

HB 287 Support Letter The Frederick HIV Coalition

Uploaded by: Alex Biggus

Position: FAV



The Frederick Center, Inc
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Support Testimony

HB 287-Public Health- Prohibition on Transfer of Human Immunodeficiency Virus- Repeal

To Honorable William C. Smith, Jr., Chair
Judicial Proceedings Committee
Miller Senate Office Building
Annapolis, MD 21401

Chair Smith and Esteemed Members of the Judiciary Committee,

The Frederick HIV Coalition urges your support for House Bill 287 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 House Bill 287

Thank you,

Alex Biggus, Frederick HIV Coalition Director



HB287 - Letter of Support.pdf

Uploaded by: Barbara Brookmyer

Position: FAV



Public Health
Prevent. Promote. Protect.

Frederick County Health Department

HOUSE BILL 287

Prohibition on Transfer of Human Immunodeficiency Virus –Repeal

**WRITTEN TESTIMONY BEFORE THE
JUDICIAL PROCEEDINGS COMMITTEE**

Barbara Brookmyer, MD, MPH, Health Officer, Frederick County Health Department

Position: Support – March 27, 2023

The bill would repeal the prohibition on an individual from knowingly transferring or attempting to transfer the human immunodeficiency virus to another individual; and generally relating to transfer of human immunodeficiency virus.

The Department of Legislative Service’s analysis states that the Judiciary advised that in the 3 years examined that there were zero convictions for knowingly transferring or attempting to transfer HIV out of five charges in FY20, two charges in FY21 and three charges in FY22.

The current criminalization of HIV perpetuates stigma, exacerbates disparities, and likely discourages HIV testing. The current law was passed at a time when little was known about HIV including how HIV was transmitted and how best to treat the virus. The Centers for Disease Control and Prevention notes that after more than 40 years of HIV research and significant biomedical advancements to treat and prevent HIV transmission, many state laws are now outdated and do not reflect our current understanding of HIV. In many cases, this same standard is not applied to other treatable diseases.

The U.S. Department of Justice Civil Rights Division in its 2014 publication, Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Support Factors, recommends that states bring laws into alignment with current evidence regarding HIV transmission and current knowledge of quality and length of life for those living with HIV citing the following facts to be taken into account:

- The CDC categorizes the risk of transmission of HIV from biting, spitting, or throwing body fluids, even in the absence of risk reduction measures, as negligible, defined as exposure routes that are technically possible but unlikely and not well documented.¹
- The CDC categorizes the risk of transmission of HIV during receptive and insertive oral intercourse, even in the absence of risk reduction measure, as low.²
- The estimated per-act probability of acquiring HIV during the following activity per 10,000 exposures is as follows: insertive penile-vaginal intercourse, 4; receptive penile-vaginal intercourse, 8; insertive anal intercourse, 11; and receptive anal intercourse, 138. These risk assessments are in the absence of risk reduction factors.³
- Taking antiretroviral therapy (ART) can reduce the risk of HIV transmission as much as 96%, consistent use of condoms reduces the risk of HIV transmission by about 80%, and the use of ART and condoms in combination reduces these risks of transmission by 99.2%.⁴

Barbara A. Brookmyer, M.D., M.P.H. ▪ Health Officer

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- With testing and treatment, HIV can be a manageable chronic disease. As of 2013, a 20-year old with the HIV virus who is on ART and is living in the United States or Canada has a life expectancy into their early 70's, a life expectancy that approaches that of an HIV-negative 20-year old in the general population.⁵

When a person living with HIV is on ART and has a continuously undetectable viral load the risk of HIV transmission is effectively zero.⁶

In the interest of alignment of policy with current scientific and medical evidence, and their intersection with HIV data privacy laws, this bill should be supported.

For more information, please contact Dr. Barbara Brookmyer at Bbrookmyer@FrederickCountyMD.gov or 301-600-2509.

1 HIV Transmission Risk: Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act, Centers for Disease Control and Prevention, available at <http://www.cdc.gov/hiv/policies/law/risk.html>.

2 Id.

3 Id.

4 Id.

5 Closing the Gap: Increases in Life Expectancy among Treated Individuals in the United States and Canada, Hasina Samji et. al., Page 16, PLOS ONE, available at <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0081355>.

6 Alison Rodger et al., *Sexual activity without condoms and risk of HIV transmission in serodifferent couples when the HIV-positive partner is using suppressive antiretroviral therapy*, 316 JAMA 171, 171 (2016). The connection between effective treatment, viral suppression, and significantly reduced transmission risk was first highlighted in 1994, when a study of pregnant women demonstrated AZT therapy dramatically decreased rates of perinatal transmission. Edward M. Connor et al., *Reduction of Maternal-Infant Transmission of Human Immunodeficiency Virus Type 1 with Zidovudine Treatment*, 331 New Eng. J. Med. 1173, 1173 (1994).

SAGE_Wilder_Maryland Decrim HIV Letter of Support_

Uploaded by: Emma Bessire

Position: FAV

March 24, 2023

Luke H. Clippinger, Chair
David Moon, Vice-Chair
Members of the Judiciary Committee
Maryland House of Delegates
House Office Building, Room 101
6 Bladen St., Annapolis, MD 21401

Re: House Bill 287 concerning HIV decriminalization – SUPPORT

Dear Chair Clippinger, Vice-Chair Moon, and Members of the House of Delegates Judiciary Committee,

SAGE, the world's largest and oldest organization dedicated to improving the lives of lesbian, gay, bisexual, transgender, and queer (LGBTQ+) older people, respectfully submits written comments in support of H.B. 287, concerning HIV decriminalization. As an organization that offers supportive services and consumer resources to LGBTQ+ older people and their caregivers, including people aging with HIV, SAGE is committed to advocating for public policy changes that address the needs of LGBTQ+ elders and older adults living with HIV. H.B. 287 would repeal a statute that criminalizes HIV status, which is an important step towards creating a more just and equitable society where people are valued and respected.

We believe that current HIV criminalization laws are outdated and do not reflect the HIV medical and scientific advances that have taken place in the last two decades that make HIV impossible to transmit sexually when a person with HIV has an undetectable viral load. A person who takes HIV medication as prescribed, and gets and stays virally suppressed, not only can live a long and healthy life but also will not transmit HIV to sexual partners. This is often referred to as Undetectable=Untransmittable or U=U.

