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(Original Signature of Member)

112TH CONGRESS
1ST SESSION

H. R. _____

To eliminate discrimination in the law for those who have tested positive for HIV, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. LEE of California introduced the following bill; which was referred to the Committee on _____

A BILL

To eliminate discrimination in the law for those who have tested positive for HIV, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Repeal Existing Policies that Encourage and Allow Legal HIV Discrimination Act'', the ''REPEAL HIV Discrimination Act'', or the ''REPEAL Act''.

SEC. 2. DEFINITIONS.

(a) HIV AND HIV/AIDS.—The terms ''HIV'' and ''HIV/AIDS'' have the meanings given to such terms in section 2689 of the Public Health Service Act (42 U.S.C. 300ff–88).

(b) STATE.—The term ''State'' includes the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the United States Virgin Islands.

SEC. 3. FINDINGS.

The Congress makes the following findings:

(1) At present, 34 States and 2 U.S. territories have criminal statutes based on ''exposure'' to HIV. Most of these laws were adopted before the availability of effective antiretroviral treatment for HIV/AIDS.

(2) According to the Centers for Disease Control and Prevention (CDC), HIV cannot reproduce outside the human body. HIV is not spread by air or water, insects, saliva, tears, sweat, casual contact (like shaking hands or sharing dishes), or kissing.

(3) HIV is primarily transmitted between persons neither of whom is aware that one is infected with HIV. Epidemiologically important routes of transmission are unprotected vaginal or anal sexual contact. HIV can also be transmitted via some types

of oral sex and also via blood transfusions, although transmission via these routes is not common in the United States.

(4) 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.

(5) The Ryan White Comprehensive AIDS Emergency Act of 1990 (CARE Act) mandated that States prove the adequacy of their laws for criminal prosecution of ''intentional transmission'' of HIV before they could receive Federal funding for HIV/AIDS prevention.

(6) By 1993, approximately half the States had HIV-specific criminal legislation. Most of these felony laws do not require that HIV transmission actually occur for a person to be charged and convicted. Being unaware of one's HIV status is the primary defense to prosecution under State criminal laws, because almost all statutes that criminalize exposure to HIV do so only if the accused individual, prior to the time of exposure, has been tested and informed that he or she is infected with HIV.

(7) Over the past 3 decades, scientists have learned much about HIV, its transmission, and the

treatment of those who become infected with it. State and Federal law does not currently reflect the medical advances and discoveries made with regards to HIV/AIDS.

(8) Many people living with HIV have been given sentences of 10 to 30 years even in the absence of HIV transmission, despite CDC acknowledgment and other scientific resources concluding that intentional HIV transmission is rare.

(9) In most States, any sexual exposure—regardless of whether protection is used, if there is no deliberate intent to transmit HIV, or without assessment of risk—is subject to the same punishment as actual transmission.

(10) According to the CDC, correct and consistent male or female condom use greatly reduces the risk of HIV transmission. Nonetheless, most State HIV-specific laws and prosecutions do not treat the use of a condom during sexual intercourse as a mitigating factor or evidence that the defendant did not intend to transmit HIV.

(11) In addition, criminal laws and prosecutions do not take into account the positive effects of consistently taking antiretroviral medication, which can

lower viral load to undetectable levels and further reduce the risks of transmitting the virus.

(12) Although HIV/AIDS currently is viewed as a chronic, treatable medical condition, people living with HIV have been charged under aggravated assault, attempted murder, and even bioterrorism statutes because prosecutors, courts, and legislators continue to view and characterize the blood, semen, and saliva of people living with HIV as a ''deadly weapon''.

(13) Studies amply demonstrate that HIV-specific laws do not influence the behavior of people living with or at risk of HIV in those States where these laws exist. Furthermore, placing legal responsibility for preventing the transmission of HIV and other pathogens exclusively on people diagnosed with HIV undermines the public health message that all people should practice behaviors that protect themselves and their partners from HIV and other sexually transmitted diseases.

