OPEN LETTER TO ILLINOIS GENERAL ASSEMBLY: VOTE “YES” ON HOUSE BILL 61

February 20, 2013

The Chicago Board of Health urges the Illinois General Assembly to repeal — in its entirety — Section 2a of the Communicable Disease Prevention Act. Specifically, the Board of Health urges legislators to vote “YES” on House Bill 61, as amended by House Amendment 1.

I. BACKGROUND: HIV PRINCIPAL NOTIFICATION LAW

In 1987, during the height of the AIDS crisis, the Illinois General Assembly acted swiftly and boldly — presenting a wide range of AIDS legislation to Governor James R. Thompson. On September 21, 1987, Gov. Thompson signed 10 bills into law related to HIV/AIDS1 and amendatorily vetoed three other bills2 on which lawmakers could accept or reject the changes.

Included in these bills was House Bill 2044, which is now codified as Section 2a of the Communicable Disease Prevention Act.3 Section 2a of the

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1. S.B. 651, the Illinois Sexually Transmissible Disease Control Act. Thompson called it the “centerpiece” of the state's policy. It allows the Illinois Department of Public Health to work with victims to trace previous sexual contacts and encourage them to be tested for exposure to the human immunodeficiency virus (HIV). It also allows the department to order testing, to direct persons to seek treatment and allows, with a court order, isolation of those with the disease.

S.B. 100 and H.B. 100 (identical), the Aids Confidentiality Act. It required written consent before HIV testing, makes results confidential and establishes a 25-member AIDS Advisory Council to develop a statewide plan.

S.B. 972. Required hospitals to allow blood recipients to designate a donor.

S.B. 995. Allowed the Department of Public Aid to offer incentives to the families of AIDS victims.

H.B. 1268. Required testing of all donated blood for HIV antibodies.

S.B. 771. Required labeling of cadavers suspected of having AIDS or other infectious diseases.

S.B. 550. Required schools that teach sex education to include AIDS prevention.

H.B. 1225. Required principals to be told of students who test positive for HIV.

H.B. 1242. Required notification of ambulance personnel that the patient had handled an AIDS victim.

H.B. 736. It would require the state health department to maintain information on cases of AIDS in Illinois.

H.B. 2043. It would require the registry of sperm and tissue banks and HIV testing for donors.

2. H.B. 2044. As amended, required couples to take an AIDS test before a marriage license can be issued. It also requires that school principals be told of students who test positive for HIV, and it allows for testing of those convicted of sex offenses.

H.B. 736. It would require the state health department to maintain information on cases of AIDS in Illinois.

H.B. 2043. It would require the registry of sperm and tissue banks and HIV testing for donors.

3. See (410 ILCS 315/) Communicable Disease Prevention Act Sec. 2a. Whenever a child of school age is reported to the Illinois Department of Public Health or a local health department as having been diagnosed as having acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) … such department shall give prompt and confidential notice of the identity of the child to the principal of the school in which the child is enrolled. If the child is enrolled in a public school, the principal shall disclose the identity of the child to the superintendent of the school district in which the child resides.

The principal may, as necessary, disclose the identity of an infected child to:

(1) the school nurse at that school;

(2) the classroom teachers in whose classes the child is enrolled; and

(3) those persons who, pursuant to federal or state law, are required to decide the placement or educational program of the child.

In addition, the principal may inform such other persons as may be necessary that an infected child is enrolled at that school, so long as the child's identity is not revealed.
Communicable Disease Prevention Act, requires health departments to reveal the identity of students who test positive for HIV to their principal. In addition, public school principals are required to then notify the superintendent and may also notify the school nurse, the student’s classroom teacher, and other personnel as deemed appropriate.

Twenty-five years since the passage of this law, there are no legitimate reasons for keeping it on the books. However, there are several compelling reasons to repeal Illinois’ HIV Principal Notification law.

II. GIVEN ADVANCES IN KNOWLEDGE THAT ARE BASED ON A SCIENTIFIC RESEARCH, NO RATIONAL BASIS REMAINS FOR PRESERVING THE LAW.

In 1987, one could easily provide a rational basis for enacting an HIV Principal Notification law. During that time, no treatment for HIV was available. There was a dearth of knowledge regarding HIV infections, transmission, and the etiology of AIDS. And, at the time, it was reasonably believed that HIV could be transmitted through biting, fighting, sports, or in other school settings. Moreover, fear was prevalent at that time — spreading faster than HIV/AIDS itself.

In 2013, however, we are unable to articulate any rational basis to justify the preservation of this law. Today we have vastly more knowledge regarding HIV infection, transmission, and the etiology of AIDS — knowledge that is grounded in scientific research, rather than intense fear and stigma.

