

114TH CONGRESS
1ST SESSION

S. 2336

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 1, 2015

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

A BILL

To modernize laws, 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 2015” or the “REPEAL HIV Discrimination Act
7 of 2015”.

8 **SEC. 2. FINDINGS.**

9 The Congress makes the following findings:

1 (1) At present, 32 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. Thirteen 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 (2) According to the Centers for Disease Con-
8 trol and Prevention (CDC), HIV is only transmitted
9 through blood, semen, vaginal fluid, and breast milk.

10 (3) Prosecutions for perceived exposure, non-
11 disclosure, or unintentional transmission of HIV
12 have occurred in at least 39 States under general or
13 HIV-specific laws.

14 (4) Even in the absence of HIV transmission,
15 people living with HIV have been given sentences of
16 up to 35 years based on exaggerated fears of HIV,
17 regardless of actual risk of transmission.

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

22 (6) According to CDC, correct and consistent
23 male or female condom use is very effective in pre-
24 venting HIV transmission. However, most State
25 HIV-specific laws and prosecutions do not treat the

1 use of a condom during sexual intercourse as a miti-
2 gating factor or evidence that the defendant did not
3 intend to transmit HIV.

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

9 (8) Although HIV/AIDS currently is viewed as
10 a treatable, chronic, medical condition, people living
11 with HIV have been charged under aggravated as-
12 sault, attempted murder, and even bioterrorism stat-
13 utes because prosecutors, courts, and legislators con-
14 tinue to view and characterize the blood, semen, and
15 saliva of people living with HIV as a “deadly weap-
16 on”.

17 (9) Multiple peer-reviewed studies demonstrate
18 that HIV-specific laws do not reduce risk-taking be-
19 havior or increase disclosure by people living with or
20 at risk of HIV, and there is increasing evidence that
21 these laws reduce the willingness to get tested. Fur-
22 thermore, placing legal responsibility for preventing
23 the transmission of HIV and other pathogens exclu-
24 sively on people diagnosed with HIV, and without
25 consideration of other pathogens that can be sexu-

1 ally transmitted, undermines the public health mes-
2 sage that all people should practice behaviors that
3 protect themselves and their partners from HIV and
4 other sexually transmitted diseases.

5 (10) The identity of an individual accused of
6 violating existing HIV-specific restrictions is broad-
7 cast through media reports, potentially destroying
8 employment opportunities and relationships and vio-
9 lating the person's right to privacy.

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

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

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

15 (14) In 2010, the President released a National
16 HIV/AIDS Strategy (NHAS), which addressed HIV-
17 specific criminal laws, stating: “[W]hile we under-
18 stand the intent behind [these] laws, they may not
19 have the desired effect and they may make people
20 less willing to disclose their status by making people
21 feel at even greater risk of discrimination. In some
22 cases, it may be appropriate for legislators to recon-
23 sider whether existing laws continue to further the
24 public interest and public health. In many instances,
25 the continued existence and enforcement of these

1 types of laws run counter to scientific evidence about
 2 routes of HIV transmission and may undermine the
 3 public health goals of promoting HIV screening and
 4 treatment.”. The NHAS also states that State legis-
 5 latures should consider reviewing HIV-specific crimi-
 6 nal statutes to ensure that they are consistent with
 7 current knowledge of HIV transmission and support
 8 public health approaches to preventing and treating
 9 HIV.

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

17 **SEC. 3. SENSE OF CONGRESS REGARDING LAWS OR REGU-**
 18 **LATIONS DIRECTED AT PEOPLE LIVING WITH**
 19 **HIV/AIDS.**

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

23 (1) should not place unique or additional bur-
 24 dens on such individuals solely as a result of their
 25 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

1 laws, policies, regulations, and judicial precedents
2 and decisions regarding criminal and related civil
3 commitment cases involving people living with HIV/
4 AIDS, including in regard to the Uniform Code of
5 Military Justice.

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

10 (A) Each State.

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

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

15 (D) State judicial and court system offi-
16 cers, including judges, district attorneys, pros-
17 ecutors, defense attorneys, law enforcement,
18 and correctional officers.

19 (E) Members of the United States Armed
20 Forces, including members of other Federal
21 services subject to the Uniform Code of Military
22 Justice.

23 (F) People living with HIV/AIDS, particu-
24 larly those who have been subject to HIV-re-
25 lated prosecution or who are from communities

1 whose members have been disproportionately
2 subject to HIV-specific arrests and prosecution.

3 (G) Legal advocacy and HIV/AIDS service
4 organizations that work with people living with
5 HIV/AIDS.

6 (H) Nongovernmental health organizations
7 that work on behalf of people living with HIV/
8 AIDS.

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

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

22 (b) REPORT.—Not later than 180 days after initi-
23 ating the review required by subsection (a), the Attorney
24 General shall transmit to the Congress and make publicly

1 available a report containing the results of the review,
 2 which includes the following:

3 (1) For each State and for the Uniform Code
 4 of Military Justice, a summary of the relevant laws,
 5 policies, regulations, and judicial precedents and de-
 6 cisions regarding criminal cases involving people liv-
 7 ing with HIV/AIDS, including the following:

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

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

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

19 (ii) the relative risk of HIV trans-
 20 mission routes;

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

23 (iv) the associated benefits of treat-
 24 ment and support services for people living
 25 with HIV; and

1 (v) the impact of punitive HIV-spe-
2 cific laws and policies on public health, on
3 people living with or affected by HIV, and
4 on their families and communities.

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

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

21 (2) An analysis of common elements shared be-
22 tween State laws, policies, regulations, and judicial
23 precedents.

24 (3) A set of best practice recommendations di-
25 rected to State governments, including State attor-

1 neys general, public health officials, and judicial offi-
2 cers, in order to ensure that laws, policies, regula-
3 tions, and judicial precedents regarding people living
4 with HIV/AIDS are in accordance with the prin-
5 ciples set forth in section 3.

6 (4) Recommendations for adjustments to the
7 Uniform Code of Military Justice, as may be nec-
8 essary, in order to ensure that laws, policies, regula-
9 tions, and judicial precedents regarding people living
10 with HIV/AIDS are in accordance with the prin-
11 ciples set forth in section 3.

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

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

1 formance goals and indicators to measure progress toward
 2 statewide implementation in each State of the best prac-
 3 tice recommendations required in subsection (b)(3).

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

14 **SEC. 5. RULE OF CONSTRUCTION.**

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

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

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

22 **SEC. 7. DEFINITIONS.**

23 For purposes of this Act:

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

1 in 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.

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