

**SB**

**17**

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 30, 1997

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 4-14-98

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

SB 17

SENATE BILL NO. 17

CRIMINAL TRANSMISSION OF HIV

"An Act creating the crime of criminal transmission of human immunodeficiency virus (HIV)."

recommends it be replaced with the following committee substitute \_\_\_\_\_  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) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

③  zero fiscal note(s) Admin,  
Law, Public Safety,

zero fiscal note(s) \_\_\_\_\_

| SIGNING WITH RECOMMENDATIONS | DP | DNP | NR | AM |
|------------------------------|----|-----|----|----|
| <i>Paul D...</i>             | ✓  |     |    |    |
| <i>Joseph...</i>             |    |     | ✓  |    |
| <i>Car Beude</i>             |    |     | ✓  |    |
| <i>Brian N. Porter</i>       | ✓  |     |    |    |
| <i>John...</i>               |    | ✓   |    |    |
|                              |    |     |    |    |
|                              |    |     |    |    |
|                              |    |     |    |    |
|                              |    |     |    |    |
|                              |    |     |    |    |
|                              |    |     |    |    |
|                              |    |     |    |    |

CHAIR'S SIGNATURE

*Car Beude*

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SB 17

Revision Date: \_\_\_\_\_  
 Title: "An Act creating the crime of criminal transmission of HIV..."  
 Sponsor: Senator Taylor  
 Requestor: (H) HES

Department Affected: Administration  
 BRU: Legal and Advocacy Services  
 Component: Public Defender Agency  
 COMPONENT SERIAL NO. 1631

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99      | FY 00      | FY 01      | FY 02      | FY 03      | FY 04      |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES      |            |            |            |            |            |            |
| TRAVEL                 |            |            |            |            |            |            |
| CONTRACTUAL            |            |            |            |            |            |            |
| SUPPLIES               |            |            |            |            |            |            |
| EQUIPMENT              |            |            |            |            |            |            |
| LAND & STRUCTURES      |            |            |            |            |            |            |
| GRANTS, CLAIMS         |            |            |            |            |            |            |
| MISCELLANEOUS          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE:** (Thousands of Dollars)

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  |            |            |            |            |            |            |
| 1005 GF/Program Receipts |            |            |            |            |            |            |
| 1037 CF/Mental Health    |            |            |            |            |            |            |
| OTHER                    |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY 98) cost: \$ \_\_\_\_\_

**POSITIONS:**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

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

See attached.

Prepared by: Barbara K. Brink, Director  
 Division: Public Defender Agency

Phone: (907) 264-4414  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

*Alison M. Elger*  
 Date: 3/10/98

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## 1998 LEGISLATIVE SESSION

## ANALYSIS: (continued)

This bill creates the new crime of criminal transmission of HIV. If a person

(1) knows that they are infected with HIV, and

(a) voluntarily engages in intimate contact with another person; or

(b) transfers, donates or provides blood, tissue, semen, organs or other potentially infectious bodily fluids for transfusion, transplantation, insemination or other administration to another; or

(c) dispenses, delivers, exchanges, sells or in any manner transfers to another person any non-sterile intravenous or intramuscular drug paraphernalia.

The existing criminal statutes in Alaska already provide an adequate means to prosecute and punish anyone who either intentionally or recklessly transmit HIV. The bill unconstitutionally shifts the burden of proof to the accused person to show either that the person exposed knew that the defendant was infected or that the action could result in infection and consented with that knowledge. Additionally, many of the definitions are vague. As no cases of this type have been heard of in Alaska, and current statutes already allow for criminal prosecution, no additional fiscal impact is expected.

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO: SB 17

Revision Date: 03/09/98  
Title: Criminal Transmission of HIV  
Sponsor: Sen. Taylor  
Requestor: House HESS

Dept. Affected: Public Safety  
BRU: Alaska State Troopers  
Component: Detachments  
COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

| OPERATING         | FY99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|-------------------|------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES |      |       |       |       |       |       |
| TRAVEL            |      |       |       |       |       |       |
| CONTRACTUAL       |      |       |       |       |       |       |
| SUPPLIES          |      |       |       |       |       |       |
| EQUIPMENT         |      |       |       |       |       |       |
| LAND & STRUCTURES |      |       |       |       |       |       |
| GRANTS, CLAIMS    |      |       |       |       |       |       |
| MISCELLANEOUS     |      |       |       |       |       |       |
| TOTAL OPERATING   | -0-  | -0-   | -0-   | -0-   | -0-   | -0-   |

|         |     |     |     |     |     |     |
|---------|-----|-----|-----|-----|-----|-----|
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
|---------|-----|-----|-----|-----|-----|-----|

|  |     |     |     |     |     |     |
|--|-----|-----|-----|-----|-----|-----|
| CHANGE IN REVENUES ( )<br>Revenue Code | -0- | -0- | -0- | -0- | -0- | -0- |
|--|-----|-----|-----|-----|-----|-----|

FUNDING: (Thousands of Dollars)

|                       |     |     |     |     |     |     |
|-----------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts |     |     |     |     |     |     |
| 1003 GF Match         |     |     |     |     |     |     |
| 1004 GF               |     |     |     |     |     |     |
| 1005 GF/Program       |     |     |     |     |     |     |
| 1006 GF/MHTIA         |     |     |     |     |     |     |
| Other                 |     |     |     |     |     |     |
| TOTAL                 | -0- | -0- | -0- | -0- | -0- | -0- |

Estimate of current year (FY 98) impact: \$ \_\_\_\_\_

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

While there may be 1 or 2 cases a year involving this crime, it is not expected that this bill would have a significant fiscal impact on AST.

Prepared By: Capt. Ted M. Bachman Phone 269-5650  
Division: Alaska State Troopers Date: 03/09/98  
Approved by Commissioner: Ronald L. Otte Date: 7-9-98  
Agency: Department of Public Safety

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SB 17

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act creating the crime of criminal transmission  
of human immunodeficiency virus (HIV)." BRU: Criminal Division  
 Sponsor: Senator Taylor Component: 1st-4th Jud District/OSPA  
 Requester: House HESS Committee #2198/99/  
 COMPONENT SERIAL NO. 2261/79/01/03

**Expenditures/Revenues** (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99      | FY 00      | FY 01      | FY 02      | FY 03      | FY 04      |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES      |            |            |            |            |            |            |
| TRAVEL                 |            |            |            |            |            |            |
| CONTRACTUAL            |            |            |            |            |            |            |
| SUPPLIES               |            |            |            |            |            |            |
| EQUIPMENT              |            |            |            |            |            |            |
| LAND & STRUCTURES      |            |            |            |            |            |            |
| GRANTS, CLAIMS         |            |            |            |            |            |            |
| MISCELLANEOUS          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

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

**FUND SOURCE** (Thousands of Dollars)

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  |            |            |            |            |            |            |
| 1005 GF/Program Receipts |            |            |            |            |            |            |
| 1006 GF/MHTIA            |            |            |            |            |            |            |
| Other                    |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY98) cost: \$ 0.0

**POSITIONS**

|           |     |     |     |     |     |     |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| PART-TIME |     |     |     |     |     |     |
| TEMPORARY |     |     |     |     |     |     |

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

This bill would make it a class B 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 contact, potentially 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, 640 out of 99,725 Alaskans tested through state health laboratories are known to be infected with HIV. 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.

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.

Prepared by: Joan M. Kasson  
 Division: Attorney General's Office  
 Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law

Phone: 465-5370  
 Date: 3/5/98  
 Date: 3/5/98

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FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SB 17

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 conviction) 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. Because the cases where it is likely that we could obtain a conviction, and thus initiate a prosecution, are for actions already prohibited under present law, we believe that this bill will have no significant fiscal impact on the Department of Law.

# Alaska State Legislature

*Chairman:*  
Judiciary Committee

*Member:*  
Resources Committee  
Rules Committee  
Committee on Committees



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Juneau, Alaska 99801-1182  
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Ketchikan, Alaska 99901  
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*Senator Robin L. Taylor*  
*Senate Majority Leader*

## Sponsor Statement

### Senate Bill 17

Senate Bill 17 was introduced with the goal of putting Alaska in a pro-active position when it comes to dealing with individuals who knowingly place others at risk of HIV infection. SB 17 is intended to be preventative as well as punitive and is intended to render a criminal rather than moral judgment.

As of December 31, 1997, 412 Alaskans had been confirmed to have AIDS. That's since tracking began in 1982. Of these cases, 202 are known to have died.

The Epidemiology Section of the Division of Public Health reports that as of December 31, 1996, 640 Alaskans had tested positive for HIV infection. That number represents only those who have voluntarily tested through the State Section of Laboratories.

The statistics show that HIV/AIDS affects both male and female, across all age groups and without respect to race or residence. The sad fact is that the rate of infection in Alaska is increasing.

If someone intentionally sets out to kill another person by infecting them with the AIDS virus, they can be charged under state law with attempted first degree murder. But, what do we do with the person who does not "intend" to kill, but who still places others in jeopardy?

**Sponsor Statement -SB 17**  
**Page Two**

In 1990 the Attorney General's office reviewed that question and suggested that..."it might be possible to prosecute the person for reckless endangerment". That is a class A misdemeanor, prohibiting reckless conduct which creates a "substantial risk of serious physical injury".

Most people would equate becoming infected with HIV as something more than a "serious injury".

At least 27 other states have seen fit to adopt specific laws dealing with criminal penalties for knowingly transmitting or exposing another to HIV infection. It would only be prudent for Alaska to have such a statute on the books.

SB 17 is not intended to punish those who have contracted HIV. It is intended to protect others who may be unknowingly exposed to the virus by what should be a criminal act of irresponsibility.

In drafting Senate Bill 17, we researched similar laws adopted in other states. The sponsor used the Illinois statute, which was adopted in 1989, as the model for the bill before you.

A copy of the Illinois statute was provided to the committee, along with a summary of laws passed in other states. We have also provided two court rulings on the Illinois law.

Sponsor Statement - SB 17  
Page Three

On April 6, 1994, the Illinois Supreme Court held that the statute did not violate state or federal constitutional protections for free speech; the statute did not violate state and federal protections for free association and that the statute was not unconstitutionally vague.

In its ruling, the Supreme Court of the State of Illinois stated "Vagueness, like beauty, may be in the eye of the beholder. We however read the statute as being sufficiently clear and explicit so that a person of ordinary intelligence need not guess at its meaning or application. Also it provides sufficiently definite standards for law enforcement officers and triers of fact so that its application need not depend merely on their private conceptions".

The Illinois Appellate Court, in a separate case, also ruled that the Illinois statute was not vague and that a statute need only be sufficiently certain to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by law.

We also asked the Illinois Public Health about the impact of the statute on HIV testing in that state. In March of 1995, after the law had been on the books for six years, the department reported that testing for HIV/AIDS had increased and not decreased.

# MEMORANDUM

State of Alaska

Department of Law


TO: Elizabeth L. Shaw  
Assistant Attorney General  
Department of Law - Civil Div.

DATE: November 16, 1990

FILE NO.:

TEL. NO.: 465-3423

SUBJECT: Criminal liability for  
having unprotected sex  
while infected with HIV  
or AIDS

FROM: Dean J. Guaneli   
Assistant Attorney General  
Criminal Division, Central Office

At the request of Chief Prosecutor Laurie Otto, I briefly reviewed the question of possible criminal liability for someone who intends to spread the HIV virus by having unprotected sex with another person, or by donating blood. In short, I believe we can certify that prosecution under state law is possible for both intentional or reckless conduct.

If someone intends to kill another person by infecting them with the AIDS virus, it could be prosecuted as attempted first degree murder.<sup>1</sup> This holds even if infection is, as a factual matter, unlikely or impossible, since impossibility is not a defense as long as the actor believes that death will occur. AS 11.31.100(b); see also Gargan v. State, 436 P.2d 963 (Alaska 1968) (factual impossibility which was not apparent to the actor should not, as a matter of policy, insulate him from conviction for attempting commission of the offense). This view is shared by Barry Stern, Professor of Law at Western New England Law School, who was one of the principal drafters of the revised criminal code. It would also be possible to charge an attempted assault, if the person only intended serious injury, rather than death.<sup>2</sup>

The more interesting problem, and the one more likely to occur, is when a person is aware of the infection and has, or attempts to have, unprotected sex with a partner who is unaware. The mental state would probably not be "intentional" (since the

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<sup>1</sup> The Alaska Court of Appeals has held there is no such crime as attempted second degree murder, Huitt v. State, 678 P.2d 415 (Alaska App. 1984), and based on that opinion, there are no such crimes as attempted manslaughter or negligent homicide.

<sup>2</sup> The U.S. Supreme Court recently denied review of an opinion from a military court (attached) where the person was convicted of attempted aggravated assault (by means likely to cause death or bodily harm) by trying to have unprotected sex knowing he was infected by HIV. United States v. Johnson, 30 M.J. 53 (U.S. Ct. of Mil. Appeals, April 12, 1990), cert. den. 48 CrL 3037 (Oct. 15, 1990).

1990 ATTORNEY GENERAL'S OPINION

Elizabeth L. Shaw  
Criminal liability for

November 16, 1990  
Page 2

actor no doubt would not intend to pass the infection), nor would it be "knowing" (because the person may not believe infection was a substantial probability). However, the person is consciously disregarding a risk of infection, and most juries would find such a risk to be substantial and unjustifiable. Thus the mental state would be "reckless" under AS 11.81.900(a)(3), and it may be possible to prosecute the person for reckless endangerment, a class A misdemeanor (AS 11.41.250), that prohibits recklessly engaging in conduct which creates a substantial risk of serious physical injury.

Please let me know if a more detailed review of the law is necessary.

# Alaska State Legislature

Legislative Research Agency



130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196

Phone: (907) 465-3991  
Fax: (907) 463-3351

March 7, 1995

## MEMORANDUM

TO: Senator Robin Taylor

FROM: Paula d. Scavera *PKS*  
Legislative Analyst

RE: Testing for HIV/AIDS in Illinois

You requested that this office research whether the number of tests for HIV/AIDS has decreased in Illinois since 1989, when House Bill 1871 (Criminal Transmission of HIV) became law.

According to the Illinois Public Health Department, Epidemiology Studies and Health Systems Development Office, the number of HIV/AIDS tests has been on the increase and not decreased.

**THE FOLLOWING PAGES MAY  
NOT FILM LEGIBLY BECAUSE OF  
THE POOR QUALITY OF THE ORIGINAL.**

KNOWING EXPOSURE/TRANSMISSION  
5/25/93

CRIMINAL PENALTIES FOR KNOWINGLY TRANSMITTING/EXPOSING  
ANOTHER TO HIV INFECTION

Alabama, HB 338, Act 87-574 (87) - misdemeanor - "risks transmitting or conducts himself in a manner likely to transmit the disease)

Arkansas, HB 1486, Act 814 (88) - felony - "sexual intercourse" (without 1st informing others)

California, SB 1002, Chapter 1164 (88) - felony, blood donation

Colorado, HB 1255 (90) - class 6 felony for knowingly performing, offering or agreeing to perform certain sexual acts with persons other than their spouses in exchange for money or any other thing of value. Persons who are knowingly infected with HIV who patronize prostitutes are guilty of a class 6 felony

Delaware, HB 637, Chapter 335 (88) - felony, blood donation

Florida, HB 1313, Chapter 88-220 (88) - misdemeanor "sexual intercourse"; (88) - misdemeanor (if person has been informed of modes of transmission); HB 1519 (88) - felony of the third degree, blood/body fluids donation;

Georgia, HB 1281, Act 1440 (88) - felony (after obtaining knowledge of infection) knowing intercourse, donation, sharing syringes

Idaho, HB 653, Chapter 70 (88) - prohibits knowing or willful exposure; HB 433 (88) - felony (provides affirmative defense if sexual activity occurred between consenting adults); - felony, knowing transmission or transmit with the intent of infection

✓ Illinois, HB 1871 (89) - class 2 felony for criminal transmission = intimate contact, blood, semen, tissue or organ donation; sell, exchange, etc. non-sterile IV drug paraphernalia. Provides an affirmative defense if the person exposed knew that the infected person was infected with HIV, knew that the action could result in HIV infection and consented to the action with that knowledge.

Indiana, SB 9, Public Law 88-123 (88) - Class C felony, blood donation

Kansas, HB 2841 (92) - Class A misdemeanor for individuals with a life threatening communicable disease to knowingly engage in sexual intercourse or sodomy, sell or donate blood, semen, tissue or other body fluids, or share hypodermic needles with intent to expose another to the disease.

Kentucky, HB 50 (88) - Class C felony, blood donation (also any health facility, physician or health care worker who knowingly transfuses untested blood when there is not an emergency situation is guilty of Class C felony)

HB 425 (90) - felony for donating organs, skin or other human tissue; class A misdemeanor for persons who commit prostitution; class D felony for committing prostitution or who procures another to commit prostitution by engaging in sexual activity in a manner likely to transmit HIV infection.

Source: AIDS Policy Center, Intergovernmental Health Policy Project, The George Washington University, June 1993.

ADDITIONAL INFORMATION  
PENALTIES IN OTHER STATES

FROM: NCSL DENVER

KNOWING EXPOSURE/TRANSMISSION  
PAGE 2

SB 244 (92) - Makes it a felony for any person to commit, offer, or agree to commit prostitution by engaging in sexual activity when he or she knew or had been informed that he or she could possibly transmit the virus through sexual activity.

