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RE: An Act relative to the deliberate spread of contagious diseases (H.2295)

The Fenway Institute at Fenway Health in Boston strongly opposes H.2295, An Act relative to the deliberate spread of contagious diseases. The Fenway Institute works to make life healthier for those who are lesbian, gay, bisexual, and transgender (LGBT), as well as people living with HIV and the larger community. We achieve this through research and evaluation, education and training, and policy analysis. We are the research division of Fenway Health, a federally qualified health center and Ryan White Part C HIV clinic in Boston, MA.

HIV criminalization laws, like H.2295, are crafted with the intention to reduce the likelihood that HIV-positive individuals will intentionally or unintentionally spread the disease to uninfected individuals who are unaware of the risk they are being put in.¹ However, research has shown that HIV criminalization laws are not associated with lower rates of sex by HIV-positive individuals without disclosure of HIV status.² In a study examining the attitudes of 1,725 US men who have sex with men (MSM) and the impact of HIV criminalization laws, researchers found no evidence to support the notion that criminalization is an effective deterrent to engaging in high risk sexual behavior.³

Rather, it has become clear that HIV criminalization laws exacerbate stigma and discrimination associated with HIV and thus increase the risk of transmission.⁴

¹ Mesika R. 2012. *The ethics of HIV criminalization*. International Center for Ethics, Justice and Public Life. Brandeis University.

² Duru OK, Collins RL, Ciccarone DH, Morton SC, Stall R, Beckman R, Miu A, Kanouse DE. 2006. Correlates of sex without serostatus disclosure among a national probability sample of HIV patients. *AIDS and Behavior*, 10(5), 495-507.

³ Horvath KJ, Weinmeyer R, & Rosser S. 2010. Should it be illegal for HIV-positive persons to have unprotected sex without disclosure? An examination of attitudes among US men who have sex with men and the impact of state law. *AIDS Care*, 22(10), 1221-1228.

⁴ Center for HIV Law and Policy. 2017. *When sex is a crime and spit is a dangerous weapon: A snapshot of HIV criminalization in the United States*. New York.

Based on this data, states including California and Iowa are beginning to repeal their HIV criminalization laws.^{5,6} President Obama’s Office of National AIDS Policy calls for the elimination HIV criminalization laws in *The National HIV/AIDS Strategy: Updated to 2020*, stating that due to the fact that “HIV-specific laws do not influence the behavior of people living with HIV in those States where these laws exist, legislators should reconsider whether existing laws continue to further the public interest and public health. In too many instances, the existence and enforcement of these types of laws run counter to scientific evidence about...effective measures of HIV prevention, and undermine the public health goals of promoting HIV screening and treatment.”⁷ Organizations including the American Medical Association, the American Psychological Association, and U.S. Conference of Mayors all oppose HIV criminalization laws such as H.2295.

H.2295 would create unnecessary barriers to HIV testing and treatment, further complicate disclosure of HIV status, and increase the stigma surrounding HIV. If enacted, this bill would actively discourage people from getting tested, therefore penalizing responsible behavior and rewarding lack of knowledge about HIV status.⁸ By associating HIV status with criminality, this bill perpetuates the stigma surrounding HIV, discouraging people from seeking critical healthcare and disclosing their status to potential sexual partners. There is nothing criminal about having HIV in and of itself, and should someone who happens to have HIV engage in assaultive or otherwise illegal conduct, there are plenty of existing laws on the books to ensure justice for those harmed.

Framing the spread of HIV as a criminal behavior undermines the supportive social environment needed to stop the spread of HIV.⁹ In our view, H.2295 is a step in the wrong direction—reinforcing negative stigma¹⁰ and undermining public health efforts to lower the rate of new HIV infections in Massachusetts. H.2295 would deter testing, deter treatment, and promote misconceptions about HIV,¹¹ undoubtedly worsening the epidemic.

We respectfully urge the Massachusetts state legislature, long a leader in equitable public health policies, to reject this bill which jeopardizes the strides taken to reduce the rate of HIV transmission. Instead, our state government should continue to support and fund proven public health interventions, such as voluntary testing, outreach, and training of peer leaders.¹² These approaches are

⁵ Associated Press. 2017. “California lawmakers vote to repeal HIV criminalization laws.”

⁶ San Francisco AIDS Foundation. 2014. “Iowa first state to repeal HIV criminalization law.”

⁷ The Office of National AIDS Policy. 2015. *The National HIV/AIDS Strategy: Updated to 2020*. Washington, DC: ONAP.

⁸ AIDSWatch. *HIV criminalization: A challenge to public health and ending AIDS*. Washington, DC: AIDS United. No date.

⁹ Burris S, Cameron E. 2008. The case against criminalization of HIV transmission. *JAMA*. 300(5):578-581.

¹⁰ Halkitis P, Griffin-Tomas M. 2017. HIV criminalization and the public’s health: Policy considerations in the era of Treatment as Prevention (TasP) and Pre-Exposure Prophylaxis (PrEP). *Psychology and AIDS Exchange*.

¹¹ Cockerill R, Wahlert L. 2015. AIDS panic in the Twenty-First Century: The tenuous legal status of HIV-positive persons in America. *Journal of Bioethical Inquiry*, 12(3), 377-381.

¹² Burris S, Cameron E. 2008.

proven effective in promoting disclosure of HIV-positive status and promoting safer sex.¹³

HIV criminalization laws do not reduce unprotected sex without disclosure of HIV-positive status.¹⁴ Instead, they reinforce stigma¹⁵ and undermine public health efforts to ensure that all individuals are screened for HIV/STIs and educated as to how to reduce the risk of HIV infection.

Sincerely,

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¹³ *Ibid.*

¹⁴ Lazzarini Z, Galletly CL, Mykhalovskiy E, Harsono D, O'Keefe E, Singer M, & Levine RJ. 2013. Criminalization of HIV transmission and exposure: research and policy agenda. *American Journal of Public Health*, 103(8), 1350-1353.

¹⁵ Halkitis P, Griffin-Tomas M. 2017.