

**TESTIMONY OF AIDS LAW PROJECT OF GAY & LESBIAN ADVOCATES &
DEFENDERS IN OPPOSITION TO H 5245**

Rhode Island House Judiciary Committee

February 24, 2015

Submitted by:
Bennett Klein
Senior Attorney and AIDS Law Project Director

Gay & Lesbian Advocates & Defenders (GLAD) is a New England-wide organization that works to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. GLAD's AIDS Law Project, founded in 1984, has since the earliest years of the epidemic advocated for sound public health policies to combat HIV. GLAD opposes H 5245, a law that criminalizes failure to disclose HIV status, because leading medical and public health authorities agree that **such a law will undermine public health efforts to prevent HIV and will actually increase HIV transmission.**

We all share the goal of stopping HIV transmission. Rhode Island has been a leader in adopting successful tools to curtail the spread of HIV. Those measures include increasing HIV testing, ensuring access to HIV antiviral medications that drastically reduce the likelihood of transmission, adopting laws providing for access to clean syringes, and operating an effective partner notification program. H 5245, however, **will not only fail to have any impact on HIV transmission, it will actually increase HIV transmission by undermining these proven public health measures.**

For this reason, there is a **consensus among the nation's leading medical and public health organizations that HIV criminalization laws, such as H 5245, are harmful to the public health.** See American Medical Association, *H-20.914 Discrimination and Criminalization Based on HIV Seropositivity*, (June 2014) (noting "the stigma created by HIV

Through strategic litigation, public policy advocacy, and education, Gay & Lesbian Advocates & Defenders works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation.

criminalization statutes and subsequent negative clinical and public health consequences;” calling for “avoidance of any imposition of punishment based on health and disability status”) ¹; HIV Medical Association, *HIVMA Urges Repeal of HIV-Specific Criminal Statutes*, 1 (October 16, 2012) (“Policies and laws that create HIV-specific crimes or that impose penalties for persons who are HIV-infected are unjust and harmful to the public health”) ²; United States Department of Justice: Civil Rights Division, *Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Supported Factors*, 2 (July 15, 2014) (calling for an end to unfounded HIV criminalization and noting that “HIV stigma has been shown to be a barrier to HIV testing”) ³; Presidential Advisory Council on HIV/AIDS (PACHA) *Resolution on Ending Federal and State HIV-Specific Criminal Laws, Prosecutions, and Civil Commitments*, 2 (February 2013) (“singling out HIV or any other health condition or disability as a basis for prosecution or sentence enhancement is unjust and unwarranted from legal, ethical, and public health perspectives”) ⁴; National Alliance of State & Territorial AIDS Directors, *National HIV/AIDS Strategy Imperative: Fighting Stigma and Discrimination By Repealing HIV-Specific Criminal Statutes*, 2 (February 2011) (“HIV criminalization undercuts our most basic HIV prevention and sexual health messages”) ⁵; The United States Conference of Mayors, *HIV Discrimination and Criminalization*, (June 2013) (noting that “public health is endangered by HIV discrimination and criminalization”) ⁶.

¹ Available at <https://www.ama-assn.org/ssl3/ecommerce/PolicyFinderForm.pl?site=www.ama-assn.org&uri=/resources/html/PolicyFinder/policyfiles/HnE/H-20.914.HTM>.

² Available at <http://www.hivma.org/uploadedFiles/HIVMA/FINAL%20HIVMA%20Policy%20Statement%20on%20HIV%20Criminalization.pdf>.

³ Available at <http://www.justice.gov/opa/pr/justice-department-releases-best-practices-guide-reform-hiv-specific-criminal-laws-align>.

⁴ Available at <https://aids.gov/federal-resources/pacha/meetings/2013/feb-2013-criminalization-resolution.pdf>.

⁵ Available at http://www.nastad.org/Docs/114641_2011311_NASTAD%20Statement%20on%20Criminalization%20-%20Final.pdf.

⁶ Available at http://www.usmayors.org/resolutions/81st_Conference/cs11.asp.

