



Positive Justice Project

February 14, 2014

To: Hon. Frank Chopp
Chair, Rules Committee
cc: Rep. Moeller

RE: **House Bill 2107, 2014 Regular Session, 63rd Legislature:**

**AN ACT relating to expanding criminal penalties for assault;
amending RCW 9A.36.011, 9A.36.021, and 70.24.140; and prescribing
penalties.**

Dear Chair:

We submit this letter in opposition to HB 2107 on behalf of the Steering Committee of the Positive Justice Project (PJP). PJP is a national coalition of organizations and individuals working to end HIV criminalization in the United States. PJP includes people living with or at great risk of HIV, those who have been arrested or prosecuted, medical and public health professionals, community organizers, advocates, attorneys, law enforcement officials and others. PJP's membership includes hundreds of individuals and organizations, including the National Alliance of State and Territorial AIDS Directors, the HIV Medicine Association, the National Organization of Black Law Enforcement Executives, and the Association of Nurses in AIDS Care.

We are grateful for the effort and laudable intention to reduce the stigmatization of people living with HIV that Washington's current criminal law, and the laws of many other states, still enshrine. The intent stated in Section 1 of HB 2107, "to reduce the stigma that ... disparate treatment brings upon those infected with the human immunodeficiency virus," reflects a worthy and urgent goal. Efforts to improve this bill over the last year, since PJP first weighed in on Washington's effort to modernize its current law, reflect a much-improved understanding of the current realities of HIV transmission routes and risks.

However, HB 2107 perpetuates the HIV stigma it was designed to address because it continues to treat exposure to HIV – and now many other blood-borne diseases – as "grievous bodily harm," the legal equivalent to shooting an individual in the head.

The application of felony laws and severe sentences (up to 25 years for one charged incident is more than what is meted out for manslaughter) to what is, in almost all cases, the consequences of consensual sex between adults, has produced terrible injustices that

the bill effectively re-ratifies. Extending this injustice to others with different blood-borne diseases does not address the HIV stigma problem.

HIV is serious, but it is, in 2014, a chronic, manageable condition. It is not the equivalent of carrying an unlicensed, loaded gun with the intent to kill someone, nor is consensual sex while HIV positive the equivalent of stabbing someone with the intent of causing death or grievous bodily harm. These false equivalencies in the current law and in HB 2107 are harmful not just to people living with HIV, but to the health care providers and prevention specialists dedicated to controlling the HIV epidemic through increased diagnosis and linkage to care.

The following are some specific problems with the current bill:

- In Section 2, the continued characterization of HIV (or herpes, HPV, or other STIs, for that matter) as a “destructive or noxious substance” reinforces the 1980s perception of people with HIV as innately dangerous and HIV as a “death sentence” rather than a serious, but treatable, chronic disease.
- Treating infection with HIV or another STI under RCW9A.36.011 as a Class A felony amounts to punishment that is grossly disproportionate to the harm, even in the case of actual transmission.
- Section 3’s prohibition of sexual intercourse without disclosure to a partner is impossible to fairly enforce for multiple reasons:
 - A partner who is the subject of, or at risk of, domestic violence may not have a reasonable ability to either disclose or to refuse sex.
 - Individuals with HIV, or other STIs, who are on treatment that reduces their transmission risk to zero or near-zero may in fact not pose, and almost certainly would not intend to pose, even a negligible risk of transmission. Treatment and the use of other prophylaxis to prevent transmission are not taken into account in determining criminal intent, which should be the basis of criminal liability.
 - Many years of experience have demonstrated that this kind of disclosure law provides a vehicle for partners to use the criminal justice system to punish current or former partners whom they feel have betrayed them, particularly as disclosure is typically impossible for a defendant to prove. Hinging criminal liability on the ability to prove disclosure places an unusual, and unfair, burden on the defendant in such cases.
 - Federal and state HIV prevention campaigns focus on the right and ability of people living with HIV to continue to have healthy sex lives. Federal guidance released by the President’s Advisory Council on HIV/AIDS

recognizes that disclosure is context-driven and cannot reasonably be mandated in all cases or at any specific time.

- We believe that several modifications to the new language in Section 2 that would, in turn, replace the current provisions of Section 3 (adding intent to harm to that section and moving STI/HIV transmission from a Class A felony offense to the current misdemeanor section), would achieve the sponsor's original intent without expanding the scope of criminal liability on the basis of disease status. It would also provide a national model for state legislators across the country.

The issues addressed in this bill are complex, and we respectfully request that you postpone further action on the current bill to allow for discussion and input from medical providers and others who can address the unintended consequences of both HB 2107 and the law as it is currently applied. Please contact Catherine Hanssens at (212) 430-6733 or chanssens@hivlawandpolicy.org in connection with this matter.

Thank you for considering these comments.

Respectfully submitted by the PJP Steering Committee,



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