

## Additional talking points for advocates on HB 61 (HA 1)

### **Q: What is the HIV student notification law?**

A: Illinois HIV Principal Notification was originally passed in 1987 as part of House Bill 2044. The current law, 410 ILCS 315(2)(a), states as follows:

“Whenever a child of school age is reported to the Illinois Department of Public Health or a local health department as having [AIDS or 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.... 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.”

The law applies to any student enrolled in a public school in grades K-12.

### **Q: Why are we repealing the HIV student notification law?**

A: The law is based on a fundamental misunderstanding of the transmission of HIV.

In 1987, when the law was passed, no HIV treatment was available. Babies were born terminally ill and many were indeed in perilous physical shape by the time they reached school. Fortunately, this is no longer the case. Effective HIV treatment is available that allows children with HIV to live near-normal lives. We know today that HIV cannot be transmitted through biting, fighting, sports, or in other school settings.

Even if the legislators who passed the law in the 1980s had the best intentions, it is now clear that there is no medical basis for the bill.

### **Q: Why do we need to repeal the current law now?**

A: According to new data released by the U.S. Centers for Disease Control and Prevention (CDC), youths ages 13 through 24 accounted for more than a quarter of new HIV infections in the U.S. However, only a third of that age group had ever been tested for the virus.

Illinois is experiencing an increase in adolescent HIV transmission. Between 2003 and 2009, the number of 13-19 year-olds diagnosed with HIV increased **50 percent**, and rose 20 percent for

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youth ages 20 to 29.<sup>1</sup> The HIV student notification law stands in contrast to one of the goals of the National AIDS Strategy, which emphasizes the importance of testing as an integral part of the prevention and spread of HIV.

With an increasing epidemic of HIV among youth, fear that a student's HIV status will be disclosed to principals and others at school may deter youth from being tested for HIV and increases the risk of further transmission of HIV.

**Q: Is the law needed to protect students from getting HIV why playing sports in school?**

A: According to the CDC there are no documented cases of HIV being transmitted during participation in sports.

In all situations involving school sports activity, if a player is bleeding, their participation in the sport should be interrupted until the wound stops bleeding and is both antiseptically cleaned and securely bandaged. There is no risk of HIV transmission through sports activities where bleeding does not occur.

**Q: Will school personnel be at risk of exposure to HIV if we repeal the law?**

A: Since 1994, the Illinois Department of Labor has required school personnel to take routine universal precautions to prevent the spread of any blood-borne diseases among students and school personnel, precautions that are more than sufficient to prevent HIV transmission.

In addition, all school personnel must follow federal Occupational Safety and Health Administration (OSHA) universal precautions to avoid exposure to body fluids. Universal precautions are an approach mandated by the federal government in which all individuals treat all human blood and body fluids as if they are infectious.

**Q: When should a principal or teacher know about a student's HIV status?**

A: There is no basis for school personnel to be told about a student's HIV status. The private medical fact of HIV status is confidential. The parents/legal guardian of a child should control who learns of the health status of that child. Adults learning of the HIV status of a student should never casually mention it to others, because experience has shown that "inside" information sometimes spreads rapidly, resulting in great harm to the child involved and maybe even lawsuits.

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<sup>1</sup> Chicago Department of Public Health. STI/HIV Surveillance Report, 2011. Chicago, IL: City of Chicago; November, 2011

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**Q: Biting or scratching among children can be a daily problem among young children. What if a student is HIV-positive?**

A: Even though blood-to-blood transmission of HIV is recognized as a mode of transmission, the risk of infection through biting is tremendously remote, according to the CDC. Blood from one person would need to directly enter the blood system of the other to transmit HIV.

**Q: Does notification of a student's HIV status increase stigma for HIV-positive students?**

A: Access to a quality education free from harassment is a right for all children, including those living with HIV.

In some school systems in Illinois, after a HIV-positive status has been disclosed, the infected children and their families have been treated as outcasts ending up in legal and/or public relation nightmares for all concerned.

