

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8861 SENATE HEALTH EDUCATION & SOCIAL SERVICES

Alaska State Legislature

SENATOR
BERT SHARP
DISTRICT P
CHAIRMAN
SENATE STATE AFFAIRS COMMITTEE
MEMBER
FINANCE COMMITTEE
RULES COMMITTEE



Senate

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SPONSOR STATEMENT

SB-88

BY: SENATOR BERT SHARP

THE ISSUE OF CHARTER SCHOOLS WAS DISCUSSED AT LENGTH DURING THE TWO YEARS OF THE 18TH LEGISLATURE. UNFORTUNATELY, CHARTER SCHOOLS WAS JUST ONE PART OF SB-61, WHICH IN ALL ASPECTS, WAS AN "OMNIBUS EDUCATION BILL". THE BILL TRIED TO ADDRESS SUCH DIVERSE ISSUES AS LENGTHENING THE SCHOOL YEAR, MODIFYING TEACHERS TENURE, SETTING UP TEACHERS EVALUATION COMMITTEES, CREATING IMPROVEMENT OF SCHOOL PERFORMANCE FUND, MANDATED ADVISORY BOARDS IN SCHOOL DISTRICTS, LISTED THREE PAGES OF GOALS FOR STUDENT PERFORMANCE, AND CHARTER SCHOOLS, EACH OF WHICH WERE CONTROVERSIAL AND EACH IN SOME WAY, TAINTING THE OTHER BY ASSOCIATION.



REPRESENTING
GOLDEN HEART
OF ALASKA

I'VE TRIED TO CRAFT SB-88 TO BE A SINGLE ISSUE BILL ON CHARTER SCHOOLS. I WANTED THE BILL TO SET AS FEW LIMITATIONS AS POSSIBLE ON SETTING UP AND OPERATING CHARTER SCHOOLS, TO ALLOW SCHOOL DISTRICT TEACHERS AND PARENTS THE SPACE TO BE CREATIVE.

SEE SECTIONAL

I'M SURE THAT THE COMBINED TALENTS OF THE MEMBERS OF THIS LEGISLATURE CAN CRAFT A BILL THAT ENCOURAGES SCHOOL DISTRICTS, TEACHERS AND PARENTS TO DESIGN CHARTER SCHOOLS THAT CHALLENGES STUDENTS TO ACHIEVE AT THEIR HIGHEST CAPABILITIES.

I FIRMLY BELIEVE CHARTER SCHOOLS MAY LEAD THE WAY TO A MORE EFFECTIVE EDUCATION SYSTEM FOR THE NEXT CENTURY.

WE ALL HAVE THE OBLIGATION TO TRY.



**NEW LAW RELATING TO CHARTER SCHOOLS
(1993 WISCONSIN ACT 16)**

Information Memorandum 94-22

*Wisconsin Legislative Council Staff
One East Main Street, Suite 401
Madison, Wisconsin
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*SUBJECT Education and Affili.
DATE 1994-03-03-0516 COPY 2/2
STATE INFORMATION CENTR.
ORNO 18266*

June 23, 1994

FEB 06 1995

Information Memorandum 94-22*

NEW LAW RELATING TO CHARTER SCHOOLS
(1993 WISCONSIN ACT 16)

INTRODUCTION

This Information Memorandum describes the provisions of 1993 Wisconsin Act 16, relating to the creation of charter schools. The Act was signed into law on August 10, 1993 by Governor Tommy G. Thompson and published August 11, 1993. The Act took effect August 12, 1993.

Copies of Act 16 may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone: (608) 266-2400.

This Memorandum is divided into the following parts:

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* This Information Memorandum was prepared by Russ Whitesel, Senior Staff Attorney, Legislative Council Staff.

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I. BACKGROUND OF 1993 WISCONSIN ACT 16, RELATING TO CHARTER SCHOOLS

The legislation which authorized charter schools in Wisconsin was part of 1993 Wisconsin Act 16, the Biennial Budget Act. The initial charter school provisions were included in 1993 Senate Bill 44, which was introduced by the Joint Committee on Finance, by request of Governor Tommy G. Thompson.

Senate Bill 44 was referred to the Joint Committee on Finance on February 4, 1993. The Joint Finance Committee modified the charter school provisions and included those provisions in Senate Substitute Amendment 2 to Senate Bill 44 on June 29, 1993. The charter school provisions were included in the legislation passed by the Senate on June 30, 1993.

The charter school provisions, as modified by the Senate, were included in the Conference Committee Report on Senate Bill 44, adopted by the Assembly and concurred in by the Senate. The only modification to the charter school provisions as passed by the Senate was an additional requirement that the State Superintendent act by July 1, 1994 on all requests to establish a charter school. The Governor signed Senate Bill 44 into law as 1993 Wisconsin Act 16 on August 10, 1993. The charter school provisions are included in the following SECTIONS of 1993 Wisconsin Act 16: 808g, 808r, 2221, 2256, 2283m, 2289b, 2292, 2296, 2297, 2329g, 2329r, 2333 and 2335. Act 16 was published on August 11, 1993.

II. DESCRIPTION OF PROVISIONS OF 1993 WISCONSIN ACT 16, RELATING TO CHARTER SCHOOLS

A. AUTHORIZATION AND APPROVAL

Under the provisions of 1993 Wisconsin Act 16, relating to charter schools, a school board of any public school district in the state, including the Milwaukee Public Schools (MPS) may request the State Superintendent of Public Instruction for approval to establish one or two charter schools in the school district.

