

**HB**

**109**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/28/93

FURTHER:

DATE TURNED INTO OFFICE: 5-3-93

The Finance Committee considered CS FOR HOUSE BILL NO. 109(JUD)

"An Act relating to blood tests for persons charged with sex offenses; and providing for an effective date."

and recommends:

- replace with \_\_\_\_\_ CS \_\_\_\_\_ (FINANCE)
- or  adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts \_\_\_\_\_ Letter of Intent

further referral to the \_\_\_\_\_

do pass

do not pass

no recommendation

individual recommendations

**NEW FISCAL NOTES**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTES**

Department	Date	Zero	Fiscal
Corrections	2/22/93	0	
Law	2/23/93	0	
Health & SS	3/16/93		\$ 45.5 #288
Health & SS	2/9/93		\$ 27.9 #291

Appropriation No Fiscal Note

**DO PASS:**

**OTHER RECOMMENDATIONS:**

*Steve P...  
Best Sharp*

*Prohibit NO RES  
NO RES*

1. *Don't Do Pass*

2. *increase - 1022*

# FISCAL NOTE

No. 6

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Bill Version: CSHB 109 (JUD)  
(H) Publish Date: 3/19/93

Revision Date: 2-22-93 Dept. Affected: Corrections  
 Title: "An Act relating to blood tests for persons charged with sex offenses...." BRU: Statewide Programs  
 Sponsor: Rep. Kott Component: Inmate Health Care  
 Requestor: House HESS Committee COMPONENT SERIAL NO. 705

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ -0-

**ANALYSIS:** (Attach a separate page if necessary)

This legislation does not have a fiscal impact on the Department of Corrections. The Department has staff who can draw the blood for the tests. Collecting the cost of the blood test from inmate earnings can be achieved without additional cost.

Prepared by: Dana LaTour, Special Assistant  
 Division: Office of the Commissioner  
 Approved by Commissioner: Lloyd G. Rupp  
 Agency: Department of Corrections

Phone: 465-3376  
 Date: 2-22-93  
 Date: 2-22-93

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

FISCAL NOTE

5

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Bill Version: CSHB 109 (JUD)  
(H) Publish Date: 3/19/93

Revision Date: February 23, 1993  
Title: ...relating to blood tests for persons charged with sex offenses.  
Sponsor: Representative Kott  
Requestor: Representative Kott

Department Affected: Department of Law  
BRU: Prosecution, Legal Services  
Component: Prosecution - All  
Legal Services - Operations  
COMPONENT SERIAL NO. 0085 through 0090, 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUND SOURCE:						
FUNDING:						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

*D. I. Peques*  
Richard I. Peques

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division (1)  
Approved by Commissioner: Richard I. Peques / RRP  
Charles E. Cole, Attorney General  
Agency: Department of Law

Phone: 465-3672  
Date: February 23, 1993  
Date: February 23, 1993

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
COPIES: 22 COPY further distribution information call the Governor's Legislative Office

# FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

4  
Bill Version: CSHB 109 (JUD)  
(H) Publish Date: 3/19/93

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
Title: Blood tests for persons charged with sex BRU: State Health Services  
offenses Component: Nursing  
Sponsor: Kott  
Requestor: House Judiciary COMPONENT SERIAL NO. #288

Expenditures/Revenues:	(Thousands of Dollars)					
OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	45.5	45.5	45.5	45.5	45.5	45.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>
CAPITAL						
REVENUE FUND SOURCE						

FUNDING:	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF	45.5	45.5	45.5	45.5	45.5	45.5
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>

POSITIONS:						
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: None

**ANALYSIS:** (Attach a separate page if necessary)

Assuming a base of 200 individuals who would need testing and counseling and who would be presenting themselves to the Public Health Center for referral for these services, the costs of this bill for the Nursing Component are as follows:

Line 300 Contractual Services	
200 draws & pre- & post-test counseling @ 1.5 hours x \$65/hr for initial tests	19,500
400 draws & pre- & post-test counseling @ 1.0 hr x \$65/hr follow-up testing	26,000
	45,500

Prepared by: Peter M. Nakamura, MD, MPH Phone: (907) 465-3090  
 Division: Division of Public Health Date: 3/16/93  
 Approved by Commissioner: Theodore A. Mala, MD, MPH Date: 3/16/93  
 Agency: Department of Health & Social Services

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Bill Version: 5 CSHB 109 (JUD)  
(H) Publish Date: 3/19/93

Revision Date: February 23, 1993  
Title: ...relating to blood tests for persons charged with sex offenses.  
Sponsor: Representative Kort  
Requestor: Representative Kort

Department Affected: Department of Law  
BRU: Prosecution, Legal Services  
Component: Prosecution - All  
Legal Services - Operations  
COMPONENT SERIAL NO. 0085 through 0090, 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
FUND SOURCE:						

FUNDING:						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

Prepared by: Richard I. Peques, Director  
Division: Administrative Services Division  
Approved by Commissioner: Charles E. Cole, Attorney General  
Agency: Department of Law

Phone: 465-3672  
Date: February 23, 1993  
Date: February 23, 1993

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
COPIES: 122 COPY further distribution information call the Governor's Legislative Office

FISCAL NOTE

CS HB 109 (JUD)  
NO. 5  
pg. 2 of 2

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

ANALYSIS (Continued):

The committee substitute for HB 109, CSHB 109 (HES), changes the standard for hearing petitions of victims to request an order requiring that blood samples be taken from a defendant, to require (1) that a court find that probable cause exists to believe that a crime for which a test may be ordered has been committed, and (2) that a court find that probable cause exists to believe that sexual penetration took place between the defendant or a minor and the alleged victim. The bill further provides that in making these determinations, the court may rely on the evidence presented at a grand jury proceeding or preliminary hearing. We believe that these changes will eliminate virtually all "mini-hearings" and associated discovery efforts that we predicted in our fiscal note comments dated February 3, 1993. Consequently, there should not be a fiscal impact for the Department of Law.