Louisiana, HB 1728, Act 683 (87) - fine of not more than \$5,000, imprisonment with or without hard labor for not more than 10 years "sexual contact" without knowing consent of other person

Maryland, SB 719, Chapter 789 (88) - misdemeanor (may not knowingly transfer or attempt to transfer)

Michigan, HB 5026, Public Act 490 (88) - felony, sexual penetration (if they do not inform other person of the presence of disease)

Mississippi, HB 515, chapter 657 (88) - knowingly and willfully violating health department orders

Missouri, HB 1151 and 1044 (88) - Class D felony, donation of blood, organ, sperm, tissue; sexual contact

Nevada, AB 550, Chapter 762 (87) - Provides that any person who practices prostitution after testing positive for HIV is guilty of a felony and will be imprisoned in the state prison for not less than 1 year, not more than 20 years and/or fined up to \$10,000. An owner of a house of prostitution who continues to employ HIV+ prostitutes is liable for any damages caused by HIV exposure as a result of the employment; SB 73 (89) - subject to confinement by court order as well as other penalties (which are not specified)

Ohio, HB 571 (88) - felony of the 3rd. degree, sell or donate blood plasma, blood product

Oklahoma, HB 1798 (88) - felony (with intent to infect); HB 1012 (91) - felony punishable by a maximum of 5 years of imprisonment for knowingly engaging with intent to infect in conduct reasonably likely to result in transfer of blood or bodily fluids into the bloodstream or through the skin or other membranes of a person except during in utero transmission.

South Carolina, HB 2807, Ramification 547 (88) - sale, donation, exchange of blood products; "exposing another person to HIV without first informing"; SB 1165 (90) - felony (upon conviction must be fined not more than \$5,000 or imprisoned for not more than 10 years) for engaging with or without consent in sexual intercourse (vaginal, anal or oral) without first informing in prostitution, selling or donating blood or other body fluids or sharing needles

Tennessee, HB 481, Chapter 281 (91) - class C felony for committing prostitution when a person knows that he or she is HIV+

Texas, SB 959 (89) - felony for "engaging in conduct likely to transfer"

Utah, HB 24 (93) - Mandates HIV testing for persons convicted of prostitution or patronizing or sexually soliciting a prostitute. Provides enhanced penalties (3rd. degree felony) if these individuals test positive for HIV, know their test results and have received written personal notice of their positive test results from a law enforcement agency.

Virginia, HB 1974 (89) - class 6 felony, donating or selling blood, body fluids, organs or tissues

Washington; SB 6221, Chapter 206 (88) - assault in the second degree for a person who has exposed or transmitted HIV to another person with intent to inflict bodily harm

TOTAL = 28 STATES

Illinois

720 ILCS 5/12-16

Note 400

400. Excessive sentence and punishment

Five-year sentences on each of four counts of aggravated criminal sexual abuse was not excessive; sentences were midrange for offense, defendant had previous criminal record and was on parole at time of offense and victim had sustained psychological harm. People v. Edwards, App. 2 Dist. 1990, 147 Ill. Dec. 8, 195 Ill. App. 3d 454, 552 N.E.2d 358.

VIII. REVIEW

Subdivision Index

In general 451

Plain error 453

Preservation of grounds for review 452

451. In general, review

Appropriate standard of review of challenge to conviction for sex offense is whether, after viewing evidence in light most favorable to prosecution, any rational trier of fact could have found essential elements of crime beyond reasonable doubt. People v. Haun, App. 5 Dist. 1991, 163 Ill. Dec. 710, 221 Ill. App. 3d 164, 581 N.E.2d 864, disagreed with 165 Ill. Dec. 739, 585 N.E.2d 135.

Standard of review for determining sufficiency of evidence to support sex offense convictions was the traditional test applicable in other criminal cases, of whether evidence viewed in light most favorable to State would support rational trier of fact's determination that essential elements of crime had been proven beyond reasonable doubt, rather than heightened requirement that evidence against defendant be clear and convincing or substantially corroborated, and accordingly, the issue

to be resolved was whether State's evidence was so unsatisfactory or improbable that there remained reasonable doubt of defendant's guilt. People v. Allen, App. 1 Dist. 1991, 162 Ill. Dec. 877, 220 Ill. App. 3d 772, 580 N.E.2d 1291.

452. Preservation of grounds for review

Defendant in child sexual abuse case waived issue whether circuit court erred in allowing pediatric nurse to testify that, in her opinion, victim was being truthful in describing assault, where defendant did not object to testimony either at trial or in written posttrial motion, and specifically questioned witness about her statement at length. People v. Davis, App. 5 Dist. 1991, 153 Ill. Dec. 82, 208 Ill. App. 3d 33, 566 N.E.2d 932.

Issue of whether examining clinical psychologist's opinion of credibility of minor who was allegedly victim of sexual abuse should not have been admitted was waived, where defendant did not object to court's questioning of psychologist at trial or raise the matter in posttrial motion. People v. Hickox, App. 2 Dist. 1990, 143 Ill. Dec. 180, 197 Ill. App. 3d 205, 553 N.E.2d 1166, appeal denied 149 Ill. Dec. 330, 133 Ill. 2d 565, 561 N.E.2d 700.

453. Plain error, review

Any error in considering examining clinical psychologist's opinion of credibility of minor who was allegedly victim of sexual abuse by her father was not of such magnitude as to require plain error review. People v. Hickox, App. 2 Dist. 1990, 143 Ill. Dec. 180, 197 Ill. App. 3d 205, 553 N.E.2d 1166, appeal denied 149 Ill. Dec. 330, 133 Ill. 2d 565, 561 N.E.2d 700.

5/12-16.1. § 12-16.1. Repealed by P.A. 85-1433, § 6, eff. Jan. 11, 1989

Historical and Statutory Notes

The repealed section made it a crime to permit the sexual abuse of children. See, now, 720 ILCS 150/5.1.

5/12-16.2. Criminal transmission of HIV

§ 12-16.2. Criminal Transmission of HIV. (a) A person commits criminal transmission of HIV when he or she, knowing that he or she is infected with HIV:

- (1) engages in intimate contact with another;
- (2) transfers, donates, or provides his or her blood, tissue, semen, organs, or other potentially infectious body fluids for transfusion, transplantation, insemination, or other administration to another; or
- (3) dispenses, delivers, exchanges, sells, or in any other way transfers to another any nonsterile intravenous or intramuscular drug paraphernalia

(b) For purposes of this Section:

872

Legislative Research Agency Sent To You By

CRIMINAL CODE OF 1961

BODILY HARM

"HIV" means the h causative agent of acc

"Intimate contact v person to a bodily flu: transmission of HIV.

"Intravenous or intr product, or material of injecting a substance i

(c) Nothing in this § with HIV has occurre transmission of HIV.

(d) It shall be an affi infected person was int infection with HIV, and

(e) A person who con: felony.

Laws 1961, p. 1983, § 12-; Formerly Ill. Rev. Stat. 1991, ch

AIDS investigation information

Are AIDS-transmission law abortion? Michael L. Closer Isaacman, 76 ABA J. 76 (1990) Criminal sanctions for :: AIDS—Analysis of new Illin Jeffrey Deutschman, 4 CBA-1

Words and Phrases (Form. Ed)

5/12-17. Defenses

§ 12-17. Defenses

(a) It shall be a defense of this Code where force the victim consented. "Ce sexual penetration or sexu resistance or submission threat of force by the acc dress of the victim at the

(b) It shall be a defense 12-15 and subsection (d) reasonably believed the pe Laws 1961, p. 1983, § 12-17, by P.A. 83-1117, § 1, eff. July § 1, eff. Jan. 1, 1992; P.A. 87- Aug. 14, 1992. Formerly Ill. Rev. Stat. 1991, ch. 38

CODE OF 1961

BODILY HARM.

720 ILCS 5/12-17

State's evidence probable that there of defendants 1 Dist.1991, 162 772, 580 N.E.2d

ds for review abuse case waived erred in allowing it, in her opinion, describing assault, object to testimony posttrial motion. witness about her v. Davis, App. 5 Ill.App.3d 33, 566

g clinical psychol. of minor who was abuse should not ived, where defen- t's questioning of lse the matter in Hickox, App. 2 197 Ill.App.3d 203, nized 149 IllDec. 2d 700.

examining clinical edibility of minor f sexual abuse by i magnitude as to People v. Hickox, Dec. 180, 197 Ill. 66, appeal denied ss, 561 N.E.2d 700.

. Jan. 11, 1989

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"HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

"Intimate contact with another" means the exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV.

"Intravenous or intramuscular drug paraphernalia" means any equipment, product, or material of any kind which is peculiar to and marketed for use in injecting a substance into the human body.

(c) Nothing in this Section shall be construed to require that an infection with HIV has occurred in order for a person to have committed criminal transmission of HIV.

(d) It shall be an affirmative defense that the person exposed knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and consented to the action with that knowledge.

(e) A person who commits criminal transmission of HIV commits a Class 2 felony.

Laws 1961, p. 1983, § 12-16.2, added by P.A. 86-897, § 1, eff. Sept. 11, 1989. Formerly Ill.Rev.Stat.1951, ch. 38, § 12-16.2.

Cross References

AIDS investigation information, confidentiality, see 410 ILCS 325/3.5.

Law Review Commentaries

Are AIDS-transmission laws encouraging abortion? Michael L. Cloven and Scott H. Issacman, 76 ABA J. 76 (1990). Neonatal HIV testing: Governmental inspection of the baby factory. Scott H. Issacman, 24 J. Marshall L.Rev. 571 (1991). Criminal sanctions for transmission of AIDS—Analysis of new Illinois legislation. Jeffrey Deutschman, 7 CBA Rec. 32 (1990). Proposal to repeal the Illinois HIV transmission statute. Michael L. Cloven and Jeffrey S. Deutschman, 78 Ill.B.J. 592 (1990).

Library References

Words and Phrases (Perm.Ed.)

5/12-17. Defenses

§ 12-17. Defenses.

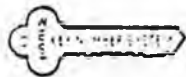
(a) It shall be a defense to any offense under Section 12-13 through 12-16 of this Code where force or threat of force is an element of the offense that the victim consented. "Consent" means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent.

(b) It shall be a defense under subsection (b) and subsection (c) of Section 12-15 and subsection (d) of Section 12-16 of this Code that the accused reasonably believed the person to be 17 years of age or over.

Laws 1961, p. 1983, § 12-17, added by P.A. 83-1067, § 1, eff. July 1, 1984. Amended by P.A. 83-1117, § 1, eff. July 1, 1984; P.A. 85-651, § 1, eff. Jan. 1, 1988; P.A. 87-438, § 1, eff. Jan. 1, 1992; P.A. 87-457, § 1, eff. Jan. 1, 1992; P.A. 87-805, Art. 2, § 2-19, eff. Aug. 14, 1992. Formerly Ill.Rev.Stat.1991, ch. 38, § 12-17.

and this cause to the circuit court of Cumberland County to allow defendant to file a new motion to withdraw his guilty plea and to a hearing on that motion in full compliance with Rule 604(b). If, upon completion of the proceedings on remand, defendant's motion to withdraw his guilty plea is denied, this court will address, at defendant's request, the correctness of that decision and the remaining issues raised herein. See *People v. Jones*, 1990, 139 Ill.2d 159, 295, 151 Ill.Dec. 329, 564 N.E.2d 784.

*Case not covered by any other Illinois appellate or federal authority.*



1

155 Ill.2d 509

196 Ill.Dec. 629

PEOPLE, State of Illinois, Respondent.

v.

Johnny GILSON, Petitioner.

No. 76090.

Supreme Court of Illinois.

April 6, 1994.

Prior Report: 246 Ill.App.3d 564, 616 N.E.2d 647.

Petition for leave to appeal allowed.

In the exercise of this Court's supervisory authority, this cause is *REMANDED* to the Appellate Court, Third District. The appellate court is ordered to reconsider its judgment in case Nos. 3-92-0901, 3-92-0902 and 3-92-0903 in light of *People v. Jones* (1994), 155 Ill.2d 27, 196 Ill.Dec. 625, 630 N.E.2d 790.



2  
58 Ill.2d 22  
106 Ill.Dec. 125

The PEOPLE of the State  
of Illinois, Appellant.

v.

Caretha RUSSELL, Appellee.

The PEOPLE of the State  
of Illinois, Appellant.

v.

Timothy LUNSFORD, Appellee.

Nos. 73721, 74443.

Supreme Court of Illinois.

Jan. 20, 1994.

Defendants were charged, in separate prosecutions, with knowingly transmitting human immunodeficiency virus (HIV) to another person through intimate contact. The Circuit Court, St. Clair County, James Donovan, J., and the Circuit Court, Coles County, Ashton C. Waller, Jr., J., declared criminal statute prohibiting knowing transmission of HIV to another through intimate contact unconstitutional. State appealed and cases were consolidated. The Supreme Court, Heiple, J., held that: (1) statute did not violate state and federal constitutional protections for free speech; (2) statute did not violate state and federal constitutional protections for free association; and (3) statute was not unconstitutionally vague.

Reversed and remanded.

#### 1. Constitutional Law §90.1(1)

##### Health and Environment §21

Criminal statute prohibiting knowing transmission of human immunodeficiency virus (HIV) to another through intimate contact was not unconstitutionally overbroad or vague with respect to protected speech; neither statute nor two cases in which it was applied, which involved defendant charged with engaging in consensual sexual intercourse knowing that she was infected without telling her partner, and defendant charged with raping woman knowing that he was infected, had any connection with free

S.H.A. 720 ILCS 5.12-16.2; S.H.A. Const. Art. 1, § 2; U.S.C.A. Const.Amend. 1.

James D. Holzhauser, Timothy S. Bishop and Jesse A. Witten, of Mayer, Brown & Platt, Chicago, for amici curiae American Public Health Ass'n et al.

Susan J. Curry, and Mark E. Wonek, Chicago, for amicus curiae AIDS Legal Council of Chicago.

Gregg W. Boneill, of Mattoon, and Michael L. Closen, Chicago, for appellee in No. 74443.

Justice HEIPLE delivered the opinion of the court:

In 1989, the Illinois General Assembly made it a crime for a knowing carrier of the HIV virus to transmit this virus to another person through intimate contact. The stated offense is designated as a Class 2 felony which, though subject to probation, carries a possible sentence of imprisonment from three to seven years. (Ill.Rev.Stat.1989, ch. 38, par. 12-16.2(a)(1) (now 720 ILCS 5.12-16.2(a)(1) (West 1992)). We take judicial notice of the fact that the HIV virus is a precursor to AIDS, a progressive and inevitably fatal disease syndrome. We further take judicial notice of the fact that intimate sexual contact whereby blood or semen of an infected person is transferred to an uninfected person is a primary method of spreading the infection.

The statute is now before us for consideration because two Illinois trial judges in separate criminal proceedings have declared the statute to be unconstitutional, ostensibly on the basis of vagueness. For purposes of appeal, these cases are here consolidated. We reverse and remand.

Neither of the court orders below indicates whether the statute is violative of either the State or Federal Constitutions. No article, section or clause of either constitution is alluded to. It could be the Constitution of the United States. It could be that of Illinois. It could be both. We are left to surmise which constitution or which portion thereof the trial judges may have had in mind.

From the defendants/appellees' briefs, however, we are informed that both the Federal and State Constitutions are allegedly

1. Constitutional Law §91  
Health and Environment §21

Criminal statute prohibiting knowing transmission of human immunodeficiency virus (HIV) to another through intimate contact did not violate defendants' federal or state constitutional rights of free association; charge did not impute any alleged right of intimate association as one defendant was charged with engaging in consensual sexual intercourse knowing that she was infected without telling her partner and other defendant was charged with raping woman knowing that he was infected. S.H.A. 720 ILCS 5.12-16.2; S.H.A. Const. Art. 1, § 2; U.S.C.A. Const.Amend. 1.

2. Health and Environment §21

Criminal statute prohibiting knowing transmission of human immunodeficiency virus (HIV) to another through intimate contact was not unconstitutionally vague; statute was sufficiently clear and explicit and provided sufficiently definite standards for law enforcement and triers of fact, and that statute might open innocent conduct of others to prosecution was matter of pure speculation given specific conduct of two defendants, one of whom was charged with engaging in consensual sexual intercourse knowing that she was infected without telling her partner and one of whom was charged with raping woman knowing that he was infected. S.H.A. 720 ILCS 5.12-16.2; S.H.A. Const. Art. 1, § 2; U.S.C.A. Const.Amend. 14.

Roland W. Burris, Atty. Gen., Springfield, Robert Haida, State's Atty., Belleville, and C. Steve Ferguson, State's Atty., Charleston (Norbert J. Goetten, Stephen E. Norris and Gerry R. Arnold, Office of the State's Attys. Appellate Prosecutor, Mt. Vernon, of counsel), for the People.

Carrie J. Hightman, Stuart I. Graff and Judith M. Feller, of Schiff, Hardin & Waite, and John R. Hammell, Harvey Grossman, Colleen K. Connell, Mathew S. Nosanchuk and Pilar Penn, Chicago, for appellee in No. 73721.

of the State  
Appellant.

PELL, Appellee.

of the State  
Appellant.

WORD, Appellee.

71, 74443.

of Illinois.

1994.

charged, in separate knowingly transmitting HIV to another through intimate contact. The County, James Dono Court, Coles County, J., declared criminal knowing transmission of intimate contact unappealed and cases The Supreme Court.

