

**2024-03-26 SB1165 (Support).pdf**

Uploaded by: Adam Spangler

Position: FAV

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March 26, 2024

**TO:** The Honorable Will Smith  
Chair, Judicial Proceedings Committee

**FROM:** Adam Spangler  
Legislative Aide, Legislative Affairs, Office of the Attorney General

**RE:** Senate Bill 1165 Public Health - Prohibition on Transfer of Human  
Immunodeficiency Virus - Repeal- **Support**

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The Office of the Attorney General urges the Judicial Proceedings Committee to report favorably on Senate Bill 1165.

Senate Bill 1165 would repeal § 18-601.1 of the Health-General Article, which makes the knowing transfer or attempted transfer of the human immunodeficiency virus (HIV) a criminal offense subject to up to 3 years' imprisonment.

Section 18-601.1 was enacted in the 1980s, when the understanding of HIV transmission was more limited and the treatment of HIV and AIDS was far less advanced than it is today. The criminalization of HIV transmission is not consistent with the current public health understanding of effective ways to discourage and prevent HIV transmission.<sup>1</sup> Moreover, the treatment of HIV transmission under this statute, when the knowing transmission of other serious

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<sup>1</sup> See U.S. Centers for Disease Control and Prevention, HIV and STD Criminalization Laws, <https://www.cdc.gov/hiv/policies/law/states/exposure.html>

communicable or sexually transmitted diseases is not similarly treated under State law, stigmatizes those living with HIV and raises equity concerns.

For these reasons, the Office of the Attorney General urges a favorable report on Senate Bill 1165.

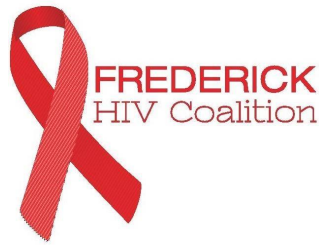
cc: The Honorable Karen Lewis Young  
Judicial Proceedings Committee Members

# **SB 1165 Support Letter The Frederick HIV Coalition**

Uploaded by: Alex Biggus

Position: FAV





The Frederick Center, Inc  
322 W Patrick Street  
Frederick, MD 21701  
301-383-8787

## **Support Testimony**

### **SB 1165-Public Health- Prohibition on Transfer of Human Immunodeficiency Virus- Repeal**

To Honorable William Smith, Chair  
Judiciary Proceedings Committee  
Miller Senate Office Building - Room 2 East Wing  
11 Bladen Street  
Annapolis, MD 21401

Chair Smith and Esteemed Members of the Judiciary Committee,

The Frederick HIV Coalition urges your support for Senate Bill 1165 which seeks to address and repeal the criminalization of the transfer of Human Immunodeficiency Virus (HIV). Maryland HIV Criminalization law ignores the current understanding of HIV and the science behind HIV transmission. It uses the perception of danger due to antiquated beliefs to designate persons living with HIV as a threat to the general public. The added misconception and perception of HIV as a 'gay disease' allows for the discrimination, retaliatory behavior and targeting of LGBTQ individuals and other charges are often arbitrarily added to increase sentencing.

#### **Maryland Laws Ignore Science:**

The medical field has done extensive research into the pathology of the transmission of HIV and it is evident which ways the virus is transmitted and which ways it is not. HIV can not be passed through saliva; yet, 'spitting' is an action that could carry with it the designation of attempting to expose someone to HIV and has the potential to include 'reckless endangerment' as an offense. Current medical research tells us that those who are HIV positive and adhere to Antiretroviral Therapies (ART) and maintain an

undetectable status cannot pass the virus on to others sexually and are similar to those living without the virus. Because of these therapies, those living with HIV have life expectancies and qualities of life parallel to those of non-positive persons. ARTs have also allowed for the development of Pre/Post-exposure Prophylaxis (PrEP/PEP) which allow those who are negative to prevent infection even if exposed to the virus. Current Maryland law ignores these factors and does not take into account during sentencing the presence or use of ARTs, PrEP, condoms, or other preventive measures during even consensual encounters and allows for charges of "knowingly attempting to transmit HIV" to be considered regardless of actual possibility of transmission.

**Arbitrary Verbiage Allows for Specific Targeting:**

Maryland HIV laws currently state 'exposure' or 'perception of exposure' as means for bringing forward charges against HIV positive individuals. However, due to the aforementioned progresses in HIV treatment, oftentimes there is no exposure or even threat of exposure, because the virus cannot be passed on. Maryland laws target individuals who have 'knowledge' of their status in an interaction regardless of the actual presence of harm and use the 'perception' of harm or discomfort as means for prosecution. This allows for easy targeting of vulnerable populations, especially those in LGBTQ communities.

**Prohibits the Eradication of HIV and inhibits HIV Prevention Initiatives:**

In 2019 The United States announced a plan to end the HIV epidemic by 2030 (EHE) with the goal of reducing new infections by 90 percent. This plan relies on the combination of HIV testing, diagnosis treatment, and the availability of resources and programs. However the Centers for Disease Control and Prevention (CDC) state that one of the biggest hurdles to testing, treatment and the provision of resources is stigma. Societal shame, misinformation and fear of legal reprisals prevent individuals from testing and discourages status sharing.

Maryland HIV laws suppose that persons living with HIV are criminals by the very nature of being positive. HIV is not a crime, and those living with HIV pose no threat to their peers when given the resources. This is only possible through repeal of current Maryland law. We respectfully encourage your support for Senate Bill 1165

Thank you,

Alex Biggus, Frederick HIV Coalition Director



# **FAVORABLE STATEMENT ON SB1165 - Commissioner Mick**

Uploaded by: Amit "Mickey" Dhir

Position: FAV



## Maryland Commission on LGBTQIA+ Affairs

TESTIMONY OF AMIT (MICKEY) DHIR  
COMMISSIONER, MARYLAND COMMISSION ON LGBTQIA+ AFFAIRS  
FAVORABLE STATEMENT ON SENATE BILL 1165  
PUBLIC HEALTH - PROHIBITION ON TRANSFER OF HUMAN IMMUNODEFICIENCY VIRUS - REPEL

March 26, 2024

Senate Judicial Proceedings Committee

The Hon. William C. Smith, Chair  
The Hon. J. Jeff Waldstreicher, Vice Chair

Chair Smith, Vice-Chair Waldstreicher, and members of the Judicial Proceedings Committee, my name is Mickey Dhir (he/him), and I am the Chair of the Health and Wellness committee of the Maryland Commission on LGBTQIA+ Affairs and an HIV certified medical provider. Today, I am honored to testify to express the strong support of Senate Bill 1165 on behalf of the Maryland Commission on LGBTQIA+ Affairs.

As a Commission, we believe that reforming existing laws related to HIV is a crucial step towards fostering a more just and compassionate society. Ending the HIV Epidemic in the U.S. requires addressing structural barriers to HIV prevention and care.

**After more than 40 years of HIV research and significant biomedical advancements to treat and prevent HIV, most HIV criminalization laws do not reflect current scientific and medical evidence.**

- Many of these laws were passed at a time when very little was known about HIV, including how HIV was transmitted and should be treated.
- These laws have not increased disclosure and may discourage HIV testing, increase stigma against people with HIV, and exacerbate disparities.

**HIV criminalization laws were enacted before the availability of antiretroviral therapy (ART):**

- **Scientific Dissonance:** A critical gap exists between current scientific understanding of HIV and these outdated laws. Decades of research have yielded significant advancements.

<https://www.nih.gov/news-events/news-releases/hiv-aids-research-yields-dividends-across-medical-fields>):

- **Antiretroviral Therapy (ART):** With effective ART regimens, individuals with HIV can achieve viral suppression, rendering them virtually untransmittable (VT) through sex.  
<https://www.poz.com/basics/hiv-basics/undetectable-equals-untransmittable>. These laws, however, perpetuate the misconception that HIV transmission is inevitable.
- **Improved Prevention:** Advances like Pre-Exposure Prophylaxis (PrEP) offer powerful prevention tools not considered when these laws were enacted  
<https://www.cdc.gov/hiv/basics/prep.html>.

HIV criminalization laws have long been a source of stigma and discrimination, disproportionately affecting individuals living with HIV and people who have been marginalized and made vulnerable. These laws not only perpetuate misinformation and fear but also hinder our collective efforts to address the HIV epidemic effectively.

In essence supporting the passage of this important bill will:

**1. Promote Public Health:**

- Decriminalizing HIV helps destigmatize the virus, encouraging individuals to seek testing and treatment without fear of legal repercussions.
- It allows for a more open and honest dialogue about HIV, contributing to increased awareness, prevention, and overall public health outcomes.

**2. Address Stigma and Discrimination:**

- Criminalization perpetuates stigma, discrimination, and misinformation about HIV, leading to negative social attitudes and biases against those living with the virus.
- Decriminalization sends a powerful message of inclusivity, acknowledging that individuals with HIV should not face legal penalties simply for their health status.

**3. Protect Human Rights:**

- Current laws often infringe upon the basic human rights of individuals living with HIV, including privacy, autonomy, and the right to live free from discrimination.
- Senate Bill 1165 is an opportunity to align our legal framework with principles of justice, equality, and the protection of fundamental human rights.

**4. Foster Supportive Healthcare Environments:**

- Decriminalization can contribute to creating a more supportive healthcare environment where individuals feel comfortable disclosing their HIV status to healthcare providers without fear of legal consequences.
- This, in turn, enables better-informed healthcare decisions and improved overall health outcomes.

**5. Adapt to Scientific Advances:**

- Advances in medical science have transformed our understanding of HIV transmission, treatment, and prevention.
- Senate Bill 1165 reflects a commitment to adapting our legal system to reflect these advances, promoting evidence-based policies that prioritize public health.

**6. Eliminate Disparities:**

- These laws disproportionately impact marginalized communities, hindering access to testing, treatment, and prevention resources.
- Senate Bill 1165 is a move towards addressing health disparities and ensuring equitable access to HIV testing, treatment, and prevention resources for all communities, particularly marginalized populations.

When a law meant to protect the public is not working as intended, is unjust, and may be hurting efforts to keep communities healthy, it should be repealed. For those reasons, the Maryland Commission on LGBTQIA+ Affairs urges a favorable report on Senate Bill 1165.

Thank you for your time and consideration.

# **SERO Letter in Support of Maryland SB 1165.pdf**

Uploaded by: Anna Kastner

Position: FAV



[www.seroproject.com](http://www.seroproject.com)

March 25, 2024

Dear Members of the Maryland Senate:

The SERO Project urges you to pass SB 1165, which would repeal Maryland's outdated HIV criminalization law (Maryland Code, Gen-Health § 18-601.1, making it a crime for a person living with HIV to "knowingly transfer or attempt to transfer" HIV to another person). The SERO Project is a national organization which centers the leadership of people living with HIV (PLHIV) to end HIV criminalization, mass incarceration, racism and social injustice by supporting inclusive PLHIV networks to improve policy outcomes, advance human rights and promote healing justice.

In the 35 years since Maryland's HIV criminalization law was enacted, our knowledge of HIV prevention, treatment, and transmission has advanced in significant ways. Today, HIV is a manageable chronic health condition and people diagnosed with HIV can take antiretroviral therapy (ART) and live long and healthy lives. The Centers for Disease Control and Prevention (CDC) has identified a number of mechanisms including barrier protection, such as condoms,<sup>1</sup> pre-exposure prophylaxis (PrEP),<sup>2</sup> and post-exposure prophylaxis (PEP)<sup>3</sup> that are effective in preventing the transmission of HIV. The CDC also acknowledges that treatment *is* prevention, as a person who takes ART and has an undetectable viral load is unable to transmit HIV through sexual contact.<sup>4</sup>

Despite these scientific advances, there remain common misperceptions about HIV which have motivated prior prosecutions under this law. In 2008, a man was convicted of knowingly attempting to transmit HIV for biting,<sup>5</sup> even though according to the CDC biting carries a negligible risk of HIV transmission and HIV cannot be transmitted through saliva.<sup>6</sup> Repealing

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<sup>1</sup> Centers for Disease Control and Prevention, *Condoms*, (Feb. 15, 2022) available at <https://www.cdc.gov/hiv/risk/prep/index.html>.

<sup>2</sup> Centers for Disease Control and Prevention, *Pre-Exposure Prophylaxis (PrEP)*, (July 5, 2022) available at <https://www.cdc.gov/hiv/risk/prep/index.html>.

<sup>3</sup> Centers for Disease Control and Prevention, *Post-Exposure Prophylaxis (PEP)*, (Aug. 24, 2022) available at <https://www.cdc.gov/hiv/risk/pep/index.html>.

<sup>4</sup> Centers for Disease Control and Prevention, *HIV Treatment as Prevention*, (Aug. 9, 2023) available at <https://www.cdc.gov/hiv/risk/art/index.html>.

<sup>5</sup> Center for HIV Law and Policy, *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, "Maryland," (2024), available at [https://www.hivlawandpolicy.org/sites/default/files/Maryland%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S.\\_0.pdf](https://www.hivlawandpolicy.org/sites/default/files/Maryland%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S._0.pdf).

<sup>6</sup> Centers for Disease Control and Prevention, "HIV Risk Behaviors," (Nov. 13, 2019) available at <https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html>.



Maryland's HIV criminalization law would modernize the criminal code so that it is aligned with the current science regarding HIV.

This legislation also reduces stigma and, by doing so, supports important public health goals. According to the White House's National HIV/AIDS Strategy for the United States 2022-2025, "HIV-related stigma and discrimination continue to undermine the effective use of tools to reduce HIV transmissions".<sup>7</sup> Additionally, the current law discourages people from getting tested for HIV because if a person is unaware of their serostatus, they cannot be charged under the current law.

Even when someone has not been arrested, charged or convicted of a crime, the mere existence of HIV criminalization laws such as Gen-Health § 18-601.1 create fear for people living with HIV. In response to the question "Have you ever worried that someone might bring charges against you based on your positive HIV status or has anyone ever threatened to do so?" included in a national survey of over 600 people living with HIV, 37.8% responded "frequently" or "a few times".<sup>8</sup> More than half of transgender/nonbinary respondents reported experiencing this fear.<sup>9</sup>

The threat of arrest or prosecution based on allegations of violating HIV criminalization laws can also be used as a tool of intimate partner violence. One study from 2019 found that 24% of women experienced intimate partner violence after disclosing their HIV status.<sup>10</sup> This group is particularly at risk of harm from laws like the one that Maryland currently has in place.

Repealing the current law will also reduce racial discrimination in the criminal legal system. A January 2024 report from the Williams Institute at UCLA School of Law found that Black men are disproportionately charged under Maryland's current law. Black men made up 68% of HIV-related arrests, despite being 14% of Maryland's population and 44% of the population living with HIV.<sup>11</sup> This is consistent with other reports from the Williams Institute that have shown that Black people are disproportionately charged with HIV criminalization offenses across the country.<sup>12</sup>

HIV criminalization laws are discriminatory. On February 15, 2024, the Department of Justice (DOJ) filed a lawsuit against the state of Tennessee, alleging that the state is violating the Americans with Disabilities Act (ADA) by enforcing its aggravated prostitution law, which makes

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<sup>7</sup> The White House, *National HIV/AIDS Strategy for the United States 2022-2025*, (2021) available at <https://files.hiv.gov/s3fs-public/NHAS-2022-2025.pdf>.

<sup>8</sup> SERO Project, *The National HIV Criminalization Survey*, (2021) available at <https://www.sero-project.com/wp-content/uploads/2023/03/Sero-Project-National-HIV-Criminalization-Survey-Report-2021.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> Sullivan, Tami, *The Intersection of Intimate Partner Violence and HIV: Detection, Disclosure, Discussion, and Implications for Treatment Adherence*, Topics in Antiviral Medicine v. 27(2) (May 1, 2019) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6550354>.

<sup>11</sup> Cisneros, Nathan, et al., *Enforcement of HIV Criminalization Laws in Maryland*, Williams Institute at UCLA Law (Jan. 2024), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MD-Jan-2024.pdf>.

<sup>12</sup> *Id.* at 9.

prostitution a felony offense for people living with HIV.<sup>13</sup> The same logic could apply to Maryland's current law which singles out people living with HIV for prosecution based on their serostatus.

Maryland's legislature should pass SB 1165 to further public health goals, reduce stigma against people living with HIV, and bring state law up to date with current science. Thank you for your consideration.

Sincerely,

The SERO Project

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<sup>13</sup> Press Release, *Justice Department Finds that Enforcement of Tennessee State Law Discriminates Against People with HIV*, (Dec. 1 2023), available at <https://www.justice.gov/opa/pr/justice-department-finds-enforcement-tennessee-state-law-discriminates-against-people-hiv>.

**SB\_1165\_Favorable\_BROOKS.pdf**

Uploaded by: Benjamin Brooks

Position: FAV

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

Benjamin Brooks, JD, MPH  
Associate Director of Policy and Education  
Whitman-Walker Institute

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.<sup>1</sup> The verdict of these studies is:

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<sup>1</sup> 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.<sup>2</sup> 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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<sup>2</sup> 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".

Benjamin Brooks, JD, MPH  
Associate Director of Policy and Education  
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Washington, DC 20032  
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# **Maryland Coalition in Support of SB1165.pdf**

Uploaded by: Camila Reynolds-Dominguez

Position: FAV

## 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

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<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

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<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

**2024\_0326\_SB1165\_EzraTowne\_Favorable.PDF**

Uploaded by: Ezra Towne

Position: FAV

# Ezra Towne

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## **Favorable Testimony on Bill SB1165:** **Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal**

March 26, 2024

Chair Senator William C. Smith, Jr., Vice-Chair Jeff Walstreicher, and esteemed members of the Judicial Proceedings committee,

I write to you today as a transmasculine nonbinary adult invested in the well-being of humans with HIV. I am also a facilitator of a trans-led peer support group and an advocate for the LGBTQ+ community in Montgomery County. **My testimony on this bill is favorable, and I urge you to move this bill promptly through committee with a favorable vote.**

SB1165 would repeal draconian law regarding the HIV epidemic in our state. The bill is a remnant of the early days of the national HIV/AIDS pandemic - which primarily effected gay men.

We know today that the science of HIV transmission and harm-reduction is much different in 2024. Due to advances and innovations in science, HIV and become undetectable (with no viral load). Undetectable means untransmissible. It is not possible to transmit HIV as easily as it was in the early days of the HIV/AIDS crisis.

Pre-exposure PrEP (pre-exposure prophylaxis) can be prescribed to people who are HIV negative and may be more likely to contract HIV. It is administered as a shot, given once monthly and eventually every other month. PEP (post-exposure prophylaxis) can also be used in addition to other HIV precautions to after someone is exposed to HIV, and can be taken within 72 hours after exposure.

However, the only way to know if you have HIV is through regular testing. HIV criminalization law like the one Maryland has on it's books today, reduce testing frequency out of fear of becoming criminalized through accidental transmission (and not intentional transmission).\

We also know that HIV criminalization bills are disproportionately leveraged against black and brown people with HIV - the population with the fastest growing rate of transmission in our state. This bill is unfair for all folks with HIV, but especially black and brown folks.

Finally, it is well know that in intentional cases of transmission of HIV, many states and localities will prosecute under reckless endangerment even today. Reckless endangerment carries harsher penalties. We do not need the draconian law regarding HIV transmission to prevent legal charges of intentional transmission.

# Ezra Towne

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SB1165 would repeal this legislation, making it easier for all folks to get regular testing so that they know their HIV status. It would also remove the duplicative nature the law we already have in place to give harsh penalties to people who intentionally transmit HIV to their sexual partners.

I ask the Judicial Proceedings committee for a swift favorable vote out of committee. We need you to take swift action to make sure this bill passes on the Senate floor this year. **Now is the time to pass SB1165: Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal.**

I look forward to your favorable vote.

Sincerely,



Ezra Towne  
District 18

# **SB1165 2024 Annapolis Pride.pdf**

Uploaded by: Jaden Farris

Position: FAV



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(he/him)

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**Joshua Seefried**  
(he/him)

**Jayne Walters**  
(she/her)

**Tim Williams**  
(he/him)

**BILL:** Senate Bill 1165 - Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal

**DATE:** March 26, 2024

**POSITION:** FAVORABLE

**COMMITTEE:** Judicial Proceedings

**CONTACT:** Jaden Farris | [jaden@annapolispride.org](mailto:jaden@annapolispride.org)

Annapolis Pride's mission is to advocate for, empower, and celebrate the LGBTQ+ community in Anne Arundel County to live fully and authentically. Our vision is a safe, equitable, and anti-racist community where people of all identities thrive.

