To modernize laws and policies, and eliminate discrimination, with respect to people living with HIV/AIDS, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2017

Ms. Lee (for herself, Ms. Ros-Lehtinen, Mr. Pocan, Mr. Beyer, Ms. Jackson Lee, Ms. Clarke of New York, Ms. Speier, Ms. McCollum, Mr. Ellison, Ms. Kelly of Illinois, Mr. Kilmer, Ms. Clark of Massachusetts, Mr. Takano, Ms. Roybal-Allard, Mr. Blumenauer, Mr. Nadler, Ms. Norton, Ms. Sewell of Alabama, Mr. Danny K. Davis of Illinois, Mr. Lowenthal, Ms. Jayapal, Mr. Swalwell of California, Ms. Schakowsky, Mr. Cohen, Mr. Quigley, Mr. Price of North Carolina, Mr. Peters, Mr. Hastings, and Ms. Wasserman Schultz) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Energy and Commerce, and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To modernize laws and policies, and eliminate discrimination, with respect to people living with HIV/AIDS, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Repeal Existing Policies that Encourage and Allow Legal HIV Discrimination Act of 2017” or the “REPEAL HIV Discrimination Act of 2017”.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) At present, 33 States and 2 United States territories have criminal statutes based on perceived exposure to HIV, rather than actual transmission of HIV to another. Eleven States have HIV-specific laws that make spitting or biting a felony, even though it is not possible to transmit HIV via saliva. Twenty-four States require persons who are aware that they have HIV to disclose their status to sexual partners. Fourteen of these 24 States also require disclosure to needle-sharing partners. Twenty-five States criminalize one or more behaviors that pose a low or negligible risk for HIV transmission.

(2) According to the Centers for Disease Control and Prevention (CDC), HIV is only transmitted through blood, semen, vaginal fluid, and breast milk.

(3) HIV-specific criminal laws are classified as felonies in 28 States; in three States, a person’s exposure to another to HIV does not subject the person to criminal prosecution for that act alone, but
may result in a sentence enhancement. Eighteen States impose sentences of up to 10 years; seven impose sentences between 11 and 20 years; and five impose sentences of greater than 20 years.

(4) When members of the Armed Forces acquire HIV, they are issued orders that require them to disclose under all circumstances including when the known risk of transmission is zero. Failure to disclose can result in prosecution under the Uniform Code of Military Justice (UCMJ).

(5) The number of prosecutions, arrests, and instances where HIV-specific criminal laws are used to induce plea agreements is unknown. Because State-level prosecution and arrest data are not readily available in any national legal database, the societal impact of these laws may be underestimated and most cases that go to trial are not reduced to written, published opinions.

(6) State and Federal criminal law does not currently reflect the three decades of medical advances and discoveries made with regard to transmission and treatment of HIV/AIDS.

(7) According to CDC, correct and consistent male or female condom use is very effective in preventing HIV transmission. However, most State
HIV-specific laws and prosecutions do not treat the use of a condom during sexual intercourse as a mitigating factor or evidence that the defendant did not intend to transmit HIV.

(8) Criminal laws and prosecutions do not take into account the benefits of effective antiretroviral medications, which reduce the HIV virus to undetectable levels and further reduce the already low risk of transmitting the HIV to near zero.

(9) Although HIV/AIDS currently is viewed as a treatable, chronic, medical condition, people living with HIV/AIDS have been charged under aggravated assault, attempted murder, and even bioterrorism statutes because prosecutors, courts, and legislators continue to view and characterize the blood, semen, and saliva of people living with HIV as a “deadly weapon”.

(10) Multiple peer-reviewed studies demonstrate that HIV-specific laws do not reduce risk-taking behavior or increase disclosure by people living with or at risk of HIV, and there is increasing evidence that these laws reduce the willingness to get tested. Furthermore, placing legal responsibility for preventing the transmission of HIV and other pathogens exclusively on people diagnosed with HIV, and without
consideration of other pathogens that can be sexually transmitted, undermines the public health message that all people should practice behaviors that protect themselves and their partners from HIV and other sexually transmitted diseases.

(11) The identity of an individual accused of violating existing HIV-specific restrictions is broadcast through media reports, potentially destroying employment opportunities and relationships and violating the person’s right to privacy.

