

Medical-Legal Partnership Clinic
University of Maryland Francis King Carey School of Law
Testimony in Support of SB 1165 – FAVORABLE
Prohibition on Transfer of Human Immunodeficiency Virus – Repeal
Before the Senate Judiciary Proceedings Committee – March 26, 2024

Law students in the Medical-Legal Partnership Clinic at the University of Maryland Francis King Carey School of Law submit this testimony in favor of Senate Bill 1165 – Repeal of Prohibition on Transfer of Human Immunodeficiency Virus. The Medical-Legal Partnership Clinic at the University of Maryland Carey School of Law is comprised of law students and a supervising attorney who represent clients living with HIV in a range of civil matters. As such, we would like to use our testimony as an opportunity to highlight the reasons we support efforts to repeal MD Code, Health-Gen §18-601.1. These reasons include the legislative history and stigma surrounding the creation of Maryland’s HIV-specific law on intentional transmission, the medical advancements that have been made to prevent the spread of HIV, and the availability of alternative legal theories to prosecute criminal sexual behaviors.

Thirty-five years ago, on February 3, 1989, Senators introduced the Human Immunodeficiency Virus–Omnibus Bill, Senate Bill 719, which ultimately became Maryland’s HIV criminalization statute. The Bill was originally introduced in response to the increasing rates of HIV transmission in Maryland at the time—long before there was effective testing, treatment allowing people living with HIV to live a healthy and normal life, and before preventive measures were widely available. Between 1980 to 1988, the number of HIV diagnoses rose from 88 to over 80,000, which was considered a public health emergency. It is important to note an increasing number of these cases were in the “heterosexual and black population.” When Senate Bill 719 was introduced, the Maryland Disability Law Center opposed the criminalization portion for similar reasons as we do today, including that the conduct it prohibited would already be chargeable as a felony under general criminal laws and that the fear of prosecution it would introduce for people living with HIV would discourage counseling and/or testing (“take the test, risk arrest”).

The enforcement of §18-601.1 across the state of Maryland has a disparate impact on people of color. The overwhelming majority of HIV-related cases were Black men. Black men make up 14% of the state’s population and 44% of people living with HIV but comprised of 68% of HIV-related arrests. Black people were 82% of all HIV-related cases, but only 30% of the state’s population, and 71% of people living with HIV in the state. Further, enforcement of §18-601.1 is highly concentrated by geographical location, with Baltimore City accounting for nearly a third of all HIV-related cases in the state of Maryland. Montgomery County, Prince George’s County and Baltimore City combined accounted for over two-thirds of all HIV-related cases in the state. (*see* Williams Institute Report 2024)

Next, significant medical advancements since the enactment of §18-601.1 provide suitable treatment options to prevent the spread of HIV and reflect current scientific understanding of how HIV is transmitted. If HIV is virally suppressed and undetectable in a person, then it is untransmittable by that person (Undetectable=Untransmittable) (“U=U”) . The law does not address HIV-positive individuals who cannot transmit HIV through sexual contact due to an undetectable viral load, and who carry no risk of transmission. According to the Centers for Disease Control and Prevention, of all people living with HIV in the US in 2016, 51% were taking common medications and were virally suppressed– and this group accounted for 0% of new transmissions in 2016. However, 38% of new transmissions in the same period came from the 15% percent of people living with HIV that didn’t know their HIV status while a further 43% of transmissions that year were from the 23% of individuals who knew their positive HIV status but weren’t receiving care. (See Centers for Disease Control and Prevention, *HIV Treatment as Prevention* (August 2023). §18-601.1 discourages the small group disproportionately linked to new transmissions from seeking testing and care, ultimately disrupting Maryland’s public health goal to end the HIV epidemic. Removing statutory provisions like § 18-601.1 that reinforce stigma and create barriers to testing and care is critical for reducing those new transmissions.

Finally, removing § 18-601.1 would not result in the inability of the state to prosecute actual or threatened transmissions with the intent to harm, because the intentional, harmful transmission of contagious diseases is already addressed elsewhere in our criminal code (i.e, MD Code, Criminal Law, § 3-202 (assault in the first degree), § 3-203 (assault in the second degree), § 3-204 (reckless endangerment), § 3-215 (knowingly and willfully causing another to ingest bodily fluid), § 3-303 (rape in the first degree), and § 3-307 (sexual offense in the third degree). Testimony from the Frederick County State’s Attorney’s Office and the Maryland State’s Attorney’s Association (MSAA) indicates that their offices have and can continue to prosecute the intentional transmission of HIV through legal causes of action such as Second Degree Assault and Reckless Endangerment, which carry higher penalties than §18-601.1. Section 18-601.1 does not require actual transmission or even the risk of transmission, and there is no defense (i.e., viral suppression, condom use, or PREP) to the charge. This results in enforcement practices based on fear, completely disregarding medical science. For example, individuals have been charged with attempting to transmit HIV through spitting and biting, even though it is medically impossible to transmit HIV through saliva.

For the above stated reasons, we strongly support SB 1165/HB 485, the Repeal of Prohibition on Transfer of Human Immunodeficiency Virus.

This testimony in support of this Bill represents the personal opinions of Kennedy Hagens, Lydia Lockwood, and Isabella Datillo, third-year law students in the Clinical Law Program at the University of Maryland Francis King Carey School of Law and is not being submitted on behalf of the School of Law, the University of Maryland, Baltimore, or the University of Maryland School System.