Since 2014, the Centers for Disease Control and Prevention (CDC) have encouraged states with HIV criminal statutes to re-assess these laws based on the current state of the evidence regarding HIV transmission risk and the public's health. It is important to note that behavior such as biting, spitting, and throwing bodily fluids, which pose a negligible risk of HIV transmission, have in some cases resulted in overly harsh sentencing. These laws continue to be used against people living with HIV regardless of intent to harm others or actual transmission having occurred. 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 HIV disclosure and may discourage HIV testing and entry into medical care, increase stigma against people with HIV, and exacerbate health disparities.

HIV epidemics are driven by undiagnosed HIV, not by people who know their HIV positive status. Furthermore, these laws disproportionately affect Black men and women and those already targeted by the criminal legal system. People living with HIV in Maryland could face misdemeanor penalties that include up to 3 years in prison and a significant fine. Under current Maryland law, any type of HIV exposure could result in

prosecution, including consensual sex and breast/chest feeding. In Maryland, even people living with HIV who disclose their status or use HIV prevention tools like condoms can still be prosecuted, and disclosure or using condoms is not an affirmative defense under current law. People living with HIV can face prosecution even without exposing anyone to any risk of HIV transmission.

According to the Maryland Department of Health, of the 32,149 people living with diagnosed HIV in Maryland in 2021, 53.7% are 50+ years old. Over 50% of people living with HIV in the United States are over 50, and by 2030 that percentage will reach 73%. As the HIV community continues to age, older people with HIV are more at risk for being convicted under HIV criminalization laws simply because there will be more older adults with HIV as the years go by. These types of laws will lead to a disproportionate impact on an already marginalized population.

Criminalizing older adults with HIV is bad public policy because it reinforces stigma against people living with HIV, discourages HIV testing and entry into medical care, and exacerbates health disparities. It can also have a negative impact on older adults' mental health and well-being, as they may feel targeted, isolated, and afraid of seeking the care and support they need. Repealing these laws promotes public health, reduces stigma, and helps to ensure that all people, including older adults with HIV, are treated with dignity and respect. Repealing HIV criminalization laws is a critical step towards addressing the health and well-being of older adults with HIV. By eliminating the fear of criminal prosecution, older adults with HIV will be more likely to live full and productive lives.

SAGE respectfully asks that you vote in favor of HB 287. Please do not hesitate to email me if SAGE can provide additional information at twilder@sageusa.org. Thank you for your consideration of this important legislation.

Sincerely,

Terri L Wilder, MSW

HIV/Aging Policy Advocate

3_28_23 - HB287 HIV Decrim.pdf

Uploaded by: Ericka McDonald

Position: FAV



TESTIMONY TO THE JUDICIAL PROCEEDINGS COMMITTEE

HB287 - Public Health - Prohibition on Transfer of Human Immunodeficiency Virus

- Repeal

Position- Support

By: Nancy Soreng, President League of Women Voters of Maryland

Date: March 28, 2023

The League of Women Voters is a nonpartisan organization that works to influence public policy through education and advocacy. The League supports HB287, which eliminates the unequal criminal treatment of people living with human immunodeficiency virus (HIV) by fully repealing § 18–601.1 of the Health Article from the Maryland Code.

The League advocates for the health and safety of all Americans, including those living with HIV. The League’s Social Policy includes an equitable criminal justice system and elimination of systemic bias, as well as access to quality health care *for all U.S. residents*.¹ The current law is out of sync with Maryland’s public health goals, discriminates against people with HIV, and its enforcement disproportionately impacts marginalized communities.

The current law criminalizes a person’s health status, rather than intentional actions. The stigma created by the current law thus leads to higher transmission levels in the state. The law unfairly and arbitrarily penalizes people who are safely managing an HIV diagnosis thanks to advances in medicine. A 2017 study from the Centers for Disease Control found no correlation between HIV diagnosis rates and the effectiveness of criminal exposure laws.

HIV is the only disease specifically singled out by statute. No other disease, whether it is a sexually transmitted disease or otherwise, is specifically named in the Maryland Code. All other diseases are covered under the general transmission statute, § 18-601, and through civil tort liability. Legal guardrails already exist to penalize people who knowingly and intentionally transmit a communicable disease. That law does not additionally stigmatize vulnerable populations.

People are prosecuted for behavior that poses only a remote/minuscule risk of HIV transmission. The burden of enforcement also disproportionately falls on marginalized communities. Nationally, these laws specifically exacerbate the well documented

¹ <https://www.lww.org/sites/default/files/2020-12/LWV-impact-2020.pdf>

over-criminalization of Black, gay, and transgender Americans, as well as sex workers, among other marginalized groups.

The League of Women Voters of Maryland, representing concerned citizens throughout the state, strongly urges a favorable report.

Senate HIV Decrim Testimony.pdf

Uploaded by: Jamie Grace Alexandeer

Position: FAV



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The Honorable Chair Will Smith
Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401
March 27th, 2023

**Testimony of FreeState Justice
IN SUPPORT OF HB 287 - Public Health: Prohibition on Transfer of Human
Immunodeficiency Virus – Repeal**

To the Honorable Chair Will Smith and esteemed members of the Judicial Proceedings Committee:

FreeState Justice is Maryland's lesbian, gay, bisexual, transgender, and queer (LGBTQ) civil rights advocacy organization. Each year, we provide free legal services to dozens, if not hundreds, of LGBTQ+ Marylanders who could not otherwise be able to afford an attorney, as well as advocate more broadly on behalf of the LGBTQ+ community.

We write today in support of HB 287 which would eliminate the unequal treatment of people living with HIV (PLHIV) for prosecution and stigma. Currently, HIV is the only infectious disease specifically named in a criminal context within Maryland's criminal code. This statute allows a court to fine the person at a rate five times harsher with three times as long of a prison sentence compared to the general statute applied against other infectious diseases.

PLHIV has faced prosecution even without exposing others to any risk of disease transmission. In a 2008 case, a 44-year-old was sentenced to 18 years of imprisonment; ten years of his sentence stemmed from a charge of "knowingly attempting to transfer HIV to another person" because they allegedly bit a police officer during an arrest. The officer did not test positive for HIV and, according to the CDC, there exists only a "negligible" risk of HIV transmission from a bite. Yet Maryland's statute and its application ignore these scientific findings, leading to prosecutions for behavior that poses a remote and minuscule possibility of transmitting HIV.

This law frustrates public health goals. Stigma against this disease and the severity of this criminal code reduces the number of people getting tested, potentially leading to higher

*FreeState Justice, Inc. (formerly FreeState Legal Project, Inc., merging with Equality Maryland)
is a social justice organization that works through direct legal services, legislative and policy advocacy, and community engagement to enable Marylanders across the spectrum of lesbian, gay, bisexual, transgender, and queer identities to be free to live authentically, with safety and dignity, in all communities throughout our state.*

transmission levels throughout the state. Furthermore, the context in which the law was enacted and is still applied leads us to understand its discriminatory intent; the specific statute that singles out HIV transmission above all other disease was enacted during the height of the AIDS epidemic where fear & homophobia governed much of our public policy.

