February 7, 2024

Senator Pamela Beidle

Chairperson
Senate Finance Committee
3E Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401

Re: Opposition to Senate Bill 211 (The GIFT Act), which would expose pregnant persons to criminal liability, undermine bodily autonomy and rights of parents, and exacerbate medical distrust.

Dear Senator Beidle,

The Center for HIV Law and Policy (CHLP) is a national abolitionist legal and policy organization fighting to end the stigma, discrimination, and violence towards our communities experiencing racial oppression, patriarchal violence, and/or economic divestment. Our work focuses on people living with and deeply affected by HIV and other stigmatized health conditions. We utilize legal advocacy, high-impact policy and research initiatives, and multi-issue partnerships, networks, and resources as concrete ways to support our communities working to decriminalize HIV and other stigmatized health conditions.

Our partner organization The Well Project (TWP), which works to change the course of the HIV pandemic through a unique and comprehensive focus on women across the gender spectrum, has been heavily involved in advocacy, provider education, research promotion, and resource development at the intersection of HIV and reproductive health/rights/justice, particularly around the issue of chestfeeding and bodily autonomy for parents living with HIV.

Through CHLP' s Positive Justice Project, we analyze and advocate against the diverse forms of criminalization of people living with HIV and other sexually transmitted infections (STIs).[1] We have collaborated with federal, statewide, and local coalitions of grassroots activists, including organizers in Maryland and the Maryland Department of Health to modernize these laws to remove stigmatizing and counterproductive language, reduce the potential for criminalization of marginalized folks, and center the dignity of people living with these conditions.

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[1] The Center for HIV Law and Policy (CHLP), *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, https://www.hivlawandpolicy.org/resources/hiv-criminalization-united-states-sourcebook-state-and-federal-hiv-criminal-law-and (last visited Jan. 23, 2024).

We offer testimony to express serious concerns regarding Senate Bill 211 (SB211), also known as the Giving Infants a Future Without Transmission (GIFT) Act.[2] Although reducing the rates of vertical (parent-to-child) transmission of HIV and syphilis is an important goal in ending these epidemics, SB211 would put parents, pregnant people living with HIV, and others at risk of criminalization, exacerbate existing medical distrust, discourage healthy parenting behaviors, and undermine the goal of ending the HIV epidemic. As such, we ask the Legislature to reject SB211.

SB211 would increase the non-consensual data collection of pregnant persons, people living with HIV (PLHIV), and others in several significant ways. The bill would newly require that healthcare providers and healthcare institutions report the pregnancy status of people diagnosed with HIV. Furthermore, the bill would newly mandate that healthcare providers obtain an additional blood sample from birthing parents, even those who deliver stillborn infants, for syphilis testing. Lastly, the bill would newly require that healthcare providers obtain additional samples from the birthing parent and the newborn for HIV testing, without requiring affirmative consent from the parent.

To be sure, the existing law obtains extensive information on PLHIV without their affirmative consent and maintains this information within a state "registry."[3] Although such non-consensual data collection and maintenance already exposes PLHIV to criminal sanctions, SB211 would go further and expand the problems with this registry, including the information it contains and the manner in which it obtains this information.

I. The bill would expose PLHIV who are pregnant to increased criminalization. Moreover, the proposed bill would discourage Black and brown parents from engaging in healthcare by exacerbating medical distrust and would undermine parents' rights to choose how and what to feed their newborn.

In mandating the reporting of someone's HIV diagnosis concurrently with their pregnancy status, SB211 broadens the possibility of prosecution under Section 18-601.1. The official, permanent record of someone's HIV status alongside pregnancy status would open the door even further to surveillance, prosecution, and potential child regulation system involvement.

Under Maryland Code Section 18-601.1 (Section 18-601.1), Marylanders living with HIV face up to three years in prison and a $2,500 fine for knowingly transferring or attempting to transfer HIV to another person.[4] Any type of conduct by PLHIV, including chestfeeding, is subject to prosecution. Prosecutors have used Section 18-601.1 to criminalize behavior by people living with HIV, despite scientific evidence

[2] *Giving Infants a Future Without Transmission (GIFT) Act*, SB0211 (2024).

[3] MD. CODE ANN., HEALTH–GEN. § 18-201.1 (2024).
[4] MD. CODE ANN., HEALTH-GEN. § 18-601.1 (2024).

that such behavior poses effectively no risk of transmitting HIV.[5] Neither disclosure nor the use of condoms or other protection operate as an affirmative defense to prosecution under this law.[6]

SB211's additional data collection and maintenance would particularly threaten Black and brown parents with either criminalization or child protective services intervention. Despite representing 30 percent of the state's population and 71 percent of the state's population of PLHIV, Black people comprise 82 percent of all prosecutions under Section 18-601.1.[7] Thus under the laws as already written, Black people are especially targeted for arrest and prosecution. Additional surveillance under SB211 would likely only exacerbate the inequalities marginalized communities face.

