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Joint Committee on Public Health
April 5, 2011

Testimony in Support of S.1108/H.2906
Strong consent and privacy protections for HIV

The American Civil Liberties Union of Massachusetts supports S.1108/H.2906, thoughtful legislation that will facilitate more routine HIV testing and reaffirm the Commonwealth's commitment to meaningful patient consent for HIV testing and confidentiality of HIV-related medical information. Strong consent and privacy protections are necessary prerequisites to patient trust and more widespread testing.

Legislation has been filed in past sessions to do away with written informed consent for HIV testing, and the ACLU of Massachusetts has always opposed it. Those earlier bills failed to adequately safeguard patients' autonomy to make a voluntary, knowledgeable decision to get tested, and did not sufficiently safeguard patients' privacy. In past testimony, we have described written informed consent as the gold standard for fully autonomous decision-making about medical care. We have strenuously and consistently opposed changes that would apply a general consent scheme to HIV testing, taking away a patient's opportunity to discuss HIV testing with her doctor and decide for herself whether to be tested.

By moving from written consent to verbal consent documented in the patient's record, this proposal represents a significant compromise. We can support this compromise because this bill contains provisions that we view as essential to protecting the privacy of people with HIV.

Current Massachusetts law prohibits the disclosure of an individual's HIV status without their written consent, a guarantee without which many people would not get tested. However, the statutory language of this protection is outdated, referring simply to the results of an HLTV-III test (as HIV was called when the law was originally passed). While the law clearly intends to protect against disclosure of information revealing a person's HIV status, the text should be updated to clarify that intent. Disclosure of HIV-related information – viral load testing and HIV-specific medications, for example – is equivalent to disclosure of a person's HIV status, and the law should continue to protect against this sensitive medical information being shared without patient authorization. Without such fundamental privacy protections, the ACLU of Massachusetts would not support this legislation.

Massachusetts has long been a leader in promoting a sensible public health agenda with regard to HIV testing and care based on comprehensive education about HIV transmission, voluntary and informed HIV testing, and robust privacy provisions. This bill continues that tradition. It moves in the direction of CDC guidelines encouraging more widespread HIV testing, takes care to ensure – as the CDC also recommends – that all HIV testing is informed and voluntary, and renews basic privacy safeguards.

For the record, the ACLU's concern for patient privacy prevents us from supporting name-based public health reporting of HIV. While we recognize that such reporting already takes place by dint of regulation, we see no need to refer to the practice in statute.

Notwithstanding, the ACLU of Massachusetts urges the committee to give this legislation a favorable report. Let us take advantage of this opportunity to strengthen the public health and reinforce patients' autonomy and privacy at the same time.

**Testimony of AIDS Action Committee of Massachusetts in Support of
“An Act to Increase Routine Screening for HIV” (H2906 and S1108)**

My name is Rebecca Haag, President and CEO of AIDS Action Committee of Massachusetts, and I am writing in **support of H2906 and S1108**, both entitled “An Act to Increase Routine Screening for HIV.” AIDS Action Committee of Massachusetts (AAC) is New England’s first and largest AIDS service organization, assisting the greater Boston area by providing services to men, women, and children infected by, affected by, and at risk for HIV and AIDS. AAC also works to educate the public about prevention, and advocate for equitable policy at the state and federal level.

AAC supports H2906 and S1108 because passage of this legislation will dramatically expand the number of people tested for HIV in Massachusetts by directing all health care providers who deliver primary medical care services or infectious disease services to offer an HIV test to all adolescent and adult patients, provided there is no evidence of prior HIV screening and provided that the patient is not being treated for a life threatening emergency. These bills also modify current HIV testing law (Chapter 111, Section 70F) by replacing the need for written consent from patients for HIV testing with verbal consent. Under these proposed changes to the law, the provider offering the HIV test would also make a note in the patient’s medical record as to whether or not the patient consented to be tested, as doctors routinely do for all patient visits. The bills also directs the Massachusetts Department of Public Health (DPH) to promulgate regulations designating patients who are at high risk for HIV and establishing the frequency with which health care providers shall offer HIV testing to such patients.

These changes to existing law are necessary because currently nearly one-third of people who are newly diagnosed with HIV in Massachusetts have been HIV positive for so long that the disease has already progressed to AIDS.¹ Massachusetts needs better ways of identifying people who are living with HIV and connecting them with health care. Earlier testing for HIV will also help prevent the spread of new infections.