(1) statute did not real constitutional protection; (2) statute did not real constitutional protection; and (3) statute real vague.

v §90.1(1)

onment §21

prohibiting knowing immunodeficiency virus through intimate contact is constitutionally overbroad or protected speech; neither cases in which it was defendant charged consensual sexual intercourse was infected without defendant charged knowing that he was connection with free

protected by the statute for reasons of free speech and association. U.S. Const., amend. I; Ill. Const. 1970, art. I, § 4, 5; and that the statute is so vague as to deny the defendants due process of law. U.S. Const., amend. V; Ill. Const. 1970, art. I, § 2. These arguments are without merit.

In one of the cases before us, the criminal complaint charges that the defendant Carena Rassel knew that she was infected with the HIV virus when she engaged in consensual sexual intercourse with Darren Smith without telling Smith of her infection. In the other case, defendant Timothy Lansford is charged with raping a woman at a time when he knew he was infected with the HIV virus.

[1] Neither the statute nor the cases before us have even the slightest connection with free speech. Consequently, pursuant to constitutional interpretations of the United States Supreme Court, defendants' overbreadth argument and their argument of facial vagueness are inapplicable. *Bates v. State Bar* (1977), 433 U.S. 350, 350, 97 S.Ct. 2691, 2707, 53 L.Ed.2d 810, 833; *Smith v. Goguen* (1974), 415 U.S. 566, 94 S.Ct. 1242, 39 L.Ed.2d 605; *Broadrick v. Oklahoma* (1973), 413 U.S. 601, 611-17, 93 S.Ct. 2008, 2015-18, 37 L.Ed.2d 830, 839-43; *Grayned v. City of Rockford* (1972), 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222; *People v. Garrison* (1980), 82 Ill.2d 444, 45 Ill.Dec. 132, 412 N.E.2d 483.

[2, 3] Additionally, the defendants' cases do not infringe on any supposed right of intimate association as claimed. In fact, we know of no such right. The facts are that in the first of the two cases, the victim did not know that his sexual partner had HIV. In the second of the two cases, the HIV transmission charge is appendant to a charge of forcible rape. It is preposterous to argue that the statute constitutes a violation of either of the defendants' supposed right to intimate association in these situations. Finally, the vagueness argument is in error both facially and factually. Reference to the specific language of the statute makes this clear.

The subject statute provides in pertinent part:

"Criminal Transmission of HIV. (a) A person commits criminal transmission of HIV when he or she, knowing that he or she is infected with HIV:

1. engages in intimate contact with another;

(b) For purposes of this Section:

"Intimate contact with another" means the exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV." 720 ILCS 5/12-16.2 West 1992).

Vagueness, like beauty, may be in the eye of the beholder. We, however, read the statute as being sufficiently clear and explicit so that a person of ordinary intelligence need not have to guess at its meaning or application. Also, it provides sufficiently definite standards for law enforcement officers and triers of fact so that its application need not depend merely on their private conceptions. *Smith v. Goguen* (1974), 415 U.S. 566, 94 S.Ct. 1242, 39 L.Ed.2d 605; *Grayned v. City of Rockford* (1972), 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222; *Interstate Circuit, Inc. v. City of Dallas* (1968), 390 U.S. 676, 38 S.Ct. 1298, 20 L.Ed.2d 225.

That the statute might open the innocent conduct of others to possible prosecution is a matter of pure speculation and conjecture which is not before us in these consolidated cases. We are here concerned only with the specific conduct of these defendants and the application of the statute to them. *People v. Garrison* (1980), 82 Ill.2d 444, 453-57, 45 Ill.Dec. 132, 412 N.E.2d 483.

For the foregoing reasons, we hold that the statute in question is not violative of either the Illinois or the United States Constitution. Accordingly, we reverse the judgments of the courts below and remand these causes for further proceedings.

*Reversed and remanded.*



232 Ill.App.3d 568

182 Ill.Dec. 784

The PEOPLE of the State of Illinois,  
Plaintiff-Appellee.

v.

Randall Lee DEMPSEY, Defendant-  
Appellant.

No. 5-91-0033.

Appellate Court of Illinois,  
Fifth District.

March 19, 1993.

Defendant was convicted in the Circuit Court, Williamson County, Snyder Howell, J., of aggravated criminal sexual assault and criminal transmission of human immunodeficiency virus (HIV), and he appealed. The Appellate Court, Welch, J., held that: (1) victim's testimony was admissible even though no pretrial competency hearing had been held; (2) victim's recantation of accusation after incident but prior to trial did not render evidence inadmissible for conviction; and (3) statute making knowing transmission of HIV criminal was not unconstitutionally vague as applied to defendant.

Affirmed in part; vacated in part; remanded with directions.

### Criminal Law §1170½(1)

If child witness is properly found competent to testify after motion to strike testimony, there can be no prejudice to defendant as result of failure to hold pretrial competency hearing; any error in failing to hold pretrial competency hearing is harmless. Ill.Rev.Stat.1989, ch. 38, § 106A-5, 115-14(b)(2).

### 2. Criminal Law §115(2)

#### Witnesses §79(1)

Question of witness competency is to be determined by trial judge, and reviewing court may not disturb the determination unless it is clear that trial judge abused discretion or misapprehended legal principle.

### 3. Criminal Law §115(2)

Although decisions as to competency of witness are reviewable, competency determinations will be overturned only if it appears that trial judge has abused his discretion.

### 4. Witnesses §10(1)

Child witness may be deemed competent even if child does not give perfect answers to questions asked during competency determination or at trial; imperfect response to questions does not invalidate finding of competency if totality of responses indicate competence.

### 5. Witnesses §10(1)

Fact that nine-year-old male victim of sexual abuse testified that he did not know difference between the truth and a lie did not automatically make witness incompetent where victim testified that he knew he would "go to the devil" if he told a lie and that he would be spanked if he lied to his mother.

### 6. Witnesses §79(1)

Trial court may determine witness' competency to testify by observing demeanor and ability to testify during trial.

### 7. Sodomy §6

Fact that nine-year-old male victim of sexual assault had repeatedly denied that assault occurred did not make victim's testimony at trial that assault did occur unworthy of belief; jury had been fully advised as to circumstances under which victim made accusations and circumstances under which he recanted them.

### 8. Criminal Law §942(2)

Evidence of recantation is inherently unreliable and insufficient to warrant new trial other than in extraordinary and unusual cases.

### 9. Criminal Law §474.4(4)

Expert testimony concerning child sexual abuse accommodation syndrome was admissible in light of sufficient foundation established by testimony that it was form of posttraumatic stress syndrome and was accepted theory in psychological community. Ill.Rev.Stat.1989, ch. 38, § 115-7.2.

statements. It is not think this was unduly prejudicial. Defendant felt, as we explained in *Moore*, that only the defendant's own actions which will necessitate the use of the syncretic testimony. The evidence will not be admissible simply to bolster the victim's testimony unless the victim's credibility has first been brought into question.

In the instant case, the subject of the victim's recantation was first raised by defendant in his cross-examination of the victim during the State's case-in-chief. Accordingly, in the instant case, we find no error in the admission during the State's case-in-chief of evidence of the child sexual abuse accommodation syndrome.

[11] Defendant's fourth argument on appeal is that his conviction for criminal transmission of HIV must be vacated because the statute upon which it is based, section 12-16.2(a)(1) of the Criminal Code of 1961 (Ill.Rev.Stat.1989, ch. 38, par. 12-16.2(a)(1)), is unconstitutionally vague and therefore invalid. Section 12-16.2 provides in pertinent part as follows:

Criminal Transmission of HIV. (a) A person commits criminal transmission of HIV when he or she, knowing that he or she is infected with HIV:

(1) engages in intimate contact with another;

(b) For purposes of this Section:

'HIV' means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

'Intimate contact with another' means the exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV.

(c) Nothing in this Section shall be construed to require that an infection with HIV has occurred in order for a person to have committed criminal transmission of HIV. Ill.Rev.Stat.1989, ch. 38, par. 12-16.2.

Defendant argues that the statute is unconstitutionally vague because the term

"bodily fluid" is insufficiently defined and that, because the use of the word "could" in the definition of intimate contact encompasses such a broad range of conduct, it fails to clearly indicate what behavior is prohibited. As a result, the term "intimate contact with another" is not adequately defined and is vague. Defendant argues that because the term "bodily fluid" is not defined, the jury could conclude that saliva and tears could transmit the virus, when experts in the field assert that these are not bodily fluids capable of transmitting the virus. Furthermore, because the word "could" encompasses such a broad range of conduct, a jury could conclude that some sexual act short of penetrative oral, anal or vaginal intercourse could transmit the virus when experts assert that only these penetrative sexual acts could transmit the virus. Defendant further argues that one must speculate whether biting or spitting on another while knowingly infected with HIV constitutes criminal transmission of HIV because the statute does not define what bodily fluids are possible transmitters of the virus. Defendant argues that these uncertainties in the statute render it unconstitutionally vague in that it fails to give adequate notice to as to what acts are prohibited and allows arbitrary and discriminatory application.

Defendant's argument must fail because, not only does he lack standing to raise the constitutionality of the statute as applied to other acts and actors, the statute is not vague and unconstitutional as applied to him. It is well settled that vagueness challenges to statutes which do not involve first amendment freedoms must be examined in light of the facts of the case at hand. (*People v. Jihan* (1989), 127 Ill.2d 379, 385, 130 Ill.Dec. 422, 425, 537 N.E.2d 751, 754.) Thus, to prevail in a vagueness challenge to a statute that does not implicate first amendment concerns, a party must demonstrate that the statute is vague as applied to the conduct for which the party is being prosecuted. (*Jihan*, 127 Ill.2d at 385, 130 Ill.Dec. at 425, 537 N.E.2d at 754.) The party must show that the statute did not provide clear notice that the

party's conduct was prohibited. *Jihan*, 127 Ill.2d at 425, 537 N.E.2d at 711. The right to challenge a statute as being vague on its face where the statute clearly applies to the conduct of the party making the challenge does not exist unless first amendment concerns are involved. *Jihan*, 127 Ill.2d at 426, 537 N.E.2d at 711.

[12] In the instant case, defendant does not argue, nor could he successfully argue, that any first amendment rights are implicated. Thus, defendant must demonstrate that the statute is vague not as applied to someone else, or some act other than that which he committed, but as applied to him and the act he committed. Thus, the issue before us is whether the statute clearly proscribed the conduct engaged in by defendant in this case.

A statute need only be sufficiently certain to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by law. (*People v. Lowe* (1990), 202 Ill.App.3d 648, 653, 148 Ill.Dec. 136, 139, 560 N.E.2d 438, 441.) A person should not be subjected to a penalty for certain conduct unless the words of the statute clearly describe the conduct prohibited. (*People v. Taylor* (1990), 138 Ill.2d 204, 211, 149 Ill.Dec. 297, 300, 561 N.E.2d 667, 670.) However, a defendant may be prosecuted under a statute without violating his right of due process if his conduct falls squarely within the statute's proscriptions, even though the statute may be vague as applied to other conduct. (*Taylor*, 138 Ill.2d at 211, 149 Ill.Dec. at 300, 561 N.E.2d at 670.) The fact that there may be borderline cases wherein a degree of uncertainty exists as to the applicability of a statute does not render the statute unconstitutional as to conduct about which no uncertainty exists. *People v. Witzkowski* (1972), 53 Ill.2d 216, 219, 290 N.E.2d 236, 239.

In the instant case, defendant placed his penis in the mouth of the victim and ejaculated semen. Defendant acknowledges that semen is a bodily fluid well known as a transmitter of HIV. Oral sexual intercourse is a penetrative sexual contact

which is recognized as allowing transmission of the virus. Thus, defendant clearly exposed the body of another to his bodily fluids in a manner that could result in the transmission of HIV. A penal statute need only convey sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. (*Taylor*, 138 Ill.2d at 217, 149 Ill. Dec. at 303, 561 N.E.2d at 673.) Defendant's conduct clearly fell within the proscription of the statute. Section 12-15.2(a)(1) is not unconstitutionally vague as applied to defendant in this case, and defendant has no standing to raise the constitutionality of the statute as it may be applied to other individuals and other acts.

~~Defendant's next argument on appeal is that the testimony of defendant's physician, Dr. Hyde, was improperly admitted because the physician-patient privilege barred his testimony and no exception to that privilege applied. The State sought to introduce Dr. Hyde's testimony to establish that defendant had knowledge that he was infected with HIV, an essential element of the offense of criminal transmission of HIV. The court allowed Dr. Hyde to testify over defendant's objection, finding that there was a compelling need for the testimony. Defendant argues that the trial court improperly allowed Dr. Hyde to testify over defendant's assertion of the physician-patient privilege.~~

The physician-patient privilege is established by statute as follows:

"No physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient \* \* ." (Ill.Rev. Stat.1989, ch. 110, par. 8-802.)

The statute sets forth several exceptions to the privilege, among them the following:

(4) in all actions brought by or against the patient, his or her personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his or her estate wherein the patient's physical or mental condition is an issue. \* \* , (7) in actions, civil or crim

2/9/98

Anchorage Daily News

## Many with HIV don't tell sex partners, study finds

The Associated Press

CHICAGO — Four out of every 10 HIV-infected people surveyed at two New England hospitals failed to inform sex partners about their condition, and nearly two-thirds of those didn't always use a condom, researchers said.

The survey subjects were mostly poor, often illegal drug users and commonly lacked high school educations, but researchers reporting in today's issue of Archives of Internal Medicine believe withholding HIV information is widespread.

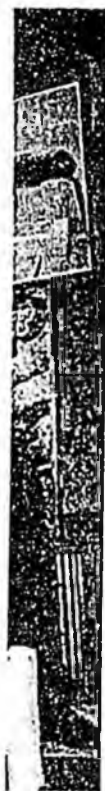
Ironically, HIV-infected people were least likely to tell

the individual they presumably valued most — their spouse or long-term partner, the study found.

Researchers questioned 203 HIV-positive patients getting treatment at Boston City Hospital and Rhode Island Hospital between 1994 and 1996, and 129 reported sexual activity during the previous six months.

Subjects with only one sexual partner were three times more likely to have told their partners than subjects with multiple partners.

Whites and Hispanics were three times as likely to tell partners as blacks.



## HIV carrier leaves legacy of fear, worry

The Associated Press

ST. LOUIS — A man who knew he was infected with the AIDS virus had sex with dozens of attention-starved women and girls before he was gunned down in a possible revenge killing earlier this year.

Now the women fear for their lives, not only because of the virus but because they worry Darnell McGee's family or friends will seek their own revenge.

"They probably are feeling like that could happen to them," Rebecca Bathon, whose AIDS clinic is treating nine of the 12 infected women, said Friday.

In two years, McGee, 28, had sex with at least 61 women and girls, said Elisa Daues, spokeswoman for the Missouri Bureau of STD-HIV Prevention. "That's not a final number. It's changing every day," she said.

Health officials say some of the women are pregnant and at least one has delivered an HIV-infected baby.

Investigators are searching for more possible victims.

"It's frantic," said Beth Meyerson, chief of the bureau of sexually transmitted diseases for the Missouri Department of Health. "We need to find these people. This is a very serious health threat."

McGee was driving in a residential area with a young woman on Jan. 15 when a man flagged him down. The man walked up to the driver's window, shot McGee at point-blank range and then went through his pockets.

Police are unsure whether the killing was a robbery or revenge against McGee for spreading the virus.

## NATION NEWS

### Judge sides with marijuana doctors

SAN FRANCISCO — A federal judge Friday temporarily barred government action against California doctors who recommend marijuana for their patients, saying federal policy on the issue was too confusing. The ruling doesn't change federal law which deems any marijuana use illegal. But the temporary restraining order was an important first-round victory for supporters of the state's medical marijuana ballot issue. The measure, approved by voters last November, allows patients in California to grow and possess marijuana for medical use at the recommendation of their doctors.

### Fierce weather hits Texas; man dies

LUBBOCK, Texas — Tornadoes and baseball-size hail pounded western Texas, smashing homes and toppling power lines. One person was killed. Rescuers used flashlights to search under fallen walls and trees after a tornado ripped apart six mobile homes northeast of Lubbock late Thursday. Only one person in that community suffered minor injuries, Beverly Morton, a Lubbock County sheriff's dispatcher, said Friday morning. Forty miles east, a man was killed when a tornado struck a mobile home near White River Lake.

### Heart disease detected in cult leader

SAN DIEGO — With 38 of the 39 bodies claimed by relatives, the county medical examiner made official Friday what investigators had suspected from the beginning: Members of the Heaven's Gate cult died from the effects of alcohol, phenobarbital and asphyxiation. In his final report on the March 26 mass suicide, Brian Blackbourne also listed coronary arteriosclerosis as a possible contributory cause in the suicide of cult leader Marshall Herff Applewhite, 65.

### Powell doesn't feel pull of politics

WASHINGTON — Enjoying his life in the private sector, retired Gen. Colin Powell says he plans to stay out of politics "for the foreseeable and the unforeseeable future." Since deciding not to seek the 1996 Republican presidential nomination, Powell consistently has said he has no plans to seek any political office. In an interview broadcast Friday night on ABC's "20/20" program, Powell was asked about the prospect of a future run for the presidency and said: "I am very, very happy in my private life. ... And that's where I intend to remain, for the foreseeable future and the unforeseeable future. No regrets."

Daily News wire service

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## Man pleads guilty to HIV transmission

By Jennifer Liberto  
*Daily Staff Writer*

The Chicago man charged with criminal transmission of HIV after an alleged sexual assault at Elder Hall last October pleaded guilty at a hearing at Circuit Court in Skokie yesterday.

Anthony M. Carr of the 5200 block of South Federal Street in Chicago was sentenced to 48 months probation on the condition that he serve it in a hospital, said prosecutor Cathy Crawley of the State's Attorney Office. Carr now has full-blown AIDS.

