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**17**

# FISCAL NOTE

No: 6

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

Bill. version: SB 17  
**BILL NO:** (H) Publish Date: 4/15/98

Revision Date: 03/09/98 Dept. Affected: Public Safety  
 Title: Criminal Transmission of HIV BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Sen. Taylor  
 Requestor: House HESS 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						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	-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 *Ronald L. Otte* Date: 4-9-98  
 Agency: Department of Public Safety

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# FISCAL NOTE

Bill Version: SB 17

(H) Publish Date: 4/15/98

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

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

**FUND SOURCE** (Thousands of Dollars)

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

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

Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law

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.

FISCAL NOTE

No: 4

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

Bill Version: SB 17  
(H) Publish Date: 4/15/98

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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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FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 17

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.

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

... 3  
Bill Version: SB17  
(S) Publish Date: 4/11/97

Revision Date: _____	Dept. Affected: <u>Department of Law</u>	_____
Title: <u>"An Act creating the crime of criminal transmission of human immunodeficiency virus (HIV)."</u>	BRU: <u>Criminal Division</u>	_____
Sponsor: <u>Senator Taylor</u>	Component: <u>Criminal Division</u>	_____
Requester: <u>Senate HESS Committee</u>	COMPONENT SERIAL NO. <u>2085</u>	_____

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

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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 (FY97) 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)

... the risk of spreading HIV.

Prepared by: <u>Joan M. Kasson</u>	Phone: <u>465-5370</u>
Division: <u>Administrative/Services Division</u>	Date: <u>4/10/97</u>
Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u>	Date: <u>4/10/97</u>
Agency: <u>Department of Law</u>	

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# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

N 2  
 BILL NO: Bill Version: SB17  
 (S) Publish Date: 4/11/97

Revision Date: 04/07/97 Dept. Affected: Public Safety  
 Title: Criminal Transmission of HIV BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Sen. Taylor  
 Requestor: Senate HESS COMPONENT SERIAL NO. 0799

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

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
<b>OPERATING</b>						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

**FUNDING: (Thousands of Dollars)**

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

Estimate of current year (FY 97) 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: 04/07/97  
 Approved by Commissioner: Ronald L. Otte *Ronald L. Otte* Date: 4-7-97  
 Agency: Department of Public Safety

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# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

No. 1  
Bill Version: SB17  
(S) Publish Date: 4/11/97

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

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

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

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( / )</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>
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**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/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 97) cost: \$ 0.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

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

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

Approved by Commissioner: Mark Bover  
Agency: Department of Administration

*Alison M. Elger*  
Date: 4/10/97

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# Alaska State Legislature

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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, 1996, 369 Alaskans had been confirmed to have AIDS. That's since tracking began in 1982. Of these cases, 194 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? In 1990, the Attorney General's office reviewed that question and suggested that ...quote..."it might be possible to prosecute the person for reckless endangerment"....end quote.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

**Sponsor Statement - SB 17**

**Page Two**

**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".**

**Twenty seven 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 brief and to the point. It creates the crime of criminal transmission of HIV and covers actions and conduct known to transmit the disease.**

**The bill also provides an affirmative defense when the person exposed knows beforehand that the action could result in infection. The bill also provides a provision excluding perinatal transmission of the virus and to assure that an individual is not prosecuted for an involuntary act.**

**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.**

STATE OFFICE  
**ALASKA PEACE OFFICERS ASSOCIATION**

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



January 17, 1997

RECEIVED JAN 24 1997

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Craig  
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Senator Robin Taylor  
Alaska State Legislature  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182

Dear Senator Taylor,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing Senate Bill 17 creating the crime of criminal transmission of human immunodeficiency virus (HIV). At a recent meeting of the APOA State Board, we decided unanimously to support this legislation. We believe that specific laws need to be enacted to address this ever-growing problem and further feel that your bill addresses this need.

In reviewing this bill, we did find that the proposed language on lines 7 & 8 of page 1 was a bit confusing. We suggest a change be made to that language without changing the meaning or intent of the bill.

We encourage you to call on us when there are hearings on this bill, so that we may testify about the need for this legislation. If you need assistance as you shepherd this bill through the legislative process, please call me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely,

  
Michael Corkill  
APOA State President

# 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 <sup>DG</sup>  
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 968 (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).

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.

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 1496, Act 614 (89) - felony - "sexual intercourse" (without 1st informing others)

California, SB 1002, Chapter 1154 (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); HD 1519 (88) - felony of the third degree, blood/body fluids donation;

Georgia, HB 1261, 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 1471 (89) - class 2 felony for criminal transmission = intimate contact; blood, semen, tissue or organ donation; sex, 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

FROM: NCSL DENVER

KNOWING EXPOSURE/TRANSMISSION  
PAGE 2

SB 244 (82) - 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 709 (88) - misdemeanor (may not knowingly transfer or attempt to transfer)

✓ Michigan, HB 5026, Public Act 490 (83) - felony, sexual penetration (if they do not inform other person of the presence of disease)

Mississippi, HB 515, chapter 557 (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 1166 (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 B 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

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HEALTH AND ENVIRONMENT  
ENERGY AND POWER

**Congress of the United States**  
**House of Representatives**  
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## 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>

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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, MD".

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.*

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## 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 CHOB  
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.

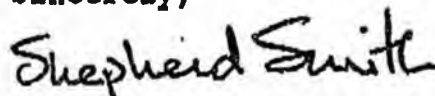
While promising people extraordinary confidentiality and privacy protections once sounded like a reasonable inducement to get people to voluntarily come forward to be tested, that sophistry has proven an abject failure. We must immediately treat HIV/AIDS as the serious public/health issue it really is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

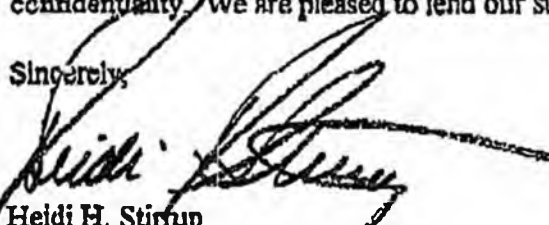
Dear Congressman Coburn:

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:

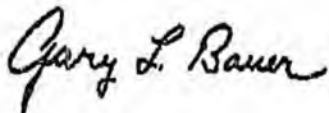
The AIDS epidemic has, thus far, avoided traditional public health treatment, but Congress now has the opportunity to pass new legislation that will reverse this deadly trend.