Maryland law has not kept up with advances in science since then; it punishes people who are safely managing HIV thanks to advances in medicine and perpetuates rhetoric that leads to legal, social, and physical discrimination against this community.

Ultimately, these laws are unnecessary. Legal guardrails already exist for people who knowingly and intentionally transmit a communicable disease.

For this reason, FreeState Justice urges a favorable report on House Bill 287.

Jamie Grace Alexander

Policy Coordinator, FreeState Justice

HPPP Testimony HB 287- FAV (JPR).pdf

Uploaded by: Jessica Emerson

Position: FAV

Testimony of the Human Trafficking Prevention Project

BILL NO: House Bill 287
TITLE: Public Health - Prohibition on Transfer of Human Immunodeficiency Virus – Repeal
COMMITTEE: Judicial Proceedings
HEARING DATE: March 28, 2023
POSITION: FAVORABLE

House Bill 287 would repeal the current prohibition on an individual from transferring the human immunodeficiency virus (HIV) to another individual.¹ The Human Trafficking Prevention Project at the University of Baltimore School of Law, which regularly serves clients who are or have been engaged in the commercial sex trade, whether that involvement is by choice, due to their individual circumstances, or because they are or have experienced sex trafficking, supports HB 287 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

The irony is that these 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

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

² The Center of 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 rticle 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).

those in marginalized settings, particularly those in the sex trades. House Bill 287 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 at the University of Baltimore School of Law supports House Bill 287 and respectfully urges a favorable report.

HB0287_InFavor_Jones_2023.03.27.pdf

Uploaded by: Joyce Jones

Position: FAV

March 27, 2023

Senator William C. Smith, Jr. et al.
Judicial Proceedings Committee
Maryland General Assembly
Room 101
House Office Building
Annapolis, Maryland 21401

Dear Senator Smith, et al.

I am writing testimony in favor of HB 287 “Public Health – Prohibition of Transfer of Human Immunodeficiency Virus – Repeal.” I am writing as a Maryland state citizen, Baltimore City resident and physician who specializes in HIV prevention and treatment. I have been providing care to people living with HIV for over 20 years and have seen first-hand how advances in antiretroviral therapy have made it possible for people living with HIV to live full, healthy, productive lives with life expectancy near that of people who do not have HIV. With HIV treatment and suppression of the HIV virus, HIV cannot be passed to sex partners (also known as “undetectable = untransmittable” or “U=U”). Despite these advances in treatment and the knowledge of “U=U,” the stigma and discrimination people living with HIV face remains significant. The current Maryland State Law “Prohibition of Transfer of Human Immunodeficiency Virus” contributes to this stigma and has been used to convict people living with HIV due to acts that do not pose a meaningful risk to transmit HIV such as spitting and throwing bodily fluids. HIV criminal statutes punish health status and not intentional wrongdoing and disproportionately affect black men and women and those already disproportionately targeted by the criminal legal system.

As noted by the CDC, “After more than 40 years of HIV research and significant biomedical advancements to treat and prevent HIV transmission, many state laws are now outdated and do not reflect our current understanding of HIV ... these laws have been shown to increase stigma, exacerbate disparities, and may discourage HIV testing.” HB 287 “Public Health – Prohibition of Transfer of Human Immunodeficiency Virus – Repeal” should be passed to bring Maryland to the 21st century and contribute to rather than thwart our efforts to End the HIV Epidemic in Maryland and the United States.

Sincerely,



Joyce Jones, MD, MS
1302 William St.
Baltimore, MD 21230
Cell 917-696-9941
Email: jj2023@gmail.com

References:

CDC, HIV and STD Criminalization laws: <https://www.cdc.gov/hiv/policies/law/states/exposure.html>
NIAID/NIH, HIV Undetectable=Untransmittable: <https://www.niaid.nih.gov/diseases-conditions/treatment-prevention>
HIV and Ending the HIV Epidemic: <https://www.webmd.com/hiv-aids/news/20210616/is-decriminalizing-hiv-the-key-to-ending-epidemic>

Letter to Senate Judicial Proceedings Committee re

Uploaded by: Kara Ingelhart

Position: FAV

March 27, 2023

William C. Smith, Jr., Chair
Jeff Waldstreicher, Vice-Chair
Senate Judicial Proceedings Committee
Maryland General Assembly
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Re: House Bill 287 concerning HIV decriminalization – SUPPORT

Chair Smith, Vice-Chair Waldstreicher, and Members of the Senate Judicial Proceedings Committee:

Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) respectfully submits the following written comments in support of H.B. 287, concerning HIV decriminalization. Founded fifty years ago in 1973, Lambda Legal is the oldest and largest national legal organization dedicated to achieving full recognition of the civil rights of lesbian, gay, bisexual, and transgender people and people living with HIV through impact litigation, education, and public policy work. Lambda Legal has experience representing the interests of people living with HIV and has advanced policy and litigated to ensure access to treatment, and helped combat discrimination, bias, and stigma. Our HIV Project has lead cases across the nation concerning HIV discrimination in all areas of law including health care, employment discrimination, privacy, and criminalization.

We write to express our firm support for H.B. 287, which would repeal a statute that criminalizes health status, not intentional wrongdoing.

Laws that criminalize HIV are outdated given medical advance in HIV treatment and prevention. In the 1980s and 1990s, at a time when very little was known about HIV or its treatment, legislators across the nation introduced and passed laws to address the growing issues presented by the HIV epidemic. Most of the legislation had stated public health purposes or intentions, namely, to reduce risk of HIV transmission. HIV-criminalization laws enacted around the time—although with the stated intent “to discourage actions that might lead to transmission”¹—have the effect of decreasing measures shown to enhance the public health goal of reducing transmission. Not only are HIV criminalization laws harmful to public health goals,

¹ *HIV and STD Criminalization Laws*, <https://www.cdc.gov/hiv/policies/law/states/exposure.html> (last reviewed Oct. 24, 2022)

their direct and indirect impacts are disparately felt by historically marginalized populations, and they result in prosecutions grounded in stigma rather than scientific fact.

HIV criminalization laws are contrary to efforts to increase public health.

