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The Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

Testimony of Trans Maryland

IN SUPPORT OF

Senate Bill #356: Public Health -
Prohibition on Transfer of Human Immunodeficiency Virus - Repeal

To the Chair, Vice Chair, and esteemed members of the Senate Judicial Proceedings Committee:

Trans Maryland is a multi-racial, multi-gender community power building organization for Maryland's trans community. In our work with and on behalf of transgender and gender-diverse Marylanders, we have seen firsthand how Health-Gen. § 18-601.1, Maryland's statute criminalizing the knowing transference or attempted transference of HIV to another person,¹ not only harms a population that is already marginalized, but also undermines the law's ultimate goal of decreasing transmission of an infectious disease. Moreover, the science and treatment of HIV has advanced so far since the law in question was first adopted that even if it were once justified as a public health measure, it now only serves to further stigmatize an easily preventable and treatable sexually-transmitted infection. For these reasons, we strongly support Senate Bill 356.

While § 18-601.1's original purpose was to discourage transmission of HIV, the overwhelming evidence is that laws criminalizing HIV transmission have the opposite effect. Instead, by increasing the stigma of people living with HIV, they paradoxically result in a decrease in HIV testing and an increase in risky sexual behavior, especially by people who do not know their HIV

¹ Md. Code, Health-Gen. § 18-601.1.



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status.² Indeed, the fact that these laws (including § 18-601.1) criminalize only the *knowing* transmission of HIV, they act as a disincentive to getting tested.

This effect is especially pronounced among groups who are subject to excessively high policing, including transgender Marylanders, Marylanders of color, and, especially, transgender women of color. According to a study by the Movement Advancement Project, trans women of color face incarceration at a rate four times the national average, and over one in five transgender people have reported being mistreated by the police.³ With mistreatment by the criminal justice system being so common, is it any wonder many Marylanders opt out of HIV testing rather than potentially provide the police with yet another tool to use in their oppression?

On top of this, people living with HIV experience continue to experience intense discrimination. In a recent survey from the Sero Project, 48% of persons with HIV status reported receiving serious HIV-related discrimination.⁴ Only 18% of respondents stated that they believed they could receive a fair hearing, if accused of failing to disclose HIV status, because of their HIV status, transgender identity, sexual orientation, race, ethnicity, or immigration status.⁵ Indeed, something we have heard repeatedly from people living with HIV is that they fear their HIV+ status could be used against them by someone making a false allegation under § 18-601.1.

Finally, it is crucial to emphasize just how much the science of HIV has changed since 1989 when § 18-601.1 was adopted, a mere eight years after the first reported case of what would come to be known as AIDS and six years after the identification of the virus that would come to be known as HIV. At that time, not only was there no known treatment for AIDS or known mechanism to prevent HIV infection from proceeding to AIDS, but there was also widespread misunderstandings about how HIV was transmitted in the first place. Notably, large swathes of the public (including many legislators) refused to believe public health experts that HIV could not

² Harsono D, Galletly C, O'Keefe E, & Lazzarini Z, *Criminalization of HIV Exposure: A Review of Empirical Studies in the United States*, National Institutes of Health, 2017, available at <https://bit.ly/3Ur0Mccq>. (Citing Lee SG. Criminal law and HIV testing: empirical analysis of how at-risk individuals respond to the law. *Yale J Health Pol'y L & Ethics*. 2014;14(1):194–238. Lee SG. Criminal law and HIV testing: empirical analysis of how at-risk individuals respond to the law. *Yale J Health Pol'y L & Ethics*. 2014;14(1):194–238. [PubMed] [Google Scholar]. Burris S, Beletsky L, Burleson JA, Case P, Lazzarini Z. Do criminal laws influence HIV risk behavior? An empirical trial. *Ariz State Law J*. 2007;39:467–517. [Google Scholar]. Wise DL. *Criminal penalties for non-disclosure of HIV-positive status: effects on HIV testing rates and incidence [dissertation]* University of Missouri; Kansas City: 2008. [Google Scholar]. Francis AM, Mialon HM. The optimal penalty for sexually transmitting HIV. *Am Law Econ Rev*. 2008;10(2):388–423. [Google Scholar]. Delavande A, Goldman D, Sood N. Criminal prosecution and HIV-related risky behavior. *J Law Econ*. 2010;53(4):741–782. [Google Scholar]).