While the need for increased and earlier testing for HIV is clear, it is also important that patients fully understand what it means to consent to an HIV test and what the results mean. This ability to understand medical matters is often referred to as “health literacy.” This legislation ensures “health literacy” for patients being tested for HIV by requiring that the health care provider offering the test explain what the HIV test is for, explain the meaning of negative and positive test results and offer the patient an opportunity to ask questions about the test. Only in this way can the health care provider accurately determine that the patient is voluntarily and knowingly consenting to an HIV test. This dialogue between the health care provider and the patient is also important because studies have shown that engaging in a conversation about HIV with a medical provider increases the likelihood that a patient will take steps to reduce their risk of HIV infection in the future.² These bills also help ensure health literacy by requiring that any health care provider who orders an HIV test provide the subject of the test with written information about HIV and to provide patients testing positive with a connection to medical care and counseling.

The provision in the legislation that requires that the provider offering the HIV test make a notation in the patient’s medical record as to whether or not the patient consented to be tested is

¹ “Trends in Massachusetts HIV/AIDS by Year of Diagnosis of HIV Infection, October 1, 2008. HIV/AIDS Bureau. Massachusetts Department of Public Health.”

² Project Respect, U.S. Centers for Disease Control. www.cdc.gov/hiv/topics/research/respect/.

also very important. Many people who are most at risk for HIV transmission,³ including Black and Hispanic residents, gay and bisexual men, are those who have historically been most mistrustful of the medical establishment and fearful that they will be tested for HIV without their consent. Requiring a notation in the patient's medical record of verbal consent to an HIV test can alleviate these fears.⁴ This requirement would not pose additional burdens for health care providers since standard medical practice already involves a process for providers to document every patient visit.

For all of the forgoing reasons, AIDS Action Committee of Massachusetts supports H2906 and S1108 and urges the Committee to give these bills a favorable report.

Respectfully submitted,



Rebecca Haag, President and CEO
AIDS Action Committee of Massachusetts
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Boston, MA 02119

³ "Fact Sheet: Health Disparities in HIV Infection, U.S. centers for Disease Control, 2011," accessed at www.cdc.gov/minorityhealth/reports/CHDIR11/FactSheets/HIV.pdf

⁴ AIDS Action Town Hall meetings, Summer, 2009.



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**TESTIMONY OF GAY & LESBIAN ADVOCATES & DEFENDERS
IN SUPPORT OF S 1108 AND H 2906**

Gay & Lesbian Advocates & Defenders (GLAD) is New England's leading legal organization protecting the rights of lesbians, gay men, bisexuals, transgender persons and people living with HIV. Founded in 1984, GLAD's AIDS Law Project has provided legal assistance to thousands of individuals with, or affected by, HIV. The AIDS Law Project has litigated precedent-setting cases protecting the legal rights of people with HIV, including in the areas of access to health care, antidiscrimination law, privacy protections, and insurance.

GLAD enthusiastically supports S 1108 and H 2906. These bills implement important public health policies that will facilitate the goal of the United States Centers for Disease Control and Prevention (CDC) to expand HIV testing and link people who test positive to medical care. In addition, although eliminating the requirement of written informed consent for HIV testing, these bills maintain a meaningful process for ensuring that HIV testing remains voluntary and ensuring that patients maintain control over the decision to be tested.

GLAD has historically been a strong supporter of written informed consent for HIV testing. This commitment has been based on principles of patient autonomy and sound public health policy. The requirement of written informed consent is the strongest method of ensuring that a patient makes an informed and voluntary choice to be tested, a key component of encouraging individuals to come forward for testing and care. At the same time, we have not agreed that the requirement of written informed consent is a

barrier to HIV testing. Rather, other factors, such as the failure of many doctors to offer HIV testing, have been the barriers to expanded testing.

