

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6804 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

HB

24

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 24

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to HIV testing for BRU: Trial Courts
certain sexual offenders Components: _____
 Sponsor: Sharp, Gruenberg
 Requestor: Sharp COMPONENT SERIAL NO. 000 | 000 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS & CLAIMS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUNDS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
 Division: Alaska Court System Date: 02/06/91

Approved by: Arthur H. Snowden, II, Administrative Director *Stephanie Cole, for*
 Agency: Alaska Court System Date: 02/06/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. H.B. 24

Revision Date: _____ Department Affected: Corrections

Title: "An Act relating to HIV testing for certain sexual offenders....effective date" BRU: _____
Component: _____

Sponsor: Rep. Sharp

Requestor: _____ COMPONENT SERIAL NO.

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

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

| | | | | | | |
|----------------|------------|------------|------------|------------|------------|------------|
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |
|----------------|------------|------------|------------|------------|------------|------------|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|------------|------------|------------|------------|------------|------------|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Tom Sutton, Director *[Signature]* Phone: 465-3376
Division: Administrative Services Date: 02-12-91

Approved by Commissioner: *[Signature]*
Agency: Department of Corrections Date: 02-12-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 24

Revision Date: _____
Title: An Act relating to HIV testing
for certain sexual offenders; ...
Sponsor: Reps. Sharp & Gruenberg
Requestor: H. HESS

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

COMPONENT SERIAL NO.

| | | | |
|--|---|---|---|
| | 7 | 9 | 9 |
|--|---|---|---|

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

| OPERATING | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | - 0 - | - 0 - | - 0 - | - 0 - | - 0 - | - 0 - |

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

| | | | | | | |
|----------------|-------|-------|-------|-------|-------|-------|
| REVENUE | - 0 - | - 0 - | - 0 - | - 0 - | - 0 - | - 0 - |
|----------------|-------|-------|-------|-------|-------|-------|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|-----------------|-------|-------|-------|-------|-------|-------|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER/PROG RCPT | | | | | | |
| TOTAL | - 0 - | - 0 - | - 0 - | - 0 - | - 0 - | - 0 - |

POSITIONS:

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

Estimate of current year impact None.

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact is anticipated.

Prepared by: Gayle A. Horetski Phone: 465-4322
Division: Commissioner's Office Date: 2/14/91

Approved by Commissioner: *G.A. Horetski* for Richard L. Burton
Agency: Department of Public Safety Date: 2/14/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

TELECOPY COVER SHEET

Fairbanks Legislative Information Office

Office - (907) 452-4448 Fax - (907) 456-3346

TO: HOUSE HESS ^{Conroy (Co-Chair)} FAX: _____ PHONE: 465-3759

FROM: Linda Lison PHONE: _____

INSTRUCTIONS: Written testimony for H HESS TC on
3/6/91. Please distribute to Com. members.
Thanks!

RECEIVED: Date 3/12/91 Time _____

SENT: Date _____ Time _____

DISPOSAL OF ORIGINAL: Discard _____ Hold for Pickup _____

NUMBER OF PAGES: 2 (Not counting cover sheet)

SENT BY: Fane

on HB 24

Summary of testimony given March 6, 1991 to House HESS committee.

My name is Linda Linson. I am a board member and the most recent past-president of the Fairbanks NOW and consider myself a strong feminist. I have worked for most of my adult life in various human services, including domestic violence and sexual assault and children's mental health services. Among my co-workers, clients and friends are many people who have been sexually assaulted - children who have been molested, adults who have been raped, etc. I am very, very concerned about the spread of AIDS in general and appreciate the additional trauma this risk could impose on a victim of sexual assault. I also have many friends and co-workers who are health care and corrections workers.

I am also one of the people who received training by our local Red Cross to be a speaker for the American Red Cross AIDS Speakers' Bureau. I feel I must bring to bear all of my training and experience in sexual assault and AIDS prevention and tell you that House Bill 24 will not help a single one of my friends who have been molested or raped, will not help prevent the spread of AIDS to a single one of my friends who are health care and corrections workers and actually cannot help prevent the spread of the AIDS virus at all.

Any victim of sexual assault is in the same position as any other person who has, voluntarily or involuntarily, engaged in behaviors that put them at high risk for contracting HIV. They must get tested for HIV if they want to know if they have been infected with this virus. There is simply no way to judge the risk that a victim is exposed to by knowing the HIV status of the offender. I know from my training that some people have been infected from a one-time sexual contact with someone who is HIV+. There are also people who have been sexually active for years with an infected partner and have not contracted the disease. This virus is that unpredictable.

I very much want to see protocols developed by all counseling programs to inform all adults who are sexually assaulted and parents of children who are assaulted of the only effective way to find out if they have the HIV virus - they must be tested. I realize the process this bill outlines for getting an offender tested is optional and voluntary on the part of the victim, but why have these already traumatized people go through a hearing process which, no matter how simple, would be an additional stress on them and would be completely useless in determining if the victim has the AIDS virus? I am also afraid the very existence of this kind of legislation, this kind of hearing process, may falsely reassure a victim that he or she does not need to be tested, which could prevent an infected person from receiving the early treatment that some HIV+ people choose. Medical and

corrections personnel should also follow their protocols for dealing with all patients and offenders. They must be educated as to what high risk behaviors are and follow the universal precautions for preventing infection.

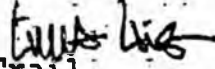
Mr. Sharp has cited tuberculosis (TB) testing as an example of testing for a communicable disease that we already require of some populations. The ethical and legal basis for imposing such testing is and always has been the existence of an overwhelming public health concern. This concern is in turn based on several facts :

1. TB can be spread by casual contact with an infected person.
2. Those who are found to have tuberculosis can be treated and recover from TB, and
3. The spread of TB can be prevented from spreading through an institution if infected people are identified.

None of these things are true of the HIV virus or AIDS and therefore there is no overwhelming public health interest in providing a mechanism to get anyone tested against their will.

I understand that there are laws similar to this bill on the books in other states. I assure you that those laws are not helping anyone in those states either. We in Alaska are proud of our independence from the mass craziness that sometimes happens outside. Please don't be naive about this subject. Educate yourselves about the effective ways to prevent AIDS in Alaska. I think our goals are the same and I appreciate your concern, but HB 24 will unfortunately not help anyone.

Thank you for taking the time to read my comments. Please feel free to call me or write with any questions at all. I can find answers or make sure you find them even if I don't know myself.

Linda Linson 
871 Goldmine Trail
Fairbanks, AK 99712
457-3308 h
456-1070 w

FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO. HCR 24

Revision Date: _____ Department Affected: University of Alaska
 Title: Requesting the University of Alaska to complete certain types BRU: UAA Organized Research
 of Information relating to adolescent pregnancy & parenthood Component:
 Sponsor: Reps. Eills, C. Davis and Ulmer
 Requestor: _____ Component Serial No. _____

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING | FY82 | FY93 | FY94 | FY95 | FY96 | FY97 |
|------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | 75.0 | 75.0 | 75.0 | 75.0 | 75.0 | 75.0 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 75.0 | 75.0 | 75.0 | 75.0 | 75.0 | 75.0 |

| | | | | | | |
|----------------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|----------------|--|--|--|--|--|--|

| | | | | | | |
|----------------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|----------------|--|--|--|--|--|--|

| FUNDING: (Thousands of Dollars) | FY82 | FY93 | FY94 | FY95 | FY96 | FY97 |
|---------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| GENERAL FUND | 75.0 | 75.0 | 75.0 | 75.0 | 75.0 | 75.0 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 75.0 | 75.0 | 75.0 | 75.0 | 75.0 | 75.0 |

| POSITIONS: | FY82 | FY93 | FY94 | FY95 | FY96 | FY97 |
|------------|------|------|------|------|------|------|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 Cost to establish data base and provide analysis for public policy review.

Prepared by: Marsha A. Hubbard
 Division: Statewide Budget Office

Phone: 474-7593
 Date: 4/29/91

Approved by: Brian Rogers, Vice President for Finance
 Agency: University of Alaska

Date: 4/29/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FN 75.0 UNIV.



Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCH V
JUNEAU, AK 99811
465-3759

March 5, 1991

FN's for Department of Health & Social Services
Court System
Department of Corrections

are all forthcoming.....

Department of Public Safety is a -0- and will not be
providing a FN for HB 24.

Patti
.....Patti
Committee Secretary/HESS/X4923

TESTIMONY TO THE HOUSE
HEALTH, EDUCATION AND SOCIAL SERVICE COMMITTEE

Date: March 6, 1991
Given by: Susan Stephenson
Representing: SHANTI of Juneau

SHANTI of Juneau is an organization committed to providing accurate, up-to-date AIDS education in Juneau and other Southeast communities, and to providing support to persons whose lives have been impacted by AIDS.

We depend upon current medical information from the Centers for Disease Control and from the State of Alaska Department of Health and Social Services, especially the Section of Epidemiology. We strive to meet our clients emotional and practical needs with the highest degree of confidentiality.

Our goal is to lessen peoples' fears about AIDS and to lessen the fears of people who have contracted the AIDS virus.

We and our colleagues oppose HB24 for a variety of reasons.

The bill has an air of panic which we feel is detrimental to the very persons it intends to defend. It proposes forced testing of a convicted person; an act, which if negotiated professionally, could reap far greater and earlier benefits for not only the victim, but indeed, all contacts made by the person charged. We feel that this bill, which violates an individual's right to privacy, will not benefit the victim and will not deter the spread of the HIV virus.

Testing indicates the presence of antibodies in the blood. It takes a window period of six weeks to six months to develop the antibodies. Conviction of an accused person will, in all probability, take several months as well. The appropriate response is to assume, as health care professionals now do, that the exposure was made to the HIV virus, and to take precautionary measures.

It is, of course, possible that a rapist can contract the HIV virus from his victim. Without a baseline test one is not able to confirm who may have given the virus to whom.

The legalities of the mandatory testing could lead the victim to litigation exposing her attack, her potential status of HIV+, her own behavior, to mandatory testing of the victim and so forth, ad infinitum. These potentials lead not to protecting the victim, but to further trauma.

Because of the window period, a mandatory test of the perpetrator could read negative. This would give the victim a false sense of assurance.

A test of the perpetrator provides information about the perpetrator. It provides no information about the victim. # The bill mentions the exchange of saliva. It would require approximately two quarts of saliva to place a person at risk.

The bill specifies a lengthy process of notification -- "the officer in charge of the facility shall notify all employees, medical personnel, contract personnel, and volunteers providing services at the facility who have or may have direct contact with the inmate or minor in question." At present there are state agencies working against such public notification in workplaces, calling that practice discriminatory. It promotes a misunderstanding of the transmission of the disease as does the use of the word "saliva" in this bill.

This bill proposes an invasive medical technique on a potentially unwilling human being.

Far better to provide counseling for the perpetrator at the time of the arrest. His co-operation can provide a baseline test, and potentially information regarding his behavior and therefore partner notification. The methods which have been implemented by our health care professionals are found to be effective. Involuntary testing is not conducive to co-operation.

HB24 aligns deviant behavior with the AIDS epidemic. It does virtually nothing to benefit the victim. It promotes negative connotations to an already stigmatized population. We feel that the funds which would go to implementing this act would be far better spent on education. It is the high risk behaviors which continue to perpetrate this epidemic and which must be changed.

A United Way Agency



SUSAN STEPHENSON
Executive Director

SHANTI of Juneau
P.O. Box 22653
Juneau, Alaska 99802-2655

(907) 463-5665

* DELIVER TO: LMSCHES
 * ORIGINAL
 * SENT: 03/06/91 TIME: 10:01
 * FROM: LTCCSOL
 * SUBJECT: 91-02-141,FS,HIV,3-6-91
 * PRINT DATE: 03/06/91 TIME: 10:01

SUBJECT LINE TO READ: TC NO.,PL/FS,SHORT SUBJECT,DATE

T/C NO: 91-02-141
 DATE: 3-6-91
 SPONSOR: HOUSE HES
 SUBJECT: HB24-HIV TESTING
 MODERATOR: VESTA
 SITE: SUBDOTHAM

FINAL STATS

TESTIFIED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-------------------|---------|-------|----------|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |
| 8. | | | |
| 9. | | | |
| 10. | | | |

OBSERVED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|--------------------|---------------------|-----------|----------|
| 1. ANN PENCE/WRCC | 325 SPRUCE ST 99611 | 28 3-9479 | H B24 |
| 2. ANN DOOLEY/WRCC | | | |
| 3. | | | |
| 4. | | | |

5.
 6.
 7.
 8.
 9.
 10.

TESTIFIED: 0
 UNABLE: 0
 OBSERVED: 2
 TOTAL: 2

* DELIVER TO: LHSCHES *
 * * *
 * ORIGINAL *
 * SENT: 03/06/91 TIME: 09:59 *
 * FROM: LIOCDLG *
 * SUBJECT: 91-02-141;FS;HB24,SCR3,3-06-91 *
 * PRINT DATE: 03/06/91 TIME: 09:59 *
 * * *

SUBJECT LINE TO READ: TC NO.;PL/FS;SHORT SUBJECT;DATE

T/C NO: 91-02-141
 DATE: MARCH 06, 1991 WEDNESDAY 8:30 - 10:00 A.M.
 SPONSOR: HOUSE HEALTH, EDUCATION & SOCIAL SERVICES
 SUBJECT: HB 24:HIV TESTING & SCR 3: LOW-INCOME HOUSING
 MODERATOR: ANNA MAY SORENSEN
 SITE: ~~DILLINGHAM~~

FINAL STATS

 TESTIFIED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-------------------|------------------------------|----------|----------|
| 1. ANNIE SWEET | BBNA C HILD JUSTICE PROJ ECT | | HB 24 |
| 2. | BOX 94 ,DILLINGHAM,AK995 76 | 842-2320 | |
| 3. | Bristol Bay Native Assoc. | | |
| 4. | Project Director | | |
| 5. | | | |

 OBSERVED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-------------------|---------|-------|----------|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |

 TESTIFIED: -1-

UNABLE: -0-
 OBSERVED: -0-
 TOTAL: -1-

START TIME: 8:30 A.M. END TIME: 9:35 A.M.

* DELIVER TO LHSCHES
 * ORIGINAL
 * SENT: 03/06/91 TIME: 10:24
 * FROM: LTCCFBX
 * SUBJECT: 91-02-141,FS,HB24,SCR3,3-6
 * PRINT DATE: 03/06/91 TIME: 10:25
 *

SUBJECT LINE TO READ: TC NO.,PL/FS,SHORT SUBJECT,DATE

T/C NO: 91-02-141
 DATE: MARCH 6, 1991
 SPONSOR: HOUSE HESS
 SUBJECT: HB24, SCR3
 MODERATOR: FRAN
 SITE: ~~SCORPION~~

FINAL STATS

 TESTIFIED

| NAME REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-------------------|------------------------------|----------|----------|
| 1. MARK TUMEO, | 1324 SUMMIT DR.,FBX,99712 | 457-6818 | HB24 |
| 2. CRAIG LEWIS, | 1881 MARIKA, FBX, 99709 | 456-3978 | HB24 |
| 3. LINDA LINSON, | 871 GOLDMINE TRAIL,FBX,99712 | 457-3308 | HB24 |
| 4. | | | |
| 5. | | | |

 OBSERVED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-------------------|------------------------|----------|----------|
| 1. CANDICE CHASE, | P.O. BOX 710,FBX,99701 | 456-6661 | HB24 |
| 2. | FBX Daily Newsmen | | |
| 4. | | | |
| 5. | | | |

 TESTIFIED: 3

UNABLE: 0
 OBSERVED: 1
 TOTAL: 4

START TIME: 8:30 A.M. END TIME: 9:40 A.M.



Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

DATE: March 6, 1991

PLACE: Capitol Room 106

SUBJECT OF MEETING:

~~HB 24 RIV~~ Testing for Sex Offenders

| NAME | REPRESENTING | BUSINESS/PERSONAL MAILING ADDRESS | ZIP | (H) PHONE | (W) PHONE | DO YOU WANT TO TESTIFY? | | WHAT SUBJECT/ WHICH BILL? |
|-------------------|------------------------------------|-----------------------------------|-------|-----------|-----------|----------------------------------|-----------------------|---------------------------|
| ✓ Susan Eplerison | EX-DIRECTOR SHAOT 14 Juniata | P.O. Box 22655 Juniata | 99002 | | 463-5665 | <input checked="" type="radio"/> | <input type="radio"/> | HB24 |
| Tom Bergstrom | SPEC. ASSIST. DHSS | P.O. Box 4 | 99811 | | 465-3030 | <input checked="" type="radio"/> | <input type="radio"/> | HB24 |
| | | | | | | <input type="radio"/> | <input type="radio"/> | |
| | | | | | | <input type="radio"/> | <input type="radio"/> | |
| | | | | | | <input type="radio"/> | <input type="radio"/> | |
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| | | | | | | <input type="radio"/> | <input type="radio"/> | |
| | | | | | | <input type="radio"/> | <input type="radio"/> | |



Alaska State Legislature
House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: February 21, 1991

PLACE: Capitol Room 106

SUBJECT OF MEETING:

 HB 24 HIV TESTING FOR SEX OFFENDERS

| NAME | REPRESENTING | BUSINESS/PERSONAL MAILING ADDRESS | ZIP | (H) PHONE | (W) PHONE | DO YOU WANT TO TESTIFY? | | WHAT SUBJECT/ WHICH BILL? | |
|---------------------------|----------------------|---|-------|-----------|-----------|-------------------------|----------------------------------|----------------------------------|-------|
| | | | | | | Y | N | | |
| (DO YOU WISH TO TESTIFY?) | | (FILL OUT COMPLETELY!) | | | | | Y | N | |
| Cindy Smith | Network co- DU/SA | Domestic Violence + Sexual Assault 150 Seward Street # 301 | 99801 | 586-3650 | | | <input checked="" type="radio"/> | <input type="radio"/> | HB24 |
| Tommy Torgerson | H&SS | 219 AOB | 99811 | 465-3030 | | | <input checked="" type="radio"/> | <input type="radio"/> | HB24 |
| Sara Brossard | | Po Box 34202 | 99803 | 789-9607 | 586-5231 | | <input checked="" type="radio"/> | <input type="radio"/> | HB 24 |
| BARBARA MIKLOS | Council DU/SA | P.O. Box N | 99811 | 364-3456 | 465-4358 | | <input checked="" type="radio"/> | <input checked="" type="radio"/> | HB 24 |
| | | | | | | | Y | N | |
| | | | | | | | Y | N | |
| | | | | | | | Y | N | |
| | | | | | | | Y | N | |
| | | | | | | | Y | N | |
| | | | | | | | Y | N | |

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

DATE 3/6/91

JOINT _____

TAPE # 17

JOINT _____

TIME CALLED TO ORDER 8:33 (am/pm)

TIME ADJOURNED 9:35 a.m.

| ROLL CALL: | PRES | ABST | TIME ARRVD | JOINT MEMBERS PRESENT: |
|------------------------|------|------|------------|------------------------|
| Rep. Patrick Carney | ✓ | | | |
| Rep. Georgiana Lincoln | ✓ | | | |
| Rep. Bettye Davis | ✓ | | | was late @ 8:36 a.m. |
| Rep. Cheri Davis | ✓ | | | |
| Rep. John Gonzales | ✓ | | | |
| Rep. Mark Hanley | ✓ | | | was late @ 8:38 a.m. |
| Rep. Mary Miller | ✓ | | | |

AGENDA:

| BILL NO. | SHORT TITLE | ACTION TAKEN |
|--------------|--|---|
| <u>HB 24</u> | <u>HIV Testing for Sex Offenders</u> | <u>CS HB 24 (RES) mod w/FN as ind. rec.</u> |
| <u>SCR 3</u> | <u>Urge AHFC to Finance Low Income Housing</u> | <u>mod w/FN w/ DO PASS</u> |
| | | |
| | | |
| | | |
| | | |
| | | |

OTHER:

Rep. Bert Sharp, prime sponsor of HB 24
Joan F. Hope, staff member of Senator Fahrenkamp - SCR 3

SPECIAL ANNOUNCEMENTS:

Teleconference with Anchorage and Fairbanks, Soldotna + Dillingham

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

DATE 2/21/91

JOINT _____

TAPE # 12

JOINT _____

TIME CALLED TO ORDER 8:35 am/pm

TIME ADJOURNED 10:00A

| ROLL CALL: | PRES | ABST | TIME ARRVD | JOINT MEMBERS PRESENT: |
|------------------------|------|-------|------------|------------------------|
| Rep. Patrick Carney | ✓ | _____ | _____ | _____ |
| Rep. Georgiana Lincoln | ✓ | _____ | _____ | _____ |
| Rep. Bettye Davis | ✓ | _____ | _____ | _____ |
| Rep. Cheri Davis | ✓ | _____ | _____ | came in late. c 8:38A |
| Rep. John Gonzales | ✓ | _____ | _____ | _____ |
| Rep. Mark Hanley | ✓ | _____ | _____ | _____ |
| Rep. Mary Miller | ✓ | _____ | _____ | _____ |

AGENDA:

| BILL NO. | SHORT TITLE | ACTION TAKEN |
|----------|-----------------------------------|--------------|
| *HB 45 | Insurance Coverage for Mammograms | _____ |
| *HB 24 | HIV Testing for Sex Offenders | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

OTHER:

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

SPECIAL ANNOUNCEMENTS:

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* DELIVER TO: LHSCHES
*
* ORIGINAL
* SENT: 02/21/91 TIME: 11:22
* FROM: LTCCFBX
* SUBJECT: 91-02-092;FS;HB45,24;2-21
* PRINT DATE: 02/21/91 TIME: 11:22
*
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SUBJECT LINE TO READ: TC NO.;PL/FS;SHORT SUBJECT;DATE

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T/C NO: 91-02-092
DATE: FEBRUARY 21, 1991
SPONSOR: HOUSE HESS
SUBJECT: HB 45; HB 24
MODERATOR: FRAN
SITE: FAIRBANKS

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FINAL STATS

TESTIFIED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-------------------------|----------------------------|----------|----------|
| 1. BONNIE MCCORQUODALE, | P.O. BOX 71248,FBX,99707 | 452-5222 | HB24 |
| 2. VEVA BECKER, | 4139 ROSEBUD LN.,FBX,99709 | 479-6968 | HB45 |
| 3. MARGARET GRAY, | 311 SLATER ST.,FBX,99701 | 452-3788 | HB45 |
| 4. MARK TUMEO, | 1324 SUMMIT DR.,FBX,99712 | 457-6818 | HB24 |
| 5. TRISH NEUBERT, | 1969 SWALLOW DR.,FBX,99709 | 479-6538 | HB45 |
| 6. DORIS LOENNING, | 665 10TH,FBX,99701 | 452-4039 | HB45 |

OBSERVED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-----------------------|--------------------------|-----------|----------|
| 1. BEVERLY MCCLENDON, | P.O. BOX 84397,FBX,99708 | 455-6639, | HB24 |
| 2. LUCY MCCAKEY, | P.O. BOX 80687,FBX,99708 | 479-2804 | HB45 |
| 3. | | | |
| 4. | | | |
| 5. | | | |

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TESTIFIED: 6
UNABLE: 0
OBSERVED: 2
TOTAL: 8

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START TIME: 8:30 A.M. END TIME: 10:05 A.M.

Good Morning. My name is Mark Tumeo. I am a co-founder and past Chair of the Interior AIDS Association. I currently serve on the Board of Directors and am here to testify on behalf of the Chair of the Board, Ms. Susan McInnis, and the Board of Directors of the Interior AIDS Association. We are strongly opposed to House Bill 24, the bill that would require HIV-testing of individuals convicted of sexual assault, without the individuals consent, and mandates notification of the convicted individual's spouse, the the victim of the offense, the victim's legal custodian, and the commissioner of corrections of the results of the test. We urge all legislators to oppose this bill, and ask the sponsors to withdraw it.

We are sure that the sponsors of the bill feel they are working towards a solution to the spread of HIV and, most importantly, towards the protection of victims of sexual assault. We applaud these goals. However, House Bill 24 will achieve neither. In fact, it will hurt victims of sexual assault and impede the efforts of organizations working to educate our communities on the risk of AIDS.

Our first and foremost concern must be with the victims of sexual abuse. House Bill 24 will do nothing for these victims. Consider first what HIV testing is, and is not. An HIV test will indicate if a person is positive AT THE TIME OF THE TEST. A test four months after an assault, the minimum time for sexual assault conviction after an arrest, will not indicate whether the person was positive at the time the sexual assault occurred. It is quite possible that a person convicted of a sexual assault may have contracted the virus AFTER the crime. And to what advantage is the knowledge that the assailant has tested positive for HIV, regardless of when the disease was contracted. It says absolutely nothing about the status of the victim !! A positive test of a convicted sexual assailant, several months to a year after the crime, will only serve to further traumatize the victim of a sexual assault.

Anybody who has been sexually assaulted should be tested the day of the assault, to ensure that the person assaulted was not ALREADY POSITIVE for HIV before the assault, and then tested again six-weeks afterwards - the maximum incubation period before antibodies for HIV are produced. No convictions will be completed within six weeks. In fact, in cases of stranger rape, an arrest may not even have been made by this point. By the time of a conviction, if it is achieved, the victim should have ALREADY BEEN TESTED, CONFIDENTIALLY AND VOLUNTARILY, so that appropriate health protection methods could already be underway. There is NO ADVANTAGE to a victim of sexual assault to force the convicted assailant to be tested, nor in sharing the results of this test with anyone.

We must also consider the effect this bill will have on others infected with HIV. House Bill 24 promotes the dangerous illusion that we are dealing with AIDS, but it will only force people away from the realization that they are particularly vulnerable. This bill will further stigmatize HIV-positive individuals by once again associating the illness with 'deviant' or illegal behavior. Worse, it will promote the illusion that the 'average' person is not at-risk for AIDS. The fact is that a person who commits rape is less likely to be a carrier than anyone who has sex with prostitutes or is promiscuous. HIV-infection is growing at its fastest rate among young women between the ages of 18 and 30 - not from sexual assault or drug use, but from consensual sexual relations !! The second highest rate of infection is among teenagers, an equally high rate for men and women, once again from consensual sexual contact. By furthering the false impression that only victims of sexual assault are at-risk, or that only those who are rapists, gay or drug-users are HIV-positive, is to place one more barrier in the way of effective AIDS education, and to help condemn our teenagers, especially young women, to death.

House Bill 24 is also an example of the type of potential state-sanctioned violation of personal rights that all HIV-positive individuals fear. The argument that AIDS should be treated like any other sexually transmitted disease when it comes to testing and reporting is fallacious and based on a misunderstanding of the AIDS epidemic. AIDS is NOT like other sexually transmitted diseases. Most notably, it is not curable. More important however, is that individuals with other sexually transmitted diseases are not singled out by society for discrimination. People do not lose their jobs if they are diagnosed with gonorrhea; they are not denied housing, insurance, or medical care if they are found to have syphilis; and no other diagnosis of a sexually transmitted disease will subject a rapist to a potential murder charge or result in isolation from the general prison population. With a diagnosis of HIV-positive, these are common occurrences.

The violation of an individual's right to privacy, a right guaranteed in our State constitution, as proposed in House Bill 24, will not benefit the victim of a sexual assault nor help stem the spread of AIDS. Its only possible effect is a punitive one for the convicted individual. In a nation that is struggling to reduce discrimination against populations that are identified closely with HIV, we cannot tolerate an obvious violation of an individual's right to privacy when it comes to HIV-testing. We would do much more to help victim and criminal alike by better educating the prison population about the dangers of HIV. As much as we dislike the idea, we should make condoms and voluntary CONFIDENTIAL HIV-testing available in prisons. We must educate the prison population and give them the necessary tools, so that THEY can stop the spread of HIV among themselves. We know that personal knowledge of one's own HIV status can help an individual take steps to change behaviors, remain healthy, and extend life. Behavior change is the only way to stop the spread of this disease, not mandatory testing and violation of confidence.

While AIDS education, the availability of condoms, and promotion of voluntary HIV-testing in prisons are important goals for a limited target group, we must not ignore the fact that it is our sisters and brothers, spouses, loved ones, family members and friends who are really at the greatest risk. Groups like the Interior AIDS Association, the Anchorage AIDS Assistance Association, and Shanti Juneau, are doing a great deal to educate local high-risk groups. In Fairbanks, the IAA is working with gay and bisexual males, teens, women at-risk and IV drug users. We are also actively educating the general population. These efforts will continue, and we hope the legislature will assist us in continuing our efforts.

You as legislators and we in grass-roots organizations such as the IAA, have an immense responsibility to reach out to society with education, encouragement for voluntary testing, and information on prevention of transmission of HIV, so that people realize that it is our teens, young men and women, gay, bisexual or straight, single or married, that this virus is threatening and killing: it is not the behavior of sexual assailant that is putting this nation, our state and our communities at risk, it is sexual behavior in GENERAL. Punitive measures against a reviled subgroup of the population will not prevent the spread of HIV nor provide assistance or solace to victims of sexual assault.. House Bill 24 will only further hamper our efforts, will result in punitive isolation of individuals in prisons, and will cause unnecessary and painful hysteria among the already traumatized victims of sexual assault.

We encourage our law makers, especially the sponsors of House Bill 24, to withdraw this bill and support legislation or resolutions that will encourage statewide education regarding HIV, promote voluntary, confidential HIV-testing, and support alternative testing sites, while at the same time protecting the civil rights and privacy of individuals who are HIV-positive.

I thank you for your time this morning, and for your willingness to address the difficult issues surrounding the AIDS epidemic. I stand ready to answer any questions you may have.



Alaska State Legislature

Please enter into the record my testimony to the House HESS
 committee name
 committee on 24, dated 2/21/91
 bill/subject

I AM the AIDS Coordinator for the Rural Alaska Health Education Center, and am on the board of directors of the Interior AIDS Association. I have worked with rape crisis centers, & cofacilitating a support group for women who have been sexually assaulted and was on the board of the National Coalition Against Sexual Assault from 1981-1983. Finally I am a survivor of a stranger rape.

I am opposed to this bill. We should not and cannot mandate HIV testing of anyone. If the offender is tested after conviction we cannot prove they were infected at the time the offense occurred (even though we don't want to admit it sexual activity does occur among our inmates). HIV testing should be a very private decision.

