

## House Resolution 240

By: Representatives Cooper of the 43<sup>rd</sup>, Willard of the 51<sup>st</sup>, Hugley of the 136<sup>th</sup>, and Broadrick of the 4<sup>th</sup>

## A RESOLUTION

1 Creating the Joint Study Committee on Reforming HIV Related Criminal Laws; and for other  
2 purposes.

3 WHEREAS, on March 15, 2014, the Civil Rights Division of the United States Department  
4 of Justice and the Centers for Disease Control and Prevention ("CDC") published  
5 "Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV  
6 Exposure in the United States, AIDS and Behavior" ("Article"); and

7 WHEREAS, the Article examines HIV-specific state laws that criminalize engaging in  
8 certain behaviors before disclosing known HIV-positive status. Most of these laws do not  
9 account for actual scientifically supported levels of risk by type of activities engaged in or  
10 risk reduction measures undertaken. As a result, many of these state laws criminalize  
11 behaviors that the CDC regards as posing either no or negligible risk for HIV transmission  
12 even in the absence of risk reduction measures; and

13 WHEREAS, the Article encourages states to use scientific findings to, "re-examine [these]  
14 laws, assess the laws' alignment with current evidence regarding HIV transmission risk, and  
15 consider whether the laws are the best vehicle to achieve their intended purposes"; and

16 WHEREAS, as required by the Committee Report accompanying the Commerce, Justice,  
17 Science, and Related Agencies Appropriations Bill, 2014, the Department of Justice has  
18 produced the "Best Practices Guide to Reform of HIV-Specific Criminal Laws to Align with  
19 Scientifically-Supported Factors" ("Guide") to provide technical assistance to states that wish  
20 to reexamine their HIV-specific criminal laws to ensure that existing policies "do not place  
21 unique or additional burdens on individuals living with HIV/AIDS" and that these policies  
22 "reflect contemporary understanding of HIV transmission routes and associated benefits of  
23 treatment"; and

24 WHEREAS, bringing these laws into alignment with current evidence regarding HIV  
25 transmission and current knowledge of quality and length of life for those living with HIV  
26 the following facts should be taken into account:

27 (1) The CDC categorizes the risk of transmission of HIV from biting, spitting, or  
28 throwing body fluids, even in the absence of risk reduction measures, as negligible,  
29 defined as exposure routes that are technically possible but unlikely and not well  
30 documented;

31 (2) The CDC categorizes the risk of transmission of HIV during receptive and insertive  
32 oral intercourse, even in the absence of risk reduction measure, as low;

33 (3) The estimated per-act probability of acquiring HIV during the following activity per  
34 10,000 exposures is as follows: insertive penile-vaginal intercourse, 4; receptive  
35 penile-vaginal intercourse, 8; insertive anal intercourse, 11; and receptive anal  
36 intercourse, 138. These risk assessments are in the absence of risk reduction factors;

37 (4) Taking antiretroviral therapy ("ART") can reduce the risk of HIV transmission as  
38 much as 96 percent, consistent use of condoms reduces the risk of HIV transmission by  
39 about 80 percent, and the use of ART and condoms in combination reduces these risks  
40 of transmission by 99.2 percent; and

41 (5) With testing and treatment, HIV can be a manageable chronic disease. As of 2013,  
42 a 20 year-old with the HIV virus who is on ART and is living in the United States or  
43 Canada has a life expectancy into their early 70s, a life expectancy that approaches that  
44 of an HIV-negative 20 year-old in the general population; and

45 WHEREAS, the Guide provides that generally, the best practice would be for states to reform  
46 these laws to eliminate HIV-specific criminal penalties except in two distinct circumstances.  
47 First, states may wish to retain criminal liability when a person who knows he or she is HIV  
48 positive commits a (non-HIV specific) sex crime when there is a risk of transmission (e.g.,  
49 rape or other sexual assault). The second circumstance is when the individual knows he or  
50 she is HIV positive and the evidence clearly demonstrates that individual's intent was to  
51 transmit the virus and that the behavior engaged in had a significant risk of transmission,  
52 whether or not transmission actually occurred; and

53 WHEREAS, for states that choose to retain HIV-specific criminal laws or penalty  
54 enhancements beyond these two limited circumstances, the best practice would be to reform  
55 and modernize them so that they accurately reflect the current science of risk and modes of  
56 transmission, the quality of life and life span of individuals who are living with HIV, account  
57 for circumstances in which the failure to disclose is directly related to intimate partner

58 violence, and ensure they are the desired vehicle to achieve the states' intended purpose in  
59 enacting them initially or retaining them in modernized form; and

60 WHEREAS, it would be beneficial to study the HIV-specific criminal laws and penalties in  
61 Georgia, including garnering input from district attorneys, public defenders, the Department  
62 of Corrections, the Department of Public Health, and other pertinent stakeholders to  
63 determine whether modernization should be recommended.