Last year it was clear that there were differing views in the HIV community about the importance of written consent for testing and its impact on testing rates. In particular, many physicians expressed their strong belief that written informed consent is a barrier to testing. Because we believe it is important to find common ground to move forward together on this issue, GLAD has made a significant compromise in our longstanding position on this issue and supports this legislation that removes the requirement of written informed consent for HIV testing from Massachusetts law. We can strongly support these bills because S 1108 and H 2906 contain additional provisions that we view as essential to protecting people with HIV and promoting increased testing. For example, the provision requiring physicians to offer HIV testing to patients who have not previously been tested is consistent with the recommendations of the CDC and will address a major barrier to expand testing.¹

The most important of these provisions is the privacy component of this bill. The fear of disclosure of HIV status remains a significant deterrent to HIV testing for many people. Specifically, the fear of unwanted disclosure of an individual's HIV status often arises in healthcare settings. A joint report issued by the WilmerHale Legal Services Center of Harvard Law School and the Center for Health Policy and Research in 2009 noted that "fear and experience of stigma are closely intertwined with decisions concerning HIV testing...and the fear that one's HIV status will be disclosed

¹ Department of Health and Human Services Centers for Disease Control and Prevention (2006), Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings, *Morbidity and Mortality Weekly Report*, 55(RR-14), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>.

involuntarily by others.”² The study observed “a range of experiences related to stigma and involuntarily disclosure of one’s HIV status in healthcare settings.”³

Concerns about privacy are often the direct result of fears regarding stigma. The White House Office of National AIDS Policy, in the National HIV/AIDS Strategy of the United States issued in July 2010, observed that stigma and the fear of discrimination “cause[] some Americans to avoid learning their HIV status...or accessing medical care.”⁴ As a result, it is critically important that strong privacy protections exist for medical information that identifies a person as having HIV so that individuals are not deterred from testing by the fear of unwanted disclosure.

The current requirement in Massachusetts law prohibiting the disclosure of an HIV-positive patient’s status without written consent is essential to a sound HIV testing policy. The privacy language in this bill simply maintains that requirement while bringing it up-to-date with changes in testing technologies and HIV treatments since M.G.L.A. ch. 111, § 70F was passed in 1986. Current law, for example, provides that a health care provider or institution shall not “(1) test any person for the presence of the HTLV-III antibody or antigen without obtaining his written informed consent; [or] (2) disclose the results of such test to any person other than the subject thereof without obtaining the subject’s written informed consent.”⁵ The clear intent of the law was that patients must consent to the disclosure of their HIV status. Changes in the medical

² Greenwald, R., Rosenberg, A., Clements, C., Anderson, T., Cabral, L., Golden, K., Ellingwood, J., Strother, H., & Baruck, C. (2009). Massachusetts HIV Stigma Project: An investigation of the nature, extent, and effects of HIV-related stigma in the Commonwealth. Shrewsbury, MA: University of Massachusetts Medical School Center for Health Policy and Research.

³ *Id.*

⁴ White House Office of National AIDS Policy, *National HIV/AIDS Strategy for the United States* (2010), available at <http://www.whitehouse.gov/sites/default/files/uploads/NHAS.pdf>.

⁵ M.G.L.A. ch. 111, § 70F.

treatment of HIV since 1986 require that this section be updated. Neither viral load testing nor HIV antiviral medications existed in 1986. Yet, the disclosure of such information about a patient is equivalent to the disclosure that a person has HIV or is HIV-positive. Without a clarification in the statute, HIV-related privacy provisions in Massachusetts could be rendered meaningless.

During the entire debate last year on bills to change the law on authorization to test for HIV, all sides agreed that there should be no weakening of the requirement of written consent for the disclosure of a patient's HIV status. The inclusion of this provision that simply reaffirms and clarifies the intent of current law is essential to GLAD's support of this legislation.

Senate Bill 1108 and House Bill 2906 provide real solutions that will facilitate increased HIV testing in Massachusetts. Passage of these bills in their current form will be something that this Committee and this Legislature can be very proud of. The passage of these bills will continue Massachusetts' role as a national leader in the fight against the HIV epidemic.

Submitted by:

Bennett H. Klein
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April 5, 2011

Testimony of MassEquality in Support of S1108 and H2906: An Act to Increase Routine Screening for HIV

On behalf of the board and staff of MassEquality, I would like to thank the members of the Joint Committee on Public Health for the opportunity to offer testimony in support of H2906/S1108-An Act to Increase Routine Screening for HIV. My name is Carly Burton and I am the Director of Public Policy and Political Affairs at MassEquality. MassEquality is the statewide, grassroots organization working to achieve full equality for the LGBT community from cradle to grave. We believe that every LGBT person deserves to be treated equally, to feel safe and to be free from discrimination based on their sexual orientation or gender identity.