As such, Annapolis Pride supports House Bill 485, which criminalizes the knowing transmission of HIV. This outdated and harmful statute serves no public health purpose and inflicts significant injustices upon individuals living with HIV. Numerous studies have found zero empirical evidence that HIV criminalization laws reduce the transmission of HIV.<sup>1</sup> In fact, they create disincentives for individuals to get tested and seek treatment, further hindering control efforts.

Research by the Williams Institute has uncovered a troubling statistic: Black individuals constitute 82% of defendants in HIV-related criminal cases, even though they make up only 14% of the state's population and 44% of those living with HIV.<sup>2</sup> This data paints a troubling picture of racial bias within the criminal justice system and within the enforcement of this unjust law. The focus on intent to transmit, coupled with historical prejudice, leaves the door wide open for discriminatory targeting and prosecution of Black individuals, particularly Black men, living with HIV.

Further, the law doesn't account for the incredible progress in HIV treatment with antiretroviral therapy (ART). When taken consistently, ART can suppress the virus to undetectable levels, virtually eliminating the risk of transmission to others. This is reflected in the criminalization approach, perpetuating outdated notions of HIV as a highly contagious and uncontrollable disease.

Accordingly, Annapolis Pride respectfully requests a **favorable** committee report on House Bill 485.

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<sup>1</sup> Lazzarini, Z., Galletly, C. L., Mykhalovskiy, E., Harsono, D., O'Keefe, E., Singer, M., & Levine, R. J. (2013). Criminalization of HIV transmission and exposure: research and policy agenda. *American journal of public health*, 103(8), 1350–1353.

<https://doi.org/10.2105/AJPH.2013.301267>

<sup>2</sup> Cisneros, N., Tentindo, W., Sears, B., Macklin, M., & Bendana, D. (2024). Enforcement of HIV Criminalization in Maryland - Williams Institute

<https://williamsinstitute.law.ucla.edu/publications/hiv-crim-md/>

# **HPP Testimony SB 1165 (HIV Crim Repeal)- FAV.pdf**

Uploaded by: Jessica Emerson

Position: FAV



## Testimony of the Human Trafficking Prevention Project

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**BILL NO:** Senate Bill 1165  
**TITLE:** Public Health - Prohibition on Transfer of Human Immunodeficiency Virus – Repeal  
**COMMITTEE:** Judicial Proceedings  
**HEARING DATE:** March 26, 2024  
**POSITION:** FAVORABLE

Senate Bill 1165 would repeal the current prohibition on an individual from transferring the human immunodeficiency virus (HIV) to another individual.<sup>1</sup> The Human Trafficking Prevention Project, which regularly serves clients who have traded sex by choice, out of circumstance, and/or because they have experienced sex trafficking, supports SB 1165 because the criminalization of HIV disproportionately impacts and harms those in the sex trades, and conflicts with public health recommendations that encourage risk reduction.

Currently, more than 30 states have laws that criminalize alleged exposure, non-disclosure, or transmission of HIV.<sup>2</sup> While HIV criminalization laws criminalize non-disclosure of a person’s HIV status prior to *any* instance of consensual sex, data indicates that it is primarily sex workers living with HIV who are criminalized under these laws.<sup>3</sup> The intersection of laws criminalizing the transmission of HIV with those criminalizing sex work increase the harm sex workers already face in numerous ways. First, they reinforce stigma and discrimination against sex workers, particularly those who are living with HIV. By reinforcing the trope of people in the sex trades as diseased and amoral,<sup>4</sup> this only gives further license to those who seek to harm them by justifying their dehumanization.<sup>5</sup> Sex workers *already* rarely report the violence they experience due to stigma and the criminalization of sex work; the possibility of also having their HIV status criminalized makes reporting even less likely.

Secondly, HIV criminalization laws conflict with data-driven and evidence-based public health efforts to combat HIV. People who trade sex are already put at increased risk of HIV “as a result of multiple factors and limited choices related to poverty, the criminalization of sex work, and associated biological risk.”<sup>6</sup> HIV criminalization laws impact the ability and willingness of sex workers to access necessary health care by negatively affecting provider attitudes and increasing fear of provider judgment and reporting to law enforcement. This in turn results in discriminatory healthcare delivery that ultimately pushes people away from accessing essential services such as prevention, treatment, and care for HIV.<sup>7</sup>

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<sup>1</sup> MD CODE ANN., HEALTH-GEN. § 18-601.1 (West 2020).

<sup>2</sup> The Center for HIV Law and Policy & the National LGBTQ Task Force, *The Intersection of Sex Work and HIV Criminalization: An Advocate’s Toolkit 1* (2017), [https://www.hivlawandpolicy.org/sites/default/files/Sex%20Work%20HIV%20Toolkit%20FINAL%20R2\\_0.pdf](https://www.hivlawandpolicy.org/sites/default/files/Sex%20Work%20HIV%20Toolkit%20FINAL%20R2_0.pdf).

<sup>3</sup> *Id.* See also Amira Hasenbush, et. al., *HIV Criminalization and Sex Work in California* (2017), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-Sex-Work-CA-Oct-2017.pdf>.

<sup>4</sup> Carol Galletly & Steven Pinkerton, *Conflicting Messages: How Criminal HIV Disclosure Laws Undermine Public Health Efforts to Control the Spread of HIV*, 10 AIDS Behav. 451, 458 (2006), <https://www.hivlawandpolicy.org/sites/default/files/Conflicting%20Messages.pdf> (citing commonly held beliefs of HIV as “a disease that mainly affected society’s ‘undesirables’ (i.e., persons who were not part of mainstream society)”).

<sup>5</sup> SW and HIV article p.3

<sup>6</sup> P. 4

<sup>7</sup> Eric Mykhalovskiy, *The Problem of “Significant Risk”: Exploring the Public Health Impact of Criminalizing HIV Non-Disclosure*, 73 SoC. Science & MeD. 668 (2011).

The irony is that HIV criminalization laws actually do the opposite of what is intended- instead of reducing HIV transmission rates, they actually bring about the conditions that increase HIV risk and infection. Criminal approaches to HIV transmission are counterproductive to advancing public health and detrimental to the health and wellbeing of those in marginalized settings, particularly those in the sex trades. SB 1165 will rightfully repeal Maryland's draconian HIV criminalization law, resulting in improved health outcomes for all persons, including sex workers and trafficking survivors. For these reasons, the Human Trafficking Prevention Project supports Senate Bill 1165 and **respectfully urges a favorable report.**

*The Human Trafficking Prevention Project is dedicated to ending the criminalization of sex workers, survivors of human trafficking, and those populations put at highest risk of exploitation through access to civil legal services and support for policies that dismantle harmful systems and increase access to basic human rights and legal relief.*

*For more information, please contact:  
Jessica Emerson, LMSW, Esq.  
Director, Human Trafficking Prevention Project  
(E): [jemerson@ubalt.edu](mailto:jemerson@ubalt.edu)*

**SB1165- MSAA - FCSAO Letter of Support\_.pdf**

Uploaded by: Joyce King

Position: FAV



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JUVENILE DIVISION  
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[www.statesattorney.us](http://www.statesattorney.us)

March 25, 2024

The Honorable William Smith & Members of the Senate Judicial Proceedings Committee  
Miller Senate Office Building  
11 Bladen St., Annapolis, MD 21401

Dear Chairperson Smith and Judicial Proceedings Committee,

The Frederick County State's Attorney's Office and the Maryland State's Attorney's Association support **Senate Bill 1165 – Repeal of HIV-Specific Law on Intentional Transmission**. The MSAA Special Victims Committee discussed this bill and agreed that our offices have proceeded and can continue to prosecute the intentional infection of HIV through legal theories such as Second Degree Assault and Reckless Endangerment which carry higher penalties than Health General §18-601.1.

Our prosecutor offices have conferred with the Attorney General's Office and our local Health Departments. We agree there is no legal reason to single out HIV in this statute and it stands against public and health policy recommendations. We agree the existing statute increases stigma, exacerbates disparities, and may discourage HIV testing.

This law is based on long outdated beliefs about the routes and risks of HIV transmission and about HIV as a "death sentence" when it is in fact a chronic, manageable disease. Our laws should not be inconsistent with evidence-based initiatives and are at direct odds with U.S. public health goals and HIV prevention strategies and programs.

We ask for a favorable report of SB 1165.

Sincerely,

Joyce King  
Chief Counsel

Co-Chair MSAA Special Victims Committee

**SB 1165 Testimony.pdf**

Uploaded by: Kennedy Hagens

Position: FAV

**Medical-Legal Partnership Clinic**  
**University of Maryland Francis King Carey School of Law**  
**Testimony in Support of SB 1165 – FAVORABLE**  
**Prohibition on Transfer of Human Immunodeficiency Virus – Repeal**  
**Before the Senate Judiciary Proceedings Committee – March 26, 2024**

Law students in the Medical-Legal Partnership Clinic at the University of Maryland Francis King Carey School of Law submit this testimony in favor of Senate Bill 1165 – Repeal of Prohibition on Transfer of Human Immunodeficiency Virus. The Medical-Legal Partnership Clinic at the University of Maryland Carey School of Law is comprised of law students and a supervising attorney who represent clients living with HIV in a range of civil matters. As such, we would like to use our testimony as an opportunity to highlight the reasons we support efforts to repeal MD Code, Health-Gen §18-601.1. These reasons include the legislative history and stigma surrounding the creation of Maryland’s HIV-specific law on intentional transmission, the medical advancements that have been made to prevent the spread of HIV, and the availability of alternative legal theories to prosecute criminal sexual behaviors.

Thirty-five years ago, on February 3, 1989, Senators introduced the Human Immunodeficiency Virus–Omnibus Bill, Senate Bill 719, which ultimately became Maryland’s HIV criminalization statute. The Bill was originally introduced in response to the increasing rates of HIV transmission in Maryland at the time—long before there was effective testing, treatment allowing people living with HIV to live a healthy and normal life, and before preventive measures were widely available. Between 1980 to 1988, the number of HIV diagnoses rose from 88 to over 80,000, which was considered a public health emergency. It is important to note an increasing number of these cases were in the “heterosexual and black population.” When Senate Bill 719 was introduced, the Maryland Disability Law Center opposed the criminalization portion for similar reasons as we do today, including that the conduct it prohibited would already be chargeable as a felony under general criminal laws and that the fear of prosecution it would introduce for people living with HIV would discourage counseling and/or testing (“take the test, risk arrest”).

The enforcement of §18-601.1 across the state of Maryland has a disparate impact on people of color. The overwhelming majority of HIV-related cases were Black men. Black men make up 14% of the state’s population and 44% of people living with HIV but comprised of 68% of HIV-related arrests. Black people were 82% of all HIV-related cases, but only 30% of the state’s population, and 71% of people living with HIV in the state. Further, enforcement of §18-601.1 is highly concentrated by geographical location, with Baltimore City accounting for nearly a third of all HIV-related cases in the state of Maryland. Montgomery County, Prince George’s County and Baltimore City combined accounted for over two-thirds of all HIV-related cases in the state. (*see* Williams Institute Report 2024)

Next, significant medical advancements since the enactment of §18-601.1 provide suitable treatment options to prevent the spread of HIV and reflect current scientific understanding of how HIV is transmitted. If HIV is virally suppressed and undetectable in a person, then it is untransmittable by that person (Undetectable=Untransmittable) (“U=U”) . The law does not address HIV-positive individuals who cannot transmit HIV through sexual contact due to an undetectable viral load, and who carry no risk of transmission. 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. 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 while a further 43% of transmissions that year were from the 23% of individuals who knew their positive HIV status but weren’t receiving care. (See Centers for Disease Control and Prevention, *HIV Treatment as Prevention* (August 2023). §18-601.1 discourages the small group disproportionately linked to new transmissions from seeking testing and care, ultimately disrupting Maryland’s public health goal to end the HIV epidemic. Removing statutory provisions like § 18-601.1 that reinforce stigma and create barriers to testing and care is critical for reducing those new transmissions.

Finally, 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 contagious diseases is already addressed elsewhere in our criminal code (i.e, 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). Testimony from the Frederick County State’s Attorney’s Office and the Maryland State’s Attorney’s Association (MSAA) indicates that their offices have and can continue to prosecute the intentional transmission of HIV through legal causes of action such as Second Degree Assault and Reckless Endangerment, which carry higher penalties than §18-601.1. Section 18-601.1 does not require actual transmission or even the risk of transmission, and there is no defense (i.e., viral suppression, condom use, or PREP) to the charge. This results in enforcement practices based on fear, completely disregarding medical science. For example, individuals have been charged with attempting to transmit HIV through spitting and biting, even though it is medically impossible to transmit HIV through saliva.

For the above stated reasons, we strongly support SB 1165/HB 485, the Repeal of Prohibition on Transfer of Human Immunodeficiency Virus.

This testimony in support of this Bill represents the personal opinions of Kennedy Hagens, Lydia Lockwood, and Isabella Datillo, third-year law students in the Clinical Law Program at the University of Maryland Francis King Carey School of Law and is not being submitted on behalf of the School of Law, the University of Maryland, Baltimore, or the University of Maryland School System.

# **Maryland\_Testimony\_Senate.pdf**

Uploaded by: Kytara Epps

Position: FAV





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).<sup>1</sup> 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.<sup>2</sup> Any type of conduct by PLHIV, including consensual sex, blood and tissue donation, chestfeeding, or needle sharing, is subject to prosecution.<sup>3</sup> Despite scientific consensus, prosecutors have used

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<sup>1</sup> 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).

<sup>2</sup> MD. CODE. ANN., HEALTH-GEN. § 18-601.1 (2024).

<sup>3</sup> 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.<sup>4</sup> On its face, neither disclosure nor the use of condoms or other protection operate as an affirmative defense to prosecution under this law.<sup>5</sup>

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.<sup>6</sup>

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 IPV<sup>7</sup>. 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.<sup>8</sup> Understanding laws like Section 18-601.1 exist, perpetrators of intimate violence use the threat of disclosure of ones 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.<sup>9</sup> 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

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<sup>4</sup> 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).

<sup>5</sup> 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)

<sup>6</sup> 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).

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

<sup>8</sup> 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.*

<sup>9</sup> 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.<sup>10</sup> 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,<sup>11</sup> about one quarter of newly diagnosed people being diagnosed late, and almost one third of PLHIV not receiving care,<sup>12</sup> 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.<sup>13</sup> Black men are particularly impacted, as they account for 68 percent of all HIV-related prosecutions.<sup>14</sup> 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.<sup>15</sup>

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<sup>10</sup> 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).

<sup>11</sup> 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>.

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

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

<sup>14</sup> *Id.*

<sup>15</sup> 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](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,

Kytara Epps, MPH  
National Community Outreach Coordinator  
The Center for HIV Law and Policy

**SB 1165\_MNADV\_FAV.pdf**

Uploaded by: Melanie Shapiro

Position: FAV



**BILL NO:** Senate Bill 1165  
**TITLE:** Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal  
**COMMITTEE:** Judicial Proceedings  
**HEARING DATE:** March 26, 2024  
**POSITION:** **SUPPORT**

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The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to issue a favorable report on SB 1165.**

Senate Bill 1165 repeals the prohibition on an individual from knowingly transferring or attempting to transfer the human immunodeficiency virus (HIV) to another individual. The Prohibition on Transfer of HIV became law in 1989, at the height of the AIDS crisis and the hysteria surrounding it. While well-intentioned at the time, unintended consequences of the law have become evident over the past two decades. In 1989, the concept of “U=U”, Undetectable Equals Un-transmittable, was impossible to imagine. Furthermore, the thought that someone would willingly not get tested was unfathomable. However, as time passed, and treatment of HIV continued to improve, these issues became evident.

This law applies even when people have taken precautions against transmitting the virus (such as wearing a condom), disclosed their status, and have undetectable and therefore un-transmittable viral loads. The law does not require actual transmission of HIV. Consequently, people do not test for the disease so they will not be aware of their status and risk criminal repercussions. Furthermore, intentional and threatened transmission of HIV and all other infectious diseases is already criminalized elsewhere in state law, with far more serious penalties.<sup>1</sup>

For survivors of domestic violence, this is a serious public health issue. The rate of women living with HIV who have experienced domestic violence is 55 percent, double the national rate.<sup>2</sup>

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<sup>1</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>2</sup> Sullivan T. P. (2019). The intersection of intimate partner violence and HIV: detection, disclosure, discussion, and implications for treatment adherence. *Topics in antiviral medicine*, 27(2), 84–87.

For further information contact Melanie Shapiro • Public Policy Director • 301-852-3930 • [mshapiro@mnadv.org](mailto:mshapiro@mnadv.org)



Victims of domestic violence are 48 percent more likely to be exposed to HIV than non-victims.<sup>3</sup> The current law criminalizes women who are victims of intimate partner and domestic violence who are often HIV positive because of the abuse. Victims are unlikely to test for HIV because they fear repercussions from the abusive partner. One study revealed that 45 percent of women experiencing domestic violence experienced physical abuse as a direct consequence of disclosing their HIV status.<sup>4</sup> The law as it is currently written, therefore, actively discourages testing for HIV and seeking medical services and interventions.

MNADV believes repealing the archaic 1989 law would reduce stigmatization of people living with HIV, including victims of domestic violence. It would also encourage testing and treatment for victims of domestic and intimate partner violence, which in turn would reduce the unknowing transmission of HIV and provide victims an opportunity to seek medical treatment without fear of criminal repercussions.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on SB 1165.**

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<sup>3</sup> Intersection of Intimate Partner Violence and HIV in Women [https://www.cdc.gov/violenceprevention/pdf/ipv/13\\_243567\\_green\\_aag-a.pdf](https://www.cdc.gov/violenceprevention/pdf/ipv/13_243567_green_aag-a.pdf)

<sup>4</sup> Gielen AC, McDonnell KA, Burke JG, O'Campo P. Women's lives after an HIV-positive diagnosis: disclosure and violence. *Matern Child Health J.* Jun 2000;4(2):111-120.

For further information contact Melanie Shapiro • Public Policy Director • 301-852-3930 • [mshapiro@mnadv.org](mailto:mshapiro@mnadv.org)

# **SB1165\_FAV\_MedChi\_PH - Prohibition on Transfer of**

Uploaded by: Pam Kasemeyer

Position: FAV



# MedChi

*The Maryland State Medical Society*

1211 Cathedral Street  
Baltimore, MD 21201-5516  
410.539.0872  
Fax: 410.547.0915

1.800.492.1056

www.medchi.org

TO: The Honorable William C. Smith, Jr., Chair  
Members, Senate Judicial Proceedings Committee  
The Honorable Karen Lewis Young

FROM: Pamela Metz Kasemeyer  
J. Steven Wise  
Danna L. Kauffman  
Andrew G. Vetter  
Christine K. Krone  
410-244-7000

DATE: March 26, 2024

RE: **SUPPORT** – Senate Bill 1165 – *Public Health – Prohibition on Transfer of Human Immunodeficiency Virus – Repeal*

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The Maryland State Medical Society (MedChi), the largest physician organization in Maryland, **supports** Senate Bill 1165.

Senate Bill 1165 repeals Maryland’s criminalization of the transfer or attempt to transfer human immunodeficiency virus (HIV) to another individual. Repeal of this law would update Maryland statutes to be in line with current guidelines from the American Medical Association, the Centers for Disease Control and Prevention, and other leading organizations in the fields of medicine, public health, and human rights. The current law was enacted in 1989 when there was very little medical understanding of HIV or effective treatment. Today, there is highly effective treatment as well as pre- and post-exposure prophylaxis and, therefore, the disease is no longer a death sentence. However, stigma and discrimination continue to harm those living with HIV.

Effective HIV response requires access to high-quality preventative, diagnostic care, treatment, and supportive services that are non-stigmatizing, non-discriminatory, inclusive, and responsive to the needs of those affected. Criminalization laws perpetuate HIV-related stigma and discrimination, deter individuals from getting tested, and do not reflect our current understanding of HIV. Repeal of Maryland’s law is overdue. A favorable report is requested.

**2024 Moveable SB 1165 Senate Side.pdf**

Uploaded by: Robyn Elliott

Position: FAV



**Committee:** Senate Judicial Proceedings Committee

**Bill Number:** Senate Bill 1165 - Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal

**Hearing Date:** March 26, 2024

**Position:** Support

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Moveable Feast strongly supports *Senate Bill 1165 – Public Health – Prohibition on Transfer of Human Immunodeficiency Virus – Repeal*. Our mission is to improve the health and quality of life of people with serious illnesses through nutritional counseling and medically tailored meals.

Moveable Feast began as an organization serving people with HIV. When the HIV epidemic first emerged, people with HIV were stigmatized by the law, our health care system, and general society. Many states passed laws like Maryland’s to criminalize the knowing transmission of HIV. These laws marginalize and unfairly target the LGBTQ community, as well as other marginalized communities, such as certain immigrant populations, with high rates of HIV.