I understand this bill is for the victim's benefit. Sexual Assault is a tragedy and recovery from it's effects is a long hard process. Even if the offender does have HIV infection we do not know from this fact whether the victim will become ~~offended~~ ^{infected}. Just as the victim needs to be tested & treated for syphilis, gonorrhea, chlamydia and other sexually transmitted diseases, the victim now also needs to be tested for HIV.

This bill will do ~~nothing~~ nothing for the victim and will be an infringement on the privacy of the offender. We need societal changes so that sexual assault ~~does not~~ ^{does not} occur. AND we need legislative changes to protect confidentiality

Signed: Beverly M. O'Connell Ph.D.
 Testifier

RAHSC, IAA
 Representing (Optional)

PO Box 84397 Fairbanks 99708
 Address

455-6639
 Phone No.

of HIV information, to mandate informed consent for HIV testing, to mandate ~~and~~ counseling to go along with HIV testing, to provide monies for treatment for HIV infected individuals.

HB24 Testimony
Representative Bert Sharp

HESS committee
February 21, 1991

I have introduced HB24, which would make HIV testing mandatory for persons convicted of sexual offenses. Test results would be made available to the Commissioner of Corrections and, upon request, to the victim or the spouse of the offender.

Sexual offenses are recognized as one of the most offensive in our nation. It is appalling when one considers that withholding life threatening information from a victim who is struggling to overcome the effects of an assault, essentially allows an offender to continue mentally attacking the victim long after the physical assault.

Studies indicate that fear of exposure to the AIDS virus is more pronounced when intimate contact is involuntary. To subject a victim to the added stress of "not knowing" is inequitable and cruel justice.

HB24 requires that the offender be tested. The victim may receive the test results upon request. Many believe this information needs to be made available to help minimize the victim's trauma and aid in recovery.

HB24 also provides the test results be provided to the Commissioner of Corrections. The Federal Bureau of Prisons reports that up to 20% of the prison population are targets of aggressive sexual acts during their incarceration. Mandatory testing will provide the Department of Corrections with vital information in

making decisions concerning housing, counselling, and providing medical treatment to offenders who test positive.

The Department of Corrections has indicated that prisoners in the Alaska prison system are presently given a medical examination if their prison stay exceeds 14 days. This exam includes routine blood tests for Hepatitis.

Some have expressed concerns that it would be more unfair to provide a victim with false results because the methods of testing are inaccurate. A 1989 study concludes that new test procedures are available that virtually eliminate false positive results, thereby putting these concerns to rest.

In addressing the Fourth Amendment question, courts have determined that a government's interest in protecting the health and safety of the general public outweigh the criminal's privacy rights, and therefore administrative search may be conducted without a warrant. Courts have held that "blood tests are not a significant intrusion into the individual's privacy because they have become 'routine in our everyday life.'"

Your bill packets have information addressing these issues.

Recent studies also indicate that early treatment would, among other things, reduce the possibility of an HIV-infected individual actually contracting AIDS.

Many states have addressed this issue. By 1987, 14 states enacted legislation on the issue of antibody testing. Today there are at least 29 criminal and civil statutes concerning this topic, and at least 12 states have enacted legislation directly concerning mandatory HIV testing.

HIV is not a political debate or opinion - it is a life threatening illness. When it threatens the lives of innocent victims, it is in the public interest that government to step in and take action.

I urge your favorable consideration of this legislation.

1
"American Red Cross
Women, sex and aids"

is the best way to get

Yes. The most common screening test is called ELISA (enzyme-linked immunosorbent assay). This test is now considered to be better than 99 percent accurate when testing people who have antibodies to the AIDS virus (HIV). In all cases, another more specific test, such as the Western blot, should be performed to confirm the accuracy of reactive ELISA test results.

If your test result is negative, a repeat test, at a later date, may be recommended because of the time it takes the body to form antibodies.

If you are worried

about your test

here are some things you should know:

➤ Make certain that HIV/AIDS counseling is provided both before and after the test. Fear and worry about the test are very common feelings, both before the test and while waiting for the result. Counseling is important for a clear understanding of what your test result means.

➤ In all states, your test result is kept confidential and will not prevent you from legally getting married. In some states, your test result must be reported to the public health department. Ask your doctor or *someone at the testing center you select* about the rules on reporting test results in your area.

➤ Some test sites do not keep your name on file and *only* release your test result to you in person.

- A positive HIV antibody test in your medical/dental record may need to be confirmed, possibly preventing you from obtaining a new individual health insurance policy.

- **DO NOT donate blood in order to be tested.** If you believe you may be infected, do not donate blood, plasma, body tissue, or organs.

Contact your local public health department, AIDS service organization, Red Cross chapter, or

doctor's office for more information and HIV/AIDS counseling services available for people with AIDS or HIV-related conditions.

They can help

Know the facts and AIDS. Use what you know about yourself. Teach your family and friends about HIV/AIDS.

Set a compassionate example. Show support and understanding if you or someone you know is infected with HIV/AIDS. Remember, you can be a friend.

Become a volunteer. Help the Red Cross or AIDS service organization show you how you can help.

Sponsor a blood donor. (Make sure you meet the requirements for donating blood.) This is one thing that *is impossible to prevent AIDS by donating blood.* Encourage healthy volunteers to donate.

Sponsor an HIV/AIDS awareness event. Donate money.

For more information

- Your local chapter
- The National All (toll free): 1-800-342-2662
persons, Linea Nacion
For hearing-impaired:
1-800-AIDS-TTY.

- Your doctor or health care provider
- Your local or state health department
- Your local AIDS service organization

#2

Acquired Immunodeficiency Syndrome

State Legislative Activity

Hilary C. Lewis, JD

MORE than 450 bills have been introduced in state legislatures in 1987, on the subject of acquired immunodeficiency syndrome (AIDS). This flurry of legislative activity reflects the serious public health concern raised by this disease in every part of the country (see "References").

State statutes relating to the subject of AIDS were first enacted in 1983. Most of the early laws created statewide task forces to inform and educate the public. Since that time, statutes have been enacted on a wide variety of AIDS-related topics. The information included herein based on a review through Oct 6, 1987, focus on ten major subject areas that have become matters of state law (Table). The categories highlighted, as well as examples of states that have enacted laws on each of these issues, are (1) antibody testing, (2) blood and blood products, (3) confidentiality, (4) employment, (5) housing, (6) informed consent, (7) insurance, (8) marriage, (9) prison population, and (10) reporting.

It should be noted that state regulation constitutes another means by which policymakers have responded to the AIDS crisis. This is particularly true with respect to regulations developed by state insurance commissioners and state public health department reporting requirements. Such regulations usually carry with them the force of law.

ANTIBODY TESTING

A number of states have legislated on the issue of antibody testing. In Illinois, a bill was sent to the governor that would have required health care workers with a diagnosed case of AIDS or AIDS-related complex (ARC), or one who tests positive for the antibody, to notify their employers. Failure to notify the employer would have constituted grounds for loss of licensure. The bill was amendatorily vetoed by the governor.

Other state laws that deal with antibody testing have been enacted on the following issues:

1. Requiring blood banks, hospitals, and other storage facilities to test for the AIDS antibody (California, Illinois, Oklahoma, Tennessee, Texas, and Wisconsin).

2. Establishment of alternative testing sites for voluntary serologic testing (California and Florida).

3. Requiring surgeons, physicians, funeral directors, and blood banks, etc, when authorized to remove organs for donation, or to receive semen for artificial insemination purposes, to test for the presence of the AIDS antibody in the donated organ or semen (Delaware, Idaho, Illinois, Rhode Island, Virginia, and Wisconsin).

4. Requiring individuals convicted of prostitution to be screened for sexually transmitted diseases (STDs) and permitting anyone arrested for prostitution to request screening for STDs, including presence of the AIDS antibody (Florida).

5. Authorizing the secretary of the state board of health or a local health official who believes that an individual may have a communicable or other disease that is a danger to health, to ask the individual for written informed consent to be examined to prevent the transmission of the disease to others. If the individual, when requested, refuses such an examination, the examination may be compelled only on a court order based on clear and convincing evidence of a serious and present health threat to others posed by the individual (Indiana).

6. Directing the state department of health to provide confidential screening and confirmatory testing at the request of "persons at high risk," ie, homosexuals, bisexuals, and intravenous drug users, of contracting AIDS, by contract with private physicians, alternate screening sites, or clinical laboratories (Iowa).

7. Permitting the director of the local or state department of health who knows or has reason to believe, through medical or epidemiologic information, that a person is infected with the AIDS virus and is a danger to the public, to issue an order requiring such a person to be examined and tested to determine whether he or she is so infected (Colorado).

8. Empowering the director of the state department of health to promulgate rules and regulations that require the testing for AIDS, without written permission, in the case of a

From the Department of State Legislation, Division of Legislative Activities, American Medical Association, Chicago.

Reprint requests to Department of State Legislation, Division of Legislative Activities, American Medical Association, 535 N Dearborn St, Chicago, IL 60610 (MS Lewis).

Legislation Specifically Addressing AIDS*

| State | Category | | | | | | | | | |
|----------------------|------------------|-------|----------------|------------|---------|------------------|-----------|----------|-------------------|-----------|
| | Antibody Testing | Blood | Confidentially | Employment | Housing | Informed Consent | Insurance | Marriage | Prison Population | Reporting |
| Alabama | | | | | | | | | | |
| Alaska | | | | | | | | | | |
| Arizona | | | | | | | | | | |
| Arkansas | | | | | | | | | | |
| California | X | X | X | X | X | X | X | X | | X |
| Colorado | X | | X | | | X | | | | X |
| Connecticut | | | | | X | | | | | |
| Delaware | X | | | | | | | | | |
| District of Columbia | | | | | | | X | | | |
| Florida | X | X | X | X | | | X | | X | X |
| Georgia | | X | | | | | | | | X |
| Hawaii | | | X | X | X | | X | | | |
| Idaho | X | | | | | | | | | X |
| Illinois | X | X | X | | | | | X | | X |
| Indiana | | | X | | | | | | | X |
| Iowa | X | | X | | | | | | X | X |
| Kansas | | | | | | | | | | |
| Kentucky | | | X | | | | | | | X |
| Louisiana | | | | | | | | X | | X |
| Maine | | | X | | | | X | | | |
| Maryland | | | X | | | | | | | X |
| Massachusetts | | | X | X | | X | | | | |
| Michigan | | | | | | | | | | X |
| Minnesota | | | | | | | | | | |
| Mississippi | | | | | | | | | | X |
| Missouri | | | | | | | | | | |
| Montana | | | | | | | | | | |
| Nebraska | | | | | | | | | | |
| Nevada | | | | | | | | | X | X |
| New Hampshire | | | | | | | | | | |
| New Jersey | | | | | | | | | | |
| New Mexico | | | | | | | | | | |
| New York | | | X | | | | | | | |
| North Carolina | | | | | | | | | | X |
| North Dakota | | | X | | | | | | | |
| Ohio | | | | | | | | | | |
| Oklahoma | X | X | | | | | | | | |
| Oregon | | | X | | | | X | | X | |
| Pennsylvania | | | | | | | | X | | X |
| Rhode Island | X | | X | | | | | | | X |
| South Carolina | | | | | | | | | | |
| South Dakota | | X | | | | | | | | |
| Tennessee | X | X | | | | | | | | X |
| Texas | X | | X | | | | | X | | X |
| Utah | | | | | | | | X | | |
| Vermont | | | | | | | | X | | |
| Virginia | X | | | | | | | | | |
| Washington | | | | | | | | | | |
| West Virginia | | | | | | | X | | | |
| Wisconsin | X | | X | X | | X | X | | | X |
| Wyoming | | | | | | | | | | |

*The information contained in this chart refers only to legislation and not to administrative regulations. AIDS indicates acquired immunodeficiency syndrome.

newborn child when there is a high index of medical suspicion by history or physical examination that the child may have contracted the human immunodeficiency virus infection in utero or at birth (Rhode Island).

BLOOD

In the overwhelming majority of states, processing, storage, and distribution of blood constitutes a service and not a

sale. Thus, implied warranties of fitness and merchantability do not apply, and liability is imposed primarily where negligence exists on the part of the processor or distributor. (It is necessary to examine each state's law to determine if the immunity covers the blood bank, hospital, physician, etc.) Other state legislation concerning blood has been enacted on the following issues:

1. Allowing a parent to designate his or her donated blood

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. CSHB 24

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to blood tests BRU: Trial Courts
for persons charged with violating laws Components: _____
 Sponsor: Sharp
 Requestor: _____ COMPONENT SERIAL NO.

| | |
|-----------|-----------|
| 000 000 | 000 768 |
|-----------|-----------|

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS & CLAIMS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUNDS | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |


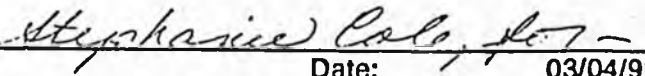
POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Division: Alaska Court System Date: 03/04/91
 Approved by: Arthur H. Snowden, II, Administrative Director  Date: 03/04/91
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

REQUEST: FISCAL NOTE

Revision Date: _____ Agency Affect: Health & Social Services
 Title: HIV Testing for certain BRU: State Health Services
sexual offenders
 Sponsor: Sharp, Gruenberg Components: AIDS
 Requester: House HESS

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 |
| Travel | | | | | | |
| Contractual | | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 |
| Supplies | | 0.3 | 0.3 | 0.3 | 0.3 | 0.3 |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants, Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 3.3 | 3.3 | 3.3 | 3.3 | 3.3 |

| | | | | | | |
|----------------|------------|------------|------------|------------|------------|------------|
| CAPITAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|----------------|------------|------------|------------|------------|------------|------------|

| | | | | | | |
|----------------|------------|------------|------------|------------|------------|------------|
| REVENUE | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|----------------|------------|------------|------------|------------|------------|------------|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|------------|------------|------------|------------|------------|------------|
| General Funds | 0.0 | 3.3 | 3.3 | 3.3 | 3.3 | 3.3 |
| Federal Funds | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 3.3 | 3.3 | 3.3 | 3.3 | 3.3 |

POSITIONS

| | | | | | | |
|-----------|--|---|--|--|--|--|
| Full-Time | | 0 | | | | |
| Part-Time | | 0 | | | | |
| Temporary | | 0 | | | | |

ANALYSIS: (attach a separate page if necessary)

These dollars are based on 160 sexual offenders entering corrections yearly, and 1.04% testing positive. The number of sexual offenders entering corrections is on the decline. Even with an increase in individual test costs, the total amount should not increase.

Cost for tests are for the initial test are \$18.25 for personal services and \$1.75 for supplies. Cost for confirmatory test after initial positive test is \$55.00 by contract.

Prepared By: Alfred G. Zangri
 Division: PUBLIC HEALTH

Phone: 465-3090
 Date: 02/13/91

Approved By Commissioner: Theodore Mala, M.D., MPH
 Agency: HEALTH & SOCIAL SERVICES

Date: 2/20/91

Distribution (by preparer):

Legislative Finance, Legislative Sponsor, Requestor,
 Office of Management & Budget, Impacted Agency(ies)

7-LS0233V
Lauterbach
3/1/91

CS FOR HOUSE BILL NO. 24 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES SHARP, Gruenberg, Zawacki

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to blood tests for persons charged with violating laws; and providing
2 for an effective date."