Under the law, the State Superintendent must approve the first 10 requests received and ensure that charter schools are established in no more than 10 school districts.

B. RELATIONSHIP TO SCHOOL DISTRICT; EMPLOYEES

Under the law, a charter school is considered to be an "instrumentality" of the school district in which it is located. All personnel of a charter school are employed by the school district. Thus, charter school employees have the same eligibility for enrollment in the Wisconsin Retirement System (WRS) as other employees of the district. Moreover, charter school employees are eligible for any benefits authorized under ch. 40, Stats., such as life insurance, income continuation, group health insurance or deferred compensation, if the school district offers those benefits to its other employees.

C. EXEMPTION FROM SCHOOL CODE

A charter school is exempt from the provisions of the statutes governing public schools [chs. 115 to 121, Stats.], except for the following requirements:

1. All "instructional staff" of a charter school must hold a license or permit to teach issued by the Department of Public Instruction (DPI). The State Superintendent of Public Instruction must promulgate rules defining "instructional staff" for the purposes of this licensing requirement.
2. School boards must administer the third-grade reading test to pupils enrolled in charter schools.
3. School boards must administer examinations under the statewide pupil assessment program, annually, to pupils enrolled in charter schools. Under this program, examinations are administered to 8th and 10th grade pupils to measure pupil attainment of knowledge.
4. Pupils enrolled in charter schools must be included in the school district's annual school performance report. This report includes indicators of academic achievement, including performance of pupils on the examinations described under items 2 and 3, above, other indicators of school district performance and staff and financial data.

D. CREATION OF CHARTER SCHOOLS

A school board may, under the new law, request the State Superintendent's approval for the creation of one or two charter schools, either upon its own initiative or upon receipt of a written petition from teacher's employed by the school district.

1. Creation Upon Teacher Petition

Under the petition alternative:

a. A petition requesting the creation of a charter school, signed by at least 10% of the teachers employed by the school district or at least 50% of the teachers employed by one school in the district, must be filed with the school district clerk.

b. The petition must include all of the following:

- (1) The name of the person seeking to establish the charter school.
- (2) The name of the person who will be charge of the charter school and the manner in which the administrative services will be provided.
- (3) A description of the educational program of the charter school.
- (4) The methods the school will use to enable pupils to attain the educational goals under s. 118.01, Stats.
- (5) The method by which pupil progress in attaining the educational goals under s. 118.01, Stats., will be measured.
- (6) The governance structure of the charter school, including the method to be followed by the school to ensure parental involvement.
- (7) Subject to the certification requirements described above, the qualifications that must be met by individuals employed by the charter school.
- (8) The procedures the charter school will follow to ensure the health and safety of pupils.
- (9) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the school district population.
- (10) The requirements for admission to the charter school.
- (11) The manner in which annual audits of the financial and programmatic operations of the school will be performed.

(12) The procedures for disciplining pupils.

(13) The public school alternatives for pupils who reside in the school district who do not wish to attend or are not admitted to the charter school.

(14) A description of the charter school facilities and the types and limits of the liability insurance that the school will carry.

(15) The effect of the establishment of the charter school on the liability of the school district.

If a school board has received approval for a charter school from the State Superintendent, then, within 30 days after receiving a petition from teachers, the school board must hold a public hearing on the petition to consider the level of employee and parental support for the establishment of the charter school described in the petition. After the hearing, the school board may grant the petition. However, a school board may not grant a petition that would result in a conversion of all the public schools in the school district to charter schools unless both of the following apply:

a. At least 50% of the teachers employed by the school district sign the petition.

b. The school board provides alternative public school attendance arrangements for pupils who do not wish to attend or are not admitted to a charter school.

If a school board grants the petition, the school board must contract with the person named in the petition to operate the school as a charter school. The contract must include all the provisions specified in the petition and may include other provisions agreed to by the parties.

2. Creation by School Board Initiative

Under the law, if a school board has received approval for a charter school from the State Superintendent, it may, on its own initiative, contract with an individual or group to operate a school as a charter school. The contract must include all the provisions described above under a charter school created by a teacher petition and may include other provisions agreed to by the parties.

The school board may not enter into such a contract if it would result in the conversion of all of the public schools in the school district to charter schools, unless the school board provides alternative public school attendance arrangements for pupils who do not wish to attend or are not admitted to the charter school.

E. EXPENDITURE LIMITATION

Under the law, the contract for a charter school must specify the amount to be paid by the school board to the charter school during each school year of the contract. In any school year, the school board may not spend, on average, more per pupil enrolled in any charter school than it spends, on average, per pupil enrolled in the public schools, excluding charter schools, as determined by the State Superintendent.

F. OTHER CONTRACT PROVISIONS AND LIMITATIONS

A contract for a charter school may be for any term not exceeding five school years and may be renewed for one or more terms not exceeding five school years. A school board may not enter into a contract for the establishment of a charter school located outside the school district or a contract that would result in the conversion of a private school to a charter school.

A school board must give preference in awarding charter school contracts to those charter schools that serve children-at-risk.

