

114TH CONGRESS
1ST SESSION

H. R. 1586

To modernize laws, and eliminate discrimination, with respect to people living with HIV/AIDS, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 2015

Ms. LEE introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Energy and Commerce and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To modernize laws, and eliminate discrimination, with respect to people living with HIV/AIDS, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Repeal Existing Poli-
5 cies that Encourage and Allow Legal HIV Discrimination
6 Act of 2015” or the “REPEAL HIV Discrimination Act
7 of 2015”.

8 **SEC. 2. FINDINGS.**

9 The Congress makes the following findings:

1 (1) At present, 33 States and 2 United States
2 territories have criminal statutes based on perceived
3 exposure to HIV, rather than actual transmission of
4 HIV to another. Eleven States have HIV-specific
5 laws that make spitting or biting a felony, even
6 though it is not possible to transmit HIV via saliva.
7 Twenty-four States require persons who are aware
8 that they have HIV to disclose their status to sexual
9 partners. Fourteen of these 24 States also require
10 disclosure to needle-sharing partners. Twenty-five
11 States criminalize one or more behaviors that pose
12 a low or negligible risk for HIV transmission.

13 (2) According to the Centers for Disease Con-
14 trol and Prevention (CDC), HIV is only transmitted
15 through blood, semen, vaginal fluid, and breast milk.

16 (3) HIV-specific criminal laws are classified as
17 felonies in 28 States; in three States, a person's ex-
18 posure to another to HIV does not subject the per-
19 son to criminal prosecution for that act alone, but
20 may result in a sentence enhancement. Eighteen
21 States impose sentences of up to 10 years; seven im-
22 pose sentences between 11 and 20 years; and five
23 impose sentences of greater than 20 years.

24 (4) The number of prosecutions, arrests, and
25 instances where HIV-specific criminal laws are used

1 to induce plea agreements is unknown. Because
2 State-level prosecution and arrest data are not read-
3 ily available in any national legal database, the soci-
4 etal impact of these laws may be underestimated and
5 most cases that go to trial are not reduced to writ-
6 ten, published opinions.

7 (5) State and Federal criminal law does not
8 currently reflect the three decades of medical ad-
9 vances and discoveries made with regard to trans-
10 mission and treatment of HIV.

11 (6) According to CDC, correct and consistent
12 male or female condom use is very effective in pre-
13 venting HIV transmission. However, most State
14 HIV-specific laws and prosecutions do not treat the
15 use of a condom during sexual intercourse as a miti-
16 gating factor or evidence that the defendant did not
17 intend to transmit HIV.

18 (7) Criminal laws and prosecutions do not take
19 into account the benefits of effective antiretroviral
20 medications, which reduce the HIV virus to
21 undetectable levels and further reduce the already
22 low risk of transmitting the HIV to near zero.

23 (8) Although HIV/AIDS currently is viewed as
24 a treatable, chronic, medical condition, people living
25 with HIV have been charged under aggravated as-

1 sault, attempted murder, and even bioterrorism stat-
2 utes because prosecutors, courts, and legislators con-
3 tinue to view and characterize the blood, semen, and
4 saliva of people living with HIV as a “deadly weap-
5 on”.

6 (9) Multiple peer-reviewed studies demonstrate
7 that HIV-specific laws do not reduce risk-taking be-
8 havior or increase disclosure by people living with or
9 at risk of HIV, and there is increasing evidence that
10 these laws reduce the willingness to get tested. Fur-
11 thermore, placing legal responsibility for preventing
12 the transmission of HIV and other pathogens exclu-
13 sively on people diagnosed with HIV, and without
14 consideration of other pathogens that can be sexu-
15 ally transmitted, undermines the public health mes-
16 sage that all people should practice behaviors that
17 protect themselves and their partners from HIV and
18 other sexually transmitted diseases.

19 (10) The identity of an individual accused of
20 violating existing HIV-specific restrictions is broad-
21 cast through media reports, potentially destroying
22 employment opportunities and relationships and vio-
23 lating the person’s right to privacy.

24 (11) Individuals who are convicted for HIV ex-
25 posure, nondisclosure, or transmission often must

1 register as sex offenders even in cases of consensual
2 sexual activity. Their employability is destroyed and
3 their family relationships are fractured.

4 (12) The United Nations, including the Joint
5 United Nations Programme on HIV/AIDS
6 (UNAIDS), urges governments to “limit criminaliza-
7 tion to cases of intentional transmission. Such re-
8 quirement indicates a situation where a person
9 knows his or her HIV-positive status, acts with the
10 intention to transmit HIV, and does in fact transmit
11 it”. UNAIDS also recommends that criminal law
12 should not be applied to cases where there is no sig-
13 nificant risk of transmission.

