

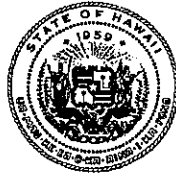
TESTIMONY

SB2896

HTH Committee Hearing 2/03/2012

LATE

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
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In reply, please refer to:
File:

Senate Committee on Health

SB 2896, Relating to Offence Against the Person

**Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health**

February 3, 2012

- 1 **Department's Position:** The Department strongly opposes this bill.
- 2 **Fiscal Implications:** Cost to the Department may be reflected in diminished effectiveness resulting in
3 increased costs to administer the HIV prevention program which promotes comprehensive voluntary
4 HIV testing and linkage of those positive with prevention and care services.
- 5 **Purpose and Justification:** SB 2896 creates an offense of "knowing exposure to HIV." It makes
6 sexual penetration with intent to expose a person to HIV, or sharing hypodermic syringe or needles for
7 injecting prohibited controlled substances with the intent to expose a person to HIV, a class C felony.
- 8 The Department strongly opposes this bill. The Attorney General's position is that current statutes are
9 adequate to prosecute such offences, as necessary. It would be poor public health practice to criminalize
10 the transmission of any specific disease. Criminalization would add to the stigma, fear and
11 discrimination surrounding HIV. These have been found to discourage engagement of those individuals
12 who may have HIV with public health and the medical system. Criminalization has been found to be a
13 disincentive for individuals, particularly those of high risk, to be tested for HIV knowing that a positive
14 diagnosis could put them in jeopardy of prosecution that they would not be subject to if their HIV status

1 was not known or negative. It is essential, however, for individuals, particularly those of high risk, to be
2 tested for HIV in order to institute preventive measures, including antiviral treatment. It is highly
3 problematic to prove intent to expose, or whether the potentially exposed individual was previously
4 informed or should have known the HIV status of their sex or needle sharing partner. In addition,
5 criminalization creates actual or perceived conflicting obligations for health care providers regarding
6 their patients and any partners.

7 The Department opposes the bill and supports the position that it is not necessary at this time.

8 Thank you for the opportunity to testify.

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COMMITTEE ON HEALTH

Senator Josh Green, Chair

Senator Clarence Nishihara, Vice Chair

Friday, February 3, 2012

3:15 p.m.

Room 229

OPPOSITION to SB2896 - OFFENSES AGAINST THE PERSON

Chair Green, Vice Chair Nishihara and Members of the Committee!

My name is Kat Brady and I am the Coordinator Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered, always being mindful that 6,000 Hawai'i individuals are living behind bars, including 1,800 men who are serving their sentences abroad, thousands of miles from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 2896 establishes the class C felony offense of knowing exposure to HIV.

Community Alliance on Prisons is in opposition to SB 2896 and we are saddened that this bill was brought forward in light of all the research that has been done on HIV.

Over the past 3 decades, scientists have learned much about HIV, its transmission, and the treatment of those who become infected with it. Sadly, state and federal law does not currently reflect the medical advances and discoveries made with regards to HIV/AIDS.

Bills like this are detrimental to the HIV prevention program as high risk individuals will be less likely to get tested if infecting another with HIV is criminalized. Knowing one's status is key to prevention and accessing treatment. Criminalization only increases fear, stigma and discrimination around HIV to no benefit.

There are other laws already available to prosecute individuals who are intentionally infecting others, therefore, we believe that this bill is not needed.

Our criminal laws must be rooted in facts, not outdated myths used to target those who live with a chronic disease.

Mahalo for this opportunity to testify.

I am writing as executive director of Life Foundation, Hawaii's oldest and largest HIV/AIDS organization, to express our STRONG OPPOSITION to this measure. I do not doubt that the measure is put forth with good intentions but want to respectfully share my views on why it should not be passed.

While it is true that more than 30 states and the District of Columbia have a criminal statute similar to the one proposed in SB 2896, most were enacted in the early days of the AIDS epidemic when there was a high degree of fear, stigma and homophobia surrounding AIDS. In those days, there were no effective treatments for AIDS and HIV positive people were dying at an alarming rate.

AIDS is certainly still a serious disease, but it can now be classified as a chronic, serious and treatable disease, especially when detected in its early stages. One of the core principles of Life Foundation's HIV prevention program (as well as that of the Department of Health and the CDC) is – "Know Your Status." Knowing you are HIV positive enables you to take care of yourself by getting into medical care while also protecting sexual partners from infection.

