

Testimony in Support of SB 1165
Public Health – Prohibition on Transfer of Human Immunodeficiency Virus – Repeal
Maryland Senate Judicial Proceedings Committee
March 26, 2024

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Dear Chair William C. Smith Jr. and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 1165.

I am the Associate Director of Policy and Education of Whitman-Walker Institute, which is the research, policy, and education arm of Whitman-Walker, a Federally Qualified Community Health Center based in Washington, DC. We serve 20,000 patients per year from across the Washington metropolitan area, of whom almost 20% come from Maryland.

Whitman-Walker Health (WWH) is a community-based, nonprofit health care center offering health care and health and wellness-related services to residents of the greater Washington, DC metropolitan area, including the nearby Maryland counties. We offer primary medical care and HIV specialty care; mental health and addiction treatment services; dental care; medical adherence case management; testing and prevention services for HIV and sexually transmitted infections; and legal services.

Whitman-Walker has been at the forefront of the regional and national response to the HIV epidemic for 40 years – since the earliest days of the AIDS crisis. Our health care providers and public health workers and educators are nationally known experts in HIV testing, treatment and prevention. Our staff and volunteer lawyers are widely respected experts in HIV law, including criminal and public health laws that address HIV transmission. Over the past decades, our staff and trained volunteers have tested many tens of thousands, if not more, individuals in Northern Virginia, the District of Columbia and Suburban Maryland for HIV and other sexually transmitted infections, and educated many more on HIV prevention facts and strategies. Whitman-Walker Institute also has a vibrant research arm that is a leader in HIV treatment and prevention.

We support Senate Bill 1165 because the evidence shows that laws which attach criminal penalties to sexual conduct by persons living with HIV are ineffective and counterproductive. A number of recent peer-reviewed, published studies have found that HIV-specific criminal laws do not alter people’s sexual behavior, including behaviors that pose a risk of HIV transmission.¹ The verdict of these studies is:

¹ See, e.g.:

- Persons living with HIV, like the general population, agree with our widely accepted moral norms of disclosure and protection, but there is no evidence that the laws have any effect.
- In particular, sexual behaviors that pose the greatest risk of transmission (particularly unprotected anal intercourse) are not any less frequent in states that have HIV criminal exposure laws than in states without such laws; and individuals who are aware of the laws engage in such behaviors as frequently, if not more frequently, than individuals who are unaware of the laws.

Moreover, the science of HIV treatment and prevention has changed dramatically since Maryland's "Prohibition on Transfer of Human Immunodeficiency Virus" law was enacted. There is a national and international consensus that persons diagnosed with HIV, who enter into treatment and become virally suppressed, simply cannot biologically transmit the virus to others through sexual conduct, even without condoms. Thus, Maryland's current law does not accurately reflect current scientific knowledge.² In order to end the HIV epidemic, public health experts and doctors agree that it is critical that everyone be tested for HIV, and that all persons testing HIV-positive be promptly engaged in antiretroviral treatment and adhere to that treatment. Laws that may discourage persons from being tested, and from fully engaging with the medical system if they are living with HIV, undermine rather than advance the fight against the epidemic.

In Whitman-Walker's experience, it is exceedingly rare for an individual, who knows they have HIV, to deliberately expose another person to the virus with the specific intent of infecting that other person. Although some such cases may exist, they are outliers that can be addressed by other criminal laws, such as Section 3-215 of the Code, Knowingly and willfully causing another ingest bodily fluid. In the experience of our medical providers, therapists and HIV testing and counseling workers, exposures that do occur result primarily from lack of understanding, momentary passion, impaired thinking, carelessness, and other common human behaviors which criminal laws do not and cannot effectively control. We urge the House and the Senate to fight HIV by funding and

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- Galletly CL, Glasman LR, Pinkerton SD, DiFranceisco W: New Jersey's HIV exposure law and the HIV-related attitudes, beliefs, and sexual and seropositive status disclosure behaviors of persons living with HIV. *Am J Pub Health* 2012; 102: 2135-2140
 - Galletly CL, Pinkerton SD, DiFranceisco W: A quantitative study of Michigan's criminal HIV exposure law. *AIDS Care* 2011; 24: 174-179
 - Horvath KJ, Weinmeyer RM, Rosser BRS: Should it be illegal for HIV-positive persons to have unprotected sex without disclosure? An examination of attitudes among US men who have sex with men and the impact of state law: *AIDS Care* 2010; 10: 1221-1228
 - Burris S et al.: Do criminal laws influence HIV risk behavior? An empirical trial. *Ariz St L J* 2007; 39: 467-519
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² Recent statements issued by prominent scientists noting that HIV criminalization is inconsistent with treatment as prevention and U=U include:

- Barre-Sinoussi F et al. Expert consensus statement on the science of HIV in the context of criminal law. *J Intl AIDS Soc* 2018, 21:e25161. <https://onlinelibrary.wiley.com/doi/full/10.1002/jia2.25161>
- Mayer KH et al. Addressing HIV criminalization: Science confronts ignorance and bias. *J Intl AIDS Soc* 2018, 21:e25163. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6058272>
- McCall B. Scientific evidence against HIV criminalization. *Lancet* 2018; 392(10147): 543-544. [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)31732-X/abstract](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31732-X/abstract)
- Editorial. HIV criminalization is bad policy based on bad science. *The Lancet HIV* 2018; 5(9): 473. [https://www.thelancet.com/journals/lanhiv/article/PIIS2352-3018\(18\)30219-4/fulltext](https://www.thelancet.com/journals/lanhiv/article/PIIS2352-3018(18)30219-4/fulltext)

otherwise supporting public health interventions that we know are effective: through increasing testing and treatment, and making prevention modalities such as Pre-Exposure Prophylaxis (PrEP) more available and affordable. It is imperative that testing, treatment and prevention reach the marginalized communities most affected by HIV, and those communities are not effectively reached by a criminal law approach.

We appreciate the opportunity to offer our expertise on this important issue. Please let us know if we can be of assistance in any other way.

Respectfully,

A handwritten signature in cursive script, appearing to read 'B. Brooks', written in black ink.

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