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) 849-9780  
Web Address: WWW.IWF.ORG

**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

**PRESIDENT**  
Donald K. Wood, MD

**EXECUTIVE DIRECTOR**  
David Stevens, MD

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Josh McDowell Ministries

Haddon Robinson, PhD  
Professor  
Gordon-Conwell Theological  
Seminary

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

501 4th Street • P.O. Box 5, Bristol, TN 37621 0005

Phone: 423-844-1110 • Fax: 423-844-1005 • 75364.1710Compuservu.Com



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

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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

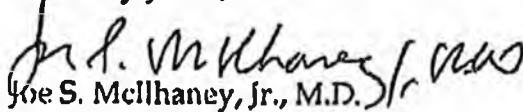
Dear Dr. Coburn:

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., 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, Darnell 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."

their status to potential partners. Indeed, even people in long-term relationships lie about their status. These are the realities of HIV transmission today. The people I am talking about are nothing like Nushawn Williams, the drug dealer who is believed to have infected numerous people in New York State. They did not grow up in ghettos surrounded by street gangs. They

EARLY three years ago I tested positive for HIV. Since then I have discovered a support system that steadfastly refuses to encourage responsible behavior, and a society whose silence ensures the continued spread of this disease. Most HIV-positive people I have encountered do not voluntarily disclose

*The Centers for Disease Control and Prevention (CDC) estimates that more than 550,000 people in the United States are HIV positive, with at least 40,000 people newly infected every year. In a recent study, 40 percent of sexually active HIV patients did not inform a sex partner about their condition. Despite the new drug therapies being developed, the end of the AIDS epidemic is not in sight. Prevention is as important as ever. In the following essay, the author, who is HIV positive, sheds provocative yet necessary light on an important way to slow the spread of this deadly virus.*

From NEW YORK TIMES  
ALAN J. MAYER

# The Irresponsibility That Spreads AIDS

## READER'S DIGEST • APRIL 1998

come from stable homes in safe neighborhoods. They went to high school and college and graduate school.

They remain silent because it is difficult to tell the truth, and because their friends and community support them in their silence. Their doctors, psychiatrists, even the AIDS organizations they call for help, offer comfort and sympathy but don't necessarily encourage them to tell the truth.

We are more than 15 years into the AIDS epidemic, and I have been asked my status by prospective partners only twice. Since testing positive, I've made a point of disclosing my status to any potential partner; all but one told me I was the first person to do so. Each believed that if he practiced safe sex, there would be no need to know.

I practiced safe sex. There is no such thing as safe sex, only levels of risk that one must choose. In making that choice, a partner's HIV status is *the* critical piece of information.

Leading advocacy groups have perpetuated the culture of irresponsibility. Last year when I called the hot line for the Gay Men's Health Crisis, one of the nation's leading AIDS service agencies, I was advised to "experiment"—informing some partners of

my HIV status while remaining silent with others. In this way I could decide which was more comfortable for me.

The CDC will only "suggest that you might want to consider informing your partner," a hot-line counselor told me. Counselors at the San Francisco AIDS Foundation said it was their job to dispense information, not moral or ethical recommendations, and, again, that I must do what makes me feel comfortable.

We are not talking about comfortable here. We are talking about life and death.

The emphasis on the individual's right, without an equally strong emphasis on the individual's responsibility, is wrong and is a direct cause of the spread of this disease.

Groups such as the Gay Men's Health Crisis claim they cannot dictate behavior. Granted. But that is all the more reason that AIDS organizations have a responsibility to encourage people who are HIV positive to do what is right.

For years the AIDS community has rallied around the battle cry "Silence = Death." What it has failed to realize is that silence comes in many forms and that all are lethal.

Reprints of this article are available. See page 208.



*Roundabout.* I flew to Denver for my birthday, and my parents treated me to dinner at our favorite Italian restaurant. When the maitre d' asked how we were enjoying our meal, I said, "I came all the way from California just to eat here tonight."

"That's nothing," he replied with a laugh. "I came all the way from Italy to serve you."

—Contributed by Erin McNamara

# 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 services

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VOL. 66, NO. 26

A NATIONAL SURVEY OF CURRENT CASE LAW

JANUARY 13, 1998

## SUMMARY AND ANALYSIS OF SIGNIFICANT COURT OPINIONS

### HIGHLIGHTS

#### **Voter-Initiated Lifetime Term Limits for California Legislators Survive Constitutional Attacks on Merits and Initiative Procedure**

Overturing a three-judge panel opinion, and agreeing with an earlier holding by the California Supreme Court, the en banc Ninth Circuit rules that a 1990 voter initiative placing lifetime term limits on California lawmakers doesn't violate the First and Fourteenth Amendment rights of voters or candidates.

The court rejects the panel's reasoning that the initiative measure is invalid because voters weren't given adequate notice of the lifetime nature of the term limits. The court goes on to hold that the measure's impact on voters' right to choose candidates of their choice and on incumbents' right to run again for office are "not severe." It says the term limits measure is a neutral candidacy qualification justified by the state's legitimate interest in curbing unfair incumbent advantages. **Page 1405**

#### **Wetlands Discharge Conviction Spoiled by Invalid Regulation; Private Citizens Keep Their 'Environmental Justice' Claims in Court**

Faulty jury instructions based in part on an invalid Clean Water Act regulation spoil the felony conviction of a residential developer charged with discharging fill material into wetlands without a permit. The Fourth Circuit says the jury instructions tracked a regulatory interpretation of covered wetlands that is too broad because it purports to regulate activity that merely "could affect" interstate commerce. **Page 1406**

On another environmental front, the Third Circuit allows citizens of predominantly black Chester, Pa., who claim the state has issued too many waste facility permits for their community, to maintain a private action under "discriminatory effect" regulations promulgated by EPA under Title VI of the 1964 Civil Rights Act. **Page 1404**

#### **Statutory Limits on Baby Bells' Entry Into Long-Distance Market Struck Down Under Infrequently Invoked Bill of Attainder Clause**

The 1996 Telecommunications Act's restrictions on regional Bell operating companies' provision of long-distance and other services are an unconstitutional bill of attainder, a federal district court in Texas rules.

