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HOUSE OF REPRESENTATIVES

COMMONWEALTH *of* PENNSYLVANIA

House Democratic Policy Committee Hearing

Decriminalizing HIV

Wednesday, October 6, 2021 | 9:30a.m. – 10:30a.m.

Representative Mary Isaacson and Representative Malcolm Kenyatta

9:30am Rep. Isaacson and Rep. Kenyatta

Welcome and opening remarks about today's Hearing

9:30am Adrian Shanker
*Executive Director, Bradbury-Sullivan LGBT Community Center
Co-Chair, Health Committee, Pennsylvania Commission on LGBTQ Affairs*

Q & A with Legislators

9:45am Julie Graham
Cumberland County resident, HIV Criminalization Survivor

Q & A with Legislators

10:00am Michelle Troxell
Pennsylvania Co-Chair, Positive Women's Network USA

Q & A with Legislators

10:15am Steven Bryson, Esq.
SERO Legal Fellow, AIDS Law Project of Pennsylvania

Q & A with Legislators



BRADBURY-SULLIVAN
LGBT COMMUNITY CENTER

*Serving the LGBT Community
of the Greater Lehigh Valley*

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TESTIMONY OF ADRIAN SHANKER
EXECUTIVE DIRECTOR, BRADBURY-SULLIVAN LGBT COMMUNITY CENTER

PA House of Representatives Democratic Policy Committee
Hearing on HIV Decriminalization -- October 6, 2021

Bradbury-Sullivan LGBT Community Center provides arts, health, youth, and pride programs to celebrate and support LGBTQ people in the Lehigh Valley. We are proud to serve people living with HIV for a variety of our programs, and to work to prevent the transmission of HIV through health promotion, education and HIV testing.

The COVID-19 pandemic has clarified the importance of grounding public policy in sound science. We have all seen first hand the challenges of a communicable disease. And LGBTQ communities especially understand the importance of ending the HIV epidemic, which includes preventing the transmission of HIV.

Biomedical research has advanced significantly in the last two decades when it comes to understanding how to best prevent HIV transmission.

We know things today that were not known in the early days of the HIV epidemic. For example, we know today that if a person is undetectable, meaning that they have received treatment for HIV and a blood test does not detect HIV, that they cannot transmit the virus.

We know today that people living at higher risk for contracting HIV can take a once-a-day pill, pre-exposure prophylaxis also known as PrEP, which when taken correctly holds incredible efficacy in preventing HIV transmission.

We know that HIV is not transmitted via saliva or urine, and certainly not by human touch.

We also know something else today which is that people living with HIV deserve to be treated with dignity and respect.

For all of these reasons, we are grateful that this hearing is occurring today. As a matter of policy, it is critical that members of this caucus vigorously and uniformly oppose any attempts at enhanced penalties for any crime based on a person's HIV status.

These enhanced penalties do not stop the spread of HIV, they just stop people from getting tested for HIV, and they cause direct harm to people living with HIV. Why do these enhanced penalties harm public health? Because if a person is aware that they are HIV+ then they can be held liable under these statutes. Even if they are undetectable and are therefore scientifically unable to transmit HIV. Even if they did not engage in any actions that could actually transmit HIV.

The Pennsylvania Legislature should absolutely prioritize efforts to end the HIV epidemic. Here are some evidence-based ways to do so:

- Ensure that sex education in Pennsylvania's public schools includes LGBTQ health information and information about HIV prevention, including the availability of pre- and post-exposure prophylaxis
- Increase accessibility by requiring all publicly-supported health insurance plans in Pennsylvania provide coverage for pre- and post-exposure prophylaxis
- Increase funding for HIV testing in Pennsylvania

Criminalization statutes and enhanced penalties don't accomplish the worthy goal of preventing the spread of HIV. They don't keep anyone safe.

Legislation that would further criminalize HIV in Pennsylvania has been supported by both Democrats and Republicans. We are here today speaking to the House Democratic Policy Committee to provide you with information about this issue because unified support to oppose any and all enhanced penalties based on HIV status is necessary to ensure the rights of people living with HIV and the public health of all Pennsylvanians.



My name is Julie Graham. I live in Cumberland county, Carlisle PA. I am a nurse at the Lebanon VA hospital. I am thirty- three years old and was diagnosed in 2011 with HIV. I have had an undetectable viral load since I have been diagnosed. As a nurse, I know having an undetectable viral load makes it impossible to transmit HIV or endanger anyone through condomless sex.