# FISCAL NOTE

4

STATE OF ALASKA  
1993 LEGISLATIVE SESSION

Bill Version: CSHB 109 (JUD)  
(H) Publish Date: 3/19/93

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: Blood tests for persons charged with sex offenses BRU: State Health Services  
 Component: Nursing  
 Sponsor: Kott  
 Requestor: House Judiciary COMPONENT SERIAL NO. #288

Expenditures/Revenues:	(Thousands of Dollars)					
OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	45.5	45.5	45.5	45.5	45.5	45.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>
CAPITAL						
REVENUE FUND SOURCE						

FUNDING:	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF	45.5	45.5	45.5	45.5	45.5	45.5
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>	<b>45.5</b>

POSITIONS:						
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: None

**ANALYSIS:** (Attach a separate page if necessary)

Assuming a base of 200 individuals who would need testing and counseling and who would be presenting themselves to the Public Health Center for referral for these services, the costs of this bill for the Nursing Component are as follows:

Line 300 Contractual Services	
200 draws & pre- & post-test counseling @ 1.5 hours x \$65/hr for initial tests	19,500
400 draws & pre- & post-test counseling @ 1.0 hr x \$65/hr follow-up testing	26,000
	45,500

Prepared by: Peter M. Nakamura, MD, MPH Phone: (907) 465-3090  
 Division: Division of Public Health Date: 3/16/93

Approved by Commissioner: Theodore A. Mala, MD, MPH Date: 3/16/93  
 Agency: Department of Health & Social Services

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
 For further distribution information call the Governor's Legislative Office

Revision Date: \_\_\_\_\_

CS HB 109 (Jud)

NO. 4

Pg. 2 of 2

ANALYSIS (cont.):

This fiscal note assumes:

- 1) testing and counseling is for individuals who are not being detained by the Department of Corrections or the Division of Family and Youth Services; and
- 2) individuals will present themselves to a Public Health Center for testing and counseling either through a court order or voluntarily; will be referred to private providers for counseling.

FISCAL NOTE

to 1  
 Bill Version: CSHB 109 (HES)  
 (H) Publish Date: 2/17/93

STATE OF ALASKA  
 1993 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: Blood Tests for persons charged with sex offenses SFU: State Health Services  
 Component: Laboratories  
 Sponsor: Kott  
 Requester: \_\_\_\_\_ COMPONENT SERIAL NO. #291

Expenditures/Revenues: (Thousands of Dollars)

	FY94	FY95	FY96	FY97	FY98	FY99
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES	27.9	27.9	27.9	27.9	27.9	27.9
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	27.9	27.9	27.9	27.9	27.9	27.9
CAPITAL						
REVENUE FUND SOURCE						

FUNDING: (Thousands of Dollars)

1000 Federal Receipts						
1000 GF Match						
1004 GF	27.9	27.9	27.9	27.9	27.9	27.9
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
TOTAL	27.9	27.9	27.9	27.9	27.9	27.9

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: None

ANALYSIS: (Attach a separate page if necessary)

This fiscal note is based on the costs for the laboratory testing alone. It does not take into account the costs of medical personnel to perform the requisite counseling and testing, travel for medical personnel to communities where qualified personnel are unavailable, shipment of specimens, cost to ensure chain of evidence, and documentation of procedures and test results.

1992, 339 charges were made for arrests for sex offenses. Using 350 as the base, the laboratory costs associated with 1993 is as follows:

Prepared by: Peter M. Nakamura, MD, MPH Phone: (907) 465-3090  
 Division: Division of Public Health Date: 2/17/93  
 Approved by Commissioner: Theodore A. Mala, MD, MPH Date: 2/19/93  
 Agency: Department of Health & Social Services

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
 For further distribution information call the Governor's Legislative Office

COMMITTEE COPY

Revision Date: \_\_\_\_\_

CS HB 109 (HES)  
No. 1.

ANALYSIS (cont.):

1. Cost for initial HIV screening @ \$16.30/test	5,705
2. Assuming that 0.9% initially screened were positive, the cost for HIV Western blot for making a positive diagnosis is \$93.15/test	293
3. Cost for screening negative results after the six month window period for 347 @ \$16.30/test	5,656
4. Cost for West Blot for the 0.9% of those persons which tested positive after the 6 month window period	293
5. Cost of Hepatitis B screening @ \$16.30/test	5,705
6. Cost of Hepatitis B testing on the 11.2% that will test positive @ \$114.10/test	4,473
7. Cost of RPR test for syphilis @ \$16.30/test	5,705
TOTAL	\$27,830

A M E N D M E N T

OFFERED IN THE SENATE  
TO: CSHB 109(JUD)

SENATE FINANCE  
COMMITTEE  
Amendment Number: ①  
Bill Number: HB 109  
Sponsor: \_\_\_\_\_ Date: 4/29/93  
Logged In By: [Signature]

Page 3, line 28, through page 4, line 3:

Delete all material and insert:

Insert "(e) Personal identifying data relating to the results of tests conducted under AS 18.15.300 - 18.15.320 are confidential and may not be disclosed to any person who is not authorized to receive data under AS 18.15.300 - 18.15.320, except for disclosures

(1) made by the test subject;

(2) ordered by the court; or

(3) by the victim, or, if the victim is a minor or incompetent, by the victim's parents or legal guardian, as is necessary to obtain medical or psychological care or advice or to ensure the health of the victim's spouse, immediate family, persons occupying the same household as the victim, a person in a dating, courtship, or engagement relationship with the victim, or any other person."

Page 4, following line 31:

Insert a new section to read:

"Sec. 18.15.315. PENALTY FOR DISCLOSURE. A person who intentionally discloses personal identifying data regarding information obtained under AS 18.15.300 - 18.15.320 to any person who is not authorized to receive data under AS 18.15.300 - 18.15.320 is guilty of a violation and may be fined not more than \$1,000."

HB 109, Blood Tests for Sex Offenders  
Amendment offered in Senate Finance  
8-LS0462\O.3

PURPOSE

The purpose of this amendment is to provide balance in the bill between the rights of the victim and the rights of the accused person. Considering that the test subject will be charged on a probable cause finding, but not yet convicted, some limit to the allowable disclosures would seem to be necessary to protect the defendant's privacy rights. Several court cases seem to bear this out, notably *In re Juveniles A, B, C, D, E*, Wash SupCt. No. 58364-1, 3/11/93.

