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”.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) At present, 32 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-infectious. 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 four 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, or adherence to a pre-exposure prophylaxis (PrEP) regimen that results in viral suppression, are 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 or adherence to PrEP 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. Furthermore, placing legal responsibility for preventing the transmission of HIV and other pathogens that
can be sexually transmitted exclusively on people di-
agnosed with a sexually transmitted infection under-
mines 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 meas-
ures 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 opportu-
unities 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 of-
fenders even in cases involving consensual sexual ac-
tivity. 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 criminaliza-
tion to cases of intentional transmission.” This re-
requirement would limit prosecutions to situations
“where a person knows his or her HIV-positive sta-
tus, 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 discrimi-
nation. In some cases, it may be appropriate for leg-
islators to reconsider whether existing laws continue
to further the public interest and public health. In
many instances, the continued existence and enforce-
ment 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 preventing 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 recommendations 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 responses to HIV prevention, care and treatment services for all who need them”. The Commission recommends against the enactment of “laws that explicitly 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 “Ending 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 review 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 representatives).

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

(D) State judicial and court system officers, including judges, district attorneys, prosecutors, 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, particularly those who have been subject to HIV-related prosecution or who are from minority communities whose members have been disproportionately 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, including syringe services programs, LGBTQ-focused health organizations, and orga-
nizations who serve people who engage in sex
work.

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

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

(b) Report.—Not later than 180 days after initi-
ating 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 sum-
mary 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-oriented, evidence-based, medically accurate, and contemporary understanding of—

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

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

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

(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 commit 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”.

(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 appropriated 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 U.S.C. 300ff–88).

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