We urge a favorable report this legislation. It is time to remove the vestiges of laws that stigmatize people with HIV. If we can provide any further information, please contact Robyn Elliott at [relliott@policypartners.net](mailto:relliott@policypartners.net).

# 2024 Moveable Feast SB1165 .pdf

Uploaded by: Sam Zisow-McClean

Position: FAV

**Committee:** Senate Judicial Proceedings Committee

**Bill Number:** SB1165- Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal

**Hearing Date:** March 26, 2024

**Position:** Support

---

Moveable Feast strongly supports *Senate Bill 1165 – Public Health – Prohibition on Transfer of Human Immunodeficiency Virus – Repeal*.

Moveable Feast began as an organization serving people with HIV. When the HIV epidemic first emerged, people with HIV were stigmatized by the law, our health care system, and general society. Many states passed laws like Maryland’s to criminalize the knowing transmission of HIV. These laws marginalize and unfairly target the LGBTQ community, as well as other marginalized communities, and actively work against our goal of ending the HIV epidemic in Maryland

We urge a favorable report this legislation. It is time to remove the vestiges of laws that stigmatize people with HIV. If we can provide any further information, please contact Robyn Elliott at [relliott@policypartners.net](mailto:relliott@policypartners.net).

# **HB 485 - SB 1165 - HHIV - MD HPG Decriminalization**

Uploaded by: Scott Bertani

Position: FAV

**To: Maryland Judicial Proceedings Committees**

**FAV Position: Repeal of Maryland's HIV Criminalization Laws (SB 1165)**

Dear Honorable Members,

**Alongside dedicated efforts of the HIV Planning Group's (HPG) Integrated Management, Planning, and Community Coordinated Transition (IMPACCT) Session (Workgroup—part of the required Maryland MD HPG, appeals for your strong support in repealing Maryland's outdated HIV criminalization statute, as outlined in Senate Bill 1165.**

**And to that we recommend a FAV position without any further amendments.**

Our collaborative mandate over the past year has been to thoroughly review the potential misuse of HIV surveillance data for criminalization purposes and its adverse impacts on Persons Living with HIV (PWH) in our state. This effort culminated in a comprehensive analysis, demonstrating the critical need for legal reforms to reflect contemporary scientific advancements and prioritize public health.

**About The Maryland HIV Planning Group (HPG)**

The MD HPG is a collaborative body composed of various stakeholders involved in the planning and implementation of HIV prevention and care services within the state of Maryland. This group includes representatives from across Maryland and local health departments, community organizations, healthcare providers, and individuals living with HIV.

**The HPG is statutorily tasked with guiding the HIV prevention and treatment strategies for the state, ensuring that efforts are comprehensive, evidence-based, and aligned with the needs of those most affected by HIV.**

The HPG plays a crucial role in developing the state's HIV prevention and care plan—which outlines the priorities, goals and strategies to reduce HIV transmission and improve the quality of life for people living with HIV. *This involves assessing the current HIV epidemic in the state, identifying gaps in services, and recommending appropriate actions to address these gaps.*

The formation and operation of this planning group is in response to federal funding requirements—such as those from the Centers for Disease Control and Prevention (CDC) and the Health Resources and Services Administration (HRSA), which support state and local efforts in HIV prevention and treatment.

The Maryland HPG works closely with these and other stakeholders to coordinate a statewide response to the HIV epidemic, aiming for a collaborative and integrated approach to HIV prevention and care.

**Year Long Review and Rationale of the HPG to Work to Repeal 18.601.1**

*As part of the HPG, Workgroup 5 was given the Governing Task of: Review and report back on the potential use of HIV surveillance data for HIV criminalization and other negative impacts on persons living with HIV (PWH) in Maryland and develop plans to address and mitigate potential risk for PWH and criminalization by prosecutors.*

### **Historical Context and Legal Implications**

Since the late 1980s, amid rising HIV epidemic fears, federal and state policies have inadvertently supported the criminalization of HIV, often without regard to transmission risk or intent. Maryland's adherence to these outdated approaches, particularly through MD. CODE ANN., HEALTH-GEN. § 18-601.1, has not only fueled stigma, but also darkened public health initiatives aimed at combating the epidemic.

Our review highlighted the stark legal discrepancies between HIV and other communicable diseases, underscoring a unique and unwarranted legal burden on PWH.

### **Scientific Misconceptions and Judicial Outcomes**

Our work revealed a persistent gap between scientific understanding of HIV and its interpretation within legal frameworks. Notable cases in Maryland have seen PWH subjected to severe legal ramifications for behaviors posing negligible transmission risks.

This misalignment significantly perpetuates HIV-related stigma and deters individuals from seeking necessary testing or treatment.

### **Recommendations Tied to the Repeal of 18.601.1**

1. **Align Legal Frameworks with Scientific Evidence:** We urge the revision of current requirements to accurately reflect the realities of HIV transmission and the efficacy of modern treatment.
2. **Promote Public Health Over Criminalization:** Shift the focus from punitive responses to strategies *emphasizing prevention, care, and the reduction of stigma*.

This approach should prioritize the health and dignity of PWH while building broader societal benefits—and bring about the state's stated (sacrosanct) ideals of health and equity.

3. **Engage and Educate Legal and Healthcare Professionals:** Implement educational initiatives to bridge the knowledge gap, ensuring legal and healthcare practices are informed by the latest scientific and medical insights regarding HIV.
4. **Uphold Privacy and Ethical Standards:** Strengthen safeguards around the use of HIV surveillance data, ensuring it serves public health purposes without contributing to the criminalization of PWH.



5. **Support Community Involvement:** Encourage active participation from diverse stakeholders, including PWH, healthcare providers, legal experts, and advocacy groups, in shaping policies that affect the HIV community.

## **Conclusion**

*The repeal of Maryland's HIV criminalization law represents a pivotal step towards aligning our legal system with current scientific knowledge and ethical considerations.*

By embracing these changes, Maryland can lead in promoting a just, informed, and compassionate approach to HIV, enhancing public health outcomes and respecting the rights of PWH.

We trust in your commitment to justice and public health and respectfully urge your support for SB 1165. Together, we can usher in a new era of progress and empathy in our collective response to HIV.

Sincerely,

HealthHIV and Workgroup 5, Maryland HIV Planning Steering Group

**AG HIV Letter (1).pdf**

Uploaded by: Senator Karen Lewis Young

Position: FAV

**CANDACE MCLAREN LANHAM**  
*Chief Deputy Attorney General*

**CAROLYN A. QUATTROCKI**  
*Deputy Attorney General*

**LEONARD J. HOWIE III**  
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*Assistant Attorney General*

**NATALIE R. BILBROUGH**  
*Assistant Attorney General*

February 5th, 2024

The Honorable Kris Fair  
Maryland General Assembly  
221 Lowe House Building  
Annapolis, MD 21401  
*Via email*

Dear Delegate Fair –

You asked for advice on whether an individual can be charged with reckless endangerment and assault in the second degree for the transfer, or the attempted transfer of HIV. In my view, an individual who transfers or attempts to transfer HIV could be charged with reckless endangerment; but not second-degree assault if the contact in which the transfer or potential transfer of HIV occurred is consensual.

In effort to determine if an individual can be charged with reckless endangerment and second-degree assault for transmitting or attempting to transmit HIV, how the virus can be transferred and the peril of contracting the virus must be reviewed. Maryland courts have previously discussed transmitting HIV. In *Faya v. Almaraz*, the court described HIV as a retrovirus that attacks the human immune system, weakening it, and ultimately destroying the body's capacity to ward off disease. *Faya v. Almaraz*, 329 Md. 435, 438-445 (1993). HIV typically spreads via genital fluids or blood transmitted from one person to another through sexual contact, the sharing of needles, blood transfusions, or from infiltration into wounds. *Faya*, 329 Md. 435, 439. These fluids must come from contact with a mucous membrane or damaged tissue or be directly injected into the bloodstream for transmission to occur. <https://www.cdc.gov/hiv/basics/hiv-transmission/body-fluids.html>. Mucous membranes are

found inside the rectum, vagina, penis, and mouth. *Id.* The higher a person’s viral load is, the more likely that person is to transmit HIV. *Id.* The viral load is the amount of HIV in the blood of an individual who has the virus. *Id.* The viral load is the highest during the acute phase of HIV, and without treatment. *Id.* Taking HIV medicine can reduce the viral load, making the load an undetectable viral load. *Id.* It is possible for people with HIV who keep an undetectable viral load to live normal healthy lives. *Id.* Having an undetectable viral load also helps prevent the transmission of the virus to others. *Id.*

The reckless endangerment statute is aimed at deterring the commission of potentially harmful conduct before an injury or death occurs. *Holbrook v. State* 364 Md. 354 (2001). The purpose of the statute is to punish or deter criminal, reckless conduct which creates a substantial risk of death or serious physical injury to another person. *Id.* For an individual to be found guilty of reckless endangerment, the State would have the burden to prove beyond a reasonable doubt that the individual engaged in conduct that: (1) created a substantial risk of death or serious physical injury to another; (2) that a reasonable person would not have engaged in that conduct; and (3) that the defendant acted recklessly. *In re David P.*, 234 Md. App. 127 (2017). Guilt based on a charge for reckless endangerment does not depend upon whether an individual intended that their reckless conduct create a substantial risk of death or serious injury to another; rather the test is whether the individual’s misconduct, viewed objectively, was so reckless as to constitute a gross departure from the standard of conduct that a law-abiding person would observe. *Thompson v. State*, 229 Md. App. 385 (2016).

In *Williams v. State*, the court reasoned that, “[t]he state of mind of recklessness, in the context of reckless endangerment. . . . is variously described as an attitude wherein the criminal agent, is conscious of the life-endangering risk involved, nonetheless acts with a conscious disregard of or wanton indifference to the consequences.” *Williams v. State*, 100 Md. App. 468, 474 (1994). Since there is no cure for HIV, a person who has HIV would have to take treatment for the rest of his or her life.

<https://www.cdc.gov/hiv/basics/whatishiv.html#:~:text=People%20who%20take%20HIV%20treatment,into%>. Further, everyone’s immune system is different and the HIV treatments available can cause side effects in some people or may not be effective in preventing the progression of HIV. *Id.* The progression of HIV could turn into acquired immunodeficiency syndrome (AIDS). *Id.* An individual with AIDS can have a badly damaged immune system; and could get an increasing number of opportunistic infections or other illnesses. *Id.* AIDS is thus the acute clinical phase of immune dysfunction and is invariably fatal. *Smallwood v. State*, 340 Md. 97, 103 (1996). Here, even with the advances of treatment for HIV, the virus still poses a risk to an individual’s health and overall well-being. Therefore, it could be reasonably concluded that an individual who knowingly engaged in activity that transmits HIV, or could possibly transmit

HIV, participated in conduct that created a risk of death or serious physical injury; and arguably that individual consciously disregarded that risk.

For an individual to be convicted for assault in the second-degree, the state must prove: (1) that the individual caused offensive contact with physical harm; (2) that the contact was the result of an intentional or reckless act of the individual and was not accidental; and (3) that the contact was not consented to or legally justified. MPJI-Cr 4:01C. A reckless act in the context of proving second-degree assault, is conduct that under all circumstances, shows a conscious disregard of the consequences to other people and is a gross departure from the standard of conduct that a law-abiding person would observe. *Id.* It is clear that if a person were to bite, spit, rape, etc. another, then the elements of second-degree assault are satisfied, regardless of if the individual who committed those acts had HIV or not. However, the issue is when the contact is not offensive, such as the act of consensual sex.

In this case, I think the question is whether an individual who knows that he or she has HIV and fails to disclose this information to their sex partners, amounts to offensive contact that was not consented to. Maryland courts have not explored this issue in depth. Nonetheless, I am not certain that an individual who transfers HIV or attempts to transfer HIV during consensual sex, qualifies as offensive and harmful contact that was not consented to. Moreover, looking at how Maryland courts have previously examined the facts that amount to nonconsensual offensive physical contact that causes harm, I do not think that an individual engaging in consensual sex, who fails to tell their partner that they have HIV, will satisfy those elements. For an example, most recently in *Johnson v. State*, the court reasoned that offensive physical contact occurred when the victim awoke and the defendant was holding her legs in the air, to assault her further sexually. *Johnson v. State*, No. C-02-CR-20-001566 (Sept. 16, 2022). The court further reasoned that the victim did not consent to this contact or touching, because she woke up to it happening, and she was passed out when the defendant initiated the contact. *Id.*

While it is recognized that there have been medical advancements in the treatment of individuals with HIV that may reduce the transmission and mortality rates associated with the virus, dying from the progression of HIV or having other health complications because of HIV are still plausible factors. It is my view that those who have HIV, and knowingly transmit or attempt to transmit the virus to others, pose a risk to the lives of others and have a reckless disregard for their actions and the consequences of their actions; and therefore, could be charged under the reckless endangerment statute. Essentially, reckless endangerment is an inchoate crime, designed to punish not only harmful conduct but also potentially harmful conduct even under circumstances where a reckless act yields no harm. *Marlin v. State*, 192 Md. App. 134, 156 (2010) (citing *Williams*, 100 Md. App. at 480). Moreover, I think that charging a person who

acts with such a disregard for the harm that could stem from their actions, would be in accordance with the legislative intent behind the reckless endangerment statute.

Further, it is my view that it would be difficult to sustain a conviction under the second-degree assault statute for the transfer or potential transfer of HIV during consensual sex. Although transferring HIV or attempting to transfer HIV meets the intentional and reckless part of the second-degree assault statute, I do not think the conduct amounts to offensive contact that is not consented to, if the contact happened during consensual sex. One could make the argument that no one would consent to getting or being exposed to an incurable potentially deadly virus such as HIV. However, looking at Maryland courts' assessment of what is considered to be offensive harmful contact and lack of consent, I'm not certain that the act of transferring or attempting to transfer HIV meets the statutory requirements for assault in the second degree if the transfer or attempt transfer happened during a consensual act.

I hope this advice is responsive to your request. Please let me know if you have further questions.

Shaunee Harrison  
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**SB1165 HIV Cover Letter (written testimony).pdf**

Uploaded by: Senator Karen Lewis Young

Position: FAV

KAREN LEWIS YOUNG  
*Legislative District 3*  
Frederick County

Committee on Education, Energy,  
and the Environment



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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

The Honorable Senator Smith, Chair  
The Honorable Senator Waldstreicher, Vice Chair  
Judicial Proceedings Committee  
Maryland Senate  
Annapolis, MD 21401

March 26th, 2024

## **Testimony in Support of SB1165: Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal**

Chair Smith, Vice Chair Waldstreicher, and esteemed members of this committee:

Senate Bill 1165 aims to repeal 18–601.1 of the Maryland Health Code, a statute that has long perpetuated an outdated and discriminatory view against People Living with HIV (PLWHIV). This bill represents a crucial step towards aligning our legal framework with current scientific understanding, promoting public health, and ensuring justice and dignity for all Maryland residents.

### **Outdated Laws and the Need for Modernization**

The existing statute under Maryland Health Code 18-601.1 is fundamentally flawed and misaligned with contemporary medical insights into HIV transmission. This law, rooted in the fears and misconceptions of a bygone era, penalizes behaviors that pose no substantial risk of transmitting HIV. We must recognize the leaps in medical science that have transformed HIV from a fatal diagnosis into a manageable chronic condition. Modern treatments like antiretroviral therapy (ART) enable PLWHIV to lead healthy



lives and effectively end the ability of a person to transmit HIV to another person. Yet, our laws remain stagnant, failing to reflect these advancements.

## **The Stigma of Criminalization and Public Health Implications**

The stigma attached to HIV criminalization has far-reaching consequences. It deters individuals from seeking testing and knowing their status, thus inadvertently contributing to the spread of HIV. The fear of criminal charges and enhanced penalties based solely on one's HIV status is a significant barrier to testing, treatment, and disclosure. This reality is not conjecture. According to a poll in October 2023, 87 percent believe that modernizing HIV laws would incentivize testing and treatment, and 82 percent agree that PLWHIV should receive health treatment instead of facing discriminatory criminal charges<sup>1</sup>.

## **Bipartisan Support for HIV Criminalization Repeal**

It is heartening to note the bipartisan support that HIV decriminalization and modernization has garnered nationwide. According to the Centers for Disease Control and Prevention (CDC), thirteen states in the last decade have either fully repealed or significantly decreased their HIV criminal laws. These states include California, Colorado, Georgia, Illinois, Iowa, Michigan, Missouri, Nevada, New Jersey, North Carolina, Virginia, and Washington. These states join states that never criminalized people living with HIV, including Texas, New Mexico, Wyoming, Oregon, Maine, New Hampshire, Vermont, Connecticut, Delaware, Hawaii, and the District of Columbia.

## **Impact of Senate Bill 1165**

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<sup>1</sup> <https://drive.google.com/file/d/1gVOWFAX6C7ZbgY05xv4KEx6Sbm598HQ/t/view>

The passage of Senate Bill 1165 would mark a significant milestone in Maryland's commitment to public health and justice. By repealing the discriminatory statute, this bill will:

1. Bring Maryland's law up to date with scientific advancements in understanding HIV.
2. Encourage HIV testing and treatment by removing the threat of criminalization, thereby helping to lower HIV transmission rates.
3. Remove the codified stigmatization of PLWHIV, fostering a more inclusive and empathetic society.

### **Enforcement Alternatives**

In addition to this testimony, I have submitted to this Committee a letter from the Office of the Attorney General regarding the enforcement of penalties in cases of the reckless spread of HIV. It is clear existing laws on reckless endangerment and second-degree assault cover the behavior of knowingly and maliciously transmitting HIV. Those statutes have been used in place of 18-601.1, obviating the need for this statute.

In conclusion, Senate Bill 1165 is not merely a legal amendment; it is a stride toward eradicating stigma, promoting public health, and upholding the dignity of all individuals, particularly those living with HIV. I urge you to support this bill, as it aligns with our shared values of compassion, justice, and scientific integrity. This bill passed the House Judiciary Committee with a bipartisan majority this year and in 2023, reflecting the collective understanding of its necessity. It is incumbent upon us to take this final step toward justice and public health. For these reasons, I urge your support for Senate Bill 1165 and respectfully request a favorable report.

Sincerely,



# **SB 1165 - PH - Prohib on Transfer of HIV - Repeal**

Uploaded by: State of Maryland (MD)

Position: FAV



**2024 SESSION  
POSITION PAPER**

**BILL:** SB 1165 – Public Health – Prohibition on Transfer of Human Immunodeficiency Virus - Repeal

**COMMITTEE:** Senate – Judicial Proceedings Committee

**POSITION:** Letter of Support

**BILL ANALYSIS:** SB 1165 would repeal a prohibition on knowingly transferring or attempting to transfer the human immunodeficiency virus (HIV) to another individual.

**POSITION RATIONALE:** The Maryland Association of County Health Officers (MACHO) supports SB 1165. Under current Maryland law, a person with HIV can face up to three years in prison and a \$2,500 fine for knowingly transferring or attempting to transfer the virus to another person.<sup>1</sup> Punishable activities include consensual sex, breastfeeding, needle sharing, blood and tissue donation, and biting or spitting.<sup>2</sup> The current law is stigmatizing, does not reflect current understanding of HIV, and has negative public health repercussions. It is also unnecessary. Maryland does not need an HIV-specific criminal law, as a person who knowingly attempts to transfer HIV to someone else can be prosecuted under non-HIV-specific general criminal laws (such as reckless endangerment).

Although HIV remains an important public health issue, it is now treatable and we know that “U=U,” or “undetectable = untransmissible.” With proper treatment, people with low enough viral loads cannot transmit HIV sexually to others.<sup>3</sup> In fact, most people can become undetectable within six months of treatment.<sup>4</sup> In order for people with HIV to get treatment, we must do all we can to decrease HIV stigma and increase testing. Maryland’s HIV-specific criminal law is counterproductive to these efforts.

Between 2000 and 2020, Maryland saw at least 104 prosecutions due to an “allegation of an HIV-related crime.” Most of these cases occurred between 2010 and 2020, with the most recent arrest occurring in 2020.<sup>5</sup> Under the current law, a lack of knowledge of one’s HIV status could act as a defense to prosecution, potentially leading people to choose to forego testing, rather than know their HIV status. According to the Centers for Disease Control and Prevention, people with undiagnosed HIV account for almost 40% of all HIV transmissions.<sup>6</sup> We must encourage Marylanders to know their HIV status so they can both protect their sexual partners and seek

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<sup>1</sup> MD. CODE. ANN., HEALTH-GEN. § 18-601.1 (2016).