"I'm not really bitter about his light sentence because he's dying," the victim said. "At this point there is nothing else I can do."

The victim's attorney told him Carr has only six to eight months to live.

Carr was arrested on the morning of Oct. 4 after a fight broke out at Elder Hall, 2400 Sheridan Road, according to University Police reports. Carr had engaged in "intimate contact" with a Northwestern junior, police said.

Carr could have served seven years in prison for criminal transmission of HIV, which is a Class 2 felony in Illinois.

At the hearing, the public defender asked for a conference to discuss the sentence Carr would receive if he were to plead guilty, Crawley said. Carr chose to accept the relatively light sentence. There was no plea-bargaining.

The victim, who has dropped out of NU, was present at the hearing, Crawley said. He waived his right to give a "victim of violent crime impact" statement before Carr was sentenced. The statement, in which victims tell how crimes have affected their lives, is given after the sentencing so it will not influence the severity of a judge's sentence.

"No matter what I would have said, the judge had already made his decision," the victim said. "It would have only caused more pain and embarrassment."

The victim continues to test negative for HIV, and his last test is later this week. He has not yet showed any signs of AIDS, which can often takes years to fully develop.

"I get so nervous when I get a sore throat or a cough," he said. "So far, it has always turned out to be a cold."

Illinois is one of 27 states with a law against knowingly transmitting HIV. The law went into effect in September 1989.

Carr may be the first person in Illinois to be sentenced by this new law, said Allan Robinson, a Northwestern criminal law professor.

"It's a pretty tough case to sentence," Robinson said. "Nobody's thrilled to sentence someone who is dying already."

Robinson said the sentence had probably been discussed for some time, since the defendant did not bargain for a reduced probation sentence and changed his plea from innocent to guilty so quickly.

The victim said he wants to return to school, but he may not be able to until next fall because of financial problems and a death in the family.

"I'm a little nervous to come back," the victim said. "I really hope no one looks at me differently, but if they do, then they're not my real friends."



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Let June 10, 1991

Page 18

**CRIME**

**AIDS Victim On Mission To 'Take All The Women ... He Can' Before Dying**

Police say William Lucas Barker of Oakland is on a deadly mission. They say he has tested positive for the AIDS virus and threatened to "take all the women with him that he can" before he dies. Barker, who denies the accusation, is in jail charged with four counts of assault with a deadly weapon stemming from repeated sexual encounters even though he knew he was infected.

But authorities fear the 25-year-old, who was paroled in March following convictions on charges of second-degree burglary and robbery, may go free and resume his grim task if the only woman who has agreed to testify against him backs down for fear of being identified by the media. The 22-year-old Oakland woman "is indicating that she is reluctant to appear (if) her name or picture are going to appear in the press," police officer

Lt. Craig Stewart, said.

The charges against Barker stem from four encounters of consensual sex with the woman. He could be charged with a fifth count for allegedly throwing blood from a self-inflicted wound at a cellmate, police said.

Police believe Barker has had sexual relations with several women since he allegedly boasted while in prison that he would "take all the women with him that he can" before he dies from the deadly virus. "I never said that," Barker said in a jail interview published in the Oakland Tribune. "I love women dearly. There's no way I would come out and do anything to harm them."

He also said he has been tested for the human immunodeficiency virus which causes AIDS, more than once and the results have been inconclusive. Police say he was diagnosed with the virus while in custody.

Barker was arrested April 9 after a parole officer received a tip that Barker was deliberately trying to infect women with AIDS, Stewart said. Police found Barker and the woman in a motel room. She became hysterical when officers told her Barker had AIDS, Stewart said.

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► **Citizen Arrest:** A resident of the Mount Pleasant neighborhood of Washington, D.C. asks for help from police after area residents tied him to a sapling tree during a recent outbreak of violence that erupted after a police officer shot a Hispanic youth. Officers untied the man and let him go free.

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05557632  
AIDS-TRANSMISSION CONVICTION REAFFIRMED  
USA Today (US) - TUESDAY October 16, 1990  
By: Tony Mauro  
Edition: FINAL Section: NEWS Page: 07A  
Word Count: 395

MEMO:  
NOTES: Accompanies: SUPREME COURT

TEXT:  
A brief homosexual encounter in Tacoma, Washington nearly three years ago left a trail of AIDS-related controversy that ended at the Supreme Court Monday.

The result, gay rights advocates fear, may be a rise in criminal laws to punish those suffering from AIDS.

On Monday the court refused to hear the case of Nathaniel Johnson, an Air Force sergeant who learned in 1987 that he was HIV-positive - an AIDS indicator - and received counseling at Lackland Air Force Base in Texas. He then returned to duty at McChord Air Force Base in Washington.

According to trial records, it was there that Johnson met a 17-year-old boy and returned to his apartment, where they had drinks and sex.

When the boy later reported the incident, Johnson was court-martialed not only on sodomy charges but - because he was HIV-positive - on an aggravated assault charge.

Because he had unprotected sex while knowing he might be carrying a potentially fatal virus, the government claimed, in essence, that he should be in the same category as someone swinging an ax at another.

The government said Johnson knew "he was likely to transmit HIV" if he engaged in sex without a condom.

Johnson was convicted and sentenced to 10 years. He appealed, claiming the law and Air Force policy were vague.

The high court's action affirms his conviction.

Cases like Johnson's are increasingly common, legal experts say. In recent years, AIDS patients have been prosecuted for biting, spitting, or donating blood.

More than a dozen states have enacted laws specifically to make "intentional" AIDS transmission a criminal act.

"What would otherwise be no crime at all becomes a serious crime," says Paul DiDonato, legal director of San Francisco-based National Gay Rights Advocates.

Only if it could be proved that someone went out with a clear intent to infect someone else, says William Rubenstein of the American Civil Liberties Union, could criminal laws possibly come into play.

"AIDS is a health problem, best handled by the public health community," says Rubenstein. "Handling it as a crime is not very effective."

#### FOCUS

A mainstay of U.S. justice is that every citizen has the right to his or her day in court - and can take that issue "all the way to the Supreme Court." Here's a look at one journey to the high court.

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HIGH COURT UPHOLDS LAW BANNING INTENTIONAL SPREAD OF AIDS VIRUS  
Chicago Tribune (CT) - FRIDAY, January 21, 1994  
By: Jan Crawford, Tribune Legal Affairs Writer.  
Edition: NORTH SPORTS FINAL Section: CHICAGOLAND Page: 2  
Word Count: 386

#### TEXT:

A state law prohibiting people with the AIDS virus from engaging in any behavior that could spread the disease is not unconstitutional, the Illinois Supreme Court ruled Thursday.

With the decision, prosecutors now are free to bring criminal

charges against people suspected of spreading HIV.

Opponents had argued that the law was so broad and vaguely written that a woman with the virus could be arrested for breastfeeding her baby. But the court, in a terse, three-page unanimous opinion, dismissed those and other arguments with little discussion. Further, it said it was unconcerned that opponents were able to conjure up possible ways the law might open up innocent conduct to possible prosecution.

"Vagueness, like beauty, may be in the eye of the beholder," wrote Justice James Heiple.

"We, however, read the statute as being sufficiently clear and explicit so that a person of ordinary intelligence need not have to guess at its meaning or application."

The decision reversed the opinions of two Downstate Illinois trial judges, who found the law unconstitutional in separate criminal cases.

In one of the cases, a woman was charged with knowingly spreading the virus when she had sex without telling her partner. In the second case, a man was charged with raping a woman when he knew he was infected with the virus.

Those charges now will be reinstated, said Gerry Arnold, a staff attorney in the state appellate prosecutor's office who defended the law last November in arguments before the court.

"The court did not seem to have any trouble deciding the issue," Arnold said. "We're obviously grateful the court reached the decision it did."

Only a few people have been charged under the law since it was passed in 1989.

Under the law, the state can bring felony charges against anyone who, knowing he or she has HIV, nevertheless engages in activities that could transmit AIDS, such as intimate contact, donating blood or sharing dirty needles. Those convicted face 3 to 7 years in prison.

The key issue in the court challenge was whether the phrase "intimate contact" provided enough notice for people to know what is prohibited.

The American Civil Liberties Union, which helped challenge the law on the defendants' behalf, argued it was unconstitutionally vague because it didn't clearly state what kind of activity it prohibited.

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01938878  
Edgar defends clemency choice for re-arrested AIDS sufferer  
Chicago Tribune (CT) - FRIDAY February 7, 1992  
By: Rick Pearson, Chicago Tribune  
Edition: NORTH SPORTS FINAL Section: CHICAGOLAND Page: 2  
Word Count: 288

TEXT:

SPRINGFIELD - Gov. Jim Edgar said Thursday he still believes he made the right decision in granting clemency last October to an AIDS-infected Rockford woman, despite her arrest this week on charges of criminal transmission of the deadly virus and prostitution.

Tracy Eichman, 34, was arrested by Rockford police on Tuesday after offering to perform sexual acts for a police officer for \$20, authorities said. She was being held in the Winnebago County Jail on \$25,000 bond, sheriff's officials said.

She faces one to three years in prison if convicted on the new charges, officials said.

In February 1991, Eichman was sentenced to 3 years in prison after being convicted of criminal transmission of the AIDS-causing HIV virus.

Edgar initially rejected requests that he approve clemency for Eichman, even as her health deteriorated.

But as Eichman's condition grew worse, and in the belief that she would soon die, the governor agreed to grant pleas for clemency from her family and from members of the First Evangelical Free Church of Rockford.

Edgar said that despite Eichman's arrest, he thought the procedures his administration used in granting clemency were correct.

"Why she made a miraculous recovery is beyond me," Edgar said. "I don't claim to be a medical expert. The medical experts we had to deal with indicated to us that she was bedridden and near death.

"I thought from a humane point of view that it was the right thing to do and I still do think I made the right decision," he said. "I suspect in the future that we'll probably put some provisions in the clemency so in case the person does improve, that we know that they are not going to be a

threat to society."

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\$4.11 Estimated total session cost 0.042 Hrs.

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Charlotte Observer file photo  
LaGena Lookabill Greene, shown in a January 1995 photo, is now dying of AIDS. She was the fiancée of race car driver Tim Richmond, who died of the disease in August 1989 and left behind a haunting legacy of dying women.

# Lady Killer

Tim Richmond was a good-looking, hard-driving racing star. When he died of AIDS in 1989, he was mourned as a tragic figure. More tragic still is the line of women following him to the grave.

By KEN RODRIGUEZ  
Miami Herald

Beyond the grave of Tim Richmond lies a trail of prey women following him to the ground. Freshly buried is the tombstone of one former lover. A second, his friend, still fighting for her life, has picked up her casket. At least two former partners are in seclusion on the East Coast, awaiting the inevitable. Others — friends suspect a dozen or more — have passed on quietly. Some to take his secret with them. Richmond, the late auto racing star, infected them with the virus that causes AIDS.

He seized women across the country when media reports leaked the cause of Richmond's death in August 1989. LaGena Lookabill Greene, Richmond's former fiancée, now lives in Washington, D.C., and received more than two dozen calls. From those calls alone — only counting the ones from Charlotte — he could have started a support group of women exposed to HIV from Tim," said Greene, 35. "There were about 30 in that support group. They told me they were worried that they had had sex with Tim and they were worried."

Richmond's infectious-disease specialist, Dr. David Dodson, can only guess when his late patient might have become infected. "Perhaps in the late '70s," Dodson said.

Please see Page C-2, RICHMOND

# RICHMOND: Women follow dead race car driver to the grave

Florida State. LaGena dated Danny for a while, broke up, then returned to Charlotte. Once home, she resumed her relationship with Richmond, a former football star himself at now-closed Miami Military Academy.

Tim's father, Al, does not believe that his late son infected LaGena Greene. "I don't think there is anything to it," said Al, who lost his wife, Evelyn, to cancer after Tim's death. "I don't remember her."

LaGena says she and Al spoke on the phone many times. "LaGena," she recalled Al telling her, "Tim says you're the keeper. The first time he said that, I asked what he meant. He said, 'You're the one Tim wants to marry.'"

Jackie Lookabill, Greene's mother, also remembers Al Richmond. "On Sept. 10, 1986, I brought my daughter to Charlotte Municipal Airport," Jackie said. "And Evelyn and Al Richmond brought Tim. We chatted inside the lobby. Tim and LaGena were on the way to Maryland for Tim to have a press conference with USA Today."

After the news conference, Richmond asked Greene to fly with him to New York for dinner, hinting he wanted to discuss something special.

Richmond rented a hotel suite, saying he wanted to freshen up. Moments after they arrived, a bellman delivered pink roses. Outside the window, Central Park in resplendent autumn colors. Inside the room, a man promising to be a devoted husband and father.

Richmond proposed, LaGena accepted. They consummated their relationship.

"I believed that by giving myself to Tim physically, our union marked the beginning of a lifetime of mutual commitment," she said. "We never made love again. Now I see that day as the end of my life as I had known it."

## 'WHY NOW?'

The odds of a woman contracting HIV from a single sexual encounter with an infected man are limited. But the chances increase when the man is in the late stages of the disease.

Richmond, by his own doctor's estimate, may have been carrying the virus for eight years when he had sex with LaGena. Jemsek, her infectious-disease specialist, says he believes his patient's account.

"Because of the timing of her sexual encounter and the subsequent development of medical problems, it all makes perfect sense," Jemsek said.

A former friend of Richmond, who did not want to be identified, confirms that LaGena was with Richmond that day in the hotel suite. The woman told The Miami Herald she called Richmond's room and LaGena answered.

After leaving New York, LaGena and Richmond remained in touch by telephone. "Tim wanted to spend Thanksgiving with me in Los Angeles," she said. "We made plans, he didn't show up, and he didn't call for the next two years and four months."

A sports agent called LaGena, wanting to know about whispers that Richmond had AIDS. A vicious rumor, she said. No way it could be true.

"After hanging up with the sports agent, my mind began to swirl with memories of Tim's proposal," she said. "I pictured Tim's face and his eyes, which were filled with tears saying, 'Why now? Why are you saying yes now? Why not earlier?' I became concerned that I needed

to get tested, even though AIDS was known as a gay man's disease. The test came back negative. But I had only been exposed 11 weeks earlier. What doctors know now that they didn't know then is there can be a window of three to six months in which a person can be infected with HIV and test negative."

Nine months after the test, a sports writer called. He said Richmond was in the hospital and wondered if LaGena could confirm that Richmond had AIDS.

"I only said what a great race driver he was and I could not confirm any rumor," she said. "But I went and got tested again. This time, I was positive."

LaGena suffered privately for eight years until Jemsek, her doctor, persuaded her to speak at a Charlotte AIDS seminar. The only other woman to publicly say an American sports hero infected her is Waymer Moore. She sued Magic Johnson for \$2.2 million, claiming he had infected her with HIV in 1990. The case has been settled out of court.

After a failed suicide attempt, LaGena went to church with Danny Greene. At the altar, she repented for the sin of premarital sex and rededicated her life to Jesus Christ.

Two years later, Danny proposed, knowing he and LaGena would never have children. They were married on Valentine's Day 1990.

## ARE THERE OTHERS?

LaGena wanted an apology from Richmond after learning she had been infected. In March 1989, Richmond began calling. "But it wasn't to apologize and it wasn't to admit he had AIDS," she said. "He denied for the next four months that he had AIDS."

The Richmond family also denied the illness.

"Then, in what turned out to be our last conversation, I realized that Tim lacked the capacity to be truthful," LaGena said. "So, I told him, 'I know you gave me this disease and that you knew that you had AIDS when you asked me to marry you. But I forgive you.' He thanked me."

A few days later, he died in West Palm Beach at age 34.

LaGena now speaks at churches, high schools and colleges across the country, telling her story and crusading for abstinence. She does not neglect to drop a word or two about hero worship.

"The line is crossed when people begin to equate athletic ability with good character," LaGena said. "Those are two different things."

Jackie Lookabill knows.

"LaGena lived in secrecy for so long and we were so pained and here's this sports figure, who gets all this adulation," Jackie said. "Here is this man who has taken my child's life, and he is put so far above . . . while my child has a death sentence."

" . . . How can a human being do this to someone, knowingly infect another person? And I say knowingly. I have no doubt."

Sometimes LaGena Lookabill Greene wonders how many others like her are out there.

Dawn Freeman, Tommy Morrison's fiancée? She has tested negative for HIV. LaGena did, too. The first time.

□ Miami Herald researcher Elisabeth Donovan contributed to this report.

Senate Bill No. 17

"An Act creating the crime of criminal transmission of human immunodeficiency virus  
(HIV)

Briefing Paper

SB 17 intends to criminalize an individual's knowing exposure of another to HIV through (1) voluntarily engaging in intimate sexual or other physical contact which could result in infection; transferring, donating or providing blood, tissue, semen, organs, or other potentially infectious bodily fluids for transfusion, transplantation, insemination, or other administration to another; or dispensing, delivering, exchanging, selling, or in any manner transferring to another nonsterile intravenous or intramuscular drug paraphernalia.

**WHY DO WE NEED THIS BILL? DON'T WE HAVE LAWS ON THE BOOKS ALREADY TO DEAL WITH A PERSON WHO KNOWINGLY EXPOSES ANOTHER TO HIV?**

Yes. According to the Department of Law, a person with known HIV infection could be prosecuted under existing statutes for:

- (a) attempted first degree murder--if he/she intended to kill another through infecting them with HIV,
- (b) attempted assault--if he/she intended serious injury, not death, or
- (c) reckless endangerment--if he/she engaged in behavior that could transmit the virus, but where transmission of the virus was not intentional or not "knowing" (because the person may not believe infection was a substantial probability).