(14) Approximately 13 States mandate that all those who are aware that they have HIV must disclose their HIV status to partners, despite CDC prevention guidelines that encourage States to devise partner notification services that are voluntary, con-

fidential, and conducted in a collegial and cooperative manner and are sensitive to potential consequences of notification. Such consequences can include damage to relationships, loss of housing and potential violence.

(15) Often, the identity of an individual accused of violating any of these HIV-specific restrictions is broadcast through media reports, potentially destroying employment opportunities and relationships and violating the person's right to privacy.

(16) In some States, individuals who are convicted under an HIV-specific statute are forced to register as sex offenders, destroying their employability and fracturing family relationships, even in cases where no actual HIV transmission occurred.

(17) The United Nations, including the Joint United Nations Programme on HIV/AIDS (UNAIDS), urges governments to ''limit criminalization to cases of intentional transmission. Such requirement indicates a situation where a person knows his or her HIV-positive status, acts with the intention to transmit HIV, and does in fact transmit it''. UNAIDS also recommends that criminal law should not be applied to cases where there is no significant risk of transmission.

(18) The Global Commission on HIV and the Law was launched in June 2010 to examine laws and practices that criminalize people living with and vulnerable to HIV and to develop evidence-based recommendations for effective HIV responses that promote and protect human rights.

(19) The National Alliance of State and Territorial AIDS Directors released a statement in February 2011 saying that ''HIV criminalization undercuts our most basic HIV prevention and sexual health messages, and breeds ignorance, fear and discrimination against people living with HIV''. NASTAD further ''supports efforts to examine and support level-headed, proven public health approaches that end punitive laws that single out HIV over other STD's and that impose penalties for alleged nondisclosure, exposure and transmission that are severely disproportionate to the actual resulting harm''.

(20) In 2010, the President released a National HIV/AIDS Strategy (NHAS), which addressed HIV-specific criminal laws, stating: ''[W]hile we understand the intent behind [these] laws, they may not have the desired effect and they may make people less willing to disclose their status by making people

feel at even greater risk of discrimination. In some cases, it may be appropriate for legislators to reconsider whether existing laws continue to further the public interest and public health. In many instances, the continued existence and enforcement of these types of laws run counter to scientific evidence about routes of HIV transmission and may undermine the public health goals of promoting HIV screening and treatment.''.

(21) The NHAS also states that State legislatures should 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.

SEC. 4. SENSE OF CONGRESS REGARDING LAWS OR REGULATIONS DIRECTED AT PEOPLE LIVING WITH HIV/AIDS.

It is the sense of Congress that Federal and State laws, policies, and regulations regarding people living with HIV/AIDS—

(1) should not place unique or additional burdens on such individuals solely as a result of their HIV status; and

(2) should instead demonstrate a public health-oriented, evidence-based, medically accurate, and contemporary understanding of—

(A) the multiple factors that lead to HIV transmission;

(B) the relative risk of HIV transmission routes;

(C) the current health implications of living with HIV;

(D) the associated benefits of treatment and support services for people living with HIV; and

(E) the impact of punitive HIV-specific laws and policies on public health, on people living with or affected by HIV, and on their families and communities.

SEC. 5. REVIEW OF FEDERAL AND STATE LAWS.

(a) REVIEW OF FEDERAL AND STATE LAWS.—

(1) IN GENERAL.—No later than 90 days after the date of the enactment of this Act, the Attorney General, the Secretary of Health and Human Services, and the Secretary of Defense acting jointly (in this subsection and subsection (b) referred to as the ''designated officials'') shall initiate a national review of Federal and State laws, policies, regulations,

and judicial precedents and decisions regarding criminal and related civil commitment cases involving people living with HIV/AIDS, including in regards to the Uniform Code of Military Justice.

