

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]
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 SENATE:

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

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

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

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

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 chairperson shall call all meetings of the committee. The committee
 83 may conduct such meetings at such places and at such times as it may deem necessary or
 84 convenient to enable it to exercise fully and effectively its powers, perform its duties, and
 85 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 Senate; except that funds for the reimbursement of the
103 expenses of state officials, other than legislative members, and state employees shall
104 come from funds appropriated to or otherwise available to their respective agencies.

105 **(6) Report.**

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

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

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

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

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