**WHAT WOULD SB 17 DO?**

SB 17 specifies the manner of exposure but does not criminalize any behaviors which would not already be included under existing law. However, SB 17 would make exposure a class B felony, whether intentional or unintentional, whether or not transmission of the virus actually occurred, and whether or not any harm occurred.

**WHAT IS THE DIFFERENCE BETWEEN 'TRANSMISSION' AND 'EXPOSURE'?**

"Transmission" is a term that describes the circumstance when the virus is passed from one person to another, resulting in an infection in the other person.

"Exposure" is a term that describes when a person has any contact with the virus, regardless of whether the virus actually infects the second person. Most exposures to HIV do not result in an infection in the exposed person.

## WHY NOT PASS SB 17? WHAT HARM COULD IT DO?

SB 17 could interfere with public health interventions that have been shown to be effective in preventing the spread of HIV.

## HOW COULD SB 17 HARM EFFORTS TO PREVENT HIV SPREAD?

Important and effective public health activities to prevent spread of HIV are based on encouraging individuals to

- (1) seek HIV testing and learn if they are infected,
- (2) receive early medical diagnosis and treatment for HIV infection and disease,
- (3) receive ongoing education and supportive services to reduce high risk behavior, and
- (4) participate in partner notification activities.

Criminalization of consensual sexual conduct and introduction of additional criminal penalties for illicit drug use activities, which hinge on a person's knowledge of his or her HIV status, may deter individuals from seeking HIV testing. A person might well fear what would happen if an initially consenting partner subsequently disputed his or her knowledge and consent, or whether a condom or other protective measure had been used during sexual activity

Health care providers and public health professionals ask patients who test positive for HIV to voluntarily identify their sexual partner and/or those with whom they have shared injection equipment, and to either notify their partners of their exposure to HIV or have public health professionals confidentially notify their partners so they may receive HIV counseling and testing. SB 17 may lead a person newly testing positive for HIV to fear criminal prosecution (whether or not this fear is well-founded). This would reduce the person's willingness to participate in partner notification activities.

## IF WE CRIMINALIZE EXPOSURE TO HIV, WHAT ABOUT OTHER INFECTIOUS DISEASES?

Criminalizing diseases and infections is inconsistent with effective public health practice. There is no scientific basis for criminalizing HIV exposure--other infectious agents are much more likely to cause infection after exposure, for example hepatitis B.

U.S House of Representatives  
Committee On Commerce  
Subcommittee on Health and Environment  
Hearing on the Preventing the Transmission of HIV

Mr. Chairman:

I am honored to be asked to testify before this committee today. As a public health official from a small, rural county in New York State, I feel that I bring a perspective that may help shape your approach to this epidemic. For the majority of the seventeen years of the AIDS problem in this country, the focus has not been directed towards the millions of Americans living in small communities that are found in all states of this great nation. All this changed on October 27, 1997 when I had the unfortunate task of announcing to our county residents, the details of a cluster of new HIV positive individuals, resulting from the alleged transmission of infection from a single source. What followed is best described as a nightmare of media attention and community soul searching that has changed forever the peace and tranquility that characterized Chautauqua County New York.

To date we have identified thirteen young females, ranging in age from 13 to 26 years, one infected male secondary contact, and two infants, (born to infected women), who have unfortunately also proven to carry the virus. Yet more disconcerting is that in spite of years of successful programming in the areas of health and human sexuality education that were responsible for dramatic reductions in traditionally high teenage pregnancy rates, data collected during our intensive response to the HIV outbreak suggested ongoing risk taking at unacceptable levels amongst our teenage population. This impression was reinforced by the more than 1450 individuals that presented for HIV testing following our media disclosure. Furthermore, epidemiological investigation of the cluster around our index case led to 134 individuals with extremely high risk behavior and a subset of 48 women with direct contact with our primary source. HIV/AIDS and the risks associated with it's heterosexual transmission are alive and present in the rural heartland of America.

Before I address the issues inherent in the HIV Prevention Act of 1997 (H.R.1062), I feel that I would be remiss if I did not look at some of the lessons learned by our experience. Amid the hue and cry about the confidentiality laws in New York State, the reality in our situation was that we were able to use the letter of the law to swiftly deal with a unique situation through the special provisions in the NYS Public Health Law (Article 27-F sub.2785) that addressed the willful endangerment of individuals by subjects infected with HIV. Any apparent delays arose only as a result of our extreme caution due to the precedent setting nature of our action and the ongoing concern for the welfare and well being of our infected teens. Furthermore, in all instances, including our initial interviews with the index case, voluntary partner notification, based on the cooperation of all infected individuals, led to active case finding and testing of as many contacts as we were able to find by the efforts of local, state, and federal public health officials.

Perhaps the most important lesson learned from our experience lies in the domain of the award winning educational process that we have so carefully crafted in Chautauqua County. It missed the mark with some of the youth in our communities. Adolescent risk taking behavior is an inherent aspect of the age group. The process by which we effectively shape the decision making of teenagers is complex and

requires interventions at all levels of the community, and must begin at the earliest possible ages. We must also recognize that the impact of the family and social dynamics surrounding each individual may in fact represent potent contributors to risk taking behaviors and that these influences at times outweigh the positive messages that we attempt to inculcate into their lives. Although we proudly look at the thousands of teens leaving our school systems, full of self esteem and bright futures, our experience has demonstrated a small but significant sub-set of individuals not reached by traditional efforts. The societal cost of this defect in the fabric of our community is now all too evident.

There is no doubt in my mind that the time has come to change part of our approach to this disease process. For far too long HIV has been treated as a unique and special issue and not as a communicable disease. The initial reasons for this approach are all too well known, and have been the hallmark of the human response to any new disease process whose etiology may at first be unclear and yet whose outcomes are so devastating. In this case however, the situation was further complicated by the initial infection being centered in the gay community, and the abuses that marked the early years of the epidemic. Although the demographics of the victims slowly changed, our response has been slow and it seems that the more we tried to protect the rights of those infected, the more we promoted the hysteria surrounding this dreaded affliction. We were in fact perpetuating the cycle as we continued on with layer upon layer of confidentiality etc.

HIV should be a reportable condition in order to improve the knowledge base that is required to plan for the future public health response. In addition, the early reporting and detection is essential to capture those infected individuals, as soon as possible in their disease process, so as to have a reasonable chance to affect their future life expectancy and mortality. With present day treatment modalities, this represents a significant improvement in the possibility for ultimate control of the epidemic.

Partner notification must be strengthened so as to be an effective tool in reaching out to all potential victims of exposure. This process must remain confidential and I am unclear as to how it can be anything more than voluntary. The Chautauqua County experience, difficult at best, still managed high compliance levels due to the diligence of the staff involved. Mandating states to carry this process out would be preferable to attempting any criminal or punitive actions against individuals.

The details of the issues surrounding the incident in Chautauqua County may have to wait until the courts deal with the charges against the index case. Needless to say, our alleged individual was fully informed of the issues involving the potential transmission of HIV during his post test counseling ( as mandated by NYS Public Health Law). In spite of this, it is possible that he infected an additional nine (9) women and two (2) infants in the three months following this counseling. Based on the information available, the Chautauqua County District Attorney has begun the process to bring charges of felony reckless endangerment against the index case. New York State does not have specific criminal legislation at this time to deal with intentional transmission of HIV. Although this act is repugnant, and confers on the victim a life of potential misery and early demise, I am not qualified to begin to explore the legal morass that surrounds this issue. It suffices to say that there is a clear and present danger that the public health efforts to control HIV may be put at some risk if there is a perceived close connection between the public health and criminal action efforts.

I would however, like to inject a note of caution at this point. On October 29, 1997, a statement

was issued concerning the possible effect that H.R. 1062 might have had on the Chautauqua HIV incident. Therein it was suggested that Nushawn Williams may have been protected from infection by prior action of an effective HIV reporting and partner notification system. Furthermore, that his previous partners could have been more expeditiously tracked once he was tested, and that he could have been monitored following testing. Finally, there is language to imply that authorities would have been better equipped to quickly notify and follow up on those exposed.

There is always a danger to attempt a "one size fits all" solution when pursuing a process change. My support of the basic concept for changes in the HIV reporting process in this country remains steadfast. I do not however feel that it is necessary to attempt to justify this important adjustment to our public health psyche with conjecture about the Williams case. This individual moved in the nether world of a sub-culture that is all but impervious to interventions by government, health and criminal justice systems. Reducing his risk of infection, based on his reported lifestyle, would require societal changes far beyond the scope of this , or any other proposed legislation.

After his diagnosis, all his previous contacts were expeditiously contacted, tested, and dealt with by health department staff. H.R. 1062 would not have changed that process and in fact, the quality of the work done was considered exemplary by CDC reviewers brought on site during October 1997.

Tracking Williams after his diagnosis was not possible either through the criminal justice system nor by the Health Department. This individual had spent his life in the shadows, and H.R. 1062 is not the instrument to change that unfortunate reality of our societal underside.

Finally, the timeliness of the response to the apparent problem, once it had been discovered, was mitigated more by the unique nature of the process than by factors that might lend themselves to enhancement by H.R. 1062. Our "victims" presented themselves one at a time through a variety of Health Department portals, over a period of five months, and it was only following a concerted effort by staff, and the chance recognition of one of Williams' many aliases that the case was finally made. Again, H.R. 1062 would have had little impact on what was a rather effective process in very special circumstances.

Thank you for allowing me the opportunity to speak to day on this important matter.

Robert Berke, M.D., M.P.H.  
Commissioner of Public Health  
Chautauqua County Health Department  
Mayville, New York 14757



Department of Health and Social Services  
Karen Perdue, Commissioner

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Bulletin No. 1 February 6, 1998

## Proposed Changes in Disease Reporting Regulations and Regulations Dealing with Control of Diseases of Public Health Significance

**7 AAC 27.005** Regarding required reporting by health care providers is proposed to be amended as follows:

The list is modified to use consistent terminology when referring to diseases and conditions by replacing condition and pathogen names with disease names and by eliminating the distinction between common and rare diseases.

The list is expanded to require reporting of additional diseases including human immunodeficiency virus infection (HIV), cyclospora, *E. coli* 0157:H7, blood or CSF infection caused by any type of *Haemophilus influenzae* (including nontypable) and *Neisseria meningitidis*. Smallpox and encephalitis are removed from the list of diseases required to be reported.

The regulation is amended to clarify that disease outbreaks or the unusual occurrence of infectious diseases must be reported for any infectious disease, not just those specified in the sections; and to require reporting within 5 working days allowing health care providers to submit reports of disease by electronic means, and to require that certain public health emergencies must be reported immediately by telephone.

Ethnicity is added to the demographic variables which would be reported.

**7 AAC 27.007** Regarding reporting by laboratories is proposed to be amended as follows:

The list is modified to use consistent terminology for pathogens.

A requirement is added for laboratories to report test results on specimens obtained within Alaska.

The list is expanded to require reporting of additional diseases, including invasive infection caused *H. influenzae* or *N. meningitidis*, paralytic shellfish poison, *Borrelia burgdorferi*, human immunodeficiency virus (HIV), cyclospora, viral causes of meningitis, and *Yersinia pseudotuberculosis*.

Meningitis, smallpox, and typhus are removed from the list of diseases required to be reported.

Telephonic and electronic transmission are added as acceptable methods for reporting.

Reports are required to be made within 5 working days, except for public health emergencies which must be reported immediately by telephone.

Date of birth, sex, race and ethnicity are added as reportable variables.

**7 AAC 27.010** Regarding Control of Communicable Diseases in Man is proposed to be amended to correct the title of the manual adopted by reference.

**7 AAC 27.011** Regarding the cancer registry is proposed to be amended to include reporting of cancer screening, to delete in-situ carcinoma of the cervix uteri, to correct typographical errors, and to add ethnicity as an element to be reported.

**7 AAC 27.012** Regarding birth defects registry is proposed to be amended to require reporting for patients up to 1 year of age except for ICD-9 codes 760 and 760.71 pertaining to alcohol effects on the fetus and fetal alcohol syndrome that will continue to be reportable up to 6 years of age; ethnicity will be added as an element to be reported, and typographical errors will be corrected.

**7 AAC 27.013** Regarding reporting firearm injuries is proposed to be amended by changing the time period for reporting injuries, adding geographic location of occurrence and ethnicity to elements required to be reported, and deleting place of birth from reporting requirements.

**7 AAC 27.014** Regarding Blood Lead Test Results is proposed to be amended by requiring ethnicity to be reported and correcting a typographical error in the abbreviation for micrograms per deciliter.

**7 AAC 27.020** Regarding Control of Animal Diseases Transmissible to Man is proposed to be amended by removing reference to the Department of Natural Resources involvement in quarantine determination, and adding several facilities and locations that can be used to confine animals during quarantine. The Compendium of Animal Rabies Control adopted by reference is updated. The requirement that free ranging wild animals that bite persons be tested for rabies will be changed to apply to bats and free ranging carnivorous wild animals. The term "destroyed" is replaced with euthanized. A provision is added to establish that the department may euthanize an unvaccinated dog or cat bitten by a suspected rabid animal, and to clarify that prior rabies vaccination of an animal may not preclude euthanasia if the period of virus shedding is unknown for that species.

**7 AAC 27.080** Regarding Quarantine of Aviaries or Pet Shows is proposed to be repealed.

**7 AAC 27.213** Regarding Tuberculosis Skin Test is proposed to be amended to reduce the mandatory requirement for annual skin testing in grades one, three, and eleven and to establish that the division of public health may require testing in grades in certain school systems if evidence exists that there is increased risk of spread of tuberculosis in a particular community or region.

The regulation is amended to change the testing requirement to require an intradermal purified protein derivative (PPD) test. Schools will no longer be required to mail skin test results to parents or guardians. Gender specific language will be removed.

**7 AAC 27.900** Regarding definitions is proposed to be amended to define health care providers to mean licensed physician, physician assistant, advanced nurse practitioner or nurse.

Any person may present written statements or arguments relevant to the proposed action by writing to the Section of Epidemiology, 3601 C Street, Suite 540, PO Box 240249, Anchorage, AK 99524-0249, so that they are received no later than April 10, 1998. Additionally, any interested person may present oral or written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, at a hearing to be held in Room 515, Frontier Building, 3601 C Street, Anchorage, AK, at 5:00 pm on March 25, 1998. The hearing will be held from 5:00 pm to 8:00 pm and might be extended to accommodate those present before 8:00 pm who do not have an opportunity to testify. All oral testimony may be presented on March 26, 1998, from 1:00 pm to 4:00 pm by calling toll free 1-888-869-5955.

Copies of the proposed regulations may be obtained by writing to the Section of Epidemiology, 3601 C Street, Suite 540, PO Box 240249, Anchorage, AK 99524-0249, by calling 907-269-8000, by faxing 907-561-6588, or by e-mailing to [epi.hss.state.ak.us](mailto:epi.hss.state.ak.us).



Department of Health and Social Services  
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Bulletin No. 3 February 12, 1998

## HIV Reporting - The Time Has Come (?)

AIDS has been reportable to the state health department since 1985. AIDS case data, along with other data such as HIV antibody testing conducted through the State Section of Laboratories, scientific information about HIV, and data on national trends, are used to help characterize the HIV/AIDS epidemic in Alaska and to guide public health efforts.

In the absence of effective treatment, HIV-infected individuals develop AIDS an average of 10 years after initial infection. AIDS case data therefore present a snapshot of the HIV epidemic approximately one decade earlier. AIDS case data for 1996 and 1997 show that advances in treating HIV infection are delaying infected individuals' progression to AIDS. This encouraging trend is expected to continue. As a result, however, AIDS case data will provide less and less information about recent patterns in the epidemic. Although the behaviors which transmit HIV are well known, the prevalence of and changes in these behaviors within various populations are not. More current data on the occurrence of HIV infection are essential to target and marshal support for prevention activities.

The Alaska Division of Public Health is currently updating its disease reporting regulations. The Division is proposing to add HIV infection to the approximately 45 conditions for which health care providers and laboratories are required to report identifying information to the Section of Epidemiology.

A number of professional organizations have recently recommended that all states implement HIV case reporting. The Centers for Disease Control and Prevention (CDC), the Council of State and Territorial Epidemiologists (CSTE), the Association of State and Territorial Health Officers (ASTHO), and the National Alliance of State and Territorial AIDS Directors (NASTAD) have all taken positions supporting name-based HIV surveillance. Support for HIV reporting (but not necessarily for reporting by name) has also come from national advocacy groups such as the National Association of People with AIDS (Washington, DC), Gay Men's Health Crisis (New York), and AIDS Action Council (Washington, DC).

While there is growing support for national HIV reporting, the nature of the HIV/AIDS epidemic, injuries suffered by many affected individuals, and punitive legislative proposals introduced in some areas have raised a number of serious concerns about HIV named reporting. Some of these concerns, and alternatives considered, are discussed below.

### Will HIV reporting discourage people from getting tested?

In recent years, many people have expressed concern that the perceived social risks resulting from making HIV a reportable condition would deter some people, especially those potentially at highest risk, from seeking testing. Some also believe HIV reporting might increase the number of

people seeking anonymous, rather than confidential, testing. Results of several recent studies indicate the impact on testing is likely to be less than anticipated.