G. RESTRICTIONS ON CHARTER SCHOOLS

The following restrictions apply to the operations of charter schools:

1. No pupil may be required to attend a charter school without his or her approval, if the pupil is an adult, or the approval of his or her parents or legal guardian, if the pupil is a minor.
2. If a charter school replaces a public school, in whole or in part, the charter school must give preference in admission to any pupil who resides within the attendance area or former attendance area of the public school.
3. The charter school must be nonsectarian in its programs, admissions policies, employment practices and all other operations.
4. A charter school may not discriminate in admission or deny participation in any program or activity on the basis of a person's sex, race, religion, national origin, ancestry, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.
5. A charter school may not charge tuition.

H. CHARTER REVOCATION

A charter may be revoked by the school board if the school board finds that any of the following occurred:

1. The charter school violated its contract with the school board.
2. The pupils enrolled in the charter school failed to make sufficient progress toward obtaining the educational goals under s. 118.01, Stats.
3. The charter school failed to comply with generally accepted accounting standards of fiscal management.
4. The charter school violated the provisions of the statutes related to charter schools.

I. REVOCATION OF SCHOOL BOARD AUTHORITY

Under the law, a school board which receives approval from the State Superintendent to establish a charter school prior to the end of a calendar year must operate or demonstrate significant progress toward operating the charter school by the beginning of the next school year. If not, the State Superintendent must withdraw his or her approval for the establishment of that charter school.

J. STATE AID

Pupils enrolled in a charter school are included in the school district's membership for general state aid purposes.

K. AUDIT BUREAU EVALUATION

Under the law, the Joint Legislative Audit Committee may direct the Legislative Audit Bureau to perform a financial and program evaluation audit of the charter school's program and submit its report by January 1, 2000.

RW:rjl:wu:jt:las

planning
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ing on his own airline -
to pay off his own lost-

tionary and paranoia
However, the left's sentimental-
ity about itself and nastiness about
this nation suffered another wound
last week, when the Yale Universi-
ty Press published "The Secret
World of American Communism,"
a selection of documents from the
archives of the former Soviet
Union pertaining to the Commu-
nist Party of the United States. An-
notated by Harvey Klehr of Emory
University, John Earl Haynes of
the Library of Congress and
Fridrikh Igorevich Firsov, a Rus-
sian archivist, the documents dem-
olish the romantic notion that
the CPUSA was just a manifesta-
tion of political idealism, perhaps
naively and imprudently extreme,
but still an institution in the Amer-
ican tradition of populist protest:
"The documents in this book
demonstrate with unmistakable
clarity that the common percep-
tion that 'American communism

strument of Soviet espionage. ...
(The CPUSA was) a conspiracy fi-
nanced by a hostile foreign power
that recruited members for clan-
destine work, developed an elabo-
rate underground apparatus, and
used that apparatus to collaborate
with espionage services of that
power."
Highly pertinent to the Hiss
case is the fact that some of the
documents confirm the story of
clandestine activities in Washing-
ton in the 1930s as told by Whitt-
aker Chambers, the former Soviet
agent who became Hiss' accuser.
The documents, say the authors of
the book, demonstrate something
that Hiss' defenders scoffed at, the
fact that "a thriving Communist
underground was in place in the
1930s." For example, documents 32
and 33, found in CPUSA files that
had been sent to Moscow for safe-
keeping, demonstrate the theft of

...
pants in clandestine Communist
activities.
The evidence against Hiss was
sufficient to convict him of perju-
ry, and since then additional evi-
dence (see Allen Weinstein's defi-
nitive history of the case) has
forced his embattled defenders to
adopt what is now known as an
"Oliver Stone defense." The prem-
ise of Stone's movie "JFK" was
that a vast conspiracy produced
the Kennedy assassination, and
proof of the vastness is that the
conspirators left not a shred of evi-
dence of their conspiracy. Hiss' de-
fenders say many individuals and
government agencies conspired to
frame him, even producing a flaw-
lessly forged copy of his typewrit-
er. (O.J. Simpson's lawyers are
mounting a modified "Stone" de-
fense, arguing that the night of the
murders the Los Angeles police in-

but is wrong about everything.
That is, paranoiacs can have real
problems and enemies, but not for
the reasons suggested by their
weird view of how the world
works. Postwar anti-communism
committed excesses and occasion-
ally partook of paranoia. However,
that did not vindicate the anti-anti-
communism of many intellectuals.
The people who portrayed the
CPUSA darkly got it essentially
right, although they rarely por-
trayed it darkly enough.
And the deepest paranoia was
- and is - among those who con-
tinue to consider America para-
noid because they cannot face the
fact that the left was on the losing
side of history, and deserved to be.

George F. Will is a columnist
for the Washington Post.

