H. R. 6054

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

IN THE HOUSE OF REPRESENTATIVES

March 2, 2020

Ms. Lee of California (for herself, Mr. Khanna, Ms. Jackson Lee, Mr. Cicilline, Mrs. Watson Coleman, Mr. Payne, Ms. Haaland, Mr. Swalwell of California, Mr. Foster, Mr. Grijalva, Mr. Schiff, Mr. Nadler, Ms. McCollum, Mr. Kilmer, Mr. Hastings, Mr. Johnson of Georgia, Ms. Moore, Mr. Panetta, Mr. Price of North Carolina, Mr. Crist, Mr. Pocan, Mr. McGovern, Ms. Wasserman Schultz, Ms. Norton, Ms. Bass, Mr. Lewis, Mr. Quigley, Ms. Kelly of Illinois, Ms. Meng, Ms. Schakowsky, and Mr. Blumenauer) 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 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,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Repeal Existing Policies that Encourage and Allow Legal HIV Discrimination Act of 2020” or the “REPEAL HIV Discrimination Act of 2020”.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) At present, 34 States and 2 United States territories have criminal statutes based on perceived exposure to HIV, rather than behaviors motivated by an intent to harm, presenting a significant risk of transmission and resulting in actual transmission of HIV to another. Eleven States have HIV-specific laws that make spitting or biting a felony, even though it is not possible to transmit HIV via saliva. Twenty-four States require persons who are aware that they have HIV to disclose their status to sexual partners, regardless of whether they are non-infected. Fourteen of these 24 States also require disclosure to needle-sharing partners. Twenty-five States criminalize one or more behaviors that pose a low or negligible risk for HIV transmission.

(2) HIV-specific criminal laws are classified as felonies in 28 States; in three States, a person’s exposure to another to HIV does not subject the person to criminal prosecution for that act alone, but
may result in a sentence enhancement. Eighteen States impose sentences of up to 10 years per violation; seven impose sentences between 11 and 20 years; and five impose sentences of greater than 20 years.

(3) When members of the Armed Forces acquire HIV, they are issued orders that require them to disclose and use a condom under all circumstances including when the known risk of transmission is zero. Failure to disclose can result in prosecution under the Uniform Code of Military Justice (UCMJ).

(4) The number of prosecutions, arrests, and instances where HIV-based charges are used to induce plea agreements is unknown. Because State-level prosecution and arrest data are not readily available in any national legal database, the societal impact of these laws may be underestimated and most cases that go to trial are not reduced to written, published opinions.

(5) State and Federal criminal law does not currently reflect the three decades of medical advances and discoveries made with regard to transmission and treatment of HIV/AIDS.
(6) According to CDC, correct and consistent male or female condom use is very effective in preventing HIV transmission. However, most State HIV-specific laws and prosecutions do not treat the use of a condom during sexual intercourse as a mitigating factor or evidence that the defendant did not intend to transmit HIV.

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

(8) In addition to HIV-specific criminal laws, general criminal laws are often misused to prosecute people based on their HIV status. Although HIV, and even AIDS, currently is viewed as a treatable, chronic, medical condition, people living with HIV have been charged under aggravated assault, attempted murder, and even bioterrorism statutes because prosecutors, courts, and legislators continue to view and characterize the blood, semen, and saliva of people living with HIV as a “deadly weapon”.

(9) Multiple peer-reviewed studies demonstrate that HIV-specific laws do not reduce risk-taking behavior or increase disclosure by people living with or
at risk of HIV, and there is increasing evidence that these laws reduce the willingness to get tested. Fur-
thermore, placing legal responsibility for preventing the transmission of HIV and other pathogens that can be sexually transmitted exclusively on people diagnosed with a sexually transmitted infection undermines the public health message that all people are responsible for practicing behaviors that protect themselves from HIV and other sexually transmitted infections. Unfortunately, some State laws create an expectation of disclosure work against public health communication and discourage risk-reduction measures that could prevent transmission as a result of those who are acutely infected and unaware of their status.

(10) The identity of an individual subject to an HIV-based prosecution is broadcast through media reports, potentially destroying employment opportunities and relationships and violating the person’s right to privacy.

(11) Individuals who are convicted after an HIV-based prosecution often must register as sex offenders even in cases involving consensual sexual activity. Their employability is destroyed, and their family relationships are fractured.
(12) The United Nations, including the Joint United Nations Programme on HIV/AIDS (UNAIDS), urges governments to “limit criminalization to cases of intentional transmission.” This requirement would limit prosecutions to situations “where a person knows his or her HIV-positive status, acts with the intention to transmit HIV, and does in fact transmit it”. UNAIDS also recommends that criminal law should not be applied to cases where there is no significant risk of transmission.

(13) In 2010, the Federal Government released the first ever National HIV/AIDS Strategy (NHAS), which addressed HIV-specific criminal laws, stating: “While we understand the intent behind these laws, they may not have the desired effect and they may make people less willing to disclose their status by making people feel at even greater risk of discrimination. In some cases, it may be appropriate for legislators to reconsider whether existing laws continue to further the public interest and public health. In many instances, the continued existence and enforcement of these types of laws run counter to scientific evidence about routes of HIV transmission and may undermine the public health goals of promoting HIV screening and treatment.”. The NHAS also states
that State legislatures should consider reviewing
HIV-specific criminal statutes to ensure that they
are consistent with current knowledge of HIV trans-
mission and support public health approaches to pre-
venting and treating HIV.

