HUMAN TRAFFICKING, 235, 243 (2015). In a review of media articles about coverage of human trafficking, “crime” was a key part of the article 60 to 95% of the time, while “policy” and “legislation” were only mentioned 30 to 42% of the time. Id. “Public health” was mentioned even less frequently, typically less than 10% of the time. Id. This note will use the terms “survivor” and “victim” interchangeably, as other legal scholars have done, to denote the fluid stages of victimization and recovery. See Sarah Dohoney Byrne, Meeting the Legal Needs of Human Trafficking Survivors, 52 WAKE FOREST L. REV. 379, 379 (2017) (referring to the use of the word “survivors” in this sentence).


The Wyoming State Legislature designed its communicable disease laws to protect the public at large from the spread of contagious diseases.\(^8\) However, Wyoming’s healthcare laws do not require a healthcare provider to inform any patient of the potential social or legal consequences of an HIV test.\(^9\) Wyoming’s laws leave individuals who are HIV positive with little information about legal protections, available medical treatments, and resources.\(^10\) The current communicable disease statutes only suggest healthcare professionals give minimal, if any, information to patients before they are tested for HIV.\(^11\) Furthermore, the law does not effectively require routine testing because it fails to mandate screening for those who could be at risk.\(^12\)

This is particularly problematic for human trafficking victims, who are at a greater risk of contracting HIV.\(^13\) To address this problem, the Wyoming Legislature should aim to routinize HIV testing without a screening process.\(^14\) This reform should include adopting measures to ensure trafficking victims are adequately informed and assisted as they navigate the HIV testing process.\(^15\)

\(^8\) See Wyo. Stat. Ann. § 35-4-101 (2019) (“The state department of health shall have the power to prescribe rules and regulations for the management and control of communicable diseases.”); see also Pehle v. Farm Bureau Life Ins., 397 F.3d 897, 905 (10th Cir. 2005) (“While the plaintiffs argue that § 35-4-133 protects victims of diseases as a separate class, the statute’s own statement of its intent refutes this argument; it states unequivocally that its purpose is to benefit the public in preventing the spread of sexually transmitted disease.”).


\(^10\) See id. § 35-4-131 compared with, N.Y. Pub. Health Law § 2781 (Consol. 2019); see also infra notes 159–79. Linking individuals to treatment and information is critical because, without it, HIV positive individuals may not seek follow-up care due to lack of sophistication or uncertainty while maneuvering through the healthcare system. See Stacey A. Rizza et al., HIV Screening in the Health Care Setting: Status, Barriers, and Potential Solutions, 87 Mayo Clinic Division Proc. 915, 920 (2012).

\(^11\) Wyo. Stat. Ann. § 35-4-131(b). If an individual is reasonably suspected of an HIV or AIDS infection, a healthcare provider may “administer, refer . . . or recommend appropriate treatment.” Id. Upon learning that an individual is reasonably suspected of an HIV or AIDS infection, a health officer may arrange for counseling on the “medical significance of the . . . disease.” Id. § 35-4-133(a).

\(^12\) Wyo. Stat. Ann. § 35-4-131(b). The Wyoming statute states that a physician shall recommend treatment to a person who was exposed to or is reasonably suspected of having a sexually transmitted infection. Id. (emphasis added). However, there is no requirement that a healthcare provider ask for a sexual history, so they may be ignorant to whether a patient was exposed to or currently has a sexually transmitted infection. See id. § 35-4-131.

\(^13\) See Michele R. Decker et al., Human Rights Violations Against Sex Workers: Burden and Effect on HIV, 385 Lancet 186, 186 (2015). Women in sex trafficking are at a higher risk to contract HIV than women in other types of trafficking, although the risk is prevalent for all victims. Kathleen E. Wirth et al., How Does Sex Trafficking Increase the Risk of HIV Infection? An Observational Study from Southern India, 177 Am. J. Epidemiology 232, 238 (2013).

\(^14\) See infra notes 211–36 and accompanying text.

\(^15\) See infra notes 197–210 and accompanying text.
Routinization of HIV testing requires robust informed consent and post-test counseling for all HIV tests.\textsuperscript{16}

This Comment argues that the Wyoming State Legislature should update Wyoming’s current communicable disease laws to require informed consent, routine HIV testing, and post-test counseling for anyone tested for HIV.\textsuperscript{17} These changes will better assist human trafficking victims, who already face increased stigmatization and a slower recovery if they are HIV positive.\textsuperscript{18} Part II of this Article describes the general concept of informed consent and provides information about HIV and human trafficking across the country and in Wyoming.\textsuperscript{19} Part III identifies four problems with Wyoming’s current communicable disease statutes.\textsuperscript{20} Part IV examines informed consent and HIV testing case law and statutes from other jurisdictions.\textsuperscript{21} Part V proposes new legislation for HIV testing in Wyoming.\textsuperscript{22} Part VI addresses potential counterarguments.\textsuperscript{23}

II. BACKGROUND

A. HIV in Wyoming

Human Immunodeficiency Virus (HIV) weakens a person’s immune system by attacking white blood cells which would otherwise fight infection.\textsuperscript{24} Left untreated, HIV can progress to Acquired Immunodeficiency Syndrome (AIDS) in as little as two years, and lead to death from an AIDS related infection within three years later.\textsuperscript{25} Fortunately, drug therapy and preventative measures can extend

\begin{itemize}
\item[\textsuperscript{16}] See infra notes 197–210; 237–59 and accompanying text.
\item[\textsuperscript{17}] See infra notes 197, 211, 237 and accompanying text.
\item[\textsuperscript{18}] See infra notes 79 and 103. Although this Comment will focus on the benefits of new legislation for human trafficking victims, the proposed legislation complies with WHO Guidelines for improving HIV testing and treatment for entire populations. See WORLD HEALTH, ORG., CONSOLIDATED GUIDELINES ON HIV TESTING SERVICES, 2–3, 10 (July 2015), apps.who.int/iris/bitstream/handle/10665/179870/9789241508926_eng.pdf?sequence=1 [https://perma.cc/2X59-T8FE] [hereinafter WHO Guidelines].
\item[\textsuperscript{19}] See infra notes 24–77 and accompanying text.
\item[\textsuperscript{20}] See infra notes 78–141 and accompanying text.
\item[\textsuperscript{21}] See infra notes 142–90 and accompanying text.
\item[\textsuperscript{22}] See infra notes 191–96 and accompanying text.
\item[\textsuperscript{23}] See infra notes 260–91 and accompanying text.
\item[\textsuperscript{25}] See Adnan Bashir Bhatti et al., Current Scenarios of HIV/AIDS, Treatment Options, and Major Challenges with Compliance to Antiretroviral Therapy, 8 CURVES 1, 2 (2016). Without treatment, HIV can progress into AIDS any time between two and fifteen years after the initial HIV diagnosis. Id. Once an individual has AIDS, the survival time is about three years if left untreated. See About HIV/AIDS, supra note 24.
\end{itemize}
life expectancies and prevent HIV from ever progressing to AIDS.\textsuperscript{26} While HIV is no longer the deadly disease it was twenty years ago, early diagnosis and treatment are critical to ensure a prolonged life for HIV positive individuals.\textsuperscript{27}

Between 2013 and 2017, there were seventy-seven people in Wyoming diagnosed with new cases of HIV and 36% of those individuals were diagnosed with AIDS.\textsuperscript{28} In 2017, a total of 312 HIV positive individuals were living in Wyoming.\textsuperscript{29} Over the past thirty years, 39% of HIV positive individuals in the state died of HIV/AIDS related causes.\textsuperscript{30}

The Wyoming Department of Health (DOH) lists HIV as a communicable disease.\textsuperscript{31} Accordingly, if an individual tests positive for HIV, a healthcare professional shall report that result to the DOH to assist in “preventing the spread of sexually transmitted disease[s].”\textsuperscript{32} To protect the general public, healthcare professionals may administer or recommend treatment to any individual suspected of or exposed to infection.\textsuperscript{33} Aside from this mandatory reporting, HIV test results are generally kept confidential.\textsuperscript{34}

B. Informed Consent in Wyoming

Common law fiercely protects a person’s right to control his or her own body, and the practice of informed consent clearly illustrates this principle.\textsuperscript{35} The Wyoming Constitution guarantees competent adults the right to make their own healthcare decisions.\textsuperscript{36} In Wyoming, informed consent requires physicians

\textsuperscript{29} Id. at 12.
\textsuperscript{30} See id. at 14.
\textsuperscript{32} WYO. STAT. ANN. § 35-4-132(a) (2019).
\textsuperscript{33} Id. § 35-4-131(b).
\textsuperscript{34} See id. §§ 35-4-132(a), (d). There are three relevant exceptions: (1) when the patient gives written consent to release identifying information and HIV status; (2) when identifying information is necessary for criminal prosecution; or (3) when identifying information must be given to notify healthcare professionals or employees “to protect life and health.” Id. § 35-4-132(d); WYO. STAT. ANN. § 7-1-109(f) (2019).
\textsuperscript{36} WYO. CONST. art. I, § 38.
“to disclose only such risks that a reasonable practitioner of like training would have disclosed in the same or similar circumstances.” 37 This standard applies to all medical procedures and tests in Wyoming.38 While roughly half of the states follow this “reasonable physician” approach, the others provide patients more robust protection.39 These states have adopted a standard of informed consent that requires physicians to disclose information that would be material to a reasonable patient’s informed decision about the procedure.40 This standard of informed consent better protects patient autonomy.41 Comparatively, Wyoming’s standard of informed consent places more emphasis on the judgment of a reasonable practitioner than the patient’s autonomy.42

Neither the reasonable patient nor the reasonable practitioner standard of informed consent places emphasis on disclosing social or legal risk factors that may accompany a treatment or diagnosis.43 Under the reasonable practitioner standard, which Wyoming follows, sociolegal risks are not generally included as risks that a reasonable practitioner would disclose.44 Under the reasonable patient standard, healthcare practitioners must disclose material risks, which courts have held do not include social or legal risks.45 In fact, abortion is one of the few medical procedures where doctors are not only required to disclose medical risks, but also

