

I am hereby testifying in support of 2023 HB 1281, to repeal section 12.1-20-17 from the North Dakota Century Code, relating to willfully transferring body fluid containing the human immunodeficiency virus as punishable as a Class A felony.

The reasons I am in support of this bill are as follows:

1. Scientific and social understandings of HIV/AIDS are substantially improved since 1993, when this statute was put into law.
 - In 1993, antiretroviral therapies such as zidovudine were expensive, and neither well understood, nor widely available. In 2023, these drugs can be made available to all patients in need.
 - In 1993, AIDS was a fatal condition, in 2023 it is a chronic disease that can be managed with medication and a person can live a relatively normal life.
 - If a person is adherent to their HIV medications and able to achieve an undetectable viral load, they will not transmit HIV to their sex partner. It will also reduce, but not eliminate, the risk of HIV transmission through needle sharing or other drug injection equipment.
 - Programs such as the Ryan White Program provide free care for all HIV positive persons who are eligible. As of December 31, 2021, of the 520 estimated persons living with HIV in North Dakota, 292 (56%) were enrolled in the ND Ryan White program. This should continue to be upscaled to all eligible individuals.
2. Criminalization of HIV transmission does not result in reduced transmission of HIV at the population level.
 - There is no evidence that HIV criminalization deters persons from transmitting HIV by having fewer sex partners or disclosing their status more frequently, and none have found effects of sufficient magnitude to reduce HIV prevalence at a population level.
 - HIV criminalization gives the false impression that the state is punishing bad people who are responsible for wantonly spreading HIV virus to others. This is an illusion because HIV exposure or transmission is seldom the result of malicious intent.
 - Criminalizing HIV transmission does not reduce infractions.
 - If an individual intentionally transmits HIV to a victim, there is nothing preventing that person from being otherwise charged with aggravated assault, reckless endangerment, aggravated sexual assault, or attempted murder, as is done in Canada.
3. Criminalization of HIV transmission further stigmatizes people with HIV.
 - These laws increase HIV stigma, because possession of the virus is tantamount to possessing a weapon in one's body.
 - Such laws are more a mechanism to stigmatize, intimidate, and isolate individuals with HIV than they are a mechanism to prevent HIV transmission at the population level, and person's positive for HIV are more frequently vulnerable individuals to begin with, based on race, sexual orientation, and poverty.
 - Such laws are seldom enforced, so they hang like the Sword of Damocles over people living with HIV.
 - All persons should be treated with empathy and kindness, regardless of the reason they contracted a disease.

In summary, I support North Dakota working to decrease the number of people with HIV and reducing HIV transmission so as to reduce the incidence of HIV in North Dakota. This will happen by focusing on testing, prevention efforts, and treatment. And this will be more easily accomplished when patients with HIV do not fear they are potentially criminals. Therefore I support HB 1281, to repeal section 12.1-20-17 from the North Dakota Century Code, to no longer treat individuals willfully transferring body fluid containing the human immunodeficiency virus as a Class A felony

References:

Bernard EJ, Symington A, Beaumont S. Punishing vulnerability through HIV criminalization. *Am J Public Health*. 2022;112(S4):S395–S397. DOI: <https://doi.org/10.2105/AJPH.2022.306713>

Lazzarini, Zita; Galletly, Carol L.; Mykhalovskiy, Eric; Harsono, Dini; O'Keefe, Elaine; Singer, Merrill; Levine, Robert J. *Am J Public Health*. Criminalization of HIV Transmission and Exposure: Research and Policy Agenda". *American Journal of Public Health*. 2013;103 (8): 1350–1353. [doi:10.2105/AJPH.2013.301267](https://doi.org/10.2105/AJPH.2013.301267)

Mermin J., Salvant Valentine S., McCray E. (2021). HIV Criminalization laws and ending the US HIV epidemic. *The Lancet*,8(1), E4-E6. Retrieved from [https://doi.org/10.1016/S2352-3018\(20\)30333-7](https://doi.org/10.1016/S2352-3018(20)30333-7)

Centers for Disease Control and Prevention. Protecting Others.
<https://www.cdc.gov/hiv/basics/livingwithhiv/protecting-others.html>

Centers for Disease Control and Prevention. HIV and STD Criminalization Laws.
<https://www.cdc.gov/hiv/policies/law/states/exposure.html>

2021 North Dakota HIV, STI, TB & Viral Hepatitis Epidemiologic Profile, September 2022.
<https://www.hhs.nd.gov/sites/www/files/documents/EpiProfile.pdf>