

113TH CONGRESS  
1ST SESSION

# H. R. 1843

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

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## IN THE HOUSE OF REPRESENTATIVES

MAY 7, 2013

Ms. LEE of California (for herself and Ms. ROS-LEHTINEN) 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

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## 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 2013” or the “REPEAL HIV Discrimination Act  
7 of 2013”.

1 **SEC. 2. FINDINGS.**

2 The Congress makes the following findings:

3 (1) At present, 32 States and 2 United States  
4 territories have criminal statutes based on perceived  
5 exposure to HIV, rather than actual transmission of  
6 HIV to another. Thirteen States have HIV-specific  
7 laws that make spitting or biting a felony, even  
8 though it is not possible to transmit HIV via saliva.

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

12 (3) Prosecutions for perceived exposure, non-  
13 disclosure, or unintentional transmission of HIV  
14 have occurred in at least 39 States under general or  
15 HIV-specific laws.

16 (4) Even in the absence of HIV transmission,  
17 people living with HIV have been given sentences of  
18 up to 35 years based on exaggerated fears of HIV,  
19 regardless of actual risk of transmission.

20 (5) State and Federal criminal law does not  
21 currently reflect the three decades of medical ad-  
22 vances and discoveries made with regard to trans-  
23 mission and treatment of HIV.

24 (6) According to CDC, correct and consistent  
25 male or female condom use is very effective in pre-  
26 venting HIV transmission. However, most State

1 HIV-specific laws and prosecutions do not treat the  
2 use of a condom during sexual intercourse as a miti-  
3 gating factor or evidence that the defendant did not  
4 intend to transmit HIV.

5 (7) Criminal laws and prosecutions do not take  
6 into account the benefits of effective antiretroviral  
7 medications, which reduce the HIV virus to  
8 undetectable levels and further reduce the already  
9 low risk of transmitting the HIV to near-zero.

10 (8) Although HIV/AIDS currently is viewed as  
11 a treatable, chronic, medical condition, people living  
12 with HIV have been charged under aggravated as-  
13 sault, attempted murder, and even bioterrorism stat-  
14 utes because prosecutors, courts, and legislators con-  
15 tinue to view and characterize the blood, semen, and  
16 saliva of people living with HIV as a “deadly weap-  
17 on”.

18 (9) Multiple peer-reviewed studies demonstrate  
19 that HIV-specific laws do not reduce risk-taking be-  
20 havior or increase disclosure by people living with or  
21 at risk of HIV, and there is increasing evidence that  
22 these laws reduce the willingness to get tested. Fur-  
23 thermore, placing legal responsibility for preventing  
24 the transmission of HIV and other pathogens exclu-  
25 sively on people diagnosed with HIV, and without

1 consideration of other pathogens that can be sexu-  
2 ally transmitted, undermines the public health mes-  
3 sage that all people should practice behaviors that  
4 protect themselves and their partners from HIV and  
5 other sexually transmitted diseases.

6 (10) The identity of an individual accused of  
7 violating existing HIV-specific restrictions is broad-  
8 cast through media reports, potentially destroying  
9 employment opportunities and relationships and vio-  
10 lating the person's right to privacy.

11 (11) Individuals who are convicted for HIV ex-  
12 posure, nondisclosure, or transmission often must  
13 register as sex offenders even in cases of consensual  
14 sexual activity. Their employability is destroyed and  
15 their family relationships are fractured.

16 (12) The United Nations, including the Joint  
17 United Nations Programme on HIV/AIDS  
18 (UNAIDS), urges governments to "limit criminaliza-  
19 tion to cases of intentional transmission. Such re-  
20 quirement indicates a situation where a person  
21 knows his or her HIV-positive status, acts with the  
22 intention to transmit HIV, and does in fact transmit  
23 it". UNAIDS also recommends that criminal law  
24 should not be applied to cases where there is no sig-  
25 nificant risk of transmission.