(12) Individuals who are convicted for HIV exposure, nondisclosure, or transmission often must register as sex offenders even in cases of consensual sexual activity. Their employability is destroyed and their family relationships are fractured.

(13) The United Nations, including the Joint United Nations Programme on HIV/AIDS (UNAIDS), urges governments to “limit criminalization to cases of intentional transmission. Such requirement indicates a situation where a person knows his or her HIV-positive status, acts with the intention to transmit HIV, and does in fact transmit it”. UNAIDS also recommends that criminal law should not be applied to cases where there is no significant risk of transmission.
(14) The Global Commission on HIV and the Law was launched in June 2010 to examine laws and practices that criminalize people living with and vulnerable to HIV and to develop evidence-based recommendations for effective HIV responses. The Commission calls for “governments, civil society and international bodies to repeal punitive laws and enact laws that facilitate and enable effective responses to HIV prevention, care and treatment services for all who need them”. The Commission recommends against the enactment of “laws that explicitly criminalize HIV transmission, exposure or non-disclosure of HIV status, which are counter-productive”.

(15) In 2010, the President released a National HIV/AIDS Strategy (NHAS), which addressed HIV-specific criminal laws, stating: “While we understand the intent behind these laws, they may not have the desired effect and they may make people less willing to disclose their status by making people feel at even greater risk of discrimination. In some cases, it may be appropriate for legislators to reconsider whether existing laws continue to further the public interest and public health. 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.”.

The NHAS also states that State legislatures should consider reviewing HIV-specific criminal statutes to ensure that they are consistent with current knowledge of HIV transmission and support public health approaches to preventing and treating HIV.

(16) In February 2013, the President’s Advisory Council on AIDS (PACHA) passed a resolution stating “all U.S. law should be consistent with current medical and scientific knowledge and accepted human rights-based approaches to disease control and prevention and avoid imposition of unwarranted punishment based on health and disability status”.

SEC. 3. SENSE OF CONGRESS REGARDING LAWS OR REGULATIONS DIRECTED AT PEOPLE LIVING WITH HIV.

It is the sense of Congress that Federal and State laws, policies, and regulations regarding people living with HIV—

(1) should not place unique or additional burdens on such individuals solely as a result of their HIV status; and
(2) should instead demonstrate a public health-oriented, evidence-based, medically accurate, and contemporary understanding of—

(A) the multiple factors that lead to HIV transmission;

(B) the relative risk of demonstrated HIV transmission routes;

(C) the current health implications of living with HIV;

(D) the associated benefits of treatment and support services for people living with HIV; and

(E) the impact of punitive HIV-specific laws, policies, regulations, and judicial precedents and decisions on public health, on people living with or affected by HIV, and on their families and communities.

SEC. 4. REVIEW OF FEDERAL AND STATE LAWS.

(a) Review of Federal and State Laws.—

(1) In General.—Not later than 90 days after the date of the enactment of this Act, the Attorney General, the Secretary of Health and Human Services, and the Secretary of Defense acting jointly (in this section referred to as the “designated officials”) shall initiate a national review of Federal and State
laws, policies, regulations, and judicial precedents and decisions regarding criminal and related civil commitment cases involving people living with HIV/AIDS, including in regard to the Uniform Code of Military Justice (UCMJ).

(2) CONSULTATION.—In carrying out the review under paragraph (1), the designated officials shall seek to include diverse participation from, and consultation with, each of the following:

(A) Each State.

(B) State attorneys general (or their representatives).

(C) State public health officials (or their representatives).

(D) State judicial and court system officers, including judges, district attorneys, prosecutors, defense attorneys, law enforcement, and correctional officers.

(E) Members of the United States Armed Forces, including members of other Federal services subject to the UCMJ.

(F) People living with HIV/AIDS, particularly those who have been subject to HIV-related prosecution or who are from communities
whose members have been disproportionately subject to HIV-specific arrests and prosecution.

(G) Legal advocacy and HIV/AIDS service organizations that work with people living with HIV/AIDS.

(H) Nongovernmental health organizations that work on behalf of people living with HIV/AIDS.

(I) Trade organizations or associations representing persons or entities described in subparagraphs (A) through (G).