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

4 * Section 1. LEGISLATIVE FINDINGS; INTENT. (a) The legislature finds that AIDS-related
5 conditions and other communicable diseases pose a major threat to the public health and safety. The
6 legislature also finds that the health and safety of the public, victims of sexual crimes, and peace
7 officers, firefighters, and custodial personnel who may come into contact with infected persons, have not
8 been adequately protected by law.

9 (b) The purpose of this Act is to require that information that may be vital to the health and
10 safety of the public, victims of certain crimes, certain defendants and minors, and custodial personnel,
11 custodial medical personnel, peace officers, firefighters, and emergency medical personnel put at risk
12 in the course of their official duties, be obtained and disclosed in an appropriate manner in order that
13 precautions can be taken to preserve their health and the health of others or in order for these persons
14 to be relieved from groundless fear of infection.

1 * Sec. 2. AS 18.15 is amended by adding new sections to read:

2 ARTICLE 3A. BLOOD TESTS OF CERTAIN DEFENDANTS.

3 Sec. 18.15.250. SEXUAL OFFENSES. (a) A defendant charged in a criminal complaint
4 filed with a magistrate or court with a violation of AS 11.41.410 - 11.41.440 and a minor with
5 respect to whom a petition has been filed in a juvenile court alleging violation of AS 11.41.410 -
6 11.41.440, shall be subject to an order of a court having jurisdiction of the complaint or petition
7 requiring testing as provided in AS 18.15.250 - 18.15.290.

8 (b) An alleged victim listed in the complaint or petition, or the prosecuting attorney at
9 the request of an alleged victim, may petition the court for an order authorized under this section.

10 (c) The court shall promptly conduct a hearing upon a petition filed under (b) of this
11 section. If the court finds that probable cause exists to believe that a possible transfer of blood,
12 saliva, semen, or other bodily fluid took place between the defendant or minor and the alleged
13 victim in an act for which the defendant or minor is charged under (a) of this section, the court
14 shall order that the defendant or minor provide two specimens of blood for testing as provided
15 in AS 18.15.250 - 18.15.290.

16 (d) Copies of the blood test results shall be sent to the defendant or minor, each
17 requesting victim or the victim's designee and, if the defendant or minor is incarcerated or
18 detained, to the officer in charge and the chief medical officer of the facility in which the person
19 is incarcerated or detained.

20 Sec. 18.15.260. ASSAULTS ON CERTAIN PERSONS. (a) A person charged in a
21 criminal complaint filed with a magistrate or court and a minor with respect to whom a petition
22 has been filed in juvenile court, in which it is alleged in whole or in part that the defendant or
23 minor interfered with the official duties of a peace officer, firefighter, or emergency medical
24 person by biting, scratching, spitting, or transferring blood or other bodily fluids on, upon, or
25 through the skin or membranes of a peace officer, firefighter, or emergency medical person shall
26 be subject to an order of a court having jurisdiction of the complaint or petition requiring testing
27 as provided in AS 18.15.250 - 18.15.290.

28 (b) The peace officer, firefighter, emergency medical person or the employing agency,
29 officer, or entity may petition the court for an order authorized under this section.

30 (c) The court shall promptly conduct a hearing upon a petition filed under (b) of this
31 section. If the court finds that probable cause exists to believe that a possible transfer of blood,

1 saliva, semen, or other bodily fluid took place between the defendant or minor and the peace
2 officer, firefighter, or emergency medical person, as specified in this section, the court shall order
3 that the defendant or minor provide two specimens of blood for testing as provided in
4 AS 18.15.250 - 18.15.290.

5 (d) Copies of the test results shall be sent to the defendant or minor, each peace officer,
6 firefighter, and emergency medical person named in the petition and the employing agency,
7 officer, or entity, and if the defendant or minor is incarcerated or detained, to the officer in
8 charge and the chief medical officer of the facility in which the person is incarcerated or
9 detained.

10 Sec. 18.15.270. TESTING; TEST RESULTS. (a) The withdrawal of blood for a test
11 under AS 18.15.250 - 18.15.290 shall be performed in a medically approved manner. Only a
12 physician licensed under AS 08.64, registered nurse, licensed practical nurse, or certified
13 emergency medical technician may withdraw blood specimens for the purposes of AS 18.15.250 -
14 18.15.290.

15 (b) The court shall order that the blood specimens withdrawn under AS 18.15.250 -
16 18.15.290 be transmitted to a licensed medical laboratory and that tests be conducted on them
17 for medically accepted indications of exposure to or infection by the human immunodeficiency
18 virus (HIV) and other communicable diseases for which medically approved testing is readily and
19 economically available as determined by the court.

20 (c) Copies of test results that indicate exposure to or infection by the HIV virus or other
21 communicable diseases shall also be transmitted to the department.

22 (d) The test results shall be sent to the designated recipients with the following
23 disclaimer:

24 The tests were conducted in a medically approved manner
25 but tests cannot determine exposure to or infection by the
26 HIV virus or other communicable diseases with absolute
27 accuracy. Persons receiving this test result should continue
28 to monitor their own health and should consult a physician
29 as appropriate.

30 (e) If the person subject to the test is a minor, copies of the test result shall also be sent
31 to the minor's parents or guardian.

1 (f) The court shall order all persons, other than the test subject, who receive test results
2 under AS 18.15.250 - 18.15.290 to maintain the confidentiality of personal identifying data
3 relating to the test results except for disclosures that may be necessary to obtain medical or
4 psychological care or advice.

5 (g) The specimens and the results of tests ordered under AS 18.15.250 - 18.15.290 are
6 not admissible evidence in a criminal or juvenile proceeding.

7 (h) A person performing testing, transmitting test results, or disclosing information under
8 AS 18.15.250 - 18.15.290 is immune from civil liability for an action undertaken in accordance
9 with the provisions of AS 18.15.250 - 18.15.290.

10 Sec. 18.15.280. PERSONS IN CUSTODY. (a) Medical personnel employed by, under
11 contract to, or receiving payment from the state, an agency of the state, or a municipality to
12 provide service at a state prison, municipal jail, juvenile detention facility, or other facility,
13 including a health facility, in which adults are held in custody or minors are detained, or medical
14 personnel employed, under contract, or receiving payment to provide services to persons in
15 custody or detained at any of these facilities, who receives information as specified in this section
16 that an inmate or minor at the facility has been exposed to or infected by the HIV virus or has
17 a communicable disease, shall communicate this information to the officer in charge of the
18 facility in which the inmate or minor is in custody or detained.

19 (b) Information subject to disclosure under (a) of this section includes the following: a
20 laboratory test that indicates exposure to or infection by the HIV virus or other communicable
21 diseases; a statement by the inmate or minor to medical personnel that the inmate or minor has
22 AIDS or an AIDS-related condition, has tested positive for the HIV virus, has been exposed to
23 the HIV virus, or has any communicable disease; the results of a medical examination or test that
24 indicates that the inmate or minor has tested positive for antibodies to the AIDS virus, has been
25 exposed to the HIV virus, has an AIDS-related condition, or is infected with AIDS or any
26 communicable disease; provided, that information subject to disclosure does not include
27 information communicated to or obtained by a scientific research study under prior written
28 approval expressly waiving disclosure under this section by the officer in charge of the facility.

29 (c) The officer in charge of the facility shall notify all employees, medical personnel,
30 contract personnel, and volunteers providing services at the facility who have or may have direct
31 contact with the inmate or minor in question, or with bodily fluids from the inmate or minor, of

1 the substance of the information received under (a) and (b) of this section so that those persons
2 can take appropriate action to provide for the care of the inmate or minor, the safety of other
3 inmates or minors, and their own safety.

4 (d) The officer in charge and all persons to whom information is disclosed under this
5 section shall maintain the confidentiality of personal identifying data regarding the information,
6 except for disclosure authorized under this section or as may be necessary to obtain medical or
7 psychological care or advice.

8 (e) A person who intentionally discloses personal identifying data regarding information
9 obtained under this section to a person who is not a peace officer or an employee of a federal,
10 state, or local public health agency, except as authorized under this section, by court order, with
11 the written consent of the patient, or as otherwise authorized by law, is guilty of a class A
12 misdemeanor.

13 Sec. 18.15.290. DEFINITIONS. In AS 18.15.250 - 18.15.290,

14 (1) "AIDS" means Acquired Immune Deficiency Syndrome;

15 (2) "HIV" means the Human Immunodeficiency Virus.

16 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

REPRESENTATIVE
BERT SHARP

DISTRICT 20

MEMBER
FINANCE COMMITTEE

FINANCE SUBCOMMITTEES
GOVERNOR
FISH AND GAME
LABOR



FAIRBANKS
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FAIRBANKS, ALASKA 99701
(907) 452-7885 / 7886

WHILE IN JUNEAU

PO BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3004 / 3018

House of Representatives

CSHB 24 SECTIONAL ANALYSIS

Section 1. Sets forth the legislative findings and intent relating to AIDS and other communicable diseases as they pertain to the health and safety of the public, victims of certain crimes and employees put at risk in the course of their official duties.

Section 2. Adds a new section to AS 18.15. (Health & Safety) to allow blood tests of certain defendants.

Sec. 18.15.250 Sexual offenses.

a & b) Victims of a sexual assault may petition the court for an order requiring the defendant charged of the offense to submit to a blood test for the purpose of determining the presence of the human immunodeficiency virus (HIV) and other communicable diseases.

c) The court shall conduct a hearing to determine if probable cause exists to believe there was an exchange of body fluids and issue an order accordingly.

d) Test results shall be disclosed to defendant, the victim or the victim's designee, and the chief medical officer of the facility in which the person is incarcerated or detained.

Sec. 18.15.250 Assaults on certain persons.

a & b) Peace officers, firefighters, or emergency medical personnel who are victims of an assault where there is an exchange of body fluids may petition the court for an order requiring the defendant charged of the offense to submit to a blood test for the purpose of determining the presence of the human immunodeficiency virus (HIV) and other communicable diseases.

c) The court shall conduct a hearing to determine if probable cause exists to believe there was an exchange of body fluids and issue an order accordingly.

d) Test results shall be disclosed to defendant, the petitioner, and the officer in charge of the facility in which person is incarcerated or detained.



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GOLDEN HEART
OF ALASKA

Sectional Analysis.

Sec. 18.15.270. Testing and test results.

a & b) Outlines procedures for which testing may be performed and the types of tests to be conducted.

c) Test results shall be provided to Department of Health & Social Services.

d) Disclaimer shall be provided to recipients of the test results which state that results are not absolutely accurate and persons receiving results should monitor their own health and consult a physician as appropriate.

e) Minor's provision - test results of a minor shall be disclosed to parent or guardian.

f) All persons receiving test results must maintain confidentiality of information received except as necessary to receive medical or psychological care.

g) Specimens and results are not admissible evidence in a criminal or juvenile proceeding.

h) Civil liability immunity to all persons performing testing, transmitting test results, or disclosing information in accordance with provisions of this law.

Sec. 18.15.280. Persons in custody.

a & b) Medical personnel who have knowledge of an inmate's (including minors) exposure to or infection by the HIV virus or other communicable disease, including a positive test result or a statement made to the medical personnel, must convey this information to the officer in charge of the facility where the person is incarcerated or detained.

c) The officer in charge of the facility must notify all employees, medical personnel, contract personnel, and volunteers providing services at the facility who may have direct contact with the inmate or minor in question so that appropriate action for protection and safety can be taken.

d) Confidentiality must be maintained except as necessary to obtain medical or psychological care.

e) Persons who intentionally disclose personal identifying data regarding information obtained under this section are guilty of a class A misdemeanor.

Sec. 18.15.290. Definitions

Sectional Analysis

CSHB24

Page 2

Alaska State Legislature

REPRESENTATIVE
BERT SHARP

DISTRICT 20

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House of Representatives

Sponsor Statement CSHB24

One of the most significant elements of state government is its duty to protect the public from the spread of communicable diseases. Alaska law upholds this obligation by requiring blood tests of pregnant women to determine the presence of syphilis (AS 18.15.150). And, where it is believed to be necessary to preserve and protect public health, persons can also be ordered to submit to an examination to detect the presence of tuberculosis. (AS 18.15.135).

CSHB 24 is designed to safeguard certain crime victims and public safety personnel by making available information regarding risks to their health and relieving them of fear of infection from all communicable diseases including AIDS.

Alaska's duty to protect crime victims, peace officers, and emergency personnel is substantial. Therefore, it is not unreasonable to warrant blood testing of defendants charged with certain crimes to determine the presence of the human immunodeficiency virus (HIV) and other communicable diseases.

It is known that AIDS antibodies may usually be detected in the blood anywhere from two weeks to three months after infection,



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GOLDEN HEART
OF ALASKA

and sometimes longer. If the defendant did infect the victim with AIDS, but the presence of antibodies cannot yet be detected in the victim's blood, the victim may infect someone else before learning he carries the AIDS virus. Therefore, the most timely way to find out whether the defendant may have infected the victim is to test the defendant. The risk of infecting others gives added weight to the government's interest in testing defendants charged with crimes.

The implied intrusion from a court mandated blood test is further minimized when compared to the advantages that may be gained from informing a crime victim as well as the offender whether he is at risk for infection with AIDS. Most recent information indicates early detection and treatment is extremely advantageous.

The great danger AIDS presents to our society and the rapid spread of the disease in recent years presents the government with a strong interest in establishing greater health safety standards. CSHB 24 does just that.

HIV is not a political debate or opinion - it is a life threatening illness. When it threatens the lives of innocent victims, it is in the public interest that government step in and take action.

Alaska State Legislature

REPRESENTATIVE
BERT SHARP

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House of Representatives

M E M O R A N D U M

TO: HESS committee members
FROM: Representative Bert Sharp
DATE: March 4, 1991
SUBJ: CSHB24 dated 3/1/91

Before you is a new draft of HB24, dated 3/1/91. The changes to this bill occur on page 2, line 17 where "or the victim's designee" was added; and page 2, line 20, "Assaults on Certain Persons" was added and [ASSAULTS ON PUBLIC OFFICIALS AND MEDICAL PERSONNEL] was deleted.



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Sponsor Stmt - CSHB24()

2-13-91

Mike Meath
660 Wilcox Avenue #20
Fairbanks, Alaska 99709

Bert Sharp
State House
P.O. Box V
Juneau, Alaska 99811

Dear Sir:

This letter is to express my support of proposed House Bill 24. I fully support this proposal which would make HIV testing mandatory for persons convicted of sexual offenses. The results of such tests should be available to the victim, the victim's legal guardian and the spouse of the offender. A victim's inability to access to an offender's HIV results stands as a major obstacle to the process of healing and reestablishing a sense of security. The proposed legislation is a sign to the public that our criminal justice system may begin to recognize victim's rights. I would support any legislation that would improve victim's rights without infringing on the civil liberties of the accused. The proposed House Bill 24, on it's face, does not appear to pose any threat to a convicted sexual offender's constitutional rights. Thank you for your time and consideration.