**Q: Why does the current law not truly protect students and school personnel?**

A: The proponents of the current law feel that it is imperative that school principals know when a student is HIV-positive so that they can take "appropriate steps" to protect others. This argument fails to acknowledge that there may be students in the school who have HIV (or some other disease, such as Hepatitis A, B or C, all far more easily transmitted) and don't know they have it. For this reason, federal public health authorities have recommended for decades that schools use universal precautions in any instance of exposure to any bodily fluids. Knowing that someone is HIV positive should not have any effect on how school officials respond to such an incident.

**Q: Is the current law a violation of the Americans with Disabilities Act?**

A: This law appears to violate the Americans with Disabilities Act (ADA). Title II of the ADA prohibits discrimination on the basis of disability in public accommodations, such as education. 42 U.S.C.A. § 12132. The Code of Federal Regulations that interprets this section of the ADA makes it a violation for a public entity to "afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others." 28 C.F.R. § 35.130. HIV is classified as a disability under the ADA.

By forcing a student to disclose his or her HIV status, this law requires an HIV-positive student to participate in the public education system on a different, unequal basis than that afforded to other students without this disability. HIV-negative students are not required to disclose health information, including information about conditions that might actually be transmissible, to

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their principals and/or classroom teachers. While parents may choose to inform school officials of their child's HIV status in some situations, they may also decide to keep that information confidential out of fear of stigmatization and bullying.

There is an exception to the ADA for "direct threats" to health and safety. However, the presence of an HIV-positive child in a school does not constitute such a threat. Direct threats must be "based on actual risks, not on mere speculation, stereotypes or generalizations about individuals with disabilities." 28 C.F.R. § 35.139. Because all school personnel are required to utilize universal precautions at all times when dealing with any bodily fluids or injured students, knowledge of a student's HIV status is irrelevant.

Legal groups are still exploring litigation as an option. Repeal of the law would stop further exploration of legal challenges.

**Q: Does the current law place certain school personnel at risk for violating the AIDS Confidentiality Act?**

A: Yes. The Illinois AIDS Confidentiality Act (410 ILCS 305) is one of the strongest in the nation. The law prevents anyone from disclosing another person's HIV status without written permission, with exceptions for instances like a medical care team, emergency personal who may have been involved in a possible transmission situation, and DCFS foster parents.

Under current law, unauthorized school personnel who disclose a child's HIV status without consent could be subject to a civil fine of up to \$10,000 under the AIDS Confidentiality Act. Only the school principal is authorized to disclose a student's HIV status; a classroom teacher is forbidden from sharing a child's HIV status with another teacher. This opens many teachers and other school staff to unnecessary liability if they disclose a student's HIV status.

**Q: If the law is repealed will this place first responders at greater risk?**

A: No. If emergency first responders are exposed to blood and other bodily fluid, the law allows them to test for HIV and to know the student's status in accordance with the AIDS Confidentiality Act.

**Q: Can the parent(s)/legal guardian of an HIV-positive student still notify school personnel if they desire, if the law is repealed?**

A: Yes. The law allows for the private medical fact of HIV status to be disclosed by a student's parents/legal guardian if they so desire.

In addition, if a student's medical condition requires disclosure, the law permits a child's doctor or parent to disclose the student's HIV status to school staff, such as a school nurse.

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**Q: Isn't it in the child's best interest for school staff to know that a child has HIV?**

A: Today, for most children who are diagnosed with HIV, the disease is a chronic condition that can be managed with medications. In fact, the biggest risk to the child in school is not medical, but social. Children with HIV – and their families – too often suffer disastrous consequences when well-meaning staff inadvertently but illegally disclose a child's HIV status.

Even in 2013, HIV remains a highly stigmatized disease. Children with HIV can be routinely bullied and ostracized by their classmates.

Instead of forced HIV disclosure with no medical basis, a parent in consultation with their health care provider should decide if school staff needs to know that their child has HIV. If the child has medical needs that impact daily activities, it would be appropriate for the parent to inform the school staff. If health protection issues for the student are involved, it may be advantageous to disclose this information to the designated school health professional, but notification should not be mandated.

In addition, annual training in universal precautions is provided to all school staff. Knowing that a student has HIV should not impact how school officials respond to such an incident.

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