



December 15, 2014

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Lt. Governor Brian Calley, Senate President
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Senator Randy Richardville, Senate Majority Leader
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Senator Gretchen Whitmer, Senate Minority Leader
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Senator Roger Kahn
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Representative Jase Bolger, Speaker of the House
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Representative Tim Greimel, Minority Leader
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Re: Senate Bill No. 1130

Dear Governor Snyder, Lt. Governor Calley, and Leadership of the Michigan Senate and House of Representatives:

On behalf of the National Viral Hepatitis Roundtable, the HIV Prevention Justice Alliance, the Positive Justice Project and the undersigned national medical, infectious disease, public health and allied organizations, we are writing to ask that you strongly oppose Michigan Senate Bill 1130 (SB 1130), which would amend sections 5101 and 5210 of Act 368 of the Public Health Code. This bill would compound the problems of the current HIV felony law – adopted when HIV was far less understood or treatable – by creating new felony penalties for people with the hepatitis C virus (HCV) for any kind of sexual penetration with an uninformed partner.

We are grateful to Senator Roger Kahn for bringing attention to the issue of HCV infections in Michigan and share his concern for the health and safety of all Michigan residents. We support legislative action that will increase testing and care for HCV and improve the well-being of Michiganders. For that reason, we oppose SB 1130 as contrary to these goals, and urge you to oppose this bill.

In Michigan, it currently is a felony for those who know they are HIV positive to engage in “sexual penetration, however slight” without first disclosing that status to a partner. Sexual penetration is defined to include oral, anal, and vaginal intercourse, but also includes inserting an “object” into a

person's "genital or oral openings." (Act 368 of 1978, MCL§333.5210, *available at* <http://legislature.mi.gov/doc.aspx?mcl-333-5210>).

HCV is a blood borne virus that is seldom spread sexually, particularly among heterosexual couples, yet SB 1130 proposes to make people diagnosed with HCV prone to felony charges if an infected individual has "sexual penetration" without informing his or her partner.

Medical experts and public health officials agree that policies that criminalize the conduct of people living with communicable diseases, such as HCV, do nothing to decrease the rates of infection and, in fact, actually deter conduct and decisions that reduce disease transmission. Consequently, organizations such as the American Medical Association, the HIV Medicine Association/Infectious Disease Society of America, the Association of Nurses in AIDS Care, and the National Alliance of State and Territorial AIDS Directors all have issued statements calling for an end to use of the criminal law to deal with exposure to or transmission of HIV and other infectious diseases, including HCV. The U.S. Conference of Mayors, the Presidential Advisory Council on HIV/AIDS, and the U.S. Department of Justice all have issued statements and guidance calling for an end to felony prosecutions of people living with HIV. A bill that proposes not only to reaffirm Michigan's outdated law on HIV but to add HCV is at direct odds with this growing national consensus.

Public health problems are not solved with criminal justice responses. Instead, we should be encouraging people to get tested and treated:

- An estimated 3.2 million persons in the United States have chronic HCV infection. Most people – approximately 75% – do not know they are infected because they do not look or feel sick. Similarly, approximately 20% of people living with HIV do not yet know their status. It is critical to eliminate rather than create additional barriers to testing by expanding serious criminal penalties that affect only those who actually get tested.
- Incarceration is an established risk factor for HCV infection, so jailing HCV affected individuals undermines attempts to halt the spread of the disease, at increased cost to taxpayers.
- Many people at risk for HCV do not know they are at risk or how to prevent becoming infected.
- Funding programs that expand public knowledge about the routes of HCV infection, awareness about testing opportunities, and expanded treatment access is the most effective way to curb the spread of HCV in Michigan, and is in fact less expensive than incarcerating those who get tested.

We strongly urge you to oppose SB 1130 for the following reasons:

- **SB 1130 undermines critical public health goals.** Creating felons of those who may not disclose their disease status – even when they do not intend to cause a partner any harm – further stigmatizes both HIV and HCV and could discourage testing and engagement in care.
- **SB 1130 is an inappropriate criminal justice response to a public health problem.** The collateral consequences of a felony charge – highly damaging to housing, employment, educational, and other opportunities – represent lifelong and unjust punishment in comparison to the supposed crime and decreases the pool of employable Michiganders. Singling out HCV status or any other health condition or disability as an element of a crime or as proof of intent to harm is unjust and unwarranted from legal, ethical, and public health perspectives. A just

application of the criminal law requires that any prosecution of an individual for harming another be based on: (a) proof of an intent to harm; (b) conduct that is likely to result in that harm; (c) proof that the conduct of the accused in fact resulted in the alleged harm; and (d) punishment that is proportionate to the actual harm caused by the defendant's conduct.