(2) CONSULTATION.—In carrying out the review under paragraph (1), the designated officials shall ensure diverse participation and consultation from each State, including with—

(A) State attorneys general (or their representatives);

(B) State public health officials (or their representatives);

(C) State judicial and court system officers, including judges, district attorneys, prosecutors, defense attorneys, law enforcement, and correctional officers;

(D) members of the United States Armed Forces, including members of other Federal services subject to the Uniform Code of Military Justice;

(E) people living with HIV/AIDS, particularly those who have been subject to HIV-related prosecution or who are from communities whose members have been disproportionately

subject to HIV-specific arrests and prosecutions;

(F) legal advocacy and HIV/AIDS service organizations that work with people living with HIV/AIDS;

(G) nongovernmental health organizations that work on behalf of people living with HIV/AIDS; and

(H) trade organizations or associations representing persons or entities described in subparagraphs (A) through (G).

(3) RELATION TO OTHER REVIEWS.—In carrying out the review under paragraph (1), the designated officials may utilize other existing reviews of criminal and related civil commitment cases involving people living with HIV/AIDS, including any such review conducted by any Federal or State agency or any public health, legal advocacy, or trade organization or association if the designated officials determine that such reviews were conducted in accordance with the principles set forth in section 4.

(b) REPORT.—No later than 180 days after initiating the review required by subsection (a), the Attorney General shall transmit to the Congress and make publicly

available a report containing the results of the review, which includes the following:

(1) For each State and for the Uniform Code of Military Justice, a summary of the relevant laws, policies, regulations, and judicial precedents and decisions regarding criminal cases involving people living with HIV/AIDS, including, if applicable, the following:

(A) A determination of whether such laws, policies, regulations, and judicial precedents and decisions place any unique or additional burdens upon people living with HIV/AIDS.

(B) A determination of whether such laws, policies, regulations, and judicial precedents and decisions demonstrate a public health-oriented, evidence-based, medically accurate, and contemporary understanding of—

(i) the multiple factors that lead to HIV transmission;

(ii) the relative risk of HIV transmission routes;

(iii) the current health implications of living with HIV;

(iv) the associated benefits of treatment and support services for people living with HIV; and

(v) the impact of punitive HIV-specific laws and policies on public health, on people living with or affected by HIV, and on their families and communities.

(C) An analysis of the public health and legal implications of such laws, policies, regulations, and judicial precedents, including an analysis of the consequences of having a similar penal scheme applied to comparable situations involving other communicable diseases.

(D) An analysis of the proportionality of punishments imposed under HIV-specific laws, policies, regulations, and judicial precedents, taking into consideration penalties attached to violation of State laws against similar degrees of endangerment or harm, such as driving while intoxicated (DWI) or transmission of other communicable diseases, or more serious harms, such as vehicular manslaughter offenses.

(2) An analysis of common elements shared between State laws, policies, regulations, and judicial precedents.

(3) A set of best practice recommendations directed to State governments, including State attorneys general, public health officials, and judicial officers, in order to ensure that laws, policies, regulations, and judicial precedents regarding people living with HIV/AIDS are in accordance with the principles set forth in section 4.

(4) Recommendations for adjustments to the Uniform Code of Military Justice, as may be necessary, in order to ensure that laws, policies, regulations, and judicial precedents regarding people living with HIV/AIDS are in accordance with the principles set forth in section 4.

(c) GUIDANCE.—Within 90 days of the release of the report required by subsection (b), the Attorney General and the Secretary of Health and Human Services, acting jointly, shall develop and publicly release updated guidance for States based on the set of best practice recommendations required by subsection (b)(3) in order to assist States dealing with criminal and related civil commitment cases regarding people living with HIV/AIDS.

(d) MONITORING AND EVALUATION SYSTEM.—Within 60 days of the release of the guidance required by subsection (c), the Attorney General and the Secretary of Health and Human Services, acting jointly, shall establish

an integrated monitoring and evaluation system which includes, where appropriate, objective and quantifiable performance goals and indicators to measure progress towards statewide implementation in each State of the best practice recommendations required in subsection (b)(3), including to monitor, track, and evaluate the effectiveness of assistance provided pursuant to section 6.