Sincerely,



Mike Meath

Misc. Support

February 13, 1991

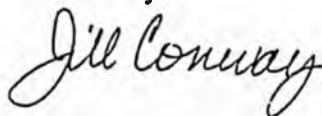
Jill Conway
660 Wilcox Avenue #20
Fairbanks, Alaska 99709

Bert Sharp
State House
P.O. Box V
Juneau, Alaska 99811

Dear Sir:

This letter is regarding the proposed House Bill 24. I wholeheartedly support this proposal which would make HIV testing mandatory for persons convicted of sexual offenses. The results of such tests should be available to the victim, the victim's legal guardian and the spouse of the offender. A victim's inability to access to an offender's HIV results stands as a major obstacle to the process of healing and reestablishing a sense of security. The proposed legislation is a sign to the public that our criminal justice system is beginning to recognize victim's rights. I would support any legislation that would improve victim's rights without infringing on the civil liberties of the accused. The proposed House Bill 24, on it's face, does not appear to pose any threat to a convicted sexual offender's constitutional rights. Thank you for your time and consideration.

Sincerely,



Jill Conway

Alaska State Legislature

REPRESENTATIVE
BERT SHARP

DISTRICT 20

COMMITTEE
RESOURCE

FINANCE SUBCOMMITTEE:
DEPARTMENT OF NATURAL RESOURCES



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House of Representatives

MEMORANDUM

RECEIVED
JAN 25 P.M.

TO: Representative Pat Carney
Co-Chair HESS Committee

Representative Georgianna Lincoln
Co-Chair HESS Committee

FROM: Representative Bert Sharp *BMS*

DATE: January 25, 1991

SUBJ: Scheduling request

I respectfully request a hearing to be scheduled as soon as possible on HB24, AIDS Testing for Sex Offenders. In view of the increasing number of sexual offenses occurring in our State, I feel it is critical that this legislation be reviewed and passed out of committee with all due speed.

HB24 would require mandatory HIV testing for all convicted sexual offenders. Results of this test would be made available to the Department of Corrections in the interest of protecting other inmates, the spouse of the offender, and the victim or the victim's legal custodian.

I have prepared a CS for committee consideration. The only change is that notification to the victim or the spouse shall be upon request.

A fiscal note has been requested.



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GOLDEN HEART
OF ALASKA

SPONSOR STATEMENT



Alaska State Legislature

Please enter into the record my testimony to the Health, Education + Social Services
committee name

committee on House Bill #24, dated 2/1/91
bill/subject

I support this bill whole heartedly! The experience of being sexually assaulted is degrading enough, without having to be degraded by the legal system when trying to obtain life and death information. Information concerning HIV is essential to healing. If you can't find out if your life is endangered ~~from~~ from exposure to HIV, getting healthy, healing and just getting on with your life is impossible. ~~Sometimes~~ ^{after} the days, weeks and months that it takes to get results in HIV testing can be a living hell. This can be easily circumvented by just forcing the perp. to be tested in a timely manner and making that information known to the victim in a timely manner.

Signed: Lisa Seger
Testifier

WIC-CA
Representing (Optional)

717 9th Ave, Fairbanks AK 99701
Address

907-452-2293
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the _____ committee name

committee on House Bill No. 24 , dated 2/1/91 .
bill/subject

I support the bill requiring ~~and~~ HIV testing of sexual offenders. Its only logical to demand ~~sexual~~ HIV and STD testing of the sexual offenders ~~and~~ rather than ~~putting~~ on responsibility being placed on the victim to test for STD and HIV testing

Signed: *Shirley S. Shores* SHIRLEY
Testifier

Representing (Optional)
Box 83279 FRK AK 99708
Address
452-2293
Phone No.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**



Alaska State Legislature

Please enter into the record my testimony to the Health, Education + Social Services
committee name

committee on House Bill #24, dated 2/1/91
bill/subject

I support this bill whole heartedly! The experience of being sexually assaulted is degrading enough, without having to be degraded by the legal system when trying to obtain life and death information. Information concerning HIV is essential to healing. If you can't find out if your life is endangered ~~from~~ from exposure to HIV, getting healthy, healing and just getting on with your life is impossible. ~~Sometimes~~ ^{Often} the days, weeks and months that it takes to get results in HIV testing can be a living hell. This can be easily circumvented by just forcing the perp. to be tested in a timely manner and making that information known to the victim in a timely manner.

Signed: Lisa Seger

Testifier

WIC-CA

Representing (Optional)

717 9th Ave, Fairbanks AK 99701

Address

907-452-2293

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Bill
committee name

committee on # 24, dated Feb 1 1991
bill/subject

I totally support this bill. I believe the results of the HIV test should also be printed in the local newspaper.

Signed: Cathy Wingone
Testifier

WLCCA
Representing (Optional)

217 Ninth Ave, FAIRBANKS, AK
Address

907-452-2293
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the _____ committee name

committee on HOUSE Bill NO. 24, dated 2/1/91
bill/subject

I support the bill requiring ~~test~~ HIV TESTING of sexual offenders. Its only logical to demand ~~sexual~~ HIV and STD testing of the sexual offenders ~~and~~ rather than ~~putting~~ on responsibility being placed on the victim to test for STD and HIV testing

Signed: *Shirley L. Shanon* SHIRLEY
Testifier

Representing (Optional)
Box 83279 Fair AK 99708
Address
452-2293
Phone No.

Renee Herbst
9902 Afognak Circle
Eagle River AK 99577
February 5, 1991

Bert Sharp
State House
PO Box V
Juneau AK 99811

Dear Mr. Sharp:

I support the house bill 24. I think it is imperative that this be passed. It is unfair that victims of molestation or rape not know of other horrors that may befall them besides the trauma of the event. It is time to pay some attention to victims' rights especially as it is those same victims that vote for the legislators. Give us all a chance.

Sincerely,

Renee Herbst
Renee Herbst

Thank you for introducing this legislation - I am 33 now and I'm starting to remember the rape, tortures and traumas of my first 18 years. Others who live through this should have the right to know if they've been infected. If I may do anything else to help, please contact me.

P.O. Box 72884
Fairbanks, 99707
1 February 1991

Dear Bert Sharp:

I am writing to thank you for proposing HB24, and I plan to write to other legislators to solicit their support for your efforts.

It is a triumph of twisted reasoning that at this time rapists and molesters are, in effect, allowed to continue their torture and power over their victims long after the physical assault has ended.

Again, my appreciation for supporting legislation that is important for all women.

Sincerely,

Linden Staciokas
Linden Staciokas

P.O. Box 72884
Fairbanks, 99707
1 February 1991

Dear Bert Sharp:

Thank you for proposing HB24. I only hope that other legislators have the courage to support the bill.

Until recently I was not aware that victims of rape and incest were not allowed access to the results of HIV tests performed on their rapists and molesters. It is inconceivable that at this time rapists and molesters are, in effect, allowed to continue their control of their victim's lives long after the physical assault has ended.

My appreciation for your farsightedness in proposing this legislation before it became a popular issue.

Sincerely,

Ted S. Sponse
Ted S. Sponse

Alaska State Legislature

REPRESENTATIVE
BERT SHARP

DISTRICT 20

COMMITTEE
RESOURCE

FINANCE SUBCOMMITTEE
DEPARTMENT OF NATURAL RESOURCES



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House of Representatives

M E M O R A N D U M

December 17, 1990

SUBJ: AIDS Testing for Sexual Offenders (W.O. 17-LS0233)
TO: Terri Lauterbach, Legislative Counsel
FROM: Representative Bert Sharp *BMS*

My primary intent in proposing this legislation is to make this information available to the victim or the offender's spouse. In addition, it would be made available to prison officials to allow for possible segregation and medical treatment.

I understand that this may raise constitutional privacy issues. However, I believe that threshold was crossed with the establishment of mandatory DWI breathalyzer and blood tests for persons charged with DWI offenses.

The legislation would provide for testing for an HIV positive response as well as full-blown AIDS.

Please revise the bill accordingly, and let me know if I can provide you with further clarification.



REPRESENTING
GOLDEN HEART
OF ALASKA

COMMUNICATIONS BETWEEN LEGISLATIVE COUNSEL

PST

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

*P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029*

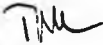
*Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101*

MEMORANDUM

November 28, 1990

SUBJECT: AIDS Testing for Sexual Offenders (W.O. No. 17-LS0233)

TO: Representative Bert Sharp

FROM: Terri Lauterbach 
Legislative Counsel

Enclosed is a draft relating to AIDS testing for sexual offenders.

You will note that the draft only requires testing, as you requested, and it makes the results of the tests confidential. It does not provide that the results of the test be communicated to anyone.

I have expanded the draft beyond "rapists" to include all degrees of sexual assault and sexual abuse of a minor. This is in keeping with a recently enacted Washington law, a copy of which is attached. The Washington law also requires testing for certain drug offenders and prostitution offenders and counseling for the persons who are tested, but I have not added those provisions to your bill.

You requested a discussion of the legal ramifications of the draft. Issues raised by mandatory testing lie in the area of privacy for the most part. A blood test is an intrusion into the body, an area for which society recognizes an expectation of privacy. Therefore, there are issues raised under art. I, sec. 22, Constitution of the State of Alaska, which recognizes a specific right of privacy, and under the federal constitution, which has been interpreted to grant an implied right of privacy under several different provisions.

There would be additional privacy issues raised if, instead of simply testing the offenders, your bill also provided for sharing information about the test with anyone else, for instance, the victim of the assault or abuse or the warden of the prison.

I cannot give you a full discussion of the constitutionality of your proposal until I understand the purpose for which you would require AIDS testing. Is the purpose to counsel inmates before they return to society? Is the purpose to allow segregation in prison? Is the purpose to inform the victim or the offender's spouse or other

2001

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

December 21, 1990

SUBJECT: HIV+ Testing for Sexual Offenders (Work Order No. 7LS-0233)

TO: Representative Bert Sharp

FROM: Terri Lauterbach *TML*
Legislative Counsel

Enclosed is a new draft of your bill relating to HIV+ testing for sexual offenders.

As you requested, I have expanded the draft's scope to include HIV+ testing, not just AIDS testing. I have also provided for sharing the results of the test with the persons you requested.

I must advise you that the privacy issues I raised in my first memo are probably not the same sort that are raised by the DWI testing area that you mentioned. Testing following suspicion of DWI is an investigative technique for gathering evidence of a crime; having AIDS or HIV+ blood is not a crime. Also, DWI blood tests are not mandatory, and even breath tests can be refused, although with a penalty. So, the intrusive aspect of this bill is significantly greater (blood test vs. breath test) and for a different purpose (public health vs. criminal investigation) than the intrusiveness related to DWI investigations.

All this is not to say that your draft, if enacted into law, would be totally indefensible. There obviously are some implications for public health. I just want to let you know that the privacy and policy considerations involved in DWI cases are not really the same as those involved in HIV+ testing so DWI precedents would not be very helpful in supporting your bill if it were tested in court.

Let me know if I can be of further assistance.

TML:mi
90-016.mai

Enclosure

prevention, transmission, and treatment of AIDS and shall not be required for employees who are covered by comparable rules adopted under other sections of this chapter. In adopting rules under this section, the department shall consider infection control standards and educational materials available from appropriate professional associations and professionally prepared publications. [1988 c 206 § 608.]

70.24.320 Counseling and testing—AIDS and HIV—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Pretest counseling" means counseling aimed at helping the individual understand ways to reduce the risk of HIV infection, the nature and purpose of the tests, the significance of the results, and the potential dangers of the disease, and to assess the individual's ability to cope with the results.

(2) "Posttest counseling" means further counseling following testing usually directed toward increasing the individual's understanding of the human immunodeficiency virus infection, changing the individual's behavior, and, if necessary, encouraging the individual to notify persons with whom there has been contact capable of spreading HIV.

(3) "AIDS counseling" means counseling directed toward increasing the individual's understanding of acquired immunodeficiency syndrome and changing the individual's behavior.

(4) "HIV testing" means a test indicative of infection with the human immunodeficiency virus as specified by the board of health by rule. [1988 c 206 § 701.]

70.24.325 Counseling and testing—Insurance requirements. (1) This section shall apply to counseling and consent for HIV testing administered as part of an application for coverage authorized under Title 48 RCW.

(2) Persons subject to regulation under Title 48 RCW who are requesting an insured, a subscriber, or a potential insured or subscriber to furnish the results of an HIV test for underwriting purposes as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Provide written information to the individual prior to being tested which explains:

(i) What an HIV test is;

(ii) Behaviors that place a person at risk for HIV infection;

(iii) That the purpose of HIV testing in this setting is to determine eligibility for coverage;

(iv) The potential risks of HIV testing; and

(v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

(i) An explanation of the confidential treatment of the test results which limits access to the results to persons

involved in handling or determining applications for coverage or claims of the applicant or claimant and to those persons designated under (c)(iii) of this subsection; and

(ii) Requirements under (c)(iii) of this subsection.

(c) Establish procedures to inform an applicant of the following:

(i) That post-test counseling, as specified under WAC 248-100-209(4), is required if an HIV test is positive or indeterminate;

(ii) That post-test counseling occurs at the time a positive or indeterminate HIV test result is given to the tested individual;

(iii) That the applicant may designate a health care provider or health care agency to whom the insurer, the health care service contractor, or health maintenance organization will provide positive or indeterminate test results for interpretation and post-test counseling. When an applicant does not identify a designated health care provider or health care agency and the applicant's test results are either positive or indeterminate, the insurer, the health care service contractor, or health maintenance organization shall provide the test results to the local health department for interpretation and post-test counseling; and

(iv) That positive or indeterminate HIV test results shall not be sent directly to the applicant. [1989 c 387 § 1.]

70.24.330 HIV testing—Consent, exceptions. No person may undergo HIV testing without the person's consent except:

(1) Pursuant to RCW 7.70.065 for incompetent persons;

(2) In seroprevalence studies where neither the persons whose blood is being tested know the test results nor the persons conducting the tests know who is undergoing testing;

(3) If the department of labor and industries determines that it is relevant, in which case payments made under Title 51 RCW may be conditioned on the taking of an HIV antibody test; or

(4) As otherwise expressly authorized by this chapter. [1988 c 206 § 702.]

70.24.340 Convicted persons—Mandatory testing and counseling for certain offenses—Employees substantial exposure to bodily fluids—Procedure. (1) Local health departments authorized under this chapter shall conduct or cause to be conducted pretest counseling, HIV testing, and posttest counseling of all persons:

(a) Convicted of a sexual offense under chapter 9A.44 RCW;

(b) Convicted of prostitution or offenses relating to prostitution under chapter 9A.88 RCW; or

(c) Convicted of drug offenses under chapter 69.50 RCW if the court determines at the time of conviction that the related drug offense is one associated with the use of hypodermic needles.

(2) Such testing shall be conducted as soon as possible after sentencing and shall be so ordered by the sentencing judge.