Although the goal of improving the health of children is laudable, SB211 runs the risk of accomplishing the opposite effect. Increasing the risk of prosecution for chestfeeding by PLHIV is contrary to the scientific evidence and national and international guidelines. Governing bodies such as UNICEF and the World Health Organization (WHO) recommend exclusive chestfeeding for the first six months of an infant's life, including for parents living with HIV on effective treatment.[8] Efforts across the United States are focused on increasing the ability of Black parents to engage in chestfeeding if they so desire.[9] The U.S. Perinatal HIV Clinical Guidelines now state that HIV viral suppression reduces HIV transmission from chestfeeding to less than 1 percent. However, studies show that pregnant PLHIV can feel judged and restricted when it comes to their child-rearing and infant feeding choices.[10]

Many of the co-signers to this letter have experienced dealing with parents living with HIV who were either threatened with having their child removed should they engage in chestfeeding (even with the agreement of their HIV provider) or have actually had their child removed by the family regulation system. The revised U.S Perinatal HIV Clinical Guidelines now clearly state that involvement of so-called child protective services "is not an appropriate response to the infant feeding choices of an individual with HIV," citing the harm wrought by such systems, as well as the heightened HIV stigma that occurs with engaging them.

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[5] The Center for HIV Law and Policy (CHLP) (Sourcebook), *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, https://www.hivlawandpolicy.org/resources/hiv-criminalization-united-states-sourcebook-state-and-federal-hiv-criminal-law-and (last visited Jan. 23, 2024) (describing prosecution under Section 18-601.1 for biting, which poses a negligible risk of HIV transmission); *See* Centers for Disease Control and Prevention (CDC), *HIV Risk Behaviors, Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (Dec. 4, 2015) available at http://www.cdc.gov/hiv/policies/law/risk.html (last visited Jan. 31, 2024).

[6] CHLP, *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, https://www.hivlawandpolicy.org/resources/hiv-criminalization-united-states-sourcebook-state-and-federal-hiv-criminal-law-and (last visited Jan. 23, 2024).

[7] UCLA School of Law The Williams Institute, *Enforcement of HIV Criminalization in Maryland* (Jan. 2024), https://williamsinstitute.law.ucla.edu/publications/hiv-crim-md/. (last visited Jan. 23, 2024)

[8] World Health Organization (WHO), *Breastfeeding*, https://www.who.int/health-topics/breastfeeding#tab=tab_1 (lasting visited Feb. 7, 2024).

[9] Rachel Crumpler, *Black Mothers Face Disproportionate Barriers to Breastfeeding* (Aug 2022). https://www.northcarolinahealthnews.org/2022/08/25/black-mothers-face-disproportionate-barriers-to-breastfeeding/ (last visited February 7, 2024).

[10] Alison Symington et al., *When law and science part ways: the criminalization of breastfeeding by women living with HIV*. 9 THERAPEUTIC ADVANCES IN INFECTIOUS DISEASE Advances in Infectious Disease (2022).

As parents living with HIV and allied providers have themselves stated:

- "Because [opposition to chestfeeding by parents living with HIV] represents one of the current frontiers of HIV stigma/moral panic, it is a salient example of how compounded biases affect healthcare practice with great potential harms for long-term health and equity, and is a key example of why we must eliminate the maternal-fetal conflict framing of perinatal care and ethics as it incorrectly assumes that healthcare providers take infants' best interests to heart more than their own mothers."

- "[P]olicy should be implemented by listening to the voices and needs of women living with HIV who want to get pregnant and breastfeed."

- "Support from my infectious disease doctor and partner is what allowed me to be successful in breastfeeding both of my children. "

- "It now feels as if we are one step closer to decriminalizing breast/chestfeeding among parents living with HIV since the guidelines specifically recommend against calling CPS. From my own personal experience, I know that this threat is one of the scariest, and by removing it, pregnant people living with HIV will have more confidence to exert agency over their bodies and how they care for their families."