38 See id.
39 Richard Weinmeyer, Lack of Standardized Informed Consent Practices and Medical Malpractice, 16 AM. MEDICAL ASSOC. J. ETHICS 120, 121 (2014); see generally infra note 40 and accompanying text.
42 See Weber, 950 P.2d at 552.
44 See Clark v. Grigson, 579 S.W.2d 263, 265 (Tex. Civ. App. 1978) (holding that under the reasonable practitioner standard, a physician was not required to disclose legal risks of a psychiatric evaluation).
45 See Arato, 858 P.2d at 599–600 (holding that informed consent under the reasonable patient standard did not require a physician to disclose nonmedical risks); see also Presidential Women’s Ctr., 937 So.2d at 119–20 (holding that because physicians are not sociologists, they are only required to disclose medical risks under the reasonable patient standard).
sociolegal risks.\textsuperscript{46} The United States Supreme Court has found that in certain instances, such as abortion, additional information outside the scope of traditional informed consent can be helpful to patients.\textsuperscript{47} Legal scholars have argued that informed consent generally should include other risks that help patients consider factors beyond medical risks, including social, legal, and financial consequences.\textsuperscript{48}

Because informed consent stems from common law, there is no current Wyoming statute expressly requiring written or verbal informed consent before a healthcare professional administers an HIV test.\textsuperscript{49} As a result, physicians may inform the patient only about the actual test procedures for HIV and the risks associated with a small blood draw from a needle instead of giving patients information about living with HIV/AIDS.\textsuperscript{50} Given the language of Wyoming’s communicable disease statutes, providers may even test human trafficking victims for HIV without their knowledge.\textsuperscript{51}

The Tenth Circuit Court of Appeals only considered the issue of whether there is a duty to disclose HIV test results once, in \textit{Pehle v. Farm Bureau Life Insurance Co.}\textsuperscript{52} In \textit{Pehle}, husband and wife plaintiffs, who were Wyoming residents, applied for life insurance which required HIV testing at the time of

\begin{footnotes}
\item See also Planned Parenthood v. Casey, 505 U.S. 833, 882–83 (1992) (holding that it is permissible to provide truthful information about consequences that have no direct bearing on the patient’s health to prevent harmful psychological consequences). Targeted Regulations of Abortion Providers (TRAP) laws impose a multitude of requirements on abortion providers, including a requirement of counseling before abortions in thirty-three states. See Katherine Kubak et al., \textit{Abortion}, 20 GEO. J. GENDER & L. 265, 284, 286–87 (2019). Some have criticized this approach of providing information about sociolegal consequences as a component of informed consent. Ian Vandewalker, \textit{Abortion and Informed Consent: How Biased Counseling Laws Mandate Violations of Medical Ethics}, 19 MICH. J. GENDER L. 1, 13 (2012).

\item See Planned Parenthood, 505 U.S. at 882–83.


\item See WYO. STAT. ANN. § 35-4-132 (2019); id. § 35-4-131(b). The communicable disease statutes only encourage healthcare professionals to provide recommendations or offer treatment once they confirm a positive test result. See id.


\item See Doe v. High-Tech Institute, Inc., 972 P.2d 1060 (Colo. App. 1998) (regarding a plaintiff who was tested for HIV without his knowledge, under the guise of being tested for Rubella); see also Doe v. City of Chicago, 883 F. Supp 1126, 1132 (N.D. Ill.1994) (regarding plaintiffs who were tested for HIV without their consent during a general medical exam).

\item Pehle v. Farm Bureau Life Ins., 397 F.3d 897 (10th Cir. 2005).
\end{footnotes}
application.53 The insurance company sent their blood samples to an independent laboratory in Kansas for testing.54 When testing showed that the couple was HIV positive, the insurance company rejected the couple's application, but did not disclose their HIV status.55 Two years later, the couple finally learned they were HIV positive when a healthcare professional diagnosed the wife with AIDS.56 The couple sued the insurance company and the lab that analyzed their results based on a negligence theory.57

On appeal, the Tenth Circuit concluded that Farm Bureau Life Insurance Company owed the couple a limited duty to disclose their HIV status.58 The court reasoned that the insurance company had purported to act with the plaintiff’s best interests in mind and the plaintiffs trusted the insurance company enough to give them their blood samples.59 In contrast, the Kansas laboratory owed no duty to the plaintiffs, “[b]ecause Wyoming’s reporting statutes were primarily intended to protect the general public, and not HIV victims . . . ”60 The Tenth Circuit came to this result ultimately on public policy grounds, finding that the Pehles were just members of the public in this situation, and members of the public had no standing under Wyoming law to sue the out-of-state laboratory.61

While the issue considered in Pehle was the duty owed in a negligence action, and not informed consent, the holding does imply legal standards about informed consent.62 The holding in Pehle turned on the fact that the insurance company was held to a higher duty than the laboratory because there was a relationship of trust and confidence between the company and the plaintiffs.63 Presumably, a court would likewise hold physicians to a higher duty to disclose because patients rely on and trust in their doctors.64 Doctors must comply not only with the standards in their field, but also with acceptable general societal standards.65 It follows from Pehle that, if life insurance companies are held to a certain standard because of

53 Id. at 899.
54 Id.
55 Id.
56 Id.
57 Id.
58 Id. at 903–04.
59 Id.
60 Id. at 905.
61 Id. at 904–05.
62 Id. at 905.
63 See Pehle, 397 P.3d at 903.
65 See id.
a relationship of trust and confidence, doctors are almost certainly held to that same standard.66

C. Human Trafficking

Human trafficking is modern-day slavery.67 Sex trafficking, a common form of human trafficking, occurs when an adult engages in a commercial sex act because of force, fraud, or coercion.68 Wyoming has recorded a total of sixty-one reported cases of human trafficking since 2012, although the estimated number of actual victims is much higher.69 Each year, there are approximately one hundred unreported cases of human trafficking in Wyoming.70 Wyoming law enforcement has rescued several young victims from sex trafficking just in the past two years.71

Global research shows that human trafficking victims, especially female sex trafficking victims, are at a heightened risk of contracting HIV.72 Additionally, these coerced sex trafficking victims are often indistinguishable from sex workers

66 See id. (finding that because people rely on and trust doctors, doctors must comply with the standards of their field and also the standards society sets or they are subject to legal action).


68 What is Modern Slavery?, supra note 67.

69 Wyoming, NAT’L HUMAN TRAFFICKING HOTLINE, humantraffickinghotline.org/state/wyoming [https://perma.cc/Y74U-79YR] (last updated Dec. 31, 2018). Approximately 43% of the reported cases were sex trafficking victims, with the remaining percentage either solely trafficked for labor or a combination of sex and labor. Id.

70 See ADMIN. FOR CHILDREN AND FAMILIES, WYOMING: EFFORTS TO COMBAT HUMAN TRAFFICKING 1 (2017).


without information regarding coercion into the sex work industry.73 Because of
the heightened risk of sexual violence, women in the commercial sex industry,
including trafficking victims, face a high risk of contracting HIV.74 The World
Health Organization (WHO) identifies sex workers as a key population for
contracting HIV/AIDS.75 Similarly, labor trafficking victims are also often coerced
into sex and victimized by sexual violence, targeted because of their vulnerability.76
Human trafficking victims of all types are therefore critical to any discussion of
HIV law and policy.77

III. PROBLEMS WITH HIV TESTING IN WYOMING FOR HUMAN TRAFFICKING VICTIMS

Human trafficking survivors coming out of captivity are faced with the
daunting task of navigating the healthcare system.78 Survivors often face
stigmatization for both their status as human trafficking victims and their HIV
positive status.79 They also lose their autonomy due to a lack of informed consent
before HIV testing.80 Additionally, because there is no routine testing procedure for
HIV in Wyoming, other potential problems arise.81 Victims may be retraumatized

73 See Dovydaitis, supra note 7, at 463. Often the main distinction between prostitution
and trafficking are consent and coercion. Id. The term sex worker encompasses human trafficking
victims because trafficking victims are often coerced into prostitution. See Shira M. Goldenberg et
al., Exploring the Context of Trafficking and Adolescent Sex Industry Involvement in Tijuana, Mexico:

74 See Lance Gable et al., HIV/AIDS, Reproductive and Sexual Health, and the Law, 98 AM.
J. PUB. HEALTH 1779, 1782 (2008). Sexual abuse was reported by 42% of female sex workers.
NAT'L SEXUAL VIOLENCE RES. CTR., SEXUAL VIOLENCE AND HIV, A TECHNICAL ASSISTANCE GUIDE
FOR VICTIM SERVICE PROVIDERS 4 (2008), www.nsvrc.org/sites/default/files/2012-04/Publications_
NSVRC_Guides_Sexual-Violence-and-HIV_A-Technical-Assistance-Guide-for-Victim-Service-
Providers_0.pdf [https://perma.cc/3W4X-5E5M].

75 WHO Guidelines, supra note 18, at 135.

76 See GLOB. FREEDOM CTR., supra note 72, at 1; Kloer, supra note 72, at 9.

77 Gable supra note 74, at 1779; see also Kloer supra note 72, at 8.

78 See generally Nicky Stanley et al., The Health Needs and Healthcare Experiences of Young
People Trafficked in the UK, 59 CHILD ABUSE & NEGLECT 100, 100 (2016). During trafficking,
a victim's decisions about their own healthcare are limited or nonexistent. Id. at 105. Many young
victims are unfamiliar with healthcare systems. See id. at 106. After victimization, support and
advocacy are crucial to helping victims navigate the healthcare system. Id. at 106, 108.

79 See WHO Guidelines, supra note 18, at 69 (stating that stigma is a barrier to HIV treatment
and care). The term sex worker encompasses human trafficking victims, because trafficking victims
are often coerced into prostitution. See Goldenberg, supra note 73, at 488.

80 See Marshall B. Kapp, Patient Autonomy in the Age of Consumer-Driven Health Care:
from the overarching concept of patient autonomy. See id.

