

HB

1999

B

HOUSE COMMITTEE REPORT

3/15/95

(7)

Date Referred: February 27, 1995

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 199

HOUSE BILL NO. 199

CRIMINAL TRANSMISSION OF HIV

"An Act creating the crime of criminal transmission of HIV."

recommends it be replaced with the following committee substitute CS HB 199 (STA) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) Law
C indeterminate

fiscal note(s) _____

zero fiscal note(s) Admin
Corrections

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<u>Jeannette James</u>	James			<input checked="" type="checkbox"/>	
<u>Brian Porter</u>	Porter			<input checked="" type="checkbox"/>	
<u>Green</u>	Green	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
<u>Robert Robinson</u>	ROBINSON		<input checked="" type="checkbox"/>		
<u>Ed Willis</u>	Willis	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
<u>Dred Ogan</u>	Ogan	<input checked="" type="checkbox"/>			
		(2)	(1)	(3)	

CHAIR'S SIGNATURE

Jeannette James
James

FISCAL NOTE

No. 3
 Bill Vers. No.: CSHB 199(STA)
 (H) Publish Date: 3/15/95

**STATE OF ALASKA
 1995 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Corrections
 Title: An Act creating the crime of criminal transmiss BRU: Statewide programs
 of HIV _____ Component inmate health
 Sponsor: Rep. Ogan
 Requester: Rep. Ogan COMPONENT SERIAL NO. 705

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The crime defined in this bill would carry a presumptive five year sentence. The Department of Corrections has no data to determine the number of people who may be convicted under this bill. It is believed that the number would be very small; perhaps zero in many years. However, in addition to the \$39.0 annual cost of maintaining an inmate in a prison facility, the exposure to medical cost liability must be considered.

In FY 95 alone nearly \$600.0 has been spent on one HIV/AIDS inmate. Every day an HIV positive inmate is in a prison facility, we risk adding huge medical costs to our inmate health care costs. DOC could be faced with an indeterminate number of million dollar per year inmates.

Prepared by: Jerry Shriner Phone: 465-5582
 Division: _____ Date: 3/3/95
 Approved by Commissioner: *Norbert H. Ruda* Date: 3/3/95
 Agency: Department of Corrections

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FISCAL NOTE

No. 2

Bill Version: CSHB 199(STA)

(H) Publish Date: 3/15/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act creating the crime of criminal transmission of HIV"
 Sponsor: Rep. Ogan
 Requestor: (H) STA

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
 No measurable impact on the Public Defender Agency is anticipated.

Prepared by: John Salemi, Director
 Division: Public Defender Agency

Phone: 264-4400
 Date: _____

Approved by Commissioner: Mark Bove
 Agency: Department of Administration

Date: 3/13/95

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FISCAL NOTE

**STATE OF ALASKA
 1995 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act creating the crime of criminal transmission of HIV." BRU: Prosecution
 of HIV." Component: All
 Sponsor: Representative Ogan
 Requester: House State Affairs COMPONENT SERIAL NO. 0085-0090

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	*****	*****	*****	*****	*****	*****
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would make it a class A felony for a person, knowing that he or she is infected with the human immunodeficiency virus (HIV), to knowingly expose others to HIV infection through intimate sexual contact, infectious body fluids (including blood, tissue, semen or organs) in any manner that could result in transmission of HIV to a person who is unaware that the person causing the exposure is infected with HIV.

At the current time, 660 Alaskans are known to be infected with HIV, including 120 full blown cases of AIDS. This number includes only those tested through state health laboratories. About four percent of those known to be infected with HIV are under the age of 20. Because many at high risk test anonymously or out of state, the actual number of persons residing in the state who have tested positive for HIV is undoubtedly higher than state records indicate. The current rate of growth for HIV in Alaska is about eight percent per year.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3/6/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 3/6/95
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 199

ANALYSIS CONTINUATION:

Of the known HIV cases in Alaska, the vast majority resulted from consensual sexual contact. Obtaining a conviction under this circumstance (simply securing sufficient evidence to warrant a prosecution) would be difficult, if not impossible. Consequently, the number of convictions resulting from exposure to HIV through intimate sexual contact may be relatively small. In a rare case where a person infected with HIV deliberately sets about to infect another, it might be possible to obtain a conviction. However, such a case is already chargeable under the state's existing criminal laws.

Although the bill is intended to deter persons who have tested positive from engaging in conduct that may spread HIV, we are concerned that it will have the unintended, but certain effect of deterring persons at the highest risk from seeking HIV testing and counseling, thus increasing the risk of spreading HIV.

Under these circumstances, estimating the number of prosecutions that would occur if the bill is enacted would be highly speculative, making it nearly impossible to determine a fiscal impact.

Barbara Brink - speaker

Rope - testing

Does the leg. already exist?

WORK DRAFT

WORK DRAFT

WORK DRAFT

* 18.15.106 - quarantines pox
quarantines - violation class A misdemeanor
(Notzeme. face 94)

9-LS0763F
Luckhaupt
3/10/95

* 26 other states - but challenged, ^{received} because of federal \$
CS FOR HOUSE BILL NO. 199()

IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

Does it happen in rape victims?

BY * ABA: HIV sanctions play limiting role
discouraged using this legislation.