LETTERS

Parental control is the real issue for education

Reference has been made to
David Reaume's My Turn column
and follow-up letter presenting in-
formation that refutes the claim
that class size impacts student
performance.
The idea that class size should
be limited to no more than 25 stu-
dents is: obviously subjective. Why
not 15 or 28 or 32? There are sim-
ply too many variables involved,
e.g. family circumstances, quali-

ties and skill of the teacher, school
atmosphere and expectations, etc.
My concern is that class size
may be used as an excuse for poor
educational performance to direct
attention away from the real prob-
lem with our public schools.
We constantly hear that our
schools need more money, but as
far as I am concerned lack of mon-
ey is not the problem. If it was, we
would be in excellent shape.
Certainly one of the major prob-
lems in our society that seriously
impacts student performance has

nothing to do with our schools -
namely the disintegration of the
family unit and lack of parental in-
volvement.
But there is enough blame to go
around. Our schools have become
social institutions rather than edu-
cational institutions. Programs
and policies reflect the least com-
mon denominator of student be-
havior and performance.
Our schools need more autono-
my with less bureaucratic over-
sight and its resulting high admin-
istrative costs. Certainly a good

dose of competition in the form of
school choice would work wonders.
Parents simply need more power
over the education of their chil-
dren.
Until parents can wrest control
of the schools from the National
Education Association and its sup-
porters, there is little hope of cor-
recting the problem. Certainly
spending more money as request-
ed by the defenders of the existing
system will not do it.
Sidney D. Heidersdorf

BY GARRY TRULEAU

YOU DON'T
WANT TO
KNOW.
ACTUALLY,
I DO, SIR.
I CARE
ABOUT BOTH
OF YOU.

I HOPE YOU DON'T MIND
THAT I ESTABLISHED HIS
BLOODLINES. SOMETIMES
I CAN'T HELP MY-
SELF. I JUST LIKE
BRINGING PEOP-

THANK YOU,
JENNY JONES.
WHERE'S THAT
GUNNY-
SACK?
UM...
WHY?

JUNEAU EMPIRE

AN INDEPENDENT NEWSPAPER
Published Sunday through Friday, ex-
cept holidays, by Southeastern Newspapers
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Way, Washington, 98003. Phone (206)
946-5191.

HOME DELIVERY RATES

(4-21-95)

SB

91

Dr. Nakamura
Amendments:
→ mothers to fetus → Yes Taylor
→ condom amendment → No Taylor

9-LS0739A

SENATE BILL NO. 91

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATORS TAYLOR, Halford

Introduced: 2/20/95
Referred: HES. JUD

A BILL

FOR AN ACT ENTITLED

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

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

4 * Section 1. AS 11.66 is amended by adding a new section to read:

5 ARTICLE 1A. HEALTH OFFENSES.

6 Sec. 11.66.160. CRIMINAL TRANSMISSION OF HIV. (a) A person

7 commits the crime of criminal transmission of human immunodeficiency virus (HIV)
8 if the person, knowing that the person is infected with HIV,

9 (1) engages in intimate contact with another person;

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

13 (3) dispenses, delivers, exchanges, sells, or in any manner transfers to
14 another person any nonsterile intravenous or intramuscular drug paraphernalia.

Taylor
Yes
"voluntarily"

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(b) In a prosecution under this section,

(1) it is an affirmative defense that the person exposed by the intimate contact, the transfusion, transplantation, insemination, or other administration or the transfer, knew that the defendant was infected with HIV, knew that the action could result in infection with HIV, and consented to the action with that knowledge;

(2) it is not necessary to show that the victim has been actually infected with HIV for the defendant to be convicted.

(c) In this section,

(1) "HIV" means the human immunodeficiency virus or another identified causative agent of acquired immunodeficiency syndrome;

(2) "intimate contact" means sexual penetration or any contact in which the body of one person is exposed to a body fluid of another person in a manner that could result in the transmission of HIV;

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

(d) Criminal transmission of HIV is a class B felony.

* Sec. 2. This Act applies to all offenses committed on or after the effective date of this Act.

9-LS0739C
Luckhaupt
3/9/95

CS FOR SENATE BILL NO. 91()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS TAYLOR, Halford

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7 commits the crime of criminal transmission of human immunodeficiency virus (HIV)
8 if the person, knowing that the person is infected with HIV,

9 (1) voluntarily engages in intimate contact with another person:

10 (2) transfers, donates, or provides the person's blood, tissue, semen,
11 organs, or other potentially infectious body fluids for transfusion, transplantation,
12 insemination, or other administration to another, excluding perinatal transmission; or

13 (3) dispenses, delivers, exchanges, sells, or in any manner transfers to
14 another person any nonsterile intravenous or intramuscular drug paraphernalia.

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(b) In a prosecution under this section,

(1) it is an affirmative defense that the person exposed by the intimate contact, the transfusion, transplantation, insemination, or other administration or the transfer, knew that the defendant was infected with HIV, knew that the action could result in infection with HIV, and consented to the action with that knowledge;

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• Sec. 2. This Act applies to all offenses committed on or after the effective date of this Act.

7 March, 1995

The Honorable Lyda Green, Chair
Senate Health, Education and Social Services Committee
Alaska State Capitol
Juneau, Alaska 99801-1182



Dear Senator Green:

I am writing on behalf of the Board of Directors of the Interior AIDS Association to express our strong opposition to Senate Bill 91 (SB-91). This bill, if passed, will not prevent the spread of HIV-infection, but will in fact promote the spread by further marginalizing individuals who are infected, stopping highly effective needle exchange programs which have demonstrated ability to reduce HIV transmission, and causing individuals to not get tested, thereby reducing the chance these individuals will receive medical attention or take appropriate precautions to prevent further transmission.

BOARD OF DIRECTORS

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Misha Strielvert
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Landra Epperson

Eric Klason

Susan McInnis

Bob Miller

Burt Schilling

The bill appears to be based on the misconception that HIV is spread by a select few individuals in a malicious and intentional manner - this is completely false. There are already laws which punish individuals convicted of rape and/or assault who knowingly try to spread HIV. However, SB 91 intrudes in private lives, and places responsibility for the acts and decisions of others on one group of people. As those of us who have been fighting this disease for over a decade know, we ALL share the responsibility for protecting OURSELVES. To place that responsibility on others, and then blame them when your own actions result in transmission of HIV, is to promote irresponsible behavior and further spread of this disease.