81 See infra notes 129–41 and accompanying text.
by relaying their sexual history to a healthcare provider, or they may not be tested at all if the provider fails to identify them as being at risk for HIV.\textsuperscript{82}

A. HIV Positive Trafficking Victims May Struggle with Access to Healthcare

Because patients can manage HIV with treatment, it is no longer certain to cause death.\textsuperscript{83} However, the ability to obtain health insurance is critical for HIV patients, because individuals who are uninsured have lower levels of viral suppression.\textsuperscript{84} Viral suppression is the best treatment for HIV, and without this treatment, HIV/AIDS is deadly.\textsuperscript{85} Human trafficking victims may struggle to afford treatment if they test positive for HIV.\textsuperscript{86} Wyoming residents specifically may face difficulty with access to healthcare, even if insured, because Wyoming is a predominately rural state.\textsuperscript{87} Wyoming chose not to expand Medicaid, which means approximately 19\% of HIV positive individuals in the state are uninsured.\textsuperscript{88}

Preventative HIV medication can be expensive, even with insurance.\textsuperscript{89} Pre-exposure prophylaxis (PrEP) is a preventative medicine that individuals can take

\textsuperscript{82} See Becca C. Johnson, Aftercare for Survivors of Human Trafficking, 39 SOC. WORK & CHRISTIANITY 370, 371 (2012); see also infra notes 112–41 and accompanying text.

\textsuperscript{83} Early HIV Treatment Can Reduce Transmission Risk By 96\% Study Results Show, KFF (May 13, 2011), www.kff.org/news-summary/early-hiv-treatment-can-reduce-transmission-risk-by-96-study-results-show/ [https://perma.cc/6BCQ-YBR2]. Antiretroviral therapy reduced the risk of heterosexual transmission of HIV by 96\%. Id.

\textsuperscript{84} See Lindsey Dawson & Jennifer Kates, An Update on Insurance Coverage Among People with HIV in the United States, KFF (May 20, 2019) www.kff.org/report-section/an-update-on-insurance-coverage-among-people-with-hiv-in-the-united-states-findings/ [https://perma.cc/4DYY-7JAJ]. The viral suppression rates for uninsured individuals is 54\%, while the rates for insured individuals ranges from 60 to 69\%. Id. An individual achieves viral suppression when there are less than 200 copies of HIV per milliliter of blood. HIV Treatment as Prevention, Ctrs. DISEASE CONTROL & PREVENTION, www.cdc.gov/hiv/risk/art/index.html [https://perma.cc/CG6V-XVDL] (last updated Nov. 12, 2019). This typically occurs after successful HIV medication treatment, often referred to as Antiretroviral Therapy (ART). Id. Viral suppression can make HIV infection virtually undetectable. Id.

\textsuperscript{85} See Bhatti et al., supra note 25, at 2. Viral suppression can make HIV infection virtually undetectable. HIV Treatment, supra note 84.

\textsuperscript{86} See Amanda D. Castel et al., Comparing Cost-Effectiveness of HIV Testing Strategies: Targeted and Routine Testing in Washington DC, 10 PLoS ONE 1, 8 (2015) ("lifetime HIV treatment costs for an infected individual have been estimated to be as high as $380,000 . . . .").


\textsuperscript{89} See Shefali Luthra & Anna Gorman, Out-of-Pocket Costs Put HIV Prevention Drug Out of Reach For Many At Risk, KAIER HEALTH NEWS (July 3, 2018), khn.org/news/out-of-pocket-
if they think they have been exposed to HIV in order to prevent contracting the virus.\textsuperscript{90} Most health insurers do cover PrEP, but due to the exorbitant cost of the drug, patients often pay out of pocket until they meet their deductible, which can be thousands of dollars.\textsuperscript{91} As a result, there are thousands of people who are unable to afford preventative HIV medication.\textsuperscript{92}

The potential lack of access to healthcare and the difficulty in preventing HIV even with health insurance coverage can be particularly devastating to human trafficking victims.\textsuperscript{93} Despite these difficulties, an HIV test is usually the right choice for all individuals.\textsuperscript{94} Nevertheless, human trafficking victims should be aware of these issues through informed consent before they are tested for HIV, because this information might be material to them in their decision to undergo testing or not.\textsuperscript{95}

B. Victims Face Stigmatization for Trafficking and HIV Positive Status

Stigma is a major factor in the spread of HIV/AIDS in the United States.\textsuperscript{96} Society stereotypes both human trafficking victims and HIV positive individuals as promiscuous and morally inferior.\textsuperscript{97} These stereotypes are rooted in rape myths, a lack of understanding, and a disconnect in education on how HIV transmission occurs.\textsuperscript{98} The stigma (or perceived stigma) one may feel as a human trafficking

\textsuperscript{90} See Luthra & Gorman supra note 89.

\textsuperscript{91} See id.

\textsuperscript{92} See id.

\textsuperscript{93} See Gable et al., supra note 74, at 1779–80.


\textsuperscript{98} See generally Katherine C. Cunningham & Lisa DeMarni Crometer, Attitudes About Human Trafficking: Individual Differences Related to Belief and Victim Blame, 31 J. INTERPERSONAL VIOLENCE 228, 238–39 (2014); Martha R. Burt, Cultural Myths and Supports for Rape, 38 J. PERSONALITY & SOC. PSYCHOLOGY 217, 217 (1980). Rape Myths include the belief that women can resist rape if they
victim and/or as an HIV positive individual can severely hinder a victim's recovery and treatment.99 Both human trafficking victims and HIV positive individuals face stigmatization that affects their access to healthcare.100 A trafficking victim who is HIV positive is at a greater risk for stigmatization because the victim fits both profiles.101

After an HIV test, victims may face an HIV positive result and the label of “prostitute” as they attempt to navigate society again.102 The stigma of being involved in sex work can also be a barrier for healthcare access.103 Human trafficking victims are often subject to victim blaming and degradation for their past sexual conduct, regardless of the fact that they had little or no control over their entrance into sex work.104

HIV positive patients avoid medical care and receive less treatment when they perceive stigma or judgment from a healthcare professional.105 If a patient feels that their healthcare provider is uncomfortable with their condition or acts condescendingly towards them based on their HIV status, patients are less likely to adhere to their medication and treatment regimen.106 This is because try hard enough, or that only certain types of women (i.e. “bad women”) get raped. Id. Individuals fear that others will think less of them or perceive them as morally inferior if they were HIV positive. Rizza et al., supra note 10, at 919.

99 See Cunningham & Cromer, supra note 98, at 239; WHO Guidelines, supra note 18, at 5–6 (stating that stigma is a barrier to HIV treatment and care). Even if stigma is only perceived by the patient, it can still deter them from HIV testing and treatment. Janni J. Kinsler et al., The Effect of Perceived Stigma from a Health Care Provider on Access to Care Among a Low-Income HIV-Positive Population, 21 AIDS PATIENT CARE & STDs 584, 585 (2007).

100 See WHO Guidelines, supra note 18, at 5–6; Cunningham & Cromer, supra note 98, at 12.

101 WHO Guidelines, supra note 18, at 69 (stating that stigma is a barrier to HIV treatment and care).

102 See Adams, supra note 97, at 210; Cunningham & Cromer, supra note 98, at 238; see also Lara Gerassi, A Heated Debate: Theoretical Perspectives of Sexual Exploitation and Sex Work, 42 J. SOCIOLOGY & SOCIAL WELFARE 79, 81 (2015) (acknowledging that some scholars and public policy activists argue that even though sex work seems voluntary, it is always a form of oppression and never truly voluntary).

103 See Cunningham & Cromer, supra note 98, at 238–39.

104 See Cunningham & Cromer, supra note 98, at 238–39. Human trafficking victims also “face severe social stigma as a ‘prostitute,’” which can lead to greater vulnerability in society, even in comparison to when they were first forced into slavery. Adams, supra note 97, at 210.


106 See Schuster et al., supra note 105, at 811.
perceived stigma reduces trust in healthcare professionals.\textsuperscript{107} Moreover, negative interactions between HIV positive patients and their healthcare providers deter patients from receiving additional care and break down relationships with healthcare providers by interfering with patient-provider communication and trust.\textsuperscript{108} The downstream effects of stigma do not end at the doors of the clinic.\textsuperscript{109} Beyond the healthcare system, perceived stigma leads to fear of rejection, subsequently limiting a patient’s reliance on social support systems.\textsuperscript{110} Isolation from both the healthcare and social networks stemming from stigmatization may prove an insurmountable barrier to HIV treatment and care for both human trafficking victims and HIV positive individuals.\textsuperscript{111}

C. Lack of Informed Consent Disregards the Trauma Informed Care Model

Trauma Informed Care (TIC) is a widely accepted and recognized model for the care of human trafficking victims.\textsuperscript{112} TIC is a framework for providing treatment and care to victims who have experienced any type of traumatic incident, including human trafficking.\textsuperscript{113} The TIC framework recommends providers focus on physical, psychological, and emotional safety for victims, thus helping victims become empowered and regain a sense of control over their lives.\textsuperscript{114}

Choice and control are key elements of the TIC framework and crucial for recovery.\textsuperscript{115} In order to facilitate proper rehabilitation after trauma, victims should receive as many choices and as much control over their care as possible after rescue.\textsuperscript{116} Additionally, linking patients to care and other appropriate services is

\textsuperscript{107} See id.

\textsuperscript{108} See id.

\textsuperscript{109} See infra note 110 and accompanying text.

\textsuperscript{110} See Barbara E. Berger et al., Measuring Stigma in People with HIV: Psychometric Assessment of the HIV Stigma Scale, 24 RES. NURS. HEALTH 518, 519 (2001); see also Broeckaert & Challacombe, supra note 105.

\textsuperscript{111} See supra notes 98–99 and accompanying text.

\textsuperscript{112} See Kristin Heffernan & Betty Blythe, Evidence-Based Practice: Developing a Trauma-Informed Lens to Case Management for Victims of Human Trafficking, 1 GLOBAL SOC. WELFARE 169, 170 (2014); Rebecca J. Macy & Natalie Johns, Aftercare Services for International Sex Trafficking Survivors: Informing U.S. Service and Program Development in an Emerging Practice Area, 12 TRAUMA VIOLENCE & ABUSE 87, 92 (2011).