The court says the restrictions impose onerous economic conditions on the Bells, but not on similarly situated competitors, and thus single out the Bells for legislatively imposed punishment because of their past affiliation with one-time antitrust defendant AT&T or their presumed future anticompetitive conduct. The FCC's argument that the statute merely revamps provisions of the 1982 AT&T consent decree, moving them from the judicial to the legislative sphere, is rebuffed by the court, which says the Bill of Attainder Clause is a separation of powers provision meant to snuff such maneuvers. **Page 1414**

### IN THIS ISSUE

*A complete topical index of Case Alert.*

**BANKING:** The U.S. Court of Federal Claims rules for acquirors of troubled thrifts on multi-billion dollar contract claims against the federal government tied to a 1989 law that changed the accounting and regulatory treatment of the acquired savings and loans. **Page 1403**

**BANKING:** A breach of contract suit against the FDIC as receiver is a suit against the United States governed by the six-year statute of limitations in 28 USC 2401(a), the D.C. Circuit holds. **Page 1403**

**CIVIL RIGHTS:** A federal agency's regulations under Title VI of the 1964 Civil Rights Act barring use of federal funds for purposes that have a discriminatory effect may be enforced by private parties, the Third Circuit rules. **Page 1404**

**CRIMINAL LAW:** California sentence enhancements for men who commit statutory rape while knowing that they are HIV-positive does not violate equal protection or the Eighth Amendment, a state appellate court says. **Page 1405**

**ELECTIONS:** California's placement of lifetime term limits on state legislators is constitutional, the en banc Ninth Circuit holds. **Page 1405**

of the enabling statute, (2) the statute properly permits the implication of a private right of action, and (3) such implication furthers the purpose of the statute.

EPA's regulation clearly satisfies the first condition, the court said. The third condition is also satisfied, it said, because empowering citizens to act as private attorneys general adds an avenue for challenging discriminatory acts by recipients of federal funds and gives citizens effective protection against discrimination. Both of these results further the goals of Title VI, it said.

In concluding that the second factor is also satisfied, the court noted that the legislative history includes at least some suggestion of an intent to create a private enforcement right and that implying such a right is consistent with the underlying purpose of the statute.

The court rejected the state's argument that EPA's provision of an administrative mechanism to deal with allegations of unintentional discrimination precludes a private cause of action. The procedural requirements in Section 602 and its implementing regulations are appropriate as notice mechanisms when a federal agency may be commencing a process that will end up terminating an entity's funding, the court said. Because such a drastic result would not be adjunct to a private cause of action, the requirements are not inconsistent with implying such a private right, the court said.

In support of its ruling, the court cited other federal appellate decisions involving regulations issued by the Departments of Education, Transportation, and Housing and Urban Development.

Full text at <http://lw.bna.com/#0113>

### Criminal Law—Sex Offenses

#### **Sentence Boost for HIV+ Adult Males Who Have Sex With Minor Girls Is Valid**

■ *California statute imposing three-year sentence enhancement on knowingly HIV-positive persons who have sexual intercourse with minor females does not violate Fourteenth Amendment's Equal Protection Clause or Eighth Amendment.*

**A** California statute that imposes a three-year sentence enhancement upon men who commit statutory rape while knowing that they carry the human immunodeficiency virus passes constitutional scrutiny, the California Court of Appeal, Sixth District, held Dec. 19. (*Guevara v. Superior Court, Santa Cruz County, Calif CtApp 6thDist, No. H016326, 12/19/97*)

The court also held that unprotected, vaginal intercourse between an HIV-positive male and a female does not pose sufficient risk of transmission of the disease to constitute an aggravated assault.

The defendant had unprotected consensual sex with the minor victim while he knew he was HIV positive and did not inform the minor of his HIV-positive status. He was charged with various offenses, including unlawful sexual intercourse and aggravated assault.

**No Equal Protection Flaw.** Upholding the sentence enhancement against constitutional challenges, the court compared it to gender-specific statutory rape laws that have been held not to violate equal protection principles. The same rationale that supports these laws—

that only females bear children, who in this context may be born HIV-positive—supports the gender distinction made by the sentence enhancement statute, Judge Nathan D. Mihara said.

Nor does the enhancement statute violate equal protection by punishing HIV-positive persons but not the carriers of other diseases, the court said. The defendant argued that persons with hepatitis, polio, herpes, and many other communicable debilitating diseases are similarly situated. But the court responded that these diseases are, unlike AIDS, either curable by treatment, not sexually transmitted, or not inevitably deadly. No other communicable diseases pose this same threat to sex crime victims, the court said.

The court also rejected the defendant's arguments that the enhancement violates the Eighth Amendment by punishing status rather than conduct. Unlike the California statute criminalizing "narcotics addiction" that was held invalid in *California v. Robinson, 370 U.S. 660 (1962)*, the enhancement statute does not criminalize the status of being HIV-positive because it applies only when a knowingly HIV-positive individual commits specified criminal conduct, the court reasoned.

**No Aggravated Assault.** The defendant was charged not only with unlawful sexual intercourse, but also with aggravated assault. Under the state's penal code, assault is punishable as a felony—aggravated assault—when the perpetrator "commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury."

The court concluded that the defendant's actions were not sufficient to support a charge of aggravated assault. It acknowledged that the victim's consent did not vitiate either the unlawful act or mens rea elements of assault. However, in light of medical studies showing that a single incident of unprotected sex between an HIV-positive male and an uninfected female is not likely to result in transmission of the infection of the female, the court held that the defendant's act was not "likely to produce great bodily injury," as required by the assault statute.

Full text at <http://lw.bna.com/#0113>

### Elections—State Regulation

#### **Term Limits for California Legislators Resurrected by En Banc Ninth Circuit**

■ *California voter initiative amending state constitution to place lifetime term limits on state officers does not violate First and Fourteenth Amendments.*

**P**roposition 140, which was adopted by California voters in 1990 to place term limits on state legislators, does not violate the First and Fourteenth Amendment rights of voters, the en banc U.S. Court of Appeals for the Ninth Circuit held Dec. 19. (*Bates v. Jones, CA 9 (en banc), No. 97-15864, 12/19/97*)

By an 8-3 vote, the court rejected an earlier three-judge panel ruling that the initiative matter was constitutionally invalid because voters were not adequately informed that the term limits were for life instead of merely a restriction on consecutive legislative terms.

