



March 26, 2024

Senator William C. Smith Jr.
Chairperson
Judicial Proceedings Committee
Miller Senate Office Building
2 East Street
Annapolis, MD 21401

Re: Support for SB 1165 - Repeal of HIV Criminalization Law (Maryland Code Section 18-601.1)

Dear Chairperson Smith,

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.

Through our 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, to modernize these laws to reflect scientific developments, remove stigmatizing and counterproductive language, and center the dignity of people living with these conditions.

We offer testimony to urge the passage of SB1165, which would repeal Maryland Code Section 18-601.1 (Section 18-601.1), a statute that specifically targets people living with HIV (PLHIV) for criminal punishment. Passage of SB1165 would remove a stigmatizing, archaic law; advance racial justice; and further the fight to end the HIV epidemic.

Under 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.² Any type of conduct by PLHIV, including consensual sex, blood and tissue donation, chestfeeding, or needle sharing, is subject to prosecution.³ Despite scientific consensus, prosecutors have used

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).

² MD. CODE. ANN., HEALTH-GEN. § 18-601.1 (2024).

³ 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).

Section 18-601.1 to criminalize behavior that poses effectively no risk of transmitting HIV.⁴ On its face, neither disclosure nor the use of condoms or other protection operate as an affirmative defense to prosecution under this law.⁵

In addition to removing the criminal penalties imposed by Section 18-601.1, SB1165 would remove the continuing and lasting punishment and other collateral consequences caused by criminalization. A criminal conviction can negatively affect an individual's ability to obtain employment, find housing, and pursue an education.⁶

Moreover, SB1165 would additionally reduce the threat of Intimate Partner Violence (IPV). According to the CDC, women living with HIV in the United States experience IPV at rates that are higher than women not living with HIV. Over half of women living with HIV have reported instances of IPV⁷. Women living with HIV may experience abuse that is more frequent and more severe than women who are not living with HIV. Disclosure of HIV status may also play a role in increased rates of violence, with 0.5-4% of women living with HIV reporting experiencing violence following HIV serostatus disclosure.⁸ Understanding laws like Section 18-601.1 exist, perpetrators of intimate violence use the threat of disclosure of one's HIV status to exercise control over PLHIV, leading to the coercion and abuse of the PLHIV.

SB1165 would also reduce stigma against people living with HIV, which Section 18-601.1 continues to perpetuate. Although there is already an existing law criminalizing exposure to infectious diseases, Section 18-601.1 unjustly singles out people living with HIV with longer prison times and higher fines if they engage in various activities, including conduct that poses no risk of HIV transmission. In targeting PLHIV, the law creates and exacerbates stigma against people disparately affected by HIV, who are often Black and brown LGBTQ+ Marylanders.⁹ In the more than three decades since the passage of Section 18-601.1, our understanding of HIV transmission and the tools we have for prevention and treatment of HIV have dramatically transformed. The statute ignores these advancements and keeps Maryland entrenched in the past. SB1165 would eliminate this archaic law that continues to stigmatize PLHIV.

The unfair targeting of PLHIV through Section 18-601.1 additionally undermines Maryland's efforts to end the HIV epidemic. With carceral penalties for PLHIV exacerbating

⁴ 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) (describing prosecution under Section 18-601.1 for biting, which poses a negligible risk of HIV transmission); See CTR. FOR DISEASE CONTROL & PREVENTION, *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).

⁵ 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)

⁶ The Center for American Progress, *A Criminal Record Shouldn't Be a Life Sentence to Poverty* (May 28, 2021), <https://www.americanprogress.org/article/criminal-record-shouldnt-life-sentence-poverty-2/>; Simone Ispa-Landa & Charles E. Loeffler, *Indefinite Punishment and the Criminal Record: Stigma Reports Among Expungement-Seekers in Illinois*, 0 *Criminology* 1, 1 (2016).

⁷ Dawson, L., Kates, J. and Ramaswamy, A., 2019. HIV, Intimate Partner Violence (IPV), and Women: An Emerging Policy Landscape. *Kaiser Family Foundation*.

