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March 25, 2024

Dear Members of the Maryland Senate:

The SERO Project urges you to pass SB 1165, which would repeal Maryland's outdated HIV criminalization law (Maryland Code, Gen-Health § 18-601.1, making it a crime for a person living with HIV to "knowingly transfer or attempt to transfer" HIV to another person). The SERO Project is a national organization which centers the leadership of people living with HIV (PLHIV) to end HIV criminalization, mass incarceration, racism and social injustice by supporting inclusive PLHIV networks to improve policy outcomes, advance human rights and promote healing justice.

In the 35 years since Maryland's HIV criminalization law was enacted, our knowledge of HIV prevention, treatment, and transmission has advanced in significant ways. Today, HIV is a manageable chronic health condition and people diagnosed with HIV can take antiretroviral therapy (ART) and live long and healthy lives. The Centers for Disease Control and Prevention (CDC) has identified a number of mechanisms including barrier protection, such as condoms,<sup>1</sup> pre-exposure prophylaxis (PrEP),<sup>2</sup> and post-exposure prophylaxis (PEP)<sup>3</sup> that are effective in preventing the transmission of HIV. The CDC also acknowledges that treatment *is* prevention, as a person who takes ART and has an undetectable viral load is unable to transmit HIV through sexual contact.<sup>4</sup>

Despite these scientific advances, there remain common misperceptions about HIV which have motivated prior prosecutions under this law. In 2008, a man was convicted of knowingly attempting to transmit HIV for biting,<sup>5</sup> even though according to the CDC biting carries a negligible risk of HIV transmission and HIV cannot be transmitted through saliva.<sup>6</sup> Repealing

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<sup>1</sup> Centers for Disease Control and Prevention, *Condoms*, (Feb. 15, 2022) available at <https://www.cdc.gov/hiv/risk/prep/index.html>.

<sup>2</sup> Centers for Disease Control and Prevention, *Pre-Exposure Prophylaxis (PrEP)*, (July 5, 2022) available at <https://www.cdc.gov/hiv/risk/prep/index.html>.

<sup>3</sup> Centers for Disease Control and Prevention, *Post-Exposure Prophylaxis (PEP)*, (Aug. 24, 2022) available at <https://www.cdc.gov/hiv/risk/pep/index.html>.

<sup>4</sup> Centers for Disease Control and Prevention, *HIV Treatment as Prevention*, (Aug. 9, 2023) available at <https://www.cdc.gov/hiv/risk/art/index.html>.

<sup>5</sup> Center for HIV Law and Policy, *HIV Criminalization in the United States: A Sourcebook on State and Federal HIV Criminal Law and Practice*, "Maryland," (2024), available at [https://www.hivlawandpolicy.org/sites/default/files/Maryland%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S.\\_0.pdf](https://www.hivlawandpolicy.org/sites/default/files/Maryland%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S._0.pdf).

<sup>6</sup> Centers for Disease Control and Prevention, "HIV Risk Behaviors," (Nov. 13, 2019) available at <https://www.cdc.gov/hiv/risk/estimates/riskbehaviors.html>.

Maryland's HIV criminalization law would modernize the criminal code so that it is aligned with the current science regarding HIV.

This legislation also reduces stigma and, by doing so, supports important public health goals. According to the White House's National HIV/AIDS Strategy for the United States 2022-2025, "HIV-related stigma and discrimination continue to undermine the effective use of tools to reduce HIV transmissions".<sup>7</sup> Additionally, the current law discourages people from getting tested for HIV because if a person is unaware of their serostatus, they cannot be charged under the current law.

Even when someone has not been arrested, charged or convicted of a crime, the mere existence of HIV criminalization laws such as Gen-Health § 18-601.1 create fear for people living with HIV. In response to the question "Have you ever worried that someone might bring charges against you based on your positive HIV status or has anyone ever threatened to do so?" included in a national survey of over 600 people living with HIV, 37.8% responded "frequently" or "a few times".<sup>8</sup> More than half of transgender/nonbinary respondents reported experiencing this fear.<sup>9</sup>

The threat of arrest or prosecution based on allegations of violating HIV criminalization laws can also be used as a tool of intimate partner violence. One study from 2019 found that 24% of women experienced intimate partner violence after disclosing their HIV status.<sup>10</sup> This group is particularly at risk of harm from laws like the one that Maryland currently has in place.

Repealing the current law will also reduce racial discrimination in the criminal legal system. A January 2024 report from the Williams Institute at UCLA School of Law found that Black men are disproportionately charged under Maryland's current law. Black men made up 68% of HIV-related arrests, despite being 14% of Maryland's population and 44% of the population living with HIV.<sup>11</sup> This is consistent with other reports from the Williams Institute that have shown that Black people are disproportionately charged with HIV criminalization offenses across the country.<sup>12</sup>

HIV criminalization laws are discriminatory. On February 15, 2024, the Department of Justice (DOJ) filed a lawsuit against the state of Tennessee, alleging that the state is violating the Americans with Disabilities Act (ADA) by enforcing its aggravated prostitution law, which makes

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<sup>7</sup> The White House, *National HIV/AIDS Strategy for the United States 2022-2025*, (2021) available at <https://files.hiv.gov/s3fs-public/NHAS-2022-2025.pdf>.

<sup>8</sup> SERO Project, *The National HIV Criminalization Survey*, (2021) available at <https://www.sero-project.com/wp-content/uploads/2023/03/Sero-Project-National-HIV-Criminalization-Survey-Report-2021.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> Sullivan, Tami, *The Intersection of Intimate Partner Violence and HIV: Detection, Disclosure, Discussion, and Implications for Treatment Adherence*, Topics in Antiviral Medicine v. 27(2) (May 1, 2019) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6550354>.

<sup>11</sup> Cisneros, Nathan, et al., *Enforcement of HIV Criminalization Laws in Maryland*, Williams Institute at UCLA Law (Jan. 2024), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-MD-Jan-2024.pdf>.

<sup>12</sup> *Id.* at 9.

prostitution a felony offense for people living with HIV.<sup>13</sup> The same logic could apply to Maryland's current law which singles out people living with HIV for prosecution based on their serostatus.

Maryland's legislature should pass SB 1165 to further public health goals, reduce stigma against people living with HIV, and bring state law up to date with current science. Thank you for your consideration.

Sincerely,

The SERO Project

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<sup>13</sup> Press Release, *Justice Department Finds that Enforcement of Tennessee State Law Discriminates Against People with HIV*, (Dec. 1 2023), available at <https://www.justice.gov/opa/pr/justice-department-finds-enforcement-tennessee-state-law-discriminates-against-people-hiv>.