64 NOW, THEREFORE, BE IT RESOLVED BY THE GENERAL ASSEMBLY OF  
65 GEORGIA:

66 (1) **Creation of joint study committee.** There is created the Joint Study Committee on  
67 Reforming HIV Related Criminal Laws.

68 (2) **Members and officers.**

69 (A) The committee shall be composed of 12 members.

70 (B) The Speaker of the House of Representatives shall appoint five members of the  
71 House of Representatives as members of the committee and shall designate one of such  
72 members as cochairperson. The Speaker of the House of Representatives shall also  
73 appoint an additional member of the committee as follows: a member representing the  
74 Prosecuting Attorneys' Council.

75 (C) The President of the Senate shall appoint five members of the Senate as members  
76 of the committee and shall designate one of such members as cochairperson. The  
77 President of the Senate shall also appoint an additional member of the committee as  
78 follows: a member representing Department of Public Health.

79 (3) **Powers and duties.** The committee shall undertake a study of the conditions, needs,  
80 issues, and problems mentioned above or related thereto and recommend any action or  
81 legislation which the committee deems necessary or appropriate.

82 (4) **Meetings.** The cochairpersons shall call all meetings of the committee. The  
83 committee may conduct such meetings at such places and at such times as it may deem  
84 necessary or convenient to enable it to exercise fully and effectively its powers, perform  
85 its duties, and accomplish the objectives and purposes of this resolution.

86 (5) **Allowances, expenses, and funding.**

87 (A) The legislative members of the committee shall receive the allowances provided  
88 for in Code Section 28-1-8 of the Official Code of Georgia Annotated.

89 (B) Members of the committee who are state officials, other than legislative members,  
90 or state employees shall receive no compensation for their services on the committee,  
91 but they may be reimbursed for expenses incurred by them in the performance of their

92 duties as members of the committee in the same manner as they are reimbursed for  
93 expenses in their capacities as state officials or employees.

94 (C) Members of the committee who are not legislators, state officials, or state  
95 employees shall receive a daily expense allowance in an amount the same as that  
96 specified in subsection (b) of Code Section 45-7-21 of the Official Code of Georgia  
97 Annotated, as well as the mileage or transportation allowance authorized for state  
98 employees.

99 (D) The allowances and expenses authorized by this resolution shall not be received  
100 by any member of the committee for more than five days unless additional days are  
101 authorized. Funds necessary to carry out the provisions of this resolution shall come  
102 from funds appropriated to the House of Representatives and Senate; except that funds  
103 for the reimbursement of the expenses of state officials, other than legislative members,  
104 and state employees shall come from funds appropriated to or otherwise available to  
105 their respective agencies.

106 **(6) Report.**

107 (A) In the event the committee adopts any specific findings or recommendations that  
108 include suggestions for proposed legislation, the cochairpersons shall file a report of the  
109 same prior to the date of abolishment specified in this resolution, subject to  
110 subparagraph (C) of this paragraph.

111 (B) In the event the committee adopts a report that does not include suggestions for  
112 proposed legislation, the cochairpersons shall file the report, subject to subparagraph  
113 (C) of this paragraph.

114 (C) No report shall be filed unless the same has been approved prior to the date of  
115 abolishment specified in this resolution by majority vote of a quorum of the committee.  
116 A report so approved shall be signed by the cochairpersons of the committee and filed  
117 with the Clerk of the House of Representatives and the Secretary of the Senate.

118 (D) In the absence of an approved report, the cochairpersons may file with the Clerk  
119 of the House of Representatives and the Secretary of the Senate copies of the minutes  
120 of the meetings of the committee in lieu thereof.

121 **(7) Abolishment.** The committee shall stand abolished on December 1, 2017.