### Are reported HIV/AIDS data secure?

State public health departments have an excellent record for protecting confidentiality of HIV/AIDS data. There have been no reported breaches of name-based HIV surveillance. Access to, and uses of, Alaska data collected for public health purposes are severely limited. A report which identifies cases, or establishes characteristics of the status of an identifiable patient with a reportable condition, is confidential and may not be disclosed to the public (7 AAC 27.890).

### Are there feasible alternatives to name-based reporting?

Decisions about approaches to report HIV cases other than by name need to weigh the purposes and relative benefits of disease surveillance. Disease surveillance systems, such as the reporting system now proposed for HIV, are designed to help monitor disease trends, to provide information sufficient to target appropriate public health services, and may improve timely treatment and preventive services. By their nature these systems are most effective if they place a relatively low burden on reporting providers, produce accurate and verifiable data, allow for necessary follow up, and are of relatively low cost.

CDC recently published an evaluation of two existing state systems (Texas and Maryland) which use a unique identifier for HIV case reporting. The evaluation found that the systems tested provided much less complete information than name-based systems; could not reliably eliminate duplicate case reports; greatly increased the complexity of health department follow up with providers to complete risk and other information; precluded integration of HIV data with other relevant name-based public health surveillance data (for example, TB); and might not diminish risks for breaches in confidentiality since providers had to keep logs of patient names to match with assigned identifiers.

### The process proposed changes to regulations must follow:

All interested individuals are urged to provide verbal or written comments on the proposed changes to the Section of Epidemiology so that they are received no later than April 10, 1998. Additionally, any interested person may present oral or written comments at a hearing to be held in Room 515, Frontier Building, 3601 C Street, Anchorage, AK, from 5:00 pm to 8:00 pm on March 25, 1998. Oral testimony also may be presented on March 26, 1998, from 1:00 pm to 4:00 pm, by calling toll free 1-888-869-5955.

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Bulletin No. 4 February 17, 1998

<http://www.epi.hss.state.ak.us>

## HIV INFECTION - ALASKA

Data from HIV antibody testing conducted through the State Section of Laboratories and data from the Department of Defense on civilian applicants for military service in Alaska are shown below. These data do not include HIV tests sent by providers to laboratories other than the State or Department of Defense Laboratories. HIV infection without AIDS is not currently reportable in Alaska.

### State Section of Laboratories

Through December 31, 1997, the Section of Laboratories, Division of Public Health, has conducted 145,144 HIV antibody tests on 110,787 individuals, with a total of 671 (0.6%) individuals testing HIV positive. Through December 31, 1997, 56 (1.1%) of 50,984 males, 104 (0.2%) of 59,144 females, and 4 (0.6%) of 659 individuals of unspecified sex have tested positive. Data below reflect unduplicated individuals.

#### HIV Testing by Age

For Period May 1, 1985 thru December 31, 1997

| Age          | Number Tested  | Number Positive | % Positive |
|--------------|----------------|-----------------|------------|
| 0-9          | 844            | 4               | 0.5        |
| 10-19        | 14,990         | 27              | 0.2        |
| 20-29        | 40,293         | 258             | 0.6        |
| 30-39        | 33,688         | 255             | 0.8        |
| 40-49        | 15,161         | 107             | 0.7        |
| 50+          | 5,779          | 20              | 0.3        |
| Unk          | 32             | 0               | 0.0        |
| <b>Total</b> | <b>110,787</b> | <b>671</b>      | <b>0.6</b> |

#### HIV Testing by Year

For Period May 1, 1985 thru December 31, 1997

|      | Number Tested | Number Positive | % Positive |
|------|---------------|-----------------|------------|
| 1985 | 771           | 76              | 9.9        |
| 1986 | 1,448         | 56              | 3.9        |
| 1987 | 5,786         | 74              | 1.3        |
| 1988 | 5,757         | 65              | 1.1        |
| 1989 | 6,195         | 51              | 0.8        |
| 1990 | 7,934         | 69              | 0.9        |
| 1991 | 11,852        | 46              | 0.4        |
| 1992 | 17,350        | 50              | 0.3        |
| 1993 | 16,716        | 45              | 0.3        |
| 1994 | 15,818        | 44              | 0.3        |
| 1995 | 15,345        | 50              | 0.3        |
| 1996 | 16,217        | 50              | 0.3        |
| 1997 | 14,574        | 32              | 0.2        |

#### HIV Testing by Exposure Category and Ethnicity

(Number Positive, Number Tested, Percent Positive)

For Period May 1, 1985 thru December 31, 1997

| Exposure Category   | White      |               |            | Native American/<br>Alaska Native |               |            | Black     |              |            | Hispanic  |              |            | Other     |              |            | Not Specified |              |            | Total      |                |
|---|------------|---------------|------------|-----------------------------------|---------------|------------|-----------|--------------|------------|-----------|--------------|------------|-----------|--------------|------------|---------------|--------------|------------|------------|----------------|
|   | Pos        | Tested        | (%)        | Pos                               | Tested        | (%)        | Pos       | Tested       | (%)        | Pos       | Tested       | (%)        | Pos       | Tested       | (%)        | Pos           | Tested       | (%)        | Pos        | Tested         |
| Homosexual/<br>Bisexual Male                                    | 226        | 1,794         | 12.6       | 29                                | 357           | 8.1        | 18        | 107          | 16.8       | 15        | 69           | 21.7       | 7         | 50           | 14.0       | 4             | 27           | 14.8       | 299        | 2,404          |
| IV Drug User  | 25         | 2,603         | 1.0        | 2                                 | 658           | 0.3        | 1         | 229          | 5.7        | 5         | 68           | 7.4        | 0         | 50           | 0.0        | 2             | 70           | 2.9        | 47         | 3,678          |
| Heterosexual<br>Contact of<br>Person with/or<br>at Risk of AIDS | 6          | 2,656         | 0.2        | 5                                 | 597           | 0.8        | 3         | 217          | 1.4        | 1         | 99           | 1.0        | 0         | 75           | 0.0        | 0             | 64           | 0.0        | 15         | 3,708          |
| Hemophiliac   | 7          | 21            | 33.3       | 0                                 | 4             | 0.0        | 0         | 0            | 0.0        | 0         | 1            | 0.0        | 0         | 2            | 0.0        | 0             | 0            | 0.0        | 7          | 28             |
| Transfusion w/<br>Blood/Blood<br>Products                       | 8          | 1,141         | 0.7        | 4                                 | 370           | 1.1        | 0         | 52           | 0.0        | 0         | 19           | 0.0        | 0         | 29           | 0.0        | 0             | 51           | 0.0        | 12         | 1,662          |
| All Others  | 141        | 56,591        | 0.2        | 77                                | 25,078        | 0.3        | 35        | 5,482        | 0.6        | 20        | 2,574        | 0.8        | 8         | 3,037        | 0.3        | 10            | 6,545        | 0.2        | 291        | 99,307         |
| <b>Total</b>  | <b>413</b> | <b>64,806</b> | <b>0.6</b> | <b>117</b>                        | <b>27,064</b> | <b>0.4</b> | <b>69</b> | <b>6,087</b> | <b>1.1</b> | <b>41</b> | <b>2,830</b> | <b>1.4</b> | <b>15</b> | <b>3,243</b> | <b>0.5</b> | <b>16</b>     | <b>6,757</b> | <b>0.2</b> | <b>671</b> | <b>110,787</b> |

### Department of Defense

Since October 1985, all persons applying for active duty or reserve military service, the service academies, and the Reserve Officer Training Corps (ROTC) have been screened for HIV infection as part of their entrance evaluation. The Department of Defense shares the resulting statistical data with states for HIV surveillance purposes. Of 16,608 individuals (13,785 males and 2,823 females) screened in Alaska from October 1985 through September 1997, 3 (0.02%) have tested positive for HIV infection. Characteristics of the three individuals with HIV infection follow.

| Sex           | Ethnicity | Age               |   |                   |   |
|---------------|-----------|-------------------|---|-------------------|---|
| Males .....   | 3         | White .....       | 1 | 20-24 years ..... | 1 |
| Females ..... | 0         | Black .....       | 1 | 30+ years .....   | 2 |
|               |           | Unspecified ..... | 1 |                   |   |



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Bulletin No. 5 February 18, 1998

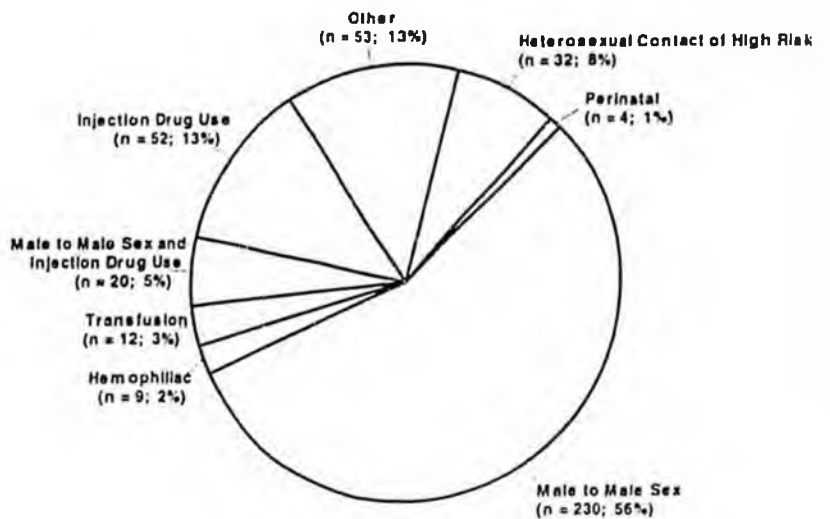
## AIDS - ALASKA

Through December 31, 1997, 412 Alaskans have been confirmed to have AIDS. Of these, 202 (49%) are known to have died. Of the 412 AIDS cases, 356 (86%) are male and 56 (14%) are female. Data below employ the 1993 Expanded Case Definition for AIDS. All cases are shown as diagnosed in the year the person first met the revised case definition. Residence at time of diagnosis is shown by census area.

**Cases and Known Deaths**  
by Year of Diagnosis, N = 412

| Year         | Cases      | Deaths     |
|--------------|------------|------------|
| 1982         | 1          | 1          |
| 1983         | 2          | 2          |
| 1984         | 4          | 3          |
| 1985         | 14         | 13         |
| 1986         | 15         | 14         |
| 1987         | 16         | 16         |
| 1988         | 19         | 18         |
| 1989         | 20         | 18         |
| 1990         | 19         | 16         |
| 1991         | 36         | 27         |
| 1992         | 40         | 30         |
| 1993         | 45         | 20         |
| 1994         | 56         | 14         |
| 1995         | 44         | 4          |
| 1996         | 48         | 4          |
| 1997         | 33         | 2          |
| <b>Total</b> | <b>412</b> | <b>202</b> |

**Exposure Category<sup>1</sup>**  
N = 412



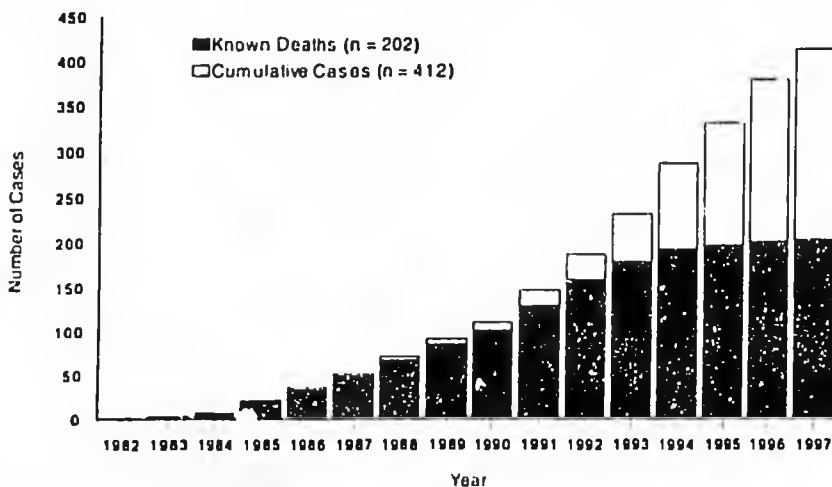
**Cases and Known Deaths**  
by Age at Diagnosis, N = 412

| Age Group    | Cases      | Deaths     |
|--------------|------------|------------|
| 0 - 4        | 4          | 2          |
| 5 - 9        | 0          | 0          |
| 10 - 14      | 1          | 1          |
| 15 - 19      | 2          | 1          |
| 20 - 24      | 20         | 13         |
| 25 - 29      | 59         | 31         |
| 30 - 34      | 98         | 49         |
| 35 - 39      | 97         | 41         |
| 40 - 44      | 60         | 27         |
| 45 - 49      | 35         | 19         |
| 50 - 54      | 20         | 9          |
| 55 - 59      | 7          | 2          |
| 60 - 64      | 4          | 3          |
| 65 +         | 5          | 4          |
| <b>Total</b> | <b>412</b> | <b>202</b> |

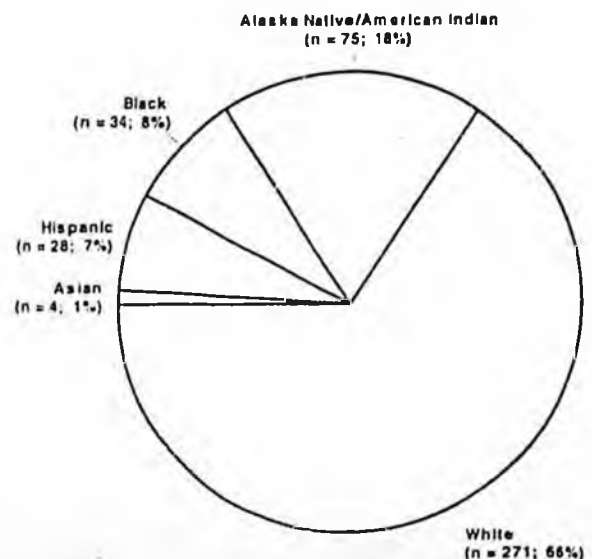
**Cumulative Cases**  
by Census Area of Residence at Diagnosis, N = 412



**Cases and Known Deaths**  
by Year of Diagnosis, N = 412



**Ethnicity of Cases**  
N = 412



<sup>1</sup> The category "other" is defined nationally to include persons having heterosexual contact with person(s) of unknown risk, occupationally exposed health care workers, and persons for whom a risk factor has not been determined.



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the HOUSE H.E.S.S.  
 Committee on SB 17 Committee Name  
Bill / Subject Dated 3-12-98

THE PEOPLE SHOULD NOT BE UNFAIRLY PREJUDICED WITH THE CREATION OF A NEW CRIME BY THIS LEGISLATION.

THEREFORE A COMPLETE LIST OF POSSIBLE SOURCES OF "CRIMINAL TRANSMISSION OF H.I.V." SHOULD INCLUDE:

- 1) BY MEANS OF MILITARY, PUBLIC HEALTH, OR PUBLIC OR PRIVATE INSTITUTIONAL RESEARCH, TREATMENT, EXPERIMENTATION, AND WEAPONS SYSTEMS OF ANY KIND.
- 2) ANY PERSON EMPLOYED BY AN AUTHORITY OR INSTITUTION LISTED IN 1), ABOVE, OR WHO, THOUGH NOT PERSONALLY INFECTED, POSSESSES TECHNICAL CONTROL OVER, OR IN RESPECT TO H.I.V. INFECTED MATERIALS.

SIGNED:

Scott Trafford Calder  
 Testifier

SCOTT TRAFFORD CALDER  
 Representing

P.O. 750 11 FBKS 99707/474-0174  
 Address / Phone Number



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the HHESS  
 Committee on SB 17 Committee Name  
 Dated 3/12  
 Bill / Subject

My name is Ilena Cramer. I am the women's Outreach Worker at Interior AIDS Association. I am a life long Alaskan resident. My job is to help women ask themselves "Where does my personal responsibility begin?"

The government cannot fix all of societies woes, and should not even try. This law will make intimacy illegal, and more dangerous for people than it already is: We all remember the hype about the 'sexless nineties'. We now see that this has turned out to be far from the reality. People must learn how to protect themselves in today's day and age. But that is a big responsibility, some people would rather close there eyes to there own dangerous behaviors, pointing fingers and finding fault. Having HIV is not a crime, it is a disease. A government cannot legislate a disease. If it could, I would suggest outlawing HIV altogether, and throwing that pesky little virus in the slammer. While your at it eradicate cancer, Alzheimer's and MS.

This legislation is going to take all responsibility out of the hands of the people and place it in the hands of the courts, clogging up the system with disgruntled ex-lovers. The only way to prevent HIV is through education, behavior change and responsible behavior. This law will not cut down on HIV transmission rates. It will increase ignorance, hatred, and it will punish HIV positive people (who have been punished enough, thank you!)

I urge you to oppose this legislation. Thank you for your time.

Partners For a World Without AIDS,  
 Ilena Cramer

SIGNED:

Ilena Cramer  
 Testifier

Representing

479-2136  
 Address / Phone Number

Testimony SB17

Launie Wolf  
1504 D. Street.  
Anch. AK. 99501

My name is Laurie Wolf, I am a life-long  
Alaskan, a registered voter. ~~and~~ ~~and~~

I strongly disagree with ~~the~~ SB17. It clearly discriminates  
against people with HIV/AIDS. It regulates private life, a  
role government has no right to do. It discourages  
testing because ~~not~~ knowing you are HIV is someone's  
best defence in a court of law. It makes illegal the  
exchange of needles - a practice that further helps protect  
our community.

If you are trying to discourage people like the man  
in Western New York who exchanged sex for drugs and subsequently  
infected 13 women, then you know that New York does not  
have any law like this on their books and it is not stopping  
them from prosecuting him fully without talking about  
his HIV status.