Today, at a time when medical advances provide for people living with HIV to live long, healthy, and fulfilling lives,² the condition remains criminalized in many states. HIV criminalization laws, like Maryland’s Health Code §18-601.1, are statutes that make specific acts uniquely a crime if an individual is living with HIV.³ Maryland’s law does not require transmission, account for affirmative defenses, or a risk assessment for transmission to prove criminal liability, and thus does not recognize actual risk of transmission for varying acts⁴ as estimated by the Centers for Disease Control. Instead, the elements of this laws may trigger prosecution even in the absence of substantial risk of transmission or intent to transmit.⁵

Primary public health strategies related to ending the HIV epidemic include people knowing their HIV status, people with HIV being in the care of a medical professional, and people living with HIV being on a medical treatment regimen for HIV.⁶ However, HIV criminalization statutes by their very existence and enforcement put negative pressures on reaching those goals.

Advocates explain that criminalization schemes disincentivize HIV testing—the foundation to any HIV-related public health strategy—because, as under §18-601.1 *knowing* one’s status is an essential element to the crime of “knowingly transfer[ring] or attempt[ing] to transfer [HIV].” Thus, if a person does not know that they were living with HIV, they cannot knowingly transmit or attempt to transmit HIV. Where criminalization creates such disincentives to learning one’s status, they indirectly alienate people living with HIV from health care because one will not seek out care for a condition they are unaware they have.

But even when people living with HIV do access care, they may face interference because of criminalization schemes in the provision of their care. Doctors often internalize HIV-related stigma (that is reinforced by HIV-criminalization schemes) and reflect it back upon their patients when providing care in making negative statements and inferences about people living

² Rosalie Hayes, *Life Expectancy for People Living with HIV*, AIDS MAP, (Nov. 2021) <http://bit.ly/3RuY7L0>

³ MD. Code. Ann., Health-Gen. § 18-601.1 (2023)

⁴ *HIV Risk Behaviors*, <https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html> (last reviewed Nov. 13, 2019)

⁵ Kate Boulton, et. al., *Maryland, in HIV CRIMINALIZATION IN THE UNITED STATES: A SOURCEBOOK ON STATE AND FEDERAL HIV CRIMINAL LAW AND PRACTICE 206, 206-12* (Center for HIV Law and Policy 3rd ed., 2022), <https://bit.ly/3JAfAzT>

⁶ Collectively, these strategies are also known as the 90-90-90 strategy. See UNAIDS, *90-90-90: Treatment for All*, <https://www.unaids.org/en/resources/909090> (last visited Jan. 3, 2023)

with HIV.⁷ Further, medical records are often utilized by law enforcement in prosecutions.⁸ Finally, with ample scientific evidence to the contrary, leading experts agree,⁹ there is also no scientific support for the efficacy of HIV criminalization statutes as utilitarian. Instead, they function as a form of retributive justice, and—according to the Director of the White House’s Office of National AIDS Policy—“get in the way of us achieving our goals to end the HIV epidemic.”¹⁰

HIV disproportionately impacts historically marginalized communities.

HIV disproportionately impacts historically marginalized communities including Black communities, Latinx communities, gay and bisexual men, transgender women, and Black women.¹¹ And, although HIV can affect anyone, today, in the U.S., Black women are currently experiencing the highest HIV transmission rates¹² of any demographic group. And, as with any criminalization scheme, those most impacted by HIV-criminalization policing, prosecutions, and sentencing are low-income people, people of color, and LGBTQ+ people. Data show that Black and Latinx people are arrested, prosecuted, and convicted at disproportionately higher rates than their White counterparts for HIV-criminal offenses.¹³ Compounding biased-driven overpolicing, charges, and prosecutions; juries’ and courts’ implicit biases¹⁴—against LGBTQ+ people, people living with HIV, sex between people of the same sex, sex workers, racial minorities, etc.—and often an incomplete understanding of the risk of transmission can result in convictions and sentencing based on assumptions of HIV transmission risk where none existed. This disparate

⁷ Angelica Geter, et. al., *HIV-Related Stigma by Healthcare Providers in the United States: A Systematic Review*, 32 AIDS Patient Care and STDs 418 (2018), <https://doi.org/10.1089/apc.2018.0114>

⁸ Sergio Hernandez, *Sex, Lies and HIV: When What You Don’t Tell Your Partner Is a Crime*, (Dec. 1, 2013, 10:58 PM) <https://www.propublica.org/article/hiv-criminal-transmission>

⁹ Cameron Gorman, *20 Global Experts Agree: Science Doesn’t Back HIV Crime Laws*, (Jul. 25, 2018), <https://www.poz.com/article/20-global-experts-agree-science-back-hiv-crime-laws-video>

¹⁰ *HIV Criminalization: ONAP’s Harold Phillips Discusses Repealing Outdated Laws*, (Apr. 27, 2022), <https://www.hiv.gov/blog/hiv-criminalization-onap-s-harold-phillips-discusses-repealing-outdated-laws>

¹¹ *Impact on Racial and Ethnic Minorities*, HIV.gov, <http://bit.ly/3jruJJ2> (last updated Jan. 20, 2023)

¹² Shamard Charles, M.D., *HIV Hits black Women Hardest, CDC Report Says*, (May 9, 2019, 10:17 AM), <https://www.nbcnews.com/health/womens-health/hiv-hits-black-women-hardest-cdc-report-says-n1003891>

¹³ Amira Haenbush, et. al, *HIV Criminalization in California* (The Williams Institute, 2015) <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-CA-Dec-2015.pdf>; Brad Sears, et. al, *The Criminalization of HIV and Hepatitis B and C in Missouri*. (The Williams Institute, 2020) <http://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MO-Feb-2020.pdf>

¹⁴ *Anti-LGBT and HIV Bias in the Courtroom*, subsection of *Protected and Served*, <https://www.lambdalegal.org/node/30526#1a> (last visited Jan. 3, 2023)

impact is a vital consideration for your attention as elected leaders in Maryland, a state in which HIV rates are ten-times higher among Black people than White people.¹⁵

Science, not stigma, should inform public policy.

Again, despite their original statutory intent, HIV criminalization laws face broad criticism from independent medical professional associations,¹⁶ the Centers for Disease Control,¹⁷ civil rights advocates,¹⁸ elected officials,¹⁹ and even the U.S. Department of Justice²⁰ for the laws' outdated foundations, effect stigmatizing an illness, and impairing public health efforts to end the epidemic.