This amendment provides for the court to allow a very broad range of disclosures as it sees fit. It also decriminalizes the penalty for unauthorized disclosure. Unlike the original bill which made unauthorized disclosure a misdemeanor, this makes it a violation with a maximum fine of \$1,000.

Alaska State Legislature  
House of Representatives

COMMITTEES:  
HEALTH, EDUCATION  
& SOCIAL SERVICES  
JUDICIARY  
STATE AFFAIRS

SPECIAL COMMITTEES:  
MILITARY & VETERANS AFFAIRS  
OIL & GAS



HOME:  
9843 CHICHAGOF LOOP  
EAGLE RIVER, AK 99577  
PHONE (907) 694-7943

DURING SESSION:  
STATE CAPITOL  
JUNEAU, AK 99811  
PHONE (907) 465-3777

Representative Pete Kott

SPONSOR STATEMENT

HB 109 – Blood Tests for Sex Crime Perpetrators

The purpose of HB 109 is to provide an avenue of relief for victims of sexual assault. The threat of HIV infection and of infection from other sexually transmitted diseases is a serious complicating side-effect of being victimized by sexual assault. The state has a compelling interest in assuring innocent victims of crime timely relief from the anxiety that may result from sexual assault.

HB 109 allows the victim of a sexual assault to petition the court to require a blood test on the defendant. The bill also provides that the state must make available to both the victim and the alleged perpetrator, upon their request, counseling relating to HIV and AIDS which is medically appropriate for those persons, and referrals for medical and support services.

Finally, HB 109 is designed to minimize the cost to the state of implementing this program. If the defendant is convicted, he or she must reimburse the state for the cost of the test. The court may order the Department of Corrections to provide for the reimbursement through garnishment.

The Federal Crime Control Act of 1990 specified that states must have a law such as that proposed by HB 109 or lose part of their law enforcement assistance grants. The deadline established by Congress is October, 1993. If we fail to pass this bill during the current session, Alaska's Department of Public Safety will lose approximately \$185,000 in FY94.

This bill can satisfy the Federal requirement and simultaneously form an integral part of an effort by the state of Alaska to ensure that victims of crime in our state are afforded every opportunity to receive appropriate relief.



**CSHB 109(JUD)  
SECTIONAL ANALYSIS**

**"An Act relating to blood tests for  
persons charged with sex offenses;  
and providing for an effective date."**

Section 1.

Adds new sections to AS 18.15 as follows:

AS 18.15.300

(a) makes a defendant (including a minor) charged with a sexual offense under AS 11.41.410 - 11.41.440 that includes sexual penetration as an element of the crime subject to an order of the court requiring testing for HIV and other sexually transmitted diseases.

(b) allows an alleged victim, the parent or guardian of a victim who is a minor or incompetent, or the prosecuting attorney on behalf of an alleged victim, to petition the court for an order requiring the defendant to be tested.

(c) requires the court to make a probable cause determination 1) that a crime has taken place under the specified statutes, and 2) that sexual penetration took place. Allows the court to rely exclusively on evidence presented at a grand jury proceeding or preliminary hearing to make the determinations required under this subsection.

(d) requires the court to order the test if the court finds probable cause that a crime was committed and that sexual penetration took place.

(e) designates the authorized recipients of test results obtained under an order authorized by subsection (d) of this section. Authorized recipients are the defendant, the victim (or the victim's parents or guardian) and the officer in charge and the chief medical officer of the facility in which the defendant is incarcerated.

(f) places time constraints on when the order authorized under (d) of this section may be filed. The test may not be ordered sooner than seven days after the arrest nor more than 90 days after the defendant has been convicted and sentenced. Additionally, a test may not be ordered after a finding favorable to the defendant.

(g) provides definitions for "disposition favorable to defendant," and "sexual penetration."

#### AS 18.15.310

(a) requires that blood drawn for a test under this act be drawn by licensed medical personnel according to AS 08.64.

(b) requires that testing for HIV and other sexually transmitted diseases on blood drawn under provisions of this act be conducted by a licensed medical laboratory and according to accepted medical standards.

(c) requires that positive test results be transmitted to the Department of Health & Social Services.

(d) requires test results to be sent to the designated recipients and requires a disclaimer to be attached to test results.

(e) allows the court to order persons who receive the test results to maintain the confidentiality of personal identifying data related to the tests. Provides certain exceptions to this confidentiality: (1) the defendant, and (2) the victim for such disclosures as are necessary to provide for the victim's own health and the health of the victim's spouse, immediate family and household, or a person in a dating, courtship, or engagement relationship with the victim.

(f) prohibits the test results from being used as evidence in a criminal or juvenile proceeding.

(g) provides civil immunity for persons performing the duties authorized by this act.

(h) if the test results are positive, requires the Department of Health & Social Services to provide free counseling and testing to the victim and counseling

to the defendant upon request. Also requires the department to provide referral for the victim to appropriate health care facilities and support services.

(i) defines "AIDS," "counseling," and "HIV." Counseling is defined as providing medically appropriate information including information on the diseases, their treatment and the medical and social implications of the diagnosis and the tests.

#### AS 18.15.320

(a) requires the Department of Health & Social Services to pay for tests ordered under this act.

(b) requires a defendant who is convicted of an offense for which a test was ordered under this act to reimburse the department for the cost of the test. Allows the court to order the Department of Corrections to garnish wages earned in correctional industries to pay for the test.

#### Section 2.

Provides that the act takes effect immediately according to AS 01.10.070(c).

Bill No. CSHB 109(JUD)

Date: March 31, 1993

Contact: Joanne F. Lopez  
Executive Director  
465-4356

Title: "An Act relating to blood tests for persons charged with sex offenses..."