More importantly, SB-91 is blatantly unconstitutional, violates privacy, sets up the State as "bedroom police", punishes a small group of people based on their medical status, and violates State and Federal law prohibiting discrimination based on disability.

One does not have to look far to see how unethical, unenforceable and unrealistic this law is. Will HIV-positive women be tried for passing the virus to a fetus? Will a person in a divorce proceeding be able to bring felony charges against an estranged spouse as "pay-back"? The result of this legislation would be endless litigation and increased suffering for those already dealing with HIV and AIDS.

STAFF

Bonnie McConquale
Executive Director

Theresa M. Clarkin
Ed. & Office Coordinator

We urge you to stop this bill in Committee. It is bad policy for the State of Alaska and will not protect one individual. It will be costly to the State, cause suffering and pain to many individuals already fighting for their life, and in the end, serve to spread HIV farther and faster.

Sincerely,

Mark A. Tumeo, Ph.D.
Chair, Interior AIDS Association

Interior AIDS Association, 1514 R. Cookman, Suite 212, Fairbanks, AK 99701
Mailing: P.O. Box 71248, Fairbanks, AK 99707
Phone: (907) 452-4772 Fax: (907) 452-4176

Nakanuma opposes

SENATE BILL NO. 91

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATORS TAYLOR, Halford

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7 commits the crime of criminal transmission of human immunodeficiency virus (HIV)
8 if the person, knowing that the person is infected with HIV,

9 (1) ^{voluntarily} engages in intimate contact with another person;

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

13 (3) dispenses, delivers, exchanges, sells, or in any manner transfers to
14 another person any nonsterile intravenous or intramuscular drug paraphernalia.

with reasonable (10,000) to 10,000
excluding perinatal transmission

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(b) In a prosecution under this section.

(1) it is an affirmative defense that the person exposed by the intimate contact, the transfusion, transplantation, insemination, or other administration or the transfer, knew that the defendant was infected with HIV, knew that the action could result in infection with HIV, and consented to the action with that knowledge;

(2) it is not necessary to show that the victim has been actually infected with HIV for the defendant to be convicted.

(c) In this section,

(1) "HIV" means the human immunodeficiency virus or another identified causative agent of acquired immunodeficiency syndrome;

(2) "intimate contact" means sexual penetration or any contact in which the body of one person is exposed to a body fluid of another person in a manner that could result in the transmission of HIV;

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

(d) Criminal transmission of HIV is a class B felony.

• Sec. 2. This Act applies to all offenses committed on or after the effective date of this Act.

language
lacked
the process
too broad

ALASKA

CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union
P. O. Box 201844 Anchorage, AK 99520-1844
Phone: 1-907-258-0044 Fax: 1-907-258-0288

March 7, 1995

The Honorable Lyda Green
Chair -- Senate Health, Education
and Social Services Committee
Alaska State Senate
State Capitol Building, Room 423
Juneau, AK 99801-1182

Re: House Bill 199/SB 91

Dear Senator Green:

I am writing to you on behalf of the Board of Directors and members of the Alaska Civil Liberties Union (AkCLU) to express serious concerns regarding House Bill 199 and Senate Bill 91, "an act creating the crime of criminal transmission of HIV."

The emergence of the Acquired Immune Deficiency Syndrome (AIDS) as a major threat to public health has serious implications for civil liberties, such as control over one's body, freedom of association, and the right of privacy of one's medical records. The outbreak of HIV/AIDS has caused great public fear and concern. It is especially important at such times that a public health policy which is rational, effective, and presents the minimal intrusion possible into civil liberties be implemented. This bill accomplishes none of those goals.

These proposed bills are so fraught with problems that the best approach would be to abandon them altogether. Among the problems: these bills would actually discourage responsible testing and preventative measures designed to prevent the control and spread of HIV/AIDS; it would be impossible to prosecute these cases even with grave invasions of personal privacy; the bills discriminate on the basis of marital status; and the bills are unnecessary. Each of these concerns will be addressed individually.

1. Transmission of AIDS may already be prosecuted under existing criminal statutes.

The first point that needs to be made is that the bills are absolutely unnecessary. Existing criminal statutes can already be used to prosecute the knowing transmission of HIV/AIDS. According to Assistant Attorney General Dean Guanelli, a person with known HIV

Page Two -- Representative Jeannette James -- March 7, 1995

infection could be prosecuted under existing statutes for: (a) attempted first degree murder, if s/he intended to kill another person by infecting them with HIV; (b) attempted assault, if s/he intended serious injury, not death; or (c) reckless endangerment, if s/he engaged in behavior that could transmit the virus, but where transmission of the virus was not intentional or knowing. Of course, SB 91 and HB 199 would create new classes of felonies, Class B and Class A felonies respectively, which is unnecessary given the laws which already exist.

