

117TH CONGRESS
1ST SESSION

H. R. 1305

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

FEBRUARY 24, 2021

Ms. LEE of California (for herself, Miss GONZÁLEZ-COLÓN, Mr. KHANNA, Mrs. WATSON COLEMAN, Mr. SIRES, Mr. HASTINGS, Mr. FOSTER, Ms. MCCOLLUM, Mr. CICILLINE, Mr. SCHIFF, Mr. PRICE of North Carolina, Ms. WASSERMAN SCHULTZ, Mr. KILMER, Mr. CARSON, Ms. WILSON of Florida, Mr. SWALWELL, Mr. POCAN, Mrs. HAYES, Ms. MOORE of Wisconsin, Ms. CHU, Ms. BASS, and Mr. MCGOVERN) 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,*

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

1 Act of 2021” or the “REPEAL HIV Discrimination Act
2 of 2021”.

3 **SEC. 2. FINDINGS.**

4 The Congress makes the following findings:

5 (1) At present, 32 States and 2 United States
6 territories have criminal statutes based on perceived
7 exposure to HIV, rather than behaviors motivated by
8 an intent to harm, presenting a significant risk of
9 transmission and resulting in actual transmission of
10 HIV to another. Eleven States have HIV-specific
11 laws that make spitting or biting a felony, even
12 though it is not possible to transmit HIV via saliva.
13 Twenty-four States require persons who are aware
14 that they have HIV to disclose their status to sexual
15 partners, regardless of whether they are non-infec-
16 tious. Fourteen of these 24 States also require dis-
17 closure to needle-sharing partners. Twenty-five
18 States criminalize one or more behaviors that pose
19 a low or negligible risk for HIV transmission.

20 (2) HIV-specific criminal laws are classified as
21 felonies in 28 States; in three States, a person’s ex-
22 posure to another to HIV does not subject the per-
23 son to criminal prosecution for that act alone but
24 may result in a sentence enhancement. Eighteen
25 States impose sentences of up to 10 years per viola-

1 tion; seven impose sentences between 11 and 20
2 years; and five impose sentences of greater than 20
3 years.

4 (3) When members of the Armed Forces ac-
5 quire HIV, they are issued orders that require them
6 to disclose and use a condom under all cir-
7 cumstances including when the known risk of trans-
8 mission is zero. Failure to disclose can result in
9 prosecution under the Uniform Code of Military Jus-
10 tice (UCMJ).

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

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

23 (6) According to CDC, correct and consistent
24 male or female condom use, or adherence to a pre-
25 exposure prophylaxis (PrEP) regimen that results in

1 viral suppression, are very effective in preventing
2 HIV transmission. However, most State HIV-spe-
3 cific laws and prosecutions do not treat the use of
4 a condom during sexual intercourse or adherence to
5 PrEP as a mitigating factor or evidence that the de-
6 fendant did not intend to transmit HIV.

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

12 (8) In addition to HIV-specific criminal laws,
13 general criminal laws are often misused to prosecute
14 people based on their HIV status. Although HIV,
15 and even AIDS, currently is viewed as a treatable,
16 chronic, medical condition, people living with HIV
17 have been charged under aggravated assault, at-
18 tempted murder, and even bioterrorism statutes be-
19 cause prosecutors, courts, and legislators continue to
20 view and characterize the blood, semen, and saliva of
21 people living with HIV as a “deadly weapon”.

22 (9) Multiple peer-reviewed studies demonstrate
23 that HIV-specific laws do not reduce risk-taking be-
24 havior or increase disclosure by people living with or
25 at risk of HIV, and there is increasing evidence that

1 these laws reduce the willingness to get tested. Fur-
2 thermore, placing legal responsibility for preventing
3 the transmission of HIV and other pathogens that
4 can be sexually transmitted exclusively on people di-
5 agnosed with a sexually transmitted infection under-
6 mines the public health message that all people are
7 responsible for practicing behaviors that protect
8 themselves from HIV and other sexually transmitted
9 infections. Unfortunately, some State laws create an
10 expectation of disclosure work against public health
11 communication and discourage risk-reduction meas-
12 ures that could prevent transmission as a result of
13 those who are acutely infected and unaware of their
14 status.

15 (10) The identity of an individual subject to an
16 HIV-based prosecution is broadcast through media
17 reports, potentially destroying employment opportu-
18 nities and relationships and violating the person's
19 right to privacy.

20 (11) Individuals who are convicted after an
21 HIV-based prosecution often must register as sex of-
22 fenders even in cases involving consensual sexual ac-
23 tivity. Their employability is destroyed, and their
24 family relationships are fractured.