<sup>2</sup> The Center for HIV Law and Policy. (2022). HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice. Retrieved from

<sup>3</sup> National Institute of Allergy and Infectious Diseases. (2019). HIV Undetectable=Untransmittable (U=U), or Treatment as Prevention. Retrieved from <https://www.niaid.nih.gov/diseases-conditions/treatment-prevention>

<sup>4</sup> US Centers for Disease Control and Prevention. (2022). Newly Diagnosed with HIV. Retrieved from <https://www.cdc.gov/hiv/basics/livingwithhiv/newly-diagnosed.html>

<sup>5</sup> Cisneros, N., Tentindo, W., Sears, B., Macklin, M., & Bendana, D. (2024). Enforcement of HIV Criminalization in Maryland. The Williams Institute, UCLA School of Law. Retrieved from <https://williamsinstitute.law.ucla.edu/publications/hiv-crim-md/#:~:text=While%20previous%20comprehensive%20attempts%20to,crime%20from%202000%20to%202020>.

<sup>6</sup> Li Z, Purcell DW, Sansom SL, Hayes D, Hall HI. *Vital Signs: HIV Transmission Along the Continuum of Care — United States, 2016*. MMWR Morb Mortal Wkly Rep 2019;68:267–272.

DOI: [http://dx.doi.org/10.15585/mmwr.mm6811e1external icon](http://dx.doi.org/10.15585/mmwr.mm6811e1external%20icon).

proper treatment to support their own health. Today, people with HIV can live long, thriving lives but only if they get the treatment they need.

HIV stigma can negatively affect people with HIV, impacting their mental and physical health. It can lead to discriminatory treatment from health care providers, employers, friends, and family, causing social isolation and acting as a barrier to proper medical treatment.<sup>7</sup> By passing HB 485, Maryland will send an important message that people with HIV are no less valued than others, and bring the state into accordance with today's knowledge of and ability to treat HIV.

For these reasons, the Maryland Association of County Health Officers submits this letter of support for SB 1165. For more information, please contact Ruth Maiorana, MACHO Executive Director at [rmaiora1@jhu.edu](mailto:rmaiora1@jhu.edu) or 410-937-1433. *This communication reflects the position of MACHO.*

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**615 North Wolfe Street, Room E 2530 // Baltimore, Maryland 21205 // 410-937-1433**

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<sup>7</sup> Anderson, B. (2009). HIV Stigma and Discrimination Persist, Even in Health Care. *American Medical Association Journal of Ethics*; 11(12):998-1001. doi: 10.1001/virtualmentor.2009.11.12.oped1-0912.

# **SB 1165 Repeal - Prohibition on Transfer of Human**

Uploaded by: University of Maryland Baltimore

Position: FAV

**Interdisciplinary HIV Preparing the Future Program – University of Maryland, Baltimore**  
**Testimony in Support of SB 1165 – FAVORABLE**  
**Public Health – Prohibition on Transfer of Human Immunodeficiency Virus - Repeal**  
**Before the Senate Judicial Proceedings Committee – March 25, 2024**

The interprofessional HIV Preparing the Future (PTF) Program at the University of Maryland, Baltimore submits this testimony in favor of Senate Bill 1165 which would repeal Health General § 18-601.1. The PTF Program is an interprofessional educational program at the University of Maryland, Baltimore that trains future professionals from the Schools of Medicine, Nursing, Pharmacy, Social Work, Law, and Dentistry with the discipline-specific and interdisciplinary skills to provide excellent care to patients/clients living with HIV and to end the HIV epidemic in Maryland. The PTF Program engages students in interprofessional learning about holistic HIV care, treatment, and prevention through didactic, experiential, and simulation experiences. The PTF Program is governed by a board of faculty member champions from each of the six participating graduate schools at the University of Maryland, Baltimore who collectively submit this testimony in support of SB 1165/HB 485.

Section 18-601.1, which makes it a misdemeanor to knowingly transmit or attempt to transmit HIV to another individual, has existed without change since its enactment in 1989 when little was known about HIV transmission, there was no treatment, there were no known measures to prevent HIV transmission, and there was widespread fear. Section 18-601.1 does not require HIV transmission or even the risk of HIV transmission, does not require any intent to transmit HIV or to harm, and targets a specific disease that, due to advances in medical science over the last 35 years since the law was enacted, is now a treatable and preventable chronic medical condition. There are numerous well-tolerated medical regimens to treat HIV today, including once-a-day pills and monthly or bi-monthly injectables. Fortunately, for people living with HIV in Maryland, access to HIV treatment is accessible regardless of insurance coverage or income through Ryan White funding.

People living with HIV who are adherent to their treatment regimen can now live long healthy lives just like people without HIV. In addition, with an undetectable viral load, a person living with HIV cannot sexually transmit HIV to anyone else. Public health officials have been messaging this important fact through the *Undetectable = Untransmissible* (U=U) campaign to encourage everyone to get tested for HIV, to seek HIV care if HIV+, and to reduce HIV-related stigma as the primary ways to end the HIV epidemic in Maryland and across the United States. (National Institute of Allergy and Infectious Diseases website, avail. at <https://www.niaid.nih.gov/diseases-conditions/treatment-prevention>; CDC website, avail. at <https://www.cdc.gov/hiv/risk/art/index.html>; National Institute of Health website, avail. at <https://www.nih.gov/news-events/news-releases/science-clear-hiv-undetectable-equals-untransmittable>). Outdated laws like Health-General § 18-601.1 serve as one of the barriers to HIV testing, linkage to care, adherence to care, and ultimately viral suppression due to both to its perpetuation of HIV-related stigma as well as the fact that knowledge of HIV status provides the basis for criminal prosecution under current law (“take the test and risk arrest”).

In addition to now having a robust medical treatment toolkit that enables people living with HIV to have an undetectable viral load which enables them to live long health lives AND prevents HIV

transmission to other people, we also have several other available and accessible tools to prevent HIV transmission including condom use, pre-exposure prophylaxis (PrEP), and post-exposure prophylaxis (PEP) (NIH, National Library of Medicine, avail. at <https://www.ncbi.nlm.nih.gov/books/NBK470281/>).

Public health agencies across the state and country are promoting these measures as the way to achieve the goals of the federal government's Ending the HIV Epidemic initiative which aims to reduce the number of new HIV infections in the United States by 75 percent by 2025, and by at least 90 percent by 2030, for an estimated 250,000 total HIV infections averted nationally. (Ending the HIV Epidemic (EHE), avail at <https://www.hiv.gov/federal-response/ending-the-hiv-epidemic/overview> and <https://www.cdc.gov/endhiv/index.html>). Factors such as HIV-related stigma which discourage testing, treatment, and disclosure (including in abusive relationships where it may not be safe for HIV+ survivors of domestic violence to disclose their HIV status to their sexual partner) are barriers to reaching these public health goals.

It is widely accepted that there is no evidence that HIV-specific criminal laws and prosecutions have any effect on deterring the transmission of HIV. Indeed, a CDC report indicates that the nearly 15 percent of people whose HIV infections are undiagnosed due to not having been tested account for almost 40 percent of all HIV transmissions (Centers for Disease Control and Prevention, *HIV Treatment as Prevention*, August 2023). Section 18-601.1 targets those people who have been tested and who know their HIV status and discourages others from being tested because lack of knowledge of HIV status is the only defense to the current law. Removing this legal barrier to testing would facilitate more diagnoses, getting more people living with HIV into care and virally suppressed, and reducing HIV transmission. This should be our goal, rather than punishing people for knowing their HIV status and contributing to HIV-related stigma and disparities.

As medical, social work, mental health, pharmacy, and legal service providers to people living with HIV, we see the effects that HIV-related stigma has on our patients and clients. Not only does HIV-related stigma discourage HIV testing and diagnoses, stigma also contributes to negative coping mechanisms such as substance and alcohol misuse, as well as co-occurring mental health disorders stemming from stressors associated with internalized and external stigma. It also weakens often already fragile support systems as many people living with HIV fear disclosing their HIV status to family and friends. Further, HIV-related stigma places domestic violence survivors at risk by forcing them to stay in unsafe relationship under threats by abusive partners to publicize a survivor's HIV status. (Jane Stoeber, *Stories Absent from the Courtroom: Responding to Domestic Violence in the Context of HIV and AIDS*, North Carolina Law Review, 2009)

Based on findings from the January 2024 report released by the UCLA School of Law's Williams Institute about the enforcement of HIV criminalization in Maryland, enforcement disproportionately affects people living with HIV in Baltimore City (with 32% of all HIV-related cases in Maryland), followed by Montgomery County (with 19%) and Prince Georges County (with 18%). These three counties combined accounted for over two-thirds of all HIV-related cases. HIV-related charges also disproportionately affect black people with black people making up 82% of all HIV-related cases, but only 30% of Maryland's population, and 71% of people living with HIV in Maryland. Black men, in particular, are overrepresented in that they make up only 14% of Maryland's population and 44% of people living with HIV, but 68% of HIV-related arrests.



For the above-stated reasons, we support SB 1165/HB 0485, the Public Health - Prohibition on Transfer of Human Immunodeficiency Virus – Repeal,

This testimony in support of Senate Bill 1165 represents the personal opinions of the individual faculty champions of the PTF Program at the University of Maryland, Baltimore from the Schools of Law, Medicine, Social Work, Nursing, Pharmacy, and Dentistry, and is not submitted on behalf of the AIDS Education Training Center, the University of Pittsburgh, the University of Maryland, Baltimore, the University of Maryland System, the School of Law, the School of Medicine, the School of Social Work, the School of Nursing, the School of Pharmacy, or the School of Dentistry.

DocuSigned by:  
*Sara Gold*  
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Professor Sara E. Gold, JD  
Director, Medical-Legal Partnership Clinic  
University of Maryland Carey School of Law

DocuSigned by:  
*Joseph Magness PhD*  
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Joseph Magness, PhD  
Clinical Psychologist, Thrive Program/Center for Infectious Disease  
Institute of Human Virology

DocuSigned by:  
*Neha Sheth Pandit*  
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Professor Neha Sheth Pandit, PharmD, BCPS, AAHIVP  
Professor and Vice Chair for Research and Scholarship  
Department of Practice, Sciences, and Health Outcomes Research  
University of Maryland School of Pharmacy

DocuSigned by:  
*Sarah Schmalzle*  
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Professor Sarah Schmalzle, MD, FIDSA  
Associate Professor of Medicine, Division of Infectious Diseases  
Medical Director, Thrive Program/Center for Infectious Disease  
Institute of Human Virology  
University of Maryland School of Medicine

DocuSigned by:  
*Darren Whitfield*  
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Professor Darren L. Whitfield, PhD, MSW  
Associate Professor  
University of Maryland School of Social Work

**SB 1165\_ProhibitionHIVRepeal\_SWA.pdf**

Uploaded by: Jane Krienke

Position: FWA



Maryland  
Hospital Association

March 26, 2024

To: The Honorable William C. Smith Jr., Chair, Senate Judicial Proceedings Committee

Re: Letter of Support with Amendments - Senate Bill 1165 - Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal

Dear Chair Smith:

On behalf of the Maryland Hospital Association's (MHA) 62 member hospitals and health systems, we appreciate the opportunity to comment on Senate Bill 1165.

Maryland hospital employees often serve as the first line of care and compassion for sexual assault survivors. One of the primary health risks to rape survivors is HIV infection. MHA agrees there must be criminal charges for individuals who maliciously and intentionally infect their victims. However, the existing law that SB 1165 would repeal, which targets HIV as the only infectious disease that can be intentionally transmitted, is concerning and was heavily influenced by discriminatory prejudices against the LGBTQ+ community. It also does not reflect the three decades of HIV research and biomedical advancements, including post-exposure prophylaxis, to treat and prevent HIV transmission. The Centers for Disease Control and Prevention (CDC) state: "[T]hese laws have been shown to increase stigma, exacerbate disparities, and may discourage HIV testing."<sup>1</sup>

For these reasons, MHA respectfully requests amending SB 1165 with the language proposed by the Maryland Coalition Against Sexual Assault (MCASA). Replacing HIV with "infectious or contagious diseases" will hold wrongdoers accountable for their actions but destigmatizes HIV and appropriately expands the types of diseases that can be intentionally spread. This includes other sexually transmitted infections with long-term effects, such as hepatitis and syphilis, the latter of which experienced an 80% increase since 2018.<sup>2</sup>

For these reasons, we request a favorable report on SB 1165 with the proposed amendment from MCASA.

For more information, please contact:

Jane Krienke, Senior Legislative Analyst, Government Affairs  
Jkrienke@mhaonline.org

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<sup>1</sup> Centers for Disease Control and Prevention (CDC). "HIV and STD Criminalization."  
[cdc.gov/hiv/policies/law/states/exposure.html](https://www.cdc.gov/hiv/policies/law/states/exposure.html) (accessed February 2, 2024).

<sup>2</sup> Cho, Kelly Kasulis. "U.S. syphilis numbers are at their highest since the 1950s, CDC report says."  
[washingtonpost.com/health/2024/02/01/syphilis-cases-surge-united-states/](https://www.washingtonpost.com/health/2024/02/01/syphilis-cases-surge-united-states/) (accessed February 2, 2024).

# **HIV transfer - testimony - senate - 2024 - SB1165**

Uploaded by: Lisae C Jordan

Position: FWA



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**Working to end sexual violence in Maryland**

P.O. Box 8782  
Silver Spring, MD 20907  
Phone: 301-565-2277  
Fax: 301-565-3619

For more information contact:  
Lisae C. Jordan, Esquire  
443-995-5544  
mcasa.org

**Testimony Supporting Senate Bill 1165 with Amendments**  
**Lisae C. Jordan, Executive Director & Counsel**  
March 26, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 1165 with Amendments.

**Senate Bill 1165 – Repeal of HIV-Specific Law on Intentional Transmission**

Senate Bill 1165 would repeal HIV-specific provisions criminalizing knowing transmission or attempted transmission of the HIV virus and imposing a penalty of up to 3 years imprisonment, a \$2500 fine, or both. **MCASA fully supports amending the law to strike the reference to HIV alone**, but respectfully asks that the Committee adopt amendments to continue to criminalize conduct to transmit an infectious or contagious disease with the specific intent to harm another person.

One of the risks faced by rape survivors is HIV infection.<sup>1</sup> Studies of HIV transmission have been based on consensual sexual activity, and do not account for the violence of rape, so it is unclear what the risk level is, however, 91.9% of rape victims reported some degree of initial fear or concern for contracting HIV and 72.6% reported extreme fear or concern for contracting HIV.<sup>2</sup>

Sexual assault programs and prosecutors in Maryland have reported cases of sexual assault where perpetrators have intentionally attempted to infect their victims with HIV. These have included situations where perpetrators have told the victim they are infected during the assault. It is appropriate to have an additional criminal charge available for this exceeding cruel and demeaning behavior. However, MCASA agrees with the consensus that Health General §18-601.1 and a law specifically targeting HIV is problematic and interwoven with discrimination against the LGBTQ+ community.

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<sup>1</sup> Draughon, J. (2012). *Sexual Assault Injuries and Increased Risk of HIV Transmission*.

<sup>2</sup> Resnick, H., Monnier, J., Seals, B., Holmes, M., Walsh, J., Acierno, R., Kilpatrick, D., (2002). *Rape-Related HIV Risk Concerns Among Recent Rape Victims*.

Public Health officials also report that statutes singling out HIV increase stigma, exacerbate disparities, and may discourage HIV testing.<sup>3</sup> This is particularly relevant for sex workers, many of whom are victims of sex trafficking, and who may avoid testing for HIV due to §18-601.1.

MCASA firmly believes that Health General §18-601.1 should be repealed and replaced due to the discriminatory history and application of an HIV specific law and the serious public health concerns the statute raises. **However, we also suggest that the law should not be simply repealed without being replaced. MCASA supports amendments to move the current law into the criminal law article and prohibit actions which are made with the specific intent to harm another by transmitting any infectious or contagious disease.** We note that inserting a specific intent requirement will exclude transmission made without the intent to harm, for example, when couples with different HepC status have sexual relations and the virus is transmitted. HIV should not be singled out, but other infectious diseases such as hepatitis C, herpes, or other sexually transmitted diseases should be included in the law. Some colleagues have expressed a preference to exclude respiratory transmission from intentional transmission provisions, and MCASA has no objection to this. We also note that intentional transmission of disease with the intent to harm is a concern of MCASA partners, such as law enforcement and health care workers, and we support efforts to help protect them.

Regarding some of the statements that have been made regarding other sections of the code: Maryland also has a generally applicable statute prohibiting being in a public place without taking proper precautions against exposing other individuals to the disease, or transferring to another individual any article that has been exposed to the disease without thoroughly disinfecting the article. Health General §18-601. This section, however, does not cover intentional transmission. Other crimes with adjacent relevancy includes prohibiting attempted poisoning (Crim.Law §3-213), contamination of water, food, or drink (Crim.Law §3-214), and ingestion of bodily fluids (Crim.Law §3-215). None of these, however, capture the direct intent to harm via infection. Finally, an advice email from counsel to the General Assembly opines that transmitting or attempting to transmit HIV would fall under reckless endangerment, but not assault, law and there are some prosecutors' offices that have used this approach. MCASA appreciates this recent advice, and defers to the Committee regarding whether this is sufficient for other types of infectious diseases. We also note that proposed amendments would either stand alone or be in addition to other charges and would apply only if there was specific intent to harm. Other states have taken approaches similar to the proposed amendments, see [hivlawandpolicy.org](http://hivlawandpolicy.org) (e.g., Missouri: removed most references to HIV and replaced them with “a serious infectious or communicable disease”; California: prosecution requires specific intent to transmit couple with conduct likely to transmit and transmission results).

For these reasons, MCASA respectfully requests amending SB1165 with the following language:

Repeal Health General - §18–601.1. and insert into the Criminal Law Article:

Criminal Law §XXX

(a) (1) An individual who has [the human immunodeficiency virus] **AN INFECTIOUS**

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<sup>3</sup> <https://www.cdc.gov/hiv/policies/law/states/exposure.html>

**OR CONTAGIOUS DISEASE** may not knowingly transfer or attempt to transfer [the human immunodeficiency virus] **THE INFECTIOUS OR CONTAGIOUS DISEASE** to another individual **WITH THE SPECIFIC INTENT TO HARM THE INDIVIDUAL.**

**(2) THIS SECTION SHALL NOT APPLY TO REPIRATORY TRANSMISSION OF AN INFECTIOUS OR CONTAGIOUS DISEASE.**

(b) A person who violates the provisions of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,500 or imprisonment not exceeding 3 years or both.

**(C) (1) UNLESS SPECIFICALLY CHARGED BY THE STATE, A VIOLATION OF THIS SECTION MAY NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER CRIME.**

**(2) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE IMPOSED SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.**

**The Maryland Coalition Against Sexual Assault urges the  
Judicial Proceedings Committee to  
report favorably on Senate Bill 1165 with Amendments**



**MCPA-MSA\_SB 1165 Transfer of HIV - SWA.pdf**

Uploaded by: Natasha Mehu

Position: FWA





# Maryland Chiefs of Police Association

## Maryland Sheriffs' Association



### MEMORANDUM

**TO:** The Honorable William C. Smith, Jr., Chair and  
Members of the Senate Judicial Proceedings Committee

**FROM:** Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee  
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee  
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

**DATE:** March 26, 2024

**RE:** **SB 1165 - Public Health - Prohibition on Transfer of Human Immunodeficiency Virus – Repeal**

**POSITION:** SUPPORT WITH AMENDMENTS

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **SUPPORT SB 1165 WITH AMENDMENTS**. This bill repeals provisions of law that would make it a misdemeanor to transfer or attempt to transfer HIV to another individual knowingly.

No one should be stigmatized, targeted, or potentially face misdemeanor charges for having HIV and being in situations where the virus can be transferred. Statutes like the one SB 1165 seeks to repeal were born out of the peak of the HIV epidemic out of ignorance and fear of contracting it. The fact that the law is rarely used demonstrates that it is dated, unnecessary, and should be repealed.

While individuals with HIV do not deserve to be stigmatized or live in fear they can be charged with a misdemeanor for an unintentional action, individuals who have an infectious disease and knowingly use that disease to abuse victims through the transfer of the virus or intimidate victims through the threat of transfer should face the consequences for those intentional actions.

Law enforcement and correctional officers often face hostile individuals who attempt to harm officers through biting, spitting, and other means of expelling bodily fluids. Sometimes, people do this knowing they have an infectious disease intending to infect the officers. Additionally, officers come across situations in which people are sexually assaulted or raped and the person performing these wicked acts does so with the intent to pass on a disease often further traumatizing the victim by verbalizing the intent during the process. In both cases, victims not only have to feel the physical and mental pains of the assault but also have to wait with bated breath to see if the perpetrator was successful in their attempt to harm them with a virus. Those perpetrators should face criminal charges for their targeted and deliberate actions.