2. These bills discourage Alaskans from becoming informed of their HIV/AIDS status.

These bills are likely to discourage people from becoming informed of their HIV/AIDS status. There is a strong public health incentive to encourage people to participate in voluntary testing programs in order to be informed of their HIV/AIDS status and therefore, to practice behaviors which reduce the risk of transmission of AIDS. By making it a crime to "knowingly" engage in behavior which is likely to transmit HIV/AIDS, the legislature is encouraging people to remain ignorant about their HIV/AIDS status. Ironically, this bill will have the paradoxical effect of discouraging people from being informed of their status, which is the exact opposite result from what the legislature is trying to accomplish.

3. It will be difficult, if not impossible, to prosecute these cases.

It will be nearly, if not completely, impossible for the state to establish that someone knowingly engaged in intimate contact which could result in transmission of HIV/AIDS. To establish that the person acted with knowledge, the state would be required to obtain confidential medical records from the defendant, or would be required to investigate intimate details of that person's life to determine whether "the totality of the evidence concerning the existence of the knowledge" [see Section 11.41.600 (3)(c)] regarding that person's life indicated that s/he knew of the likelihood of his or her status. To prove that a person "knew" about his or her status, without actual test results to establish this fact, would require the prosecution to investigate very intimate details about a person's life including his or her sexual life, possible drug usage, and medical history areas which are constitutionally protected.

4. These bills violate rights to privacy and equal protection.

The entire statute is likely to violate constitutional rights

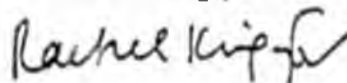
Page Three -- Representative Jeannette James -- March 7, 1995

of privacy articulated by the United States Supreme Court in a series of decisions, including Griswold v. State of Connecticut, 381 U.S. 479 (1965) Eisenstadt v. Baird, 405 U.S. 438 (1972) and Roe v. Wade, 410 U.S. 113 (1973). These cases have been interpreted to give individuals a right of privacy in decisions such as birth control, sexual conduct, and abortion. This line of cases would likely apply to criminal transmission of AIDS because of the degree of state intrusiveness necessary to prosecute these cases.

It is further problematic to allow an affirmative defense to married couples [~~see~~ Sec. 11.41.600 (b)(1)] and not to unmarried couples. Besides the privacy concerns addressed above, this section will also pose an equal protection problem. The case of Eisenstadt v. Baird (1972) specifically forbade -- on equal protection grounds -- discrimination based on marital status. Allowing an affirmative defense to married couples, but not to unmarried couples, will pose equal protection problems if this bill becomes law.

In short, the AkCLU is very much opposed to these bills and believes they are unconstitutional, misguided and wrong. While the concern for the spread of AIDS is a valid legislative concern, the time, money and effort involved in passing these bills into law would be much better spent on a broad-based public education campaign informing Alaskans about the risks of HIV/AIDS. For those persons who do knowingly chose to engage in dangerous and risky behavior, current criminal statutes permit prosecution of these cases.

Sincerely,



Randall Burns
Executive Director

RCK:RPB

MEMORANDUM

NOV 16 1990

State of Alaska

Department of Law

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

DATE: November 16, 1990

FILE NO:

465-3428

TEL NO:

SUBJECT:

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

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

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

If someone intends to kill another person by infecting them with the AIDS virus, it could be prosecuted as attempted first degree murder.¹ This holds even if infection is, as a factual matter, unlikely or impossible, since impossibility is not a defense as long as the actor believes that death will occur. AS 11.31.100(b); see also Gargan v. State, 436 P.2d 968 (Alaska 1968) (factual impossibility which was not apparent to the actor should not, as a matter of policy, insulate him from conviction for attempting commission of the offense). This view is shared by Barry Stern, Professor of Law at Western New England Law School, who was one of the principal drafters of the revised criminal code. It would also be possible to charge an attempted assault, if the person only intended serious injury, rather than death.²

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

¹ The Alaska Court of Appeals has held there is no such crime as attempted second degree murder, Huitt v. State, 670 P.2d 415 (Alaska App. 1984), and based on that opinion, there are no such crimes as attempted manslaughter or negligent homicide.

² The U.S. Supreme Court recently denied review of an opinion from a military court (attached) where the person was convicted of attempted aggravated assault (by means likely to cause death or bodily harm) by trying to have unprotected sex knowing he was infected by HIV. United States v. Johnson, 10 M.J. 53 (U.S. Ct. of Mil. Appeals, April 12, 1990), cert. den. 48 Crf. 3037 (Oct. 15, 1990).

Elizabeth L. Shaw
Criminal liability for

November 16, 1990
Page 2

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

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

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 91

Revision Date: _____
 Title: "An Act creating the crime of criminal transmission of human immunodeficiency virus (HIV)."
 Sponsor: Sen. Taylor
 Requestor: (S) HES

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

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

Phone: 254-4400
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/1/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 91

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act creating the crime of criminal transmission of human immunodeficiency virus (HIV)." BRU: Prosecution
 Sponsor: Senator Taylor Component: All
 Requester: Senate HESS COMPONENT SERIAL NO. 0085-0090

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

FULL-TIME	*****	*****	*****	*****	*****	*****
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

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

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

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

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SB 91

ANALYSIS CONTINUATION:

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

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

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

Alaska State Legislature

Chairman
Judiciary Committee

Vice Chairman
Transportation Committee

Member
Resources Committee
Western Legislative Forestry Task Force



State Capitol
Juneau, Alaska 99801-4182
907 465 3873
245 907 465 3922

332 Front Street
Ketchikan, Alaska 99901
907 225 8088
245 907 225 0713

Senator Robin L. Taylor

Sponsor Statement

Senate Bill 91

Before the Senate HES Committee
March 8, 1995

Senate Bill 91 was introduced with the goal of putting Alaska in a pro-active position when it comes to dealing with individuals who knowingly place others at risk of HIV infection. SB 91 is intended to be preventative as well as punitive and is intended to render a criminal rather than moral judgement.