Since 2014, the Centers for Disease Control and Prevention (CDC) and the Department of Justice have encouraged states with HIV criminal statutes to re-assess these laws based on the current state of the evidence regarding HIV transmission risk and the public's health, given that behavior such as biting, spitting, and throwing bodily fluids, which pose a negligible risk of HIV transmission has, in some cases, resulted in overly harsh sentencing.²¹ It was more than five years ago that the CDC affirmed that a person who is on HIV antiretrovirals, regularly takes them (one-pill, once a day), and thus has an undetectable viral load presents "effectively no risk"²² of HIV transmission through sex. Yet, Maryland's §18-601.1 does not account for actual risk of the

¹⁵ *HIV by Race/Ethnicity in Maryland, 2021*, Maryland Department of Health (Jun. 30, 2022), <https://health.maryland.gov/phpa/OIDEOR/CHSE/SiteAssets/Pages/statistics/Race-and-HIV-Fact-Sheet-2021.pdf>

¹⁶ *HIV Criminalization*, American Academy of HIV Medicine, <https://aahivm.org/hiv-criminalization/> (last visited Jan. 3, 2023)

¹⁷ *HIV Criminalization and Ending the HIV epidemic in the U.S.*, <https://www.cdc.gov/hiv/policies/law/criminalization-ehe.html> (last updated Jan. 19, 2023)

¹⁸ *HIV Criminalization*, <https://www.lambdalegal.org/know-your-rights/article/hiv-criminalization> (last visited Jan. 23, 2023)

¹⁹ John Riley, *Congressional HIV/AIDS Caucus Introduces Bill to Stop Criminalizing People with HIV*, (Mar. 2, 2021), <https://www.metroweekly.com/2021/03/co-chairs-of-congressional-hiv-aids-caucus-introduce-bill-to-stop-criminalizing-people-with-hiv/>

²⁰ Office of Public Affairs, *Justice Department Releases Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Supported Factors*, DOJ (Jul. 15, 2014), <https://www.justice.gov/opa/pr/justice-department-releases-best-practices-guide-reform-hiv-specific-criminal-laws-align>

²¹ J. Stan Lehman, et. al., *Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States*, 18 AIDS Behavior 997 (Mar. 15, 2014), <https://www.justice.gov/sites/default/files/crt/legacy/2014/10/02/hivcrimarticle.pdf>

²² *National Gay Men's HIV/AIDS Awareness Day*, (Sep. 27, 2017), https://www.cdc.gov/nchhstp/dear_colleague/2017/dcl-092717-National-Gay-Mens-HIV-AIDS-Awareness-Day.html

underlying act or mitigating factors to address risk of transmission like the risk posed by underlying factual act,²³ an individual being in treatment,²⁴ or barriers like condom use.²⁵

Threats of criminal prosecution create stigma and harm. Rather than compliment the work of public health experts and health care providers, HIV criminalization laws undermine those efforts to end the HIV epidemic. In the ways described above, HIV criminalization laws perpetuate the public health crisis of systemic racism and bias within the criminal legal system.

We strongly support H.B. 287 as a critical and necessary step in our fight to end HIV stigma and discrimination.

Please do not hesitate to contact me via kingelhart@lambdalegal.org should you have questions or if additional information would be helpful.

Sincerely,

Kara N. Ingelhart
Senior Attorney

²³ *HIV Risk Behaviors*, CDC, <http://bit.ly/3HUHVIX> (last reviewed Nov. 13, 2019)

²⁴ *Effectiveness of Prevention Strategies to Reduue the Risk of Acquiring or Transmitting HIV*, <https://www.cdc.gov/hiv/risk/estimates/preventionstrategies.html> (last reviewed Jun. 17, 2022)

²⁵ *Condoms*, <https://www.cdc.gov/hiv/risk/condoms.html> (last reviewed Feb. 15, 2022)

Copy of Melanie Testimony.pdf

Uploaded by: Keyanna Voorhes

Position: FAV

Chair W. C. Smith, Jr., Vice-Chair J. D. Waldstreicher, and Esteemed Members of the Judiciary Proceedings Committee:

My name is Melanie Reese, I am the Executive Director of Older Women Embracing Life. I am here in support of House Bill 287, HIV is not a crime but the law I am here to change says that say it is.

I became HIV+ during a date rape. However, I would not even think of prosecuting my attacker for giving me HIV because it would not change my status. It would not make me HIV-, but only put another HIV+ Black individual at risk for incarceration, doing further harm to individuals & communities that are already overpoliced, prosecuted & criminalized.

As a sexual assault survivor, I believe a disease specific law puts women at risk for domestic & intimate partner violence. The person perpetrating violence, can use the law as control over a victim 'you prosecute me & I'll kill you'

Even in situations like these I have empathy, navigating HIV is often difficult because of stigma & managing the disease itself. Criminal laws such as this one contribute to that stigma & prevent people from wanting to know their own status. An individual should never be prosecuted for being HIV+.

HIV Criminalization is particularly harmful to Black, Indigenous & LGBTQ communities who face higher rates of diagnosis. More practically, the current law does not follow medical science & treatment advances. With treatment as prevention & U=U, HIV cannot be transmitted.

I didn't immediately accept my status but being HIV+ was the best thing that happened to me because I learned to love myself & that I was enough. I wouldn't have begun that journey without my diagnosis. Before my diagnosis, I believed I was powerless, but now I feel powerful & help others, especially women, empower themselves.

DKF_Support_HB0287_03282023.pdf

Uploaded by: Kris Fair

Position: FAV



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

SUPPORT TESTIMONY

HB 0287 – Public Health–Prohibition on Transfer of Human Immunodeficiency Virus –Repeal

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

Chair Smith, Vice-Chair Waldstreicher, and Esteemed Members of the Judicial Proceedings Committee:

House Bill 287 seeks to repeal an outdated and harmful law that criminalizes individuals for transferring the Human Immunodeficiency Virus (HIV). The negative impact of this law on the efforts to end the HIV epidemic in Maryland and across the country is significant. It disproportionately affects marginalized communities, including women of color, sex workers, and LGBTQIA+ people.

The law's impact on ending the HIV epidemic is counterproductive since it discourages people from knowing their HIV status. As we know, early diagnosis and treatment can significantly improve health outcomes and prevent transmission. Maryland's current law stigmatizes HIV discouraging people from getting tested and seeking treatment, which leads to increased transmission rates.

Furthermore, Maryland's HIV-specific criminalization law is among the most restrictive in the United States. Thirteen states including Texas, New Mexico, Oregon, Wyoming, and Illinois have no such criminalization for transmission of any infections. This creates an environment of fear and discrimination for those living with HIV and can discourage them from seeking the care they need.

According to the Centers for Disease Control and Prevention, "These laws have not increased disclosure and may decrease HIV testing, increase stigma against people with HIV, and exacerbate disparities."

