

To: Professor Sean Kealy
From: Nicole Hanson
Date: December 19, 2012
Re: Legislative History of S. 2158

S. 2158, An Act to increase routine screening for HIV, is the product of four predecessor bills (H. 2906, S. 1108, H. 3594, S. 1997), which were largely motivated by the concern that thousands of Massachusetts residents were unknowingly living with HIV and too few people were being tested. Upon the Senate's passage of the bill, Sen. President Murray stressed these points, which I have included in the press release in the legislative history. Another particular concern, as stated by Sen. Jehlen (a lead sponsor of the bill), was for untested pregnant women to transmit HIV to their babies. The bill was also inspired by the fact that Massachusetts was one of only two states where doctors had to obtain written consent in order to test for HIV. The new bill requires only verbal consent to test. I obtained articles from the State House News Service explaining these driving factors behind the bills.

H. 2906, introduced by Rep. Rushing, and S. 1108, introduced by Sen. Jehlen, were the initial parallel bills introduced on January 24, 2011. I obtained the bill language as filed from the State House Library, and the bills have identical language. I was also able to get the bill summaries from the State House Library, which are likewise identical for both bills. These bills were both referred to the Committee on Public Health, with the Senate and House concurring respectively. The Joint Committee on Public Health then took both bills on March 28, 2011, and a hearing was scheduled for April 5, 2011. I was able to obtain the records of those who testified on the bills as well as their stated testimony from the State House Library and Tim O'Neill with the Committee on Public Health. Sen. Jehlen, the AIDS Action Committee, the AIDS Project Worcester, MassEquality, Massachusetts ACLU, GLAD, Rep. Story, Sen. Wolf, and the March of Dimes all supported the bill, and their relevant materials and testimony are included. These

AIDS activist supporters were the forces driving the need and idea for the legislation, so it is unsurprising that the bills favor their views as they were who the legislature was responding to and trying to help. The Massachusetts Hospital Association (MHA) and a representative from the Massachusetts Medical Society (MMS) testified in opposition, arguing that the bills conflict with the Center of Disease Control's (CDC) clinical recommendations and do not simplify testing. I found additional information in general press articles about the bills, statements made regarding the bills, and those advocating or opposing.

Both H. 2906 and S. 1108 then accompanied a new draft in H. 3594 on July 18, 2011. The language changed to allow a patient's health care proxy or guardian to give verbal consent, not just the patient (Line 13). Reference to the CDC was also added, promulgating that patients shall be offered an HIV test "at the frequency recommended by the CDC" (Lines 30-31). The new bill removed the Department of Public Health's authority to "establish" the frequency by which providers must offer testing, and instead only allowed them to "recommend" the frequency to providers (Line 34). It further created a limitation to the disclosure requirements (Lines 49-51), and established an institutional review board for the exception (Lines 52-55). The consolidated bill removed the clarifications on the basis and information of reports (Lines 57-62). I obtained the bill language as filed along with the bill summary from the State House Library. As with the previous versions of the bill and because H. 3594 contains most of the same provisions, the MMS again opposed the bill and aroused the opposition to be more broadly from practicing physicians. I have included a segment regarding the opposition from their website. H. 3594 was then reported from the Committee on Public Health on July 18, 2011. On that same day, the House reported the bill favorably and referred it to the Committee on Health Care Financing. I contacted Sen. Richard Moore, co-chair of this committee, and he was unable to

provide me with any materials since the Committee on Health Care Financing was not the original committee of jurisdiction for the bill. As such, Health Care Financing was only a secondary referral committee and was not required to hold a hearing on the bill.

On August 8, 2011, the Senate (from the Committee on Health Care Financing) reported H. 3594 in part by S. 1997. Rep. Sanchez sponsored this bill. S. 1997 only included SECTION 1 from H. 3594, with SECTIONS 2-5 being removed. I provided the text of the bill as filed and the bill summary from the State House Library. I also found press articles about the bill generally and physicians strongly opposing the bill, as they did all along. The Committee on Health Care Financing reported the bill favorably and referred it to the Committee on Ethics and Rules.

