

## Letter in Support of HB 0485/SB1165 Public Health – Prohibition on Transfer of Human Immunodeficiency Virus – Repeal

We are a coalition of dozens of advocates and organizations seeking to remove the stigma of targeted criminalization of people living with HIV. We are asking you to support the repeal of MD Code, Gen-Health § 18-601.1, which unfairly penalizes people living with HIV (PLWH) with longer prison times and larger fines if they knowingly transfer or attempt to transfer HIV, as compared to people living with other infectious diseases. The stigma created by the law disrupts Maryland’s public health goal of ending the HIV epidemic by discouraging testing, because the charge depends on whether someone knows their HIV status. As long as it remains in force, § 18-601.1 perpetuates a lifelong threat of criminalization for every person living with HIV in Maryland who is aware of their status.

If HIV is virally suppressed and undetectable in a person, then it is untransmittable by that person.<sup>1</sup> This is often called “U=U” (undetectable = untransmittable). According to the Centers for Disease Control and Prevention, of all people living with HIV in the US in 2016, 51% were taking common medications and were virally suppressed— and this group accounted for 0% of new transmissions in 2016.<sup>2</sup> However, 38% of new transmissions in the same period came from the 15% percent of people living with HIV that didn’t know their HIV status.<sup>3</sup> A further 43% of transmissions that year were from the 23% of individuals who knew their positive HIV status but weren’t receiving care.<sup>4</sup> The current law discourages the small group disproportionately linked to new transmissions from seeking testing and care. Removing statutory provisions like § 18-601.1 that reinforce stigma and create barriers to testing and care is critical for reducing those new transmissions.

Even though it is clear that “U=U,” there are no defenses to this offense like the use of protection or complete viral suppression through medical treatment—and the statute does not even require actual transmission. This results in enforcement practices based on fear, completely out of touch with scientific reality. For example, individuals have been charged with attempting to transmit HIV through spitting and biting, even though it is impossible to transmit through saliva. Additionally, removing § 18-601.1 would not result in the inability of the state to prosecute actual or threatened transmissions with the intent to harm, because the intentional, harmful transmission of infectious diseases is already addressed elsewhere in our criminal code.<sup>5</sup>

Data about how § 18-601.1 is enforced also illustrates yet another example of racial disparities in our criminal justice system. Black people comprise 82% of all HIV-related prosecutions, but only 30% of the state’s population, and 71% of people living with HIV in the state.<sup>6</sup> Black men are particularly impacted— they make up 14% of the state’s population and 44% of people living with HIV, but they account for 68% of HIV-related prosecutions.<sup>7</sup> Repealing § 18-601.1 would not fix the overarching

---

<sup>1</sup> [Centers for Disease Control and Prevention, \*HIV Treatment as Prevention\* \(August 2023\)](#)

<sup>2</sup> [Centers for Disease Control and Prevention, \*Vital Signs: End HIV\* \(2019\)](#)

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See MD Code, Criminal Law, § 3-202 (assault in the first degree), § 3-203 (assault in the second degree), § 3-204 (reckless endangerment), § 3-215 (knowingly and willfully causing another to ingest bodily fluid), § 3-303 (rape in the first degree), and § 3-307 (sexual offense in the third degree).

<sup>6</sup> [The Williams Institute, UCLA School of Law: \*Enforcement of HIV Criminalization in Maryland\* \(January 2024\)](#)

<sup>7</sup> *Id.*

problems with the system, but it would absolutely be a tangible step towards evidence-based policymaking and enforcement.

§ 18-601.1 was enacted in 1989 and has not been updated since, despite multiple breakthroughs in medical understanding of HIV and its treatment. HIV is no longer a death sentence, and people living with HIV survive, thrive, and grow old thanks to advances in care— yet the legislature has not responded to the new medical realities, nor has it addressed the unintended negative consequences of the existing law.

Polling shows that between 72% and 87% of voters support similar initiatives.<sup>8</sup> Governor Moore even campaigned on this idea before he was elected, stating on his campaign website that a goal of his time in office is to “[a]bolish Maryland’s outdated laws that criminalize HIV, which disproportionately affect and stigmatize the LGBTQ+ community.”<sup>9</sup> A repeal bill introduced last session by Delegate Kris Fair passed 97-37 out of the House. That bill had incredible momentum, but because the bill was not passed by the Senate last session, Maryland is now falling behind other states who have recently taken steps to lessen or remove HIV stigma from their state code, like Nevada, Georgia, Illinois, Missouri, Virginia, Kentucky, Tennessee, and Indiana.

Repealing § 18-601.1 would remove language that stigmatizes people living with HIV. Repeal would also lower barriers to HIV testing as Maryland responds to the epidemic. Doing so would represent a significant update to state policy, to be in line with lifesaving medical advances, and it would also help reduce racially disparate and unscientific enforcement practices. We urge you to support this effort and speak about it with your colleagues, and we hope to see you vote in favor of finally repealing § 18-601.1.

Please do not hesitate to reach out to us or the bill sponsors, Del. Kris Fair or Sen. Karen Lewis Young, for more information or with any questions you have. Thank you for your consideration.

Respectfully submitted,

Professor Kathleen Hoke, UMD Carey School of Law  
Professor Leigh Goodmark, UMD Carey School of Law  
Professor Sophia Jayanty, Fair Housing Law Clinic  
Jeremy Myers, Community Advocate for AIDS Healthcare Foundation (AHF)  
University of Maryland Carey School of Law, Clinical Law Program, Prof. Sara Gold  
Prof. Sara Gold (individually)  
Maureen A. Sweeney, UMD Carey School of Law  
Jaden Farris, Annapolis Pride  
James PJ Gouldmann , Greater Baltimore HIV Health Services Planning Council  
Emily Halden Brown  
Edward C. Traver, M.D.  
Michel McVicker-Weaver, AIDS Healthcare Foundation  
Joyce L. Jones, MD, MS

---

<sup>8</sup> Polling conducted by Susquehanna Polling and Research from October 17-27, 2023. Surveyed 1,000 nationwide registered voters ages 18+. The margin of error for a sample size of 1,000 is +/-3.2% at the 95% confidence level. See <https://bit.ly/3u3SEU2> for poll results and <https://bit.ly/3SwZJqk> for cross tabs. For questions email [afawal@rabengroup.com](mailto:afawal@rabengroup.com).

<sup>9</sup> [Link to Gov. Moore’s Campaign Website](#), accessed 1.23.24

Kennedy Hagens  
Sam Zisow-McClean  
Jeremy Myers  
Sheila Goldscheider  
Liz Gilliams, Johns Hopkins University School of Medicine, Division of Infectious Diseases  
Amit "Mickey" Dhir  
Melanie Reese  
Carlton Ray Smith  
Ronald Johnson  
Ricarra Jones, 1199SEIU United Healthcare Workers East  
Lydia Lockwood  
Patty Snee, Progressive Maryland  
Whitman-Walker, Benjamin Brooks JD, MPH  
TransMaryland  
Sero Project  
Tami Haught  
Trans Rights Advocacy Coalition  
SAGE – Services and Advocacy for GLBT Elders  
Lambda Legal, Kara N. Ingelhart, Esq.  
Camila Reynolds-Dominguez  
Natalie Spicyn, MD, MHS, AAHIVS  
Genevieve Beninati  
Charmaine Stern  
Moveable Feast  
FreeState Justice  
Shawn McIntosh  
Ezra Towne  
Safiya Yearwood  
Marijke Sutter  
Joseph Magness, PhD  
Darren Whitfield, PhD  
Frederick HIV Coalition