Senate Resolution 465
By: Senator Fort of the 39th

A RESOLUTION

1 Creating the Senate Study Committee on Reforming HIV Related Criminal Laws; and for
2 other 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] laws, assess the laws' alignment with current evidence regarding HIV transmission risk, and consider whether the laws are the best vehicle to achieve their intended purposes"; and

14 WHEREAS, as required by the Committee Report accompanying the Commerce, Justice,
15 Science, and Related Agencies Appropriations Bill, 2014, the Department of Justice has
16 produced the "Best Practices Guide to Reform of HIV-Specific Criminal Laws to Align with
17 Scientifically-Supported Factors" ("Guide") to provide technical assistance to states that wish
18 to reexamine their HIV-specific criminal laws to ensure that existing policies "do not place
19 unique or additional burdens on individuals living with HIV/AIDS" and that these policies
20 "reflect contemporary understanding of HIV transmission routes and associated benefits of
21 treatment"; and
WHEREAS, bringing these laws into alignment with current evidence regarding HIV transmission and current knowledge of quality and length of life for those living with HIV, the following facts should be taken into account:

1. The CDC categorizes the risk of transmission of HIV from biting, spitting, or throwing body fluids, even in the absence of risk reduction measures, as negligible, defined as exposure routes that are technically possible but unlikely and not well documented;
2. The CDC categorizes the risk of transmission of HIV during receptive and insertive oral intercourse, even in the absence of risk reduction measure, as low;
3. The estimated per-act probability of acquiring HIV during the following activity per 10,000 exposures is as follows: insertive penile-vaginal intercourse, 4; receptive penile-vaginal intercourse, 8; insertive anal intercourse, 11; and receptive anal intercourse, 138. These risk assessments are in the absence of risk reduction factors;
4. Taking antiretroviral therapy ("ART") can reduce the risk of HIV transmission as much as 96 percent, consistent use of condoms reduces the risk of HIV transmission by about 80 percent, and the use of ART and condoms in combination reduces these risks of transmission by 99.2 percent; and
5. With testing and treatment, HIV can be a manageable chronic disease. As of 2013, a 20 year-old with the HIV virus who is on ART and is living in the United States or Canada has a life expectancy into their early 70s, a life expectancy that approaches that of an HIV-negative 20 year-old in the general population; and

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

WHEREAS, for states that choose to retain HIV-specific criminal laws or penalty enhancements beyond these two limited circumstances, the best practice would be to reform and modernize them so that they accurately reflect the current science of risk and modes of transmission, the quality of life and life span of individuals who are living with HIV, account for circumstances in which the failure to disclose is directly related to intimate partner
violation, and ensure they are the desired vehicle to achieve the states' intended purpose in enacting them initially or retaining them in modernized form; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE:

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

(2) **Members and officers.**

(A) The committee shall be composed of nine members.

(B) The Lieutenant Governor shall appoint five members of the Senate as members of the committee and shall designate one of such members as chairperson. The Lieutenant Governor shall also appoint four additional members of the committee as follows: a member representing the Prosecuting Attorneys' Council, a member who is a criminal defense attorney, a member representing the Department of Public Health, and a member who is a community based HIV service provider or policy advocate. The Georgia Association of Criminal Defense Lawyers may recommend a list of individuals for consideration to serve as the criminal defense attorney member. The Georgia HIV Advocacy Network may recommend a list of individuals for consideration to serve as the community based HIV service provider or policy advocate member.

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

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

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

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

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

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

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

(6) Report.

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

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

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

(D) In the absence of an approved report, the chairperson may file with the Secretary of the Senate copies of the minutes of the meetings of the committee in lieu thereof.

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