On February 27, 2012, the Committee on Ethics and Rules recommended that S. 1997 ought to pass with an amendment, whereby they substituted a new draft of the bill with S. 2158. S. 2158 greatly consolidated the language of S. 1997, while primarily keeping the main provisions. The new version removed the initial definitions and began directly with prohibited conduct regarding testing, disclosure, and written informed consent. The bill kept the employer section, a version of the “written informed consent” definition, exemptions for violations, but removed most else. S. 2158 was placed in the Orders of the Day for March 1, 2012. I have included several press articles regarding the bill from this date in the legislative history, and again an article about physicians seeking changes to the bill due to dissatisfaction. I also obtained the differing texts of S. 2158 as filed and as enacted, along with the bill summary from the State House Library. The enacted bill replaced the usage of “HIV” with the more precise “HTLV-III,” and expanded the definition of “written informed consent.” The actual enacted text

of S. 2158 further removed the statement that the bill does “not apply to premortem and postmortem serological testing for purposes of donation.”

The bill was given a second reading on March 1, 2012, and Sen. Jehlen offered an amendment that was adopted. The amendment changed the name of the HIV test from the outdated name, and it requires testing organ donors for HIV. Jehlen stated in a release from the State House News Service that she wanted to “ensure that doctors can test dead bodies for the disease to ensure the safety of organ donations.” I have provided these materials from the State House News Service. Also on March 1, 2012, the rules were suspended and the bill was read for the third time. I have included a communication between Sen. Tarr and Sen. Jehlen during the Senate floor debate on March 1, 2012, where Sen. Jehlen is asked, and responds, regarding a summary of the legislation, why it is necessary, and how it seeks its goals. Lastly on March 1, 2012, S. 2158 was passed to be engrossed. I have further provided articles about the Senate generally backing the bill.

On March 2, 2012, the Senate Committee on Ethics and Rules’ amendments, resulting in the creation of S. 2158, were adopted. On March 5, 2012, the bill was referred to the House Committee on Steering, Policy, and Scheduling. On April 5, 2012, the House Committee on Steering, Policy, and Scheduling reported that the matter be placed on the Orders of the Day for the next sitting. The House rules were suspended. Also on April 5, the House read the bill for a second time and ordered it for a third reading. The House conducted the third reading on April 9, 2012. The House enacted S. 2158 on April 11, 2012. On April 19, 2012, the Senate followed suit and enacted the bill, which was then laid before Governor Patrick. S. 2158 was approved on April 27, 2012. I have obtained several articles about the governor signing the bill, including the

groups that applauded this result. I also found a clinical advisory from the Governor's office to Massachusetts' clinical care providers discussing implications of the new law.

In searching for legislative history beyond press releases, I first looked to Westlaw, which did not have any materials. I then contacted the sponsors and the House and Senate chairs of the committees that dealt with the bills, including Sen. Berry (Chair of Sen. Committee on Ethics and Rules), Sen. Spilka (Vice-Chair of Sen. Committee on Ethics and Rules), Marianne Conboy (Sen. Spilka's Legislative Aide), Rep. Sanchez (Chair of the Joint Committee on Public Health), Sen. Jehlen (sponsor of S. 1108 and sponsor of the amendment), and Rep. Rushing (sponsor of H. 2906). Rep. Sanchez directed my inquiry to Tim O'Neill, the research director for the Committee on Public Health, and he provided me countless documents of testimony for S. 1108 and the summary and redrafted summary for S. 1108. Daniel Smith, Legislative Director and General Counsel from Sen. Jehlen's office, provided me with the originally filed S. 1108 bill by Sen. Jehlen as well as the S. 2158 enacted version. I spoke with Marianne Conboy who gave me the advice that the original Committee on Public Health would be my best source. As discussed above, I contacted both chairs of the Committee on Health Care Financing, but they did not have any information. I found numerous materials in the State House Library and through the State House News Service or online searches. Additionally, I spoke a few times with Kathleen in the Senate Counsel's office, but she did not provide me with any additional information. I did not hear back or collect any information from Sen. Berry or Rep. Rushing. I got in touch with the Secretary of State's Office, but there was nothing in the State Records Division because the bill is so recent and they only take archived materials. Lastly, I contacted the Senate Clerk's Office but they said that any relevant information would be with the committee members.