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February 23, 2009

The Honorable T. Mark Mustio
402 Irvis Building
PO Box 202044
Harrisburg, PA 17120-2044

Dear Representative Mustio,

Thank you for requesting input from the American Civil Liberties Union of Pennsylvania regarding House Bill 265, related to HIV testing for persons arrested for a sexual offense. I'm grateful that we are available to help you and your colleagues craft sound public policy.

The ACLU of PA opposes mandatory HIV testing, so we oppose House Bill 265. The ACLU of PA recognizes and appreciates your efforts to protect sexual assault victims and to stop the spread of HIV. We are also aware of the mandate placed on the states by the federal government in the provision of the Violence Against Women Act related to this issue. Unfortunately, that provision of VAWA and HB 265 are largely symbolic and would do little to stop the spread of HIV to sexual assault victims.

While we recognize your intent to aid sexual assault victims, a law allowing victims to force suspects to take a test would have little positive effect because the victim needs to make critical healthcare decisions before a test result would come back, in most cases. When a person may have been exposed to HIV, she has approximately a three day window to begin taking post-exposure drugs. The Centers for Disease Control and Prevention (CDC) recommends that a person should begin taking nonoccupational postexposure prophylaxis (nPEP), a drug treatment that can stop HIV transmission, within 72 hours after possible exposure. While it is possible that an arrest could be made, a victim could request testing, and a test result could come back within that three-day timeframe, it is highly unlikely. In most cases, the victim will need to make a decision about beginning the nPEP regimen before a test result could come back from the suspect.

In addition to the lack of positive impact on sexual assault victims, HB 265 also breaches the suspect's right to privacy in medical care. While there is a provision requiring that test results be kept confidential, the bill allows the result to be given to the victim, prosecutors, defense counsel, healthcare providers for both the victim and the defendant, the judge, and "any other individual designated by the court." It is unnecessary for most of these persons to know the test result, especially since HB 265 is clear that the result is not to be used to presume guilt.

As an alternative to forced testing of suspects, the federal government and state governments should provide HIV testing and post-exposure treatment for sexual assault victims. This policy would further the attempts to stop HIV transmission from sexual assault. To that end, Senator Patrick Leahy (D-VT), who is the chair of the Senate Judiciary Committee, has introduced S. 327. This bill would amend VAWA to remove the provision requiring states to implement laws on forced testing of suspects and add a provision requiring state laws to provide testing and treatment for sexual assault victims.

Of course, Pennsylvania does not need a mandate from the federal government to make this happen. State legislation could be introduced to provide this service to sexual assault victims.

In the past, the ACLU of PA has worked with the AIDS Law Project on these issues, and I recommend you contact Ronda Goldfein, who is the executive director. Ms. Goldfein can be reached at 215-587-9377 or goldfein@aidslawpa.org.

Thank you again for contacting me and for your interest in stopping the spread of HIV/AIDS.

Sincerely,

Andy Hoover
Legislative Director