\textsuperscript{114} Id.

\textsuperscript{115} Johnson, supra note 82, at 371, 381, 387; see also Heffernan & Blythe, supra note 112, at 175–76.

\textsuperscript{116} See Macy & Johns, supra note 112, at 92.
crucial for managing HIV and preventing AIDS.\textsuperscript{117} HIV testing without proper informed consent does not always result in linkage to HIV treatment.\textsuperscript{118}

Under the Wyoming communicable disease statute, Wyoming Statute Section 35-4-133(a), victims may have no choice whether they submit to an HIV test, which deprives victims of their patient autonomy.\textsuperscript{119} In Wyoming, there is no process in place to ensure providers give victims the sociolegal information with which to make a decision.\textsuperscript{120} While an HIV test is almost always the best option for patients, patients should still have the opportunity to understand and choose the medical tests they receive.\textsuperscript{121} In Wyoming, HIV counseling is not even available at all healthcare offices, so whether a patient actually receives counseling varies by location.\textsuperscript{122} This means, under Wyoming's current laws, a human trafficking victim may be subject to a different standard of care or receive different information about HIV testing, depending on their location within the state.\textsuperscript{123}

Additionally, the Tenth Circuit Court of Appeals strayed even further from the TIC model when it held that Wyoming's communicable disease legislation was not meant to protect HIV victims.\textsuperscript{124} This reasoning stands in direct contradiction to the TIC model because it places victims at the will of the state—the holding does not require a healthcare provider to give a patient any information before an

\textsuperscript{117} See Bernard M. Branson et al., 2006 Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings, 55 CDC MORTALITY & MORTALITY WEEKLY REP. 6 (2006) [hereinafter CDC Guidelines], www.cdc.gov/mmwr/PDF/rr/rr5514.pdf [https://perma.cc/DLH5-6M93]; see also HIV Testing, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/hiv/guidelines/testing.html [https://perma.cc/B8QW-AU6Q] (last updated Nov. 13, 2019). WHO has more recently echoed this recommendation. WHO Guidelines, supra note 18, at 18. The process of connecting HIV positive individuals to care and services will hereinafter be referenced as "linkage."

\textsuperscript{118} See Decker et al., supra, note 13, at 191. This Article examines the effects of mandatory and coercive HIV testing on sex workers generally, not just human trafficking victims. Id. However, other studies have found that human trafficking victims often encompass a significant percentage of the sex worker population. See supra note 73 and accompanying text.

\textsuperscript{119} See WYO. STAT. ANN. § 35-4-133 (2019); see id. § 35-4-131(a); Wyoming, CTR. FOR HIV LAW & POL’Y, www.hivlawandpolicy.org/states/wyoming [https://perma.cc/PM33-G2LJ] (last updated Feb. 7, 2018); infra note 142 and accompanying text.

\textsuperscript{120} See WYO. STAT. ANN. § 35-4-131; id. § 35-4-133.

\textsuperscript{121} See Daniel E. Hall et al., Informed Consent for Clinical Treatment, 184 CANADIAN MED. ASS’N J. 533, 536-37 (2012); WHO Guidelines, supra note 18, at 21.

\textsuperscript{122} See 2017 INTEGRATED EPIDEMIOLOGIC PROFILE FOR COMMUNICABLE DISEASES, supra note 28, at 6. Wyoming’s public health office provides HIV counseling and testing, but if an individual receives testing at a different location, counseling may not be available. Id. There is at least one public health office per county. Id.

\textsuperscript{123} See generally id.

\textsuperscript{124} See Pehle v. Farm Bureau Life Ins., 397 F.3d 897, at 905 (10th Cir. 2005).
HIV diagnosis.\textsuperscript{125} Moreover, this holding, read in conjunction with Wyoming's communicable disease statutes, takes away the control if the patient is reasonably suspected before there is even a positive diagnosis.\textsuperscript{126} Although it is sometimes acceptable to restrict the liberty of one individual to protect society from infectious diseases, such restrictions should be a last resort.\textsuperscript{127} Generally, these restrictions stand contrary to TIC, because they do not aid survivors in recovery, nor do they give survivors the autonomy to direct their own medical care.\textsuperscript{128}

D. There is No Standard Routinized Testing Procedure for HIV

Routinized HIV testing is a process by which all individuals receive HIV testing as a part of general medical care, regardless of their risk factors.\textsuperscript{129} Currently, Wyoming does not mandate routinized HIV testing.\textsuperscript{130} Wyoming legislation only requires that healthcare providers test a patient for HIV if they are “reasonably suspected” of being infected with HIV.\textsuperscript{131} Consequently, as of 2016, only 38.5% of Wyoming’s population had been tested for HIV at least once in their life.\textsuperscript{132} Additionally, from 2013 to 2017, 22% of HIV positive males and 33% of HIV positive females did not identify with any HIV risk factors.\textsuperscript{133} Any human trafficking victim should be considered “reasonably suspected”

\textsuperscript{125} See CDC Guidelines, supra note 117, at 10 (“The central goal of HIV screening in healthcare settings is to maximize the number of persons who are aware of their HIV infection and receive care and prevention services.”); Pehle, 397 F.3d at 905.


\textsuperscript{127} See Reynolds v. McNichols, 488 F.2d 1378, 1382 (10th Cir. 1973) (finding that involuntary detention for a suspected venereal disease was valid to protect public health). This holding has been criticized by the legal community. See Scott W. Stern, The Venereal Doctrine: Compulsory Examinations, Sexually Transmitted Infections, and the Rape/Prostitute Divide, 34 Berkeley J. Gender L. & Justice 149, 188–89 (2019). WHO recommends that individual freedom be restricted only as a last resort after all other measures to protect the public from the disease have failed. WHO Guidance on Human Rights and Involuntary Detention for XDR-TB Control, World Health Org. (Jan. 24, 2007), www.who.int/tb/features_archive/involuntary_treatment/en/ [https://perma.cc/4Q2N-WK6Z].

\textsuperscript{128} See Heffernan & Blythe, supra note 112, at 170, 176.


\textsuperscript{131} Id.

\textsuperscript{132} 2017 Integrated Epidemiologic Profile for Communicable Diseases, supra note 28, at 7.

\textsuperscript{133} Id. at 10.
of being infected because of the high rates of sexual abuse during captivity.\textsuperscript{134} However, health care providers in Wyoming are not required to conduct a sexual history evaluation on their patients.\textsuperscript{135} Providers often have no way of knowing if the patient is "reasonably suspected" of having HIV when providers fail to evaluate patients' sexual history, especially from human trafficking victims.\textsuperscript{136} The best way to identify all HIV positive individuals is to test everyone, regardless of reasonable suspicion.\textsuperscript{137}

Because Wyoming does not require pre or post-HIV test counseling, health-care providers may not be adequately informing victims of risk factors.\textsuperscript{138} Similarly, providers are not asking the necessary questions to find out if a victim is at risk.\textsuperscript{139} Providers may argue that they are compliant with statutory guidelines.\textsuperscript{140} Yet the current statutes allow providers to turn a blind eye to HIV, as they are not always in a position to decide whether someone may have been at risk of HIV infection.\textsuperscript{141}

IV. A REVIEW OF HIV INFORMED CONSENT AND TESTING LAWS NATIONWIDE

A. Case Law

Several other states have considered the legal ramifications of informed consent in the context of HIV testing.\textsuperscript{142} In the Colorado case \textit{Doe v. High-}

\textsuperscript{134} Wyo. Stat. Ann. § 35-4-131(b) (stating that a healthcare provider shall "if reasonably suspected of being infected with [HIV] administer, refer for, or recommend appropriate or adequate treatment . . . "); see Ashwin S. Dharmadhikari et al., \textit{Tuberculosis and HIV: A Global Menace Exacerbated Via Sex Trafficking}, 13 Int'l J. Infectious Diseases, 543, 544 (2009).


\textsuperscript{136} See Rochelle Rollins et al., \textit{Who is in Your Waiting Room? Health Care Professionals as Culturally Responsive and Trauma-Informed First Responders to Human Trafficking}, 19 AMA J. Ethics 63, 64--65 (2017).

\textsuperscript{137} See WHO GUIDELINES supra note 18, at 48.

\textsuperscript{138} See Wyo. Stat. Ann. § 35-4-131; id. § 35-4-133.

\textsuperscript{139} See Lanier et al., supra note 135, at 113 ("[L]ess than 40% of providers conduct sexual histories with patients.").


\textsuperscript{141} See supra notes 130--40 and accompanying text.

\textsuperscript{142} See, e.g., Doe v. High-Tech Inst., Inc., 972 P.2d 1060 (Colo. App. 1998); Doe v. City of Chicago, 883 F. Supp. 1126, 1132, 1141 (N.D. Ill. 1994) (finding that plaintiffs' consent to a

Published by Law Archive of Wyoming Scholarship, 2020
Tech Institute, Inc., the plaintiff informed his instructor in a medical assistant training program that he had tested positive for HIV in an anonymous HIV test setting. Soon after, the instructor informed the entire class that they would be blood tested for rubella. All students, including the plaintiff, signed an informed consent form indicating that their blood samples would be tested for rubella. Without the plaintiff's consent, the instructor had the lab test the plaintiff's blood for HIV as well. When the test came back positive, the laboratory reported the plaintiff's name, address, and HIV status to the Colorado Department of Health, as required by law. The lab also informed the training program of the results. The Colorado Supreme Court concluded that the plaintiff did have a cause of action, specifically stating that individuals have a privacy interest in their blood samples and any medical information that can be extracted from the sample. The court further concluded that because confidential health information can be extracted through bodily fluids, such fluids cannot be taken from a person or tested without that person's authorization and informed consent. The court emphasized the "strong social stigma" that HIV carries; this stigma creates an even greater need for a person to have informed consent regarding such tests.