⁸ Centers for Disease Control and Prevention, 2014. Intersection of intimate partner violence and HIV in women. *Atlanta, GA: Author Retrieved from http://www. CDC. gov/violenceprevention/pdf/ipv/13_243567_green_aag-a. pdf.*

⁹ Edwin J. Bernard et al., *Punishing Vulnerability Through HIV Criminalization*, 112 *Am. J. Pub. Health* S395_S397 (2022) (“[W]e observe that HIV criminalization serves as a proxy for discrimination based on class, ethnicity, gender identity, migrant status, race, sex, sexual orientation, and other markers of social vulnerability. The most aggressive push to criminalize people living with HIV tends to occur at the intersection of several stigmatized identities”).

stigma, Section 18-601.1 inhibits honest conversations about sexual health and discourages people from accessing care.¹⁰ Section 18-601.1 and similar laws also directly disincentivize HIV testing, as only people who are aware of their status are vulnerable to criminal sanctions. With an estimated 3,200 Marylanders living with HIV but unaware of their status,¹¹ about one quarter of newly diagnosed people being diagnosed late, and almost one third of PLHIV not receiving care,¹² it is imperative that Section 18-601 is repealed to remove this stigmatizing barrier to testing and treatment.

SB1165 would also advance Maryland's efforts to end racial injustice. Not only does Section 18-601.1 needlessly criminalize PLHIV, it disproportionately targets Black Marylanders. 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 18-601.1.¹³ Black men are particularly impacted, as they account for 68 percent of all HIV-related prosecutions.¹⁴ While more work is needed to reduce racial disparities within the criminal legal system, the repeal of Section 18-601.1 would move Maryland toward ensuring racial justice.

As an abolitionist legal and policy organization, we understand the role of laws in perpetuating the oppression of marginalized communities, particularly folks living with HIV and other stigmatized health conditions. And we are not alone. Leading harm reduction and public health organizations recognize that the best way to further combat HIV and STI transmission is through testing and destigmatization, not criminalization. The American Medical Association, the Center for Disease Control, the White House, and the United Nations all oppose health status criminalization.¹⁵

¹⁰ CHLP, *Stigma*, <https://www.hivlawandpolicy.org/issues/stigma>, (last visited Jan. 23, 2024); Anna North, Vox, *These laws were meant to protect people from HIV. They've only increased stigma and abuse*, (Oct. 10, 2019 11:27AM),

<https://www.vox.com/the-highlight/2019/10/3/20863210/hiv-aids-law-iowacriminalization>; Amy Baugher et al., *Black men who have sex with men living in states with HIV criminalization laws report high stigma*, 23 U.S. cities, 2017, 35 AIDS 1637, 43 (2021) (finding HIV criminalization increased stigma among Black same gender loving men in particular).

¹¹ Centers for Disease Control and Prevention (CDC), *HIV Surveillance Report, 2021 (May 2023)* available at <https://www.cdc.gov/hiv/library/reports/hiv-surveillance.html>.

¹² AIDSvu, *Local Data: Maryland*, available at <https://aidsvu.org/local-data/usa/south/maryland/> (last visited Jan. 31, 2024). (last visited Jan. 31, 2024).

¹³ UCLA School of Law The Williams Institute, *Enforcement of HIV Criminalization in Maryland* (Jan. 2024), <https://williamsinstitute.law.ucla.edu/publications/hiv-crim-md/>.

¹⁴ *Id.*

¹⁵ The White House, *Remarks by President Biden to Commemorate World AIDS Day, Launch the National HIV/AIDS Strategy, and Kick Off the Global Fund Replenishment Process* (Dec. 1, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/12/01/remarks-by-president-biden-to-commemorate->

[e-world-aids-day-launch-the-national-hiv-aids-strategy-and-kick-off-the-global-fund-replenishment-process/](https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/12/01/remarks-by-president-biden-to-commemorate-world-aids-day-launch-the-national-hiv-aids-strategy-and-kick-off-the-global-fund-replenishment-process/); American Medical Association, *Discrimination and Criminalization Based on HIV Seropositivity H-20.914*, <https://policysearch.ama-assn.org/policyfinder/detail/HIV?uri=%2FAMADoc%2FHOD.xml-0-1254.xml> (last visited Jan. 23, 2024);

UNAIDS, *GLOBAL AIDS STRATEGY 2021–2026. END INEQUALITIES. END AIDS.*, https://www.unaids.org/sites/default/files/media_asset/global-AIDS-strategy-2021-2026_en.pdf (last visited Jan. 23, 2024); United Nations Development Programme, *UNDP Guidance for Prosecutors on HIV Related Criminal Cases* (Jun. 7, 2021),

<https://www.undp.org/publications/undp-guidance-prosecutors-hiv-related-criminal-cases>.



Accordingly, we urge you and your colleagues to support SB1165, which would repeal Section 18-601.1, the law that explicitly criminalizes PLHIV in Maryland. We invite you to advance the fight to end the HIV epidemic and pass SB1165. We thank you for allowing us the opportunity to testify and for reviewing our comments.

Sincerely,

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The Center for HIV Law and Policy