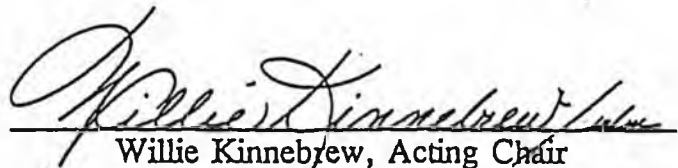
A total of 530 rapes were reported in 1991. Rapes account for 15.5% of all violent crimes. There are concerns for victims who may become infected with human immunodeficiency virus (HIV). Cases have been reported.

The Council on Domestic Violence and Sexual Assault supports the concept of a bill that would allow a victim of sexual assault to learn if her/his assailant is infected with HIV.

The Council recommends that the victim be informed that because the offender's blood test is negative, it does not mean that they are safe. The nature of HIV is such that there is an incubation/latency period of six to eight months during which a carrier's blood will not reveal the presence of HIV but they can transmit the virus. Victims need to be aware that they should be (re)tested six to eight months later. The Council would like to see funding for the Department of Health & Social Services to pay for victim testing.

The Council also believes that the legislation should specify how the information will be transmitted to the victim. The Council recommends that the information should be provided to the victim only if the victim (or the victim's legal custodian, if the victim is a minor) wants the information. The information should never be transmitted by letter and the victim, or victim's legal custodian if the victim is a minor, should be allowed to name a designee to receive the information if the victim doesn't want to learn of it directly.

The Council recommends that counseling of victims concerning the results of the alleged offender's blood test need to be handled sensitively. A counseling brochure does not meet this standard. A trained counselor or nurse or other appropriate service provider needs to be available to help the victim deal with the situation and to counsel the victim on safe sex and protection of their partner due to the potential exposure.



Willie Kinnebrew, Acting Chair  
Council on Domestic Violence & Sexual Assault

BILL NO: CSHB 109(JUD)

DATE: April 28, 1993

TITLE: "An Act relating to blood tests for persons charged with sex offenses"

CONTACT: C.E. Swackhammer  
Deputy Commissioner  
465-4322

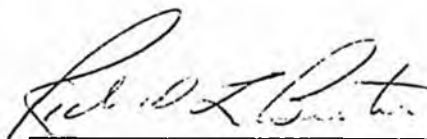
CSHB 109(JUD) amends A.S. 18.15, Disease Control, by adding new sections which will require that:

- Upon petition by the victim and a finding of probable cause, a defendant charged with sexual assault involving sexual penetration will be ordered by the court to submit to testing for medically accepted indications of exposure to or infection by the human immunodeficiency virus (HIV) and other sexually transmitted diseases.
- Sets forth requirements regarding the release of confidential testing results; the use of testing information in civil and criminal proceedings; provides free informational counseling and free testing to a victim for HIV and other sexually transmitted diseases reasonably communicable through the offense; informational counseling to the alleged perpetrator or defendant upon their request; referral to health care facilities and support services at the request of the victim.
- Establishes a means for reimbursement of costs by the defendant to the Department of Corrections.

CSHB 109(JUD) will enable a victim of a sexual assault to obtain information related to an alleged sexual assault perpetrator's infectious disease status, especially HIV infection, and convey this information to alleged victims so that they may take measures to preserve their health.

Beginning October 1, 1993, the Crime Control Act of 1990 requires that in order for the states to continue to receive their identified Drug Control and System Improvement Grant allocation amount, the states must have laws in place related to HIV testing of individuals convicted of a sexual offense. The result of a state not having such legislation enacted will result in a 10% reduction to the state's identified allocation amount.

Passage of CSHB 109(JUD) will enable the State of Alaska to continue to receive the entire Drug Control and System Improvement Grant allocation.



Richard L. Burton  
Commissioner

4/28/93

BRIEFING PAPER  
FOR

CS HOUSE BILL NO. 109 (JUD)

Prepared by Department of Public Safety

“An Act relating to blood tests for persons charged with sex offenses; and providing for an effective date.”

Since 1987, Alaska has received Drug Control And System Improvement Formula Grant Funds through the Office of Justice Programs, Bureau of Justice Assistance. The grant program is authorized by the Anti-Drug Abuse Act of 1988. The purpose of the funds is to provide assistance to the states for their law enforcement efforts to control the drug and violent crime problem. The allocation for each state and territory is primarily based on population.

For the first year, the allocation to Alaska was \$823,000. In 1993, the allocation is \$1,870,000.

Within the State, these funds are shared by state agencies and local units of government for the purpose of addressing the drug control problem through law enforcement, prosecution, and court system improvement programs.

In 1992, with federal allocation of \$1,852,000, there were 5 state agency projects and 9 local government projects funded. Through these projects the funds provided for 14 law enforcement officers throughout the State, to enforce the State's controlled substance laws through multi-jurisdictional task force, street level enforcement, and financial investigation efforts. These funds provided for two prosecuting attorneys to specialize in the prosecution of individuals violating the State's controlled substance laws. In addition, the funds provided for timely court processing and the identification of individuals with prior drug offense incidents through improvement of the court and criminal history record systems.

Beginning October 1, 1993, the Crime Control Act of 1990 requires that in order for the states to continue to receive their identified Drug Control and System Improvement Grant allocation amount, the states must have laws in place related to HIV testing of individuals convicted of a sexual offense. The result of a state not having such legislation enacted will result in a 10% reduction to the state's identified allocation amount. This amount then will be shared by those states which have enacted such legislation.

Briefing Paper  
CSHB 109(JUD)  
Page 2

For the State of Alaska to continue to receive its entire Drug Control and System Improvement allocation, avoid reducing its current drug control effort, and avoid providing 10% of its allocation to other states, passage of HIV testing legislation is necessary this session.

With a reduction of ten percent, or \$187,000, to the State's annual grant revenue allocation, it will be necessary to fund ten percent of the law enforcement and prosecution effort currently addressing the State's drug control problem through State general funds and municipal revenues.