1           (13) The Global Commission on HIV and the  
2 Law was launched in June 2010 to examine laws  
3 and practices that criminalize people living with and  
4 vulnerable to HIV and to develop evidence-based rec-  
5 ommendations for effective HIV responses. The  
6 Commission calls for “governments, civil society and  
7 international bodies to repeal punitive laws and  
8 enact laws that facilitate and enable effective re-  
9 sponses to HIV prevention, care and treatment serv-  
10 ices for all who need them”. The Commission rec-  
11 ommends against the enactment of “laws that ex-  
12 plicitly criminalise HIV transmission, exposure or  
13 non-disclosure of HIV status, which are counter-  
14 productive”.

15           (14) In 2010, the President released a National  
16 HIV/AIDS Strategy (NHAS), which addressed HIV-  
17 specific criminal laws, stating: “[W]hile we under-  
18 stand the intent behind [these] laws, they may not  
19 have the desired effect and they may make people  
20 less willing to disclose their status by making people  
21 feel at even greater risk of discrimination. In some  
22 cases, it may be appropriate for legislators to recon-  
23 sider whether existing laws continue to further the  
24 public interest and public health. In many instances,  
25 the continued existence and enforcement of these

1 types of laws run counter to scientific evidence about  
2 routes of HIV transmission and may undermine the  
3 public health goals of promoting HIV screening and  
4 treatment.”. The NHAS also states that State legis-  
5 latures should consider reviewing HIV-specific crimi-  
6 nal statutes to ensure that they are consistent with  
7 current knowledge of HIV transmission and support  
8 public health approaches to preventing and treating  
9 HIV.

10 (15) In February 2013, the President’s Advi-  
11 sory Council on AIDS (PACHA) passed a resolution  
12 stating “all U.S. law should be consistent with cur-  
13 rent medical and scientific knowledge and accepted  
14 human rights-based approaches to disease control  
15 and prevention and avoid imposition of unwarranted  
16 punishment based on health and disability status”.

17 **SEC. 3. SENSE OF CONGRESS REGARDING LAWS OR REGU-**  
18 **LATIONS DIRECTED AT PEOPLE LIVING WITH**  
19 **HIV/AIDS.**

20 It is the sense of Congress that Federal and State  
21 laws, policies, and regulations regarding people living with  
22 HIV/AIDS—

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

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

4           (A) the multiple factors that lead to HIV  
5 transmission;

6           (B) the relative risk of demonstrated HIV  
7 transmission routes;

8           (C) the current health implications of liv-  
9 ing with HIV;

10          (D) the associated benefits of treatment  
11 and support services for people living with HIV;  
12 and

13          (E) the impact of punitive HIV-specific  
14 laws, policies, regulations, and judicial prece-  
15 dents and decisions on public health, on people  
16 living with or affected by HIV, and on their  
17 families and communities.

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

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

20           (1) IN GENERAL.—Not later than 90 days after  
21 the date of the enactment of this Act, the Attorney  
22 General, the Secretary of Health and Human Serv-  
23 ices, and the Secretary of Defense acting jointly (in  
24 this section referred to as the “designated officials”)  
25 shall initiate a national review of Federal and State

1 laws, policies, regulations, and judicial precedents  
2 and decisions regarding criminal and related civil  
3 commitment cases involving people living with HIV/  
4 AIDS, including in regard to the Uniform Code of  
5 Military Justice.

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

10 (A) Each State.

11 (B) State attorneys general (or their rep-  
12 resentatives).

13 (C) State public health officials (or their  
14 representatives).

15 (D) State judicial and court system offi-  
16 cers, including judges, district attorneys, pros-  
17 ecutors, defense attorneys, law enforcement,  
18 and correctional officers.

19 (E) Members of the United States Armed  
20 Forces, including members of other Federal  
21 services subject to the Uniform Code of Military  
22 Justice.

23 (F) People living with HIV/AIDS, particu-  
24 larly those who have been subject to HIV-re-  
25 lated prosecution or who are from communities

1           whose members have been disproportionately  
2           subject to HIV-specific arrests and prosecution.

3           (G) Legal advocacy and HIV/AIDS service  
4           organizations that work with people living with  
5           HIV/AIDS.

6           (H) Nongovernmental health organizations  
7           that work on behalf of people living with HIV/  
8           AIDS.

9           (I) Trade organizations or associations  
10          representing persons or entities described in  
11          subparagraphs (A) through (G).