SB 1165 should be amended to specify criminal charges for those who intentionally harm or threaten to harm individuals and officers by transferring an infectious disease. For these reasons, MCPA and MSA **SUPPORT SB 1165 WITH AMENDMENTS** and urge a **FAVORABLE** committee report **AS AMENDED**.

# **2024 SB1165 Testimony Against 2024-03-26.pdf**

Uploaded by: Alan Lang

Position: UNF

Honorable Senators

I strongly oppose SB1165.

It is morally wrong to deliberately spread any disease to another person!

How inhumane!

It is especially worse to spread HIV, which could be fatal or require extensive medication to keep from dying.

Why would anyone even propose such a bill?

Just because the number of trials and convictions are almost zero, this crime should remain on the books just in case someone should decide to do so.

Hopefully, the listed punishment would be a deterrent.

Some rural jurisdictions in Maryland have few if any murders.

If there should be several consecutive years without a murder, we should celebrate, but not remove the law against it.

Please vote against SB1165.

Alan Lang, District 31  
242 Armstrong Lane  
Pasadena, MD 21122  
410.336.9745  
[Alanlang1@verizon.net](mailto:Alanlang1@verizon.net)

**SB1165.pdf**

Uploaded by: Suzanne Price

Position: UNF

We already have a law in place to protect people who have been the victim of being intentionally exposed to HIV, now you want to toss those victims under the bus!

SAY NO to SB1165, changing a good bill to a bad one like this is a death sentence with your bow tied on top.

Suzanne Price  
AACo, MD

# **SB1165 Testimony.pdf**

Uploaded by: William Love

Position: UNF

I'm Bill Love of 490 Fairoak Dr, Severna Park MD

Concerning SB1165: Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal

This bill repeals the law that criminalizes an individual for knowingly transferring HIV to another individual. Basically, decriminalizing causing harm to others. That is a sin and is morally wrong.

Please, vote unfavorably to this unconstitutional bill.

Thank you

# **HIV-Criminalization-MD-Jan-2024.pdf**

Uploaded by: Nathan Cisneros

Position: INFO



RESEARCH THAT MATTERS

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# ENFORCEMENT OF HIV CRIMINALIZATION IN MARYLAND

JANUARY 2024

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Nathan Cisneros  
Will Tentindo  
Brad Sears  
Moriah Macklin  
Donovan Bendana

## OVERVIEW

The Williams Institute analyzed data from the state of Maryland about individuals who have been prosecuted for an HIV-related offense under Section 18-601.1 of the Maryland Health Code. These data were obtained from the Maryland State Administrative Office of the Courts. While previous comprehensive attempts to analyze the level of enforcement of Maryland's HIV crime have identified less than six cases, our analysis revealed at least 104 prosecutions in the state because of an allegation of an HIV-related crime from 2000 to 2020.

## FINDINGS

- In total, there have been at least 104 cases and at least 148 separate charges for “knowingly transferring HIV to another” in Maryland from 2000 to 2020. Among these 104 cases, three alleged only attempted “knowingly transferring HIV to another.”
- We estimate that, from 2000 to 2020, between 82 and 104 people were charged with HIV-related offenses in Maryland.
- Arrests continue to the present, with the latest filing date in 2020. In fact, there were more cases from 2010 to 2020 than from 2000 to 2010.
- Enforcement is highly concentrated by geography: Baltimore City alone accounted for nearly a third (32%) of all HIV-related cases in the state, followed by Montgomery County (19%) and Prince George's County (18%). These three counties combined accounted for over two-thirds (69%) of all HIV-related cases.
- The youngest person with an HIV-related conviction was 21 years old, and the oldest was 59 years old. The median age was 35 years old.
- Men made up the overwhelming majority (86%) of people with an HIV-related charge. Men were over-represented in these cases as compared to the state population (49%), and the population of PLWH in Maryland (66%). We were not able to identify people who are transgender among these individuals.
- Likewise, Black people made up the overwhelming majority of people with HIV-related criminal cases in Maryland. Black people were 82% of all HIV-related cases, but only 30% of the state's population, and 71% of people living with HIV in the state. People were identified only as Black or white; we are not able to confirm whether people also identify as Hispanic/Latino or multiple races.
  - Black men, in particular, are overrepresented—14% of the state's population and 44% of people living with HIV, but 68% of HIV-related arrests.
- Among cases with an HIV-related criminal charge where we have clear case outcomes, only 10% resulted in a guilty outcome on at least one HIV-related charge.
  - However, when looking at outcomes for any charge, HIV-related or not, 41% of these cases resulted in at least one guilty outcome. Media accounts from Maryland indicated that in some instances plea deals for defendants include dropping the HIV-related charge for a guilty plea on other charges.

- While we only have complete demographic information for seven people with HIV-related convictions in Maryland, all seven were Black men.
- We have sentencing information for convictions on 16 HIV-related charges; only 1 of those sentences was for less than 3 years, the maximum allowed under the statute. The mean sentence length was 2.9 years.

## BACKGROUND

HIV criminalization is a term used to describe statutes that criminalize otherwise legal conduct, or that increase the penalties for illegal conduct based upon a person's HIV-positive status.<sup>1</sup> While there is only one federal HIV criminalization law,<sup>2</sup> more than half of states and territories across the United States have HIV criminal laws. Most HIV criminal laws do not require actual transmission of HIV or an intent to transmit HIV. Often, these laws criminalize conduct that poses no actual risk of transmission, such as spitting or biting.<sup>3</sup> Most laws criminalizing HIV were created in the early years of the HIV/AIDS epidemic,<sup>4</sup> long before there were effective tests for the virus,<sup>5</sup> before treatments became available that allow people living with HIV (PLWH) to live normal lifespans in good health,<sup>6</sup> and before extremely effective methods for preventing transmission of the virus became widely available.<sup>7</sup>

<sup>1</sup> Dini Harsono, Carol L. Galletly, Elaine O'Keffe, and Zita Lazzarini, "Criminalization of HIV Exposure: A Review of Empirical Studies in the United States," *AIDS and Behavior* 21, no. 1 (2017): 27-50, doi: 10.1007/s10461-016-1540-5.

<sup>2</sup> See 18 U.S.C. § 1122 (2015) (pertaining to the donation or sale of blood or other potentially infectious fluids or tissues).

<sup>3</sup> Barré-Sinoussi, Françoise, Salim S. Abdool Karim, Jan Albert, Linda-Gail Bekker, Chris Beyrer, Pedro Cahn, Alexandra Calmy et al., "Expert consensus statement on the science of HIV in the context of criminal law," *Journal of the International AIDS Society* 21, no. 7 (2018): e25161, doi: 10.1002/jia2.25161; Lehman, J. Stan, Meredith H. Carr, Allison J. Nichol, Alberto Ruisanchez, David W. Knight, Anne E. Langford, Simone C. Gray, and Jonathan H. Mermin, "Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States," *AIDS and Behavior* 18 (2014): 997-1006, doi: 10.1007/s10461-014-0724-0; Dini Harsono, Carol L. Galletly, Elaine O'Keffe, and Zita Lazzarini, "Criminalization of HIV Exposure: A Review of Empirical Studies in the United States," *AIDS and Behavior* 21, no. 1 (2017): 27-50, doi: 10.1007/s10461-016-1540-5; HIV.gov, "A Timeline of HIV/AIDS," 2023, <https://files.hiv.gov/s3fs-public/aidsgov-timeline.pdf> (last visited August 30, 2022).

<sup>4</sup> Dini Harsono, Carol L. Galletly, Elaine O'Keffe, and Zita Lazzarini, "Criminalization of HIV Exposure: A Review of Empirical Studies in the United States," *AIDS and Behavior* 21, no. 1 (2017): 27-50, doi: 10.1007/s10461-016-1540-5; Lehman, J. Stan, Meredith H. Carr, Allison J. Nichol, Alberto Ruisanchez, David W. Knight, Anne E. Langford, Simone C. Gray, and Jonathan H. Mermin. "Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States," *AIDS and Behavior* 18 (2014): 997-1006, doi: 10.1007/s10461-014-0724-0.

<sup>5</sup> HIV.gov, "A Timeline of HIV/AIDS," 2023, <https://files.hiv.gov/s3fs-public/aidsgov-timeline.pdf> (last visited August 30, 2022).

<sup>6</sup> Trickey, Adam, Margaret T. May, Jorg-Janne Vehreschild, Niels Obel, M. John Gill, Heidi M. Crane, Christoph Boesecke et al., "Survival of HIV-positive patients starting antiretroviral therapy between 1996 and 2013: a collaborative analysis of cohort studies." *The Lancet HIV* 4, no. 8 (2017): e349-e356, doi: 10.1016/S2352-3018(17)30066-8; Barré-Sinoussi, Françoise, Salim S. Abdool Karim, Jan Albert, Linda-Gail Bekker, Chris Beyrer, Pedro Cahn, Alexandra Calmy et al. "Expert consensus statement on the science of HIV in the context of criminal law." *Journal of the International AIDS Society* 21, no. 7 (2018): e25161, doi: 10.1002/jia2.25161; Lehman, J. Stan, Meredith H. Carr, Allison J. Nichol, Alberto Ruisanchez, David W. Knight, Anne E. Langford, Simone C. Gray, and Jonathan H. Mermin. "Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States," *AIDS and Behavior* 18 (2014): 997-1006, doi: 10.1007/s10461-014-0724-0.

<sup>7</sup> Francis Collins, "For HIV, Treatment is Prevention." NIH Director's Blog, January 22, 2019, <https://directorsblog.nih.gov>.

## MARYLAND'S HIV CRIMINALIZATION LAW

Maryland has one criminal law related to HIV, Section 18-601.1 of the Maryland Health Code, titled “Exposure of other individuals - By individual with human immunodeficiency virus.”<sup>8</sup> This section makes it a misdemeanor for a person living with HIV and who is aware of their HIV-positive status to “knowingly transfer or attempt to transfer” HIV to another person. A conviction under Section 18-601.1 carries a punishment of up to three years in prison, a fine of up to \$2,500, or both.<sup>9</sup>

Maryland’s HIV criminal statute does not require actual transmission of HIV and does not require any specific forms of conduct that are likely to transfer the HIV virus. The statute also does not have any affirmative defenses, such as first disclosing one’s HIV status or receiving consent from the other person. Notably, the U.S. Supreme Court in *Bragdon v. Abbott* characterized Section 18-601.1 as one of many laws that “forbid persons infected with HIV from having sex with others, regardless of consent.”<sup>10</sup> The law also does not address HIV-positive individuals who cannot transmit HIV through sexual contact because they are in effective treatment and virally suppressed so that HIV is non-detectable in their blood. For such people there is no HIV transmission risk from sex.

Although not specific to HIV, Maryland law also prohibits actions from people who have “an infectious disease that endangers public health.”<sup>11</sup> Questions remain over the scope of the law, including whether HIV is considered an “infectious disease that endangers public health.”<sup>12</sup> Similarly, Section 602 of Maryland’s Health Code prohibits exposure to infectious disease by a third party.<sup>13</sup> This study does not include analysis of enforcement data pursuant to these non-HIV specific code sections, nor does it include prosecutions under general criminal law.

## Legislative History

The Maryland legislature enacted Section 18-601.1 during the 1989 legislative session.<sup>14</sup> The law went into effect on July 1, 1989. The statute has not been updated or amended since its original adoption in 1989.

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[gov/2019/01/22/for-hiv-treatment-is-prevention/](https://www.hivlawandpolicy.org/2019/01/22/for-hiv-treatment-is-prevention/); Eisinger, Robert W., Carl W. Dieffenbach, and Anthony S. Fauci, “HIV viral load and transmissibility of HIV infection: undetectable equals untransmittable,” *Journal of the American Medical Association* 321, no. 5 (2019): 451-452; Susan Buchbinder, “Maximizing the benefits of HIV preexposure prophylaxis,” *Topics in Antiviral Medicine* 25, no. 4 (2018): 138.

<sup>8</sup> Md. Code Ann., Health-Gen. § 18-601.1.

<sup>9</sup> Md. Code Ann., Health-Gen. § 18-601.1.

<sup>10</sup> *Bragdon v. Abbott*, 524 U.S. 624, 641 (1998).

<sup>11</sup> Md. Code Ann., Health-Gen § 601.

<sup>12</sup> For further background, see Center for HIV Law and Policy, “Maryland,” HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice (Center for HIV Law and Policy, 2022), <https://www.hivlawandpolicy.org/sites/default/files/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20022722.pdf>.

<sup>13</sup> Center for HIV Law and Policy, “Maryland,” HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice (Center for HIV Law and Policy, 2022), <https://www.hivlawandpolicy.org/sites/default/files/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20022722.pdf>.

<sup>14</sup> 1989 Md. Sess. Laws 789, *see also* S.B. 719, 1989 Gen. Assemb. (Md. 1989).

The Maryland legislature added the statute in 1989 as part of an omnibus bill, S.B. 719, that addressed multiple policies related to HIV and PLWH.<sup>15</sup> According to records received from the Maryland Department of Legislative Services (see Online Appendix), the authors of the legislation were “The Governor’s Advisory Council on AIDS” and the bill was the result of a “study of the medical, ethical, criminal, social, and emotional issues surrounding AIDS” by the Advisory Council.<sup>16</sup> In reflection of this legislative initiative, “AIDS discrimination” and “health insurance for AIDS patients” were listed among the “significant issues” addressed by the Maryland legislature in the 1989 and 1990 Legislative sessions, respectively.<sup>17</sup>

Senate Bill 719 received letters of support from local organizations at the time, chiefly because the omnibus bill dealt with discrimination against PLWH.<sup>18</sup> However, Section 18-601.1, which specifically criminalized HIV, was subsequently introduced as an amendment. The original legislation prohibited an “individual with an infectious disease from knowingly and intentionally transferring the disease to another.”<sup>19</sup> An amendment from the Economic and Environmental Affairs Committee after the First Reading of the Bill added Section 18-601.1 and the current language of the statute, lowering the *mens rea* standard from intent to knowledge.<sup>20</sup>

Two other bills proposed in 1989 considered criminalizing willful exposure to HIV, with significant differences from the omnibus legislation that passed. One included a statutory defense to a willful exposure charge if the defendant informed their partner of their status and the partner consented to having sex.<sup>21</sup> Another bill would have prohibited all sexual conduct of a person living with HIV unless their partner was informed of their status.<sup>22</sup> The penalties contained in the omnibus legislation that passed were the harshest penalties of the three bills.<sup>23</sup>

During consideration of the omnibus bill (S.B. 719) in committee, the Advisory Council and the Department of Health and Mental Hygiene submitted a letter arguing against adding “willful exposure” to the *Criminal Code*, which was a recommendation in the competing bills. The organizations argued that “criminalizing certain behaviors for HIV-infected persons stigmatizes these individuals, alienating them from governmental authorities.”<sup>24</sup> Instead, the letter argued that the willful exposure provisions should be placed in the *Health-General Code*, as S.B. 719 did, and where Section 18-601.1 remains.

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<sup>15</sup> 1989 Md. Laws 787.

<sup>16</sup> Online Appendix, page 405, available at: <https://www.dropbox.com/scl/fi/uptfd0zaayjbywxfoog0t/MD-HIV-Criminalization-Legislative-History-Docs.pdf?rlkey=rh03rdzerxj6sitg9o78gv0h0&dl=0>.

<sup>17</sup> “Maryland Manual 1991-92,” Archives of Maryland Online, 185, 43. <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000185/html/am185--43.html>.

<sup>18</sup> Online Appendix, page 17.

<sup>19</sup> Online Appendix, page 161.

<sup>20</sup> Online Appendix, page 139 and page 184.

<sup>21</sup> Online Appendix, page 573.

<sup>22</sup> Online Appendix, page 577.

<sup>23</sup> Online Appendix, page 505 (“The penalties prescribed in SB 21 and SB 719 are actually identical, and are stronger than those prescribed by SB 177”).

<sup>24</sup> Online Appendix, page 513.



Another letter from the Montgomery AIDS Foundation emphasized the need for the nondiscrimination provisions in the omnibus bill but called the legislation “not perfect.”<sup>25</sup> The Maryland Disability Law Center specifically criticized the then-proposed Section 18-601.1, arguing that knowingly transmitting or attempting to transmit HIV was already prohibited under the state’s general criminal laws,<sup>26</sup> and that further criminalization may discourage PLWH from voluntarily seeking counseling and testing for fear of prosecution.<sup>27</sup>

## Attempts to Change Maryland’s HIV Criminal Law Since 1989

A number of legislative attempts have been made to reform or repeal Maryland’s HIV criminalization law since 1989. Only one of these bills, involving mandatory testing upon a victim’s request for certain crimes, has passed:

**Mandatory testing.** There have been several attempts to require mandatory HIV testing for those arrested for certain crimes, such as exposing a law enforcement officer to fluids (did not pass),<sup>28</sup> charges for sexual offenses that include exposure to bodily fluids (did not pass),<sup>29</sup> or upon a victim’s request to a court for a crime that could have resulted in exposure (passed).<sup>30</sup>

**Increased penalties.** Other bills have sought to increase the penalties for exposure to HIV by making it a felony instead of a misdemeanor and/or increasing the length of sentences from three to five years up to 25 years. The efforts have all failed.

- In 2006, the Maryland House considered a bill that would have provided for additional penalties if the individual to whom HIV was intentionally transferred dies from complications of the virus.<sup>31</sup> The legislation did not pass out of committee.<sup>32</sup>
- That same legislative session, legislation was introduced that would make it a second-degree, felony assault, if a person intentionally tried to “assault another by use of bodily fluids” and if the person knew or had reason to know that the other was “a law enforcement officer

<sup>25</sup> Online Appendix, page 435.

<sup>26</sup> The letter referenced murder, attempted murder, manslaughter, and assault.

<sup>27</sup> Online Appendix, page 431.

<sup>28</sup> S.B. 180, 1996 Gen. Assemb., Reg. Sess. (Md. 1996), <https://mgaleg.maryland.gov/1996rs/bills/sb/sb0180f.PDF>. The bill died in committee after an unfavorable report from committee members. Legislation: Senate Bill 180 (1996 Reg. Sess.), MARYLAND GEN. ASSEMB., <https://mgaleg.maryland.gov/mgawebsite/Search/Legislation?target=/1996rs/billfile/sb0180.htm>.

<sup>29</sup> S.B. 7, 2000 Gen. Assemb., Reg. Sess. (Md. 2000), <https://mgaleg.maryland.gov/2000rs/bills/sb/sb0007f.PDF>. The bill was reported as unfavorable in both House and Senate committees and thus was not subject to a floor vote. Legislation: Senate Bill 7 (2000 Reg. Sess.), MARYLAND GEN. ASSEMB., <https://mgaleg.maryland.gov/mgawebsite/Search/Legislation?target=/2000rs/billfile/sb0007.htm>.

<sup>30</sup> Legislation: House Bill 944 (2005 Reg. Sess.), MARYLAND GEN. ASSEMB., <https://mgaleg.maryland.gov/mgawebsite/Search/Legislation?target=/2005rs/billfile/hb0944.htm>. The law took effect on October 1, 2005.

<sup>31</sup> H.B. 1529, 2006 Gen. Assemb., Reg. Sess. (Md. 2006), <https://mgaleg.maryland.gov/2006rs/bills/hb/hb1529f.pdf>.

<sup>32</sup> Legislation: House Bill 1529 (2006 Reg. Sess.), MARYLAND GEN. ASSEMB., <https://mgaleg.maryland.gov/mgawebsite/Search/Legislation?target=/2006rs/billfile/hb1529.htm>.

engaged in the performance of the officer's official duties."<sup>33</sup> The text of the bill specifically mentioned HIV, along with hepatitis and tuberculosis, as qualifying diseases. The legislation passed the state House but stalled out in the Senate.<sup>34</sup>

- In 2012, legislation was introduced which would have changed the classification of the crime of knowingly transferring or attempting to transfer HIV from a misdemeanor to a felony.<sup>35</sup> The new classification would have brought with it a maximum fine of \$10,000 and/or 25 years of imprisonment. The legislation failed to make it out of committee.
- In 2020, the House considered a bill that would have increased the maximum penalty for someone convicted of knowingly attempting to transfer HIV from three to five years of imprisonment.<sup>36</sup> The proposed legislation also provided that any such conviction would be separate and run consecutively to any other sexual crime an individual might be charged with. The legislation died in committee.<sup>37</sup>

**Repeal efforts.** Since 2013, there have been several attempts to repeal Maryland's HIV-specific criminal law. As of November 2023, these efforts have not been successful.