As of December 31, 1994, 272 Alaskans have been confirmed to have AIDS. That's since tracking began in 1982. Of these cases, 152 are known to have died.

The Epidemiology section of the Division of Public Health reports that as of December 31, 1994, 540 Alaskans have tested positive for HIV infection. That number represents only those who were voluntarily tested through the State Section of Laboratories.

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

Sponsor Statement - SB 91

Page Two

If someone intentionally sets out to kill another person by infecting them with the AIDS virus, they can be charged under state law with attempted first degree murder. But what do we do with the person who does not "intend" to kill, but still places others in jeopardy? In 1990, the Attorney General's office reviewed that question and suggested that...quote..."it may be possible to prosecute the person for reckless endangerment", end quote. That is a class A misdemeanor prohibiting reckless conduct which creates a "substantial risk of serious physical injury".

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

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

SB 91 is brief and to the point. It creates the crime of criminal transmission of HIV and covers actions and conduct known to transmit the disease.

The bill also provides an affirmative defense when the person exposed knows beforehand that the action could result in infection.

SB 91 is not intended to punish those who have contracted HIV. It is intended to protect others who may be unknowingly exposed to the virus by what should be a criminal act of irresponsibility.

Alaska State Legislature

Legislative Research Agency



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

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

March 7, 1995

MEMORANDUM

TO: Senator Robin Taylor

FROM: Paula d. Scavera *PS*
Legislative Analyst

RE: Testing for HIV/AIDS in Illinois

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

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

KNOWING EXPOSURE/TRANSMISSION
5/25/93

CRIMINAL PENALTIES FOR KNOWINGLY TRANSMITTING/EXPOSING
ANOTHER TO HIV INFECTION

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

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

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

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

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

Florida, HB 1313, Chapter 86-220 (88) - misdemeanor "sexual intercourse"; (88) - misdemeanor (if person has been informed of modes of transmission); HB 1519 (88) - felony of the third degree, blood/body fluids donation;

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

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

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

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

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

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

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

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

KNOWING EXPOSURE/TRANSMISSION
PAGE 2

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

Louisiana, HB 1726, Act 663 (87) - fine of not more than \$5,000, imprisonment with or without hard labor for not more than 10 years "sexual contact" without knowing consent of other person

Maryland, SB 719, Chapter 789 (89) - misdemeanor (may not knowingly transfer or attempt to transfer)

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

Mississippi, HB 515, chapter 557 (88) - knowingly and willfully violating health department orders

Missouri, HB 1191 and 1044 (88) - Class D felony, donation of blood, organ, sperm, tissue; sexual contact

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

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

Oklahoma, HB 1788 (88) - felony (with intent to infect); HB 1012 (91) - felony punishable by a maximum of 5 years of imprisonment for knowingly engaging with intent to infect in conduct reasonably likely to result in transfer of blood or bodily fluids into the bloodstream or through the skin or other membranes of a person except during in utero transmission.

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

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

Texas, SB 869 (89) - felony for "engaging in conduct likely to transfer"

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

Virginia, HB 1974 (88) - class a felony, donating or selling blood, body fluids, organs or tissues

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

TOTAL = 26 STATES

Illinois

720 ILCS 5/12-16

Note 400

400. Excessive sentence and punishment

Five-year sentences on each of four counts of aggravated criminal sexual abuse was not excessive; sentences were midrange for offense, defendant had previous criminal record and was on parole at time of offense and victim had sustained psychological harm. People v. Edwards, App. 2 Dist.1990, 142 Ill.Dec. 8, 195 Ill.App.3d 454, 552 N.E.2d 358.

VIII. REVIEW

Subdivision Index

- In general 451
- Plain error 453
- Preservation of grounds for review 452

451. In general, review

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

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

CRIMINAL CODE OF 1961

to be resolved was whether State's evidence was so unsatisfactory or improbable that there remained reasonable doubt of defendants' guilt. People v. Allen, App. 1 Dist.1991, 162 Ill.Dec. 872, 220 Ill.App.3d 772, 580 N.E.2d 1291.

452. Preservation of grounds for review

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

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

453. Plain error, review

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

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

Historical and Statutory Notes

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

5/12-16.2. Criminal transmission of HIV

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

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

(b) For purposes of this Section:

872

BODILY HARM

"HIV" means the causative agent of AIDS.

"Intimate contact with a person to a bodily fluid transmission of HIV."

"Intravenous or intramuscularly injecting a substance into the body."

(c) Nothing in this Section shall constitute a defense to a charge of transmission of HIV.

(d) It shall be an affirmative defense to a charge of transmission of HIV, and

(e) A person who commits a felony.

Laws 1961, p. 1983, § 12-16.1. Formerly Ill.Rev.Stat.1991, ch. 120, § 12-16.1.