The Pennsylvania Superior Court reached a different conclusion. In Doe v. Dyer-Goode, the plaintiff consented to a blood draw, but not specifically to an HIV test. The court found that the plaintiff provided informed consent because he was aware of the risks associated with a blood draw through a needle. The court considered the subsequent testing on Doe's blood a natural and expected

general physical examination was not consent for an HIV test and plaintiffs should have received informed consent to the test as well as counseling); Doe v. Dyer-Goode, 566 A.2d 889 (Pa. Superior Ct. 1989).

143 High-Tech Inst., Inc., 972 P.2d at 1064.
144 Id.
145 Id.
146 Id.
147 Id.
148 Id.
149 Id. at 1068–69. The Colorado statute mandates that healthcare providers "shall not test . . . any specimen of a patient for a sexually transmitted infection without the knowledge and consent of the patient . . . . " COLO. REV. STAT. § 25-4-410(1)(a) (2019).
150 High-Tech, 972 P.2d at 1068.
151 Id. at 1070.
153 Id.
154 Id. at 891–93. To reach this conclusion, the court relied solely on case law, and did not consider any Pennsylvania statutes about informed consent. See id. at 891–93.
consequence of the blood draw.\textsuperscript{155} Although Pennsylvania subsequently adopted a general informed consent statute in 2002, the statute does not mandate informed consent for HIV testing.\textsuperscript{156} Thus, Dyer-Goode remains relevant law in Pennsylvania.\textsuperscript{157} Pennsylvania’s statute is similar to Wyoming’s communicable disease statute as neither expressly require informed consent.\textsuperscript{158} If Wyoming does not improve its HIV informed consent statutes, patients may be subject to similar court decisions.

B. Legislation in Other States

Several states have codified protections for HIV positive individuals.\textsuperscript{159} These statutes include stronger informed consent requirements, routine testing procedures, and mechanisms to facilitate access to HIV treatment for those who test positive.\textsuperscript{160} Looking first at informed consent, Colorado law explicitly states that no person can be tested for HIV without the patient’s knowledge and consent.\textsuperscript{161} Massachusetts requires that the healthcare provider obtain verbal informed consent before testing a patient for HIV.\textsuperscript{162} Illinois’ informed consent law is more robust, requiring that before HIV testing, the subject must receive information and gain education on their right to refuse before the provider conducts the test.\textsuperscript{163} The Illinois law further requires that the individual being tested provide specific written or verbal informed consent.\textsuperscript{164} Montana requires that a patient understand the healthcare provider is about to test them for HIV and voluntarily agree to testing.\textsuperscript{165} Arizona requires either verbal or written consent for HIV testing, and specifically defines informed consent as receiving information explaining what HIV infection is and what a positive test result means.\textsuperscript{166} The

\textsuperscript{155} Id. at 892 (finding that the subsequent blood testing was “simply a by-product of the medical procedure.”).
\textsuperscript{157} See id. This statute also does not apply to healthcare providers who conduct less than half of their practice within the state of Pennsylvania. An Act to Consolidate, Editorially Revise, and Codify the Public Welfare Laws of the Commonwealth, Pa. HB 44 (2003).
\textsuperscript{159} See infra notes 161–78 and accompanying text. Statutes cited infra also indicate the enactment or most relevant amendment dates in the citation footnote to indicate legislators’ recent acknowledgment of the importance of informed consent, routinization, and post-test counseling for HIV testing.
\textsuperscript{160} See infra notes 161–78 and accompanying text.
\textsuperscript{162} Mass. Ann. Laws ch. 111, § 70F (LexisNexis 2019). The statute was enacted in 1986, but amended in 2012 to include verbal informed consent. Id.
\textsuperscript{163} Ill. Adm. Code tit. 77, § 697.100 (2019).
\textsuperscript{164} Id. (amended in 2012 to include verbal consent).
\textsuperscript{165} Mont. Code Ann. § 50-16-1014(2) (2019).
informed consent also must indicate to the patients that they can ask questions and decline testing.\footnote{Id.}

Compared to the previous statutes, New York’s informed consent laws are the most detailed.\footnote{See N.Y. PUB. HEALTH LAW § 2781 (Consol. 2019).} New York requires that, before testing for HIV, a provider must inform a patient of several things before undergoing HIV testing, including: (1) how HIV is transmitted; (2) HIV’s relationship to AIDS; (3) available treatment for HIV; (4) that testing is completely voluntary; and (5) that testing is confidential.\footnote{N.Y. PUB. HEALTH LAW § 2781(2) (amended in 2010 to include the comprehensive list of pre-test information).} New York’s statute specifically provides that no healthcare provider will conduct an HIV test if the patient objects to the test.\footnote{Id.}

Some of these states also have laws codifying routine HIV testing.\footnote{See infra notes 172–74 and accompanying text.} Illinois law states that HIV testing is a routine part of general medical care.\footnote{ILL. ADMIN. Code tit. 77, § 697.100(b) (2019) (amended in 2012 to add routinization requirement).} Montana states that HIV testing “must be considered routine.”\footnote{MONT. CODE ANN. § 50-16-1014(1) (2019).} New York law requires healthcare providers to offer an HIV test to every individual thirteen years of age or older as a part of their primary medical care.\footnote{N.Y. PUB. HEALTH LAW § 2781-a(1).}

Several states also codify post-test counseling.\footnote{See infra notes 176–78 and accompanying text.} Illinois requires post-test counseling even if a patient is HIV negative and mandates dissemination of information about how to reduce the risk of contracting HIV in the future.\footnote{ILL. ADMIN. Code tit. 77, § 697.155(d).} This statute also mandates that healthcare providers refer a patient to both medical treatment and mental health counseling when they test positive for HIV.\footnote{Id. § 697.155(b).} Similarly, New York law dictates what information providers must offer to a patient in the case of both HIV positive and HIV negative results.\footnote{N.Y. PUB. HEALTH LAW § 2781(5). When a patient receives an HIV positive diagnosis, the healthcare provider must provide the patient referrals for counseling, including information about discrimination because of HIV status, and treatment options for HIV. Id. The provider shall also arrange for follow-up medical care. Id. When there is an HIV negative result, the provider shall give information about behavior that can prevent the contraction of HIV. Id. This statute was also amended in 2010 to include post-test counseling for a negative HIV result. Id. Post-test counseling for a positive HIV result has been present in some form since enactment in 1988. Id.}

\begin{footnotes}
\footnote{Id.}
\footnote{See N.Y. PUB. HEALTH LAW § 2781 (Consol. 2019).}
\footnote{N.Y. PUB. HEALTH LAW § 2781(2) (amended in 2010 to include the comprehensive list of pre-test information).}
\footnote{Id.}
\footnote{See infra notes 172–74 and accompanying text.}
\footnote{ILL. ADMIN. Code tit. 77, § 697.100(b) (2019) (amended in 2012 to add routinization requirement).}
\footnote{MONT. CODE ANN. § 50-16-1014(1) (2019).}
\footnote{N.Y. PUB. HEALTH LAW § 2781-a(1).}
\footnote{See infra notes 176–78 and accompanying text.}
\footnote{ILL. ADMIN. Code tit. 77, § 697.155(d).}
\footnote{Id. § 697.155(b).}
\footnote{N.Y. PUB. HEALTH LAW § 2781(5). When a patient receives an HIV positive diagnosis, the healthcare provider must provide the patient referrals for counseling, including information about discrimination because of HIV status, and treatment options for HIV. Id. The provider shall also arrange for follow-up medical care. Id. When there is an HIV negative result, the provider shall give information about behavior that can prevent the contraction of HIV. Id. This statute was also amended in 2010 to include post-test counseling for a negative HIV result. Id. Post-test counseling for a positive HIV result has been present in some form since enactment in 1988. Id.}
\end{footnotes}
C. What Wyoming's Laws Currently Accomplish

Wyoming's treatment of HIV testing in case law and statute is not entirely lacking protections for trafficking victims.\textsuperscript{179} Peble did hold Farm Bureau Insurance Company liable for failing to notify the plaintiffs of their HIV positive status.\textsuperscript{180} Additionally, the language of Wyoming Statute Section 35-4-131 attempts to improve linkage to care by stating a healthcare professional shall "administer, refer for, or recommend appropriate . . . treatment."\textsuperscript{181} The main problem is that the language does not routinize testing, since testing is only required if a patient is reasonably suspected of being infected with HIV.\textsuperscript{182} This language does require testing for human trafficking victims, but because there is no screening to find out if a patient is reasonably suspected of HIV infection, the law is ineffective.\textsuperscript{183} Similarly, while Wyoming Statute Section 35-4-133 attempts to link positive diagnosis to treatment, the language does not explicitly require linkage so the terminology is too vague to accomplish its purpose.\textsuperscript{184} Recommending that healthcare providers offer treatment for sexually transmitted infections is not the same as mandating linkage and referrals to medical treatment for HIV.\textsuperscript{185} Wyoming law should explicitly require, rather than recommend, routinization and linkage.\textsuperscript{186}

Outside of legislation, Wyoming has taken steps to prevent and treat HIV.\textsuperscript{187} The Wyoming DOH has partnered with the Centers for Disease Control and Prevention (CDC) to provide low cost or free HIV testing at forty-two healthcare centers across the state through a program called "KnoWyo."\textsuperscript{188} In 2017, this

\textsuperscript{179} See infra notes 180–89 and accompanying text.
\textsuperscript{180} See Peble v. Farm Bureau Life Ins., 397 F.3d 897, 904 (10th Cir. 2005).
\textsuperscript{181} WYO. STAT. ANN. § 35-4-131(b) (2019).
\textsuperscript{182} See supra notes 131–41 and accompanying text.
\textsuperscript{183} See supra notes 134–41 and accompanying text.
\textsuperscript{184} See WYO. STAT. ANN. § 35-4-131(b). If a person is exposed to a sexually transmitted disease, the healthcare provider shall recommend or offer treatment. Id. "A health officer . . . may arrange for counseling and education of the infected individual as to the medical significance of the sexually transmitted disease." Id. § 35-4-133(a)(iv). This language does not define vital terms including "treatment," and "medical significance," leaving room for ambiguity. See id. § 35-4-131(b); id. § 35-4-133(a)(iv).
\textsuperscript{186} See supra notes 182–85 and accompanying text.
\textsuperscript{187} 2017 INTEGRATED EPIDEMIOLOGIC PROFILE FOR COMMUNICABLE DISEASES, supra note 28, at 14–15.
\textsuperscript{188} Id. at 15.
program provided testing to over 3,300 people. For a sparsely populated rural state, Wyoming has made admirable efforts to encourage voluntary HIV testing and treatment.

