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H. R. 6111

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

DECEMBER 1, 2021

Ms. LEE of California (for herself, Miss GONZÁLEZ-COLÓN, Ms. SHERRILL, Mr. KILMER, Mr. PRICE of North Carolina, Mrs. WATSON COLEMAN, Mr. MALINOWSKI, Mr. TONKO, Mr. KHANNA, Mrs. CAROLYN B. MALONEY of New York, Mr. PANETTA, Ms. NORTON, Ms. BARRAGÁN, Ms. WILLIAMS of Georgia, Mr. CICILLINE, Mr. RUSH, Mr. TAKANO, Mr. QUIGLEY, Ms. BASS, Mr. SWALWELL, Mr. POCAN, Mr. JOHNSON of Georgia, Ms. WASSERMAN SCHULTZ, Ms. MENG, Mr. CARSON, Mr. LIEU, Ms. PRESSLEY, Ms. JACKSON LEE, Mr. DANNY K. DAVIS of Illinois, and Mr. BUTTERFIELD) 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Repeal Existing Poli-
3 cies that Encourage and Allow Legal HIV Discrimination
4 Act of 2022” or the “REPEAL HIV Discrimination Act
5 of 2022”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

8 (1) At present, 31 States and 2 United States
9 territories have criminal statutes based on perceived
10 exposure to HIV, rather than behaviors motivated by
11 an intent to harm, presenting a significant risk of
12 transmission and resulting in actual transmission of
13 HIV to another. Eleven States have HIV-specific
14 laws that make spitting or biting a felony, even
15 though it is not possible to transmit HIV via saliva.
16 Twenty-four States require persons who are aware
17 that they have HIV to disclose their status to sexual
18 partners, regardless of whether they are non-infec-
19 tious. Fourteen of these 24 States also require dis-
20 closure to needle-sharing partners. Twenty-five
21 States criminalize one or more behaviors that pose
22 a low or negligible risk for HIV transmission.

23 (2) HIV-specific criminal laws are classified as
24 felonies in 28 States. Eighteen States impose sen-
25 tences of up to 10 years per violation; seven impose

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

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

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

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

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

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

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

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

21 (9) Multiple peer-reviewed studies demonstrate
22 that HIV-specific laws do not reduce risk-taking be-
23 havior or increase disclosure by people living with
24 HIV, and there is increasing evidence that these
25 laws reduce the willingness to get tested. Further-

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

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

19 (11) Individuals who are convicted after an
20 HIV-based prosecution often must register as sex of-
21 fenders in at least six States for consensual sexual
22 behavior. Their employability, housing, and par-
23 enting options are jeopardized and their family rela-
24 tionships 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 ON FEDERAL LAW AND UPDATED REVIEW**
14 **OF STATE LAWS.**

15 (a) REVIEW OF FEDERAL LAW AND UPDATED RE-
16 VIEW OF STATE LAWS.—

17 (1) IN GENERAL.—Not later than 90 days after
18 the date of the enactment of this Act, the Attorney
19 General, the Secretary of Health and Human Serv-
20 ices, the Secretary of Defense, and the Director of
21 the White House Office of National AIDS Policy,
22 acting jointly (in this section referred to as the “des-
23 ignated officials”) shall initiate—

24 (A) a review of Federal laws, policies, reg-
25 ulations, and judicial precedents and decisions

1 regarding criminal and related civil commitment
2 cases involving people living with HIV/AIDS,
3 including in regard to the Uniform Code of
4 Military Justice; and

5 (B) an updated national review of State
6 laws, policies, regulations, and judicial prece-
7 dents and decisions regarding criminal and re-
8 lated civil commitment cases involving people
9 living with HIV/AIDS.

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

14 (A) Each State.

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

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

19 (D) State judicial and court system offi-
20 cers, including judges, district attorneys, pros-
21 ecutors, defense attorneys, law enforcement,
22 and correctional officers.

23 (E) Members of the United States Armed
24 Forces, including members of other Federal

1 services subject to the Uniform Code of Military
2 Justice.

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

9 (G) Legal advocacy and HIV/AIDS service
10 organizations that work with people living with
11 HIV/AIDS and community advocates experi-
12 enced in the application of the criminal law to
13 HIV.