Universal precautions prevent transmission of HIV and protect first responders and staff

Schools follow rules that assume everyone is infectious for HIV and other blood-borne pathogens. For example, schools follow the Universal Blood and Body Fluid Precautions and the Occupational Safety and Health Administration’s (OSHA) Occupational Exposure to Bloodborne Pathogens Standard.

There is no identified risk of transmitting the HIV virus in schools

There has never been a case of HIV transmission in schools in this country. Likewise, according to the Centers for Disease Control and Prevention (CDC), there have been no documented cases of HIV being transmitted during participation in sports. The risk of HIV infection through fighting is negligible. HIV transmission does not even occur when an HIV-infected student bites another.

Reporting requirements do not exist for more easily transmissible diseases

Hepatitis, tuberculosis, and other diseases are present in schools. Yet, no such reporting requirement exists for these more easily transmissible diseases.

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4. A set of procedural directives and guidelines published in August 1987 by the U.S. Centers for Disease Control and Prevention (CDC) (as Recommendations for Prevention of HIV Transmission in Health-Care Settings) to prevent parenteral, mucous membrane, and nonintact skin exposures of health care workers to bloodborne pathogens.

5. A standard enacted in December 1991, which incorporates universal precautions and imposing detailed requirements on employers of health care workers, including engineering controls, provision of protective barrier devices, standardized labeling of biohazards, mandatory training of employees in universal precautions, management of accidental parenteral exposure incidents, and availability to employees of immunization against hepatitis B.

III. ILLINOIS’ HIV PRINCIPAL NOTIFICATION LAW DOES NOT ACHIEVE ITS PROTECTIVE PURPOSE. THE LAW HINDERS NATIONAL PREVENTION EFFORTS, IT IS A SIGNIFICANT DETERRENT TO EARLY HIV TESTING AND DETECTION, IT AND INCREASES THE RISK OF HIV TRANSMISSION.

A number of researchers have found that students of all ages often delay or avoid seeking testing for sexually transmitted infections, even if the services are readily available, because they fear stigma and other negative consequences of testing. In fact, when Illinois passed its HIV Principal Notification law, there was an early recognition in the legislative record that stigma and confidentiality concerns were deterrents to early HIV testing and detection, which is a serious and unintended consequence of the law that abrogates its protective purpose.

Principal notification undermines prevention efforts, including the National HIV/AIDS Strategy

Illinois’ HIV Principal Notification law stands in contrast to one of the goals of the National HIV/AIDS Strategy, which emphasizes the importance of testing as an integral part of preventing the spread of HIV. According to the American Bar Association’s AIDS Coordinating Committee:

> Of all HIV-related legal rights, confidentiality of HIV status is most central to ensuring the effectiveness of any National AIDS Strategy, for it gives [people living with HIV/AIDS] and vulnerable persons confidence to seek prevention, counseling, and testing services. Without these protections, many [people living with HIV/AIDS] and vulnerable persons will avoid these services altogether, undermining prevention efforts.

Principal notification results in delayed testing which increases the risk of HIV transmission

Lower viral loads are associated with a lower risk of HIV transmission. In fact, taking antiretroviral therapy (i.e., medicines for HIV infection) can reduce the risk of an HIV-infected person transmitting the infection to another by 96%. Unfortunately, Illinois’s principal notification law makes students vulnerable to stigma and causes testing delays, which in turn results in the infection going untreated. When left untreated, HIV viral loads are not suppressed and risk of transmission increases. Thus, Illinois’ HIV Principal Notification law, which was intended to help protect the public from the spread of AIDS, is producing an outcome that is contrary to its mission.


8. Rep. Ellis Levin pointed out during floor debate “I think we all want to encourage people to voluntarily take the AIDS test if they think they may possibly been exposed to AIDS. The best way of ensuring that people will, in fact, voluntarily take the test, is by guaranteeing confidentiality and limiting access to the test results…this amendment, unfortunately, goes in the opposite direction.”


11. The HIV viral load test is used primarily to monitor HIV infection over time. It is a quantitative measurement of how many copies of the virus are present in the blood.


House Bill 61, as amended, is in the public interest and promotes student health

Public health and the public interest are best served by preventing HIV infection and reducing HIV transmission by keeping viral loads levels as low as possible. In addition to reducing the risk of transmissibility, evidence shows that keeping the viral load levels as low as possible and for as long as possible, decreases the complications of HIV disease, slows the progression from HIV infection to AIDS, optimizes health maintenance, and prolongs life.

Currently, Illinois is experiencing an increase in adolescent HIV transmission. In fact, adolescents represent one of the fastest growing populations for HIV infection. Between 2003 and 2009, the percentage of HIV infection diagnosis increased 50% for ages 13 to 19.14 Removing deterrents to adolescent testing (e.g., Illinois’ HIV Principal Notification law) is in the public interest and deserves immediate attention from policy makers.