Issue 28  
May 6, 1998

# HIV update

## **Therapies May Lower Perinatal HIV Transmission By Up to 70%**

The administration of single or combination drug therapies to infected mothers during pregnancy and labor can lower perinatal transmission by up to 70%, according to Dr. John Lambert, assistant professor at the Institute of Human Virology at the University of Maryland, who spoke at the 1998 Mid-Atlantic Symposium on HIV and AIDS Friday. The *Richmond Times-Dispatch* reports that advanced drug therapies have reduced HIV-related deaths while "also saving infants from contracting HIV from their mothers." Since the early 1990s, the number of HIV-infected babies has "decreased from a high of about 1,500 ... to about 400 today," Lambert said.

Along with the Centers for Disease Control and Prevention, Dr. Lambert "advocates universal AIDS testing of pregnant women," noting that between 5,000 and 10,000 women infected" with HIV become pregnant each year. Oftentimes, "women don't even know they're carrying the AIDS virus until their child becomes sick, and that's a little late for preventative measures," he said. Patients "are often poor people, inner-city people, street people, drug-using people ... who think they are low-risk until they have an infected baby." Lambert cautioned, however, that although the "enormously effective AIDS drug" AZT "has been shown to reduce the rate of transmission from the mother to the baby from 25% to 8%," it is unknown how "safe" it is "in the long-run."

Richmond Times-Dispatch, 5/2/98

## **Success Against AIDS Lulls Gays Back Into Unsafe Sex**

Recent studies suggest that with the new AIDS treatments and encouraging statistics, many homosexual men are falling back into unsafe practices. A small San Francisco study reported in the *New England Journal of Medicine* found that 26 percent of homosexual men participating were less concerned about contracting HIV since the widespread use of new anti-HIV treatments. Another report, conducted by researchers at the Johns Hopkins School of Hygiene and Public Health, found that 39 percent of homosexual men surveyed had unprotected sex in the prior month. Some gay men at high-risk for the virus are engaging in unsafe sex again following the introduction of protease inhibitors, and some AIDS activists fear that the drugs are creating a false sense of security among high-risk populations. The number of new AIDS cases among adults dropped in the United States from its peak at 42,367 in the first half of 1993 to

almost half of that in the most recent survey. Anthony Fauci, director of the National Institute of Allergies and Infectious Diseases, noted, "Certainly, you see the inklings of people who otherwise would have been more cautious who are now under the mistaken impression that it is an easily manageable disease, which is not catastrophic if you wind up getting infected." While the drugs have helped increase the survival time of patients

infected with HIV, they do not work for everyone, and there are questions as to the duration of their benefit. A study being conducted by researchers at the University of California at San Francisco of 136 HIV-positive subjects indicates that over half of the participants are failing to improve while taking the new medication.

Washington Times, 5/5/98, P. A3; Kilzer, Lou

### **Georgia Supreme Court Upholds HIV Testing Law**

The Georgia Supreme Court on Monday upheld a state law that allows crime victims to seek HIV testing of their assailants when they believe they have had "significant exposure" to their blood or body fluids. The law does not violate the right of privacy or the equal protection clauses of the state and federal constitutions, the court ruled.

The issue stems from a case in which two members of the Waycross Police Department attempted to arrest Malik "Chavis" Adams in a store to serve a misdemeanor trespass warrant. A struggle followed and the state moved to compel Adams to submit to an HIV test because one of the officers was scratched and bleeding as a result of the struggle, and Adams had a bloody bandage on his hand. A superior court judge in Ware County granted the state's motion to compel the test and denied Adams' motion for a stay. In an appeal to the Supreme Court, Adams claimed the statute was unconstitutional because it violated his right to privacy and equal protection guarantees and constituted an unreasonable search and seizure unsupported by probable cause.

All seven members of the appeals court upheld the law's constitutionality.

Associated Press, 5/4/98

### **Hawaii Legislature Passes Bill to Allow HIV Testing of Sexual Assailants**

Hawaii lawmakers approved a measure this week to allow HIV testing of people convicted of sexual assault, although many members of the House were upset that testing wasn't mandated for immediately after someone is charged.

Associated Press, 5/6/98

### **Junkie Science**

The following is an editorial printed in the May 6<sup>th</sup> edition of the New York Post regarding needle exchange programs:

New Jersey Gov. Christie Whitman is right to come down firmly against state-funded needle exchanges. So was the Clinton administration when it declined to lift a ban on federal financing of such programs the other week.

The idea that heroin addicts share unhygienic used needles because they cannot afford new ones is nonsense. The truth is that junkies share needles because doing so is a bonding ritual integral to the transgressive culture of heroin.

If heroin or cocaine addicts were really worried about their health they would hardly be shooting up in the first place. Junkies know it's dangerous - that's part of the thrill. And nobody does something as self-destructive as deliberately stabbing a hypodermic needle deep into his veins - risking, at the very least, death by overdose - unless he already has a pretty strong death wish.

But even if giving out needles did save the lives of addicts, the government should not be in the business of making illegal activities safer for criminals. After all, the state doesn't hand out bulletproof vests for bank robbers or climbing gear to cat burglars.

Many of those in the forefront of the needle-exchange movement have a cynical agenda all their own, which they have foisted on unknowing or foolish health professionals. They want the world to treat AIDS as merely a public-health problem - in other words, a problem that has no moral or criminal ramifications. Suggest that human foolishness and self-indulgence - or, God forbid, sin - play any part in the AIDS epidemic, and woe betide you. But pretending that getting and giving HIV through needles is morally the same as catching and passing on a cold helps no one but the propagandists.

New York Post, 5/6/98

### **Salaries Paid to Directors of AIDS Charities Under Fire**

Caring for AIDS patients can be a mission of mercy. For some, it also can be a six-figure proposition. The top officers of at least nine charitable AIDS organizations which get \$53 million a year from the federal, state or local governments receive six-figure incomes, according to annual financial disclosure forms filed with the Internal Revenue Service.

The payments have drawn criticism from AIDS activists as well as Rep. Tom Coburn, an Oklahoma Republican who also is a physician. "The money isn't going to the people who need it," said Coburn, who has treated patients with HIV, the virus that causes AIDS. "I'm not against anybody making money, but if you're in a charity organization where it's your purpose to help people, you shouldn't be earning two or three or even eight or nine times the national average."

Coburn, who circulated a letter on the issue among his colleagues, spoke out on the House floor today. "At a time when direct services and medically necessary care is being severely curtailed, many AIDS charity executives have put lining their own pockets above saving lives," he said.

The directors of the nine AIDS organizations are in charge of their operations, budgets and staff. At the top of the list: Jerome Radwin, chief executive officer

of the New York City-based American Foundation for AIDS Research, better known as AmFAR, who was paid \$191,729 in 1996. AmFAR officials did not immediately return

a phone call seeking comment.