This bill makes knowledge of your HIV status a key element of the proposed crime and could have a chilling effect on what is becoming routine HIV testing in Hawaii. The bill also targets only one disease - HIV/AIDS – as a deadly weapon and makes no reference to conditions that are equally serious and more easily spread than AIDS. The only real effect of a criminal law created by this bill would be to restore much of the shame, stigma and dread that have been successfully eroded over the years through the diligent and concerted efforts of the private and public programs committed to the fight against AIDS.

In nineteen years at Life Foundation, I have never heard of anyone in Hawaii who, with malicious intent, set out to infect another person with HIV. To my knowledge, the AIDS Branch of the Department of Health is also unaware of such an attempt ever being made. In the rare and unlikely event that such a reprehensible assault ever occurs, the criminal assault laws of Hawaii would surely apply. In short – there is no need for a new law when there are no perpetrators to prosecute and when the new law itself would be harmful to the state's highly successful campaign to banish HIV from these beautiful islands.

In 2010, President Obama released the country's first ever National HIV/AIDS Strategy, which addressed HIV-specific criminal laws, stating, "While we understand the initial intent behind these laws, they may not have the desired effect and they may make people less willing to disclose their status by making people feel at greater risk of discrimination. In some cases, it may be appropriate for legislators to reconsider whether existing laws continue to further the public interest and public health. In many instances, the continued existence and enforcement of these types of laws run counter to scientific evidence about routes of AIDS transmission and may undermine the public health goals of promoting HIV screening and treatment."

SB 2896
RELATING TO OFFENSES AGAINST THE PERSON
Senate Committee on Health
Public Hearing - February 3, 2012
3: 15 p.m., State Capitol, Conference Room 229

By

Keith R Wolter, Executive Director
Maui AIDS Foundation

SB 2896 makes it a class C felony offense to knowingly expose someone to HIV

I am writing to oppose SB 2896 for the following reasons:

1. High risk individuals will be less likely to get tested if they fear that they may also be prosecuted for exposing others to the virus. While this may not be the intent of the bill, it will be the perception of those being tested. One person who does not know their status could potentially infect many others.
2. Criminalizing people who are already dealing with fear, stigma and discrimination will only cause them to hide their status, not deal with treatment issues and not disclose to others. This is a serious unintended consequence that will become one of the major consequences of criminalization.
3. Punitive actions to stem the tide of a deadly disease do not produce lasting or enduring results. Fear of punishment can result in behavior change of up to three days but then, persons tend to revert to prior behavior patterns.
4. Ninety nine point nine per cent of all persons living with HIV/AIDS do not put others at risk for HIV infection. Studies have shown that altruism among persons who know they have HIV infection, that is, the desire NOT to infect others, is high.
5. There are already laws on the books protecting people from assault by others, without describing the means of the assault, i.e., baseballs, guns, knives and peach pits are not enumerated in specific laws. HIV need not be either.
6. Proving intent is difficult.
7. Enforcement is going to be an impossible challenge – who is to report or enforce? Case managers? Primary care providers? HIV testers? Department of Health workers? Turning them into extended law enforcement agents will compromise seriously their ability to build trust, persuade and help create risk reduction in a meaningful and lasting manner.

In conclusion, I have served and worked in the field of HIV/AIDS prevention and care for over thirteen years, here in Hawaii and also in Idaho and Washington where such laws are already in force. I can say from experience that those laws were not helpful. Only once did we even consider discussing this law in relation to a case. The discussion was short because the law was unwieldy, unhelpful and potentially harmful.

Thank you for your time. Please, consider opposing the bill.

LATE

February 3, 2012 3:15 p.m. Conference rm# 229

To: Senate Committee on Health
Senator Green, Chair
Senator Nishihara, Vice Chair

From: Hawaii Island HIV/AIDS Foundation
Tina Clothier- Executive Director

Co-signers-
Kahele, Green, Kidani, Chun Oakland, Espero, Galuteria, Nishihara, Ryan, Wakai

Re: Bill SB2896 Relating to offenses against a person
Establishes the class C felony offense of knowing exposure to HIV.

