



March 6, 2019

Standing Committee on Justice Policy
Legislative Assembly of Ontario
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Attention: Ms. Jocelyn McCauley, Clerk

Re: Bill 68

As organizations involved in the response to HIV in Ontario, we write to express our concerns with certain provisions in the recently-introduced Bill 68 (*Comprehensive Ontario Police Services Act, 2019*) – and specifically the provisions in Schedule 7 that amend the existing *Mandatory Blood Testing Act, 2006* that provides for compulsory testing for HIV, viral hepatitis or potentially other infectious diseases in certain circumstances.

We begin by observing that the existing statute already on the books in Ontario is legislation that, in our view, is unnecessary and unwarranted. It raises serious concerns about the infringement of *Charter* rights, particularly the privacy and bodily integrity (i.e., “security of the person”) of those who may be subjected to forcible testing for HIV or other illnesses at the hands of the state. It should be repealed.

Instead, Bill 68 proposes to worsen the infringement of human rights that the existing law already represents.

In particular, we are concerned about the following two aspects of the bill:

- **Abridged timeframe for forced testing orders**

Current legislation authorizes the Consent and Capacity Board to issue an order authorizing that a person be involuntarily tested for HIV, hepatitis B or C or another disease set out in a regulation if that person is alleged to be the source of a bodily substance to which the person seeking the testing order has been exposed. Forcibly subjecting people to medical procedures, particularly when it is not even for their benefit but ostensibly in the interests of another

person, is a serious step for the state to take. The concern about such involuntary testing is only heightened in the case where the condition tested for is highly stigmatized, as is the case with HIV and to some extent viral hepatitis. Forced testing should not be done lightly or without due consideration of the strength of the justification, including in these cases, proper evidence about the details of the alleged exposure and solid scientific evidence about the necessity or benefit of an involuntary test.

However, the amendments proposed in Bill 68 (to sections 3 and 4 of the existing Act) would further abridge the process and timeframe in which the Board may issue such an order, forcing any decision to be rendered within 5 business days of an application being submitted to a medical officer of health. Such a short time frame increases the likelihood of a forced testing order—which is issued on the basis of an *allegation* of exposure to a person’s bodily substance—being issued without it being properly established that there was indeed an exposure that could warrant such an invasion of bodily integrity and personal privacy. Note as well that the law already denies any appeal from a Board’s order.

- **Harsher penalties compounding the infringement of Charter rights**

The current *Mandatory Blood Testing Act, 2006* indicates that a person who does not submit to a forced testing order is guilty of a provincial offence and can be punished by a fine of up to \$5000 for every day they refuse to comply. This is already a substantial penalty for objecting to what may be an unwarranted—and unappealable—violation of bodily integrity and privacy.

However, Bill 68 compounds this harm by enhancing the penalty substantially, to a maximum fine of \$10,000 per day of non-compliance and/or imprisonment for up to 6 months. This is a draconian response, particularly considering that a rushed process can lead to the state forcibly testing people for alleged exposures to bodily substances.

As noted above, the necessity and advisability of forced HIV testing legislation is doubtful, and it raises serious human rights concerns. It has also been our observation over the years that the demands for forced testing often rest on exaggerated misperceptions of the risk of infection associated with perceived exposures, and an overstated claim about the supposed benefits resulting from forced testing. We note that the risks arising in most cases of occupational exposure are exceedingly small – i.e., approximately 0.3% from an under-the-skin (“percutaneous”) exposure, at the highest. And it remains the case that, using current HIV testing assays, there is still a “window period” – i.e., a period between the time a person is infected with HIV and the test is capable of detecting that infection. Current tests in use in Ontario have, at their earliest, a window period of 11 days post-infection. This also limits, albeit does not entirely negate, the benefits of the results of a forced HIV test of a “source person.”

We enclose for your consideration a copy of [Forced HIV Testing: Questions & Answers](#), a brief that provides you with an overview of the risks associated with occupational exposures, the limited benefits of forced testing, and the harms it does.

We urge the Committee to remove Schedule 7 from Bill 68, as it compounds already-unwarranted harm to the privacy and bodily integrity of Ontarians.

Submitted by:

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AIDS Committee of Durham Region
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AIDS Committee of Ottawa
AIDS Committee of Toronto
AIDS Committee of York Region
AIDS Committee of Windsor
AIDS Network
Alliance for South Asian AIDS Prevention
Asian Community AIDS Services
Black Coalition for AIDS Prevention
Bruce House
Casey House
Committee for Accessible AIDS Treatment
Elevate NOW
Fife House
Gilbert Centre for Social and Support Services
HIV/AIDS Regional Services
HIV/AIDS Resources and Community Health
Regional HIV/AIDS Connection
PASAN
Positive Living Niagara
Réseau ACCESS Network
Teresa Group
Toronto People With AIDS Foundation

Enclosure

cc: The Hon. Sylvia Jones, Minister of Community Safety and Correctional Services