**HB 109**  
**Blood Testing of Sex Offenders**  
**Department Contacts**

Department of Health & Social Services

Elmer Lindstrom, 465-3030 - department contact; testified before House HESS & JUD  
Peter Nakamura, 465-3090 - testified before House HESS

Department of Corrections

Dana LaTour, 465-3376 - department contact

Department of Law

Margot Knuth, 465-4049 - department contact; testified before House HESS and JUD

Department of Public Safety,

Lee Ann Lucas, 465-2649 - department contact; testified before House JUD  
Joanne Lopez, 465-4356 - CDVSA contact  
Cathi Katsel, 269-5082 - Grants Administrator

Alaska Network on Domestic Violence & Sexual Assault

Cindy Smith, 586-3650 - testified before House HESS, JUD and FIN

DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

P.O. BOX 110610  
JUNEAU, ALASKA 99811-0610  
PHONE: (907) 465-3090

February 17, 1993

Honorable Pete Kott, Member  
House HESS Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99811

Dear Representative Kott,

At the House hearing of HB 109 (Blood testing on individuals accused of sexual assault) on 9/16/93 I made an error in a statement on the disease, Hepatitis B. I wish to take this opportunity to correct that misunderstanding and to apologize for any confusion that the statement may have created.

Contrary to my statement, although the primary method of transmission is through the blood route, Hepatitis B is considered to be a sexually transmitted disease.

Hepatitis B is a highly infectious virus that is very stable and can exist over a month in the dried state. It is not transferred in the fecal, oral route but is transmitted through blood and the sexual process. It can also be transmitted from an infected mother at the birthing and through the saliva of an infected person. The later is considered one reason for the high incidence of hepatitis B in institutions that cared for children who were severely mentally retarded.

Hepatitis B immune globulin is available for those who have high risk exposures but the preventions of hepatitis B is not definite. A Hepatitis B vaccine is available for preventing the disease if given before exposure. The vaccine is given in combination with the globulin at times after the exposure to maximize the possibility of preventing the disease.

In view of the transmission of hepatitis B through sexual practices it would be reasonable that testing for this disease be included in the blood tests mandated under C.S. for H.B. 109.

Thank you for giving me the opportunity to correct any misinformation that may have been provided earlier.

Sincerely,



Peter M. Nakamura M.D., M.P.H.  
Director, Division of Public Health.

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE  
P. O. BOX 110300 - STATE CAPITOL  
JUNEAU ALASKA 99811-0300  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 W. 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

March 10, 1993

The Honorable Pete Kott  
House of Representatives  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99801-1182

Re: CSHB 109(HES) (Relating to blood tests for persons charged with sex offenses)

Dear Representative Kott:

By letter dated February 26, 1993, you have asked us to review CSHB 109(HES), relating to blood tests for persons charged with sex offenses. In particular, you wish to know whether there are potential due process problems in allowing the court to order a blood test without holding a hearing on the matter at which the defendant may be present.

We do not believe that this provision presents any constitutional problems. Proposed AS 18.15.300(c) authorizes the superior court to order a defendant to provide a blood sample for testing if the court determines that there is probable cause to believe that the defendant committed one of the enumerated offenses and that sexual penetration with the victim took place.

The "probable cause" standard set forth in this bill is the same standard that is used for the issuance of search warrants. Search warrants are uniformly issued at ex parte proceedings; the defendant is neither present nor has any right to be heard before the warrant is issued and executed. Search warrants per force involve an invasion of the subject's privacy. The sufficiency of the probable cause standard to support search warrants is highly indicative of the sufficiency of that same standard for the issuance of an order requiring a charged defendant to submit a blood sample for testing. Similarly, the permissibility of obtaining search warrants in ex parte proceedings is highly indicative that an order requiring the production of a blood sample may be issued without providing the defendant an opportunity to be heard on the issue.

Proposed AS 18.15.300(c) further states: "In making the [probable cause] determination, the court may rely on the evidence presented at a grand jury proceeding or

preliminary hearing.”<sup>1</sup> At a preliminary hearing, the prosecution bears the burden of establishing that there is probable cause to believe that the alleged offense was committed by the defendant. Criminal Rule 5.1(h). The defendant has the right to be present at this hearing and may cross-examine the witnesses against him. Criminal Rule 5.1(b). Thus, to the extent that the court relies upon evidence that was presented at a preliminary hearing, the defendant had the opportunities to be present and confront the evidence against him at that hearing; a second such opportunity need not be provided.

The defendant does not have the opportunity to be present at a grand jury proceeding. Our constitution, however, provides alternative safeguards to secure defendants' rights. Thus, a grand jury, which is comprised of eighteen persons, hears the evidence against the defendant and applies a standard at least as strict as the “probable cause” standard used in preliminary hearings (whether “all of the evidence taken together, if unexplained or uncontradicted, would warrant a conviction of the defendant”). Criminal Rule 6(q). To the extent that this proceeding is sufficient to justify the maintenance of felony charges against the defendant, with the appreciable loss of liberty entailed throughout those proceedings, we believe that it is also sufficient to justify an order requiring the defendant to provide a blood sample for testing.

Finally, we note that proposed AS 18.15.310(f) specifies that “the results of tests ordered under AS 18.15.300 -- 18.15.330 are not admissible evidence in a criminal or juvenile proceeding.” Although we do not believe that this provision is constitutionally required, it further reduces any concerns that may exist regarding the lack of a new evidentiary hearing on the issue of whether a blood test should be ordered. A defendant would have a greater interest in challenging an order to provide a blood sample if that sample could be used as evidence against him.<sup>2</sup>

In summary, we find no constitutional impediment to this bill's provision authorizing the court to rely upon a preliminary hearing and/or grand jury proceedings in making the factual determination that there is probable cause to believe that the defendant committed one of the enumerated offenses and that sexual penetration with the victim took place.

You also wish to know whether the defendant's privacy interests are sufficiently safeguarded by providing that unauthorized disclosure is punishable by contempt of court. We

---

<sup>1</sup> We would like this sentence to be amended to explicitly acknowledge that the court may rely *exclusively* on such evidence.