IV. ILLINOIS’ HIV PRINCIPAL NOTIFICATION VIOLATES PRIVACY RIGHTS GUARANTEED BY THE U.S. AND ILLINOIS CONSTITUTIONS.

The U.S. Constitution does not explicitly mention any right of privacy. However the U.S. Supreme Court has cited to the right to privacy in several rulings — recognized that a right of personal privacy falls under “penumbra of rights” contained in the Constitution.15

In Illinois, the enactment of constitutional provisions expressly guaranteeing a right of privacy has the effect of ordaining privacy as a fundamental right, which triggers a constitutional analysis known as the “Strict Scrutiny” test.

“Strict Scrutiny” test: Principal notification law fails strict scrutiny test

The “Strict Scrutiny” test is one of three methods that the courts use to review the constitutionality of legislation. Any law that impinges upon a fundamental right, such as the right to privacy, will be subject to strict judicial scrutiny and will be struck down unless the government can show that the law is necessary to accomplish a compelling state interest.

For the reasons outlined above, the Board of Health categorically rejects the notion that Illinois’ HIV Principal Notification law is necessary to accomplish a compelling state interest — calling into question the Constitutionality of the statute.

“Rational Basis” test: Principal notification fails rational basis test

At the other extreme lies the “Rational Basis” test. Unlike the “Strict Scrutiny” test, the rational basis test is not a heightened tier of judicial review. It is a minimal form of scrutiny. Under this test, legislation is presumed constitutional and will not be struck down unless shown to bear no rational relationship to any legitimate state interest.


Again, for the reasons outlined above, including profound advancements in our understanding of HIV transmission, the Board of Health asserts Illinois’ HIV Principal Notification law is not supported by medical science or empirical evidence and does not currently possess a modicum of rationality — raising profound Constitutional problems.

V. HEALTH DEPARTMENTS ARE IN AN IMPOSSIBLE POSITION: ENFORCING ILLINOIS’ PRINCIPAL NOTIFICATION LAW VIOLATES THE CONSTITUTION AND INFRINGES UPON OTHER PRIVACY RIGHTS.

The AIDS Legal Council of Chicago has submitted a legal memorandum to Dr. LaMar Hasbrouck, Director of the Illinois Department of Public Health, which includes a legal analysis that suggests Illinois’ HIV Principal Notification law potentially violates the Americans with Disabilities Act and also exposes schools to lawsuits for violating the Illinois AIDS Confidentiality Act.16

Moreover, the Chicago Board of Health believes Illinois’ HIV Principal Notification law violates the spirit of other important privacy protections, such as Health Insurance Portability and Accountability Act (HIPAA).17 These legal problems, coupled with serious questions about the constitutionality of the Illinois HIV Principal Notification law, put health departments in an impossible position — local health departments must choose between either violating the Constitution and other privacy rights, or violating Illinois’ HIV Principal Notification law. The legislature should act immediately to eradicate this problem.

VI. ILLINOIS STANDS ALONE WITH ITS HIV PRINCIPAL NOTIFICATION LAW.

The legal problems created by Illinois’ HIV Principal Notification law are underscored by the fact that Illinois is the only state in the nation that requires health authorities to notify school principals of the names of HIV-positive students. Three other states (Nevada18, Missouri19 and South Carolina20) have similar reporting laws for school superintendents — but even in these states, Superintendent Notification laws are not enforced and/or have been interpreted to be optional.

VII. PRESERVING THIS LAW IS TANTAMOUNT TO EXTREME GOVERNMENT INTRUSION INTO A DEEPLY PERSONAL AND PRIVATE HEALTH ISSUE WITHOUT ADEQUATE JUSTIFICATION.

The Board of Health applauds the Illinois General Assembly for acting swiftly and using the best available information it had at the time to enact policies aimed at curing curbing the HIV/AIDS crisis in 1987, when the HIV Principal Notification Law was passed.


17. Illinois’ Principal Notification law does not violate the letter of HIPAA because HIPAA regulations permit use or disclosure of PHI for public health purposes as required by law. Nonetheless, when such disclosures are void of any legitimate public health rationale, the Chicago Board of Health argues the law violates the spirit of HIPAA.

18. NRS 441A.190.

19. RSMo 191.689.

Twenty-five years later, however, we now understand how HIV is transmitted and — more importantly — how it is not transmitted. We understand that HIV Principal Notification is not only unnecessary and unsupported by data, but it is ultimately harmful to students living with HIV and burdensome for local government. Voting to preserve this law would be a vote in support of extreme government intrusion into a deeply personal and private health issue without adequate justification.

Again, the Chicago Board of Health urges the Illinois General Assembly **VOTE “YES” on HB 61, as amended by House Amendment 1.**

Sincerely,

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President, Chicago Board of Health