³ Movement Advancement Project, *Unjust: How the Broken Criminal Justice System Fails Transgender People* (2016), available at <https://www.lgbtmap.org/policy-and-issue-analysis/criminal-justice-trans> (finding that “policing strategies that profile and target transgender people, particularly transgender women of color” resulted in “a shocking 21% of transgender women have spent time in prison or jail, compared to only 5% of all U.S. adults... [as well as] 22% of transgender people report being mistreated by police”).

⁴ Sero Project, *National Criminalization Survey 2021*, page 20, available at <https://bit.ly/3OxXjor>.

⁵ *Id.* at 22.



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be transmitted through everyday interactions. Indiana teenager Ryan White, who until his death in 1990 became a spokesperson for people living with HIV and AIDS after contracting HIV through a blood transfusion, reported his school required him to use a separate bathroom and drinking fountain, that he was given disposable utensils in the school cafeteria, and that he was prohibited from attending gym class. According to White, "Listening to medical facts was not enough. People wanted 100 percent guarantees."⁶

Unfortunately, such attitudes were also present in Maryland in 1989. While part of an omnibus bill that came out of the report of the Governor's Advisory Council on AIDS, § 18-601.1 was not part of the Advisory Council's initial recommendations and was instead added as an amendment during the legislative process. This was done over the objections of organizations including the Maryland Disability Law Center, which noted that it would have the effect of discouraging HIV testing.⁷ Section 18-601.1 was already behind the times at its adoption.

In the 35 years since, there have been incredible advances in the treatment and prevention of HIV, and yet Maryland's law has remained the same, with at least 148 Marylanders charged under § 18-601.1 since 2000 alone.⁸ Yet by the mid 1990s, multi-drug cocktails—officially referred to as highly active antiretroviral therapy, or HAART—significantly changed the calculus of HIV. With HAART, AIDS was no longer an inevitable next step for people living with HIV. As a result, worldwide AIDS death rates peaked in the early 2000s as HAART became more widely available outside of the developed world. These treatments have only improved over the past three decades.

More recently, we have also seen dramatic improvements in HIV prevention, with effective pre-exposure prophylaxis (PrEP) widely available to individuals at risk of contracting HIV. With proper use, PrEP is almost 100% effective at preventing transmission of HIV from sex.

Simply put, HIV is not the death sentence it was believed to be in 1989. It is now routinely treatable and preventable, in ways many other infectious diseases that have never been criminalized like HIV are not. There is no longer (if there ever was in the first place) any need for Maryland to treat HIV as a uniquely insidious infection deserving of criminalization. Instead, Maryland law only serves to further stigmatize HIV and disincentivize people from getting tested in the first place. It is long past time for § 18-601.1's repeal.

For these reasons we urge an favorable report on Senate Bill 356.

⁶ Tim Franklin, "Teen's Story of AIDS Prejudice Wins Hearts," *The Chicago Tribune* (March 4, 1988), available at <https://www.chicagotribune.com/1988/03/04/teens-story-of-aids-prejudice-wins-hearts/>.

⁷ See Nathan Cisneros et al, *Enforcement of HIV Criminalization in Maryland* (Williams Institute, 2024), available at <https://www.hivlawandpolicy.org/sites/default/files/2024-02/Enforcement%20of%20HIV%20Criminalization%20in%20Maryland%2C%20The%20Williams%20Institute%2C%20UCLA%20School%20of%20Law%20%282024%29.pdf>.

⁸ *Id.*