(e) ADJUSTMENTS TO FEDERAL LAWS, POLICIES, OR REGULATIONS.—Within 90 days of the release of the report required by subsection (b), the Attorney General, the Secretary of Health and Human Services, and the Secretary of Defense, acting jointly, shall develop and transmit to the President and the Congress, and make publicly available, such proposals as may be necessary to implement adjustments to Federal laws, policies, or regulations, including to the Uniform Code of Military Justice, based on the recommendations required by subsection (b)(4), either through executive order or through changes to statutory law.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary for the purpose of carrying out this section. Amounts authorized to be appropriated by the preceding sen-

tence are in addition to amounts otherwise authorized to be appropriated for such purpose.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) are authorized to remain available until expended.

SEC. 6. AUTHORIZATION TO PROVIDE GRANTS.

(a) GRANTS BY ATTORNEY GENERAL.—

(1) IN GENERAL.—The Attorney General may provide assistance to eligible State and local entities and eligible nongovernmental organizations for the purpose of incorporating the best practice recommendations developed under section 5(b)(3) within relevant State laws, policies, regulations, and judicial decisions regarding people living with HIV/AIDS.

(2) AUTHORIZED ACTIVITIES.—The assistance authorized by paragraph (1) may include—

(A) direct technical assistance to eligible State and local entities in order to develop, disseminate, or implement State laws, policies, regulations, or judicial decisions that conform with the best practice recommendations developed under section 5(b)(3);

(B) direct technical assistance to eligible nongovernmental organizations in order to provide education and training, including through classes, conferences, meetings, and other educational activities, to eligible State and local entities; and

(C) subcontracting authority to allow eligible State and local entities and eligible nongovernmental organizations to seek technical assistance from legal and public health experts with a demonstrated understanding of the principles underlying the best practice recommendations developed under section 5(b)(3).

(b) GRANTS BY SECRETARY OF HHS.—

(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention, may provide assistance to State and local public health departments and eligible nongovernmental organizations for the purpose of supporting eligible State and local entities to incorporate the best practice recommendations developed under section 5(b)(3) within relevant State laws, policies, regulations, and judicial decisions regarding people living with HIV/AIDS.

(2) AUTHORIZED ACTIVITIES.—The assistance authorized by paragraph (1) may include—

(A) direct technical assistance to State and local public health departments in order to support the development, dissemination, or implementation of State laws, policies, regulations, or judicial decisions that conform with the set of best practice recommendations developed under section 5(b)(3);

(B) direct technical assistance to eligible nongovernmental organizations in order to provide education and training, including through classes, conferences, meetings, and other educational activities, to State and local public health departments; and

(C) subcontracting authority to allow State and local public health departments and eligible nongovernmental organizations to seek technical assistance from legal and public health experts with a demonstrated understanding of the principles underlying the best practice recommendations developed under section 5(b)(3).

(c) LIMITATION.—As a condition of receiving assistance through this section, eligible State and local entities,

State and local public health departments, and eligible nongovernmental organizations shall agree—

(1) not to place any unique or additional burdens on people living with HIV/AIDS solely as a result of their HIV status; and

(2) that if the entity, department, or organization promulgates any laws, policies, regulations, or judicial decisions regarding people living with HIV/AIDS, such actions shall demonstrate a public health-oriented, evidence-based, medically accurate, and contemporary understanding of—

(A) the multiple factors that lead to HIV transmission;

(B) the relative risk of HIV transmission routes;

(C) the current health implications of living with HIV;

(D) the associated benefits of treatment and support services for people living with HIV; and

(E) the impact of punitive HIV-specific laws and policies on public health, on people living with or affected by HIV, and on their families and communities.

