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**HB0039**

January 28, 2025

**TO:** Members of the House Judiciary Committee

**FROM:** Nina Themelis, Director of Mayor's Office of Government Relations

**RE:** House Bill 39 – Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal

**POSITION: FAVORABLE**

Chair Clippinger, Vice Chair Bartlett, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports** House Bill (HB) 39.

HB 39 would repeal the prohibition on an individual from knowingly transferring or attempting to transfer human immunodeficiency virus (HIV) to another individual. According to 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>i</sup> Punishable activities include consensual sex, breastfeeding, syringe sharing, blood and tissue donation, and biting or spitting.<sup>ii</sup> This law is outdated, unnecessary, contributes to harmful stigma, hinders the implementation of public health interventions, and discourages disclosure of HIV status to sexual and syringe-sharing partners.

Contributing to HIV-Related Stigma: Due to a lack of education, modes of HIV transmission are often misrepresented, leading to ostracization of people with the virus. Today, we know that “Undetectable=Untransmittable,” meaning **there is zero transmission of HIV through sex by people with the virus who are durably virally suppressed.**<sup>iii,iv</sup> These individuals are lost in the stigma-filled and outdated current law. Furthermore, HIV disproportionately affects minority groups in Maryland and nationwide.<sup>v,vi</sup> By adding to HIV stigma and discrimination, the current law further criminalizes and isolates people of diverse sexual orientation, identities, and racial groups. In turn, this increases health disparities through reduced service utilization; understandably, people are less likely to seek treatment for a virus mired in stigma.<sup>iii</sup>

Hindering Public Health Interventions: With a lack of knowledge of HIV status being a defense to prosecution, the current law potentially incentivizes a refusal of HIV testing. It is important for people to be tested so they can access HIV treatment to suppress their viral and prevent the transmission of HIV to their partners. Getting tested is the entry point for navigation to a host of prevention and care linkage services. As of 2023 (the most recent year for which data is available), approximately 9% of Marylanders living with HIV remained undiagnosed.<sup>v</sup>

Fear of prosecution for exposing others to HIV can prevent people with HIV from accessing health services, as the current law discourages them from accessing in care for fear that their medical records could be subpoenaed to prove that they were knowingly HIV positive. For people who may have been exposed to HIV, the current law impedes the efforts of public health staff to effectively conduct contact tracing that link the sex and syringe-sharing partners of persons with HIV to vital life-saving services. These activities are a core foundation of public health strategies to decrease HIV transmission.

Discouraging Disclosure to Sexual or Syringe-Sharing Partners: Due to a fear of prosecution, a person with HIV who did not disclose before one or more sexual encounters or syringe-sharing associations is disincentivized from ever disclosing their status for fear that, if the partner learns of their HIV status, they will be arrested and prosecuted for not having shared their status earlier.

Unnecessarily Targeting Persons With HIV: A criminal law that targets a disease is not necessary to punish conduct involving intent to harm or recklessness. Such acts can be prosecuted under non-HIV specific general criminal laws such as reckless endangerment or simple assault. An HIV-specific law unnecessarily singles-out and further stigmatizes people with the virus.

Enacted in the late 1980s in the early days of the epidemic, when fear of HIV and limited information on HIV transmission, treatment, and prevention existed, these nationwide laws intended to punish those with HIV and curb transmission rates. Over the past 40 years, we have developed effective treatment and prevention options to reduce transmission. Today, HIV criminalization laws do not reflect scientific and medical evidence. HIV is now a treatable medical condition, and laws need to reflect advances in understanding the disease, its treatment, and transmission risk. An HIV-specific criminalization law stigmatizes and isolates people, hinders public health interventions, restricts disclosure, and is unnecessary.

For these reasons, the BCA respectfully requests a **favorable** report on HB 39.

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

<sup>ii</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 <https://www.hivlawandpolicy.org/sites/default/files/Maryland%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S.%20.pdf>

<sup>iii</sup> Prevention Access Campaign. What is U=U? Retrieved from: <https://preventionaccess.org/about-introduction/>

<sup>iv</sup> HIV.gov. HIV Treatment as Prevention. Retrieved from: <https://www.hiv.gov/tasp/>

Centers for Disease control and Prevention. HIV Criminalization and Ending the HIV Epidemic in the U.S.

<sup>v</sup> Maryland Annual HIV Epidemiological Profile 2022. Center for HIV Surveillance, Epidemiology and Evaluation, Maryland Department of Health, Baltimore, MD. 2023. Retrieved from <https://health.maryland.gov/phpa/OIDEOR/CHSE/SiteAssets/Pages/statistics/Maryland-Annual-HIV-Epidemiological-Profile-2022.pdf>

<sup>vi</sup> Centers for Disease Control and Prevention. HIV Surveillance Report, 2019; vol. 32: p 32. Retrieved from: <http://www.cdc.gov/hiv/library/reports/hiv-surveillance.html>. Published May 2021