(3) Relation to other reviews.—In carrying out the review under paragraph (1), the designated officials may utilize other existing reviews of criminal and related civil commitment cases involving people living with HIV, including any such review conducted by any Federal or State agency or any public health, legal advocacy, or trade organization or association if the designated officials determines that such reviews were conducted in accordance with the principles set forth in section 3.

(b) Report.—Not later than 180 days after initiating the review required by subsection (a), the Attorney General shall transmit to the Congress and make publicly
available a report containing the results of the review, which includes the following:

(1) For each State and for the UCMJ, a summary of the relevant laws, policies, regulations, and judicial precedents and decisions regarding criminal cases involving people living with HIV, including the following:

(A) A determination of whether such laws, policies, regulations, and judicial precedents and decisions place any unique or additional burdens upon people living with HIV.

(B) A determination of whether such laws, policies, regulations, and judicial precedents and decisions demonstrate a public health-oriented, evidence-based, medically accurate, and contemporary understanding of—

(i) the multiple factors that lead to HIV transmission;

(ii) the relative risk of HIV transmission routes;

(iii) the current health implications of living with HIV;

(iv) the associated benefits of treatment and support services for people living with HIV; and
(v) the impact of punitive HIV-specific laws and policies on public health, on people living with or affected by HIV, and on their families and communities.

(C) An analysis of the public health and legal implications of such laws, policies, regulations, and judicial precedents and decisions, including an analysis of the consequences of having a similar penal scheme applied to comparable situations involving other communicable diseases.

(D) An analysis of the proportionality of punishments imposed under HIV-specific laws, policies, regulations, and judicial precedents, taking into consideration penalties attached to violation of State laws against similar degrees of endangerment or harm, such as driving while intoxicated (DWI) or transmission of other communicable diseases, or more serious harms, such as vehicular manslaughter offenses.

(2) An analysis of common elements shared between State laws, policies, regulations, and judicial precedents.

(3) A set of best practice recommendations directed to State governments, including State attor-
neys general, public health officials, and judicial officers, in order to ensure that laws, policies, regulations, and judicial precedents regarding people living with HIV are in accordance with the principles set forth in section 3.

(4) Recommendations for adjustments to the UCMJ, as may be necessary, in order to ensure that laws, policies, regulations, and judicial precedents regarding people living with HIV/AIDS are in accordance with the principles set forth in section 3. Such recommendations should include any necessary and appropriate changes to “Orders to Follow Preventative Medicine Requirements”.

(e) GUIDANCE.—Within 90 days of the release of the report required by subsection (b), the Attorney General and the Secretary of Health and Human Services, acting jointly, shall develop and publicly release updated guidance for States based on the set of best practice recommendations required by subsection (b)(3) in order to assist States dealing with criminal and related civil commitment cases regarding people living with HIV.

(d) MONITORING AND EVALUATION SYSTEM.—Within 60 days of the release of the guidance required by subsection (c), the Attorney General and the Secretary of Health and Human Services, acting jointly, shall establish
an integrated monitoring and evaluation system which includes, where appropriate, objective and quantifiable performance goals and indicators to measure progress toward statewide implementation in each State of the best practice recommendations required in subsection (b)(3).

(e) Modernization of Federal Laws, Policies, and Regulations.—Within 90 days of the release of the report required by subsection (b), the designated officials shall develop and transmit to the President and the Congress, and make publicly available, such proposals as may be necessary to implement adjustments to Federal laws, policies, or regulations, including to the Uniform Code of Military Justice, based on the recommendations required by subsection (b)(4), either through Executive order or through changes to statutory law.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to discourage the prosecution of individuals who intentionally transmit or attempt to transmit HIV to another individual.

SEC. 6. NO ADDITIONAL APPROPRIATIONS AUTHORIZED.

This Act shall not be construed to increase the amount of appropriations that are authorized to be appropriated for any fiscal year.

SEC. 7. DEFINITIONS.

For purposes of this Act:
(1) HIV AND HIV/AIDS.—The terms “HIV” and “HIV/AIDS” have the meanings given to them in section 2689 of the Public Health Service Act (42 U.S.C. 300ff–88).

(2) STATE.—The term “State” includes the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the United States Virgin Islands.