- **SB 1130 has no basis in current science.** Arrests and imprisonment are inappropriate in cases in which transmission is not even possible. It is pointless to expand, as this bill does, the criminalization of what amounts to poor or misleading communication in the context of a consensual sexual relationship. This is an issue far more appropriately addressed through education, not punitive and expensive measures such as incarceration.
- **SB 1130 ignores recent and ongoing advances in HIV and HCV treatment.** There was a time when both HIV and HCV were highly damaging to both the body and overall lifespan, with limited treatment options. Since then, there have been remarkable advances in treatment. Current HCV drug regimens are highly effective with over 90 percent cure rates and few if any side effects. HIV medication also is now highly effective in both controlling disease progression and in reducing an already low transmission risk to near zero.
- **SB 1130 is an inappropriate and ineffective cost-containment measure.** HCV advocates are highly cognizant of and concerned by the challenges posed by hepatitis C treatment costs. Attempting to control such costs by imprisoning people living with HCV, however, is not only unethical but also counterproductive, as taxpayers are saddled with the additional expense of incarceration. This strategy also places excessive burden on the correctional system to finance HCV treatment, and is likely to both increase transmission and restrict treatment access.

As HCV and HIV care providers and patient advocates, we are compelled to address well intentioned but misguided legislation like SB 1130. We thank you for your attention to this matter, and welcome the opportunity to discuss the problems associated with SB 1130 in more detail or to provide additional information you may find helpful. In the meantime, the position statements referenced above are available in the appendix attached below.

Respectfully submitted,

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On behalf of:

AIDS Alliance for Women, Infants, Children, Youth & Families
AIDS Foundation of Chicago
The AIDS Institute
AIDS Partnership Michigan

AIDS United
American Academy of HIV Medicine
American Association for the Study of Liver Diseases
Association of Nurses in AIDS Care (ANAC)
Caring Ambassadors
The Center for HIV Law and Policy
GLMA: Health Professionals Advancing LGBT Equality
Global Network of People Living with HIV, North America (GNP+NA)
Gay Men's Health Crisis
Harm Reduction Coalition
HealthHIV
Hepatitis C Association
Hepatitis Education Project
Hepatitis Foundation International
HIV/AIDS Alliance of Michigan
HIV Medicine Association
Hon. Rudolph A. Serra (Dist. Judge Emeritus), SERRA SERVICES P.L.L.C.
Infectious Diseases Society of America
Lambda Legal
North American Syringe Exchange Network (NASEN)/Point Defiance AIDS Projects
National Alliance for Medication Assisted Recovery
National Center for Transgender Equality
National Black Leadership Commission on AIDS
National Hispanic Medical Association
Project Inform
Positive Justice Project
Sero Project
The STD Project
Treatment Access Expansion Project
Veterans Health Council
Vietnam Veterans of America

APPENDIX

Presidential Advisory Council on HIV/AIDS, *Resolution on Ending Federal and State HIV-Specific Criminal Laws, Prosecutions, and Civil Commitments* (2013) (noting that the criminalization of HIV-affected people fuels HIV stigma), available at http://hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/PACHA_Criminalization_Resolution%20Final%20012513.pdf

American Medical Association, *Modernization of HIV Specific Criminal Laws* (2014), available at <http://hivlawandpolicy.org/news/ama-adopts-a-resolution-opposing-hiv-criminalization>

HIV Medicine Association, *Repeal of HIV-Specific Criminal Statutes* (2012), available at www.hivma.org/uploadedFiles/IDSA/Careers_and_Training/Opportunities_for_Students_Residents/ID_Career_Paths/HIVMA%20Policy%20Statement%20on%20HIV%20Criminalization.pdf

National Alliance of State and Territorial AIDS Directors, *National HIV/AIDS Strategy Imperative: Fighting Stigma and Discrimination by Repealing HIV-Specific Criminal Statutes* (2011), available at www.nastad.org/Docs/114641_2011311_NASTAD%20Statement%20on%20Criminalization%20-%20Final.pdf

National Association of County & City Health Officials, *Statement of Policy: Opposing Stigma and Discrimination Against Persons with Communicable Diseases* (2013), available at <http://www.naccho.org/advocacy/positions/upload/13-11-Opposing-Stigma-and-Discrimination-against-Persons-with-Communicable-Diseases-2.pdf>

The Association of Nurses in AIDS Care, *HIV Criminalization Laws and Policies Promote Discrimination and Must Be Reformed* (2014), available at http://www.nursesinaidscare.org/files/public/ANAC_PS_Criminalization_December12014.pdf

U.S. Conference of Mayors, *Resolution on HIV Discrimination and Criminalization* (2013), available at www.usmayors.org/resolutions/81st_Conference/cs11.asp

Positive Justice Project, *National Consensus Statement on the Criminalization of HIV* (2012), available at www.hivlawandpolicy.org/resources/positive-justice-project-consensus-statement-criminalization-hiv-united-states-positive (this statement has more than 1000 organizational and individual endorsements from across the United States).

U.S. Department of Justice, *Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Supported Factors* (2014), available at <http://aids.gov/federal-resources/national-hiv-aids-strategy/doj-hiv-criminal-law-best-practices-guide.pdf>