14 (H) Nongovernmental health organizations
15 that work on behalf of people living with HIV/
16 AIDS, including syringe services programs,
17 LGBTQ-focused health organizations, and orga-
18 nizations who serve people who engage in sex
19 work.

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

23 (3) RELATION TO OTHER REVIEWS.—In car-
24 rying out the review under paragraph (1), the des-
25 ignated officials may utilize other existing reviews of

1 criminal and related civil commitment cases involv-
2 ing people living with HIV, including any such re-
3 view conducted by any Federal or State agency or
4 any public health, legal advocacy, or trade organiza-
5 tion or association if the designated officials deter-
6 mines that such reviews were conducted in accord-
7 ance with the principles set forth in section 3.

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

13 (1) For each State, an updated summary, and
14 for the Uniform Code of Military Justice, a sum-
15 mary of the relevant laws, policies, regulations, and
16 judicial precedents and decisions regarding criminal
17 cases involving people living with HIV, including the
18 following:

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

23 (B) A determination of whether such laws,
24 policies, regulations, and judicial precedents
25 and decisions demonstrate a public health-ori-

1 ented, evidence-based, medically accurate, and
2 contemporary understanding of—

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

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

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

12 (iv) the current status of providing
13 protection to people who engage in survival
14 sex work against whom condom possession
15 has been used as evidence to intent to com-
16 mit a crime;

17 (v) States that have the classification
18 of mandatory sex offenders;

19 (vi) the associated benefits of treat-
20 ment and support services for people living
21 with HIV; and

22 (vii) the impact of punitive HIV-spe-
23 cific laws and policies on public health, on
24 people living with or affected by HIV, and
25 on their families and communities, includ-

1 ing people who are in abusive, dependent,
2 violent, and non-consensual relationships
3 and are unable to both negotiate the use of
4 condoms and status disclosure.

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) Recommendations for adjustments to the
25 Uniform Code of Military Justice, including dis-

1 continuing the use of a service member's HIV diag-
2 nosis as the basis for prosecution, enhanced pen-
3 alties, or discharge from military service, in order to
4 ensure that laws, policies, regulations, and judicial
5 precedents regarding people living with HIV are in
6 accordance with the principles set forth in section 3.
7 Such recommendations should include any necessary
8 and appropriate changes to "Orders to Follow Pre-
9 ventative Medicine Requirements".

10 (4) A description of any personnel policies
11 under which members of the Armed Forces infected
12 with HIV may be subject to punishment under the
13 Uniform Code of Military Justice based on their
14 HIV positive status, an assessment of whether such
15 policies reflect an evidence-based, medically accurate
16 understanding of how HIV is contracted, how HIV
17 can be transmitted to other individuals, and the risk
18 of transmission, and an explanation, based on sur-
19 veys of appropriate officials from each Armed Force,
20 of why such policies continue to be place and wheth-
21 er such policies should be changed.

22 (c) GUIDANCE.—Not later than 90 days after the re-
23 lease of the report required by subsection (b), the Director
24 of the White House Office of National AIDS Policy, shall
25 develop and publicly release updated guidance for States

1 based on the updated review conducted under subsection
2 (a)(1)(B), in order to assist States dealing with criminal
3 and related civil commitment cases regarding people living
4 with HIV. In preparing the guidance under this sub-
5 section, the Director shall consult in accordance with sub-
6 section (a)(2).

7 (d) MODERNIZATION OF FEDERAL LAWS, POLICIES,
8 AND REGULATIONS.—Not later than 180 days after the
9 release of the guidance required by subsection (c), the des-
10 ignated officials shall develop and transmit to the Presi-
11 dent and the Congress, and make publicly available, such
12 proposals as may be necessary to implement adjustments
13 to Federal laws, policies, or regulations, including to the
14 Uniform Code of Military Justice, that reflect the reports
15 and guidance required under this Act either through Exec-
16 utive order or through changes to statutory law.

17 **SEC. 5. RULE OF CONSTRUCTION.**

18 Nothing in this Act shall be construed to prohibit the
19 prosecution of individuals who act with the specific intent
20 to do harm to another person by transmitting HIV
21 through means likely to result in actual transmission, and
22 who in fact transmit HIV.

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

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

5 **SEC. 7. DEFINITIONS.**

6 For purposes of this Act:

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

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

○