V. LEGISLATIVE SOLUTIONS

Wyoming can modify its healthcare legislation to combat the problems that human trafficking victims may face when being tested for HIV in several ways. The current Wyoming statute applies only to sexually transmitted diseases as a whole. This section proposes a new Wyoming statute specific to HIV testing, intended to combat each of the four problems discussed above. A new statute is necessary to give human trafficking victims information about HIV, protect them from re-traumatization, and protect them from testing without their knowledge.

A. Proposed HIV Testing Legislation

The following proposed legislation is designed to implement routinized HIV testing per the guidelines issued by WHO and the CDC.

(a) HIV Testing shall be a routine part of general medical care, and all individuals ages 13–64 must be offered an HIV test. Before testing, healthcare providers must inform the patient that:

(i) Having sex, no matter the partner or the number of times, may put an individual at risk for HIV;

(ii) Even if an individual is in a monogamous relationship, there is still a risk that the monogamous partner may not have fully disclosed their current or past sexual history, putting that individual at risk for HIV; and

189 See infra notes 197–259 and accompanying text.
191 See generally supra notes 83–141 and accompanying text. The four issues with Wyoming's current HIV testing laws discussed in this Article are: (1) the discrimination that victims may face in healthcare because of an HIV positive diagnosis. See supra notes 83–95 and accompanying text. (2) How stigmatization affects medical care. See supra notes 96–111 and accompanying text. (3) The current statutes takes away bodily integrity from victims of trauma. See supra notes 112–28 and accompanying text. And (4) there is no routine HIV testing procedure in Wyoming. See supra notes 129–41 and accompanying text.
(iii) Other factors have been shown to put individuals at a higher risk for HIV, including:

(A) A male having sex with other males; or

(B) Voluntary sex workers or victims coerced or forced into sexual intercourse; or

(C) Intravenous drug use.

(iv) Even if none of these higher risk factors apply, an HIV test is still recommended for anyone who is or has been sexually active.

(b) No health provider shall test an individual for HIV without first obtaining the individual’s specific written or verbal consent. Specific informed consent for the purposes of this section requires:

(i) An explanation of what HIV is;

(ii) An explanation of the benefits of early HIV diagnosis and testing;

(iii) An explanation of the treatment options available for HIV, if the test is positive;

(iv) An explanation that discrimination based on HIV status is legally prohibited;

(v) An opportunity for the individual to ask questions and thoroughly understand the information provided;

(vi) An explanation that the test is voluntary and will not be performed should the individual decline to be tested; and

(vii) An explanation of the confidentiality of test results.

(c) If an individual tests positive for HIV, the health care provider must give the following information:

(i) An explanation of the potential for HIV to develop into AIDS;

(ii) Locations where a patient can receive emotional counseling services, if they so choose, to cope with a
diagnosis of HIV and any trauma that may have caused the individual to become infected;

(iii) A referral or a list of providers who can administer medical treatment and care, including antiretroviral therapy;

(iv) Locations where a patient can receive legal assistance, if they so choose, in the event of illegal discrimination based on HIV status;

(v) Brochures about subsidized and low-cost resources available for HIV treatment and support in Wyoming;

(vi) An explanation that the individual will be contacted by the Wyoming Department of Health regarding the identity of sexual partners or needle sharing partners and that identified partners will be contacted by the Wyoming Department of Health; and

(vii) An explanation that individual data will be anonymously sent to the Center for Disease Control and Prevention and tracked without identifying information.

(d) If an individual tests negative for HIV, the health care provider will give the individual the following:

(i) Information about pre-exposure prophylaxis preventative medicine if the individual believes they may have been at risk for HIV exposure;

(ii) Information about preventative measures including needle sharing and condom use.

As the following sections will explain, the proposed legislation accomplishes three goals: (1) increasing informed consent; (2) routinizing HIV testing; and (3) caring for the medical and emotional needs of all patients after testing and results.196

B. Explicit Informed Consent

The Wyoming State Legislature should amend Wyoming’s laws to require explicit verbal or written informed consent for HIV testing.197 The method

196 See infra notes 197–259 and accompanying text.
197 See supra notes 119–23 and accompanying text.
of informed consent must go beyond informing patients of the minimal physical risks of a needle stick and blood draw. The CDC recommends a more comprehensive view of informed consent for HIV testing. Rather than merely informing the patient of the physical consequences of being stuck with a needle, the CDC outlines a process where the healthcare provider and patient communicate, ultimately allowing the patient to choose whether to be tested. Informed consent should include information about HIV, the risks and benefits of testing, and the sociolegal implications of a positive result. The process should allow the patient to ask questions. The WHO prescribes that informed consent ensures patients understand the process of HIV testing and their ability to refuse testing. This explicit informed consent aligns with the TIC model by putting information and the decision-making power back in the hands of patients, who may be human trafficking survivors.

Because informed consent does not typically include informing a patient of sociolegal risks, this new statute would relieve providers from the duty of having to provide this sort of information directly to the patient. Rather, section (c) (ii) through (vi) merely require a doctor to have resources, such as business cards or informational brochures, directing the patient to other support systems. This type of information is not traditionally within the scope of medical informed consent. To balance the intent of the proposed legislation with traditional informed consent practices, the patient can learn about social, legal, or financial consequences and solutions directly from programs created to assist HIV positive individuals with these issues.


199 See CDC Guidelines, supra note 117, at 3–4. This recommendation is supported by scholars in the medical field. See WHO Guidelines, supra note 18, at 10; Daniel E. Hall, et al., supra note 121, at 537.

200 See CDC Guidelines, supra note 117, at 3–4.

201 See Hanssens, supra note 185, at S234; Modernizing Informed Consent, supra note 43, at 837; CDC Guidelines supra note 117, at 3–4.

202 See CDC Guidelines, supra note 117, at 2.

203 See WHO Guidelines, supra note 18, at 10.

204 See Heffernan & Blythe, supra note 112, at 175–76.

205 See supra notes 45–48 and accompanying text.

206 See supra notes 195–96 and accompanying text.

207 JESSICA W. BERG ET AL., INFORMED CONSENT: LEGAL THEORY AND CLINICAL PRACTICE 57 (2d ed. 2001). Consent should be a process of shared decision making between the provider and patient, but should not include remote risks the patient may face beyond the scope of the medical treatment. Id.

Wyoming law should require healthcare providers to explain the testing process, what HIV is, and what happens if an individual is HIV positive. Section (b) of the proposed legislation is designed to better specify the standard of informed consent in HIV testing by enumerating several pieces of information a patient should hear and understand before they agree to or decline testing.

C. Routinization

Section (a) of the proposed legislation specifies that healthcare providers should offer HIV testing as a routine procedure for any individual between the ages of thirteen and sixty-four. The current legislation only states that healthcare providers should test or recommend treatment to individuals who are “reasonably suspected of being infected with any sexually transmitted disease.” This standard allows healthcare providers to make arbitrary, subjective decisions about which patients receive HIV testing. It may force trafficking victims to relive their trauma and may perpetuate the stigma surrounding HIV. Instead, the law should clearly mandate that healthcare providers should provide yearly HIV tests to any person between ages thirteen and sixty-four unless they opt out of testing.

Routine HIV testing is associated with higher levels of HIV identification. Currently, 15% of HIV positive individuals in the United States are unaware of their positive status. Generally, routine testing expedites the process of HIV testing. But this routinization cannot be used to bypass informed consent.

Assistance is an example of a social program in Wyoming designed to help HIV positive individuals navigate the challenges that come after an HIV diagnosis, including financial services, legal resources, and potential stigmatization. Id.

209 See supra notes 198–204 and accompanying text.
210 See supra notes 198–204 and accompanying text.
211 CDC Guidelines, supra note 117, at 7.
212 WYO. STAT. ANN. § 35-4-131(b) (2019).
213 See Rollins et al., supra note 136, at 64–65; see also Broeckaert & Challacombe, supra note 105.
214 See Macy & Johns, supra note 112, at 92; see also Gable, supra note 74, at 1779.
215 See CDC Guidelines, supra note 117, at 7; see also Gable, supra note 74, at 1779.
216 See Jason S. Haukoos et al., Routine Opt-Out Rapid HIV Screening and Detection of HIV Infection in Emergency Department Patients, 304 [J]AMA 284, 291 (2010); see supra note 129 and accompanying text (defining routine testing).
218 See Broeckaert & Challacombe, supra note 105.
219 Heather D. Boonisra, Making HIV Tests ‘Routine’: Concerns and Implications, 11 GUTTMACHER POL’Y REV. 13, 16-17 (2008); WHO Guidelines, supra note 18, at 24.
The CDC’s 2006 recommendations established that consent for HIV testing could be given as a part of routine general consent for healthcare services. Some in the HIV policy and healthcare community have criticized this recommendation. Many scholars and healthcare professionals recognize that routinization of the HIV testing process reduces stigma and leads to higher levels of HIV positive identification. However, they also acknowledge that this routinization, without the proper safeguards, presents a danger to informed consent regarding HIV testing. The proposed legislation attempts to find a middle ground between the CDC’s routinization recommendation and the need for robust informed consent, which the CDC has been criticized for overlooking.

Routinized HIV testing follows the TIC model because it eliminates the need for survivors to relive their trauma unnecessarily. It should not be necessary for the provider to ask any preliminary questions before testing for HIV. Because HIV testing will be routinely offered to everyone in the mandated age range, human trafficking victims will not have to divulge unnecessary, potentially traumatic information. This also eliminates the possibility that healthcare providers subjectively assess whether a patient is reasonably suspected of exposure to HIV.