Another New York City organization, the Gay Men's Health Crisis, had two employees who earned more than the governor of New York did in 1995. The group's executive director, Mark Robinson, was paid \$144,782 and its deputy executive director for development, Addie Guttag, got \$139,337. Gov. George Pataki's salary is \$130,000. The group also did not return a phone call for comment.

On the West Coast, the Los Angeles-based AIDS Healthcare Foundation had at least six employees with salaries exceeding \$100,000 in 1996 five physicians paid between \$127,375 and \$172,366, and the group's president, Michael Weinstein, who was paid \$126,548.

In the District of Columbia, the Whitman-Walker Clinic paid its executive director, Jim Graham, \$143,690, in 1996. Graham said his salary has increased as the clinic has grown, from a budget of \$280,000 and six employees when he first got there 14 years ago to a budget of \$21 million and 280 employees today. Even with that, the clinic spends just 2 percent of its budget on administrative costs, records show.

The salaries and other financial information about AIDS organizations nationwide have been posted on the World Wide Web by a San Francisco-based advocacy group, the Accountability Project.

"The directors should be compensated for their services, but they should sacrifice because AIDS charities are part of the non-profit sector," said a member of the group, Michael Petrelis. "People with AIDS are sacrificing their lives because of the epidemic. With six-figure salaries at AIDS charities, what are the directors sacrificing?"

The financial data is available at <http://www.accountabilityproject.com>

Associated Press, 5/6/98

### **New York Panel Set Up to Track Spread of HIV Divided**

A panel set up to design a system of tracking the HIV infections in New York state is sharply divided on how to monitor the spread of the disease. The 24-member team of doctors, health care providers and AIDS activists agreed that a system for monitoring the AIDS-causing virus is necessary, but is divided on whether the system should consist of a list of infected peoples' names or a code using social security numbers, birth dates or code words, according to a recent draft report.

New York currently keeps confidential records of individuals with AIDS, but has no database of individuals who test positive for HIV.

The report's majority opinion was that name reporting would scare the most at-risk populations from being tested. A minority faction comprised mostly of doctors and health commissioners said the unique identifier system is prone to error and more vulnerable to breaches of confidentiality because the data must be stored with the state and at doctors' offices.

The federal Centers for Disease Control and Prevention recommends name-based reporting, and 28 states use names to track the spread of HIV. "The coded numbers are extremely difficult to get on a reliable basis," said Mark S. Rappaport, co-chair of the work group. He added that he believes the claim that individuals will not get tested if their names are used is "vastly, vastly overstated."

The group, empaneled four months ago, did agree that the state should continue to offer the option of completely anonymous testing

The reports, which are not binding, are passed on to Barbara DeBuono, the governor and the Legislature.

Associated Press, 4/30/98

### **Doctors Say AIDS Drug Assistance Programs in Crisis**

AIDS Drug Assistance Programs are facing a financial crisis as costs for new medications rise, assert Dr. David Casarett at the University of Iowa Hospitals and Clinics and Dr. John Lantos of the MacLean Center for Clinical Medical Ethics at the University of Chicago. In an article published in the May 1 issue of the *Annals of Internal Medicine*, the doctors note that federal drug assistance programs are swamped with excessive demand due to the high cost of the new protease inhibitor treatment regimens. The AIDS Drug Assistance Program was created by the government in the

1980s and the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act was established in 1990 to help HIV-positive patients who cannot afford medication.

Reuters, 4/30/98

### **Former Substitute Teacher Sentenced to Life in Prison**

A former substitute teacher in Pahrump, Nevada, who has HIV has been sentenced to life in prison for engaging in sex acts with teen-age boys. Brian Lepley was charged last year with 16 drug- and sex-related counts including sexual assault and intentionally trying to transmit the AIDS virus. The charges stemmed from encounters with two boys who were 16 and 18 years old at the time. Prosecutors said he supplied the teens with marijuana on several occasions. He was convicted April 24 on a variety of charges. Neither of the teens has HIV.

Lepley admitted to the sexual contact but adamantly denied he did anything criminal other than occasionally buy underage boys alcohol or bring them marijuana. He was a substitute at Nye County middle and high schools.

In the case of the 16-year-old, there was one oral sex encounter which resulted in the sexual assault conviction and life sentence. Lepley insisted it was a consensual act. Though the boy was not in Lepley's class, Beckett said the teacher knew who he was and virtually stalked him.

The intentional transmission of the AIDS virus charge, which added 10 years onto the sentence, stemmed from what Lepley described as a four-month relationship with the 18-year-old. The 18-year-old said at trial he never would have engaged in sex acts had he known Lepley was HIV-positive. Lepley insisted he told the teen-ager about his health prior to any sexual contact. He also said his sexuality and medical condition was no secret in Pahrump because he headed a support group for people with AIDS.

Associated Press, 5/6/98

### **Hearing Set for Father Accused of Injecting Son With HIV**

A preliminary hearing will be held May 26 in Missouri for the man accused of injecting his son with HIV. St. Charles County Judge Jon Cunningham set the hearing date for Brian Stewart of Columbia, Illinois. Stewart is charged with first-degree assault for allegedly injecting a syringe filled with HIV-tainted blood into his infant son in 1992. The boy, now 7, has AIDS. The trial would probably be eight to 10 months away. Authorities say Stewart wanted the boy to die so he could avoid paying child support.

Associated Press, 5/5/98

### **HIV-Infected Prostitute Sentenced to Probation**

A Reading, Pennsylvania woman who knew she had AIDS when she offered sex to an undercover police officer avoided a prison sentence because prosecutors didn't know she had the deadly disease. Maria Soto Colon was sentenced Monday in Berks County Court to one year of probation and a \$100 fine, following a plea agreement between Assistant Public Defender Kristin E. Jacquis and Assistant District Attorney Steven L. Chung. But when Judge Scott D. Keller was about to sentence Soto Colon, Jacquis mentioned that her client was receiving treatment for heroin addiction and for AIDS, the deadly disease caused by HIV.

Keller rocked back in his chair and removed his glasses. "Wait a minute, Mr. Chung," Keller said. "Isn't there an enhanced charge for prostitution when the defendant has AIDS?" Under state law, prostitution is normally a misdemeanor but prostitution while infected with AIDS is a third-degree felony punishable by up to seven years in a state prison. Chung said the more serious charge was not filed because neither he nor city police were aware the defendant had AIDS. He later said state law prohibits police and prosecutors from compelling a prostitution defendant to submit to AIDS testing. "We had no way of knowing that until she admitted to it here in court today," Chung said.