(d) REPORT.—No later than 1 year after the date of the enactment of this Act, and annually thereafter, the Attorney General and the Secretary of Health and Human Services, acting jointly, shall transmit to Congress and make publicly available a report describing, for each State, the impact and effectiveness of the assistance provided through this Act. Each such report shall include—

(1) a detailed description of the progress each State has made, if any, in implementing the best practice recommendations developed under section 5(b)(3) as a result of the assistance provided under this section, and based on the performance goals and indicators established as part of the monitoring and evaluation system in section (5)(d);

(2) a brief summary of any outreach efforts undertaken during the prior year by the Attorney General and the Secretary of Health and Human Services to encourage States to seek assistance under this section in order to implement the best practice recommendations developed under section 5(b)(3);

(3) a summary of how assistance provided through this section is being utilized by eligible State and local entities, State and local public health departments, and eligible nongovernmental organizations and, if applicable, any contractors, including

with respect to nongovernmental organizations, the type of technical assistance provided, and an evaluation of the impact of such assistance on eligible State and local entities; and

(4) a summary and description of eligible State and local entities, State and local public health departments, and eligible nongovernmental organizations receiving assistance through this section, including if applicable, a summary and description of any contractors selected to assist in implementing such assistance.

(e) DEFINITIONS.—For the purposes of this section:

(1) ELIGIBLE STATE AND LOCAL ENTITIES.—The term ''eligible State and local entities'' means the relevant individuals, offices, or organizations that directly participate in the development, dissemination, or implementation of State laws, policies, regulations, or judicial decisions, including—

(A) State governments, including State attorneys general, State departments of justice, and State National Guards, or their equivalents;

(B) State judicial and court systems, including trial courts, appellate courts, State su-

preme courts and courts of appeal, and State correctional facilities, or their equivalents; and

(C) local governments, including city and county governments, district attorneys, and local law enforcement departments, or their equivalents.

(2) STATE AND LOCAL PUBLIC HEALTH DEPARTMENTS.—The term ''State and local public health departments'' means the following:

(A) State public health departments, or their equivalents, including the chief officer of such departments and infectious disease and communicable disease specialists within such departments.

(B) Local public health departments, or their equivalents, including city and county public health departments, the chief officer of such departments, and infectious disease and communicable disease specialists within such departments.

(C) Public health departments or officials, or their equivalents, within State or local correctional facilities.

(D) Public health departments or officials, or their equivalents, within State National Guards.

(E) Any other recognized State or local public health organization or entity charged with carrying out official State or local public health duties.

(3) ELIGIBLE NONGOVERNMENTAL ORGANIZATIONS.—The term ''eligible nongovernmental organizations'' means the following:

(A) Nongovernmental organizations, including trade organizations or associations that represent—

(i) State attorneys general, or their equivalents;

(ii) State public health officials, or their equivalents;

(iii) State judicial and court officers, including judges, district attorneys, prosecutors, defense attorneys, law enforcement, and correctional officers;

(iv) State National Guards;

(v) people living with HIV/AIDS;

(vi) legal advocacy and HIV/AIDS service organizations that work with people living with HIV/AIDS; and

(vii) nongovernmental health organizations that work on behalf of people living with HIV/AIDS;

(B) Nongovernmental organizations, including trade organizations or associations that demonstrate a public health oriented, evidence-based, medically accurate, and contemporary understanding of—

(i) the multiple factors that lead to HIV transmission;

(ii) the relative risk of HIV transmission routes;

(iii) the current health implications of living with HIV;

(iv) the associated benefits of treatment and support services for people living with HIV; and

(v) the impact of punitive HIV-specific laws and policies on public health, on people living with or affected by HIV, and on their families and communities.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—In addition to amounts otherwise made available, there are authorized to be appropriated to the Attorney General and the Secretary of Health and Human Services such sums as may be necessary to carry out this section for each of the fiscal years 2012 through 2016.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorizations of appropriations in paragraphs (1) and (2) are authorized to remain available until expended.