I resent that Alaska lawmakers are playing on people's  
fears in the name of politics and are submitting ~~new~~ bills  
based on a TV show.

Thank you.

# STATE OF ALASKA

## DEPT. OF HEALTH & SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH  
SECTION OF EPIDEMIOLOGY

3601 "C" STREET, SUITE 540  
P.O. BOX 240249  
ANCHORAGE, ALASKA 99524-0249

TONY KNOWLES, GOVERNOR

INFECTIOUS DISEASES  
AIDS/STD  
TUBERCULOSIS  
IMMUNIZATION  
CHRONIC DISEASES  
DIABETES  
INJURY CONTROL

(907) 269-8000  
FAX 562-7802

### SB17 - Criminalization of HIV Briefing Points for Testimony April 6, 1998

- The medical and public health professional communities remain opposed to SB17. The Alaska State Medical Association, Alaska Public Health Association, and Alaska Native Health Board oppose SB17.
- The House HESS Committee has heard testimony in support of SB17. Several points raised by advocates of SB17 deserve clarification.

- 1) It was stated that 27 to 30 states have passed legislation similar to SB17.

In fact, a review of HIV specific legislation passed by other states reveals a variety of types of legislation. Six of the states with laws mentioning HIV and criminalization refer only to limited situations such as prostitution or organ donation. Six states have laws that make certain acts a misdemeanor or infraction. Of all the states with specific laws, we know of only 14 that are more-or-less comparable to SB17.

- 2) It was stated that Congressman (and physician) Coburn has introduced federal legislation (HR 1062) that calls for criminalization of HIV, arguing that the Coburn bill supports SB17.

The Coburn legislation which is pending action in the House of Representatives, among many provisions, calls for legislation that would make intentional transmission of HIV a felony. This legislation does not support SB17.

- 3) It was stated that the American Medical Association endorses legislation similar to SB17.

The American Medical Association has endorsed the Coburn legislation and making intentional transmission of HIV a criminal (felony) offense. This endorsement does not extend to the broader "exposure" of SB17. The Alaska State Medical Association opposes SB17.

- 4) It was stated that public health authorities' actions in the 1920s and 1930s to control Typhoid Mary were similar to, and supportive of, SB17.

New York public health authorities did not criminalize infection with the bacteria that was carried by Typhoid Mary. Typhoid Mary was isolated and later quarantined for intentionally violating public health orders for her not to work as a cook only after she had been proven to have transmitted the disease, typhoid.

Many other food handlers who were infected with the bacteria, *Salmonella typhi*, the cause of the disease, typhoid, and who were the source of outbreaks where they transmitted the disease to others, were not isolated because they subsequently adhered to public health recommendations.

In summary, the approach that was taken to prevent disease transmission from Typhoid Mary does not support SB17.

- 5) It was stated that no adverse effects occurred in Illinois after Illinois passed legislation similar to SB17, based on data that the number of HIV tests done in the state, overall, did not go down.

Using the overall number of HIV tests as a measure of the impact of the bill is not valid. The number of HIV tests done in all states has increased substantially over the past several years. There were many factors that affected the number of HIV tests done in each state, and in the US. We can all remember that there was a great increase in the number of HIV tests done after Magic Johnson publicly announced his being infected with HIV, for example.

Of greatest importance to effective public health measures to prevent spread of HIV is identifying individuals who are at high risk of being infected or becoming infected. Overall data on the total number of tests in one state do not reflect information on the impact on this group. We do not have data from Illinois on the number of individuals who did not get tested, or drove to nearby states for testing, or who were deterred from revealing partners.

- 6) Personal responsibility for behavior is a core value and essential strategy in educating individuals about preventing HIV infection and transmission. The Department of Health and Social Services fully supports criminalization and prosecution of the intentional transmission of HIV. Existing laws provide for both. SB17 casts too broad a net, cannot be supported by medical and public health evidence, and certainly will have an adverse effect on effective preventive measures. We again request the committee not to support SB17.

# Alaska State Legislature

Legislative Research Agency



130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196

Phone: (907) 465-3991  
Fax: (907) 463-3351

March 7, 1995

## MEMORANDUM

TO: Senator Robin Taylor

FROM: Paula d. Scavera *PAS*  
Legislative Analyst

RE: Testing for HIV/AIDS in Illinois

You requested that this office research whether the number of tests for HIV/AIDS has decreased in Illinois since 1989, when House Bill 1871 (Criminal Transmission of HIV) became law.

According to the Illinois Public Health Department, Epidemiology Studies and Health Systems Development Office, the number of HIV/AIDS tests has been on the increase and not decreased.

REP. TOM COBURN  
TOM A. COBURN, M.D.  
2D DISTRICT, OKLAHOMA

420 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-2701  
(202) 225-2038 (Fax)  
rep.coburn@mail.house.gov

COMMITTEE ON COMMERCE

SUBCOMMITTEES:

OVERSIGHT AND INVESTIGATIONS  
HEALTH AND ENVIRONMENT  
ENERGY AND POWER

ID:202-225-3038

APR 28 '97

11:24 No.003 P.02

215 STATE STREET, SUITE 815  
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MIAMI, OK 74354  
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## Congress of the United States House of Representatives

Washington, DC 20515-3602

### The HIV Prevention Act of 1997

It has been just 16 years since the first cases of AIDS were recognized. The initial thousand cases were reported to the Centers for Disease Control and Prevention (CDC) by February 1983. By the end of June 1996, the cumulative incidence of reported AIDS cases reached a total of 548,102. Of these, 343,000 are known to have died. Clearly, this is an epidemic of historic proportion that is continuing to grow.

While no cure exists for AIDS, we know enough about the disease to prevent its spread. For instance, we know that AIDS is caused by the Human Immunodeficiency Virus (HIV) and is actually the end stage of HIV infection. We also know that the disease is transmitted through exchange of body fluids and it attacks the body's immune system eventually leaving the body unable to fend off infection.

What we do not know is the extent of the epidemic. We have failed to employ the public health procedures which have been successful in curtailing other epidemics in our efforts against HIV. These include confidential HIV reporting and partner notification.

We have made an effort to report cases of AIDS on a state and national level but not cases of HIV. We do not make it a priority to notify those who may have been exposed that their lives may be endangered.

Put simply, the federal government and the public health community have been AWOL in the battle against HIV. Sound medical practices have been abandoned and replaced with political correctness. HIV has been treated as a civil rights issue instead of the public health crisis that it is.

The HIV Prevention Act of 1997 (H.R. 1062/ S. 503) will return sound medical practices to our Nation's public health policy and curtail the spread of the deadly HIV epidemic.

Recent scientific breakthroughs make prompt passage of this bill extremely important. Many of the world's top HIV scientists have suggested that it may be possible to "eradicate" the virus from the body and completely suppress it by using a combination of new HIV drugs. Most believe that these drugs may transform HIV for many from a terminal disease into a chronic disease like diabetes or heart disease. However, researchers agree that *the success of these drugs depends upon starting treatment early.*

This bill aims at protecting the uninfected and at helping those who are infected to discover their status as early as possible to maximize the opportunities now available.

In addition to numerous public health officials across the country, the American Medical Association-- the nation's largest doctors group-- has announced its "strong support" for the HIV Prevention Act of 1997.

The following is a section-by-section summary of the proposal.

### IMPROVED HIV EPIDEMIC MEASUREMENT

**The HIV Prevention Act refocuses our epidemic measurement on HIV infection rather than AIDS.**

Currently every State reports cases of AIDS, which is merely the end stage of HIV infection. By confidentially reporting new cases of HIV, which is already required by 26 states, those responsible for control of the disease can more accurately determine the current extent of the epidemic as well as future trends, rates of progression, direction of spread, possible changes in transmissibility and other critical factors of disease control. Such information will allow for the development of long-term strategies based on reliable data.

Reporting is used to study and access many diseases. In addition to AIDS, many other infectious diseases (such as gonorrhea, hepatitis and syphilis) are currently reported to CDC. To protect confidentiality, many states use codes rather than personal identifiers such as name and address.

### PARTNER NOTIFICATION

**The HIV Prevention Act would require states to inform individuals if they may have been exposed to HIV by a current or past partner.**

Scientists at the National Cancer Institute have estimated that between 650,000 to 900,000 Americans were infected with HIV at the end of 1992, between 120,000 to 160,000 of whom were women (An average of 50,000 Americans became infected *each* year between 1987 and 1992).<sup>1</sup> CDC estimates that up to 950,000 Americans are currently infected.<sup>2</sup> Sadly, most of those infected do not know it and do not get tested until they are already sick with AIDS-related disease.<sup>3</sup> By this point, they have been denied the medical care that can prolong their lives and stave off illness and may have infected others unknowingly.

Partner notification is the only timely way to alert those in danger of infection and is the standard public health procedure for curtailing the spread of virtually all other sexually transmitted diseases.

Partner notification essentially requires two steps. The first is to counsel all infected individuals about the importance of notifying their partner or partners that they may have been exposed. The second is for their doctor to forward the names of any partners named by the infected person to the Department of Health where specially trained public health professionals complete the notification. In all cases, the privacy of the infected person is, and must be, protected by withholding the name of the infected person from the partner being notified. Because names are never revealed, the infected retain their anonymity.

Notification allows for early medical treatment which can prolong and improve lives. It curtails the spread of HIV, and therefore, saves lives. It is also widely supported by most Americans according to a poll published in the New York Post<sup>4</sup> and will bring greater safety to our nation's blood supply.

Partner notification has proven to be highly effective and there is no evidence that partner notification programs discourage individuals from being tested. Between 50% and 90% of those who tested positive cooperate voluntarily with notification. Further, even higher proportions of those partners contacted- usually 90% or more- voluntarily obtain an HIV test.<sup>5</sup> But only 10% or less of people who have recently tested HIV-positive manage, by themselves, to notify their partners.<sup>6</sup>

Legislation requiring *spousal notification* has already been signed into law (Public Law 104-146). It applies only to those partners who are or had been married. It makes perfect sense to expand notification to all of those who may have been exposed to HIV.

At least 32 states have enacted HIV/AIDS-specific partner notification laws, but most do not mandate or impose a duty to notify.<sup>7</sup>

The CDC currently requires states to establish procedures for partner notification for AIDS.

Partner notification is especially important for women because many HIV-infected women (50% to 70% in some studies) do not engage in high risk behaviors but were infected by a partner who does.<sup>8</sup>

Jack Wroten, who heads the Florida's program, said that "I would hope that the controversy surrounding partner notification would cease" because "it works" and "it's very, very productive. And the fact is that the majority [of people], if you ask them, 'Do you want to be notified?' - absolutely."<sup>9</sup>

In addition to saving lives, partner notification also saves money. The CDC has concluded that even if only one in 80 notifications results in preventing a new case of HIV-infection, given the huge medical and social costs of every case (lifetime cost for HIV treatment is \$119,000), notification pays for itself.<sup>10</sup>

## HIV TESTING FOR SEXUAL OFFENDERS

**The HIV Prevention Act requires that those accused of sexual offenses be tested for HIV.**

Many times the victims of rape and other sexual assaults also become victims of HIV.

Because HIV is incurable, rape and molestation victims must have the right to know if they have been exposed to HIV as soon after exposure as possible so they can begin medical treatment immediately if necessary.

Victims can not rely solely on testing themselves for the disease because there is often a lag time that can last for several months between HIV exposure and infection. Therefore, the only timely, logical and practical way for a victim to know if they may be at risk of HIV is to learn the status of their attacker.

Most states allow for victims to find out whether their attackers have HIV, but only *after* convicted of an assault, which may take many months or even years.

A recent Colorado study found that while 3,250 arrests were made for forcible rape, less than a dozen tests were ordered. And in Alabama, because of the lengthy delay in bringing rape cases to trial, no one has used a law that allows victims to find out whether or not their attackers are infected with HIV.<sup>11</sup>

Even if the victim tests negative, knowing the status of their assailant provides many victims with a sense of relief and allows them to seek further medical advice and take precautions if positive.

## HIV AND MEDICAL PROCEDURES

**The HIV Prevention Act protects both health care patients and professionals from inadvertent exposure to HIV. It would do this by encouraging states and medical associations to establish policies to be followed by providers with HIV in the performance of any risk prone invasive medical procedure on a patient. It also allows providers to test a patient for HIV before performing such a procedure.**

Both health care professionals and patients should be given the ability to protect themselves from unwarranted HIV exposure.

Universal precautions (requiring that all patients be treated as if they are infected) do not provide enough protection. Health care workers have been infected with HIV after being stuck with needles or after infected blood entered the workers' bloodstream through an open cut or splashes onto a mucous membrane (like the eyes or inside the nose). Additionally, a new study found that 17% to 25% of health care workers experience adverse reactions such as contact dermatitis from latex gloves used as routine precautions. Some can even suffer life-threatening reactions, including respiratory problems and shock.<sup>12</sup>

As of June 30, 1996, 18,014 of the AIDS cases reported to the CDC were people employed in health care. Overall, 76% of the health care workers with AIDS including 1,178 physicians and 3,019 nurses were reported to have died.

The CDC knows of 51 health care workers in the United States who have been documented as having seroconverted to HIV following occupational exposure. CDC is also aware of 108 other cases of HIV infection in occupationally exposed health care workers whose seroconversion after exposure was not documented.<sup>13</sup>

A recent study of hospital nurses concluded that workplace stress due to the fear of HIV contagion is high and the most effective way to reduce fear is to inform staff of the HIV status of patients.<sup>14</sup>

Seven-teen states have already passed legislation to protect patients from HIV-infected health care workers.<sup>15</sup>

Similar proposals regarding patients and health care providers passed the Senate overwhelmingly in 1991, but were later dropped in conference.

The public would like doctors and dentists with AIDS or HIV to be legally required to inform their patients of their health status according to 93% of those polled in a New York Post survey.<sup>16</sup>

Because an HIV-infected body is still infectious even after death, and can remain so for several days<sup>17</sup>, embalmers and other funeral-service practitioners can be at risk. In fact, it is not unprecedented for HIV infection to occur during an autopsy. The HIV Prevention Act would offer protection for those who work on corpses by allowing testing to determine whether or not a body is infected.

## HIV NOTIFICATION

**The HIV Prevention Act requires that if an insurance issuer requires an HIV test as a condition of application, the applicant is entitled to the results. It also permits adoptive parents to learn the HIV status of a child that they are considering for adoption.**

Twenty-two states do not require insurers to disclose HIV test results to applicants.<sup>18</sup> Therefore, applicants who test positive but are unaware of their status are denied the opportunity to learn their status, seek medical care and prevent exposure to others.

Many states do not permit potential adoptive parents to know the HIV status of a child they are prepared to adopt. Because of the enormous financial and emotional commitment that is necessary when caring for any one who is HIV-positive, this provision is fair both to an infected child and the adoptive parents.

## INTENTIONAL TRANSMISSION OF HIV

**The HIV Prevention Act expresses the sense of the Congress that States should criminalize the intentional transmission of HIV.**

Those who are infected with any communicable disease have a responsibility to prevent transmitting the disease to others. Because no cure exists for HIV, transmitting the disease is the equivalent of delivering a death sentence.

79% of Americans believe that those who knowingly infect another person with HIV should face criminal charges. Half of those surveyed said that people who knowingly transmit the virus should be charged with murder.<sup>19</sup>

While many states already have enacted such laws, many others have not. California, for example, does not and even released an HIV-infected man jailed for not informing his partner before having unprotected sex.<sup>20</sup> Maryland's highest court also ruled that a man who knew he had HIV and then raped three women could not be tried for attempted murder even though he may have infected his victims.<sup>21</sup>

## CONFIDENTIALITY AND HIV

**The HIV Prevention Act expresses the sense of Congress that strict confidentiality must be observed at all times in carrying out the provisions of this Act.**

At least 39 states have laws providing for confidentiality of HIV/AIDS related information. At least 28 have laws that specifically regulated medical records. The remaining states may protect confidentiality under other statutes. Additionally, most states have penalties for unauthorized disclosure of information on patient's medical records.<sup>22</sup>

1. Trends In HIV Incidence In Different Transmission Groups In The United States; Rosenberg, P.S. and Biggar, R.J., 1996 Proceedings 11th International Conference on AIDS.
2. CDC HIV/AIDS Prevention Newsletter; August 1996, page 2.
3. HEALTHLINE, "AIDS: Late Diagnoses Deprive People of Medical Care," February 1, 1996.
4. "POLL" New York Post, May 6, 1991.
5. Chris Norwood. "Mandated Life Versus Mandatory Death: New York's Disgraceful Partner Notification Record," Journal of Community Health, Vol. 20, No. 2, April 1995. Page 164.
6. Norwood, page 168.
7. Tracey Hooker. HIV/AIDS Facts to Consider: 1996. February 1996. Page 46.
8. Hooker, page 13.
9. Nina Bernstein, "When Women Aren't Told," Newsday. February 3, 1996.
10. Norwood, page 164.
11. "No One Has Used 2&1/2-Year-Old Law To Get Sexual Offenders' AIDS Test Results," Associated Press, November 12, 1995.
12. Hooker, page 42
13. CDC HIV/AIDS Prevention Report, August 1996, Surveillance of Health Care Workers with HIV/AIDS.
14. The Quarterly Newsletter of the Robert Wood Johnson Foundation, Issue 2, 1996.
15. Hooker, page 43.
16. "POLL," New York Post, May 6, 1991.
17. Mahlon Johnson, M.D., Working On A Miracle. Bantam Books, February 1997, page 3.