Advances in treatment and outreach have put us on the cusp of ending the HIV epidemic in the United States. Once-a-day antiretroviral therapy (ART) creates an undetectable viral load, meaning the individual is untransmissible even in high-risk sexual encounters. Anti-stigma campaigns have encouraged testing and knowing your status to live a healthy life. Pre- and Post-exposure Prophylaxis (PrEP and PEP) allows individuals concerned about potential transmission to take a beta-inhibitor that is 99% effective in blocking HIV from replicating in the body.

HIV is the only transmitted disease held up for special prosecution in Maryland. Countless other diseases like Syphilis, Hepatitis, and Coronavirus Disease (CD) can kill you when left untreated, and numerous other diseases can have lifelong impacts on a person's health and well-being. The unequal application of the law

targets people living with HIV, stigmatizing them as having a unique infection that deserves special laws governing their day-to-day interactions.

Therefore, repealing the current law is necessary to support vulnerable communities and end the HIV epidemic. By removing the fear of criminalization, individuals will be more likely to get tested, receive treatment, and reduce transmission rates. The passage of House Bill 287 will decrease stigma, decrease discrimination, and contribute to ending the HIV epidemic in Maryland.

For these reasons, I urge your support for House Bill 287 and respectfully request a favorable report.

Thank you,

A handwritten signature in blue ink that reads "Kris Fair". The signature is written in a cursive, flowing style.

Delegate Kris Fair

Copy of Melanie Testimony.pdf

Uploaded by: Melanie Reese

Position: FAV

Chair W. C. Smith, Jr., Vice-Chair J. D. Waldstreicher, and Esteemed Members of the Judiciary Proceedings Committee:

My name is Melanie Reese, I am the Executive Director of Older Women Embracing Life. I am here in support of House Bill 287, HIV is not a crime but the law I am here to change says that say it is.

I became HIV+ during a date rape. However, I would not even think of prosecuting my attacker for giving me HIV because it would not change my status. It would not make me HIV-, but only put another HIV+ Black individual at risk for incarceration, doing further harm to individuals & communities that are already overpoliced, prosecuted & criminalized.

As a sexual assault survivor, I believe a disease specific law puts women at risk for domestic & intimate partner violence. The person perpetrating violence, can use the law as control over a victim 'you prosecute me & I'll kill you'

Even in situations like these I have empathy, navigating HIV is often difficult because of stigma & managing the disease itself. Criminal laws such as this one contribute to that stigma & prevent people from wanting to know their own status. An individual should never be prosecuted for being HIV+.

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I didn't immediately accept my status but being HIV+ was the best thing that happened to me because I learned to love myself & that I was enough. I wouldn't have begun that journey without my diagnosis. Before my diagnosis, I believed I was powerless, but now I feel powerful & help others, especially women, empower themselves.

Senate - SUBMITTED_ Written Testimony _ Support Le

Uploaded by: Mike Webb

Position: FAV



March 27, 2023

Senator William C. Smith, Jr. et al.
Senate Judicial Proceedings
Maryland General Assembly
Miller Senate Office Building
Annapolis, Maryland 21401

Re: IN SUPPORT OF HB 287 - Public Health: Prohibition on Transfer of Human Immunodeficiency Virus - Repeal

(Committee Hearing Scheduled for March 28, at 1 p.m. ET)

Dear Senator Smith et al.,

Equality Federation is testifying in favor of HB 287, a bill on “Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal.” Equality Federation (EF) has been a leader in supporting and amplifying statewide LGBTQ+ advocacy efforts for over 25 years to bring national attention and awareness to historically siloed state-based LGBTQ+ issues. In close partnership with FreeState Justice, EF is a staunch supporter of modernizing HIV laws like the one that currently exists in Maryland.

Data and lived experiences illustrate how HIV criminalization laws in Maryland don’t work as intended, are a threat to public health, don’t align with current science, and increase HIV stigma and discrimination. Notably, the Baltimore Ending the HIV Epidemic (EHE) Plan that the Baltimore City Health Department developed explicitly states that “removal of this law would be a significant positive step for de-stigmatization of people living with HIV and would go a long way in helping improve prevention and treatment recommendations.”¹ Maryland’s current HIV-criminalizing law disproportionately criminalizes Black people, who are already disproportionately targeted by our criminal justice system. This disparate impact is magnified due to the fact that 74.4% of Marylanders living with diagnosed HIV in 2021 were Black people. Consequently, this law systematically targets Black Marylanders, including Marylanders who happen to be Black *and* members of the LGBTQ+ community.

Repealing this law is also recommended by the Centers for Disease Control & Prevention (CDC) because HIV criminalization contradicts science and doesn’t take into consideration treatment and technological advancements since the early days of the epidemic. This is illustrated by the fact that a good majority (65%) of Marylanders living with HIV are virally suppressed, meaning it is impossible for them to sexually transmit the virus, yet, under current law, they can still face prosecution.

For all these reasons, EF respectfully asks that you vote in favor of HB 287. Please do not hesitate to email me if I can provide additional information at fran@equalityfederation.org.

Sincerely,
Fran Hutchins, Executive Director

¹ Baltimore’s Guiding Document for HIV/AIDS Efforts in the City (2020 - 2030)

HB0287-JPR-FAV.pdf

Uploaded by: Nina Themelis

Position: FAV



BRANDON M. SCOTT
MAYOR

Office of Government Relations
88 State Circle
Annapolis, Maryland 21401

HB0287

March 28, 2023

TO: Members of the Senate Judiciary Committee

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

RE: House Bill 287 – Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal

POSITION: Support

Chair Smith, Vice Chair Waldstreicher, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports** House Bill (HB) 287.

HB 287 would repeal the prohibition on an individual from knowingly transferring or attempting to transfer the human immunodeficiency virus 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.ⁱ Under current law, punishable activities include consensual sex, breastfeeding, needle sharing, blood and tissue donation, and biting or spitting.ⁱⁱ

Maryland's outdated HIV-specific criminal law impedes the goals of Ending the HIV Epidemic by: Contributing to HIV-Related Stigma: Due to a lack of education on the matter, modes of HIV transmission are often misrepresented, leading to ostracization of people with this virus. Today, we know that "Undetectable=Untransmittable" (U=U), meaning there is zero transmission of HIV through sex by people with the virus who are durably virally suppressed.^{3,4} These individuals are lost in the stigma-filled and outdated current law. Furthermore, HIV disproportionately affects minority groups in Maryland and nationwide.^{5,6} The current law adds to HIV stigma and discrimination, further criminalizing and isolating people of diverse sexual orientation, identities, and racial groups, thereby increasing health disparities through reduced service utilization. Understandably, people are less likely to seek treatment for a virus mired in stigma.³

Hindering the Implementation of 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, which is the gateway for navigation to a host of prevention and care linkage services. In the U.S., a reported 15% of people with HIV remain undiagnosed, and the CDC reports that people with undiagnosed HIV account for almost 40% of all HIV transmissions.⁷ There are an estimated 9.2% of Marylanders living with HIV who are undiagnosed.⁵

The current law also impedes the efforts of public health staff to effectively conduct contact tracing that link the sex and needle-sharing partners of persons with HIV to vital life-saving services. Fear of prosecution for exposing others to HIV can prevent people from accessing health services, thereby perpetuating mistrust of public health staff for whom trust-building with clients with HIV is essential in care linkage and testing efforts. This law

discourages people with HIV to be in care for fear that their medical records could be subpoenaed to prove that the person was knowingly HIV positive.