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issued a judicial warrant based on probable cause.¹⁰⁴ For a search war-
rant to issue in a criminal context, there must be probable cause to
believe that a crime has been or is being committed.¹⁰⁵ Conversely, if
the search is deemed administrative, warrants to inspect premises or
persons are issued when there are reasonable legislative or administra-
tive standards that authorize these intrusions.¹⁰⁶ Furthermore, some cir-
cumstances will justify a warrantless administrative search.¹⁰⁷ Thus, the
standards that authorize criminal and administrative searches differ
and perhaps are less rigorous in the latter. Whether a search of an indi-
vidual's blood is reasonable, therefore, depends on whether the search is
criminal or administrative in nature.¹⁰⁸

A. Standards Governing Criminal Searches Under the Fourth Amendment

In *Schmerber v. California*¹⁰⁹ the Supreme Court held that compul-
sory administration of a blood test is a search under the fourth amend-
ment.¹¹⁰ While the Court determined that the police investigation of a
vehicular homicide had provided probable cause to believe that the de-
fendant had been driving while intoxicated, the defendant's blood alco-
hol test was conducted without a warrant.¹¹¹ The Court held, however,
that under these circumstances a warrantless search was reasonable be-
cause the evidence of drunk driving would have been lost by the time
the police had obtained a search warrant.¹¹² Therefore, promotion of a
legitimate governmental interest outweighed the intrusion into the de-
fendant's privacy.

Schmerber demonstrates that if the test of an individual's blood is
intended to discover and secure evidence for use in a criminal proceed-
ing, the government must obtain a search warrant founded on probable
cause that the test will yield evidence of a crime unless a time delay
would result in loss of the evidence altogether.¹¹³ *Schmerber* and its
progeny,¹¹⁴ however, shed little light on the reasonableness of a blood

104. *Skinner*, 109 S. Ct. at 1414.
105. See *Camara*, 387 U.S. at 534; Note, *Mandatory AIDS Testing*, *supra* note 3, at 1424.
106. *Camara*, 387 U.S. at 538.
107. See Note, *Mandatory AIDS Testing*, *supra* note 3, at 1424; see also *infra* notes 124-64
and accompanying text.
108. Note, *Mandatory AIDS Testing*, *supra* note 3, at 1424.
109. 384 U.S. 757 (1966).
110. *Id.* at 767.
111. *Id.* at 768-69 & n.12.
112. *Id.* at 770-71; see also Note, *Mandatory AIDS Testing*, *supra* note 3, at 1425 (noting
that the alcohol "would have dissipated from the defendant's blood before a search warrant could
have been obtained").
113. Note, *Mandatory AIDS Testing*, *supra* note 3, at 1427.
114. In *Winston v. Lee*, 470 U.S. 753 (1985), the Court refused to authorize removal of a

search in an administrative situation. Arguably, a program of mandatory HIV testing of sex offenders represents a search that is more administrative than criminal in nature. Because the primary purpose of mandatory testing is to protect some element or segment of public health and not to obtain evidence to be used in a criminal proceeding,¹¹⁶ one must look closely at the way in which the Court has developed its doctrine of administrative searches in order to fit mandatory HIV testing for sex offenders within the fourth amendment framework.

B. Standards Governing Administrative Searches Under the Fourth Amendment

1. Warranted Searches

In *Camara v. Municipal Court*¹¹⁶ the Supreme Court reversed the defendant's conviction, which was based on his refusal to allow state health inspectors to conduct a warrantless search of his home for housing code violations.¹¹⁷ The Court held that an administrative search conducted to enforce state regulations in the public interest constitutes a significant intrusion on fourth amendment interests. When performed without a warrant, such a search lacks the necessary fourth amendment safeguards.¹¹⁸ The *Camara* Court declared that an administrative search would be reasonable only if performed on the basis of a warrant that verifies the need for and delineates the scope of the search.¹¹⁹ The Court did not impose criminal search standards for probable cause as a requirement for obtaining an administrative warrant. Rather, the Court sought to strike a balance between the public and private interests implicated in an administrative search by holding that there is probable

bullet from the defendant's body that the Commonwealth of Virginia claimed would provide strong evidence of the defendant's guilt. Because the surgery was dangerous to the defendant, the intrusion was more severe than the one sanctioned in *Schmerber*. See *id.* at 761 & n.4. Further, because the Commonwealth had substantial additional evidence that would convict the defendant, the Court declared that the invasion of the defendant's body was unreasonable. *Id.* at 767.

115. See *supra* text accompanying notes 101-02. The Presidential Commission on the Human Immunodeficiency Virus Epidemic recommended legislation that would make knowing, intentional transmission of HIV a criminal offense. *Presidential Commission, supra* note 2, at 130. In this respect, a mandatory HIV test of a sex offender could be seen as a criminal search under the fourth amendment, since the government would be seeking evidence useful in a criminal proceeding. A few states, including Florida, Idaho, Louisiana, and Nevada, have passed criminal statutes specifically intended to cover intentional HIV transmission. *Id.* Furthermore, some states have chosen to use a positive HIV test to increase sentences in sexual assault convictions when the defendant was aware that he was HIV-infected at the time of the attack. Hoffman, *supra* note 4, at 39.

116. 387 U.S. 523 (1967).

117. *Id.*

118. *Id.* at 534.

119. *Id.* at 531-33 & n.10.

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cause to issue a warrant to inspect when "reasonable legislative or administrative standards" mandate the inspection.¹²⁰

The probable cause standards for an administrative search are relatively vague as compared with those required in the criminal context. For example, the *Camara* Court found that the condition of the surrounding area, the passage of time, and the nature of the premises to be inspected are reasonable legislative standards upon which a search warrant can issue.¹²¹ The Court did not demand that authorities have express knowledge of the premises' particular condition before requesting a warrant.¹²² Legislative standards, however, must be rational and must represent a valid public interest in order to provide probable cause to issue a "suitably restricted" administrative search warrant.¹²³

2. Warrantless Searches

Twenty years after *Camara* the Supreme Court modified its stance on the issue of whether an administrative search could be reasonable if conducted without a search warrant. In *New York v. Burger*¹²⁴ the Court expanded the scope of administrative searches to allow warrantless inspections in situations of special need: situations in which individual privacy interests are weakened, and governmental interests are concomitantly heightened.¹²⁵ In upholding a warrantless inspection of an automobile junkyard, the Court determined that closely regulated industries subjected to substantial governmental oversight have a lowered expectation of privacy.¹²⁶

The *Burger* majority stated that a warrantless inspection may be reasonable under the fourth amendment if three criteria are met. First, following the *Camara* rationale,¹²⁷ the government must demonstrate that a substantial state interest justifies the regulatory scheme under which the inspection is made.¹²⁸ Second, the warrantless inspection must be necessary to further the regulatory scheme.¹²⁹ Finally, the state's inspection program must be sufficiently certain and regular in its application to serve as a constitutionally adequate substitute for a search warrant.¹³⁰ To satisfy this last requirement, the program of in-

120. *Id.* at 538.

121. *Id.*

122. *Id.*

123. *Id.* at 539.

124. 482 U.S. 691 (1987).

125. *Id.* at 702.

126. *Id.* at 700.

127. See *supra* text accompanying notes 116-23.

128. *Burger*, 482 U.S. at 702.

129. *Id.*

130. *Id.* at 703.

spection must alert a party to the possibility of being subject to a search, and the search must be limited in time, place, and scope.¹³¹

In *Burger* the Court did not discuss whether the three part reasonableness test would govern administrative searches of an individual's body and body fluids, but two years later the Supreme Court considered this issue in *Skinner v. Railway Labor Executives' Association*.¹³² Finding that on-the-job intoxication is a significant problem in the railroad industry and that employees who abuse alcohol and drugs constitute a serious threat to public safety, the Court upheld administrative regulations mandating warrantless blood and urine tests of employees who are involved in specified accidents.¹³³ As in *Schmerber*,¹³⁴ the Court confirmed that blood, urine, and breath tests are searches under the fourth amendment.¹³⁵ Noting that a presumption in favor of a search warrant issued upon a degree of individualized suspicion still exists, the Court observed that individualized suspicion is not a constitutional requisite for every search.¹³⁶ Instead, judicial review of the railroad industry's drug testing program requires a balancing test similar to those applied in *Camara*¹³⁷ and *Burger*.¹³⁸

In *Skinner* the Court observed that special needs necessitated a balancing of governmental and private interests and made warrant requirements impracticable.¹³⁹ Here, as in *Burger*, the Court found that the customary governmental regulation of the railroad industry had weakened privacy interests and heightened governmental interests thereby making a warrantless search constitutionally acceptable.¹⁴⁰ The Court held that a substantial state interest in regulating the conduct of railroad employees justified the regulatory program under which the state administered toxicological tests.¹⁴¹

131. *Id.*

132. 109 S. Ct. 1402 (1989).

133. *Id.* at 1407, 1421-22. The Federal Railroad Administration found that from 1972 to 1983 at least 21 significant train accidents involved drug or alcohol intoxication, and that these incidents resulted in 25 fatalities, 61 injuries, and damage to property estimated at \$19 million. *Id.* at 1407-08.

134. 384 U.S. 757 (1966).

135. *Skinner*, 109 S. Ct. at 1412-18.

136. *Id.* at 1417.

137. 387 U.S. 523 (1967).

138. 482 U.S. 691 (1987).

139. *Skinner*, 109 S. Ct. at 1414.

140. *Id.*; Note, *Mandatory AIDS Testing*, *supra* note 3, at 1430-31.

141. The Court remarked that the test regulations were intended to reduce or eliminate accidents and other fatal incidents, and that the "governmental interest in ensuring the safety of the traveling public and of the employees themselves plainly justifies prohibiting covered employees from using alcohol or drugs on duty . . . This interest also require[s] and justify[ies] the exercise of supervision to assure that the restrictions are in fact observed." *Skinner*, 109 S. Ct. at 1415 (quoting *Griffin v. Wisconsin*, 483 U.S. 368, 375 (1987)).

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The Court further found that the warrantless inspection was necessary to implement the regulatory scheme.¹⁴² Because the regulations relied principally on blood tests to evidence recent drug or alcohol use prior to an accident, the Court determined that any delay in obtaining a warrant would defeat the effectiveness of the blood assay because evidence of drug or alcohol use deteriorates rapidly in the bloodstream.¹⁴³ Furthermore, although employees know that an accident will trigger testing, the unpredictability of the occurrence of such an event enhances the deterrent effect of the penalties for the use of drugs or intoxicants.¹⁴⁴ Thus, the *Skinner* inspection program is regular enough in application to further the underlying administrative scheme and to alert the individual of the possibility of being subject to a suitably limited search. Because the government's interest in testing railroad employees outweighed the employees' justifiable expectations of privacy under these circumstances, and because the *Skinner* warrantless inspection program met the *Burger* standards for such a scheme, the Court found no fourth amendment violation.¹⁴⁵

The Court followed a similar analysis in *National Treasury Employees Union v. Von Raab*¹⁴⁶ when upholding a suspicionless drug testing program for any customs officers who carried firearms or who directly participated in drug interdiction.¹⁴⁷ While holding that urine testing for illicit drug use clearly implicates the fourth amendment,¹⁴⁸ the Court determined that the realities of the workplace justify certain physical intrusions that might be unreasonable in other situations.¹⁴⁹ Finding that customs employees perform a function which substantially impacts public safety and welfare and that the safety of each employee depends largely on each employee's fitness for the job, the Court stated that these individuals should expect some inquiries that might be intrusive in other circumstances.¹⁵⁰ Certain forms of public employment, the majority concluded, result in a diminished expectation of privacy even with respect to intrusive physical searches.¹⁵¹ Ultimately, under these circumstances the government has a compelling interest in ascertaining the trustworthiness and fitness of its drug interdiction force that out-

142. *See id.* at 1421.

143. *Id.* at 1420-21; *see also Schmerber*, 384 U.S. at 770-71.

144. *Skinner*, 109 S. Ct. at 1419-20.

145. *Id.* at 1418-21.

146. 109 S. Ct. 1384 (1989).

147. *Id.* at 1397.

148. *Id.* at 1390.

149. *Id.* at 1393.

150. *Id.* at 1394.

151. *Id.* at 1393.

weighs individual privacy expectations.¹⁵² Persuaded that the drug testing program bore a close and substantial relation to the government's goal¹⁵³ and that the regulation clearly informed the employee of the rationale and scope of the test,¹⁵⁴ the Court applied the warrantless search standards of *Burger* and resolved the balancing test between public and private interests in the government's favor.¹⁵⁵

At least one commentator has contended that the *Skinner* and *Von Raab* balancing test would apply to court-ordered HIV testing as well as to drug testing.¹⁵⁶ Under this rationale, involuntary HIV tests would be permitted if the physical intrusion served a special governmental need that outweighed the individual's expectation of privacy.¹⁵⁷ The Supreme Court has yet to consider whether compulsory HIV testing can meet that fourth amendment standard.¹⁵⁸ In *Glover v. Eastern Nebraska Community Office of Retardation*,¹⁵⁹ however, one federal court considered a policy that mandated HIV testing as a condition of state employment.¹⁶⁰

The *Glover* court considered the constitutionality of an agency policy that required certain employees who had extensive contact with agency clients to undergo testing for HIV.¹⁶¹ The court found that although the legislature might have enacted the policy to combat the spread of HIV, evidence showed that the risk of HIV transmission between agency employees and clients was so insignificant that the policy had no real effect in preventing the spread of HIV.¹⁶² The court, therefore, decided that the government's interests in providing a safe environment for agency clients did not outweigh the employees' reasonable expectation of privacy in their blood.¹⁶³ Repeating that the governmental intrusion must be reasonable in both inception and scope, the court

152. *Id.* at 1396.

153. *Id.* Presumably, the Court applied the *Skinner* deterrence rationale to the warrantless urine testing in *Von Raab*. The majority remarked that the petitioner's claim that such testing is ineffective and, therefore, not conducive to the regulatory scheme was unfounded because it is extremely difficult for a drug user to alter the test results by avoiding use of the drug after the test date is known. *Id.*

154. *Id.* at 1394.

155. *Id.* at 1396.

156. *See* CRIM. JUST. NEWSL., Apr. 17, 1989, at 3.

157. *Id.* (statement of Judge Mary C. Morgan).

158. Note, *Mandatory AIDS Testing*, *supra* note 3, at 1431.

159. 686 F. Supp. 243 (D. Neb. 1988).

160. The governing board of the Eastern Nebraska Human Services Agency had adopted a policy that required certain employees to submit to mandatory testing for tuberculosis, hepatitis B, and HIV. *Id.* at 244. In addition, the policy contained reporting and disclosure requirements for employees who know or suspect they have one of the diseases or are treated for any of them. *Id.*

161. *Id.* at 247.

162. *Id.* at 249.

163. *Id.* at 250.