<sup>2</sup> We note that there is nothing in this bill that would prevent a prosecuting attorney from obtaining an independent order for the provision of a blood sample under Criminal Rule 16.

believe that this is sufficient. To the extent that the circumstances justify the invasion of the defendant's privacy rights in the first instance by requiring the production of a blood sample for testing, the defendant's additional privacy interests in restricting the disclosure of the test results are adequately protected by the provision in this bill prohibiting unauthorized disclosures. We do not believe that the defendant's right of privacy is appreciably affected by whether a violation of that prohibition is treated as contempt of court or is made a new criminal offense.

If you have further questions or if we may be of assistance in any other manner, please feel free to contact us.

Very truly yours,

CHARLES E. COLE  
ATTORNEY GENERAL

By: Margot O. Knuth  
Margot O. Knuth  
Assistant Attorney General

cc: Charles Cole  
Attorney General

Deborah Behr  
Department of Law

Kris Lethin  
Legislative Liaison

Richard Burton, Commissioner  
Department of Public Safety

Dr. Ted Mala  
Commissioner  
Department of Health and Social Services

Lloyd Rupp  
Commissioner  
Department of Corrections

Back-up

*Position Paper*

*Alaska Women's Commission  
Post Office Box 82977  
Fairbanks, Alaska 99708*

*Approval By Alaska Women's Commission  
House Bill 109*

*This bill would require blood tests from persons charged with sexual offenses and provide an avenue for victims of the sexual assault to receive the results of those tests.*

*HB 109 provides victims of sexual assault a means to determine whether they have been exposed to communicable diseases. At the present time privacy laws prohibit this testing of alleged perpetrators of sexual assault or disclosure of test results. Victims have no recourse to determine if they have contracted a sexually transmitted disease. This bill would provide that recourse.*

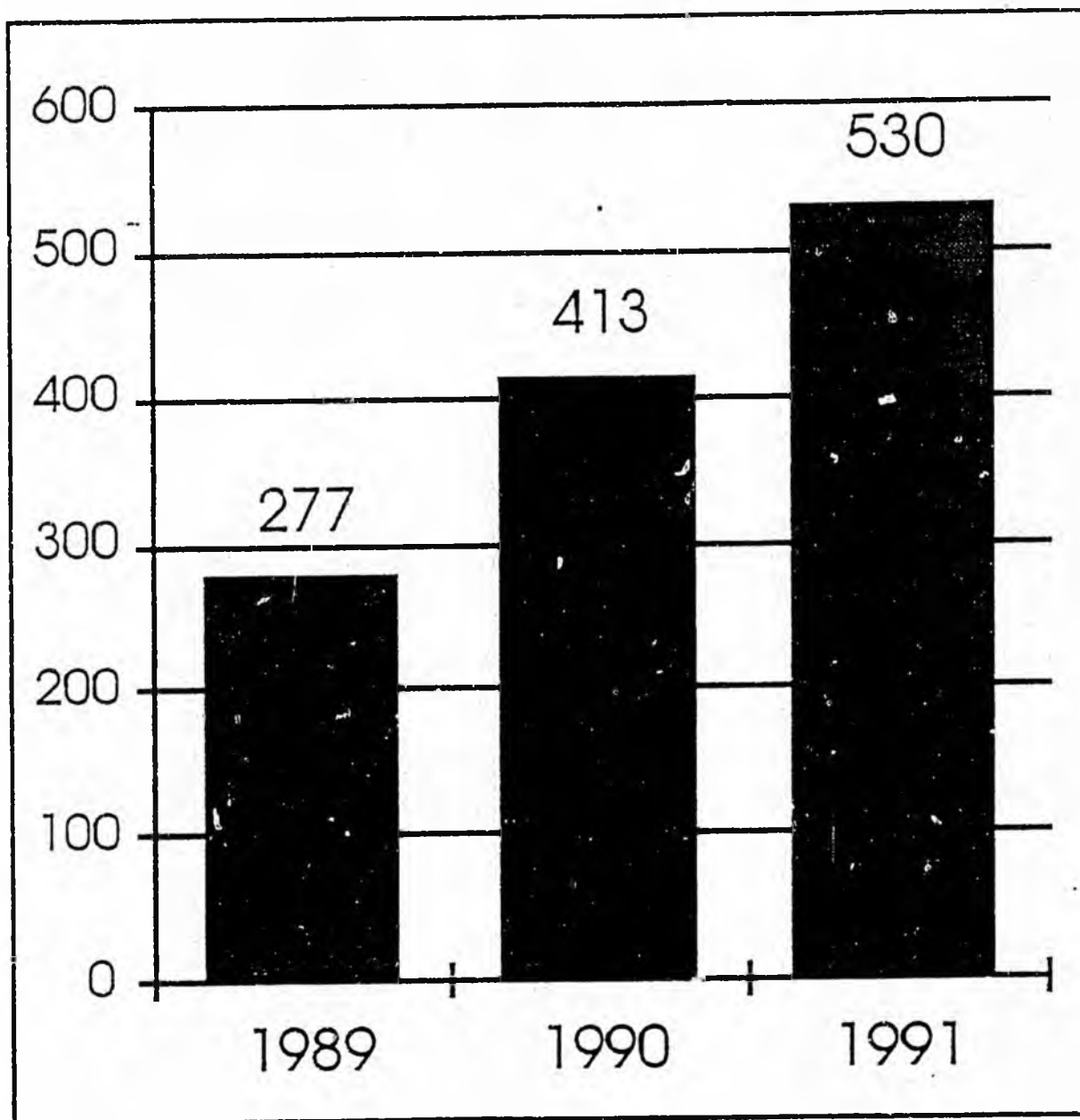
*The Alaska Women's Commission supports HB 109. Victims of sexual assault are innocent people whose person and whose own right to privacy have been violated. The statutes should provide them access to the medical information about their attacker necessary to determine any medical treatment needed to preserve their physical - and mental - health. Sexual assault victims need a great deal of help and support for recovery. HB 109 provides an important remedy without compromising legitimate protection of the alleged attacker's rights.*

*The proposed bill appears to adequately address both the necessary protections and practical means of achieving the desired results. The Alaska Women's Commission supports HB 109 as written.*

