

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.