MassEquality is delighted to join many other organizations in testifying in support of this bill. The goal of this bill is to increase the number of individuals tested for HIV in the state of Massachusetts. This is especially critical to the LGBT population that MassEquality serves. According to the Massachusetts Department of Public Health, men who have sex with men have the highest risk of exposure to HIV in Massachusetts. In fact, from 1999-2008, the rate of HIV infection diagnoses among men who have sex with men increased from 28% to 42%. Additionally, of all the populations living with HIV/AIDS, 35% of them are men who attributed their infection to male-to-male sex.

The MA Department of Public Health also reports that nearly 1/3 of the people who are newly diagnosed in Massachusetts have been HIV positive for so long that the disease has already progressed to full blown AIDS, termed concurrent diagnosis. Of that population, 25% were males that were exposed through male-to-male sex. This means that those men could likely have been tested earlier,

learned of their diagnosis sooner and treated before the infection developed into full blown AIDS.

Likewise, earlier testing would help in the prevention of new infections.

This bill strikes an important balance between the need to increase the number of individuals tested for HIV in Massachusetts and the need to ensure informed consent to such testing. The bill streamlines the consent process by requiring providers to obtain verbal informed consent from patients to administer an HIV test. Through the process of verbal informed consent, providers and patients must engage in a dialogue about being tested. This dialogue includes an explanation of the meaning of negative or positive test results and would offer the patient an opportunity to ask questions. The consent would then be documented in the patient's medical record.

This verbal consent is critical to encourage conversation between the provider and the patient about the test. It helps to build trust between provider and patient and, according to the US Centers for Disease Control, "increases the chances that a patient will take steps to reduce their risk of infection in the future."

The other critical piece of this legislation is the strengthening and reaffirming of the privacy provisions related to disclosure of one's HIV status. Current law provides that no health care provider shall "disclose the results of such test to any person other than the subject thereof without first obtaining the subject's written informed consent". To maintain the spirit of the law by strengthening the language, this bill substitutes the term "HIV-related medical information" for the term "such test". The reason for doing so is to ensure that one's status is not inadvertently revealed through the disclosure of other telling medical information. Though the climate has undoubtedly improved in the public's perception and attitudes towards those living with HIV/AIDS, stigma and discrimination still exist. In fact, the

National HIV/AIDS Strategy admits that "addressing stigma and discrimination is perhaps the biggest challenge we face". For MassEquality, this is an important feature of the bill to help alleviate some of the fear of stigmatization that may result in some individuals not being tested.

Members of the committee, MassEquality urges you to provide H2906 and S1108 with a favorable report.

Thank you again for providing me with the opportunity to offer testimony.

Respectfully Submitted,

Carly Burton

Director of Public Policy and Political Affairs

MassEquality

Testimony

SB1108/HB2906

Infectious Disease Testing, Treatment, and Related Policies

Joint Committee on Public Health

April 5, 2011

The Massachusetts Hospital Association (MHA), on behalf of its member hospitals and health systems, appreciates this opportunity to offer comments in opposition to **SB1108/HB2906**, legislation related to HIV screening.

MHA strongly supports the appropriate testing of patients for HIV in a manner consistent with recommendations advanced by the Centers for Disease Control and Prevention (CDC):

- HIV screening for patients in all health-care settings after the patient is notified that testing will be performed unless the patient declines (opt-out screening);
- Persons at high risk for HIV infection should be screened for HIV at least annually;
- Separate written consent for HIV testing should not be required; general consent for medical care should be considered sufficient to encompass consent for HIV testing; and
- Prevention counseling should not be required with HIV diagnostic testing or as part of HIV screening programs in health-care settings.”

MHA is opposed to **SB1108/HB2906** as it conflicts with the CDC standards, interferes in the patient-physician relationship, and creates unnecessary administrative burdens. The bill would not simplify testing, but instead creates complications and many unanswered questions which pose significant unintended consequences. Our concerns include the following:

- The bill requires providers to document three new items at each visit - a conversation occurred, the patient verbally agreed to be tested, and there is sufficient documentation outlining the patient conversation to show informed consent. This time is more appropriately spent in discussion with the patient about medical issues and potential treatment plans;
- The bill compels providers to conduct tests without first determining the reason for the visit or specific individual circumstances – potentially requiring unnecessary tests;
- The bill prohibits healthcare providers from releasing HIV-related information to anyone without written informed consent. This prohibition will improperly restrict access to medical records, interfere with necessary care processes, and pose significant complications for the state’s E-health initiative; and
- The bill does not require MassHealth or other public payers to cover the costs of the tests.