Discouraging Disclosure to Sexual or Needle-Sharing Partners: Due to a fear of persecution, a person with HIV who did not disclose before one or more sexual encounters or needle 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 persecuted 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 were enacted with the intention to punish those with the disease and curb transmission rates. Over the past 40 years, we have developed effective treatment and prevention options to reduce transmission and work to end the HIV epidemic. 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 287.

ⁱ MD. CODE. ANN., HEALTH-GEN. § 18-601.1 (2016).

ⁱⁱ 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._0.pdf

³ Prevention Access Campaign. What is U=U? Retrieved from: <https://preventionaccess.org/about-introduction/>

⁴ 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. Retrieved from: <https://www.cdc.gov/hiv/policies/law/criminalization-ehe.html>

⁵ Maryland Annual HIV Epidemiological Profile 2021. Center for HIV Surveillance, Epidemiology and Evaluation, Maryland Department of Health, Baltimore, MD. 2022: p6, p8

⁶ 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

⁷ 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>.

HB0287 - Senate_FAV_MedChi_PH - Prohibition on Tra

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 Kris Fair

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

DATE: March 28, 2023

RE: **SUPPORT** – House Bill 287 – *Public Health – Prohibition on Transfer of Human Immunodeficiency Virus – Repeal*

The Maryland State Medical Society (MedChi), the largest physician organization in Maryland, **supports** House Bill 287.

House Bill 287 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.

2023 ACNM HB 287 Senate Side FAV.pdf

Uploaded by: Robyn Elliott

Position: FAV



Committee: Senate Judicial Proceedings Committee

Bill Number: HB 287

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

Hearing Date: March 28, 2023

Position: Support

The Maryland Affiliate of the American College of Nurse Midwives (ACNM) supports *Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal*. The bill will repeal the current misdemeanor (MD. CODE. ANN., HEALTH-GEN. § 18-601.1) that criminalizes the transmission or potential transmission of HIV.

The current law is stated in such a way that even breastfeeding a child or consensual sex using a barrier contraceptive can be interpreted as a criminal act.¹ In 2023, the science of preventing and treating HIV renders this law both cruel and unnecessary. Medications for both pre- and post-exposure prophylaxis have transformed the risk equation in all settings, including perinatal exposure, sexual activity, and even needle-sharing. In addition, current treatment regimens for people living with HIV are highly effective at preserving health and preventing transmission.²

We ask for a favorable report on this legislation. If we can provide any further information, please contact Robyn Elliott at relliott@policypartners.net or (443) 926-3443.

References:

1. The Center for HIV Law and Policy. <https://www.hivlawandpolicy.org/states/maryland>. Accessed 1/30/2023.
2. HIV.gov. <https://www.hiv.gov/>. Accessed 1/30/2023.

2023 Moveable Feast HB 287 Senate Side FAV.pdf

Uploaded by: Robyn Elliott

Position: FAV



Committee: Senate Judicial Proceedings

Bill Number: HB0287 - Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal

Hearing Date: March 28, 2023

Position: Support

Moveable Feast strongly supports *HB0287 – Public Health – Prohibition on Transfer of Human Immunodeficiency Virus – Repeal*. Moveable Feast is a non-profit community based organization that exists to improve the health of Marylanders experiencing food insecurity and chronic illness by preparing and delivering medically tailored meals and providing nutrition education, thereby achieving racial, social, and health equity.

Founded in 1989 as a response to the HIV epidemic, Moveable Feast still serves over 400 individuals living with HIV every year. We see daily the devastating effects of stigma on health and dignity for people living with HIV. Laws such as the one that this bill addresses marginalize and unfairly target people living with HIV. 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.

2023 PPM HB 287 Senate Side FAV.pdf

Uploaded by: Robyn Elliott

Position: FAV

Planned Parenthood of Maryland

Committee: Senate Judicial Proceedings Committee

Bill Number: House Bill 287 - Public Health - Prohibition on Transfer of Human Immunodeficiency Virus – Repeal

Hearing: March 28, 2023

Position: Support

Planned Parenthood of Maryland supports *House Bill 287 – Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal*. This bill repeals the misdemeanor prohibition against and associated penalty for knowingly transferring or attempting to transfer the human immunodeficiency virus (HIV) to another.

As a health care provider for many members of the LGBTQIA+ community in Maryland, we support bills that works towards ending the stigma of HIV in the LGBTQIA+ community. 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 LGBTQIA+ community, as well as other marginalized communities, such as certain immigrant populations, with high rates of HIV. It is time to remove the vestiges of laws that stigmatize people living with HIV.

We ask for a favorable report on this legislation. If we can provide any additional information, please contact Robyn Elliott at relliott@poliypartners.net.

Written Senate Committee Testimony for HB 287 (Ron

Uploaded by: Ronald Johnson

Position: FAV

March 28, 2023

Senator William Smith, Jr., et. al.
Judicial Proceedings Committee
Maryland General Assembly
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Re: IN SUPPORT OF HB0287 - Public Health: Prohibition on Transfer of Human Immunodeficiency Virus - Repeal

(Committee Hearing Scheduled for March 28, 2023, at 1p.m. ET)

Dear Senator Smith, et. al.,

I am Ronald Johnson and I am a Marylander living with HIV testifying in favor of HB 287, a bill on *“Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal”*. To understand why I passionately support HB 287, I need to start from the beginning. Being a Black gay man living in New York City in the early ‘80s I was one of the first wave of community members to notice a “strange disease” beginning to surface. I wanted to know more about it and get more involved, which led me to become a volunteer at Gay Men’s Health Crisis (GMHC), the first community-based organization dealing with HIV. That started the very long journey of being involved in fighting HIV as a profession and as an advocate. In 1989, my partner got ill, and he tested positive, so I got tested as well. That’s when I learned I was also living with HIV and I figured I only had a few years left to live.

