

Chair Ruby, Vice Chair Frelich, and members of the Committee:

On behalf of the ACLU of North Dakota, I submit testimony in support of House Bill 1217 relating to willfully transferring body fluid containing HIV.

Laws that criminalize living with HIV fundamentally undermine the constitutional rights and dignity of individuals by penalizing them for a health condition rather than any criminal behavior. North Dakota Century Code 12.1-20-17 criminalizes the transfer of body fluids by individuals living with HIV under circumstances that fails to reflect current scientific understanding and public health realities. This law unjustly punishes individuals for their HIV status rather than for demonstrable criminal conduct. By criminalizing the willful transfer of body fluids, even in cases where consensual sexual activity occurs, it effectively turns a health condition into a basis for severe criminal penalties. This approach not only exacerbates stigma against people living with HIV but also discourages testing and open communication about HIV status, ultimately undermining public health efforts.

Furthermore, the current law is problematic in its application and scope. The definition of “transfer” covers a broad range of sexual activities and even the reuse of needles, without sufficiently considering the nuances of risk, prevention strategies, and the reality of undetectable viral load status. Although the law provides an affirmative defense when there is full disclosure and the use of prophylactic devices, this exception is not enough to mitigate the inherent overreach of the statute. It imposes a chilling effect on intimate relationships and medical disclosure, forcing individuals to navigate a legal minefield where the act of living with HIV is stigmatized and criminalized. This not only violates the principles of equal protection and due process but also reflects an outdated approach to HIV prevention that ignores decades of advancements in treatment and risk-reduction education. In addition, to the ACLU’s knowledge, no cases have ever been prosecuted under this statute since it’s roughly thirty years on the books, exhibiting it is irrelevant while remaining discriminatory.

The ACLU therefore calls for the passage of HB1217 repealing of NDCC 12.1-20-17 as a needed move toward evidence-based policies that respect the rights and dignity of all individuals. Rather than relying on broad criminal sanctions that target people living with HIV, state policy should focus on public health measures (such as education, accessible healthcare, and harm reduction strategies) that are informed by current best practices, research, and science. Passage of HB1217 will reduce legal discrimination while fostering an environment that encourages open dialogue, comprehensive prevention, and the empowerment of those affected by HIV, all of which protect and advance civil liberties and the public good

The ACLU urges a “do pass” recommendation on HB1217.

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