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

22          (b) REPORT.—Not later than 180 days after initi-  
23          ating the review required by subsection (a), the Attorney  
24          General shall transmit to the Congress and make publicly

1 available a report containing the results of the review,  
2 which includes the following:

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

8 (A) A determination of whether such laws,  
9 policies, regulations, and judicial precedents  
10 and decisions place any unique or additional  
11 burdens upon people living with HIV/AIDS.

12 (B) A determination of whether such laws,  
13 policies, regulations, and judicial precedents  
14 and decisions demonstrate a public health-ori-  
15 ented, evidence-based, medically accurate, and  
16 contemporary understanding of—

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

19 (ii) the relative risk of HIV trans-  
20 mission routes;

21 (iii) the current health implications of  
22 living with HIV;

23 (iv) the associated benefits of treat-  
24 ment and support services for people living  
25 with HIV; and

1 (v) the impact of punitive HIV-spe-  
2 cific laws and policies on public health, on  
3 people living with or affected by HIV, and  
4 on their families and communities.

5 (C) An analysis of the public health and  
6 legal implications of such laws, policies, regula-  
7 tions, and judicial precedents and decisions, in-  
8 cluding an analysis of the consequences of hav-  
9 ing a similar penal scheme applied to com-  
10 parable situations involving other communicable  
11 diseases.

12 (D) An analysis of the proportionality of  
13 punishments imposed under HIV-specific laws,  
14 policies, regulations, and judicial precedents,  
15 taking into consideration penalties attached to  
16 violation of State laws against similar degrees  
17 of endangerment or harm, such as driving while  
18 intoxicated (DWI) or transmission of other  
19 communicable diseases, or more serious harms,  
20 such as vehicular manslaughter offenses.

21 (2) An analysis of common elements shared be-  
22 tween State laws, policies, regulations, and judicial  
23 precedents.

24 (3) A set of best practice recommendations di-  
25 rected to State governments, including State attor-

1       neys general, public health officials, and judicial offi-  
2       cers, in order to ensure that laws, policies, regula-  
3       tions, and judicial precedents regarding people living  
4       with HIV/AIDS are in accordance with the prin-  
5       ciples set forth in section 3.

6               (4) Recommendations for adjustments to the  
7       Uniform Code of Military Justice, as may be nec-  
8       essary, in order to ensure that laws, policies, regula-  
9       tions, and judicial precedents regarding people living  
10      with HIV/AIDS are in accordance with the prin-  
11      ciples set forth in section 3.

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

20      (d) MONITORING AND EVALUATION SYSTEM.—With-  
21      in 60 days of the release of the guidance required by sub-  
22      section (c), the Attorney General and the Secretary of  
23      Health and Human Services, acting jointly, shall establish  
24      an integrated monitoring and evaluation system which in-  
25      cludes, where appropriate, objective and quantifiable per-

1 formance goals and indicators to measure progress toward  
2 statewide implementation in each State of the best prac-  
3 tice recommendations required in subsection (b)(3).

4 (e) MODERNIZATION OF FEDERAL LAWS, POLICIES,  
5 AND REGULATIONS.—Within 90 days of the release of the  
6 report required by subsection (b), the designated officials  
7 shall develop and transmit to the President and the Con-  
8 gress, and make publicly available, such proposals as may  
9 be necessary to implement adjustments to Federal laws,  
10 policies, or regulations, including to the Uniform Code of  
11 Military Justice, based on the recommendations required  
12 by subsection (b)(4), either through Executive order or  
13 through changes to statutory law.

14 **SEC. 5. RULE OF CONSTRUCTION.**

15 Nothing in this Act shall be construed to discourage  
16 the prosecution of individuals who intentionally transmit  
17 or attempt to transmit HIV to another individual.

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

19 This Act shall not be construed to increase the  
20 amount of appropriations that are authorized to be appro-  
21 priated for any fiscal year.

22 **SEC. 7. DEFINITIONS.**

23 For purposes of this Act:

24 (1) HIV AND HIV/AIDS.—The terms “HIV” and  
25 “HIV/AIDS” have the meanings given to such terms

1 in section 2689 of the Public Health Service Act (42  
2 U.S.C. 300ff-88).

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

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