1. H 5245 Will Deter Rhode Islanders From Being Tested for HIV and Accessing Medical Care.

The most powerful tool we have to combat HIV is to ensure that people get tested, know their status, and are linked to medical care for treatment. In fact, the United States Centers for Disease Control (CDC) has reported that current antiretroviral therapy for HIV reduces the risk that a person will transmit HIV through sexual activity by up to 96%.⁷ A law such as H 5245 on its face is a deterrent to HIV testing because it punishes individuals who get tested and who know their HIV status. People can only be prosecuted under H 5245 if they know their status. As the HIV Medical Association has explained:

Laws that criminalize HIV infection discourage individuals from learning their HIV status and from receiving care. In doing so, they jeopardize the lives of HIV-infected individuals and place more individuals at risk of contracting an infectious disease that remains fatal if untreated.⁸

2. H 5245 Will Increase the Stigma Associated with HIV.

HIV remains the most stigmatized health condition in America. Stigma is still a major barrier to combatting the epidemic. As the National HIV/AIDS Strategy explained: “The stigma associated with HIV remains extremely high and fear of discrimination causes some Americans to avoid learning their status, disclosing their status, or accessing medical care.”⁹ Further, “HIV stigma has been shown to be a barrier to HIV testing.”¹⁰ Laws that single out HIV for criminal treatment, which is not done for any other health condition, increase the stigma and fear around HIV and perpetuate the myth that people with HIV are dangerous and threatening. The National Alliance of State and Territorial AIDS Directors has explained that “HIV criminalization ...

⁷United States Department of Justice at 1.

⁸HIV Medical Association at 1.

⁹*National HIV/AIDS Strategy for the United States*, ix (July 2010), citing Anish Mahajan, Jennifer Sayles, Vishal Patel et al., *Stigma in the HIV/AIDS epidemic: A review of the literature and recommendations for the way forward*, AIDS 2008; 22(Suppl 2): S67-S69.

¹⁰*National HIV/AIDS Strategy for the United States* at 36.

breeds ignorance, fear and discrimination against people living with HIV,” thereby undermining public health strategies to combat the epidemic.¹¹

3. H 5245 Will Create Distrust Between People with HIV and Their Doctors.

An effective response to the HIV epidemic is dependent upon a trusting patient-physician relationship. Physicians must work closely with patients to maintain adherence to HIV medications. In addition, in order to work with patients to adopt practices that avoid transmitting HIV to others, patients must be able to speak freely about their sexual and other health behaviors with health care providers. H 5245 will undermine that critical trust because in a prosecution, doctors or other healthcare providers can be called upon to testify against their patients.¹²

4. Scientific Evidence Shows That Laws Like H 5245 Don’t Affect Transmission.

Not only will H 5245 undermine existing prevention programs, but the available evidence also shows that such laws do not reduce HIV transmission rates. Studies have compared sexual behaviors between people living in states with HIV criminalization laws and those living in states without these laws. They found no differences, demonstrating that criminalization laws do not influence HIV risk behaviors.¹³

5. H 5245 is Not Based on Current Medical Understanding of HIV.

¹¹ National Alliance of State & Territorial AIDS Directors at 2.

¹² Wendy Armstrong, *Criminalization of HIV*, A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV, 48 (May 2014) available at http://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf.

¹³ See Keith Horvath, Richard Weinmayer, Simon Rosser, *Should it be illegal for HIV-positive persons to have unprotected sex without disclosure? An examination of attitudes among US men who have sex with men and the impact of state law*, 22 AIDS Care 1221, 1225 (July 2010), available at <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/HORVATH-criminalization%20final%202010.pdf>; Scott Burris, *Do Criminal Laws Influence HIV Risk Behavior? An Empirical Trial*. 39 Ariz. St. L.J. 467, 501-503 (2007).

H 5245 makes it a crime to fail to disclose one's HIV status even when the risk of HIV transmission is virtually nonexistent. Today, the risk of HIV transmission for a person whose HIV viral load is undetectable due to modern HIV medications is extremely low and is virtually nonexistent if a condom is used.¹⁴ Yet, a person in that situation could be prosecuted under H 5245 for not disclosing even though there is no real risk of transmission. In contrast, a person who does not know their HIV status cannot be prosecuted under this law. Significant HIV transmission, however, occurs when people do not know their status.¹⁵ H 5245 creates absurd results and does not take into account either current HIV medical therapies or the important behaviors that prevent HIV transmission. It is an unscientific law that should be rejected.

In conclusion, H 5245 is contrary to current public health principles about HIV transmission, stigmatizes people with HIV, and if passed will not have any impact on reducing HIV transmission. GLAD strongly urges this Committee to reject H 5245.

¹⁴Centers for Disease Control and Prevention, *HIV Transmission Risk: Estimated Per-Act Probability of Acquiring HIV from an Infected Source, by Exposure Act*, (July 2014), available at <http://www.cdc.gov/hiv/policies/law/risk.html>.

¹⁵Centers for Disease Control and Prevention, *Too Few People with HIV Are Aware of Their Infection*, (December 2014) available at <http://www.cdc.gov/nchhstp/newsroom/HIVFactSheets/Challenges/TooFewPeople.htm> citing H. Hall, D. Holtgrave, C. Mulsby, *HIV transmission rates from persons living with HIV who are aware and unaware of their infection*, AIDS 2012;26(7):893-96.