- In 2013, Delegate Shirley Nathan-Pulliam and Senator Nathaniel Oaks introduced House Bill 1154 to repeal section 18-601.1.<sup>38</sup> The bill was withdrawn.<sup>39</sup>
- In 2022, Senator Clarence Lam made another attempt to repeal Maryland's HIV criminalization law with Senate Bill 547.<sup>40</sup> The bill was withdrawn soon after it was introduced.
- In 2023, Delegate Kris Fair's House Bill 287 to repeal the HIV criminal law passed in the Maryland House by 97 to 37.<sup>41</sup> The bill was next referred to the state Senate for consideration, but was not voted on before the legislative session ended.

<sup>33</sup> H.B. 152, 2006 Gen. Assemb., Reg. Sess. (Md. 2006), <https://mgaleg.maryland.gov/2006rs/bills/hb/hb0152t.pdf>.

<sup>34</sup> Legislation: House Bill 152 (2006 Reg. Sess.), MARYLAND GEN. ASSEMB., <https://mgaleg.maryland.gov/mgawebsite/Search/Legislation?target=/2006rs/billfile/hb0152.htm>.

<sup>35</sup> H.B. 622, 2012 Gen. Assemb., Reg. Sess. (Md. 2012), <https://mgaleg.maryland.gov/2012rs/bills/hb/hb0622f.pdf>.

<sup>36</sup> Legislation: House Bill 1497 (2020 Reg. Sess.), MARYLAND GEN. ASSEMB., <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb1497?ys=2020RS&search=True>.

<sup>37</sup> H.B. 1497, 2020 Gen. Assemb. Reg. Sess. (Md. 2020), <https://mgaleg.maryland.gov/2020RS/bills/hb/hb1497f.pdf>.

<sup>38</sup> H.B. 1154, 2013 Gen. Assemb., Reg. Sess. (Md. 2013), <https://mgaleg.maryland.gov/2013RS/bills/hb/hb1154f.pdf>.

<sup>39</sup> "US: Well-Meaning Bill to Repeal Maryland's HIV-Specific Criminal Law May Do More Harm Than Good, Advocates Warn," HIV Justice Network, March 26, 2013, <https://www.hivjustice.net/news-from-other-sources/maryland-lawmaker-cranks-hiv-decriminalization-gears-with-message-bill/#:~:text=Shirley%20Nathan%2DPulliam%20>.

<sup>40</sup> S.B. 547, 2022 Gen. Assemb., Reg. Sess. (Md. 2022), <https://mgaleg.maryland.gov/2022RS/bills/sb/sb0547f.pdf>.

<sup>41</sup> H.B. 287, 2023 Gen. Assemb., Reg. Sess. (Md. 2023), <https://mgaleg.maryland.gov/2023RS/bills/hb/hb0287t.pdf>.

## Case Law

There are few court cases documenting enforcement of section 18-601.1.<sup>42</sup> At least one instance of a prosecution under Section 18-601.1 was appealed to the U.S. Supreme Court but the petition for certiorari was ultimately denied.<sup>43</sup> In that case, *Karanja v. State*, the defendant was convicted in 2004 in the Maryland Circuit Court for Montgomery County of two counts of second-degree rape, two counts of second-degree sexual offense, two counts of knowingly attempting to transfer HIV, and other crimes.<sup>44</sup> Karanja appealed to both the Appellate Court of Maryland<sup>45</sup> and the Supreme Court of Maryland.<sup>46</sup> The defendant-appellant's attorneys argued in their brief that the Circuit court failed to show that defendant actually had HIV. According to their court filing, the prosecutors did not introduce medical evidence and instead only admitted testimony from another party who said that the defendant told her he was diagnosed with HIV. None of these appeals were successful.

## Application of Non-HIV Specific Criminal Laws

People in Maryland also have faced criminal charges stemming from general criminal laws if they are living with HIV. These include cases that resulted in convictions of PLWH:<sup>47</sup>

**Reckless endangerment.** In one instance, a 29-year-old man plead guilty to one charge of reckless endangerment for, in part, not disclosing his HIV status when he had consensual sex with another person.<sup>48</sup> Another man pled guilty to two counts of reckless endangerment after having unprotected sex with two women without disclosing his HIV status.<sup>49</sup> In a text message to one of the women, the man

<sup>42</sup> The statute has been referenced in at least one custody case. In 1994, a Maryland special appeals court overruled a lower court's decision to deny a gay and HIV-positive father and ex-husband overnight visitation with his children. *North v. North*, 648 A.2d 1025, (Md. Ct. Spec. App. Oct. 25, 1994). While the dissent cited the HIV criminalization law to contend that the mother was victimized and endangered by her former spouse's conduct, the majority opinion disagreed. The court ruled that a child's visitation with a noncustodial HIV-positive parent may not be restricted on the basis of that parent's HIV status. Any restriction must prove that, without such restriction, visitation would endanger the child's health or impair the child's emotional development.

<sup>43</sup> Docket Search: *Karanja v. Maryland*, SUP. CRT. OF THE U.S., <https://www.supremecourt.gov/search.aspx?filename=/docketfiles/08-5023.htm>.

<sup>44</sup> Sonia Boin, "Man Convicted in 2 Rape Counts," *The Frederick News-Post*, October 13, 2004, [https://www.fredericknews.com/archives/man-convicted-in-2-rape-counts/article\\_f696eb4f-3ea8-5d9e-b4d5-38c0be44de6a.html](https://www.fredericknews.com/archives/man-convicted-in-2-rape-counts/article_f696eb4f-3ea8-5d9e-b4d5-38c0be44de6a.html).

<sup>45</sup> See Appellant's Brief and Appendix, *Karanja v. State*, 2006 MD Sp. App. Ct. Briefs LEXIS 552 (Md. Ct. of Special Apps. 2006).

<sup>46</sup> *Karanja v. State*, 2008 Md. Lexis 55\* (Md. Court of App 2008).

<sup>47</sup> See, for example, Jessica Anderson, "Maryland Man Faces Rarely Used HIV Transmission Charges," *The Baltimore Sun/Washington Post*, September 10, 2012, [https://www.washingtonpost.com/local/maryland-man-faces-rarely-used-hivtransmission-charges/2012/09/10/Odb02f58-fb59-11e1-b2af-1f7d12fe907a\\_story.html](https://www.washingtonpost.com/local/maryland-man-faces-rarely-used-hivtransmission-charges/2012/09/10/Odb02f58-fb59-11e1-b2af-1f7d12fe907a_story.html); Deb Belt, "HIV Positive Man Pleads Guilty to Reckless Endangerment," *The Patch*, March 10, 2015, <https://patch.com/maryland/bethesda/cheychase/hiv-positive-man-pleads-guilty-reckless-endangerment>.

<sup>48</sup> Center for HIV Law and Policy, "Maryland," *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice* (Center for HIV Law and Policy, 2022), <https://www.hivlawandpolicy.org/sites/default/files/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20022722.pdf>.

<sup>49</sup> Debra Alfaroni, "Man With HIV Admits to Knowingly Having Unprotected Sex," *WUSA9*, March 10, 2015, <https://www.wusa9.com/article/news/man-with-hiv-admits-to-knowingly-having-unprotected-sex/65-203526761>.



said he was undetectable. A person with an undetectable viral load cannot transmit HIV through sex.<sup>50</sup>

**Assault.** At least two people have been convicted under assault statutes for actions that relate to their HIV status.<sup>51</sup> One 44-year-old man living with HIV was convicted of second-degree assault after spitting on a police officer.<sup>52</sup> The man, who had no teeth, argued that he did not intend to spit on the officer, and that he often unintentionally spat.<sup>53</sup> Spitting is not an HIV transmission route.<sup>54</sup>

**Attempted murder.** In *Smallwood v. State*,<sup>55</sup> the Maryland Court of Appeals held that, while the defendant knew he had HIV when he raped three women, this fact alone was insufficient to prove that he had the intent to kill for purposes of an attempted murder conviction. The court reasoned that HIV transmission occurs “simultaneously with act of rape, and thus that act alone would not provide evidence of intent to transmit the virus.”<sup>56</sup> Instead, “some additional evidence, such as an explicit statement, would be necessary to demonstrate the actor’s specific intent.”<sup>57</sup> As a result, he could be convicted of reckless endangerment, but he could not be guilty of attempted murder. The court did state, in a footnote, that it would “have no trouble concluding that Smallwood intentionally exposed his victims to the risk of HIV-infection.”<sup>58</sup>

<sup>50</sup> Debra Alfarone, “Man With HIV Admits to Knowingly Having Unprotected Sex,” *WUSA9*, March 10, 2015, <https://www.wusa9.com/article/news/man-with-hiv-admits-to-knowingly-having-unprotected-sex/65-203526761>.

<sup>51</sup> Center for HIV Law and Policy, “Maryland,” *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice* (Center for HIV Law and Policy, 2022), <https://www.hivlawandpolicy.org/sites/default/files/HIV%20Criminalization%20in%20the%20U.S.%20A%20Sourcebook%20on%20State%20Fed%20HIV%20Criminal%20Law%20and%20Practice%20022722.pdf>.

<sup>52</sup> “US: Maryland Man Gets Five Years for Unintentional Spitting On Cop,” *HIV Justice Network*, July 27, 2010, <https://www.hivjustice.net/cases/us-maryland-man-gets-five-years-for-unintentionally-spitting-on-cop/>.

<sup>53</sup> “US: Maryland Man Gets Five Years for Unintentional Spitting On Cop,” *HIV Justice Network*, July 27, 2010, <https://www.hivjustice.net/cases/us-maryland-man-gets-five-years-for-unintentionally-spitting-on-cop/>.

<sup>54</sup> See, for example, Françoise Barré-Sinoussi et al., “Expert Consensus Statements on the Science of HIV in the Context of Criminal Law,” *Journal of the International AIDS Society* 21 (2018): e215161; J. Stan Lehman et al., “Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States,” *AIDS Behavior* 18 (2014): 997, 1000.

<sup>55</sup> 680 A.2d 512 (Md. Ct. App. Aug. 1, 1996)

<sup>56</sup> 680 A.2d 512, 516 (Md. Ct. App. Aug. 1, 1996)

<sup>57</sup> 680 A.2d 512 (Md. Ct. App. Aug. 1, 1996)

<sup>58</sup> 680 A.2d 512, 517 (Md. Ct. App. Aug. 1, 1996)

## PREVIOUS STUDIES OF HIV CRIMINAL ENFORCEMENT

This report builds on a series of studies analyzing the enforcement of HIV criminal laws using state-level data. Since 2015, the Williams Institute has published similar studies for California,<sup>59</sup> Georgia,<sup>60</sup> Florida,<sup>61</sup> Missouri,<sup>62</sup> Nevada,<sup>63</sup> Kentucky,<sup>64</sup> Virginia,<sup>65</sup> Tennessee,<sup>66</sup> Louisiana,<sup>67</sup> and Arkansas.<sup>68</sup> These studies show the following:

- Thousands of people have been prosecuted for HIV crimes.
- The number of HIV-related arrests and prosecutions has not decreased in recent years.
- The vast majority of arrests, prosecutions, and convictions are pursuant to state laws that do not require actual transmission of HIV, the intent to transmit, or even conduct that can transmit HIV.
- Black people and women are disproportionately affected by HIV criminal laws.
- Sex workers are often disproportionately affected by HIV criminal enforcement.
- In most states, arrests are concentrated in just a few counties and appear to be driven by local law enforcement practice.
- Convictions for HIV crimes can carry long sentences and create lifelong collateral consequences from a felony conviction. Some states also require registration on the state's sex offender registry.
- Enforcement of HIV criminal laws has cost states tens of millions of dollars in incarceration costs alone.

<sup>59</sup> Amira Hasenbush, Ayako Miyashita, & Brad Sears, "HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS," The Williams Institute at UCLA School of Law (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-CA-Dec-2015.pdf>.

<sup>60</sup> Amira Hasenbush, "HIV Criminalization in Georgia: Penal Implications for People Living with HIV/AIDS," The Williams Institute at UCLA School of Law (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-GA-Jan-2018.pdf>.

<sup>61</sup> Nathan Cisneros & Brad Sears, "HIV Criminalization in Florida: Length of Incarceration and Fiscal Implications," The Williams Institute at UCLA School of Law (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Incarceration-FL-Jul-2021.pdf>.

<sup>62</sup> Brad Sears, Shoshana Goldberg, & Christy Mallory, "Criminalization of HIV and Hepatitis B and B in Missouri: An Analysis of Enforcement Data From 1990 to 2019," The Williams Institute at UCLA School of Law (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MO-Feb-2020.pdf>.

<sup>63</sup> Nathan Cisneros & Brad Sears, "Enforcement of HIV Criminalization in Nevada," The Williams Institute at UCLA School of Law (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-NV-May-2021.pdf>.

<sup>64</sup> Nathan Cisneros & Brad Sears, "Enforcement of HIV Criminalization in Kentucky," The Williams Institute at UCLA School of Law (2021), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-ky/>.

<sup>65</sup> Nathan Cisneros & Brad Sears, "Enforcement of HIV Criminalization in Virginia," The Williams Institute at UCLA School of Law (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-VA-Dec-2021.pdf>.

<sup>66</sup> Nathan Cisneros, Brad Sears, & Robin Lennon-Dearing, "Enforcement of HIV Criminalization in Tennessee," The Williams Institute at UCLA School of Law (2022), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-tennessee/>.

<sup>67</sup> Nathan Cisneros & Brad Sears, "Enforcement of HIV Criminalization in Louisiana," The Williams Institute at UCLA School of Law (2022), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-louisiana/>.

<sup>68</sup> Nathan Cisneros, Moriah Macklin, Will Tentindo & Brad Sears, "Enforcement of HIV Criminalization in Arkansas," The Williams Institute at UCLA School of Law (2023), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-ar/>.

The Williams Institute reports follow several earlier studies analyzing the enforcement of HIV criminal laws in other states.<sup>69</sup> For example, Trevor Hoppe, analyzing 431 HIV-related criminal convictions in six states (Arkansas, Florida, Louisiana, Michigan, Missouri, and Tennessee), concluded that victim characteristics drive uneven patterns of enforcement and sentencing.<sup>70</sup> Hoppe found that there were disproportionately high rates of convictions among heterosexual white male defendants, yet at sentencing, Black defendants were punished more severely, and women were treated more leniently. Men accused of not disclosing to women were punished more harshly than those accused by men.

Prior attempts to analyze the enforcement of Maryland's HIV criminal law, primarily based on media reports, state data, and court cases, have identified only a handful cases charging Section 18-601.1. For example, in 2013, ProPublica relied on earlier case tracking by the Sero Project and others, as well as original research, to identify HIV criminal prosecutions in the United States. Although it documented over 1,300 cases nationwide, it did not find any examples of prosecutions from Maryland.<sup>71</sup>

Comprehensive attempts to identify prosecutions of HIV crimes globally only found one case from Maryland from 2013 to 2015,<sup>72</sup> at least one case from 2015 to 2018,<sup>73</sup> and one to three cases from 2019 to 2021.<sup>74</sup> Overlapping with these three global reports, in total the HIV Justice Network's database identifies seven criminal cases against people for exposing others to HIV in Maryland through February 2023.<sup>75</sup> News reports of those cases indicate that Section 18-601.1 offenses were charged in at least four of the cases. In five cases, general criminal law cases offenses were charged

<sup>69</sup> Dini Harsono, Carol L. Galletly, Elaine O'Keffe, and Zita Lazzarini, "Criminalization of HIV Exposure: A Review of Empirical Studies in the United States," *AIDS and Behavior* 21, no. 1 (2017): 27-50, doi: 10.1007/s10461-016-1540-5; Carol Galletly and Zita Lazzarini, "Charges for Criminal Exposure to HIV and Aggravated Prostitution Filed in the Nashville, Tennessee Prosecutorial Region 2000-2010," *AIDS and Behavior* 17 (2013): 26-24, doi: 10.1007/s10461-013-0408-1; Deanna Cann, Sayward E. Harrison, and Shan Qiao, "Historical and Current Trends in HIV Criminalization in South Carolina: Implications for Southern HIV Epidemic," *AIDS and Behavior* 23 (2019): 233, doi: 10.1007/s10461-019-02599-1; Trevor Hoppe, "From Sickness to Badness: The Criminalization of HIV in Michigan," *Social Science and Medicine* 101 (2014): 139-47, doi: 10.1016/j.socscimed.2013.11.007; Trevor Hoppe, "Disparate Risks of Conviction under Michigan's Felony HIV Disclosure Law: An Observational Analysis of Convictions and HIV Diagnoses 1992-2010," *Punishment & Society* 17, no. 1 (2015): 73-93, <https://doi.org/10.1177/1462474514561711>; Trevor Hoppe, *Punishing Disease: HIV and the Criminalization of Sickness* (University of California Press, 2018); Trevor Hoppe, Alexander McClelland, and Kevin Pass, "Beyond Criminalization: Reconsidering HIV Criminalization in an Era of Reform," *Current Opinion in HIV & AIDS* 17, no. 2 (2022): 100-105, doi: 10.1097/COH.0000000000000715.

<sup>70</sup> Trevor Hoppe, *Punishing Disease: HIV and the Criminalization of Sickness* (University of California Press, 2018).

<sup>71</sup> Sergio Hernandez, "About the HIV Criminalization Data," *ProPublica*, December 1, 2013, <https://www.propublica.org/article/about-the-hiv-criminalization-data>.

<sup>72</sup> Edwin J. Bernard and Sally Cameron, *Advancing HIV Justice 2: Building Momentum in Global Advocacy Against HIV Criminalisation* (HIV Justice Network and GNP+, Brighton/Amsterdam, April 2016), [https://www.hivjustice.net/wp-content/uploads/2016/05/AHJ2.final2\\_10May2016.pdf](https://www.hivjustice.net/wp-content/uploads/2016/05/AHJ2.final2_10May2016.pdf).

<sup>73</sup> Sally Cameron and Edwin J. Bernard, *Advancing HIV Justice 3: Growing the Global Movement Against HIV Criminalisation* (HIV Justice Network, Amsterdam, May 2019), <https://www.hivjustice.net/wp-content/uploads/2019/05/AHJ3-Full-Report-English-Final.pdf>.

<sup>74</sup> Alison Symington, Edwin J. Bernard, et al., *Advancing HIV Justice 4: Understanding Commonalities, Seizing Opportunities* (HIV Justice Network, Amsterdam, July 2022), [https://www.hivjustice.net/wp-content/uploads/2022/07/AHJ4\\_EN.pdf](https://www.hivjustice.net/wp-content/uploads/2022/07/AHJ4_EN.pdf).

<sup>75</sup> Alison Symington, Edwin J. Bernard, et al., *Advancing HIV Justice 4: Understanding Commonalities, Seizing Opportunities* (HIV Justice Network, Amsterdam, July 2022), [https://www.hivjustice.net/wp-content/uploads/2022/07/AHJ4\\_EN.pdf](https://www.hivjustice.net/wp-content/uploads/2022/07/AHJ4_EN.pdf).

including charges against an HIV-positive law enforcement officer for having sex with a person in his custody,<sup>76</sup> charges of sexual assault against one defendant,<sup>77</sup> one charge of attempted murder for an HIV-positive man accused of biting a police officer,<sup>78</sup> an HIV-positive man who plead guilty to two charges of reckless endangerment for having sex with two women,<sup>79</sup> and a conviction of second-degree assault for an HIV-positive man who unintentionally spat on a police officer.<sup>80</sup>

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<sup>76</sup> Zak Failla, "Officer Who Exposed Suspect To HIV During In-Custody Sex Assault Gets Max Term," Calvert Daily Voice, February 21, 2023, <https://dailyvoice.com/maryland/calvert/police-fire/officer-who-exposed-suspect-to-hiv-during-in-custody-sex-assault-gets-max-term/857254/>.

<sup>77</sup> NBC12 Newsroom, "Henrico Man Convicted in HIV Case in Maryland Dies," NBC12, September 25, 2017, <https://www.nbc12.com/story/36444386/henrico-man-convicted-in-hiv-case-in-maryland-dies/>.

<sup>78</sup> "Police: Man Charged with Attempted Murder for Biting Officer in Severn," August 29, 2016, HIV Justice Network, <https://www.hivjustice.net/cases/usa-man-charged-with-attempted-murder-in-maryland-for-biting-policeman-during-a-struggle/>.

<sup>79</sup> "HIV Positive Man Pleads Guilty of Exposing 2 Women to the Virus," March 11, 2015, HIV Justice Network, <https://www.hivjustice.net/cases/us-man-28-pleads-guilty-to-reckless-endangerment-for-exposing-two-women-to-hiv-despite-undetectable-viral-load/>.

