

Congress of the United States

Washington, DC 20515

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

July 17, 2012

Dear Attorney General Holder:

We write to express our concern that current state and federal laws lag far behind scientific discoveries in the fight against HIV/AIDS and to ask your department to expedite its review of federal and state laws, policies, regulations, and judicial proceedings involving criminal cases against people living with HIV/AIDS. Despite the remarkable advances in understanding and in treatment of HIV/AIDS, criminal laws and prosecution policies continue to treat HIV as both highly infectious and invariably fatal, and in the process perpetuate the stigma and disparities this Administration has pledged to end.

According to the Centers for Disease Control and Prevention (CDC), HIV cannot reproduce outside the human body, nor can it spread by air or water, insects, saliva, tears, sweat, casual contact, or kissing. Though HIV is a serious chronic condition, remarkable progress in drug therapy development and access in the past decade has transformed it into a manageable health condition. Despite this knowledge, many hundreds of individuals across our nation continue to be targeted unjustly for criminal prosecution and gravely disproportionate sentences for conduct ranging from consensual sex to spitting.

At present, 34 U.S. jurisdictions have criminal felony statutes that base criminal liability not on any proof of intent to do harm but on an HIV diagnosis and conduct deemed to “expose” another to HIV without prior disclosure of HIV status. Most of these laws were adopted before the availability of effective antiretroviral treatment for HIV/AIDS and are plainly obsolete. These laws run counter to public health knowledge and priorities, and in fact can actually deter individuals from learning their HIV status and entering care, as knowledge of one’s health status is a predicate to prosecution. Consequently, criminalization of HIV status undermines significant taxpayer investment in public health initiatives aimed at promoting education and awareness, increasing testing and treatment, and ending the epidemic in this country.

Prosecutions for “exposure,” nondisclosure, and/or transmission of HIV have occurred in at least 39 states under general assault or homicide laws and/or HIV-specific laws. Many people living with HIV/AIDS have been given sentences of 10 to 50 years, often in the absence of HIV transmission, despite CDC acknowledgment and other scientific resources concluding that intentional HIV transmission is rare. These practices represent an unfairly placed burden on people living with HIV/AIDS to prevent transmission and undermine the public health message that all people should practice behaviors protecting themselves and their partners from HIV and

other sexually transmitted diseases, such as human papillomavirus (HPV) and herpes, which also have potentially serious health consequences.

The danger of attributing criminal liability to individuals based on health status was also recognized by the New York Court of Appeals this past June. In *People v. Plunkett*, the court overturned a 2006 conviction and dismissed the complaint of an HIV- positive man accused of aggravated assault for biting a police officer and sentenced to 10 years in prison. The basis of the Court's ruling was that a person's saliva, or any body fluid or part, cannot be treated as a "dangerous instrument." The Court sought to avoid the injustices that "would result if criminal liability varied with the corporeal attributes of assailants and their victims." Treating an individual's health, disability or other physical characteristics as relevant to a determination of dangerousness would result in a "sliding scale of criminal liability," the Court concluded.

Despite the positive outcome of the case's review, such criminal cases quickly gain media attention, launching personal details of the individual's life into the public eye, potentially destroying employment opportunities, relationships, and violating the person's right to privacy. Indeed, every such HIV-specific arrest creates a public record of the individual's HIV status, and treats it as evidence of a crime. Although the New York court's decision represents a growing willingness to reconsider discriminatory HIV laws, many individuals in the U.S. remain incarcerated based on their health status -- despite no intent to do harm -- and progress is unacceptably slow.

In 2010, the President released a National HIV/AIDS Strategy, which addressed HIV-specific criminal laws and encourages state legislatures to consider reviewing HIV-specific criminal statutes to ensure that they are consistent with current knowledge of HIV transmission and support public health approaches to preventing and treating HIV/AIDS.

As such, in accordance with current scientific understanding and the policy priorities articulated in the National HIV/AIDS Strategy, we are asking that the Department of Justice, in coordination with the Departments of Health and Human Services, and Defense, expedite its review of federal and state laws, policies, regulations, and judicial proceedings that involve criminal cases against people living with HIV/AIDS.

The review of state and federal HIV-specific criminal laws is crucial to aligning current law with evidence-based public health findings, reducing the stigma associated with HIV/AIDS, preventing discrimination based on health status, and protecting the privacy of patients. In particular, we ask that you examine the reliance on HIV status to initiate, or increase punishment related to, charges against members of the armed forces and inmates in federally-operated or supported prisons and jails. In doing so, we recommend that the Department of Justice collaborate with domestic experts and civil society organizations that have already reviewed and continue to monitor these laws and ways to modernize them to more accurately reflect current scientific knowledge.

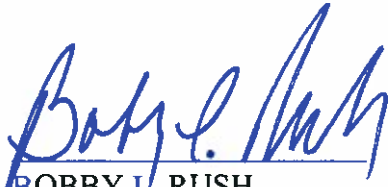
Thank you for your commitment to ending health-based discrimination and ensuring the validity of these laws through evidence-based research.



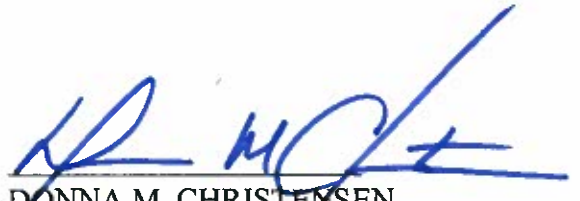
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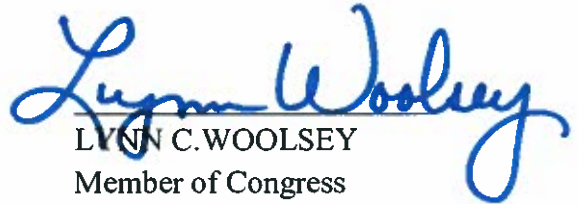
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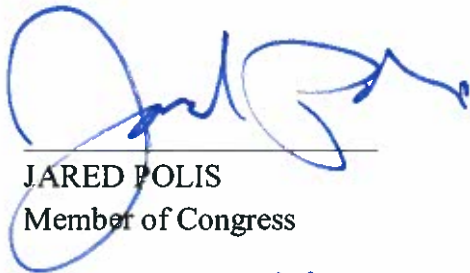
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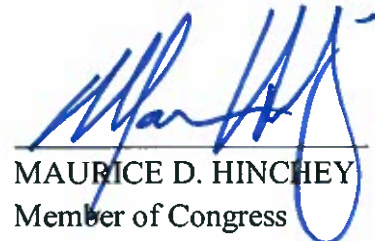

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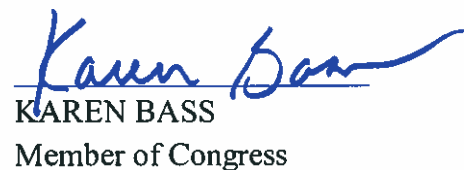

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