*Alaska Women's Commission*

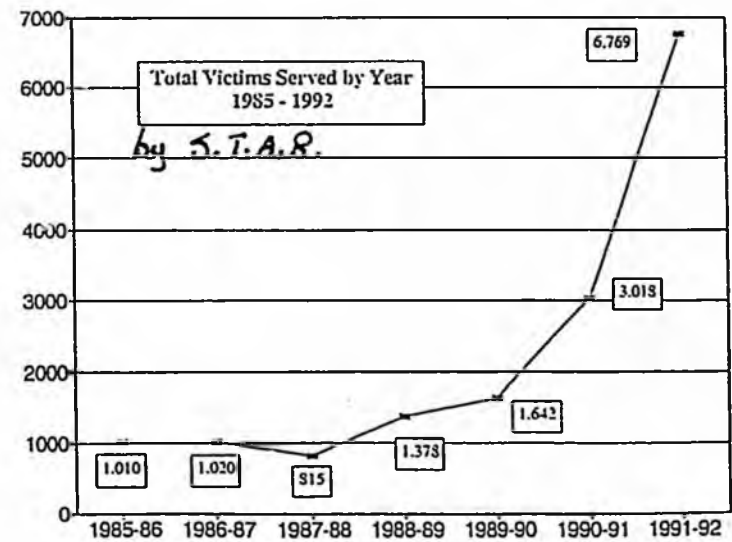
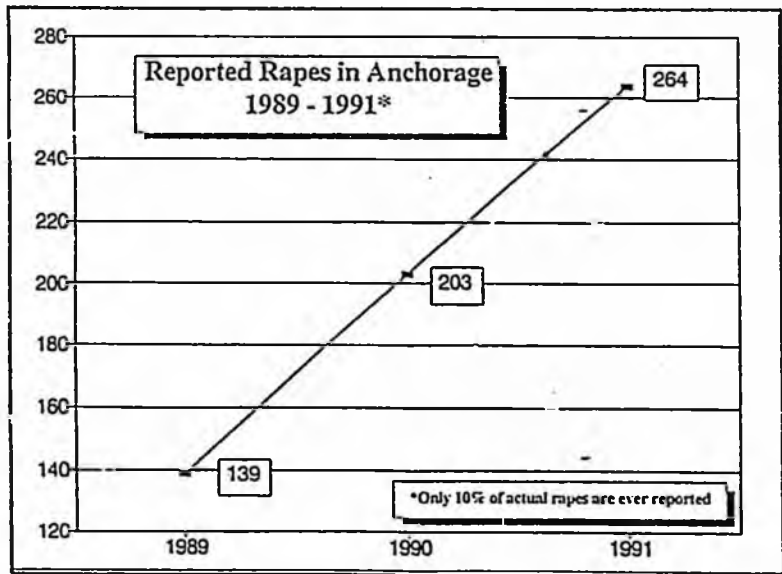
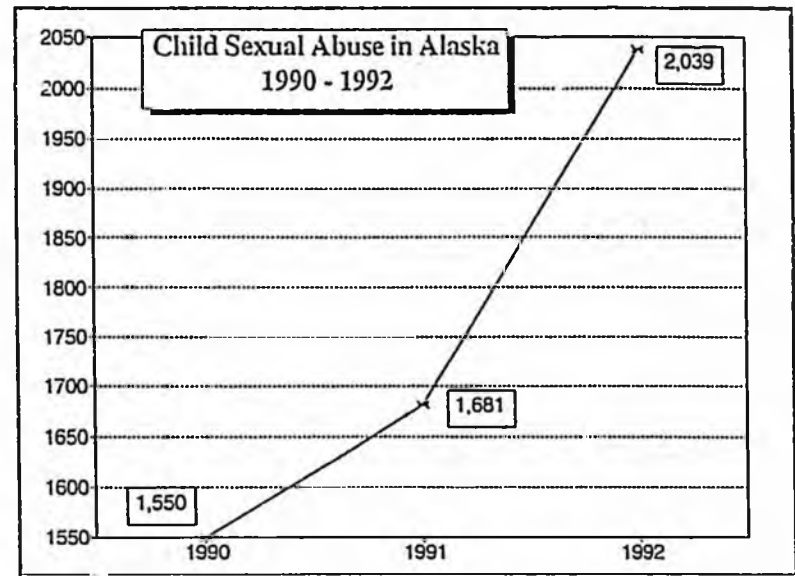
*Barbara B. Tyndall*  
Barbara B. Tyndall  
Chair

## Reported Rapes in Alaska 1989 through 1991



Provided by The Network on Domestic Violence and Sexual Assault

Source: Department of Public Safety



**DRUG CONTROL AND SYSTEM IMPROVEMENT FORMULA GRANT**  
**Administered by Bureau of Justice Assistance**

**FACT SHEET**

The Anti-Drug Abuse Act of 1988 establishes the State and Local Narcotics Control and Justice Assistance Improvement Grant Programs known as the "Edward Byrne Memorial State and Local Law Enforcement Assistance Programs". The Drug Control And System Improvement Formula Grant Program is one of these programs.

The purpose of these federal funds is to provide assistance to the states in their law enforcement efforts to control their drug and violent crime problem.

This grant is also referred to as the Formula Grant; the Anti-Drug Abuse Grant; the BJA Grant; and the Narcotics Grant.

The Drug Control and System Improvement Grant allocation for each state is primarily based on the state's population level.

The funds may be used for 21 program areas. However, from these 21 program areas, the states determine which program areas will be funded in their state.

Eligible subgrant applicants are state and local government agencies.

The basic requirements for these funds are as follows:

A percentage of the allocation must be "passed through" to the local units of government. This percentage is determined by the federal census bureau and is equal to the local government share of the state and local criminal justice expenditures for the previous fiscal year.

A 25% cash match in the form of new funds must be provided.

Projects may be funded for no longer than a 4 year period. The only exception to this is the multi-jurisdictional task force projects.

Federal mandates which impact the allocation level of funds are those which require the states to:

Report the conviction of aliens to Immigration and Naturalization Services;

Set aside 5% of the allocation for the improvement of the criminal history record information system within the state;

Establish state legislation which requires, at the victim's request, that an individual convicted of certain assault violations be tested for the presence of HIV.