In 2012, I had an undetectable viral load when I started dating a man. We had sex twice without a condom because he was not at risk. I disclosed my status, he got tested and his results were negative. We continued to have sex without a condom. I ended this relationship and cut him off completely. To get back at me he pressed charges against me with the PA State Police. These cases are usually a disgruntled partner seeking revenge and their attempt to manipulate and continue their abuse to their victims.

Months after we broke up, I found out that my medical records for the last three years were released to the PA State police through a search warrant, granted by a district justice, based on falsified reports by this man.

I lost my privacy when my name, address, and my HIV positive status and that I had been charged with two felonies and two misdemeanor charges were reported in my hometown newspaper. The moral condemnation of my status being exposed has affected my job, my nursing career, and my personal life. My ability to practice as a nurse and the emotional and mental detriment has caused myself and family unending stress and financial burdens. My parents are here today and they have also endured the strain of these events.

In 2014, with the assistance of my criminal defense lawyer and the Aids Law Project of Pennsylvania, my charges were dropped and I entered into a rehabilitation program for first time offenders. I paid fines and performed community service to get the charges expunged. My employer placed me on indefinite suspension since my charges could result in a jail sentence. The Aids Law Project of Pennsylvania helped me return to work. To this day my felony and misdemeanor charges and my indefinite suspension remains on my employee personnel file even though all charges have been expunged. This information could be transferred to any future employer. After my charges were dismissed the PA State Nursing

Licensing Board tried to go after and take my nursing license from me. With the help of the Aids Law Project of Pennsylvania I was able to keep my nursing license.

I certainly do not wish this on anyone else. I have made a promise to myself to help others by telling my HIV positive story so no one who is living with HIV will ever have to experience the hardships I have faced with HIV Criminalization. I am an active member with the Positive Women's Network and I am part of the Council of Justice Leaders for the Elizabeth Taylor Aids Foundation. We are working to dispel the stigma of HIV Criminalization and to spread awareness through media across the country.

HIV Criminalization damages lives and careers. It stays with a person the rest of their life. I have remained undetectable my whole diagnosis. The science is clear. The risk of transmission from a person whose virus is undetectable is ZERO. Undetectable means untransmissible. Today hopefully, you will consider my testimony as facts and inspiration and only support legislation grounded in science. Thank you.



POSITIVE WOMEN'S NETWORK
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October 5, 2021

Re: House Democratic Policy Committee

Dear Committee Chairman Representative Ryan Bizzaro and the House Democratic Policy Committee:

I am writing on behalf of the Positive Women's Network-USA (PWN). PWN is the only nationwide membership organization comprised of women and people of transgender experience living with HIV. We work to strengthen the strategic power of all women living with HIV, including people of trans experience, by inspiring, informing and mobilizing members to advocate for changes that improve our lives and uphold our rights. Our work is grounded in social justice and human rights, and we explicitly apply a racial justice and gender justice lens to address the multifarious barriers women living with HIV face in all aspects of our lives.

PWN members are actively engaged in HIV modernization and/or repeal efforts in numerous states around the country, including Pennsylvania. We write today to emphasize the need to end the criminalization of HIV in the state of Pennsylvania. HIV criminalization is detrimental to and diametrically opposed to achieving the goals of public health.

The domestic HIV epidemic remains a significant public health issue, one that has disproportionality impacted Black, Indigenous and other communities of color (BIPOC), LGBTQ people, people who use drugs, and sex workers. Laws that criminalize people living with HIV disproportionately impact women, especially Black and other women of color, women who are sex workers and women of trans experience.¹ They are also disproportionately enforced against Black people living with HIV.

Laws that criminalize HIV status often do not reflect the current scientific understanding of HIV and its transmission and do not acknowledge the medical advancements that now treat HIV symptoms and allow for partners to protect themselves. Criminalizing HIV does not create the conditions for safer sexual behaviors or reduce the transmission of HIV, principally because criminalization leads to stigma, discrimination and shame. HIV criminalization laws disincentive HIV testing by subjecting those who know their status to the ever-present threat of arrest and criminal prosecution. They create mistrust of, and alienation from, public health institutions and put people living with HIV at heightened risk of violence from intimate partners. Criminalizing HIV creates service barriers and mistrust of public health institutions due to the threat of disclosure to law enforcement, and so less people feel comfortable obtaining testing or treatment.

Any campaign that seeks to change HIV-specific laws must meaningfully include people living with HIV, and this is especially true for efforts to address HIV criminalization laws. It is the lives, rights, and safety of people living with HIV that will be most impacted by any modernization and/or repeal effort.

