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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R.

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

Ms. LEE of California introduced the following bill; which was referred to the Committee on _____

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 2021” or the “REPEAL HIV Discrimination Act
7 of 2021”.

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

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

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

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

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

20 (6) According to CDC, correct and consistent
21 male or female condom use, or adherence to a pre-
22 exposure prophylaxis (PrEP) regimen that results in
23 viral suppression, are very effective in preventing
24 HIV transmission. However, most State HIV-spe-
25 cific laws and prosecutions do not treat the use of

1 a condom during sexual intercourse or adherence to
2 PrEP as a mitigating factor or evidence that the de-
3 fendant did not intend to transmit HIV.

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

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

19 (9) Multiple peer-reviewed studies demonstrate
20 that HIV-specific laws do not reduce risk-taking be-
21 havior or increase disclosure by people living with or
22 at risk of HIV, and there is increasing evidence that
23 these laws reduce the willingness to get tested. Fur-
24 thermore, placing legal responsibility for preventing
25 the transmission of HIV and other pathogens that

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

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

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

22 (12) The United Nations, including the Joint
23 United Nations Programme on HIV/AIDS
24 (UNAIDS), urges governments to "limit criminaliza-
25 tion to cases of intentional transmission." This re-

1 requirement would limit prosecutions to situations
2 “where a person knows his or her HIV-positive sta-
3 tus, acts with the intention to transmit HIV, and
4 does in fact transmit it”. UNAIDS also recommends
5 that criminal law should not be applied to cases
6 where there is no significant risk of transmission.

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

1 mission and support public health approaches to pre-
2 venting and treating HIV.

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

17 (15) In February 2019, the Department of
18 Health and Human Services (HHS) launched “End-
19 ing the HIV Epidemic: A Plan for America,” a new
20 initiative with an ambitious goal to end the domestic
21 HIV epidemic in ten years by reducing new cases of
22 HIV by 75 percent by 2025 and by 90 percent by
23 2030. In this plan, HHS notes that stigma “can be
24 a debilitating barrier preventing people living with,
25 or at risk for, HIV from receiving the health care,

1 services, and respect they need and deserve.” Many
2 of the States and jurisdictions identified as a pri-
3 ority for the first five years of the plan have stigma-
4 based criminal statutes for perceived exposure to
5 HIV. These statutes run counter to the goals of this
6 new initiative and stand in the way of ending the do-
7 mestic HIV epidemic.

8 **SEC. 3. SENSE OF CONGRESS REGARDING LAWS OR REGU-**
9 **LATIONS DIRECTED AT PEOPLE LIVING WITH**
10 **HIV.**

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

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

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

20 (A) the multiple factors that lead to HIV
21 transmission;

22 (B) the relative risk of demonstrated HIV
23 transmission routes;

24 (C) the current health implications of liv-
25 ing with HIV;

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

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

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

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

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

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

1 (A) Each State.

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

4 (C) State public health officials (or their
5 representatives).

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

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

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

19 (G) Legal advocacy and HIV/AIDS service
20 organizations that work with people living with
21 HIV/AIDS.

22 (H) Nongovernmental health organizations
23 that work on behalf of people living with HIV/
24 AIDS, including syringe services programs,
25 LGBTQ-focused health organizations, and orga-

1 nizations who serve people who engage in sex
2 work.

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

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

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

21 (1) For each State and for the UCMJ, a sum-
22 mary of the relevant laws, policies, regulations, and
23 judicial precedents and decisions regarding criminal
24 cases involving people living with HIV, including the
25 following:

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

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

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

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

16 (iii) the current health implications of
17 living with HIV, including data
18 disaggregated by race and ethnicity;

19 (iv) the current status of providing
20 protection to people who engage in survival
21 sex work against whom condom possession
22 has been used as evidence to intent to com-
23 mit a crime;

24 (v) States that have the classification
25 of mandatory sex offenders;

1 (vi) the associated benefits of treat-
2 ment and support services for people living
3 with HIV; and

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

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

19 (D) An analysis of the proportionality of
20 punishments imposed under HIV-specific laws,
21 policies, regulations, and judicial precedents,
22 taking into consideration penalties attached to
23 violation of State laws against similar degrees
24 of endangerment or harm, such as driving while
25 intoxicated (DWI) or transmission of other

1 communicable diseases, or more serious harms,
2 such as vehicular manslaughter offenses.

3 (2) An analysis of common elements shared be-
4 tween State laws, policies, regulations, and judicial
5 precedents.

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

13 (4) Recommendations for adjustments to the
14 UCMJ, including discontinuing the use of a service
15 member's HIV diagnosis as the basis for prosecu-
16 tion, enhanced penalties, or discharge from military
17 service, in order to ensure that laws, policies, regula-
18 tions, and judicial precedents regarding people living
19 with HIV are in accordance with the principles set
20 forth in section 3. Such recommendations should in-
21 clude any necessary and appropriate changes to "Or-
22 ders to Follow Preventative Medicine Require-
23 ments".

24 (c) GUIDANCE.—Within 90 days of the release of the
25 report required by subsection (b), the Attorney General

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

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

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

1 **SEC. 5. RULE OF CONSTRUCTION.**

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

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

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

9 **SEC. 7. DEFINITIONS.**

10 For purposes of this Act:

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

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