MHA is committed to working with the committee, the sponsors of the legislation, the Department of Public Health, and the advocates for **SB1108/HB2906**, to establish workable standards that would properly facilitate broader screening for HIV.

Thank you for the opportunity to offer testimony on this important matter. If you have any questions, or require further information, please contact Michael Sroczyński, MHA’s Vice President of Government Advocacy, at (781) 262-6055.



MASSACHUSETTS MEDICAL SOCIETY

Every physician matters, each patient counts.

**Testimony of the Massachusetts Medical Society
In Opposition to
H 2906 and Senate 1108
An Act to Increase Routine Screening for HIV
Before the Joint Committee on Public Health
April 5, 2010**

The Massachusetts Medical Society (MMS) is here today to ask the Massachusetts legislature to support the Centers for Disease Control and Prevention's recommendations on HIV testing for patients in all health-care settings. They are simple and should be the guidelines you use in evaluating any proposed legislation before you.

Here are the basic premises on how HIV testing should be conducted. An endnote gives a link to the source.

"For patients in all health-care settings

- *HIV screening is recommended for patients in all health-care settings after the patient is notified that testing will be performed **unless the patient declines** (opt-out screening).*
- *Persons at high risk for HIV infection should be screened for HIV at least annually.*
- *Separate written consent for HIV testing should not be required; **general consent for medical care should be considered sufficient to encompass consent for HIV testing.***
- *Prevention counseling should not be required with HIV diagnostic testing or as part of HIV screening programs in health-care settings. ⁱ"*

Here is the CDC's information on opt-out screening.

- "What is opt-out screening?"
- Opt-out screening is defined as performing HIV testing after notifying the patient that the test will be performed, and although the patient may decline or defer testing, it is strongly recommended. Assent is inferred unless the patient declines testing. ⁱⁱ"

The legislation before you today conflicts with the CDC's clinical recommendations by treating HIV testing with several specific requirements.

Similar legislation was filed last session, S 883. The MMS raised several objections to the legislation regarding its impact on medical practice and its conflicts with the CDC's recommendations but the legislation is back again this session.

So what does this year's version of this bill do to spark such interest? It has been put forward as an improvement in that it removes written consent for HIV testing. However, it does require

contemporaneous documentation of informed consent or refusal in the medical record. This is most easily met by the creation of a written consent form.

The bill is supposed to facilitate broader testing, a key clinical approach when significant percentages of infected individuals may not know of their infection.

The bill does not simplify testing, but in fact:

- Maintains all existing prohibitions and penalties for sharing of test results without written informed consent except for reporting to the DPH as mandated by regulations. This prevents or impedes disclosure of medically necessary information.
- It mandates that acceptance or refusal to test must be documented within the medical record. This mitigates the value of waiving written consent prior to testing and raises the problem that now no one may see the medical record containing that protected information without written informed consent each time.
- It defines test acceptance or refusal as protected information.
- It expands the definition of HIV test and also protects HIV related medical information such as an AIDS diagnosis or treatment indicating such a diagnosis from disclosure. Will this be a retroactive requirement, changing the status of all existing medical records? Are existing medical records of AIDS patients now legally different should this bill pass?
- It continues to prohibit disclosure of the medical record or other HIV information without specific written informed consent each time. A completely unrealistic position in the medical world which leaves providers without a consistent approach to medical information.
- Mandates provision of written information to patients at the time of ordering a test. The DPH will mandate the content. No mention is made of the clinical elements of the content, the frequency of its revisions, the funding for its distribution or the options for not providing the information to patients for whom it is incorrect.
- The bill also mandates that providers give “a connection to HIV-related medical care and counseling”. It is unclear what this means and how the requirement is to be met.
- Repeated testing for monitoring the course of an established infection does not require consent. Repeated testing for those at risk, still requires consent and the results of repeated testing would still be protected information.
- The bill mandates offering testing to adolescents and adults every visit by primary care, infectious disease and emergency providers unless there is evidence of testing having been done. (Note the new provider couldn't see such testing information without the patient's written informed consent.)
- The DPH will establish frequency of offering testing by health care providers. What control does the provider have over the frequency of a patient's return? What is the penalty for not meeting the frequency standard?
- Written consent for release of any protected information must state the purpose and be specific. No routine consent is acceptable. Consider this in light of the medical records requirements and how many health care providers, labs, pharmacies etc receive such information in the treatment of every HIV positive patient.
- 93A penalties still apply as in the old law, but to a much broader list of mandates and requirements. This means that violations of any of these provisions lead to triple damages plus attorney's fees.