14 (13) The Global Commission on HIV and the
15 Law was launched in June 2010 to examine laws
16 and practices that criminalize people living with and
17 vulnerable to HIV and to develop evidence-based rec-
18 ommendations for effective HIV responses. The
19 Commission calls for “governments, civil society and
20 international bodies to repeal punitive laws and
21 enact laws that facilitate and enable effective re-
22 sponses to HIV prevention, care and treatment serv-
23 ices for all who need them”. The Commission rec-
24 ommends against the enactment of “laws that ex-
25 plicitly criminalise HIV transmission, exposure or

1 non-disclosure of HIV status, which are counter-
2 productive”.

3 (14) In 2010, the President released a National
4 HIV/AIDS Strategy (NHAS), which addressed HIV-
5 specific criminal laws, stating: “[W]hile we under-
6 stand the intent behind [these] laws, they may not
7 have the desired effect and they may make people
8 less willing to disclose their status by making people
9 feel at even greater risk of discrimination. In some
10 cases, it may be appropriate for legislators to recon-
11 sider whether existing laws continue to further the
12 public interest and public health. In many instances,
13 the continued existence and enforcement of these
14 types of laws run counter to scientific evidence about
15 routes of HIV transmission and may undermine the
16 public health goals of promoting HIV screening and
17 treatment.”. The NHAS also states that State legis-
18 latures should consider reviewing HIV-specific crimi-
19 nal statutes to ensure that they are consistent with
20 current knowledge of HIV transmission and support
21 public health approaches to preventing and treating
22 HIV.

23 (15) In February 2013, the President’s Advi-
24 sory Council on AIDS (PACHA) passed a resolution
25 stating “all U.S. law should be consistent with cur-

1 rent medical and scientific knowledge and accepted
2 human rights-based approaches to disease control
3 and prevention and avoid imposition of unwarranted
4 punishment based on health and disability status”.

5 **SEC. 3. SENSE OF CONGRESS REGARDING LAWS OR REGU-**
6 **LATIONS DIRECTED AT PEOPLE LIVING WITH**
7 **HIV/AIDS.**

8 It is the sense of Congress that Federal and State
9 laws, policies, and regulations regarding people living with
10 HIV/AIDS—

11 (1) should not place unique or additional bur-
12 dens on such individuals solely as a result of their
13 HIV status; and

14 (2) should instead demonstrate a public health-
15 oriented, evidence-based, medically accurate, and
16 contemporary understanding of—

17 (A) the multiple factors that lead to HIV
18 transmission;

19 (B) the relative risk of demonstrated HIV
20 transmission routes;

21 (C) the current health implications of liv-
22 ing with HIV;

23 (D) the associated benefits of treatment
24 and support services for people living with HIV;
25 and

1 (E) the impact of punitive HIV-specific
2 laws, policies, regulations, and judicial prece-
3 dents and decisions on public health, on people
4 living with or affected by HIV, and on their
5 families and communities.

6 **SEC. 4. REVIEW OF FEDERAL AND STATE LAWS.**

7 (a) REVIEW OF FEDERAL AND STATE LAWS.—

8 (1) IN GENERAL.—Not later than 90 days after
9 the date of the enactment of this Act, the Attorney
10 General, the Secretary of Health and Human Serv-
11 ices, and the Secretary of Defense acting jointly (in
12 this section referred to as the “designated officials”)
13 shall initiate a national review of Federal and State
14 laws, policies, regulations, and judicial precedents
15 and decisions regarding criminal and related civil
16 commitment cases involving people living with HIV/
17 AIDS, including in regard to the Uniform Code of
18 Military Justice.

19 (2) CONSULTATION.—In carrying out the re-
20 view under paragraph (1), the designated officials
21 shall seek to include diverse participation from, and
22 consultation with, each of the following:

23 (A) Each State.

24 (B) State attorneys general (or their rep-
25 representatives).

1 (C) State public health officials (or their
2 representatives).

3 (D) State judicial and court system offi-
4 cers, including judges, district attorneys, pros-
5 ecutors, defense attorneys, law enforcement,
6 and correctional officers.

7 (E) Members of the United States Armed
8 Forces, including members of other Federal
9 services subject to the Uniform Code of Military
10 Justice.

11 (F) People living with HIV/AIDS, particu-
12 larly those who have been subject to HIV-re-
13 lated prosecution or who are from communities
14 whose members have been disproportionately
15 subject to HIV-specific arrests and prosecution.

16 (G) Legal advocacy and HIV/AIDS service
17 organizations that work with people living with
18 HIV/AIDS.

19 (H) Nongovernmental health organizations
20 that work on behalf of people living with HIV/
21 AIDS.

22 (I) Trade organizations or associations
23 representing persons or entities described in
24 subparagraphs (A) through (G).

1 (3) RELATION TO OTHER REVIEWS.—In car-
2 rying out the review under paragraph (1), the des-
3 ignated officials may utilize other existing reviews of
4 criminal and related civil commitment cases involv-
5 ing people living with HIV/AIDS, including any such
6 review conducted by any Federal or State agency or
7 any public health, legal advocacy, or trade organiza-
8 tion or association if the designated officials deter-
9 mines that such reviews were conducted in accord-
10 ance with the principles set forth in section 3.