Associated Press, 5/5/98

### **The Next Epidemic?**

With increases in the incidence of hepatitis A, B, and C, some physicians are warning that the disease could become an epidemic. Former surgeon general C. Everett Koop estimates that over 15,000 people will die this year due to hepatitis. Hepatitis A and B are sexually transmissible, with virus A spreading through the oral-anal tract and virus B spreading through blood, semen, or saliva.

Advocate, 4/28/98, No. 758, P. 18; Gallagher, John

### **AIDS Risk to Rise in Africa Over the Next Two Years**

Speakers at a public health workshop in Nyeri Town, Kenya, estimated that 1.5 million people in the region will contract HIV by the year 2000, with 90,000 people dying from the disease in the same time span. They predicted that 80 percent of hospital beds will be occupied by HIV/AIDS patients, versus 30 percent to 40 percent in 1995. According to the Kenya National AIDS and Sexually Transmitted Disease Control Program, there were over 65,000 HIV cases by mid-1996, and World Health

Organization statistics show that AIDS-related deaths account for 12 percent of deaths in East Africa and 27 percent on the entire continent. Seminar participants also noted that financial resources devoted to AIDS awareness and control in East Africa were limited and inadequate and said that rates of sexually transmitted diseases in the area were increasing.

Africa News Service, 4/30/98

### **U.S. HIV Patients Admit They Don't Take Drugs**

A telephone survey of 665 people conducted by Johnston, Zabor, and Associates for Dupont Merck Pharmaceuticals indicates that 43 percent of HIV-infected people in the United States do not adhere to their drug treatment regimen. Failure to take the drugs consistently can lead to the development of drug-resistance, narrowing patient treatment options. One hundred physicians who were also surveyed estimated that 54 percent of their patients do not properly take their medication. Doctors and patients both complained that current drug treatment regimens are difficult to follow, resulting in a number of patients taking "drug holidays"—failing to take their medicine for anywhere from several days to several weeks.

Reuters, 5/5/98

### **Birthrate for Teens Declines Nationwide**

The National Center for Health Statistics (NCHS) released a report April 30 indicating a substantial drop in the teenage birth rate, falling 8.5 percent between 1991 and 1995 among girls aged 15 to 19. The national teen birthrate declined from 62.1 births per 1,000 girls in that age group to 56.8 births; however, the rate is still higher than in the 1980s, when the rate was about 50 births per 1,000 girls. According to Sarah Brown, director of the National Campaign to Prevent Teen Pregnancy, it is still too early to determine the cause of the decline, but it may be linked to a fear of contracting HIV or other sexually transmitted diseases. Fear of STDs may have resulted in an increase in the proper usage of condoms and more discussion of values may have resulted in increased sexual abstinence. The NCHS reported that the number of teens who are engaging in sex has "stabilized, reversing steady increases over the past two decades."

Washington Times, 5/1/98, P. A1; Wetzstein, Cheryl

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*HIV* update is compiled from various news sources.  
For additional information contact Roland Foster at (202) 225-2701  
or via e-mail at [roland.foster@mail.house.gov](mailto:roland.foster@mail.house.gov)

# HIV update

If you have any question about this fax, please contact Roland Foster at (202) 225-2701 or email at: [roland.foster@mail.house.gov](mailto:roland.foster@mail.house.gov)

**From: Roland Foster**

**To:**

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# TALE OF REVENGE STIRS AIDS FUROR

## Woman Claims She's Trying to Infect Men, Prompting a Surge of Concern

Special to The New York Times

DALLAS, Sept. 29 — In a chilling radio interview on Sept. 4, a woman who said she had AIDS told how she was trying to spread the virus out of revenge on the man who had infected her.

Whether the woman, who calls herself C. J. but has kept her identity secret, is telling the truth is a subject of debate. But her assertion has sent a shock wave through this city.

Attendance has swelled at AIDS education seminars, talk shows are inundated with concerned callers and health clinics are seeing a surge in requests for AIDS virus testing.

The furor began with a letter, published in the September issue of *Ebony* magazine, from someone who wrote that since contracting the AIDS virus she had become compulsively promiscuous, frequently picking up men in nightclubs. "I feel if I have to die of a horrible disease I won't go alone," the letter said. It was signed, "C. J., Dallas, Texas." *Ebony's* managing editor, Hans J. Massaquoi, said that although the letter was not verified it was printed as a warning to readers.

### A Previous Letter

Willis Johnson, a talk show host at radio station KKDA here, said the letter quickly provoked a storm of calls to his program. He issued a plea to the writer to call him, and on Aug. 31, he said, a female caller identified herself off the air as C. J. and agreed to the Sept. 4 on-air interview.

But Mr. Johnson said in an interview on Thursday that he was certain it was not his first contact with the woman.

"I got the exact same letter that was in *Ebony* about two years ago," said Mr. Johnson, who is 37 years old and has been with KKDA for 15 years.

Shortly after he received the first letter, he said, a black, "very beautiful, light-skinned woman, about 5-foot-5 and 120 pounds," approached him at a nightclub and introduced herself as C. J. "She was obviously eaten up with anger," Mr. Johnson said. "I never told anyone about the incident, but when she called Aug. 31, she reminded me of that earlier meeting. So I know it is the same woman."

Speaking quietly in the radio interview, the woman told of frequenting nightclubs in Dallas and nearby Fort Worth, of meeting men, some of them married, and having unprotected sex with them in "revenge."

The woman, who said the initials C. J. are not her own, said she felt no remorse. "I blame it on men, period,"



Mark Perlman for The New York Times

In an on-the-air interview last month, a woman told Willis Johnson, a Dallas radio personality, that she has AIDS and is methodically trying to spread the virus out of revenge on the man who infected her.

## A hoax, perhaps, but it has started healthy debates.

she said, adding, "I'm doing it to all the men because it was a man that gave it to me."

During the interview, Mr. Johnson repeatedly urged the woman to seek counseling. She continues to call him, he said Thursday. Once she told him she contracted the AIDS virus from a white bisexual man, he said. He said he arranged for her to talk with a minister, but "I don't think we have made a lot of headway with her."

Some people who call Mr. Johnson argue that C. J.'s story is a hoax.