- Insurance coverage for tests is mandated. It isn't clear how the state would fund testing for MassHealth recipients or how Medicare patients would be covered.

This legislation does not address a critical request of the MMS. Can HIV testing information be included in the patient's medical record if the patient consents to testing and is informed that his or her consent, lack of consent and test results will be included in the medical record? Medical records are subject to HIPPA protections. Medical records, particularly electronic medical records, are designed to provide comprehensive clinical information to a patient's health care providers. The legislature needs to clarify that HIV testing information belongs in the record and that written informed consent is not necessary for every individual who needs access to a patient's medical record in the course of treatment.

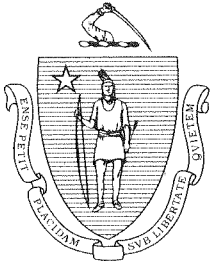
Do current electronic medical records, built for national markets, have the capacity to comply with the legislation before you today? This question needs to be answered.

The MMS is strongly supportive of patient confidentiality and stands opposed to discrimination against patients in any form. However, we ask you as legislators to ask who benefits from this legislation and does that benefit merit the significant potential clinical harm caused by non-communication of test results? Will all patients be better served if all health care providers in Massachusetts adopt a different clinical standard and a different medical records standard from their peers throughout the world?

We urge you to oppose this legislation.

ⁱ <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>

ⁱⁱ <http://www.cdc.gov/tb/publications/factsheets/testing/HIVscreening.htm>



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April 5, 2011

Representative Jeffrey Sánchez
State House, Room 130
Boston, MA 02133

Dear Mr. Chairman:

I write to you following today's public hearing to provide testimony in support of two bills.

I am a co-sponsor of Senate bill 1080, *An Act to create a genetic bill of rights*, sponsored by Senator Harriette Chandler. This bill will protect the misuse of genetic information to protect exclusive genetic information. We need this imperative legislation in Massachusetts.

House bill 2906 and Senate bill 1108, *An Act to increase routine screening for HIV*, sponsored by Byron Rushing and Senator Pat Jehlen, will modernize HIV testing laws and encourage routine HIV testing in order to provide crucial services for people diagnosed with HIV. It is time we have updated HIV testing laws in Massachusetts.

Thank you for taking the time to consider this testimony.

Yours sincerely,

A handwritten signature in black ink that reads "Ellen Story". The signature is written in a cursive, slightly slanted style.

Ellen Story
State Representative
3rd Hampshire District



SENATOR PATRICIA JEHLLEN
SECOND MIDDLESEX DISTRICT
STATE HOUSE OF MASSACHUSETTS
ROOM 513
BOSTON, MA 02133

TO: The Joint Committee on Public Health
Senator Susan C. Fargo- Chair and Representative Jeffrey Sanchez-Chair

FROM: Senator Patricia D. Jehlen

DATE: April 5, 2011

RE: S. 1108- *An Act to increase routine screening for HIV*

I write in support of Senate Bill 1108- *An Act to increase routine screening for HIV*. I am the lead sponsor of this bill.

Thank you for scheduling an early hearing on this important bill. Patients travel to the Commonwealth of Massachusetts from all over the world to receive medical advice and treatment from physicians and medical professionals. Massachusetts is known as a hub of cutting-edge medical research and treatment, and our hospitals house the top leaders in the health care field.

However, there remains one area where Massachusetts falls behind—HIV/AIDS testing. Under current law, Massachusetts remains one of only eight states that still require separate written consent between patients and health care providers to authorize a HIV test. This law was passed in the early 1980s when little was known about this disease and treatment options were nonexistent. However, medical breakthroughs and advances now allow patients diagnosed with HIV the opportunity to live more manageably with the disease. It is no longer a death sentence.