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V. AN ADMINISTRATIVE SCHEME FOR MANDATORY AIDS TESTING:
CALIFORNIA'S PROPOSITION 96

On November 8, 1988, the California electorate approved an initiative known as Proposition 96. Added as Chapter 1.20 to the California Health and Safety Code,¹⁶⁵ Proposition 96 enables victims of sexual crimes as well as certain peace officers, firefighters, and emergency medical personnel who have been assaulted in their official capacity to request HIV testing of their assailants.¹⁶⁶ The Proposition 96 HIV test is administrative in nature because the test is structured to gather information that will be used to protect the public health, not as evidence in a criminal proceeding.¹⁶⁷ The HIV test is essentially a warrantless search that may be analogized to the search upheld in *Burger*.¹⁶⁸ It is also similar in nature to the physically intrusive searches discussed in *Skinner*¹⁶⁹ and *Von Raab*.¹⁷⁰

Under Proposition 96 assault victims may petition the court for an order authorizing compulsory HIV testing of an assailant charged with either a sexual assault or with physical interference with the official duties of a peace officer, firefighter, or emergency medical officer.¹⁷¹ Upon such petition, the court will conduct a hearing to determine whether probable cause exists to believe that a transfer of body fluids from the defendant to the victim occurred during the assault or altercation.¹⁷² Upon finding probable cause, the court will order the defendant to undergo HIV testing.¹⁷³

Proposition 96 states that a licensed medical laboratory will conduct the HIV tests¹⁷⁴ and that the results of the test will be disclosed to the defendant, the requesting victim, and if the defendant is incarcer-

164. *Id.* The court commended the agency's adoption of a safety-oriented approach, but determined that achieving the goal could not overshadow the impermissible infringement on the personal liberty of the agency's employees. *Id.* at 251.

165. CAL. HEALTH & SAFETY CODE §§ 199.95-199.99 (West Supp. 1990).

166. *Id.* §§ 199.96-199.97.

167. *Id.* §§ 199.95, 199.98(f); see also Note, *Mandatory AIDS Testing*, *supra* note 3, at 1438.

168. 482 U.S. 691 (1987); see also Note, *Mandatory AIDS Testing*, *supra* note 3, at 1438.

169. 109 S. Ct. 1402 (1989); see *supra* notes 132-45 and accompanying text.

170. 109 S. Ct. 1384 (1989); see *supra* notes 146-55 and accompanying text.

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172. *Id.*

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168. 482 U.S. 691 (1987); see also Note, *Mandatory AIDS Testing*, *supra* note 3, at 1439.

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174. Proposition 96 specifies that participating laboratories will conduct tests for "medically accepted indications of exposure to or infection by" HIV. *Id.* § 199.98(b). Presumably, this language refers to the testing procedures discussed *supra* at notes 55-64 and accompanying text.

ated, the incarcerating facility.¹⁷⁵ A disclaimer informing the recipient that the test may be inaccurate accompanies the results.¹⁷⁶ Test results which indicate that the defendant has been exposed to or is infected with HIV also will be transmitted to the California State Department of Health Services.¹⁷⁷

Proposition 96 provides that anyone who receives information of the defendant's test results under the statute must maintain the confidentiality of any personal identifying data relating to the test results except for disclosure necessary to obtain medical or psychological care.¹⁷⁸ Any person who discloses test results pursuant to a statutory authorization is immune from civil liability.¹⁷⁹ Finally, no test results obtained pursuant to the statute are admissible as evidence in any criminal or juvenile proceeding.¹⁸⁰

Proposition 96 is deceptive because it uses the term "probable cause" to justify a search of an individual's blood. This term seems to suggest that the statute authorizes a criminal search. The statute, however, does not authorize a court to issue a testing order based on probable cause to believe that a crime has been committed, but instead on probable cause to believe that there has been an exchange of body fluids between defendant and victim.¹⁸¹ The question is whether this standard establishes a sufficiently articulated legislative scheme that makes the mandatory AIDS test a constitutionally legitimate warrantless administrative search.¹⁸² In other words, Proposition 96 must conform to the criteria set out in *Burger* and utilized in *Skinner* and *Von Raab* in order for its compulsory HIV testing to be a valid administra-

175. CAL. HEALTH & SAFETY CODE §§ 199.96-199.97 (West Supp. 1990). Disclosure to the incarcerating facility entails disclosure only to the officer in charge and the chief medical officer of the facility. *Id.* If the requesting victim is a peace officer, a firefighter, or an emergency medical technician, the statute also requires disclosure of test results to the victim's employing entity. *Id.* § 199.97. Finally, if the defendant is a minor, the test results will be communicated to the minor's parents or guardian. *Id.* § 199.98(d).

176. The disclaimer states: "The tests were conducted in a medically approved manner but tests cannot determine exposure to or infection by AIDS . . . with absolute accuracy. Persons receiving this test result should continue to monitor their own health and should consult a physician as appropriate." *Id.* § 199.98(d).

177. *Id.* § 199.98(c).

178. *Id.* § 199.98(e).

179. *Id.* § 199.98(g).

180. *Id.* § 199.98(f).

181. *Id.* §§ 199.96-199.97. Proposition 96 does not require that the court issue a formal search warrant in order to inspect the defendant's blood. The court's only role in the inspection process is to determine whether there is probable cause to believe that there was an exchange of body fluids between defendant and victim, i.e., that the administrative standards authorizing the search have been met. Thus, the intrusion here is analogous to the warrantless search in *New York v. Burger*. Note, *Mandatory AIDS Testing*, *supra* note 3, at 1438.

182. Note, *Mandatory AIDS Testing*, *supra* note 3, at 1438.

forming the recipient results.¹⁷⁶ Test results sent to or is infected State Department of

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190). Disclosure to the in- the chief medical officer of or an emergency medical 1's employing entity. *Id.* § municated to the minor's

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tive search.

For a mandatory HIV test to be valid under the fourth amend- ment, the government's interest in conducting the test must outweigh the individual's expectation of privacy in his or her own blood.¹⁸³ If the government constitutionally can utilize blood tests for employment pur- poses, for ascertaining a driver's blood alcohol level, and for determin- ing fitness for military service, the underlying safety rationale conceivably could be expanded to include testing of persons charged with a crime in order to provide their victims with information relevant to the victims' health.¹⁸⁴ Under such circumstances, the defendant ar- guably has a limited expectation of privacy.

Furthermore, the state has a substantial and perhaps compelling interest in curbing the transmission of HIV and in protecting crime vic- tims.¹⁸⁵ The state's interest is reflected in the purpose of the regulatory program, which is to acquire vital information and to disclose it as nec- essary to allow interested parties to take precautions, or alternatively, to relieve the parties from groundless fear of contracting the virus.¹⁸⁶ Arguably, the inspection authorized in Proposition 96 furthers the regu- latory scheme contemplated in the statute: the mandatory test purports to be an effective way of achieving the statute's stated goal. The ques- tion is whether the inspection scheme is necessary to further the regula- tory scheme. Finally, because the statute alerts the individual to the timing, manner, and scope of the mandatory HIV test, the inspection program appears to be sufficiently regular in its application to provide a constitutionally adequate substitute for a search warrant. If a court were to consider Proposition 96 under the criteria governing the consti- tutionality of administrative searches, it appears that the statute could survive fourth amendment scrutiny.¹⁸⁷

183. *Id.* at 1439 & n.230.

184. *Id.* at 1443.

185. See CAL. HEALTH & SAFETY CODE § 199.95 (West Supp. 1990).

186. *Id.*

187. Note, *Mandatory AIDS Testing*, *supra* note 3, at 1445.

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Forthcoming issues of the *Journal* will address issues related to AIDS, and serious juvenile offenders. The editors welcome unsolicited manuscripts which examine specific topics within these general categories from an ethical perspective. Articles should be directed to the Lead Articles Editor; regretfully, manuscripts cannot be returned unless postage is provided.

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MANDATORY AIDS TESTING: THE LEGAL, ETHICAL AND PRACTICAL ISSUES

A. ALYCE WERDEL*

By 1981, a new worldwide epidemic was recognized. This epidemic is known as Acquired Immunodeficiency Syndrome (AIDS). The World Health Organization (WHO) estimates that between five and ten million people may be infected with the virus,¹ and over one million will be killed by the virus by the year 2000.² The number of AIDS cases is currently doubling every ten months.³ An International Summit on AIDS held in London warned: "The AIDS virus threatens hundreds of millions of lives around the world and is likely to create an explosive epidemic far into the next century."⁴ With no vaccine presently available, one way to halt the spread of the disease is to alert people to the possible danger in the hope that they will avoid high risk behavior. Many countries have developed, or are in the process of developing, laws to control the spread of this fatal virus.⁵ One scheme proposed in the United States is mandatory testing. This article will examine the practical, ethical, and legal considerations of mandatory testing among certain high risk populations. It concludes that testing should be required among the following groups: (1) prisoners, (2) arrested prostitutes and drug users, and (3) those who attend sexually transmitted disease and drug abuse clinics.

* B.A. Human Biology, Stanford University 1986; J.D. University of Notre Dame 1990.

1. Gallo, *Quest for a Vaccine*, WORLD HEALTH, March 1988, at 9.

2. Mesce, *AIDS Infection Rate is Declining: Report*, S. Bend Trib., Feb. 2, 1990, at A2, col. 1.

3. Montefiore, *AIDS: The Only Answer*, The Times (London), Aug. 10, 1988, at 10, col. 2.

4. Prentice, *Generations at Risk from 'Explosive AIDS Epidemics'*, The Times (London), Jan. 27, 1988, at 3, col. 1.

5. By March 1988, over fifty countries had laws in force pertaining to AIDS. Other countries have extended their public health codes or communicable disease statutes to apply to AIDS cases. Jayasuriya, *AIDS Related Health Legislation*, 14 COMMONWEALTH L. BULL. 879 (1988).

I. BACKGROUND: STAGES OF THE VIRAL INFECTION AND COMMON SYMPTOMS

AIDS is caused by a virus, known as the Human Immunodeficiency Virus (HIV). A virus is defined as an ultramicroscopic parasite, which invades a living cell and takes over its metabolic machinery in order to reproduce.⁶ The HIV virus is a retrovirus; a retrovirus can easily invade the living cell "turning it into factories for more viruses."⁷ HIV invades and multiplies within the white blood cells (lymphocytes) which are found in the immune system. It either destroys the host cell immediately or lies dormant for a period of time, delaying the onset of the disease.⁸ No vaccine has ever been developed for a retroviral disease.⁹

The human immune system is the body's natural defense against potentially harmful, infectious microorganisms (microscopic life forms), such as bacteria, viruses and fungi.¹⁰ The immune system consists of two types of cells: T-lymphocytes and B-lymphocytes. In a healthy immune system, the T-lymphocytes recognize and attack foreign cells in the body, known as antigens. There are two types of T-lymphocytes: T-killer cells and T-helper (T-4) cells. The T-killer cell binds to the antigen and kills it. The T-4 cell helps the T-killer cell to multiply, so that there are enough killer cells to fight the foreign cells.¹¹ The HIV virus attacks the body's immune system by destroying the T-4 cells.¹² As a result, the T-killer cells do not

multiply and the immune system is unable to fight infections.¹³ Because the body has a high number of T-4 cells, it is easy for the virus to spread once it is in the system.¹⁴ When the virus has destroyed the T-4 cells, the immune system is weakened and germs that normally are harmless can create fatal diseases.¹⁵

There are three stages of infection: HIV infection, AIDS-related complex, and full-blown AIDS.¹⁶ The first stage of the disease, HIV infection, begins at the time that the virus enters the body and begins to attack the T-4 cells. At this stage, HIV tests can usually detect antibodies to the virus two to eight weeks after the initial infection.¹⁷ Antibodies are proteins manufactured by T-lymphocytes in the immune system in response to an infection.¹⁸ The role of the antibodies is to neutralize the viral antigen (foreign protein) in the body.¹⁹ In order to do this, they block the HIV cells from binding to the T-4 cells.²⁰ However, as the body continues to fight the HIV infection, fewer and fewer antibodies are produced because the virus destroys the T-4 cells. As a result, HIV patients have low counts of these neutralizing agents²¹ and are unable to fight off

surface of the T-4 cell; after they have attached, they are able to invade and destroy the T-4 cell. *Id.* at 43-44, 47.

The HIV virus attacks only the T-lymphocytes, not the B-lymphocytes. The immune system has two parts: humoral immunity and cellular immunity. The humoral immunity relies on the B-lymphocytes, while the cellular immunity relies on the T-lymphocytes. The T-lymphocytes attack virally infected cells or tumor cells. Therefore, this article only addresses the role of T-lymphocytes in the immune system. AMERICAN MEDICAL ASSOCIATION ENCYCLOPEDIA OF MEDICINE, *supra* note 9, at 573.

13. AMERICAN MEDICAL ASSOCIATION ENCYCLOPEDIA OF MEDICINE, *supra* note 9, at 573.

14. J. LANGONE, *supra* note 6, at 44.

15. *Id.* at 48.

16. Other authors have divided the disease into different classification systems which are typically more detailed than the one proposed in the text. More detailed classification systems are useful for antiviral therapy analysis as well as epidemiological purposes. For a survey of these classification systems and a more detailed analysis of their usefulness, see Smiley, *HIV Infection and AIDS: Definition and Classification of Disease*, 12 DEATH STUD. 399 (1988).

17. J. LANGONE, *supra* note 6, at 11. Note that there have been sporadic reports of delayed seroconversion (the time at which the body produces antibodies to the virus). For a possible explanation and examples of this rare phenomenon, see Moss & Bacchetti, *Editorial Review, Natural History of HIV Infection*, 3 AIDS 55 (1989).

18. J. LANGONE, *supra* note 6, at 10.

19. AMERICAN MEDICAL ASSOCIATION ENCYCLOPEDIA OF MEDICINE, *supra* note 9, at 115.

20. Yarchoan & Mitsuya, *supra* note 9, at 191.

21. *Id.* There is some indirect evidence that persons with high counts

6. J. LANGONE, AIDS: THE FACTS 22 (1988).

7. *Id.* at 43.

Genetic information comes the form of ribonucleic acid (RNA) or deoxyribonucleic acid (DNA). Wright, *AIDS: A Brief Overview*, 12 NOVA L. REV. 973, 974-75 (1988). The genetic information of most viruses and all living things is normally found in the DNA, which replicates itself into RNA when it is time to make a protein. *Id.* In a retrovirus the genetic information is found in the RNA rather than the DNA. *Id.* When the virus attaches to the cell, it uses a special enzyme, reverse transcriptase, in order to copy its genetic information into the host cell's DNA. At this point, the virus is able to replicate itself within the host cell. *Id.*; J. LANGONE, *supra* note 6, at 43.

8. Mann, . . . *for a Global Challenge*, WORLD HEALTH, March 1988, at 4, 5.

9. Yarchoan, Mitsuya, & Broder, *Clinical and Basic Advances in the Antiretroviral Therapy of Human Immunodeficiency Virus Infection*, 87 AM. J. MED. 191 (1989) [hereinafter Yarchoan & Mitsuya]. Other retroviral diseases include degenerative brain diseases and possibly some types of cancers. AMERICAN MEDICAL ASSOCIATION ENCYCLOPEDIA OF MEDICINE 1051 (1989).

10. AMERICAN MEDICAL ASSOCIATION ENCYCLOPEDIA OF MEDICINE, *supra* note 9, at 570.

11. *Id.* at 573.