### **THE DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT IN ALASKA**

The State Administrative Agency (SAA) is the Department of Public Safety, Alaska State Troopers.

The Drug And Violent Crime Advisory Committee has been established for the purpose developing the strategic plan and reviewing the subgrant applications. For final decision in these two areas, the committee makes recommendations to the Department of Public Safety Commissioner.

For the FFY 1992 grant, the program priorities for funding were:

- Increased law enforcement efforts;
- Increased prosecution efforts;
- Eradication of marijuana cultivation;
- Maintenance of law enforcement drug control expertise;
- Automation and improvement of the court case processing system;
- Automation and improvement of the criminal history record system;
- Increased violator accountability.

With FFY 1992 funds, 5 state agency projects and 9 local government projects were funded.

C. Katse!  
11/6/92

**AUTHORIZED PROGRAMS AREAS**

1. Demand reduction education program in which law enforcement officers participate;
2. Multi-jurisdictional task force programs that integrate Federal, state, and local drug enforcement agencies and prosecutors for the purpose of enhancing interagency coordination and intelligence and facilitating multi-jurisdictional investigations;
3. Programs designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceutical, clandestine laboratories and cannabis cultivations;
4. Providing community and neighborhood programs that assist citizens in preventing and controlling crime, including special programs that address the problems of crime committed against the elderly and special programs for rural jurisdictions;
5. Disrupting illicit commerce in stolen goods and property;
6. Improving the investigation and prosecution of white-collar crime, organized crime, public corruption crimes and fraud against the government with priority attention to cases involving drug-related official corruption;
7. A) Improving the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator programs, gang-related and low-income housing drug control programs;
7. B) Developing and implementing anti-terrorism plans for deep draft ports, international airports, and other important facilities;
8. Career criminal prosecution programs, including the development of model drug control legislation;
9. Financial investigative programs that target the identification of money laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information sharing systems;
10. Improving the operational effectiveness of court process, such as court delay reduction programs and enhancement programs;
11. Programs designed to provide additional public correctional resources and improve the corrections system, including treatment in prisons and jails, intensive supervision programs and long-range corrections and sentencing strategies;
12. Providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution;
13. Providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders;
14. Developing and implementing programs which provide assistance to jurors and witnesses and assistance (other than compensation) to victims of crimes;
15. A) Developing programs to improve drug control technology such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug-dependent offenders and enhancement of state and local forensic laboratories;
15. B) Criminal justice information systems to assist law enforcement, prosecution, courts, and corrections organizations (including automated fingerprint identification systems);
16. Innovative programs which demonstrate new and different approaches to enforcement, prosecution, and adjudication of drug offenses and other serious crimes;
17. Addressing the problems of drug trafficking and illegal manufacture of controlled substances in public housing;
18. Improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse, and abuse of the elderly;
19. Drug control evaluation programs which state and local units of government may utilize to evaluate programs and projects directed at state drug control activities;
20. Providing alternatives to prevent detention, jail, and prison for person who pose no danger to the community, and
21. Programs of which the primary goal is to strengthen urban enforcement and prosecution efforts targeted at street drug sales.

# Appendix

## Worksheet

For Fiscal Year 1994, States and other Jurisdictions (for convenience hereafter referred to as States) must be in compliance with the HIV mandatory testing standards for certain offenders established by Sec. 1804 of the Crime Control Act of 1990, 42 U.S.C. § 3756(f) (hereafter referred to as Section 1804) in order to receive continued full funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program.

The purpose of this worksheet is to assist the States in providing a self-assessment of their compliance with Section 1804. It need not be returned.

### 1. Victim Request.

Does the State statute require an HIV testing procedure at the request of any victim of a sexual act for which the person to be tested was convicted in State court (or make such a test mandatory for *all* persons thus convicted regardless of victim request)?

Yes     No    HB 109 exceeds this standard by providing for such testing on charged defendants.

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.300

### 2. Administration of the Test.

Does the State statute require an agency of the State (such as a court, health department, correctional authority, etc.) to direct that a test be administered in such cases?

Yes     No

Does the State statute specifically require testing in these cases for the presence of acquired immune deficiency syndrome (AIDS) or its precursor, human immunodeficiency virus (HIV).

Yes     No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.300(d)

AS 18.15.310(b)

3. The Person to be Tested.

Does the State statute require persons to be tested who have been convicted under State law of a defined sexual act?

Yes, in all cases  Yes, but only at the request of a victim  No

Does this either specifically or by definitional inclusion encompass persons found guilty of the offense by a jury or court, as well as those entering a pleas of guilty? (Note: Because Question 6 below concerns the definition of juveniles as persons "convicted," please disregard that issue for Question 3).

Yes  No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.300 (cf. AS 11.41.410 - 11.41.440)

4. Disclosure of the Test Results.

Does the State statute provide for disclosure of the test results to ~~the~~ both the victim and the person tested?

Yes  No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.300(e)

5. Victim Services.

Does the State statute provide for making the following services available to the victims of these sexual acts at their request:

1. Counseling regarding HIV disease?

Yes  No

2. HIV testing in accordance with applicable law?

Yes  No

3. Referral for appropriate health care and support services?

Yes  No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.310(h)

What are the sources of the funds to pay for these services?

Alaska Department of Health + Social Services  
(test paid by defendant by order of the court  
if the defendant is found guilty.)

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.310(h)

AS 18.15.900

AS 18.15.320

6. Definition of the term "convicted" as including Juveniles.

Does the State statute require HIV testing for juveniles who have been adjudicated under State law of committing sexual acts as it does with adults?

Yes  No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 18.15.300

7. Definition of the term "Sexual Act."

Does the State statute define "sexual act" as having the meaning (either literal or approximate) as that given the term in 18 U.S.C. § 2245(2)(A) or (B)? (See Division 7 of the "Guide for the States").

Yes  No

What statutory section(s), subsection(s), paragraph(s), or subparagraph(s) or non-statutory materials provide this authority?

AS 11.41.410 - 11.41.440

AS 11.81.900(b)(54)