The Centers for Disease Control and Prevention (CDC) made recommendations in 2006 for HIV tests to be made more common and routine during medical care. The CDC's recommendation prompted 15 states to update their laws. After San Francisco General Hospital eliminated the need for a separate written consent form, for example, HIV testing rates rose 33 percent and the number of positive results increased 50 percent. Of the 25,000 individuals living with HIV/AIDS in Massachusetts, approximately 8,000 do not even know they are HIV positive. Research shows that up to 70 percent of new HIV infections arise from individuals unaware that they have the disease.

S. 1108 will modernize the HIV/AIDS testing laws in accordance with the CDC's recommendations for routine voluntary screening while enhancing privacy protections for patients. For the individuals who

test positive for HIV, post-test counseling and referrals to support services would be available as well. No patient will be forced to be tested against their will or without their knowledge—consent is still required.

The bill lowers the current legal requirement for written informed consent for HIV testing to verbal consent documented in the patient's medical record, which, as we have seen in San Francisco, will greatly increase the number of people who get tested for HIV and begin to remove the stigma from such practices.

The time has come for Massachusetts to modernize its HIV testing laws. In the face of a rising HIV epidemic among the undiagnosed, avoiding simple and readily available steps to ensure that people living with the disease are diagnosed and linked to care is simply irresponsible.

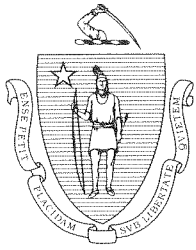
This bill is the product of collaborative effort by DPH and many diverse community groups, and reflects concerns expressed to and by this committee.

I ask that the Committee give S. 1108 an early favorable report.

Thank you for your time and consideration.

Sincerely,

Patricia D. Jehlen



COMMONWEALTH OF MASSACHUSETTS
THE GENERAL COURT

STATE HOUSE, BOSTON 02133-1053

April 5, 2011

Senator Susan Fargo
Senate Chair, Joint Committee on Public Health
Room 504
State House

Representative Jeffrey Sanchez
House Chair, Joint Committee on Public Health
Room 130
State House

Re: Senate Bill 1108, *An Act to increase routine screening for HIV.*

Dear Chairman Sanchez,

Thank you for the opportunity to comment on this very important legislation. Currently, Massachusetts is one of only a handful of states that still requires written informed consent when testing for the human immune-deficiency virus, or HIV. In 2006, the Center for Disease Control (CDC) released new guidelines for HIV testing procedures. The Center changed its recommendation to "*Separate written consent for HIV testing should not be required; general consent for medical care should be considered sufficient to encompass consent for HIV testing.*"¹ This was due in large part to research which showed many people were testing positive for HIV even after going to the doctors or emergency room multiple times in the past. The CDC determined that people seeking care for specific ailments, like going to the emergency room, did not want to have to sign a separate consent form, or take the time to fill out additional information. Also, written consent is not required for every blood test, and therefore maintaining the separate testing requirements could be reinforcing the stigma that only certain members of society are susceptible to HIV or AIDS.

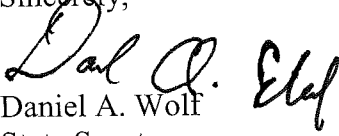
Many doctors believe one of the reasons people testing positive for HIV and AIDS continues to rise is because many people simply don't think they could be at risk, when in reality, anybody is. The more people that get tested the healthier society will be. This bill would help patients get an HIV test more easily by providing informed verbal consent instead of additional written consent. In this scenario, existing patient protections would still be preserved and enforced. The bill follows the CDC guidelines by providing for an opt-out screening, and would require that physicians refer HIV positive patients to available services. Medical insurance providers would be required to cover the cost of HIV testing under existing plans. The bill also maintains the standard for written consent to release information regarding a person's HIV status and clarifies that such consent is not necessary for disease reporting to the state Department of Public Health.

¹ <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>

Finally, the bill authorizes the Department of Public Health to promulgate regulations regarding the provisions governing clinical screening for HIV.

Thank you very much for hearing this bill and I hope that you will report it our favorably. Please do not hesitate to contact me if I can provide any additional information.

Sincerely,

A handwritten signature in black ink that reads "Dan A. Wolf". The signature is written in a cursive, slightly slanted style.

Daniel A. Wolf
State Senator
Cape & Islands District