Offered:
Referred:

Sponsor(s): REPRESENTATIVE OGAN

Dpt HESS class A felony

A BILL

* Already on books"
Margot

FOR AN ACT ENTITLED

gap - young women developmental disability

1 "An Act creating the crime of criminal transmission of HIV."

transmission w/o intent to harm

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 11.41 is amended by adding new sections to read:

4 ARTICLE 6. CRIMINAL TRANSMISSION OF HIV.

5 Sec. 11.41.600. CRIMINAL TRANSMISSION OF HIV. (a) A person
6 commits the crime of criminal transmission of HIV when the person, knowing that the
7 person is infected with HIV, ^{Right to privacy - hurt oneself.}

8 (1) voluntarily engages in intimate sexual contact with another person
9 in a manner that could result in the transmission of HIV;

10 (2) deliberately exposes the person's bodily fluid to the body of another
11 person in a manner that could result in the transmission of HIV;

12 (3) transfers, donates, or provides the person's blood, tissue, semen,
13 organs, or other potentially infectious body fluids for transfusion, transplantation,
14 insemination, or other administration to another; or

15 (4) dispenses, delivers, exchanges, sells, or in another way transfers to

references: Illinois law (1) challenge - vagueness def. intimate contact
(2) provide someone had knowledge of HIV
New Text Underlined (DELETED TEXT BRACKETED) CSHB 199()

another a nonsterile device or paraphernalia designed for the intravenous or intramuscular administration of drugs.

(b) It is an affirmative defense to a prosecution under

(1) (a)(1) of this section that the intimate sexual contact occurred under the following conditions:

(A) the parties to the intimate sexual contact were legally married at the time of the contact; *what happens if they still get aids*

as opposed to sex. (B) the person exposed knew that the defendant was infected with HIV, knew that the contact could result in transmission of HIV, and voluntarily participated in the contact with the knowledge; and

(C) during the contact, the parties used reasonable prophylactic measures designed to minimize the risk of transmission of sexually transmitted disease; *what happens if both have HIV and want sex?*

(2) (a)(2) of this section, that the exposure was incidental to the administration of medical treatment to the defendant, that the treatment took place at the direction of a medical professional licensed and qualified to authorize the treatment, and that the defendant made efforts that were reasonable considering the circumstances to inform the medical professional that the defendant was infected with HIV;

(3) (a)(1) or (2) of this section, if the person exposed to HIV by the proscribed conduct had, before that exposure, been medically diagnosed as being infected with HIV.

(c) In a prosecution under (a) of this section, the determination of whether a defendant acted with knowledge that the defendant was infected with HIV shall be based on the totality of the evidence concerning the existence of the knowledge, and may not be construed as requiring that the accused has submitted to or received the results of a particular test or method of diagnosis.

(d) This section does not require transmission of HIV to have actually occurred in order for a person to have committed criminal transmission of HIV.

(e) In this section,

(1) "HIV" means human immunodeficiency virus or another identified

1 causative agent of acquired immunodeficiency syndrome;

2 (2) "intimate sexual contact" means sexual penetration or any sexual
3 contact in which the body of one person is exposed to a body fluid of another person.

4 (f) Criminal transmission of HIV is a class A felony.

5 * Sec. 2. AS 18.67.101 is amended to read:

6 Sec. 18.67.101. INCIDENTS AND OFFENSES TO WHICH THIS CHAPTER
7 APPLIES. The board may order the payment of compensation in accordance with the
8 provisions of this chapter for personal injury or death that resulted from

9 (1) an attempt on the part of the applicant to prevent the commission
10 of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
11 officer to do so, or aiding a victim of crime; or

12 (2) the commission or attempt on the part of one other than the
13 applicant to commit any of the following offenses:

14 (A) murder in any degree;

15 (B) manslaughter;

16 (C) criminally negligent homicide;

17 (D) assault in any degree;

18 (E) kidnapping;

19 (F) sexual assault in any degree;

20 (G) sexual abuse of a minor;

21 (H) robbery in any degree;

22 (I) threats to do bodily harm; [OR]

23 (J) driving while intoxicated or another crime resulting from the
24 operation of a motor vehicle, boat, or airplane when the offender is intoxicated;

25 OR

26 (K) criminal transmission of HIV.

March 13, 1995

Jeannette James
Chair, State Affairs Commission
Juneau, Alaska

Ms. James,

I am writing in regards to HB 199, the bill to criminalize transmission of the HIV virus.

I urge you and your committee to consider the folly of a bill that could have a negative impact on individuals considering HIV testing. I have no problem in prosecuting a person who knowingly puts another person at risk for this horrible disease, but I think the existing laws can be used for this.

Anything that would put a barrier to HIV testing is ill-advised. We live in a state where there are already a good deal of barriers to testing and a lot of "high risk" behavior. Out of roughly 600,000 residents, only 76,000 have been tested through the state labs. That leaves a lot of people who don't know their HIV status. A bill such as this makes ignorance bliss.

I also have to take exception to the spousal immunity part of this bill. Why should a husband or wife who brings this disease home be exempt? My experience as a nurse on an AIDS unit brought me in touch with that tragedy too many times.

Please do not make this bill law. It will only add to the AIDS epidemic, not help to stop it.

Deborah L. Vandruff, R.N.

Deborah L. Vandruff R.N.

S.T.O.P. AIDS Project Director
520 E. 4th Ave.
Anchorage, Ak. 99501

FAX COVER SHEET

TO: Jeanette James

FAX NUMBER SENT TO: 465-2381

DATE: 3/14/95 TIME: _____

RE: HB 199

FROM: Deborah Vandruff, STOP AIDS project
c/o Mendel and Huntington
845 K Street
Anchorage, AK 99501
TEL: (907) 279-5001
FAX: (907) 279-5437

NUMBER OF PAGES AFTER TRANSMITTAL SHEET: 1

DESCRIPTION OF DOCUMENTS SENT: letter

Hard copy to follow by mail messenger none

ADDITIONAL MESSAGE:

Please call (907) 279-5001 if this fax is illegible, incomplete,
or received in error. Thank you.