Now at 74 years old, I live with my husband in Silver Spring, Maryland. We have been together for over 20 years, married for over five. Thanks to the many technological and scientific advancements in HIV treatment and prevention options, I am living in good health. Although I’m retired, fighting discriminatory and stigmatizing HIV criminalization laws like ours in Maryland keeps me active. Sometimes when my phone rings like it did for this hearing, I think, wait a minute, I’m supposed to be retired! But we’ve always known that HIV was more than a medical condition, that it was a ‘social disease.’ The HIV epidemic exists in the context of inequalities of health care in general, inequalities of income and economics, rights and racial injustices. And a contributing factor of these inequalities is our current law that criminalizes HIV.

Under Maryland's current HIV criminalizing law, Black people, who are already disproportionately targeted by our criminal justice system, are most likely to be additionally criminalized by these laws. This is especially true in Maryland, considering 74.4% of Marylanders living with diagnosed HIV in 2021 were Black people. Consequently, this law in effect targets Black Marylanders living with HIV including Marylanders who happen to be Black *and* gay like myself.

Repealing HIV criminalization laws is also recommended by the Centers for Disease Control & Prevention (CDC) because HIV criminalization contradicts science and doesn't take into consideration treatment and technological advancements since the early days of the epidemic. One notable advancement is the overwhelming clinical evidence that people with HIV who achieve and maintain an undetectable viral load and who maintain adherence to their antiretroviral therapy cannot sexually transmit HIV to others. This clinical finding has been affirmed by the CDC and the National Institute of Allergy and Infectious Diseases (NIAID).

I truly believe in the fact that we can end this epidemic -- there is hope. In the late '80s, there was so little hope and so many people died and were dying quickly. Seeing that turn around keeps me motivated. Yes, we are in a dangerous position policy-wise, in terms of laws like the one that exists here in Maryland. But I know from experience that we can turn death around, and can turn this dismal phase around if we continue to aggressively fight HIV that includes repealing these laws and supporting legislation like HB 287.

For all these reasons, I respectfully ask that you vote in favor of HB0287. Please email me if I can provide additional information at rjohn0403@aol.com.

Sincerely,

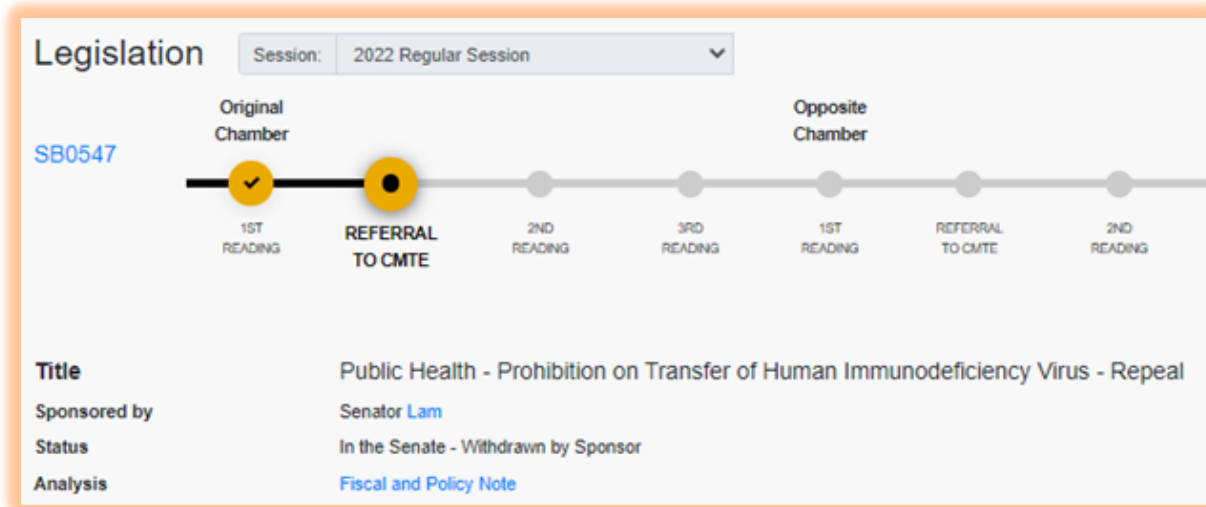
Ronald Johnson
1220 Blair Mill Road
Silver Spring, MD 20910

UNFavorable on HB0287.pdf

Uploaded by: vince mcavoy

Position: UNF

HB0287 Delegate Kris Fair
Public Health - Prohibition on Transfer of Human Immunodeficiency Virus - Repeal
Written testimony for JPR



Dear Senators~
Your colleague Senator Lam, in a rare bit of common sense, understood that jeopardizing a group of deviants who choose to play games with their and others' lives like "bug chasing" do not deserve to escape prosecution for aiming the genitals at someone (be it in sexual congress or purposeful poisoning/maliciousness or criminal neglect).
So Lam withdrew his bill last year.
Delegate Fair hasn't that commonsense.

There is no other law which will allow full redress for those who have been infected with the only life-ending STD. There is no "body count" for syphilis or herpes in this country. There **is** for HIV/AIDS. Some people don't recall that Freddie Mercury of Queen died of AIDS and thousands and thousands of others.

What was presented in House Judiciary was such folly that Delegate Conway undermined a domestic violence crowd's flawed, disingenuous attempts regarding "consent"...it's worth a watch.

We don't need more HIV. We don't need the risk of it when **HIV among children is at its highest ever. I wonder why?**

<https://twitter.com/TheDuckpin/status/1636512138452688898?s=20>

humbly
~vince

HIV transfer - testimony - house in senate - 2023

Uploaded by: Lisae C Jordan

Position: INFO



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

Information on House Bill 287 **Lisae C. Jordan, Executive Director & Counsel** March 28, 2023

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.

House Bill 287 – Repeal of HIV-Specific Law on Intentional Transmission

House Bill 287 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. The law is rarely used.

One of the risks faced by rape survivors is HIV infection.¹ 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.²

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, there is consensus that Health General §18-601.1 and a law specifically targeting HIV is problematic and interwoven with discrimination against the LGBTQ+ community.

Public Health officials also report that statutes singling out HIV increase stigma, exacerbate disparities, and may discourage HIV testing.³ 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 no longer opposes repeal of §18-601.1 due to the discriminatory history and application of an HIV specific law and the serious public health concerns the statute raises.

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

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

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

We note that 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. This is punishable by up to one year in prison, a \$1,000 fine, or both. 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.

We respectfully suggest that in the future, the Committee should explore options to address how to criminalize conduct with the specific intent to harm another individual by transmitting or attempting to transmit an infectious disease.