18. "It Was His Health and Their Secret," U.S. News & World Report, August 26, 1996, p. 8.

19. "POLL," New York Post, May 6, 1991.

20. "Judge: State Has No Law Against Knowingly Spreading AIDS," Associated Press, May 30, 1996.

21. Amy Argetsinger, "Md.'s Top Court Says HIV Not Enough To Convict Rapist of Attempted Murder," Washington Post, August 2, 1996.

22. Hooker, page 38.

**American Medical Association**

Physicians dedicated to the health of America

**P. John Seward, MD**  
Executive Vice President616 North State Street  
Chicago, Illinois 60610312 464-6000  
312 464-4184 Fax

February 20, 1997

**The Honorable Tom A. Coburn, MD**  
United States House of Representatives  
429 Cannon House Office Building  
Washington, DC 20515

Dear Congressman Coburn:

The American Medical Association (AMA) is pleased to announce its strong support for the "HIV Prevention Act of 1997" which you plan to introduce shortly. This legislation would refocus public health efforts on HIV prevention by using proven public health techniques designed for communicable diseases. These public health initiatives which result in early detection of HIV infection are now more important because of the tremendous advances that medical science has made. Early intervention combined with effective treatments will enable those with HIV and AIDS to live longer, healthier lives.

In the interest of preventing the spread of the HIV disease, the AMA has long supported the concept of confidential reporting of all HIV-positive people, including physicians and other health care workers. Similarly, we have also recommended that a system for contact-tracing and partner notification for unsuspecting sexual or needle-sharing partners who might have been HIV-infected be established in each community. The AMA is pleased that confidential reporting and partner notification are central provisions in your bill. This is in keeping with our belief that those infected with HIV and AIDS be treated in the same manner as other infectious and contagious diseases.

To protect victims of sexual assault, the bill would also require those indicted of sexual offenses be tested for HIV. Early knowledge that a defendant is HIV infected would allow the victim to gain access to the ever-growing arsenal of new HIV treatment options. In addition, knowing that the defendant was HIV infected would help the victim avoid conduct which might put others at risk of infection.

The AMA believes this bill will greatly increase public health HIV prevention efforts that until now have focused on AIDS. We commend you for your commitment to this worthy cause.

Sincerely,

A handwritten signature in cursive script that reads "P. John Seward, M.D.".

P. John Seward, MD

ELIZABETH SANCHEZ  
BROOKLYN, NEW YORK 11206

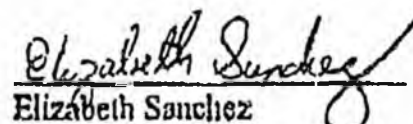
TO: Congressman Tom A. Coburn, M D.

I would love to be with you at your press conference to introduce this Comprehensive HIV Prevention Proposal. Unfortunately, do to health reasons, I am unable to attend.

I only wish such a law existed before I contracted the HIV AIDS virus. Because I, and I am sure many other women like me, might have been saved from the HIV AIDS virus.

I am living proof of what can happen to a person because AIDS notification does not exist. I was deliberately infected by a person I loved; Subsequently, I learned he infected at least ten other women before he died of AIDS.

Infecting people with the AIDS virus should be a crime, I hope your proposal will pass and save peoples lives.

  
Elizabeth Sanchez

*A.S.A.P.*

---

## Americans for a Sound AIDS/HIV Policy

P.O. Box 17433 • Washington, DC 20041 • Telephone: 703/471-7350 • Fax: 703/471-8409

March 6, 1997

Congressman Tom Coburn  
429 CHOE  
Washington, DC 20515

Dear Congressman Coburn,

Treating AIDS/HIV as a civil rights issue rather than as a medical/public health issue has been a disastrous failure. As effective treatments for HIV positive individuals are now being brought forward, over half the people in the United States infected with this disease have no idea they carry the virus, and thus cannot benefit from these new treatments.

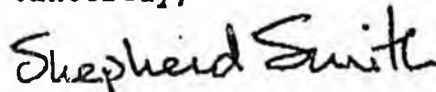
While promising people extraordinary confidentiality and privacy protections once sounded like a reasonable inducement to get people to voluntarily come forward to be tested, that sophistry has proven an abject failure. We must immediately treat HIV/AIDS as the serious public/health issue it really is and address it as we do all other serious contagious diseases.

The 1997 HIV Prevention Act that you are bringing forward today offers the sound medical public/health solution that is so desperately needed to end this epidemic. You will have our full support in seeing this bill enacted into law.

We commend your courage and judgement in standing up to those who would still want to support a failed policy of self-interest over the public good. I am certain you will find an overwhelming majority of your colleagues standing with you as this moves forward.

We thank you, and look forward to working with you on this critical issue.

Sincerely,



W. Shepherd Smith, Jr.  
President

---

*Dedicated to limiting total suffering from AIDS/HIV.*



## INDEPENDENT WOMEN'S FORUM

For Immediate Release

Contact: Jeff Rosenberg  
301-972-2367

### Independent Women's Forum Hails HIV Prevention Act of 1997 As An Effective Public Health Remedy to Combat HIV/AIDS; A Crucial Women's Issue

WASHINGTON, D.C. (March 13) -- The Independent Women's Forum (IWF) today heralds the introduction of the HIV Prevention Act of 1997 as a turning point in the fight to stop HIV/AIDS, calling the bill the first attempt to treat the disease as a public health matter rather than as a political issue.

Partner notification, accused sex offender testing, permitting adoptive parent notification, and new preventative reporting requirements, all are urgently needed to protect people at risk.

Barbara Ledeen, IWF executive director for policy, called passage of the legislation a crucial issue for women. "This legislation will give women the right to know, to choose to avoid becoming infected with this deadly disease," Ledeen said. "It will also ensure that women who do become infected will be able to take advantage of recent scientific breakthroughs -- we now have the ability to prolong and improve the quality of life of individuals who are HIV infected, but only if we diagnose and begin early treatment. Women too often are not allowed to know that they are infected with HIV until they begin to show signs of AIDS-related illnesses."

"Women are exposed to HIV every day without their knowledge. In some states, rape victims don't have the right to know if their attacker is HIV-positive," continued Ledeen. "Women have a right to protect themselves."

"We can't help but notice that traditional women's and civil rights organizations, historically concerned with women's right to know, in this case, apparently do not agree. Unfortunately, none of these groups are represented here today; nor have they spoken out for a woman's right to know if her sexual attacker has sentenced her to death by infecting her with HIV. When women are supposedly raped on military bases, NOW calls for an investigation. But NOW seems not to care whether these same women might have been infected with HIV."

Ledeen concluded by commending the bipartisan group of over 50 original co-sponsors. "This bill represents a major step forward in our strategy to combat the AIDS epidemic by focusing on preventative measures and facilitating the collection of important data that will assist public health officials to track the scope and direction of the disease's spread."

The Independent Women's Forum is a non-profit, non-partisan organization based in Washington, D.C.

**Christian Coalition**

Capitol Hill Office

March 13, 1997

Honorable Tom Coburn  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Coburn:

On behalf of Christian Coalition, I commend you for introducing the comprehensive legislation to prevent HIV (Human Immunodeficiency Virus).

Acquired Immune Deficiency Syndrome (AIDS) is the number one cause of death for Americans between the ages of 25 and 44. HIV, which causes AIDS, affects all people regardless of ethnic origin, gender, age or class and because there is currently no medicine that will cure HIV, it is imperative to curtail its spread and prevent new cases of HIV infection. Your legislation will put in place necessary steps to begin testing, notifying, and reporting on HIV status which can help protect the uninfected while also helping those who are infected to know as early as possible so they can begin treatment.

We consider this legislation necessary and consistent with promoting sound general public health policies and procedures while also addressing the needs of individuals and protecting their confidentiality. We are pleased to lend our support.

Sincerely,

Heidi H. Stirrup  
Director, Government Relations



March 12, 1997

The Honorable Tom Coburn  
511 Cannon House Office Building  
House of Representatives  
Washington, D.C. 20515-3602

Dear Congressman Coburn:

The AIDS epidemic has, thus far, avoided traditional public health treatment, but Congress now has the opportunity to pass new legislation that will reverse this deadly trend.

The HIV Prevention Act of 1997 will treat the virus that causes AIDS as what it is: a deadly health threat not a political issue. For too long, the federal government's policies toward HIV have ignored time-tested methods for stopping epidemics. In an effort to save lives this legislation establishes a confidential, national HIV reporting effort, requires partner notification, mandates testing for sexual offenders, protects health care patients and professionals from inadvertent exposure to HIV, and gives patients access to insurance-required HIV test results. It also allows adoptive parents to learn the HIV status of a child, criminalizes intentional transmission of HIV, and ensures the confidentiality of infected persons. The bill strikes just the right balance between individual rights and the interests of the larger community.

The HIV Prevention Act of 1997 is a sensible, compassionate step toward containing the tragedy that has taken the lives of hundreds of thousands of Americans since 1981.

Family Research Council is pleased to support the HIV Prevention Act of 1997, a long-overdue addition in the fight against AIDS.

Sincerely,

Gary L. Bauer  
President

Family Research Council

801 G Street, NW • Washington, DC 20001 • (202) 393-2100 • FAX (202) 393-2134 • Internet [www.frc.org](http://www.frc.org)

# WOMEN AGAINST VIOLENCE

An advocacy group for women crime victims

Deldre Raver  
Co-Founder  
Elizabeth Enright  
Co-Founder

(718) 849-0780  
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**We strongly support the HIV Prevention Act of 1997, which will guarantee rape victims the right to test their assailants for the HIV virus.**

It is inhumane to deny anyone the opportunity to learn if they have been exposed to the HIV virus. This is especially true of those who have already been victimized once by rape. Rape victims are currently victimized a second time by being denied an opportunity to learn their assailants' HIV status. HIV is incurable and early treatment is critical in improving the health and extending the life of the victim. Our current policies place the life of the rape victim at stake for a second time, by denying early treatment.

Victims cannot rely solely on testing themselves for the disease because there is often a significant lag time between HIV exposure and infection. Therefore the only timely, logical and practical way for a victim to know if she may have contracted HIV is to learn the status of her attacker.

Presently, most states allow rape victims to test their assailants for HIV, but only after the rapist is convicted, which may take months, and years in many cases. This restriction dilutes the original intention of the legislation meant to protect rape victims and delays medical treatment for those infected with HIV.

What is even more reprehensible, is that today accused rapists are using their HIV status as a plea bargaining tool with prosecutors. Rapists will submit to an HIV test only if the prosecuting attorney drops or reduces the rape charge. If the prosecuting attorney insists on pursuing a rape charge, the victim is forced to wait years for a conviction before their attacker is tested for HIV. Our current laws force prosecutors to choose between prosecuting criminals and protecting the health of victims.

Rape victims should be given as much medical information as possible. After enduring a brutal assault, rape victims deserve compassionate help that includes determining whether or not exposure to HIV has occurred. Our laws should not aggravate the terror that rape victims face when coping with the possibility of pregnancy, venereal diseases and the threat of HIV.

Not allowing rape victims to legally learn the HIV status of the defendant follows a pattern of harassment in the criminal justice system that often burdens rape victims. To knowingly infect a woman with HIV is the worst form of violence. It should be a crime for sex offenders and child predators to knowingly expose their victims to HIV and they should be charged with attempted murder. Because of privacy laws, this is currently impossible.

Because women are most at risk of infection by the HIV virus, **Women Against Violence** supports the immediate passage of this legislation.



CHANGING THE FACE OF HEALTH CARE  
BY CHANGING THE HEARTS OF DOCTORS

February 24, 1997

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Honorable Tom A. Coburn, MD  
 U.S. House of Representatives  
 Washington, DC 20515-3602

Dear Representative Coburn:

The Christian Medical & Dental Society is pleased to endorse the principles contained in the HIV Prevention Act of 1997. Having reviewed the legislation, we are encouraged to note that the bill advances important principles such as:

1. Focusing attention on preventive measures to stop the spread of the human immunodeficiency virus (HIV) as opposed to attending primarily to the later development of acquired immune deficiency syndrome (AIDS).
2. Recognizing the special risks both incurred and posed by health professionals involved in invasive procedures.
3. Protecting others, and enforcing personal responsibility regarding the spread of the virus while providing counseling and information to infected individuals.
4. Facilitating the collection of vital data by public health officers to use in evaluating the scope of the disease and in developing strategies to address the public health concern in their communities.

I commend you for your efforts to move our nation closer to an approach that promotes compassion and respect for the individual while placing a high value on the public health interest. Thank you for your leadership in this area.

Sincerely,

Gene Rudd, MD  
 Associate Director



CHRISTIAN MEDICAL & DENTAL SOCIETY

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P.O. Box 18499  
Irvine, CA 92623  
1-800-HIV-HOPE  
fax 714-474-0610

February 19, 1997

The Honorable Tom Coburn  
511 Cannon  
Washington D.C. 20515

Dear Mr. Coburn,

On behalf of the Board of Directors of He Intends Victory, I would like to thank you for the proposed HIV Prevention Act of 1997. As you know, we are an Evangelical Christian ministry to those affected by AIDS and have seen the need for this type of movement by our government for some time. Four of our nine Board members are HIV+ themselves so consequently we have a personal interest.

After examining the content of your bill, we feel you have very sensitively brought balance to the medical community, those infected with HIV, and those affected. *AIDS is preventable!* And this bill is an excellent beginning toward returning sound medical practices to our nation's public health policy and to curtailing the spread of HIV and AIDS.

If there is anything we can do to further endorse this legislation, please feel free to contact me.

Sincerely,

Rev. Bruce A. Sonnenberg  
Board President

*A Ministry To Those Affected By AIDS*

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## Medical Institute for Sexual Health

*Based on science, built on character, bridged through education...the new sexual revolution.*

Joe S. McIlhanev, Jr., M.D.

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February 20, 1997

The Honorable Tom A. Coburn  
U.S. Congressman, Second District, Oklahoma  
511 Cannon Building  
Washington, D.C. 20515

Dear Dr. Coburn:

The Medical Institute for Sexual Health has reviewed the HIV Prevention Act of 1997, and we are pleased to strongly endorse it. As a medical organization, we feel it is important for the national government to intercede in what has become a national epidemic. This is especially true for the protection of young people.

The Centers for Disease Control has now reported more than 500,000 cases of AIDS in the U.S. cumulatively; more than 340,000 of these people have died. The U.S. lost about 400,000 people in World War II. This helps to put into focus how many people from our country have died in this AIDS/HIV epidemic. Since the epidemic has not been controlled, it is important to take measures to protect people in our society from a disease that is uniformly fatal (with rare exceptions). We feel that your legislation would promote the public health without neglecting the needs and concerns of individuals.

We are grateful for the work you have done in advancing this bill and will be glad to support you in any way to get this important legislation passed.

Sincerely yours,

*Joe S. McIlhanev, Jr.*  
Joe S. McIlhanev, Jr., M.D.

JSMcl:cm

AP 04-24-97 04:54 AMT

PM-IL--HIV Killing,570

At least 100 girls and women admit having sex with HIV-infected man

stlvvvdh

ST. LOUIS (AP) More than 100 women and girls in Illinois and Missouri say they had sex with an HIV-positive man killed in January, and 13 have tested positive for the virus that causes AIDS, health officials say.

Health officials had previously said that during the past two years, Barnell McGee of East St. Louis, Ill., had sex with 61 women and girls 35 from Missouri and 26 from Illinois.

In the past two weeks, 40 more women have come forward and been tested for HIV. Many of them are still waiting for test results, which can take up to three weeks.

Health officials say some girls told them McGee cruised for sex partners in front of schools, liquor stores and skating rinks. He preyed on girls with low self-esteem, making them feel important with flattery and gifts, they said.

McGee, 28, was diagnosed with HIV in 1992. He was shot to death Jan. 15 on a St. Louis street. Officials now are investigating whether it was a revenge killing. A few months before his death, McGee was shot and wounded in a similar incident near East St. Louis.

Last week, one woman tested positive for HIV. That brings the total to 13 women and girls infected by McGee with the AIDS virus, health officials say. One delivered an HIV-positive baby.

Workers for clinics in both states have spent long hours tracking down McGee's sexual partners and their partners since learning shortly after his death about his sexual behavior.

At the St. Louis Health Department, the McGee case has increased the workload in the communicable disease division by 25 percent, Dr. Richard Biek said.

Part of that comes from heightened publicity in the past two weeks, he said. People who never knew McGee are concerned about having the AIDS virus.

The East Side Health District in Illinois has posted fliers in East St. Louis urging people to get tested for the AIDS virus, said Gracie Hutchinson, an assistant administrator for nursing. Workers there are also visiting more schools to educate young people about sexually transmitted diseases.

"Girls are asking a lot of questions," Ms. Hutchinson said. "They don't want to get HIV."

In a few days, at least three workers from the national Centers for Disease Control and Prevention will help area health officials with AIDS counseling, testing and education. They also will follow up on cases in which a person tests positive for the virus.

"This is routine," said Gary West, acting director of the disease center's division of HIV/AIDS prevention in Atlanta. "It shouldn't be seen as an unusual event."

The disease center has workers in more than 300 health departments nationwide, including some in Missouri and Illinois, West said.

Health departments are getting help from women and girls who had sex with McGee, who was known as "Boss Man." They have various racial backgrounds, come from all parts of the region, and range in age from 12 to 22. Voluntarily, they're contacting people they suspect of having had sex with McGee.

"It's a real testament to women," said Elisa Daves, a spokeswoman for the Missouri Department of Health's bureau of sexually transmitted diseases. "They're looking out for each other."