<sup>80</sup> "Maryland Man Gets Five Years for Unintentionally Spitting on Cop," July 27, 2010, *The Herald-Mail*, <https://www.hivjustice.net/cases/us-maryland-man-gets-five-years-for-unintentionally-spitting-on-cop/>.

# ANALYSIS OF HIV CRIMINAL ENFORCEMENT DATA

## DATA AND SOURCES

In July 2023, the Williams Institute received data from the Maryland state Administrative Office of the Courts on prosecutions under the state’s HIV-related criminal statute. These data include only cases that have been entered into Maryland’s electronic case management system, and exclude arrests that did not result in prosecution for at least one allegation of an HIV-related crime. The data also exclude paper filings that have not been digitized.

## NUMBER OF CASES

In total, there have been at least 104 cases and at least 148 separate charges for “knowingly transferring HIV to another” in Maryland from 2000 to 2020. Among these 104 cases, three included only attempted charges, and one case included both an attempted charge and a charge for actual consummation of the alleged crime. We estimate that between 82 and 104 people have been charged with HIV-related offenses in Maryland during the 2000-2020 time period.<sup>81</sup>

**Table 1. Number of HIV-related cases and HIV-related charges in Maryland**

OFFENSE	NUMBER OF CASES	NUMBER OF CHARGES
Knowingly transferring HIV to another	100	143
Attempted transfer of HIV to another	3	3
Knowingly transferring HIV to another & Attempted transfer of HIV to another	1	2 (one count of each of knowingly transferring and attempted transfer)
<b>Total</b>	<b>104</b>	<b>148</b>

In general, cases were likely to have a single HIV charge that was accompanied by a couple of non-HIV-related charges. The median number of HIV-related charges per case was one; only seven cases (7% of the total) had more than two HIV-related charges. Over one-fifth (22%) of all HIV-related cases had only HIV-related charges—in other words, the allegation of an HIV-related crime was the only reason the case proceeded to the court system. The median number of non-HIV-related charges per case was two. About 15% of all cases had at least 10 non-HIV-related charges. The most common non-HIV-related charge to appear in conjunction with an HIV-related charge was reckless endangerment, followed by assault and sex offenses.<sup>82</sup>

<sup>81</sup> We received de-identified data from the Maryland Administrative Office of the Courts. We counted 82 unique *birth date x race x sex* combinations across all 104 cases. It is possible that two different people can have the same combination of birth date, race, and sex, therefore we present a range between of between 82 and 104 people.

<sup>82</sup> Two cases with a combined 325 charges between them—both of which appear related to child sex abuse—were excluded from these counts.

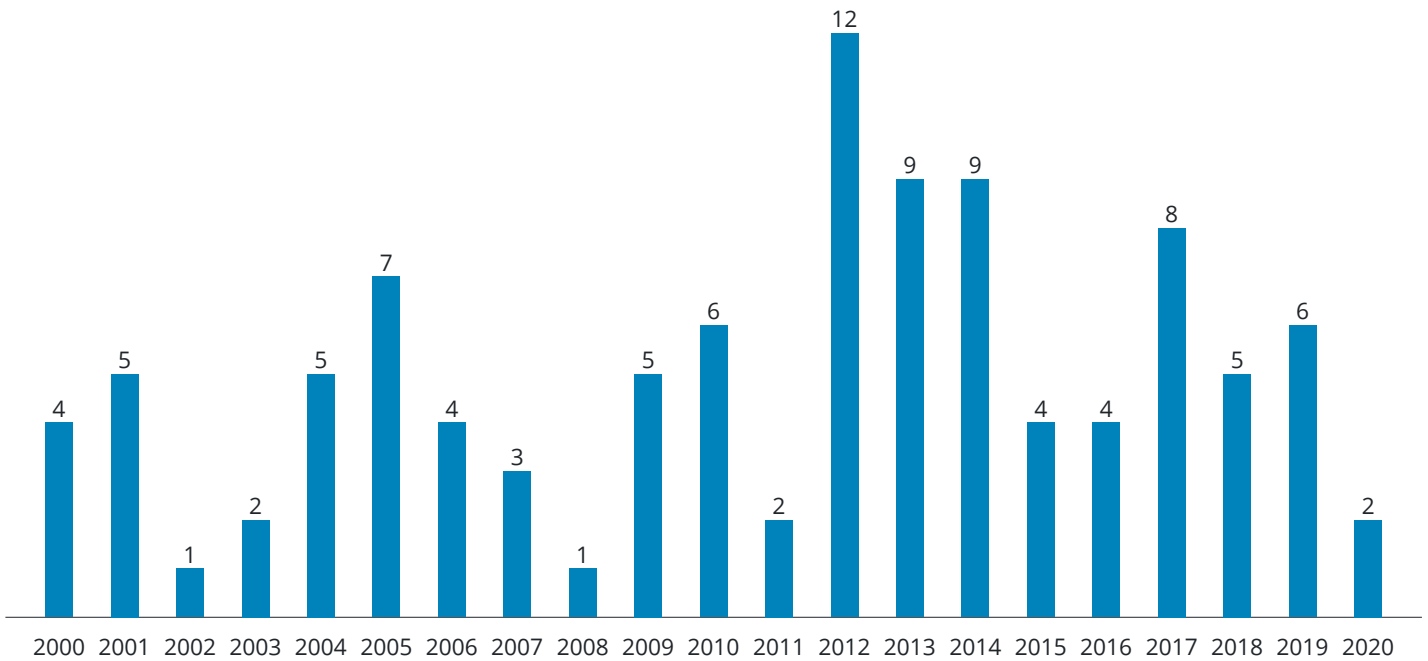
**Table 2. Most frequent non-HIV-related charges among cases with an HIV-related charge in Maryland**

CHARGE	NUMBER OF CHARGES
Reckless endangerment	73
2 <sup>nd</sup> degree assault	55
1 <sup>st</sup> degree assault	34
2 <sup>nd</sup> degree sex offense	22
3 <sup>rd</sup> degree sex offense	18
2 <sup>nd</sup> degree rape	13

### Chronology of Cases

We have filing date information going back over two decades. The earliest HIV-related case was filed in March 2000 and the most recent case was filed in March 2020, during the final year for which we have data. There have been an average of five HIV-related cases filed per year during that time period, with a peak filing year in 2012. There also appears to be a meaningful increase in cases over time. In the decade from 2001 to 2010 there were a total of 39 cases filed. In the decade ending in 2020, however, there were 61 cases filed—an increase of over 50%.

**Figure 1. Number of HIV-related cases filed in Maryland from 2000 to 2020**



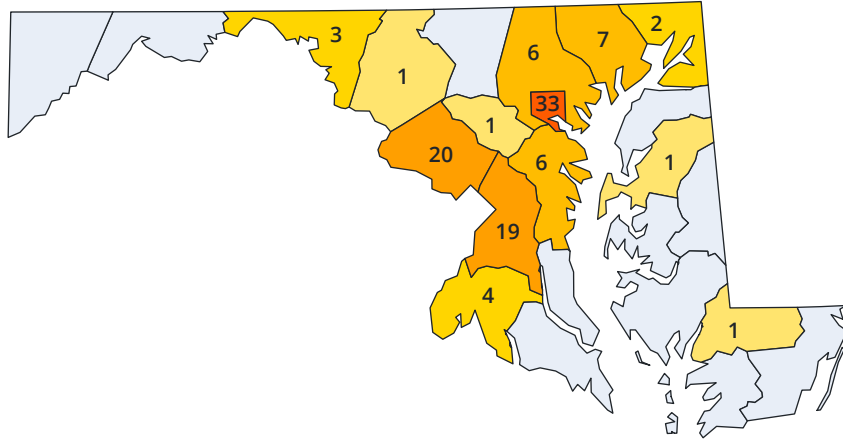
### Geography of Cases

Maryland has 23 counties and one county equivalent—the city of Baltimore. Just over half of all counties—12 of the 23 counties—had at least one HIV-related case, as did Baltimore City.<sup>83</sup> However, there were substantial geographic differences in enforcement. Baltimore City alone accounted

<sup>83</sup> We assume that the county in which a case was filed is also the county in which the arrest occurred.

for nearly a third (32%) of all HIV-related cases, followed by Montgomery County (19%) and Prince George's County (18%), both of which border the District of Columbia. These three counties combined account for over two-thirds (69%) of all HIV-related cases.<sup>84</sup>

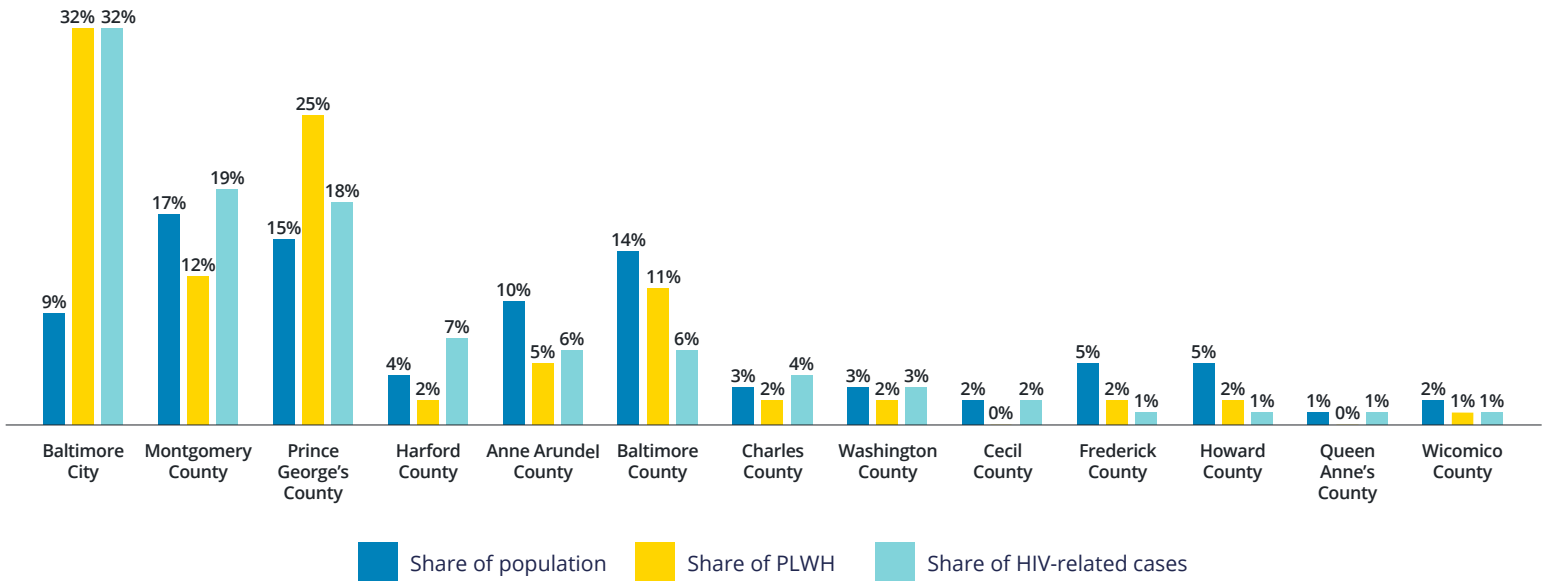
**Figure 2. Number of HIV-related cases in Maryland by county**



The geographic distribution of cases roughly matches the county-level distribution of PLWH in Maryland in 2021, but there are some disproportionalities. Prince George's County accounted for 25% of PLWH in the state, but only 18% of all HIV-related cases. In contrast, 12% of the state's PLWH resided in Montgomery County, but the county accounted for 19% of HIV-related cases. Harford also appears to have a higher level of enforcement: 2% of the state's PLWH live in Harford but 7% of all HIV-related cases were charged there. In contrast, about one-third (32%) of all PLWH lived in Baltimore in 2021, which is the same as its share of HIV-related cases. Enforcement in the county of Baltimore seems to be disproportionately low: 11% of PLWH but 6% of HIV-related prosecutions.

<sup>84</sup> The three counties also account for two-thirds (69%) of all HIV-related charges, although the distribution is slightly different: Montgomery County (32%), Baltimore city (24%), then Prince George's (14%).

Figure 3. County share of state population, share of people living with HIV, and share of HIV-related criminal cases in Maryland



### Demographics of People Charged

We have information about the age of the of the person charged at the time of filing for 97 of the 104 cases. Ages ranged from 21 years old to 59 years old at the time of filing, with an average age of 36 years old and a median age of 35 years old.

We have information about the sex of the individuals charged for all 104 cases.<sup>85</sup> Men made up the overwhelming majority (86%) of people in all cases, and were substantially overrepresented among people with HIV-related cases as compared to the state population (49%), or the population of PLWH in Maryland (66%).<sup>86</sup> We provide results about “sex” because it is the term used by the state of Maryland in their court case management system. We do not have separate information on gender identity or expression, and do not know if the individuals themselves are able to self-report. According to other state data, about 1.2% of PLWH in Maryland are transgender.<sup>87</sup>

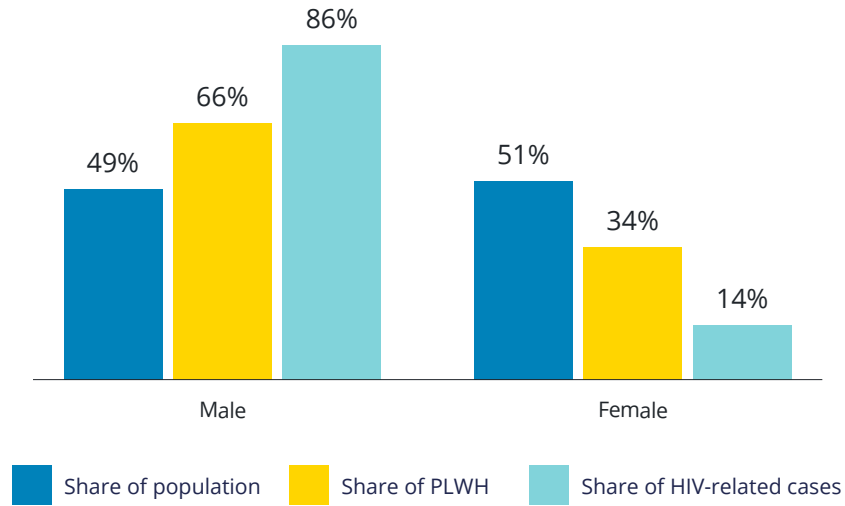
<sup>85</sup> The demographic results presented here do not substantially change whether we use data about the defendants in 104 cases or data based on the 82 unique birth date, race, and sex combinations.

<sup>86</sup> AIDSvU, “State Prevalence Data 2021,” Excel spreadsheet, last modified August 16, 2023, [https://aidsvu.org/wp-content/uploads/2022/11/AIDSvU\\_State\\_Prev\\_2021-20230816.xlsx](https://aidsvu.org/wp-content/uploads/2022/11/AIDSvU_State_Prev_2021-20230816.xlsx).

<sup>87</sup> Center for HIV Surveillance, Epidemiology and Evaluation, Maryland Department of Health, “Maryland Annual HIV Epidemiological Profile 2020,” (Baltimore, MD: Maryland Department of Health, 2021), 43, <https://health.maryland.gov/phpa/OIDEOR/CHSE/SiteAssets/Pages/statistics/Maryland-Annual-HIV-Epidemiological-Profile--2020.pdf>.



**Figure 4. Sex distribution of state population, population of people living with HIV, and HIV-related criminal cases in Maryland**



We have information about race for 101 of the 104 cases. In 100 cases, the individual was labeled either Black or white, and in the remaining case the person was labeled “Other.” Black people were substantially overrepresented among people with HIV-related cases in Maryland; 82% of cases involved Black people, although they made up only 30% of the state’s population and 71% of PLWH in 2021.<sup>88</sup> White people were also slightly overrepresented when compared to the population of PLWH (17% versus 12%), but dramatically underrepresented when compared to the state’s population as a whole (49%). While other race/ethnicity groups constitute a substantial proportion of the state’s overall population (21%) and population of PLWH (17%), these demographic groups were dramatically under-represented among HIV-related cases (1%).<sup>89</sup>

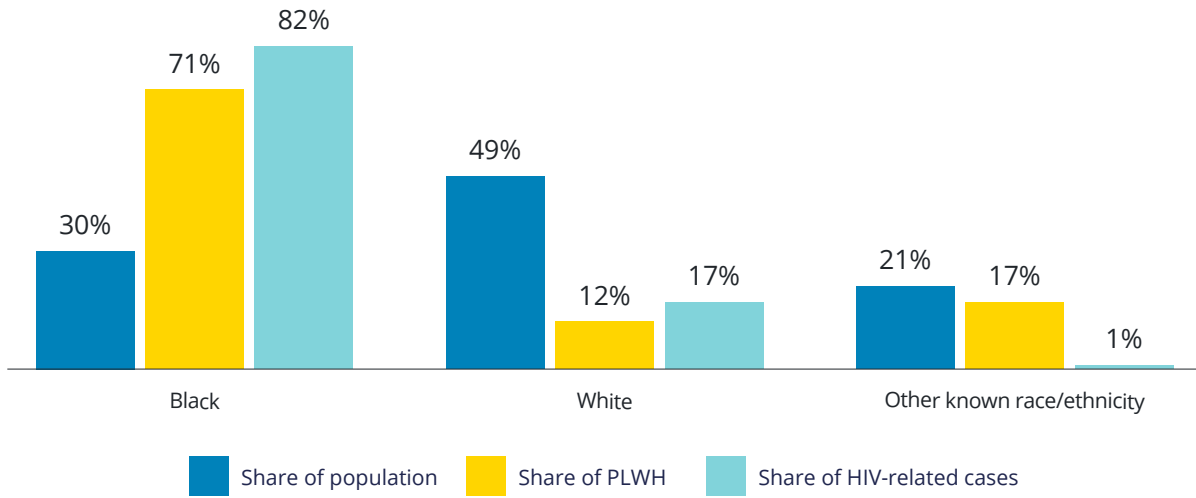
We do not have ethnicity information, including Hispanic/Latino ethnicity, and do not know if Maryland separately collects Hispanic/Latino ethnicity or includes it with information on a person’s race. About 11% of Maryland’s population was Hispanic/Latino in 2021, and about 8% of PLWH were Hispanic/Latino.<sup>90</sup> All but one person in the data were identified as either Black or white. It is possible that people who would identify as Hispanic/Latino are being recorded as Black or white.

<sup>88</sup> AIDSvu, “State Prevalence Data 2021,” Excel spreadsheet, last modified August 16, 2023, [https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu\\_State\\_Prev\\_2021-20230816.xlsx](https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu_State_Prev_2021-20230816.xlsx).

<sup>89</sup> AIDSvu, “State Prevalence Data 2021,” Excel spreadsheet, last modified August 16, 2023, [https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu\\_State\\_Prev\\_2021-20230816.xlsx](https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu_State_Prev_2021-20230816.xlsx).

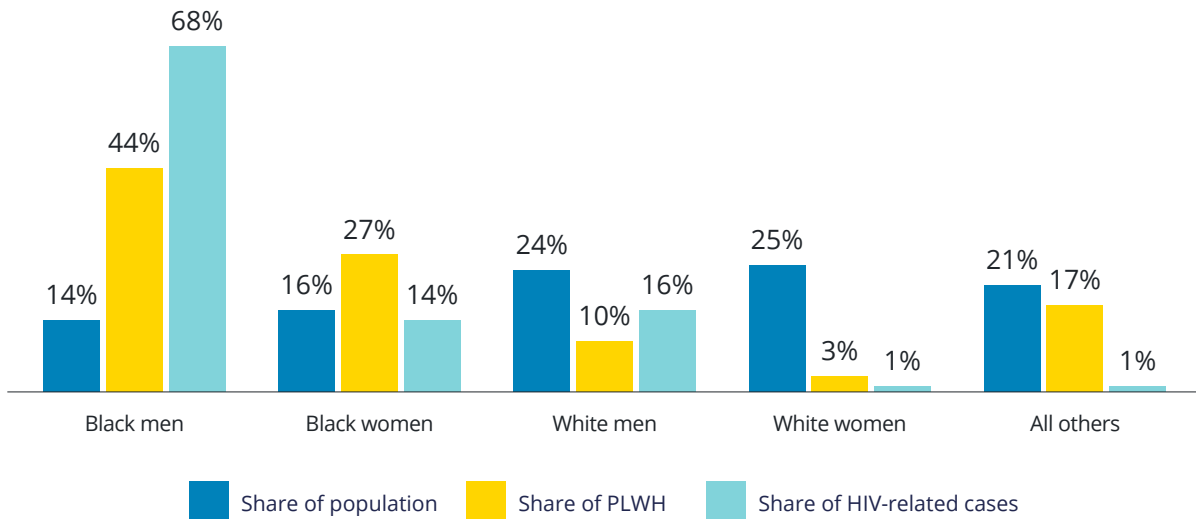
<sup>90</sup> AIDSvu, “State Prevalence Data 2021,” Excel spreadsheet, last modified August 16, 2023, [https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu\\_State\\_Prev\\_2021-20230816.xlsx](https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu_State_Prev_2021-20230816.xlsx).