1 (12) The United Nations, including the Joint
2 United Nations Programme on HIV/AIDS
3 (UNAIDS), urges governments to “limit criminaliza-
4 tion to cases of intentional transmission.” This re-
5 quirement would limit prosecutions to situations
6 “where a person knows his or her HIV-positive sta-
7 tus, acts with the intention to transmit HIV, and
8 does in fact transmit it”. UNAIDS also recommends
9 that criminal law should not be applied to cases
10 where there is no significant risk of transmission.

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

1 that State legislatures should consider reviewing
2 HIV-specific criminal statutes to ensure that they
3 are consistent with current knowledge of HIV trans-
4 mission and support public health approaches to pre-
5 venting and treating HIV.

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

20 (15) In February 2019, the Department of
21 Health and Human Services (HHS) launched “End-
22 ing the HIV Epidemic: A Plan for America,” a new
23 initiative with an ambitious goal to end the domestic
24 HIV epidemic in ten years by reducing new cases of
25 HIV by 75 percent by 2025 and by 90 percent by

1 2030. In this plan, HHS notes that stigma “can be
2 a debilitating barrier preventing people living with,
3 or at risk for, HIV from receiving the health care,
4 services, and respect they need and deserve.” Many
5 of the States and jurisdictions identified as a pri-
6 ority for the first five years of the plan have stigma-
7 based criminal statutes for perceived exposure to
8 HIV. These statutes run counter to the goals of this
9 new initiative and stand in the way of ending the do-
10 mestic HIV epidemic.

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 minority
20 communities whose members have been dis-
21 proportionately subject to HIV-specific arrests
22 and prosecution.

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

1 (H) Nongovernmental health organizations
2 that work on behalf of people living with HIV/
3 AIDS, including syringe services programs,
4 LGBTQ-focused health organizations, and orga-
5 nizations who serve people who engage in sex
6 work.

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

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

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

1 (1) For each State and for the UCMJ, a sum-
2 mary of the relevant laws, policies, regulations, and
3 judicial precedents and decisions regarding criminal
4 cases involving people living with HIV, including the
5 following:

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

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

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

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

21 (iii) the current health implications of
22 living with HIV, including data
23 disaggregated by race and ethnicity;

24 (iv) the current status of providing
25 protection to people who engage in survival

1 sex work against whom condom possession
2 has been used as evidence to intent to com-
3 mit a crime;

4 (v) States that have the classification
5 of mandatory sex offenders;

6 (vi) the associated benefits of treat-
7 ment and support services for people living
8 with HIV; and

9 (vii) the impact of punitive HIV-spe-
10 cific laws and policies on public health, on
11 people living with or affected by HIV, and
12 on their families and communities, includ-
13 ing people who are in abusive, dependent,
14 violent, and non-consensual relationships
15 and are unable to both negotiate the use of
16 condoms and status disclosure.

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

24 (D) An analysis of the proportionality of
25 punishments imposed under HIV-specific laws,

1 policies, regulations, and judicial precedents,
2 taking into consideration penalties attached to
3 violation of State laws against similar degrees
4 of endangerment or harm, such as driving while
5 intoxicated (DWI) or transmission of other
6 communicable diseases, or more serious harms,
7 such as vehicular manslaughter offenses.

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

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

18 (4) Recommendations for adjustments to the
19 UCMJ, including discontinuing the use of a service
20 member's HIV diagnosis as the basis for prosecu-
21 tion, enhanced penalties, or discharge from military
22 service, in order to ensure that laws, policies, regula-
23 tions, and judicial precedents regarding people living
24 with HIV are in accordance with the principles set
25 forth in section 3. Such recommendations should in-

1 clude any necessary and appropriate changes to “Or-
2 ders to Follow Preventative Medicine Require-
3 ments”.

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

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

21 (e) MODERNIZATION OF FEDERAL LAWS, POLICIES,
22 AND REGULATIONS.—Within 90 days of the release of the
23 report required by subsection (b), the designated officials
24 shall develop and transmit to the President and the Con-
25 gress, and make publicly available, such proposals as may

1 be necessary to implement adjustments to Federal laws,
2 policies, or regulations, including to the Uniform Code of
3 Military Justice, based on the recommendations required
4 by subsection (b)(4), either through Executive order or
5 through changes to statutory law.

6 **SEC. 5. RULE OF CONSTRUCTION.**

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

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

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

14 **SEC. 7. DEFINITIONS.**

15 For purposes of this Act:

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

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

○