Charles O'Neal, publisher of the *Dallas Examiner*, a weekly newspaper whose readership is largely black, said that though no one can be sure whether it is a hoax he believes that the story has stirred intense public discussion among blacks about heterosexual AIDS transmission. "I am certain there is some communitywide consternation that C. J. is one of a number of people who are out there wreaking havoc with this disease," he said.

Health officials said the number of heterosexual men seeking information about AIDS has greatly increased in recent weeks in Dallas County.

"In the past, people seemed to be a lot more judgmental about people who get this disease," said Phillip Mathews, director of minority services at the

AIDS Interfaith Network. "Now they are showing serious concern because it could hit very close to home. C. J. could be a blessing, in a sad sort of way."

At R. J.'s on the Lake, a fashionable disco on Dallas's northwest side, the manager, Jerry Sanders, said business was as brisk as ever but "people's attitudes about high-risk behavior have changed enormously, thanks to C. J."

### Drop in Promiscuity

Many of those at the bar agreed. "If what this woman says is true, we are talking about a form of genocide," said Levi Peterson 3d, a 32-year-old accountant. "It is serial killing. But true or not, promiscuity has de-elevated, believe me."

Coincidentally, the Dallas City Council voted Wednesday to allot \$118,650 for AIDS education and assistance programs. Although the Council budgeted \$167,000 for similar programs in the 1991 fiscal year, its new budget originally provided no AIDS money; some was added after pressure from advocates for people with AIDS. Dallas ranks 12th nationally in cities with AIDS, with 3,200 cases recorded as of Sept. 1.

Under Texas law, knowingly trying to transmit the AIDS virus is a third-degree felony, punishable by up to 10 years in prison and a \$5,000 fine. A spokesman for the Dallas Police Department, Edward Spencer, said the department is aware of C. J.'s claims but is not investigating them because no one has filed a complaint.

# Many Sense Politic

By ROBERT REINHOLD  
Special to The New York Times

LOS ANGELES, Sept. 30 — In vetoing a bill intended to protect homosexuals against job discrimination, Gov. Pete Wilson said Sunday that he was trying to protect California businesses from added costs, rather than playing electoral politics.

But the consensus today among both Republicans and Democrats in California was that the veto by Mr. Wilson, a moderate Republican who has sought the gay vote in the past, was indeed a political act. Many people here believe the Governor sought to protect himself and the man he appointed to succeed him in the United States Senate, John Seymour, against the wrath of his own party's conservative wing.

The veto dealt a sharp blow to the gay rights movement, whose leaders angrily vowed today to work for the defeat of both Governor Wilson and Senator Seymour. There were noisy demonstrations by homosexuals Sunday night in West Hollywood and San Francisco. There also were protests this afternoon at the Ronald Reagan State Building in downtown Los Angeles, where the state police reported at least two arrests.

The bill would have made California the fifth state, and by far the largest, to add sexual orientation to laws barring job discrimination on the basis of race, national origin, creed and other categories. The states that already have this provision are Connecticut, Hawaii, Massachusetts and Wisconsin.

### Emotional Political Issue

The bill had presented Mr. Wilson with what was probably the most emotional political problem he has faced since taking office last January. He has been fighting a rebellion by his own party over his agreement to raise state taxes by \$7 billion this summer. The gay rights bill stirred even deeper emotions, prompting 115,000 telephone calls and letters to the Governor's office, his aides said, with the overwhelming majority against the bill. Similarly, at the Republicans' state convention in Anaheim recently, party delegates voted overwhelmingly against the bill.

"It is no secret the Governor has serious problems with a large element of the Republican base," said Steven A. Merksamer, a Sacramento lawyer who is a leading Republican strategist. "Had he signed this bill those problems would have gotten worse. It was both a good policy and political decision."

Several political experts said the decision to veto the bill was motivated by two factors. Most immediately, Senator Seymour faces a tough primary challenge in June from Representative William E. Dannemeyer of Orange County, an outspoken opponent of gay rights. The Senator was further endangered by a gathering move by the Traditional Values Coalition, led by the Rev. Louis P. Sheldon of Anaheim, to put a measure on the same ballot to

A judge in Malibu officers of demonstrators, a Metropolitan Ne

repeal the bill if The second, an was Mr. Wilson's tions to run for P require his mini maries in states conservative th

### Advice From

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His statement a litted neither sid Assemblyman Te Los Angeles, a D Wilson gave vict Mayor Art Agn who as an Assem

# Take A Friend To Argentina

It costs 1 get away th

KNOWING EXPOSURE/TRANSMISSION  
5/25/93

**CRIMINAL PENALTIES FOR KNOWINGLY TRANSMITTING/EXPOSING  
ANOTHER TO HIV INFECTION**

Alabama, HB 338, Act 97-574 (87) - misdemeanor - "risks transmitting or conducts himself in a manner likely to transmit the disease"

Arkansas, HB 1496, Act 614 (88) - felony - "sexual intercourse" (without 1st informing others)

California, SB 1002, Chapter 1154 (89) - felony, blood donation

Colorado, HB 1255 (90) - class 5 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 1261, Act 1440 (88) - felony (after obtaining knowledge of infection) knowing intercourse, donation, sharing syringes

Idaho, HB 663, 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 1671 (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 infected 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 commits 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.

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 (89) - 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 557 (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 8 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 conducting prostitution when a person knows that he or she is HIV+

Texas, SB 969 (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 (88) - 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

## 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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COMPLIMENTS OF THE ALASKA STATE LIBRARY

Page 18

Yet June 10, 1991

*Male Heterosexual out to get women*

**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 reticent 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."

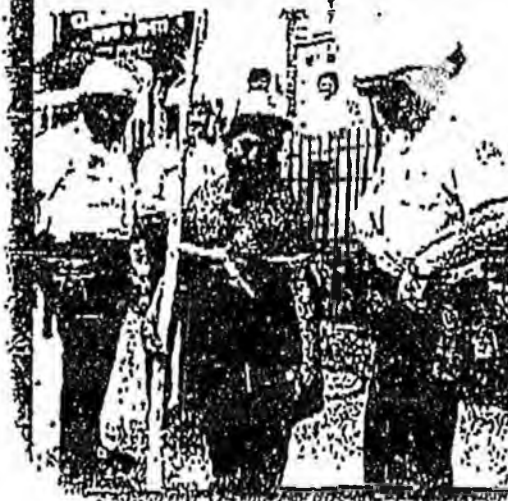
He also said he has been tested for the human immunodeficiency virus which causes AIDS, more than once and the results have been inconclusive. Police say he was diagnosed with the virus while in custody.

