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3 Title: Modernization of Michigan’s HIV Criminal Law
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5 Introduced by: John Winterholler for the Medical Student Section
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7 Original Author: Michael Chavarria, Daniel Ferman, Joshua Vandeburgh, and Grace Walter
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9 Referred to: Reference Committee D
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11 House Action: **AMEND**
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14 Whereas, Michigan’s current HIV criminal law, MCL 333.5210, was passed in 1988 as a reaction
15 to public fear during the height of the HIV epidemic in the United States, without an evidence-based
16 understanding of transmission^{1,2}, and
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18 Whereas, Michigan's current HIV criminal law has not been updated with current scientific and
19 public health-based understanding of HIV and its transmission³, and
20

21 Whereas, Michigan’s HIV criminal law, as currently written and enforced, undermines public
22 health efforts to reduce transmission of HIV^{4,5,6,7,8,9,10,11,12,13,14}, and
23

24 Whereas, the law reinforces stigma against those living with HIV¹⁵, and
25

26 Whereas, the law has disproportionately been applied against racial and ethnic minorities, as
27 well as other marginalized populations¹⁶, and
28

29 Whereas, researchers have been unable to point to evidence of any specific HIV prevention
30 benefit from HIV criminalization law regardless of time, jurisdiction, nature of criminal law, study
31 design, or indicator of HIV prevention used¹⁷, and
32

33 Whereas, criminal laws compelling HIV disclosure have been found to have little or no
34 influence on disclosure by HIV positive individuals and have no influence on sexual risk taking^{18,19}, and
35

36 Whereas, studies in Michigan have shown that awareness of the state’s criminal HIV exposure
37 laws have little effect on disclosure practices of those with HIV²⁰, and
38

39 Whereas, Michigan’s current HIV criminal law includes activities that, according to the Centers
40 for Disease Control and Prevention, pose either no risk or a negligible risk for transmission^{21,22,23}, and
41

42 Whereas, there is evidence of improper enforcement of HIV criminal law, leading to criminal
43 investigations beyond the scope of what the law intends^{24,25}, and
44

45 Whereas, the current HIV criminalization law creates barriers to testing and treatment,
46 involving but not limited to education, counseling and support^{26,27}, and
47

48 Whereas, the Michigan Coalition for HIV Health and Safety is a broad coalition of non-profit
49 organizations, elected officials, public health officials, and professional associations—including the
50 Michigan Primary Care Association-- that is committed to the modernization of Michigan’s HIV laws;
51 therefore be it
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53 RESOLVED: That MSMS endorses legislation that modernizes Michigan’s HIV criminal law to
54 incorporate three guiding principles: 1) HIV criminal law must be based on criminal intent to infect

55 and conduct likely to transmit; 2) HIV criminal law must have punishment that is proportionate to
56 harm; and 3) HIV criminal law must not create new crimes or increased penalties for any disease and
57 must exclude diseases that are airborne/casually transmitted.
58

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60 WAYS AND MEANS COMMITTEE FISCAL NOTE: NONE

Relevant MSMS Policy:

Confidentiality of HIV Blood Test Results

MSMS supports safeguards to protect the confidentiality of HIV test results. (Res61-97A)

Confirmed HIV Positivity as Sexually Transmitted Disease

HIV positivity, if confirmed, indicates a disease that can be sexually transmitted and should be reported as a sexually transmitted disease. (Prior to 1990)

– Edited 1998

Routine Premarital HIV Testing

Routine Testing for HIV in Medical Care Settings

MSMS supports premarital HIV testing. (Res58-97A)

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MSMS supports premarital HIV testing. (Res58-97A)

MSMS supports, promotes, and participates in the establishment and utilization of guidelines for routine HIV testing in medical settings, including the necessary alterations in current Michigan law that will facilitate this step. (Res68-07A)

¹ Public Health Code, Act of 1978. Available

[http://www.legislature.mi.gov/\(S\(otgsvw22uud22iaeotyj241i\)\)/mileg.aspx?page=GetObject&objectname=mcl-333-5210](http://www.legislature.mi.gov/(S(otgsvw22uud22iaeotyj241i))/mileg.aspx?page=GetObject&objectname=mcl-333-5210)

² Cox, B. Turning the Tide: The Future of HIV Criminalization after Rhoades v. State and Legislative Reform in Iowa. *Northwest J Law Soc Policy*. 2016;11(1):28-54.

³ Cox B, Cox B. Turning the Tide: The Future of HIV Criminalization after Rhoades v. State and Legislative Reform in Iowa. *Northwest J Law Soc Policy*. 2016;11(1):28-54

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⁵ Cameron, S., & Rule, J. (2009). In *The criminalisation of HIV transmission in Australia: Legality, morality and reality*. Newtown, Australia: National Association of People Living with HIV/AIDS.

⁶ Elliott, R. (2002). *Criminal law, public health and HIV transmission: a policy options paper*. Geneva: UNAIDS.

⁷ Galletly, C. L., & Pinkerton, S. D. (2006). Conflicting messages: How criminal HIV disclosure laws undermine public health efforts to control the spread of HIV. *AIDS & Behavior*, 10, 451e461.

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http://www.soros.org/initiatives/health/focus/law/articles_publications/publications/10reasons_20080918

¹⁰ UNAIDS. (2008). *Criminalization of HIV transmission. Policy brief*. Available.

http://data.unaids.org/pub/BaseDocument/2008/20080731_jc1513_policy_criminalization_en.pdf

¹¹ WHO. (2006). *WHO technical consultation in collaboration with the European AIDS treatment group and AIDS action Europe on the criminalization of HIV and other sexually transmitted infections*. Copenhagen: WHO.

¹² Wolf, L. E., & Vezina, R. (2004). Crime and punishment: is there a role for criminal law in HIV prevention policy? *Whittier Law Review*, 25, 821e886.

¹³ Mykhalovskiy E. The problem of "significant risk": Exploring the public health impact of criminalizing HIV non-disclosure. *Soc Sci Med*. 2011;73(5):668-675. doi:10.1016/j.socscimed.2011.06.051.

¹⁴ National Alliance of State and Territorial AIDS Directors. *NATIONAL HIV/AIDS STRATEGY IMPERATIVE: FIGHTING STIGMA AND DISCRIMINATION BY REPEALING HIV-SPECIFIC CRIMINAL STATUTES*; 2011.

¹⁵ GNPp. (2010). *Global criminalisation scan report*. Available.

http://www.gnpplus.net/images/stories/Rights_and_stigma/2010_Global_Criminalisation_Scan.pdf

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¹⁷ Mykhalovskiy E. The public health implications of HIV criminalization: past, current, and future research directions. *Crit Public Health*. 2015;25(4):373-385. doi:10.1080/09581596.2015.1052731.

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²¹ [http://www.legislature.mi.gov/\(S\(uzbziyfg5nqhr5tzxzhjedh2\)\)/mileg.aspx?page=GetObject&objectname=mcl-333-5210](http://www.legislature.mi.gov/(S(uzbziyfg5nqhr5tzxzhjedh2))/mileg.aspx?page=GetObject&objectname=mcl-333-5210)

²² US Department of Justice Civil Rights Division. Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically-Supported Factors.; 2014. <http://hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/DOJ-HIV-Criminal-Law-Best-Practices-Guide.pdf>.

²³ Lehman JS, Carr MH, Nichol AJ, et al. Prevalence and public health implications of state laws that criminalize potential HIV exposure in the United States. *AIDS Behav.* 2014;18(6):997-1006. doi:10.1007/s10461-014-0724-0.

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