**Figure 5. Racial distribution of state population, population of people living with HIV, and HIV-related criminal cases in Maryland**



Looking at the interaction of race and sex, Black men experienced the greatest disproportionality in enforcement. Black men were over two-thirds (68%) of all HIV-related cases for which we have complete demographic information, but only 14% of the state’s population, and 44% of PLWH. Likewise, white men were 16% of all HIV-related cases, but only 10% of PLWH in the state. In contrast, Black women were 16% of the state’s population, and 27% of PLWH, but only 14% of HIV-related cases. White women were the least likely to have an HIV-related case and also the least likely to be living with HIV in Maryland.<sup>91</sup>

**Figure 6. Demographic distribution of state population, population of people living with HIV, and HIV-related criminal cases in Maryland**



<sup>91</sup> AIDSvu, “State Prevalence Data 2021,” Excel spreadsheet, last modified August 16, 2023, [https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu\\_State\\_Prev\\_2021-20230816.xlsx](https://aidsvu.org/wp-content/uploads/2022/11/AIDSVu_State_Prev_2021-20230816.xlsx).

## CASE OUTCOMES

We have clear case outcomes in 92 of the 104 cases with an HIV-related charge, totaling 135 HIV-specific charges.<sup>92</sup> Just over 80% of all these HIV-related charges were dropped at some point after the case was filed.<sup>93</sup> A further 6% of HIV-related charges had outcomes other than guilty/not guilty.<sup>94</sup> Only one in seven HIV-related charges (13%) progressed to a final determination of guilty/not guilty on the HIV charge.<sup>95</sup> However, nearly nine-tenths (89%) of HIV-related charges that made it to this stage resulted in a guilty outcome. Put differently, of all 135 HIV-related *charges* with a clear outcome, only 12% resulted in an outcome of guilty. Of all 92 *cases* with an HIV-related charge and a clear outcome, only 10% resulted in a guilty outcome on at least one HIV-related charge.

However, when looking at outcomes for any charge, HIV-related or not, 41% of cases resulted in at least one guilty outcome.<sup>96</sup> The most common non-HIV-related convictions were for second degree assault, sexual abuse of a minor, second and third degree sexual offenses, and reckless endangerment. It is impossible to say from the available data how the bundling of HIV-related and non-HIV-related charges influenced the final outcome of the non-HIV-related charges—whether for example, certain charges were dropped in exchange for a guilty plea on other charges as part of a plea bargain. However, media accounts from Maryland indicate that in some cases plea deals include dropping the HIV-related charges for a guilty plea on other charges. For example, in a 2017 case, Section 18-601.1 charges were dropped against one defendant who plead guilty to sexual assault charges.<sup>97</sup> Similarly, in 2015, Section 18-601.1 charges against another defendant were dropped when he plead guilty to charges of reckless endangerment.<sup>98</sup>

<sup>92</sup> The data received from the state of Maryland included clear case outcomes for 118 HIV-related charges across 82 cases. Seven additional cases (containing 8 HIV-related charges) listed “Jury Trial Prayed” as the final disposition. An additional 13 cases (containing 20 HIV-related charges) indicated that the case was forwarded to the circuit court, but did include a final disposition. Two cases did not list a final disposition at all. For each of these cases we attempted to collect final dispositions using the Maryland online case lookup system (<https://casesearch.courts.state.md.us/casesearch>). Of these 22 cases, we were able to identify case outcomes in 10 cases (17 HIV-related charges), and included them in the totals here.

<sup>93</sup> This includes all charges that ended with nolle prosequi, stet, or that were dropped between filing and final disposition.

<sup>94</sup> These include: “Not Criminally Responsible – Committed,” “Abated by Death,” “Closed Jeopardy or Other Conviction,” “Conversion Default,” and “Verdict: Merged.”

<sup>95</sup> Guilty/not guilty includes a finding of guilt, a finding of not guilty, and judgment of acquittal.

<sup>96</sup> Thirty cases in total had at least one guilty charge.

<sup>97</sup> NBC12 Newsroom, “Henrico Man Convicted in HIV Case in Maryland Dies,” NBC12, September 25, 2017, <https://www.nbc12.com/story/36444386/henrico-man-convicted-in-hiv-case-in-maryland-dies/>.

<sup>98</sup> “HIV Positive Man Pleads Guilty of Exposing 2 Women to the Virus,” HIV Justice Network, March 11, 2015, <https://www.hivjustice.net/cases/us-man-28-pleads-guilty-to-reckless-endangerment-for-exposing-two-women-to-hiv-despite-undetectable-viral-load/>.

Figure 7. Final disposition of HIV-related charges with a clear outcome in Maryland

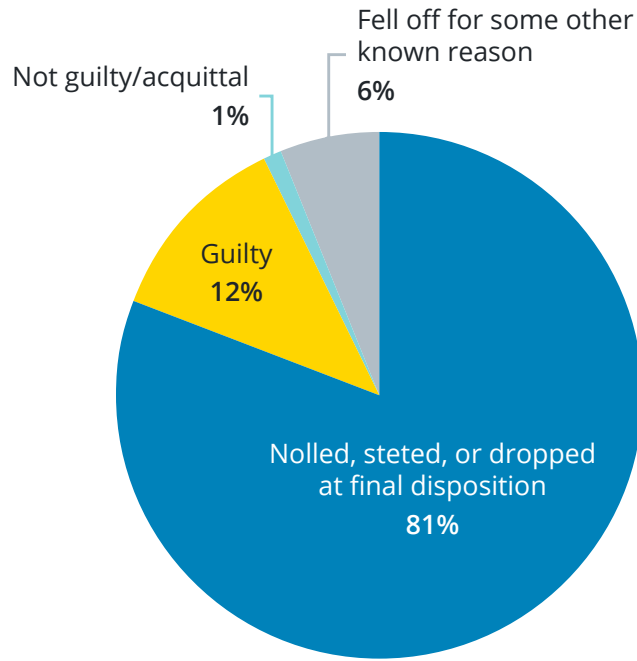
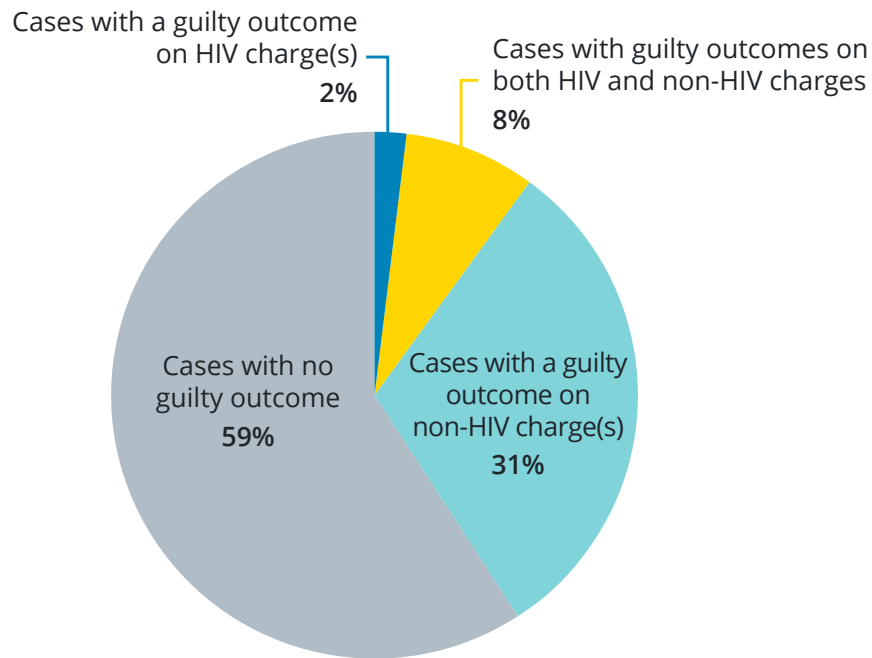


Figure 8. Share of cases that resulted in guilt on at least one charge among cases with a clear outcome in Maryland



The HIV-related guilty outcomes were geographically concentrated. Baltimore City and Montgomery County each accounted for a third of these cases. Cecil, Charles, and Frederick Counties each had one HIV-related case with a guilty outcome. Prince George’s County had no convictions.

## Sentencing for HIV-Related Convictions

We only have sentencing information for convictions of 16 HIV-related charges, including one charge for attempted transfer of HIV. The mean sentence length was 2.9 years. Sentences ranged from one year to five years, although only one sentence was for less than the maximum three years.

## Demographics of People with HIV-Related Convictions

We have complete demographic information for seven people with HIV-related convictions in the data supplied by the state of Maryland. All seven individuals were Black men. Two additional people with HIV-related convictions were identified as men, but their race/ethnicity was not available.<sup>99</sup> When looking at those with non-HIV-related convictions, in contrast, only 62% were Black men, while 15% were white men. An additional 11% were Black women. The remainder were men with race/ethnicity data unavailable. It appears, then, that Black men are overrepresented when comparing HIV-related convictions to non-HIV-related convictions, and when comparing Black men to the overall state population or people living with HIV.<sup>100</sup>

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<sup>99</sup> Using the Maryland online case lookup system (<https://casesearch.courts.state.md.us/casesearch>) we identified the race of these two individuals in other court proceedings as in one Black person and one white person. We were unable to determine why their race is inconsistently described as “Unavailable” in some court filings, and in the data received from the state.

<sup>100</sup> Black men are also overrepresented when compared to the demographic profile of those in Maryland Department of Public Safety and Correctional Services custody (at 71.5%). “Maryland Department of Public Safety and Correctional Services, ‘Inmate Characteristics Report FY 2022 Q4’ (July 2022), accessed December 4, 2023, <https://dpscs.maryland.gov/publicinfo/publications/pdfs/Inmate%20Characteristics%20Report%20FY%202022%20Q4.pdf>.”

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### ABOUT THE WILLIAMS INSTITUTE

The Williams Institute is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. A think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance and disseminates it to judges, legislators, policymakers, media, and the public. These studies can be accessed at the Williams Institute website.

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RESEARCH THAT MATTERS



# **MDSB1165 Senate Judicial Proceedings Committee Tes**

Uploaded by: Nathan Cisneros

Position: INFO

## Testimony of Nathan Cisneros, MS, in regard to SB 1165

March 25, 2024

Members of the Maryland Senate Judicial Proceedings Committee, my name is Nathan Cisneros, and I am the HIV Criminalization Project Director at the Williams Institute, a research center at the University of California Los Angeles School of Law that conducts independent, rigorous research on sexual orientation and gender identity law and public policy. I write today to share some key findings from a recent report on the enforcement of Maryland’s HIV criminal law published by the Williams Institute.<sup>1</sup> I also offer a few comments on the enforcement of these laws nationally.

### **HIV Criminalization in Maryland**

Maryland first enacted its HIV-specific criminal law in 1989, at the height of the HIV/AIDS crisis. In the decades since, we have made tremendous strides in the science and medicine of HIV. Today, we know exactly how HIV is—and is not—transmitted. We also have effective medications that ensure a person newly diagnosed with HIV can lead a healthy life. Today HIV is a manageable health condition, much like diabetes or hypertension. Moreover, we also have medications that can be taken either by a person living with HIV or a person who does not have HIV to completely eliminate the risk of HIV transmission through sex.<sup>2</sup>

Given these advances, it is reasonable to conclude that Maryland’s HIV-related criminal law does not reflect our current understanding of HIV transmission, treatment, and prevention. Maryland makes it a misdemeanor for a person living with HIV and who is aware of their HIV-positive status to “knowingly transfer or attempt to transfer” HIV to another person.<sup>3</sup> Maryland does not require actual transmission, the intent to transmit, or even conduct likely to result in transmission in order to sustain a conviction. Maryland’s HIV criminal law also does not address people living with HIV who cannot transmit HIV through sexual contact because they are in effective treatment and virally suppressed, so that HIV is non-detectable in their blood. For such people there is no HIV transmission risk from sex.

### *Williams Institute’s Findings*

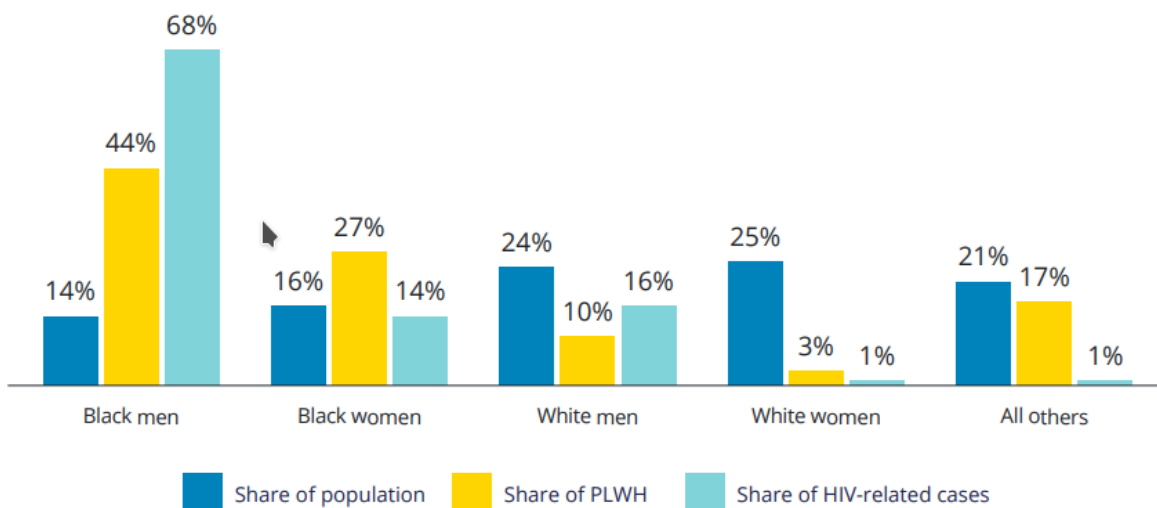
We also know who is most likely to be criminalized because of their HIV status. The Williams Institute analyzed court records provided by the Maryland State Administrative Office of the Courts. Our analysis revealed at least 104 prosecutions in the state because of an allegation of an HIV-related crime from 2000 to 2020:

- In total, there have been at least 104 cases and at least 148 separate charges for “knowingly transferring HIV to another” in Maryland from 2000 to 2020.
- Arrests continue to the present. In fact, there were more cases from 2010 to 2020 than from 2000 to 2010.



- Enforcement is highly concentrated by geography: Baltimore City alone accounted for nearly a third (32%) of all HIV-related criminal cases in the state, followed by Montgomery County (19%) and Prince George’s County (18%).
- Men made up the overwhelming majority (86%) of people with an HIV-related charge.
- Black people are disproportionately impacted by HIV criminal laws in Maryland. Black people made up the overwhelming majority (82%) of people with HIV-related criminal cases.
  - Black men, in particular, are overrepresented among those arrested for HIV crimes—14% of the state’s population and 44% of people living with HIV, but 68% of HIV-related arrests.
- The average sentence length for people convicted was 2.9 years; the maximum sentence allowed is 3 years.

**Demographic distribution of state population, population of people living with HIV, and HIV-related criminal cases in Maryland**



### **HIV Criminalization Nationally**

The enforcement of Maryland’s HIV criminal law fits into a national pattern. Since 2015, the Williams Institute has published similar studies for California,<sup>4</sup> Georgia,<sup>5</sup> Florida,<sup>6</sup> Missouri,<sup>7</sup> Nevada,<sup>8</sup> Kentucky,<sup>9</sup> Virginia,<sup>10</sup> Tennessee,<sup>11</sup> Louisiana,<sup>12</sup> and Arkansas.<sup>13</sup> Together, these studies reveal that

- Thousands of people have been prosecuted for HIV crimes.
- The number of HIV-related arrests and prosecutions has not decreased in recent years.

- The vast majority of arrests, prosecutions, and convictions are pursuant to state laws that do not require actual transmission of HIV, the intent to transmit, or even conduct that can transmit HIV.
- Black people and women are disproportionately affected by HIV criminal laws.
- Sex workers are often disproportionately affected by HIV criminal enforcement.
- In most states, arrests are concentrated in just a few counties and appear to be driven by local law enforcement practice.
- Convictions for HIV crimes can carry long sentences and create lifelong collateral consequences from a criminal conviction.
- Enforcement of HIV criminal laws has cost states tens of millions of dollars in incarceration costs alone.

In Maryland, as in over half of the United States, a people living with HIV are subject to criminalization because of their HIV status. Actual transmission, intent to transmit, and even the possibility of transmission are not required to sustain a conviction. Black people, and especially Black men are much more likely to be prosecuted and convicted of an HIV-related offense. Maryland's law does not reflect what we know about HIV prevention and transmission. This, in part is why the Centers for Disease Control and Prevention have called on states to consider updating or repealing their HIV criminal laws as a part of the nation's overall Ending the HIV Epidemic in the U.S.<sup>14</sup>

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<sup>1</sup> Md. Code Ann., Health-Gen. § 18-601.1.

<sup>2</sup> Trickey, Adam, Margaret T. May, Jorg-Janne Vehreschild, Niels Obel, M. John Gill, Heidi M. Crane, Christoph Boesecke et al., "Survival of HIV-positive patients starting antiretroviral therapy between 1996 and 2013: a collaborative analysis of cohort studies."

<sup>3</sup> Nathan Cisneros, Will Tentindo, Brad Sears, Moriah Macklin & Donovan Bendana, "Enforcement of HIV Criminalization in Maryland," The Williams Institute at UCLA School of Law (2024), <https://williamsinstitute.law.ucla.edu/publications/hiv-crim-md/>.

<sup>4</sup> Amira Hasenbush, Ayako Miyashita, & Brad Sears, "HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS," The Williams Institute at UCLA School of Law (2015), <https://williamsinstitute.law.ucla.edu/wpcontent/uploads/HIV-Criminalization-CA-Dec-2015.pdf>.

<sup>5</sup> Amira Hasenbush, "HIV Criminalization in Georgia: Penal Implications for People Living with HIV/AIDS," The Williams Institute at UCLA School of Law (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-CriminalizationGA-Jan-2018.pdf>.

<sup>6</sup> Nathan Cisneros & Brad Sears, "HIV Criminalization in Florida: Length of Incarceration and Fiscal Implications," The Williams Institute at UCLA School of Law (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIVIncarceration-FL-Jul-2021.pdf>.

<sup>7</sup> Brad Sears, Shoshana Goldberg, & Christy Mallory, "Criminalization of HIV and Hepatitis B and B in Missouri: An Analysis of Enforcement Data From 1990 to 2019," The Williams Institute at UCLA School of Law (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MO-Feb-2020.pdf>.

<sup>8</sup> Nathan Cisneros & Brad Sears, "Enforcement of HIV Criminalization in Nevada," The Williams Institute at UCLA School of Law (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-NV-May-2021.pdf>.

<sup>9</sup> Nathan Cisneros & Brad Sears, "Enforcement of HIV Criminalization in Kentucky," The Williams Institute at UCLA School of Law (2021), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-ky/>.

<sup>10</sup> Nathan Cisneros & Brad Sears, "Enforcement of HIV Criminalization in Virginia," The Williams Institute at UCLA School of Law (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-VA-Dec-2021.pdf>.

<sup>11</sup> Nathan Cisneros, Brad Sears, & Robin Lennon-Dearing, "Enforcement of HIV Criminalization in Tennessee," The Williams Institute at UCLA School of Law (2022), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalizationtennessee/>.

<sup>12</sup> Nathan Cisneros & Brad Sears, "Enforcement of HIV Criminalization in Louisiana," The Williams Institute at UCLA School of Law (2022), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-louisiana/>.

<sup>13</sup> Nathan Cisneros, Moriah Macklin, Will Tentindo & Brad Sears, "Enforcement of HIV Criminalization in Arkansas," The Williams Institute at UCLA School of Law (2023), <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalizationar/>.

<sup>14</sup> Centers for Disease Control and Prevention, "HIV Criminalization and Ending the HIV Epidemic in the U.S.," Centers for Disease Control and Prevention (Dec. 18, 2023), <https://www.cdc.gov/hiv/policies/law/criminalization-ehe.html>.