With chestfeeding by PLHIV being criminalized in Maryland, SB211 would further put parents living with HIV at the risk of criminalization or family regulation system involvement. SB211 would run contrary to well researched medical guidelines by increasing the data collection and surveillance of pregnant PLHIV and simultaneously discouraging chestfeeding, which has proven medical benefits.[11]

In addition to permanently documenting more information on the pregnancy status of PLHIV, SB211 would increase the number of samples collected in a manner that does not ensure informed, affirmative consent. Specifically, the bill would require providers to collect an additional blood sample of every pregnant person for syphilis testing after delivery, including people who deliver stillborn infants.[12] Furthermore, the bill would require providers to collect fluid or tissue samples for HIV testing from every pregnant person and their infant at the time of delivery.[13] Neither of these provisions require the affirmative, informed consent of the patient. Indeed, the language mandating collection of samples for HIV testing allows for testing “unless [the] patient declines.”

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[11] U.S. Department of Health and Human Services, *Recommendations for the use of antiretroviral drugs during pregnancy and interventions to reduce perinatal HIV transmission in the United States* (2023), *available at* https://clinicalinfo.hiv.gov/en/guidelines/perinatal/infant-feeding-individuals-hiv-united-states. (last visited Feb 1, 2024)
[12] *Giving Infants a Future Without Transmission (GIFT) Act*, SB0211 (2024) (requiring collection of a blood sample from a parent “who delivers a stillborn infant at 20 weeks of gestation or later, or weighing at least 500 grams”).
[13] *Id.*

Informed consent requires "a process of communication between a patient and physician that results in the patient's authorization or agreement to undergo a specific medical intervention."[14] Informed consent to HIV and syphilis testing is essential for ensuring the autonomy and dignity of patients. Requiring informed consent is consistent with current medical ethics as well as the national trends.

SB211 would require the collecting and testing samples without the informed, affirmative consent, limiting the bodily autonomy of pregnant Marylanders. While Maryland has protected the right to full reproductive choice during a period of increasing anti-choice bans and restrictions across the United States, passing SB211 would undermine Maryland's commitment to reproductive freedom. With the additional information stored within the record, as well as the non-consensual manner of sample collection, it is more difficult for Marylanders to exercise their reproductive and parental rights.

Moreover, such non-consensual HIV and syphilis testing would only discourage pregnant people from seeking essential pre- and post-natal care. Many members of the Black, brown, and LGBTQ+ communities, particularly those with intersectional identities, have high rates of medical distrust.[15] This is due not only to historical atrocities but also has been exacerbated by ongoing discrimination in and outside the healthcare system.[16] Covertly testing individuals, particularly those from communities that have high medical distrust, could further discourage these folks from accessing care in the future. With Maryland having an estimated 3,200 folks living with HIV but unaware of their status and experiencing a more than 200 percent increase in congenital syphilis, we should focus on reducing medical distrust and increasing the number of folks not only tested, but also committed to entering and remaining in care.[17] SB211 does the opposite.

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[14] CHLP, *Testing and Informed Consent*, https://www.hivlawandpolicy.org/issues/testing-and-informed-consent (last visited Feb. 7, 2024).
[15] Amanda B. Cox et al., *Medical Mistrust Among a Racially and Ethnically Diverse Sample of Sexual Minority Men*, 10 LGBT HEALTH (2023); Alaina Brenick et al., *Understanding the Influence of Stigma and Medical Mistrust on Engagement in Routine Healthcare Among Black Women Who Have Sex with Women*, 4 LGBT HEALTH (2017).
[16] Mohsen Bazargan et al., Discrimination and Medical Mistrust in a Racially and Ethnically Diverse Sample of California Adults, 19 ANNALS OF FAMILY MEDICINE 4 (2021); The Center for American Progress, Discrimination Prevents LGBTQ People From Accessing Health Care (Jan. 18, 2018), https://www.americanprogress.org/article/discrimination-prevents-lgbtq-people-accessing-health-care/; Simar Singh Bajaj, & Fatima Cody Stanford, Beyond Tuskegee — Vaccine Distrust and Everyday Racism, 384 NEJM (2021).
[17] CDC, *HIV Surveillance Report, 2021 (May 2023)* available at https://www.cdc.gov/hiv/library/reports/hiv-surveillance.html; CDC, Maryland: Spotlight on Sexually Transmitted Infections & Prevention (Aug. 2023), *available at* https://www.cdc.gov/std/dstdp/sti-funding-at-work/jurisdictional-spotlights/maryland.pdf (last visited Feb. 1, 2024)

CHLP
Making Positive Justice Possible

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We oppose the current extensive and dangerous data collection and maintenance requirements related to HIV and syphilis under Maryland law. As such, we oppose the expansion of these requirements to include additional non-consensual data and sample collection that would further expose people to criminalization, undermine bodily autonomy, worsen medical distrust, and discourage chestfeeding. While we understand the importance of ending vertical transmission of HIV and syphilis, SB211 would reverse Maryland's progress toward this goal. Accordingly, we urge the Legislature to reject SB211.

Sincerely,

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