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

(15) In February 2019, the Department of
Health and Human Services (HHS) launched “End-
ing the HIV Epidemic: A Plan for America,” a new
initiative with an ambitious goal to end the domestic
HIV epidemic in ten years by reducing new cases of
HIV by 75 percent by 2025 and by 90 percent by
2030. In this plan, HHS notes that stigma “can be a debilitating barrier preventing people living with, or at risk for, HIV from receiving the health care, services, and respect they need and deserve.” Many of the States and jurisdictions identified as a priority for the first five years of the plan have stigma-based criminal statutes for perceived exposure to HIV. These statutes run counter to the goals of this new initiative and stand in the way of ending the domestic HIV epidemic.

SEC. 3. SENSE OF CONGRESS REGARDING LAWS OR REGULATIONS DIRECTED AT PEOPLE LIVING WITH HIV.

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

(1) should not place unique or additional burdens on such individuals solely as a result of their HIV status; and

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

(A) the multiple factors that lead to HIV transmission;
(B) the relative risk of demonstrated HIV transmission routes;

(C) the current health implications of living with HIV;

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

(E) the impact of punitive HIV-specific laws, policies, regulations, and judicial precedents and decisions on public health, on people living with or affected by HIV, and on their families and communities.

SEC. 4. REVIEW OF FEDERAL AND STATE LAWS.

(a) Review of Federal and State Laws.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Attorney General, the Secretary of Health and Human Services, and the Secretary of Defense acting jointly (in this section referred to as the “designated officials”) shall initiate a national review of Federal and State laws, policies, regulations, and judicial precedents and decisions regarding criminal and related civil commitment cases involving people living with HIV/AIDS, including in regard to the Uniform Code of Military Justice (UCMJ).
(2) CONSULTATION.—In carrying out the re-
view under paragraph (1), the designated officials
shall seek to include diverse participation from, and
consultation with, each of the following:

(A) Each State.

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

(C) State public health officials (or their rep-
resentatives).

(D) State judicial and court system offi-
cers, including judges, district attorneys, pros-
cecutors, defense attorneys, law enforcement,
and correctional officers.

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

(F) People living with HIV/AIDS, particu-
larly those who have been subject to HIV-re-
lated prosecution or who are from minority
communities whose members have been dis-
proportionately subject to HIV-specific arrests
and prosecution.

(G) Legal advocacy and HIV/AIDS service
organizations that work with people living with
HIV/AIDS.
(H) Nongovernmental health organizations that work on behalf of people living with HIV/AIDS.

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

(3) Relation to other reviews.—In carrying out the review under paragraph (1), the designated officials may utilize other existing reviews of criminal and related civil commitment cases involving people living with HIV, including any such review conducted by any Federal or State agency or any public health, legal advocacy, or trade organization or association if the designated officials determines that such reviews were conducted in accordance with the principles set forth in section 3.

(b) Report.—Not later than 180 days after initiating the review required by subsection (a), the Attorney General shall transmit to the Congress and make publicly available a report containing the results of the review, which includes the following:

(1) For each State and for the UCMJ, a summary of the relevant laws, policies, regulations, and judicial precedents and decisions regarding criminal
cases involving people living with HIV, including the
following:

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

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

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

(ii) the relative risk of HIV trans-
mission routes, including that a person
that has an undetectable viral load cannot
transmit the disease;

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

(iv) the current status of providing
protection to people who engage in survival
sex work against whom condom possession
has been used as evidence to intent to com-
mit a crime;
(v) States that have the classification of mandatory sex offenders;

(vi) the associated benefits of treatment and support services for people living with HIV; and

(vii) the impact of punitive HIV-specific laws and policies on public health, on people living with or affected by HIV, and on their families and communities, including people who are in abusive, dependent, violent, and non-consensual relationships and are unable to both negotiate the use of condoms and status disclosure.

(C) An analysis of the public health and legal implications of such laws, policies, regulations, and judicial precedents and decisions, including an analysis of the consequences of having a similar penal scheme applied to comparable situations involving other communicable diseases.

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

(2) An analysis of common elements shared between State laws, policies, regulations, and judicial precedents.

(3) A set of best practice recommendations directed to State governments, including State attorneys general, public health officials, and judicial officers, in order to ensure that laws, policies, regulations, and judicial precedents regarding people living with HIV are in accordance with the principles set forth in section 3.

(4) Recommendations for adjustments to the UCMJ, including discontinuing the use of a service member’s HIV diagnosis as the basis for prosecution, enhanced penalties, or discharge from military service, in order to ensure that laws, policies, regulations, and judicial precedents regarding people living with HIV are in accordance with the principles set forth in section 3. Such recommendations should include any necessary and appropriate changes to “Orders to Follow Preventative Medicine Requirements”.

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(c) GUIDANCE.—Within 90 days of the release of the report required by subsection (b), the Attorney General and the Secretary of Health and Human Services, acting jointly, shall develop and publicly release updated guidance for States based on the set of best practice recommendations required by subsection (b)(3) in order to assist States dealing with criminal and related civil commitment cases regarding people living with HIV.

(d) MONITORING AND EVALUATION SYSTEM.—Within 60 days of the release of the guidance required by subsection (c), the Attorney General and the Secretary of Health and Human Services, acting jointly, shall establish an integrated monitoring and evaluation system which includes, where appropriate, objective and quantifiable performance goals and indicators to measure progress toward statewide implementation in each State of the best practice recommendations required in subsection (b)(3).

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

SEC. 5. RULE OF CONSTRUCTION.

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

SEC. 6. NO ADDITIONAL APPROPRIATIONS AUTHORIZED.

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

SEC. 7. DEFINITIONS.

For purposes of this Act:

(1) HIV AND HIV/AIDS.—The terms “HIV” and
“HIV/AIDS” have the meanings given to them in
section 2689 of the Public Health Service Act (42

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