Additionally, routinization destigmatizes HIV. Society often views HIV as a promiscuity problem—only people who engage in excessive amounts of sex, sex with multiple partners, or have sex that does not conform to heteronormative traditions are considered “at risk” for HIV. By taking away the opportunity to

---

220 CDC Guidelines, supra note 117, at 7–8.
222 See CDC Guidelines, supra note 117, at 4.
223 See Hanssens, supra note 185, at S237; WHO Guidelines, supra note 18, at 70 ("[HIV testing services] should be voluntary in all settings.").
224 See supra notes 179–95, 216–23 and accompanying text.
225 See Macy & Johns, supra note 112, at 92. Providers should never mandate that trafficking survivors discuss details of their abuse or trafficking. Id.
227 See Macy & Johns, supra note 112, at 92.
228 See Rollins et al., supra note 136, at 64. Only 13% of healthcare providers were confident that they could recognize a trafficking victim in their office, and less than 3% of healthcare providers had received any training on how to recognize victims. Id.
229 See generally Kinsler et al., supra note 99, at 585 ("Fear of stigma has deterred individuals from being tested for HIV.").
test subjectively, routinization of HIV testing treats everyone equally and thus combats the stigmatization of individuals with HIV.231 Consequently, human trafficking victims will not feel that they have subjected themselves to the risk of HIV by being too promiscuous (despite the fact that their actions were outside of their control).232

Informing the victim of heightened risk factors allows a trafficking victim to assess the importance of an HIV test.233 But this process also does not stigmatize the victim, because the provider explains that, even if the heightened risk factors do not apply, an HIV test is recommended.234 This proposed statute’s guidelines do not require the patient to answer any questions about their own high risk practices to the provider, but merely gives the patient information to make an educated decision about undergoing an HIV test.235 Offering routine HIV testing for everyone, rather than just those with a certain lifestyle, lifts barriers to HIV testing and treatment.236

D. Simplified Post-Test Counseling

Sections (c) and (d) of the proposed legislation address post-test counseling.237 After HIV testing, providers should counsel individuals on the next steps in the event of a positive or negative HIV test result.238 Counseling includes information

---

231 See CDC Guidelines, supra note 117, at 5.
232 White & Carr, supra note 230, at 353–54. Females are stigmatized for being sexually promiscuous after HIV diagnosis. Id. See also supra notes 97–101.
234 See CDC Guidelines, supra note 117, at 5. Males having sex with males, sex workers, and intravenous drug users are at a higher risk to contract HIV. SUBSTANCE ABUSE TREATMENT, supra note 233, at 1, 16, 19–20.
235 SUBSTANCE ABUSE TREATMENT, supra note 233, at 181.
237 In Nat’l Inst. of Family & Life Advocates v. Becerra, the United States Supreme Court addressed whether a statute could force pregnancy crisis providers to inform patients of the availability of outside medical resources beyond the scope of that doctor’s office. Nat’l Inst. Of Family & Life Advocates v. Becerra, 138 S. Ct. 2361, 2368–69 (2018). The Court ruled that doing so violated the provider’s First Amendment rights because the statute only applied to pregnancy crisis centers, not all medical providers, so the law was not equally applied to everyone. Id. at 2374–76. While the issue of First Amendment protections is beyond the scope of this Comment, the holding in Becerra is inapplicable here because the proposed legislation would apply to all medical providers who offer HIV testing.
238 See WHO Guidelines, supra note 18, at 10 (“All HIV testing must be accompanied by appropriate and high-quality post-test counseling based on the specific HIV test result and HIV status reported.”).
about medical and mental health treatment options, legal protections, and preventative measures.\textsuperscript{239} Patients are often unaware that the law protects them against discrimination because of their HIV status, and that there are programs available to assist them with the aftermath of their diagnoses.\textsuperscript{240} Post-test counseling from a healthcare provider should include information about available treatment options, legal protections, and social service programs.\textsuperscript{241}

In Wyoming, when someone is positive for HIV, an epidemiologist calls them shortly after diagnosis to ask about their sexual history.\textsuperscript{242} Additionally, the Communicable Disease Unit Disease Intervention Specialists contacts all HIV positive individuals in order to provide partner services, which includes reaching out to the individual’s past sexual partners and injection-drug-use partners to inform them of their exposure and to recommend testing.\textsuperscript{243} Counseling is especially important because many people who test positive for HIV are unaware of the contact and surveillance that will follow.\textsuperscript{244}

The CDC also tracks HIV positive individuals for life via mandatory reporting, which patients may not be aware of at the time of testing.\textsuperscript{245} The government sends any reports of HIV positive individuals to the CDC for tracking.\textsuperscript{246} Moreover, the CDC uses molecular surveillance of HIV test samples to identify high risk groups of HIV positive people.\textsuperscript{247} Authorities, such as the

\textsuperscript{239} See WHO Guidelines, supra note 18, at 10, 27–28. Legal protections include protection from discrimination under the Americans with Disabilities Act. See Bragdon v. Abbot, 524 U.S. 624 (1998) (finding that HIV was a disability under the Americans with Disabilities Act). Individuals with disabilities must be allowed the “full and equal enjoyment” of “any place of public accommodation.” 42 U.S.C. § 12182(a) (2019). A hospital or doctor’s office is included in the definition of “public accommodations.” Id. § 12181(7)(F).

\textsuperscript{240} See WHO Guidelines, supra note 18, at 69. Wyoming participates in several programs that fund healthcare, treatment, and provide stable housing options for HIV positive individuals. 2017 INTEGRATED EPIDEMIOLOGIC PROFILE FOR COMMUNICABLE DISEASES, supra note 28, at 14–15.

\textsuperscript{241} WHO Guidelines, supra note 18, at 10, 20, 27–28.


\textsuperscript{243} WYOMING HIV SURVEILLANCE REPORT, supra note 242, at 3; see Wyo. Stat. Ann. § 35-4-133(b) (2019).

\textsuperscript{244} See Alexander McClelland et al., The Rise of Molecular HIV Surveillance: Implications on Consent and Criminalization, CRITICAL PUB. HEALTH 4 (2019).

\textsuperscript{245} See Wyo. Stat. Ann. § 35-4-132; McClelland et al., supra note 244, at 4; WYOMING HIV SURVEILLANCE REPORT, supra note 242, at 3.


\textsuperscript{247} See McClelland et al., supra note 244, at 1–2. Molecular surveillance stores data collected during HIV testing and drug resistance testing. Id.
National HIV Surveillance System, store the results in data banks used to identify groupings of similar virus patterns across high risk populations.\textsuperscript{248} Through these methods, the federal government tracks, stores, and analyzes the private data of individuals without their consent.\textsuperscript{249} An HIV positive result can be daunting on its own, and patients should have notice that testing may subject them to lifelong government tracking.\textsuperscript{250}

While post-test counseling is crucial, it does not have to be overly complicated.\textsuperscript{251} Counseling that is too detailed or time-intensive often acts as a barrier to treatment, rather than facilitating treatment.\textsuperscript{252} The Family Planning National Training Center created a more compressed “script” for providers to use when counseling HIV patients about their results.\textsuperscript{253} The script instructs providers to give the patient information about their test results, whether positive or negative.\textsuperscript{254} Additionally, the script informs patients that the healthcare provider will share the test results with the Department of Health if the result is HIV positive.\textsuperscript{255} This sort of counseling script has not been shown to present a significant barrier to testing or treatment.\textsuperscript{256}

The required post-test counseling in the proposed legislation would give healthcare providers an opportunity to further educate patients of all the post-test follow-up that will be done by the state should they have a positive result.\textsuperscript{257} Patients can prepare for follow-up phone calls asking for their sexual history and past sexual partners and can discuss with counselors the best ways to navigate these conversations from a TIC perspective.\textsuperscript{258} The new legislation’s post-test counseling

\textsuperscript{248} See id.

\textsuperscript{249} See McClelland, supra note 244, at 4; Fred Hutch, Without Our Consent: Centering People Living with HIV in HIV Genetics Sequencing (The Legacy Project Webinar February 27, 2019), www.pwn-usa.org/get-involved/pwn-usa-webinars/[https://perma.cc/VNQ2-HNJP].

\textsuperscript{250} See McClelland et al., supra note 244, at 4.

\textsuperscript{251} See WHO Guidelines, supra note 18, at 24. Post-test counseling should be “client-centered,” meaning it should be responsive and tailored to the unique situation of each individual. WHO Guidelines, supra note 18, at 27.

\textsuperscript{252} WHO Guidelines supra note 18, at 21.


\textsuperscript{254} See id.

\textsuperscript{255} See id. at 8.

\textsuperscript{256} See WHO Guidelines, supra note 18, at 21. HIV pre-testing information should be clear and concise. Id.

\textsuperscript{257} See NAT’L SEXUAL VIOLENCE RES. CTR, supra note 74, at 13. Since HIV testing may exacerbate trauma, it is important that victims receive proper counseling. See id.

\textsuperscript{258} See NAT’L SEXUAL VIOLENCE RES. CTR, supra note 74, at 13.
requirement gives survivors the ability to understand their treatment and play a role in their recovery, by providing them with information and resources as they make decisions about HIV testing.  

VI. ADDRESSING CRITICISMS

A. Reconciling the Contradiction of Streamlined Routinization and Specific Informed Consent

At first glance, it appears that routinization and specific, explicit informed consent for HIV testing are mutually exclusive. Yet, while giving HIV information can be more time consuming for the provider, overall routine testing, even with counseling, is associated with higher levels of testing.

The process of informed consent is important for trafficking victims because it allows them to establish a relationship of trust with their healthcare providers. Trust is associated with higher levels of adherence to medical treatment and overall health improvement. Additionally, open and forthright discussions about whether to get an HIV test gives victims a sense of control over their lives. Autonomy is an essential part of the TIC model. Such discussion and patient input benefit human trafficking victims.