11 (b) REPORT.—Not later than 180 days after initi-
12 ating the review required by subsection (a), the Attorney
13 General shall transmit to the Congress and make publicly
14 available a report containing the results of the review,
15 which includes the following:

16 (1) For each State and for the Uniform Code
17 of Military Justice, a summary of the relevant laws,
18 policies, regulations, and judicial precedents and de-
19 cisions regarding criminal cases involving people liv-
20 ing with HIV/AIDS, including the following:

21 (A) A determination of whether such laws,
22 policies, regulations, and judicial precedents
23 and decisions place any unique or additional
24 burdens upon people living with HIV/AIDS.

1 (B) A determination of whether such laws,
2 policies, regulations, and judicial precedents
3 and decisions demonstrate a public health-ori-
4 ented, evidence-based, medically accurate, and
5 contemporary understanding of—

6 (i) the multiple factors that lead to
7 HIV transmission;

8 (ii) the relative risk of HIV trans-
9 mission routes;

10 (iii) the current health implications of
11 living with HIV;

12 (iv) the associated benefits of treat-
13 ment and support services for people living
14 with HIV; and

15 (v) the impact of punitive HIV-spe-
16 cific laws and policies on public health, on
17 people living with or affected by HIV, and
18 on their families and communities.

19 (C) An analysis of the public health and
20 legal implications of such laws, policies, regula-
21 tions, and judicial precedents and decisions, in-
22 cluding an analysis of the consequences of hav-
23 ing a similar penal scheme applied to com-
24 parable situations involving other communicable
25 diseases.

1 (D) An analysis of the proportionality of
2 punishments imposed under HIV-specific laws,
3 policies, regulations, and judicial precedents,
4 taking into consideration penalties attached to
5 violation of State laws against similar degrees
6 of endangerment or harm, such as driving while
7 intoxicated (DWI) or transmission of other
8 communicable diseases, or more serious harms,
9 such as vehicular manslaughter offenses.

10 (2) An analysis of common elements shared be-
11 tween State laws, policies, regulations, and judicial
12 precedents.

13 (3) A set of best practice recommendations di-
14 rected to State governments, including State attor-
15 neys general, public health officials, and judicial offi-
16 cers, in order to ensure that laws, policies, regula-
17 tions, and judicial precedents regarding people living
18 with HIV/AIDS are in accordance with the prin-
19 ciples set forth in section 3.

20 (4) Recommendations for adjustments to the
21 Uniform Code of Military Justice, as may be nec-
22 essary, in order to ensure that laws, policies, regula-
23 tions, and judicial precedents regarding people living
24 with HIV/AIDS are in accordance with the prin-
25 ciples set forth in section 3.

1 (c) GUIDANCE.—Within 90 days of the release of the
2 report required by subsection (b), the Attorney General
3 and the Secretary of Health and Human Services, acting
4 jointly, shall develop and publicly release updated guid-
5 ance for States based on the set of best practice rec-
6 ommendations required by subsection (b)(3) in order to
7 assist States dealing with criminal and related civil com-
8 mitment cases regarding people living with HIV/AIDS.

9 (d) MONITORING AND EVALUATION SYSTEM.—With-
10 in 60 days of the release of the guidance required by sub-
11 section (c), the Attorney General and the Secretary of
12 Health and Human Services, acting jointly, shall establish
13 an integrated monitoring and evaluation system which in-
14 cludes, where appropriate, objective and quantifiable per-
15 formance goals and indicators to measure progress toward
16 statewide implementation in each State of the best prac-
17 tice recommendations required in subsection (b)(3).

18 (e) MODERNIZATION OF FEDERAL LAWS, POLICIES,
19 AND REGULATIONS.—Within 90 days of the release of the
20 report required by subsection (b), the designated officials
21 shall develop and transmit to the President and the Con-
22 gress, and make publicly available, such proposals as may
23 be necessary to implement adjustments to Federal laws,
24 policies, or regulations, including to the Uniform Code of
25 Military Justice, based on the recommendations required

1 by subsection (b)(4), either through Executive order or
2 through changes to statutory law.

3 **SEC. 5. RULE OF CONSTRUCTION.**

4 Nothing in this Act shall be construed to discourage
5 the prosecution of individuals who intentionally transmit
6 or attempt to transmit HIV to another individual.

7 **SEC. 6. NO ADDITIONAL APPROPRIATIONS AUTHORIZED.**

8 This Act shall not be construed to increase the
9 amount of appropriations that are authorized to be appro-
10 priated for any fiscal year.

11 **SEC. 7. DEFINITIONS.**

12 For purposes of this Act:

13 (1) HIV AND HIV/AIDS.—The terms “HIV” and
14 “HIV/AIDS” have the meanings given to such terms
15 in section 2689 of the Public Health Service Act (42
16 U.S.C. 300ff–88).

17 (2) STATE.—The term “State” includes the
18 District of Columbia, American Samoa, the Com-
19 monwealth of the Northern Mariana Islands, Guam,
20 Puerto Rico, and the United States Virgin Islands.

○