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.

*Victim not told by Mike*



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 pretty women, following him into the ground.

Freshly buried beside the tombstone of one former lover. A second ex-girlfriend, still fighting for her life, has picked out 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, hoping to take this secret with them. Richmond, the late auto racing star, infected them with the virus that causes AIDS.

He infected 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 dying of AIDS in Charlotte, N.C., received more than two dozen calls.

From those calls alone — only counting the ones from Charlotte — Greene could have started a support group of women exposed to HIV from Tim, said Greene, 35. "There would be about 30 in that support group. They told me they were exposed, 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

The time line is telling, Richmond — who attended a Miami prep school — could have been spreading the virus unchecked for eight years or longer. His sexual partners, friends say, were like stars in the sky — too numerous to count. "I did receive several calls from women around the country," Dodson said. Not everyone exposed has been infected.

The Richmond family says their late son was diagnosed with AIDS in December 1986. Greene says he infected her Sept. 10 of that year in a New York hotel. She believes that Richmond knew he had the virus when they made love after his marriage proposal.

"I grieved his death," she said, "even though he knowingly planted his seed of death inside me."

#### ADULATION AND ISOLATION

Richmond's death evoked sympathy and tears. The girlfriends dying in his wake evoke silence. That is the cruel, sexist irony of sport — tributes for the stricken men, isolation for their victims.

Magic Johnson acknowledged he was HIV positive in 1991, then appeared on Arsenio Hall's show and assured everyone he had been infected by a woman. The studio audience cheered.

Heavyweight boxer Tommy Morrison acknowledged he was HIV positive in February, then said he was afraid his infection might put a strain on his relationship with fiancée Dawn Freeman. The boxing community wept.

After Richmond died, The Charlotte Observer ran this headline: "He's In Victory Lane Forever." One Charlotte television reporter lamented, "He was a blazing star who burned out before his time."

LaGena Lookabill Greene read the stories, watched the news, listened to every report that mourned Richmond's passing. "I would sit in front of the TV and cry — not because people were grieving for Tim, but because no one was grieving for me and I was dying in silence," Greene said. "I'd see knives in the kitchen and want to stick one right in my heart."

Life is leaking from Greene, a former North Carolina Junior Miss. Her T-cell count, which measures the strength of her immune system, has plummeted from a near-normal 965 to 14.

She has picked out a white casket. A mausoleum awaits.

"She has outlived any predictions I would have made about her surviving," said Dr. Joseph Jemsek, the infectious-disease specialist treating Greene. "But we may lose her this year if our new drugs don't work."

The journey has been wrenching. Three bouts of pneumocystis pneumonia. Acute pancreatitis. Diabetes. Dizziness. Migraines. Vomiting. Uncontrollable diarrhea. Two bouts of cervical cancer.

Her face — that beautiful face that once graced the pages of Glamour, Seventeen and Cosmopolitan magazines — is withering. Doctors say Greene suffers from temporal wasting. Her skull is caving in.

"What I see when I look at myself in the mirror is a stick of chewing gum — flat on both sides," said Greene, a former model who is 5 feet 2 and weighs 94 pounds, down from 110. "I used to be voluptuous because I worked out at the gym twice a day."

#### LIVING DANGEROUSLY

Four years ago Julia Stafford buried her best friend, the little girl who liked tagging along when she went fishing. Stafford will always remember her granddaughter that way, as a child, running through meadows; tumbling, laughing; picking wildflowers.

The memories are framed in her Charlotte apartment, snapshots that recall sweet Debbie Putman, before and after she grew up.

"What I miss most is having her sit close to me and hold my hand and call me Granny," said Stafford, 80. "When I look at obituaries now, I look for young people. If it doesn't say they had an automobile accident or cancer, it's usually AIDS."

Putman's obituary did not disclose a cause of death. But before dying Putman confided in Stafford: "Do you remember me telling you about going to a party at Tim's? That's where I must have gotten AIDS, because we were together."

Betty Putman, Debbie's mother, knew a lot about Tim Richmond. Debbie went to many of his races. "She was always talking about how she liked Tim but a lot of other girls liked him, too," said Betty, 63, who lives outside Roanoke, Va. "I don't think she had a steady relationship with him, but she went out with him a few times."

Stafford knew more about Richmond than Betty Putman did — the parties, the alcohol, the drugs, the time he had sex with Debbie. But Stafford did not know the worst.

Richmond lived as dangerously off the track as on it, once arriving at a race so hung over that other drivers threatened to walk if officials allowed him to race.

Richmond's allure was like a whiff of strong drink. Intoxicating. He walked by, and heads turned. He opened his mouth, and hearts melted. Good-looking and free-spirited, he flew from Charlotte to New York to get his hair cut. He wore Armani suits and silk shirts, skin-tight blue jeans and snakeskin boots. He had a waterfront home on Lake Norman, just outside Charlotte, a condominium in Deerfield Beach, Fla., a boat in Fort Lauderdale. He threw wild parties.

Success?

He won 13 Winston Cup races and \$2.3 million in eight years on the NASCAR circuit.

Older women liked him. Betty Putman and Julia Stafford were fans.

When doctors told Debbie she had full-blown AIDS, the family went numb. Debbie, once an aspiring model, was engaged. Her fiancé tested negative. Debbie died one year later at 35, single.

#### ONE SINGLE MOMENT

Tim Richmond met LaGena Lookabill Greene in 1980 and pursued her for six years, proposing three times. Theirs was an odd and unlikely relationship:

Southern belle, cum laude graduate meets swashbuckling, woman-chasing daredevil.

"First time I saw them together," a longtime family friend said, "I knew she was in trouble."

Trouble? Greene had lived a storybook life. Junior Olympic gymnast. Honors high school graduate. Miss Hawaiian Tropic USA. Double major in college — psychology and dramatic art.

Guest-starring roles in such TV series as "St. Elsewhere" and "Remington Steele."

Until Richmond came along, Greene had had only one boyfriend, a steady she dated from age 12 through her junior year at North Carolina.

Later, in 1985, LaGena met an actor, Danny Greene, while filming a movie. Shortly thereafter, Danny became a star on the TV series "Falcon Crest." Tall, handsome and athletic, Danny starred in several motion pictures after playing

# 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 31.

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.