Explicit informed consent coupled with routine testing is important, because not feeling at risk for HIV is a common reason why people do not get tested for HIV. Often people are not educated about the risk factors for HIV and do not believe they have been exposed to HIV at all. Routine screening

259 See Heffernan & Blythe, supra note 112, at 173. Post-test counseling gives victims the opportunity to understand and choose the services they accept, including health insurance. Id. Establishing linkage to HIV care and support services can improve an HIV positive individual's quality of life and extend their lifespan. MSMGF TECHNICAL BULLETIN SERIES, supra note 185, at 1.

260 See Broeckaert supra note 105. All tests in a systematic review of scientific studies found that routinized HIV testing led to higher rates of HIV testing. Id. The authors urged implementation of routine testing, including training on conducting counseling when giving routine HIV tests. Id.

261 See Dovydaitis, supra note 7, at 464; Macy & Johns, supra note 112, at 92.

262 M. GARRUBBA & G. YAP, TRUST IN HEALTH PROFESSIONALS 3 (2019).

263 See Doe v. High-Tech Inst., Inc., 972 P.2d 1060, 1070 (Co. App. 1998) ("An unwarranted test intrudes upon that person's control over decisions concerning his or her health status.").

264 See Heffernan & Blythe, supra note 112, at 171, 175, 176.


266 Haukoos et al., supra note 216, at 290; see also Broeckaert & Challacombe, supra note 105.

267 See Broeckaert & Challacombe, supra note 105.
eliminates the possibility of missing a diagnosis for patients who underestimate their risk of HIV exposure. Additionally, human trafficking victims in particular are unlikely to be educated about HIV risk factors. Routinization eliminates the need for victims to know about the risks of contracting HIV and self-identify as someone who may have been exposed to the virus.

This Comment may also elicit criticism for taking an idealistic, rather than a realist view of informed consent. Informed consent realists certainly have a meritorious argument that the proposed legislation comes with a potential for increased cost and more time spent with individual patients. However, an individual’s involvement in his or her own healthcare is critical to a treatment’s success. These success rates have proven true specifically in the context of both helping human trafficking survivors and treating HIV. Thus, the tradeoff of cost and time seems outweighed by the potential for an increase in HIV testing and suppression rates. The laws suggested in this Comment are also consistent with a recent shift towards increased patient autonomy in medical decision making. The proposed legislation would bring Wyoming’s HIV testing statutes up to an admirably higher ethical standard.

268 See id.
269 See Goldenberg, supra note 73, at 489.
270 See supra notes 266–69 and accompanying text.
271 An idealistic view of informed consent advocates for a “relatively expansive” interpretation of a healthcare provider’s responsibility to inform a patient of risks, benefits, and alternative treatments relating to their medical care. Peter H. Schuck, Rethinking Informed Consent, 103 YALE L.J. 899, 903 (1994). A realist view of informed consent contests that often the seemingly excessive push for patient autonomy contributes to unnecessary cost and patient confusion. Id. at 904.
273 See Evelyn M. Tenenbaum, Using Informed Consent to Reduce Preventable Medical Errors, 21 ANNALS HEALTH L. 11, 18 (2012) ("[P]atients have superior medical outcomes and recover quicker if they understand the disease process and are more involved in their medical care.").
274 Shaghayegh Vahdat, et al., Patient Involvement in Health Care Decision Making: A Review, 16 IRAN CRES MEDICAL J. 1, 6 (2014); see also supra note 17 and accompanying text.
275 See supra note 260 and accompanying text.
276 See Benjamin Moulton & Jaime S. King, Aligning Ethics with Medical Decision Making: The Quest for Informed Patient Choice, 38 J. L. MED. & ETHICS 85, 87 (2010) ("Respect for autonomy has become the dominant and controlling principle in both informed consent law and medical ethics.").
277 See generally id. Shared medical decision making is a "process of communication" between the patient and healthcare provider to discuss all treatment alternatives and options using a cohesive blend of expertise from the provider, and personal factors from the patient. Id. at 89. "Nothing less than this disclosure fully complies with the [healthcare] provider's . . . ethical obligation to the patient." Id. at 95.
B. Addressing the Cost of Routinized Testing and Post-Test Counseling

These legislative interventions will come at a higher cost than targeted HIV testing. However, the benefits that come with routinized testing outweigh the increase in costs. Routine screening for HIV is actually more cost effective for the healthcare system overall because the cost is much lower for routine HIV testing than for targeted testing. Post-test counseling and linkage to additional medical care are crucial to survival rates and managing treatment. Additionally, testing more individuals for HIV leads to higher identification of HIV positive individuals. More individuals identified as HIV positive leads to a society with less HIV cases overall, because individuals can get treatment and take preventative measures to keep HIV from spreading. The benefits, including financial savings and limiting the spread of HIV, outweigh the higher cost to the state. Furthermore, section (a) of the proposed statute identifies risk factors that may put an individual at a higher risk for HIV, so if the individual still feels they do not want an HIV test, or are not at risk, they can opt-out and save limited funding resources.

---

278 Eggman et al., supra note 272, at 545 (explaining that testing costs are typically seen as a “barrier to implementing universal rapid HIV testing.”). Targeted HIV testing is when the provider offers HIV testing based on the participant’s assessed risk factors for contracting HIV. See Castel, supra note 86, at 3.

279 See Castel et al., supra note 86, at 8 (explaining how routine testing is actually more cost effective than targeted testing in community based organizations). While strictly looking at overall costs across different studies shows targeted testing is more cost-effective, the policy benefits of testing everyone outweighs the slightly higher cost for routine testing. See id. See also CDC Guidelines, supra note 117, at 4 (“[T]he costs of [routinized] screening are reasonable in relation to the anticipated benefits.”).

280 HIV Cost-Effectiveness, CENTERS FOR DISEASE CONTROL AND PREVENTION, www.cdc.gov/hiv/programresources/guidance/costeffectiveness/index.html [https://perma.cc/RFN4-SPSD] (last updated Mar. 8, 2019). The per person cost of lifetime HIV treatment was estimated to be $379,668 in 2010. Id. See also Rizza et al., supra note 10, at 921; infra note 288 and accompanying text.


284 See Eggman et al., supra note 272, at 549, 563 (evaluating rapid HIV testing, a specific type of HIV test, in conjunction with post-test counseling); CDC Guidelines, supra note 117, at 6.

285 See Flash et al., supra note 281, at 5-14.
The cost of the proposed legislation could be split between federally funded programs, Wyoming Medicaid, and private insurers. Wyoming currently spends approximately $1.5 million annually supporting HIV positive individuals through the Communicable Disease Service Program, which receives funding through the federal Ryan White Program. The estimated annual cost for routine testing with post-test counseling overall is approximately $160,800, which is significantly less than Wyoming's current expenditures. Private insurance companies are mandated to cover annual HIV counseling and screening. Wyoming Medicaid already voluntarily covers routinized screening. Though these voluntary measures are commendable, a legislative mandate for routinization is important because it brings Wyoming's law into unquestionable compliance with recent medical guidelines, and should dramatically increase the number of people screened for HIV in Wyoming.

VII. Conclusion

HIV positive individuals face legal, emotional, and social challenges in the healthcare system on a routine basis because of their status. Wyoming can

---

286 See 2017 INTEGRATED EPIDEMIOLOGIC PROFILE FOR COMMUNICABLE DISEASES, supra note 28, at 14. Currently, Wyoming Medicaid, federally funded programs in Wyoming, and private insurers all have responsibility mandated or incentivized by the Affordable Care Act to fund routinized HIV testing. Id.

287 See 2017 INTEGRATED EPIDEMIOLOGIC PROFILE FOR COMMUNICABLE DISEASES, supra note 28, at 14 ("The [Communicable Disease Treatment Program] spends approximately $125,000 per month on [HIV/AIDS treatment and care]"). The Ryan White Program provides federal funding to states to assist with HIV care for low-income individuals. Id.


289 See Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 § 2713(a)(1) (2010) ("A group health plan and a health insurance issuer offering group or individual health insurance shall, at a minimum provide coverage for and shall not impose any cost sharing requirements for . . . evidence-based items or services that have in effect a rating of 'A' or 'B' in the current recommendations of the United States Preventative Services Task Force."). HIV screening for individuals aged 15–65 currently has an 'A' rating. USPSTF A and B Recommendations, U.S. PREVENTIVE SERVICES TASK FORCE, www.uspreventiveservicestaskforce.org/Page/Name/uspstf-a-and-b-recommendations/ [https://perma.cc/PV8E-AUQP] (last visited Nov. 20, 2019).

290 See State Medicaid Coverage of Routine HIV Screening, KFF (Feb. 25, 2014) www.kff.org/hivaid/fact-sheet/state-medicaid-coverage-of-routine-hiv-screening/ [https://perma.cc/S6V5-UV8N]. States are not required, but are given financial incentives to routinize HIV testing. Id. Wyoming is a non-expansion state, so it is not mandated to cover routine HIV testing by the Affordable Care Act. See id.


292 See Decker et al., supra note 13, at 191.
improve its communicable disease statutes in three ways to better protect human trafficking victims, who are at a higher risk of contracting HIV. First, anyone tested for HIV should give explicit informed consent to HIV testing. This informed consent should identify the risks and benefits of an HIV diagnosis, not just the physical nature of a blood test. Second, HIV testing should be a routine procedure for any adult who has had sexual intercourse—regardless of risk factors. Third, individuals should receive post-test counseling no matter their test results so they understand how to care for themselves in the future. By implementing these three legislative solutions, Wyoming can better adjust its healthcare laws to protect not only human trafficking victims, but the population at large.

293 See supra notes 199, 211, 239. State laws can present a barrier to HIV testing, and such laws should be updated to increase testing. See Tan & Black, supra note 96, at 366.

294 See Hanssens, supra note 185, at S234.

295 See id. at S234-35.

296 See WHO Guidelines, supra note 18, at 46; CDC Guidelines, supra note 117, at 7.

297 See WHO Guidelines, supra note 18, at 26, 30, 32.