

## REPEAL HIV DISCRIMINATION ACT

The REPEAL (“Repeal Existing Policies that Encourage and Allow Legal”) HIV Discrimination Act, sponsored by Congresswoman Barbara Lee, addresses the serious ongoing problem of discrimination in the use of criminal and civil commitment laws against those who test positive for HIV. These laws create a unique legal standard for prosecuting and punishing people diagnosed with HIV for conduct that is otherwise legal (such as consensual sex between adults), poses no measurable risk of HIV transmission, and that is engaged in without any evidence of an intent to harm or transmit HIV.

Since the original introduction of the REPEAL Act, a number of its recommendations have been incorporated into the National AIDS Strategy and implemented by the CDC and the Department of Justice. The 2022 REPEAL Act calls on DOJ, HHS, and DOD to complete an assessment of federal laws and policies, and state civil commitment laws, that also target people who test positive for HIV for unique and unwarranted punishment; and to develop recommendations for amendment or repeal of unnecessary and unsound federal policies, including the Uniform Code of Military Justice (UCMJ). It also requires the Office of National AIDS Policy (ONAP) to develop and publish essential principles for the appropriate use of civil and criminal law as it applies to HIV exposure and prevention, as well as examples of recommended approaches to guide states’ evaluation and reform of existing policies that reinforce outdated and stigmatizing beliefs about HIV and undermine national and state plans to End the HIV Epidemic.

### Why Criminalization of HIV is a Problem

- 31 states and 2 U.S. territories have criminal statutes based on perceived exposure to HIV, and prosecutions for alleged exposure to HIV have occurred in at least 39 states.
- Harsh criminal sentences have been imposed on many people living with HIV, almost always in the absence of HIV transmission or a serious risk that it could occur, and without evidence of an intent to do harm or other criminal state of mind.
- These laws and prosecutions are based on long--outdated beliefs about the routes and risks of HIV transmission and about HIV as a “death sentence” when it is in fact a chronic, manageable disease.
- As a result of this widespread ignorance about HIV, the blood, semen, and saliva of people living with HIV have been referred to as “deadly weapons,” and individuals have been charged under aggravated assault, attempted murder, and even bioterrorism laws.
- Conduct with the intent to transmit HIV is so exceedingly rare that there is no justification for a system of criminal and civil laws to prevent and punish it.
- Laws that are inconsistent with evidence--based initiatives (such as condom use to prevent HIV transmission) are at direct odds with U.S. public health goals and HIV prevention strategies and programs. Since usually only people who have been tested with HIV are arrested and prosecuted, these laws may actually discourage HIV testing and disclosure.
- Laws that place an additional burden on HIV--positive individuals because of their HIV status, that treat a positive HIV test as evidence of a crime, and that single out people with HIV for severe punishment in the absence of actual wrong--doing are contrary to our nation’s values of fair treatment under the law, including equitable treatment for people living with HIV and other disabilities.

### What the REPEAL HIV Discrimination Act Does to Solve the Problem

- Requires the Attorney General (AG), the Department of Health and Human Services (HHS) the Department of Defense (DOD), and the Office of National AIDS Policy (ONAP) to collaborate on, and complete within 90 days, a review and report that includes:
  - A review of a) federal and state civil commitment cases involving PLHIV, and b) provisions of the Uniform Code of Military Justice (UCMJ) that create unique civil and criminal penalties for service members living with HIV and the total number of cases of service members affected by such provisions;
  - A review of cases, amendments or repeals that have significantly amended any state and federal laws, policies and regulations, including provisions of the UCMJ), that penalize people on the basis of their HIV status;
  - Reviews and assessments that reflect consultation with people living with HIV and other relevant experts and advocates.
  - A report, developed by ONAP, outlining guiding principles for HIV prevention and management of exposure incidents. This report shall include examples of policies and provisions consistent with a modern public health approach to disease prevention and management as a guide for states evaluating their state criminal and public health codes.
  
- Requires DOJ and DOD to provide the President and Congress with a report outlining needed changes in federal laws and policies, including the Uniform Code of Military Justice (UCMJ), that create unique burdens or punishments for service members living with HIV, consistent with the principles set out in the ONAP report, specifically:
  - Recommendations for the repeal or amendment of provisions of the UCMJ that single out and disadvantage service members living with HIV, including provisions that burden both the military service and the personal relationships of service members living with HIV.
  - The responsible agencies and officials consult with current and former service members living with HIV and other relevant experts; and
  - The responsible agencies complete and submit the report and recommendations within 180 days of the publication of ONAP's report on guiding principles for reform of punitive HIV laws.