In Opposition

Dear Chair Green and Vice Chair Nishihara:

I oppose SB2896 for the following reasons:

While the intention of this bill is to stop the spread of HIV and is well meaning, I believe its impact would have the opposite effect. This bill would further stigmatize those with HIV and those who suspect that they may be infected with HIV. At a time when the Center for Disease Control is recommending that everyone 16 to 64 be tested for HIV, passing this bill may have the net effect of drastically reducing the number of people being tested for HIV in the State of Hawaii because of that stigma.

In addition, the criminalization of people infected by HIV is tantamount to categorizing them as toxic and dangerous. Criminalization sends an extremely cruel, harmful message to every child, adolescent and adult in this state living with HIV along with their families and loved ones.

Passing this bill out of committee would be an unproductive contradiction of everything health officials and AID Service Organizations in Hawaii are doing to stem the HIV epidemic. A better prevention strategy would be to urge everyone to get tested and to understand HIV as a chronic, manageable disease when it is treated.

I urge you to consider meeting with representatives from the Department of Health, Life Foundation (Oahu), Malama Pono (Kauai), Maui AIDS Foundation and Hawaii Island HIV/AIDS Foundation to learn what is currently being done to stem the spread of HIV, what still needs to be done and what kind of support the legislature can bring to bear to these efforts.

Thank you for the opportunity to submit testimony.

CLIFFORD CHANG, MPH, CHES

4924 Wa'a Street
Honolulu, HI 96821-1446

To: The Honorable Josh Green, M.D. Chair
The Honorable Clarence K. Nishihara, Vice Chair
From: Clifford Chang
Hearing: Senate Committee on Health; February 3, 2012; 3:15 pm; Conference Room 229;
Re: Opposition to SB2896: Relating to Offenses Against the Person

Chair Green, Vice Chair Nishihara and members of the Senate Committee on Health, thank you for the opportunity to testify in strong opposition of SB2896: Relating to Offenses Against the Person. While I respect the intent of this bill is ostensibly to reduce the transmission of HIV, in fact I believe the evidence regarding the criminalization of HIV transmission elsewhere shows that such laws only serve to work against much more effective prevention programs and efforts.

I am Clifford Chang, and I am submitting this testimony as a current Board member of the Life Foundation, Hawai'i's largest and oldest HIV service organization, and as someone who has been involved in HIV prevention and care-related work for over 25 years. In 1986 I was hired as the first HIV public health educator with the Hawai'i State Department of Health, and subsequently have worked in various HIV-related capacities in county, state, national and international organizations—as a Project Officer with the Centers for Disease Control and Prevention (CDC), the HIV Program Manager with the Secretariat of the Pacific Communities (SPC), as a short-term consultant with the World Health Organization Global Programme on AIDS, as the Executive Director of the Big Island AIDS Project, and now as a Board member with the Life Foundation.

Applying criminal law to HIV exposure or transmission in fact serves to undermine HIV prevention efforts. Since the key provision of this bill is “knowing exposure” to HIV, experience elsewhere demonstrates that this serves to discourage people from getting tested and finding out their HIV status, as lack of knowledge of one's status could be the best defense against such criminal prosecution. In other locations with HIV-specific criminal laws similar to SB2896, the “word on the street” is to caution people that getting an HIV test will expose them to criminal liability if they find out they are HIV-positive and continue having sex. This is in direct opposition to one of the fundamental core principles of effective HIV prevention programs—including those of the CDC, the Hawai'i State Department of Health and the Life Foundation—which is “Know Your Status.” Knowing you are HIV positive enables you to take care of yourself by getting into medical care while also protecting sexual partners from infection.

Another unintended consequence of applying criminal law to HIV exposure or transmission includes the creation of a false sense of security for people who are not HIV infected. By creating the notion that it is there is a “legal responsibility” on people living with HIV for preventing the transmission of the virus, this can undermine the public health message that everyone should practice safer behaviors, regardless of their HIV status, and that sexual health should be a shared responsibility between sexual partners. People may (wrongly) assume their partners are HIV-negative because they have not disclosed, and thus not take measures to protect themselves from HIV infection.

Criminalization of HIV transmission also fosters distrust in relationships between HIV-positive people and their health care providers. People may fear that information regarding their HIV status may be used against them in the criminal justice system. As the Chair of this Committee knows only too well, distrust is the antithesis of an effective relationship between health care provider and a patient, and impedes the provision of quality treatment and care.

Thank you for this opportunity to testify.