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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Maryland's outdated HIV-specific criminal law impedes the goals of Ending the HIV Epidemic by: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by people with the virus who are durably virally suppressed.^{3,4} These individuals are lost in the stigma-filled and outdated current law.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>.