

115TH CONGRESS
1ST SESSION

S. 2186

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 4, 2017

Mr. COONS (for himself, Ms. BALDWIN, Mr. MARKEY, Mr. CASEY, Mr. MURPHY, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To modernize laws and policies, 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 2017” or the “REPEAL HIV Discrimination Act
7 of 2017”.

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) When members of the Armed Forces ac-
25 quire HIV, they are issued orders that require them

1 to disclose under all circumstances including when
2 the known risk of transmission is zero. Failure to
3 disclose can result in prosecution under the Uniform
4 Code of Military Justice (UCMJ).

5 (5) The number of prosecutions, arrests, and
6 instances where HIV-specific criminal laws are used
7 to induce plea agreements is unknown. Because
8 State-level prosecution and arrest data are not read-
9 ily available in any national legal database, the soci-
10 etal impact of these laws may be underestimated and
11 most cases that go to trial are not reduced to writ-
12 ten, published opinions.

13 (6) State and Federal criminal law does not
14 currently reflect the three decades of medical ad-
15 vances and discoveries made with regard to trans-
16 mission and treatment of HIV/AIDS.

17 (7) According to the CDC, correct and con-
18 sistent male or female condom use is very effective
19 in preventing HIV transmission. However, most
20 State HIV-specific laws and prosecutions do not
21 treat the use of a condom during sexual intercourse
22 as a mitigating factor or evidence that the defendant
23 did not intend to transmit HIV.

24 (8) Criminal laws and prosecutions do not take
25 into account the benefits of effective antiretroviral

1 medications, which reduce the HIV virus to
2 undetectable levels and further reduce the already
3 low risk of transmitting the HIV to near zero.

4 (9) Although HIV/AIDS currently is viewed as
5 a treatable, chronic, medical condition, people living
6 with HIV/AIDS have been charged under aggra-
7 vated assault, attempted murder, and even bioter-
8 rorism statutes because prosecutors, courts, and leg-
9 islators continue to view and characterize the blood,
10 semen, and saliva of people living with HIV as a
11 “deadly weapon”.

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

1 (11) The identity of an individual accused of
2 violating existing HIV-specific restrictions is broad-
3 cast through media reports, potentially destroying
4 employment opportunities and relationships and vio-
5 lating the person’s right to privacy.

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

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

21 (14) The Global Commission on HIV and the
22 Law was launched in June 2010 to examine laws
23 and practices that criminalize people living with and
24 vulnerable to HIV and to develop evidence-based rec-
25 ommendations for effective HIV responses. The

1 Commission calls for “governments, civil society and
2 international bodies to repeal punitive laws and
3 enact laws that facilitate and enable effective re-
4 sponses to HIV prevention, care and treatment serv-
5 ices for all who need them”. The Commission rec-
6 ommends against the enactment of “laws that ex-
7 plicitly criminalize HIV transmission, exposure or
8 non-disclosure of HIV status, which are counter-
9 productive”.

10 (15) In 2010, the President released a National
11 HIV/AIDS Strategy (NHAS), which addressed HIV-
12 specific criminal laws, stating: “While we understand
13 the intent behind these laws, they may not have the
14 desired effect and they may make people less willing
15 to disclose their status by making people feel at even
16 greater risk of discrimination. In some cases, it may
17 be appropriate for legislators to reconsider whether
18 existing laws continue to further the public interest
19 and public health. In many instances, the continued
20 existence and enforcement of these types of laws run
21 counter to scientific evidence about routes of HIV
22 transmission and may undermine the public health
23 goals of promoting HIV screening and treatment.”.
24 The NHAS also states that State legislatures should
25 consider reviewing HIV-specific criminal statutes to

1 ensure that they are consistent with current knowl-
2 edge of HIV transmission and support public health
3 approaches to preventing and treating HIV.

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

11 **SEC. 3. SENSE OF CONGRESS REGARDING LAWS OR REGU-**
12 **LATIONS DIRECTED AT PEOPLE LIVING WITH**
13 **HIV.**

14 It is the sense of Congress that Federal and State
15 laws, policies, and regulations regarding people living with
16 HIV—

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

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

23 (A) the multiple factors that lead to HIV
24 transmission;

1 (B) the relative risk of demonstrated HIV
2 transmission routes;

3 (C) the current health implications of liv-
4 ing with HIV;

5 (D) the associated benefits of treatment
6 and support services for people living with HIV;
7 and

8 (E) the impact of punitive HIV-specific
9 laws, policies, regulations, and judicial prece-
10 dents and decisions on public health, on people
11 living with or affected by HIV, and on their
12 families and communities.

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

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

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

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

5 (A) Each State.

6 (B) State attorneys general (or their rep-
7 resentatives).

8 (C) State public health officials (or their
9 representatives).

10 (D) State judicial and court system offi-
11 cers, including judges, district attorneys, pros-
12 ecutors, defense attorneys, law enforcement,
13 and correctional officers.

14 (E) Members of the United States Armed
15 Forces, including members of other Federal
16 services subject to the UCMJ.

17 (F) People living with HIV/AIDS, particu-
18 larly those who have been subject to HIV-re-
19 lated prosecution or who are from communities
20 whose members have been disproportionately
21 subject to HIV-specific arrests and prosecution.

22 (G) Legal advocacy and HIV/AIDS service
23 organizations that work with people living with
24 HIV/AIDS.

1 (H) Nongovernmental health organizations
2 that work on behalf of people living with HIV/
3 AIDS.

4 (I) Trade organizations or associations
5 representing persons or entities described in
6 subparagraphs (A) through (G).

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

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

22 (1) For each State and for the UCMJ, a sum-
23 mary of the relevant laws, policies, regulations, and
24 judicial precedents and decisions regarding criminal

1 cases involving people living with HIV, including the
2 following:

3 (A) A determination of whether such laws,
4 policies, regulations, and judicial precedents
5 and decisions place any unique or additional
6 burdens upon people living with HIV.

7 (B) A determination of whether such laws,
8 policies, regulations, and judicial precedents
9 and decisions demonstrate a public health-ori-
10 ented, evidence-based, medically accurate, and
11 contemporary understanding of—

12 (i) the multiple factors that lead to
13 HIV transmission;

14 (ii) the relative risk of HIV trans-
15 mission routes;

16 (iii) the current health implications of
17 living with HIV;

18 (iv) the associated benefits of treat-
19 ment and support services for people living
20 with HIV; and

21 (v) the impact of punitive HIV-spe-
22 cific laws and policies on public health, on
23 people living with or affected by HIV, and
24 on their families and communities.

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

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

17 (2) An analysis of common elements shared be-
18 tween State laws, policies, regulations, and judicial
19 precedents.

20 (3) A set of best practice recommendations di-
21 rected to State governments, including State attor-
22 neys general, public health officials, and judicial offi-
23 cers, in order to ensure that laws, policies, regula-
24 tions, and judicial precedents regarding people living

1 with HIV are in accordance with the principles set
2 forth in section 3.

3 (4) Recommendations for adjustments to the
4 UCMJ, as may be necessary, in order to ensure that
5 laws, policies, regulations, and judicial precedents re-
6 garding people living with HIV/AIDS are in accord-
7 ance with the principles set forth in section 3. Such
8 recommendations should include any necessary and
9 appropriate changes to “Orders to Follow Preventa-
10 tive Medicine Requirements”.

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

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

1 statewide implementation in each State of the best prac-
2 tice recommendations required in subsection (b)(3).

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

13 **SEC. 5. RULE OF CONSTRUCTION.**

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

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

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

21 **SEC. 7. DEFINITIONS.**

22 For purposes of this Act:

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

1 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.

○