Thank you to the House Democratic Policy Committee for hosting this briefing and providing the opportunity to provide written comment. We look forward to continued opportunities to meaningfully

¹ "Factsheet: Criminalization as violence against women living with HIV," Positive Women's Network, n.d.. Available at <https://www.pwn-usa.org/doa2016/factsheet-doa2016/>.

collaborate with people living with HIV in Pennsylvania. We hope that these concerns about the role of criminalization in the public health response will be taken seriously.

Sincerely,

Tyler Barbarin
Policy Associate, Positive Women's Network
Tyler@pwn-usa.org

HIV IS NOT A CRIME: Opposition to HIV Specific Statutes and Sentence Enhancements

Steven R. Bryson, Esq. * bryson@aidslawpa.org
SERO Legal Fellow at the AIDS Law Project of Pennsylvania
Pennsylvania House Democratic Party – Policy Committee 10/6/2021

June 5, 2021, marked the 40th anniversary of the HIV epidemic. Early on in the AIDS epidemic, states enacted statutes targeting People Living with HIV (PLHIV) based on stigma, fear, misinformation, and in response to the Ryan White Comprehensive AIDS Resources Emergency Act (CARES Act). After forty years we have a far better understanding of HIV, therefore our laws should reflect that knowledge. HIV is no longer a death sentence and with proper antiretroviral treatment PLHIV can live a long and healthy life. Furthermore, advances in antiretroviral treatments reduces the risk of transmission by a PLHIV with an undetectable viral load to effectively zero.

Pennsylvania does not have HIV-specific criminal laws mandating disclosure of one's HIV positive status prior to engaging in intimate sexual contact. Nor does it specifically outlaw the perceived, potential or actual HIV exposure or transmission. Instead, Pennsylvania uses generally applicable criminal laws to prosecute people with HIV even when the act in question has little or no risk of transmitting HIV. Pennsylvania does, however, have HIV-specific sentencing enhancements for prisoners and sex workers. In 2010, when the CARES Act was recertified, the requirements for states to have a legal mechanism to prosecute people intentionally expose people to the virus were removed. Thus began the movement to modernize/eradicate HIV criminalization. In 2021, four states successfully reformed their laws. Moreover, the United Nations Development Programme (UNDP) released a Guidance for Prosecutors on HIV-related criminal cases in the spring of 2021. The guide, which was released globally, focused on shifting efforts from HIV criminalization to a public health approach to ending the epidemic. The guide outlines many avenues for prosecutors to resolve cases through alternative means, and urges prosecutors to only use criminalization as a very last resort.

When HIV is criminalized, PLHIV face more than just direct consequences of criminal convictions, they also face legal sanctions and restrictions which are imposed by statute on people because of their criminal record. Mandatory consequences of even a misdemeanor conviction include notification of state professional licensing boards, ineligibility for naturalization, visa or asylum; ineligibility to serve on jury; ineligibility to serve as law enforcement or firefighter; forfeiture of retirement benefits for public employees and officials; ineligibility for firearms license (Philadelphia only); ineligibility for taxicab license and ineligibility for employment at any school for 5 years from expiration of sentence. Felony convictions carry additional mandatory consequences including deportation, denial of retirement pay for military service, denial of commission for military service and ineligibility to reside in public housing. In addition to collateral consequences mandated by statute, there are discretionary consequences of criminal convictions permitted by law including temporary or permanent suspension of a license by state professional licensing boards, impeachment as a witness, denial of a firearms license, denial of liquor license, ban from gaming facility and denial of student loans and scholarships.¹

The HIV epidemic is a public health crisis and should be addressed as such. HIV Criminalization undermines efforts to encourage HIV testing and retain people living with HIV in care, and creates distrust of public health officials and programs. Fear of HIV Criminalization may discourage people with HIV from cooperating with traditional sexually transmitted infections (STI) prevention measures, like partner notification and treatment-adherence programs. HIV criminalization was initially pursued as a means to curb infections rates. There is zero evidence that criminalization curbs infection rates, in fact the evidence proves that criminalization does the opposite because it discourages individuals from testing because ignorance is the only defense to these statutes.

¹ <https://2txzlt1d3d2142rsem1eyxb1-wpengine.netdna-ssl.com/wp-content/uploads/2020/01/5-4-2017-ALL-PAIN-NO-GAIN-HIV-Criminalization-in-Pennsylvania-1.pdf>