



2526 SAINT PAUL STREET
BALTIMORE, MD 21218
TEL (410) 625-LGBT (5428)
FAX (410) 625-7423
www.freestate-justice.org

Bill: HB1497
Title: Crimes – Transfer of Human Immunodeficiency Virus While Committing Sexual Crime
Date: March 10, 2020 1:00 p.m.
Committee: Judiciary Committee
Position: OPPOSE

To the Honorable Delegate Luke Clippinger and Esteemed Members of the Committee:

FreeState Justice is a statewide legal advocacy organization that seeks to improve the lives of low-income lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) Marylanders. We work across Maryland to provide free civil legal aid to LGBTQ Marylanders with low incomes who are facing discrimination. Those clients include individuals who living with HIV/AIDS.

FreeState Justice whole heartedly opposes HB1497, which establishes that if a person has HIV and knowingly transfers or attempts to transfer HIV during a sexual crime, they are subject to further sentencing. This bill continues to discriminate against individuals who are HIV positive, feeding into the phenomenon known as HIV Exceptionalism. Even were that not the case, as Maryland law already criminalizes the knowing or attempted transfer of HIV, HB1497 is wholly unnecessary.

HIV/AIDS Exceptionalism is “the idea that the disease requires a response above and beyond ‘normal’ health interventions,” including those for other sexually transmitted infections.¹ This exceptionalism has often been framed in moral terms, portraying HIV itself as punishment for sin and individuals living with HIV as unclean. While this moralism is not unique to HIV, the legal response to it has been, built around dated understandings of what living with HIV looks like and ignoring the major developments in HIV and AIDS treatments since the 1990s.

While HIV/AIDS may once have been considered a “death sentence,” this has not been true for many years. Antiretroviral therapy (ART) has made

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¹ Julia H. Smith & Alan Whiteside, *The History of AIDS Exceptionalism*, 13 J. INT’L AIDS SOCIETY (2010), available at <https://onlinelibrary.wiley.com/doi/full/10.1186/1758-2652-13-47>.

HIV a manageable chronic condition, allowing HIV+ individuals to live full, healthy lives.² With ART, it is possible to reduce the amount of HIV in the body, known as the viral load, to very low, and even undetectable, levels. With an undetectable viral load, there is “effectively no risk” of transmitting HIV through sex.³

Instead of helping to combat the HIV/AIDS epidemic by encouraging treatment – and, in turn, reducing transmission – HIV criminalization laws such as HB1497 disincentivize HIV testing, treatment, and prevention. Under HIV criminalization laws, at least some at-risk individuals will be lead to associate HIV-related caregivers with the police or to reason that they can’t be prosecuted if they don’t know they have HIV.⁴ These effects are especially severe among already marginalized groups, including as sex workers, immigrants, and racial minorities.⁵

While HIV/AIDS continues to be a major public health concern for the broader LGBTQ population, the issue is particularly acute for African American gay men and transgender women, who are currently the groups most likely to contract HIV in the United States. As of 2015, Black gay men made up 53% of new HIV cases in the United States, and 1 in 3 Black gay men were living with HIV.⁶ Already prone to systemic racism and over-policing, HIV criminalization laws dissuade the individuals most at risk from seeking testing and treatment.

Although HIV criminalization laws are premised on the idea that punishing individuals for exposing partners to HIV will lead to greater HIV detection, and therefore increasing HIV prevention, a 2014 study found that these laws had no detectable effect on HIV prevention.⁷ As such laws have no beneficial impact on detection and treatment, instead

² P. Sweeney et al, “Association of HIV Diagnosis Rates and Laws Criminalizing HIV Exposure in the United States,” 31 AIDS 1483 (2017), *available at* https://journals.lww.com/aidsonline/FullText/2017/06190/Association_of_HIV_diagnosis_rates_and_laws.15.aspx.

³ See Centers for Disease Control and Prevention, “Evidence of HIV Treatment and Viral Suppression in Preventing the Sexual Transmission of HIV” (Dec. 2018), *available at* <https://www.cdc.gov/hiv/pdf/risk/art/cdc-hiv-art-viral-suppression.pdf>.

⁴ See Dini Harsono et al, *Criminalization of HIV Exposure: A Review of Empirical Studies in the United States*, 21 AIDS BEHAV. 27 (2017), *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5218970/>.

⁵ Lambda Legal, “15 Ways HIV Criminalization Laws Harm Us All,” *available at* <https://lambdalegal.org/sites/default/files/publications/downloads/15-ways-hiv-criminalization-laws-harm-us-all.pdf>

⁶ “HIV and the Black Community: Do #Black(Gay)Lives Matter?” amfAR Issue Brief (February 2015), *available at* https://www.amfar.org/uploadedFiles/amfarorg/Articles/On_The_Hill/2016/Black-Gay-Men-and-HIV.pdf.

⁷ The Center for HIV Law and Policy, “Transmission Routes, Viral Loads and Relative Risks: The Science of HIV for Lawyers and Advocates” (Feb. 2014), *available at* <https://www.hivlawandpolicy.org/sites/default/files/PIP%20HIV%20Science%20for%20Lawyers%20%282.14.14%29.pdf>.

discouraging at-risk individuals from being tested in the first place, they do little more than further ostracize and discriminate against individuals living with HIV.

For this reason, FreeState Justice strongly urges the Committee to OPPOSE HB1497.

Thank you for the opportunity to comment on this important legislation, and please do not hesitate to contact us if we can be of further assistance.

Sincerely,
Mark A. Procopio
Executive Director