12. J. LANGONE, *supra* note 6, at 27. The viral antigens attach to the

the HIV infection. Because the infected individual may not exhibit exterior signs of illness at this stage, he or she may be unaware of the infection. This lack of awareness is particularly dangerous in the AIDS context since any infected person is capable of spreading the disease.²²

The second stage of infection, AIDS-related-complex, begins at the time the infected individual exhibits signs of immunological defects which are similar to those of full-blown AIDS.²³ However, at this stage, these defects cause a less profound weakening of the immune system.²⁴ Researchers and scientists do not know exactly how many people will advance to this stage,²⁵ but approximately 350,000 Americans have advanced to this stage of the virus.²⁶ The virus can be detected either by testing for the antibodies to the virus or by recognizing the clinical symptoms, which include swollen glands, unexplained loss of appetite and weight loss, heavy night sweats, persistent and chronic diarrhea, persistent dry cough, white spots or unusual blemishes on the mouth, hairy leukoplakia (a precancerous condition), shingles and lymphoma.²⁷

Full-blown AIDS is the third and final stage of infection. At this stage, the immune system is so weak that the body is unable to fight off opportunistic infections.²⁸ Opportunistic infections refer to those infections which ordinarily do not cause disease in human beings. However, due to the weakened immune system of the AIDS patient, they can cause death.²⁹

of these neutralizing agents have a better disease course, and the question remains whether administering anti-HIV antibodies would help AIDS patients suffering from ARC symptoms. *Id.* For a further discussion of this theory, see Dr. Jonas Salk's approach in developing a vaccination to the virus, *infra* notes 257-260 and accompanying text.

22. Piot & Colebunders, *The Clinical Symptoms*, WORLD HEALTH, March 1988, at 25, 26.

23. J. LANGONE, *supra* note 6, at 11.

24. Mann, *supra* note 8, at 5.

25. *Id.* at 6.

26. 100 CONG. REC. H6367 (daily ed. July 15, 1987) (statement of Rep. Dannemeyer).

27. J. LANGONE, *supra* note 6, at 12-13.

Leukoplakia is characterized by raised white patches on the mucous membrane of the mouth or vulva. Herpes zoster is the medical term for shingles, an infection of the nerves which service certain areas of the skin. It can cause a painful rash and blisters. Lymphoma is defined as "[a]ny group of cancers in which the cells of lymphoid tissues (found mainly in the lymph nodes and spleen) multiply unchecked." AMERICAN MEDICAL ASSOCIATION ENCYCLOPEDIA OF MEDICINE, *supra* note 9, at 638.

28. Piot & Colebunders, *supra* note 22, at 26.

Infection at this stage may be confirmed by testing for antibodies to the virus or by recognizing the clinical symptoms which include a weakened and disfigured body, nervous system disorders ranging from forgetfulness to dementia, pneumocystis carinii pneumonia (a type of pneumonia common among AIDS patients), severe diarrhea, central nervous system infection, herpes simplex virus, tuberculosis, kaposi's sarcoma (malignant skin tumors) and emaciation.³⁰ AIDS dementia can affect anyone who carries the virus; it occurs in up to seventy-five percent of AIDS cases.³¹ The term "dementia" refers to a wide range of symptoms. The milder symptoms include muddled thinking, apathy, irritability, forgetfulness, and depression. The severe cases usually include more dramatic symptoms such as an "acute psychotic state manifested by euphoria and hyperactivity."³² There are two types of dementia: that which directly affects the central nervous system, and that which does not. The type of dementia which directly affects the central nervous system may be one of the first signs of infection because it is believed to occur at the time of seroconversion (the time at

30. J. LANGONE, *supra* note 6, at 14-16.

As infection progresses, fewer and fewer antibodies are produced. Therefore, the second two stages are more likely to be recognized by the clinical symptoms than by testing for antibodies to the virus.

Clinical symptoms refer to the symptoms and source of a disease as opposed to the laboratory findings which refer to anatomical changes. STEDMAN'S MEDICAL DICTIONARY 1308 (5th ed. 1982). In other words, clinical symptoms refer to those which pertain to or are founded on actual observation and treatment of the patients. THE SLOANE-DORLAND ANNOTATED MEDICAL-LEGAL DICTIONARY 149 (1987).

The prevalence of certain opportunistic infections varies with the geographical area because the type of infection depends on the patient's exposure to microbial [short-lived] agents. For example, pneumocystis carinii pneumonia is the most common opportunistic infection among Americans and Europeans, while the gastro-intestinal system is commonly affected in Africans with the disease. Piot & Colebunders, *supra* note 22, at 26.

31. Adams, *HIV-Related Dementia*, NURSING TIMES, Jan. 20, 1988, at 45. Other estimates have been significantly lower. See e.g., Piot & Colebunders, *supra* note 22, at 26. The authors estimate that dementia occurs in approximately one-third of all AIDS patients. However, they may not be including both types of dementia in their estimate, or they may not be including the milder symptoms, such as forgetfulness or depression, in the definition of dementia.

32. Raeburn, *AIDS Dementia Puzzles Doctors*, S. Bend Trib., Nov. 6, 1989, at A2, col. 1. Bocellan, the Director of Neuropsychology at San Francisco General Hospital, said that those patients who experience the more severe symptoms "become very grandiose and delusional." *Id.*

which the immune system produces antibodies to the virus).³³ Both types of dementia continue until death.³⁴

Scientists do not know the exact percentage of infected persons who will develop full-blown AIDS. Although early studies indicated that only a minority may go on to develop clinical symptoms of AIDS, the latency period appears to have misled researchers.³⁵ Recent studies indicate that in the absence of treatment, most infected persons will progress to AIDS, with a median time of seven to ten years from the time of infection.³⁶ One report estimates that up to ninety-eight percent of AIDS victims will die less than three years after diagnosis.³⁷

II. THE MODE OF VIRAL TRANSMISSION AND HIGH RISK GROUPS

The HIV virus is transmitted through infected body fluids.³⁸ The virus has been detected in blood, semen, vaginal fluids, breast milk, saliva, and tears.³⁹ However, there are no reported cases of viral transmission through tears⁴⁰ or saliva.⁴¹ This can be explained by the fact that it takes a fairly large amount of the virus to infect a healthy person, and the virus is fragile outside the human body.⁴² It is also unlikely that

33. Adams, *supra* note 31, at 46.

34. *Id.* at 45-46.

35. Moss & Bacchetti, *supra* note 17, at 57.

36. *Id.* The Director of the American Medical Association (AMA) task force said that it may be "very likely" that almost all infected persons will go on to develop AIDS. Van de Kamp, *The Cost of AIDS*, L.A. LAW., Sept. 1988, at 30, 32. A Dr. Crenshaw, while testifying before Congress, said, "[m]ost experts, including Dr. Gallo [one of the co-discoverers of the HIV virus], . . . agree that up to one hundred percent of infected individuals could eventually die of AIDS or ARC." 100 CONG. REC. H6370 (daily ed. July 15, 1987) (statement of Dr. Crenshaw).

37. McLaughlin, *Legal Issues in Health Care Settings, AIDS: Current State of the Law—An Overview*, 3 J.L. & HEALTH 77, 79 (1988-1989). See also 100 CONG. REC. H6368 (daily ed. July 15, 1987) (statement of Mr. Dornan) (as of July 1987, ninety-one percent of those diagnosed with AIDS between January and June 30, 1981, have died).

38. J. LANGONE, *supra* note 6, at 83.

39. Summary: *Recommendations for Preventing Transmission of Infection with Human T-Lymphotropic Virus Type III Lymphadenopathy-Associated Virus in the Workplace*, 34 MORBIDITY & MORTALITY WEEKLY REP. 681, 682 (Nov. 15, 1985); Selwyn, *AIDS: What is Now Known*, HOSP. PRAC., May 15, 1986, at 67, 73.

40. Piot & Colebunders, *supra* note 22, at 26.

41. Smith, *HIV Transmitted by Kissing*, 294 BRIT. MED. J. 1033 (1987).

42. J. LANGONE, *supra* note 6, at 54, 70, 73. If one cubic centimeter (cc) of blood containing the HIV virus is diluted in a quart of water, and then one

infected food can transmit the virus because T-4 cells are usually not found in the digestive tract.⁴³ In general, it is widely accepted that casual transmission of the virus, although theoretically possible, is highly unlikely.⁴⁴

The virus can be transmitted through sexual activity, blood transfusions, and needle sharing.⁴⁵ Mothers can transmit the virus to their infants before birth (intrauterine), during delivery (peripartum), and possibly after birth while breast-feeding with infected breast milk.⁴⁶ Heterosexual transmission occurs through penile-vaginal intercourse.⁴⁷ Although the virus is present in both semen and cervical fluid,⁴⁸ it is transmitted more efficiently from men to women than from women to men.⁴⁹ This is most likely due to the fact that men inoculate women with a substantial dose of the virus during sexual intercourse,⁵⁰ and women naturally retain the bodily secretions.⁵¹

cc of the solution is injected back into the blood of a human or chimpanzee, it would not be a sufficient amount to infect either with the virus. Compare this to HBV, the virus responsible for hepatitis B, which under the same circumstances, would cause infection. *Id.* at 73.

The fact that the virus is very fragile outside the body is supported not only by the fact that nobody has caught the disease on toilet seats, doorknobs, or shower stalls, but it is also supported by scientific research. Although the virus thrives in a cool environment, it deactivates quickly under heat and can be killed by household bleach. *Id.* at 70, 78; Steinhilber, *AIDS and Employment: Legal and Policy Considerations*, 35 FED. BAR & NEWS J. 377 (1988). When the virus was placed in a fluid-filled test-tube at room temperature for twenty four hours, it has only a ten percent chance of surviving. However, when placed in a water-based solution of human blood cells at room temperature, it is capable of surviving up to fifteen days. J. LANGONE, *supra* note 6, at 78.

43. J. LANGONE, *supra* note 6, at 44.

44. *Id.* at 75-78; Mann, *supra* note 8, at 4. But see Cannon, *Corrected Statistical Analysis Suggests Casual Transmission of AIDS in the African Study of the Center for Disease Control*, 60 PSYCHOLOGICAL REP. 177 (1987). The author corrects the CDC's statistical analysis in an African study and concludes that the study does "not disprove casual transmission of AIDS. . . [and] because the statistical analysis was incorrectly done, evidence that tends to support casual transmission was thereby suppressed." *Id.*

45. Mann, *supra* note 8, at 4.

46. National Institute of Justice, *HIV Infection and AIDS: Definitions and Means of Transmission*, AIDS BULL., Aug. 1989, at 5. It is not clear when transmission from mother to child takes place. Some evidence indicates that it occurs as early as the first trimester, while other evidence indicates infection after birth. Yarchoan & Misuya, *supra* note 9, at 197.

47. J. LANGONE, *supra* note 6, at 83-84.

48. *Id.*

49. Zuckerman, *The Enigma of AIDS Vaccines*, AIDS LETTER, Dec. 1988/Jan. 1989, at 4.

50. Leishman, *The Second Stage of the Epidemic: Heterosexuals and AIDS*, ATLANTIC MONTHLY, Feb. 1988, at 39-40.

There are currently three broad patterns of HIV infection throughout the world. In North America, Western Europe, New Zealand, and many urban areas in Latin America, the disease is primarily spread through homosexual and bi-sexual men and intravenous (IV) drug users.⁵² In some major cities, fifty to seventy percent of the homosexual men are already infected with the virus.⁵³ Heterosexual transmission is increasing in these areas as is the number of pediatric cases.⁵⁴ The National Academy of Sciences estimates that the majority of new cases will continue to come from the currently recognized high risk groups.⁵⁵

In sub-Saharan Africa and increasingly in Latin America, especially the Caribbean, heterosexual transmission is the predominant mode of transmission.⁵⁶ In Latin America, the virus was originally spread primarily through homosexual contacts. However, the pattern has recently shifted and is now increasingly spread through heterosexual contacts.⁵⁷ In Africa, up to ninety percent of the prostitutes are infected.⁵⁸ Pediatric cases are also a major problem because fifteen percent or more of the pregnant women are infected.⁵⁹ Infection through blood continues to be a problem in areas where the blood is not routinely screened and the needles are not sterilized.⁶⁰

51. Zuckerman, *supra* note 49, at 4.

52. *Id.* at 6.

53. 100 CONG. REC. H6366 (daily ed. July 15, 1987) (statement of Rep. Dannemeyer).

54. Van de Kamp, *supra* note 36, at 31. The National Academy of Sciences estimates a seven-fold increase in heterosexual cases by 1991 and a ten fold increase of pediatric cases by the same year. *Id.*

55. *Id.* See also notes 77-112 *infra* and accompanying text, which qualify this prediction: Although the disease is likely to continue among the currently recognized high risk groups, IV drug users and heterosexuals who participate in unsafe sex will account for a higher percentage of the cases. High risk heterosexuals include those who participate in unsafe sex and those whose partners are IV drug users or participate in unsafe sex.

56. Zuckerman, *supra* note 49, at 6.

57. Hiltz, *World AIDS Epidemic Draws New Warning*, N.Y. Times, Dec. 1, 1989, at D19, col. 1. In some areas, men and women are equally infected. The infection rate among women is ten percent in some countries in this region. *Id.*

58. Prentice, *supra* note 49, at 6.

59. Zuckerman, *supra* note 49, at 6; See also Pepin, Plummer, Brunham, Piot, Cameron & Ronald, *The Interaction of HIV Infection and Other Sexually Transmitted Diseases: An Opportunity for Infection*, 3 AIDS 3 (1988) [hereinafter Pepin & Plummer]. In Kampala, seroprevalence among pregnant women has increased from 10.8% in 1985 to 24.1% in 1987. *Id.*

The third pattern of infection is in North Africa, the Middle East, Eastern Europe, Asia and the Pacific.⁶¹ The HIV virus was not recognized in these areas until the mid-1980s. Its presence there is due mainly to contact with countries in groups one and two or through imported infected blood.⁶² However, the number of cases has dramatically increased in some countries in these regions. Thailand, where there were virtually no cases a few years ago, has recently reported that the infection rate among IV drug users has risen from less than one percent in 1987 to forty percent in 1989.⁶³ This is probably due to the increased popularity of drug use in Thailand, Malaysia and Pakistan.⁶⁴ Southeast India, where the disease was also virtually unknown until recently, has reported that three to seven percent of the prostitutes are infected with the virus.⁶⁵

The most dramatic increase of AIDS cases in these regions has taken place in Romania. The epidemic exists predominantly among infants and young children. Nicolae Ceausecu and his government would not admit that this epidemic existed because they considered AIDS a capitalist disease which hardly existed in Romania.⁶⁶ Since the revolution, several studies have revealed the severity of the epidemic: at least seven hundred children are infected with the virus; at one orphanage, ninety-two out of one hundred thirty eight babies tested positive for the virus.⁶⁷ There are three reasons why this epidemic is primarily among children and infants: (1) hospitals use the old practice of injecting blood into the infant's umbilical cord in order to stimulate its growth, (2) blood donors are not screened, and (3) health care professionals use contaminated syringes or needles.⁶⁸ The World Health Organization has recently sent doctors to Romania in order to determine the extent of the epidemic.⁶⁹

The current high risk groups in the United States are homosexual men (sixty-three percent of all cases), intravenous

61. *Id.*

62. *Id.*

63. Hiltz, *supra* note 57, at D19.

64. Engelman, *Advice Alone Fails to Stop the Spread of AIDS*, S. Bend Trib., Nov. 2, 1989, at 7, col. 1.

65. *Id.*

66. Purvis, *Romania's Other Tragedy*, TIME, Feb. 19, 1990, at 74.

67. Bohlen, *Romania's AIDS Babies: A Legacy of Neglect*, N.Y. Times, Feb. 8, 1990, at A1, col. 2.

68. *Id.*

69. Purvis, *supra* note 66, at 74.