

Testimony of the Human Trafficking Prevention Project

BILL NO: Senate Bill 356
TITLE: Public Health - Repeal of Prohibition on Transfer of Human Immunodeficiency Virus (Carlton R. Smith Act)
COMMITTEE: Judicial Proceedings
HEARING DATE: January 29, 2025
POSITION: FAVORABLE

Senate Bill 356 would repeal the current prohibition on an individual from transferring the human immunodeficiency virus (HIV) to another individual.¹ 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 356, with no amendments, 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.² 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.³ 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,⁴ this only gives further license to those who seek to harm them by justifying their dehumanization.⁵ 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.”⁶ 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.⁷

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

² 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.

³ *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>.

⁴ 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)”).

⁵ SW and HIV article p.3

⁶ P. 4

⁷ 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 operating in marginalized settings, particularly those in the sex trades. SB 356 will rightfully repeal Maryland's draconian and discriminatory 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 strongly supports Senate Bill 356, without any amendments as have been suggested in past legislative sessions, 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.

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