



**Talking points on Maryland House Bill 622
Knowingly Transferring the HIV Virus to Another Individual – Felony**

Maryland law currently makes the knowing transfer or attempt to transfer HIV to another individual a misdemeanor that can result in a fine of up to \$2,500 or imprisonment for not more than 3 years or both.¹

House Bill 622 would change the existing law in three ways:

1. It changes the crime from a misdemeanor to **felony**;
2. It increases the maximum fine from \$2,500 to **\$10,000**;
3. It increases the maximum prison time from 3 to **25 years**.

Neither the existing language nor the amended language defines "knowing transfer" or "attempt," and does not include a requirement that the person with HIV intend to do harm. There are no identified defenses.

Incidences of intentional transmission of HIV- where an individual intends to, and actually, uses HIV as a weapon- are exceedingly rare and can be successfully prosecuted using existing criminal laws.

For comparison, in Maryland, if you are convicted of killing someone through vehicular manslaughter, the maximum penalty is 10 years imprisonment, a \$5,000 fine, or both.²

HIV Criminalization Talking Points

- HIV is difficult to transmit. Even in the absence of treatment, the risk of infection in any sexual encounter varies between 0 and 1.4%.³ For comparison, that means that at the highest risk of transmission (being the receptive partner in anal sex without condom usage), it is still less likely that HIV will be transmitted than that a person will visit an emergency room due to being accidentally hit by a person or object in a single year.
- Treatment has reduced the already low risk of transmission to nearly undetectable levels in many individuals, and transforms HIV into a chronic, treatable condition with a life expectancy similar to that of an individual with chronic diabetes.
- HIV exposure and transmission should never be prosecuted as a felony, absent intent to cause serious harm.
- Most HIV transmission takes place during sex between two adults who choose to have sex, neither of whom is aware that one of them is living with HIV.⁴ People unaware they are living with HIV are more than twice as likely as those who know their HIV positive status to engage in HIV-related sexual risk-taking behaviors.⁵ Most HIV-positive people aware of their status do not want to⁶– and in fact do not – transmit HIV.⁷

¹ Md. Code Ann., Health-Gen. § 18-601.1 provides that "(a) An individual who has the human immunodeficiency virus may not knowingly transfer or attempt to transfer the human immunodeficiency virus to another individual. (b) A person who violates the provisions of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,500 or imprisonment not exceeding 3 years or both."

² Md. Ann. Code Criminal Law Art. § 2-209(b) provides that "A person may not cause the death of another as a result of the person's driving, operating, or controlling a vehicle or vessel in a grossly negligent manner." A person convicted of violating this statute is guilty of a felony and is "subject to imprisonment not exceeding 10 years or a fine not exceeding \$5,000, or both." Md. Criminal Law Art. § 2-209(d).

³ Fox J, et al. Quantifying sexual exposure to HIV within an HIV-serodiscordant relationship: development of an algorithm. *AIDS*. 2011;25:1065.

⁴ Marks, G et al. Estimating sexual transmission of HIV from persons aware and unaware that they are infected with the virus in the USA. *AIDS* 20(10):1447-50, 2006.

⁵ Marks G et al. Meta-analysis of high-risk sexual behaviour in persons aware and unaware they are infected with HIV in the United States. *JAIDS*, 39(4):446-53, 2005.

⁶ Galletly CL and Dickson-Gomez J. HIV sero-positive status disclosure to prospective sex partners and criminal laws that require it: Perspectives of persons living with HIV. *Int J STD AIDS* 20 (9):613-618, 2009; Bourne A et al. Relative safety II: risk and unprotected anal intercourse among gay men with diagnosed HIV. *Sigma Research*, London, 2009; Wong LH, et al. Test and tell: correlates and consequences of testing and disclosure of HIV status in South Africa (HPTN 043 Project Accept). *J Acquir Immune Defic Syndr*. 50(2):215-22, 2009; King R, et al. Processes and outcomes of HIV serostatus disclosure to sexual partners among people living with HIV in Uganda. *AIDS Behav*.12(2):232-43, 2008; Deribe K, et al. Disclosure experience and associated factors among HIV positive men and women clinical service users in Southwest Ethiopia. *BMC Public Health*. 8:81, 2008; Stevens PE and Galvao L. "He won't use condoms" HIV-infected women's struggles in primary relationships with serodiscordant partners. *Am J Public Health* 97 (6): 1015-1022, 2007.

⁷ Holtgrave, DR et al. Updated annual HIV transmission rates in the United States, 1977-2006. *J Acquir Immune Defic Syndr* 50(2):236-8, 2009.

- The National HIV/AIDS Strategy, National Association of State and Territorial AIDS Directors (NASTAD), and UNAIDS, among others, have urged reconsidering whether existing HIV criminal laws further the public interest and public health.
- The White House’s National HIV/AIDS Strategy states that, “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.”
- NASTAD advocates for “efforts to examine and support level-headed, proven public health approaches that end punitive laws that single out HIV over other STDs and that impose penalties for alleged nondisclosure, exposure and transmission that are severely disproportionate to any actual resulting harm.”
- And the UNAIDS Policy Brief on Criminalization of HIV Transmission includes that, “States should also avoid introducing HIV-specific laws and instead apply general criminal law to cases of intentional transmission,” and, “There are no data indicating that the broad application of criminal law to HIV transmission will achieve either criminal justice or prevent HIV transmission.”
- The REPEAL HIV Discrimination Act, introduced in September 2011 in the House of Representatives by Representative Barbara Lee, creates incentives and support for states to reform existing policies that use the criminal law to target people living with HIV for felony charges and severe punishments for behavior that is otherwise legal or that poses no measurable risk of HIV transmission.

The proposed House Bill 622:

- Is unconnected to modern understandings of the risks and consequences of HIV transmission;
- Discourages HIV testing and engagement with the public health system;
- Is vague and provides no guidance to HIV-positive Marylanders as to how they can avoid prosecution;
- Proposes penalties that are wildly disproportionate to any possible harms; and
- Resolutely heads in the opposite direction of the modernization and decriminalization urged by the National HIV/AIDS Strategy, NASTAD, UNAIDS, and the REPEAL Act.

The Positive Justice Project (PJP) is a working consortium devoted to ending the abuse of the criminal law against HIV-positive people. PJP includes HIV advocates, researchers, health and social service providers, media representatives, policy analysts, law enforcement and people living with HIV. We engage in federal and state policy advocacy, legal resource creation and support, and on educating and mobilizing communities and policy makers in the United States. The Center for HIV Law and Policy, PJP's founding organization, provides ongoing coordination with the active support of PJP's seven working group chairs and the dozens of individual and organizational members of PJP. To join the Positive Justice Project, contact: programassociate@hivlawandpolicy.org Learn more at: www.hivlawandpolicy.org/public/initiatives/positivejusticeproject