AIDS investigation information

Are AIDS-transmission investigations? Michael L. Cloven Isaacman, 76 ABA J. 76 (1990). Criminal sanctions for HIV/AIDS—Analysis of new Illinois law. Jeffrey Deutschman, 4 CBA 1 (1991).

Words and Phrases Defined

5/12-17. Defenses

§ 12-17. Defenses

(a) It shall be a defense to a charge of criminal transmission of HIV where force was used against the victim consented. "Coercion" means sexual penetration or sexual contact with the victim's resistance or submission threat of force by the aggressor at the address of the victim at the time of the offense.

(b) It shall be a defense to a charge of criminal transmission of HIV if the person reasonably believed the person with whom he or she had intimate contact was not infected with HIV. Laws 1961, p. 1983, § 12-17.1, by P.A. 83-1117, § 1, eff. July 1, 1992; P.A. 87-1117, § 1, eff. Aug. 14, 1992.

Formerly Ill.Rev.Stat.1991, ch. 120, § 12-17.1.

Sent To You By Legislative Research Agency

CODE OF 1961

State's evidence probative that there is a possibility of defendants' testimony. 1 Dist. 1991, 162 Ill. App. 3d 772, 580 N.E.2d 566.

... for review of abuse case waived error in allowing testimony, in her opinion, describing assault, subject to testimony posttrial motion. witness about her testimony. v. Davis, App. 3 Ill. App. 3d 33, 566.

... clinical psychology of minor who was abused should not be questioned, where defendant's questioning of the matter in People v. Hickox, App. 2 Ill. App. 3d 203, 197 Ill. App. 3d 203, 149 Ill. Dec. 2d 700.

... examining clinical edibility of minor of sexual abuse by magnitude as to People v. Hickox, Dec. 180, 197 Ill. App. 3d 203, 149 Ill. Dec. 2d 700.

Jan. 11, 1989

... commits criminal offense if infected with

... semen, organs, transplantation,

... may transfers to paraphernalia.

BODILY HARM

720 ILCS 5/12-17

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

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

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

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

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

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

Laws 1961, p. 1983, § 12-16.2, added by P.A. 86-897, § 1, eff. Sept. 11, 1989. Formerly Ill.Rev.Stat.1991, ch. 38, § 12-16.2.

Cross References

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

Law Review Commentaries

Are AIDS-transmission laws encouraging abortion? Michael L. Closen and Scott H. Issacman, 76 ABA J. 76 (1990). Neonatal HIV testing: Governmental inspection of the baby factory. Scott H. Isaacman, 24 J. Marshall L.Rev. 371 (1991). Criminal sanctions for transmission of AIDS—Analysis of new Illinois legislation. Jeffrey Deutschman, 4 CBA Rec. 32 (1990). Proposal to repeal the Illinois HIV transmission statute. Michael L. Closen and Jeffrey S. Deutschman, 78 Ill.B.J. 392 (1990).

Library References

Words and Phrases (Perm.Ed.)

5/12-17. Defenses

§ 12-17. Defenses.

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

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

Laws 1961, p. 1983, § 12-17, added by P.A. 83-1067, § 1, eff. July 1, 1984. Amended by P.A. 83-1117, § 1, eff. July 1, 1984; P.A. 85-651, § 1, eff. Jan. 1, 1988; P.A. 87-438, § 1, eff. Jan. 1, 1992; P.A. 87-457, § 1, eff. Jan. 1, 1992; P.A. 87-895, Art. 2, § 2-19, eff. Aug. 14, 1992. Formerly Ill.Rev.Stat.1991, ch. 38, § 12-17.

mand this cause to the circuit court of Cumberland County to allow defendant to file a new motion to withdraw his guilty plea and for a hearing on that motion in full compliance with Rule 604(d). If, upon completion of the proceedings on remand, defendant's motion to withdraw his guilty plea is denied, this court will address, at defendant's request, the correctness of that decision and the remaining issues raised herein. See *People v. Garrett* (1990), 139 Ill.2d 189, 195, 151 Ill.Dec. 329, 594 N.E.2d 784.

Circuit Court reversed in part; cause remanded with directions.



1

153 Ill.2d 364

196 Ill.Dec. 629

PEOPLE, State of Illinois, Respondent,

v.

Johnny GILSON, Petitioner.

No. 76090.

Supreme Court of Illinois.

April 5, 1994.

Prior Report: 216 Ill.App.3d 564, 616 N.E.2d 617.

Petition for leave to appeal allowed.

In the exercise of this Court's supervisory authority, this cause is *REMANDED* to the Appellate Court, Third District. The appellate court is ordered to reconsider its judgment in case Nos. 1-92-4901, 1-92-4902 and 1-92-4903 in light of *People v. James* (1994), 153 Ill.2d 27, 196 Ill.Dec. 625, 630 N.E.2d 790.



2

153 Ill.2d 22

196 Ill.Dec. 629

The PEOPLE of the State
of Illinois, Appellant,

v.

Caretha RUSSELL, Appellee.

The PEOPLE of the State
of Illinois, Appellant,

v.

Timothy LUNSFORD, Appellee.

Nos. 75721, 7443.

Supreme Court of Illinois

Jan. 20, 1994

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

Reversed and remanded.

1. Constitutional Law §90.1(1)

Health and Environment §21

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

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PEOPLE v. RUSSELL

Cite as 610 N.E.2d 794 (Ill. 1994)

speech. S.H.A. 720 ILCS 5/12-16.2; S.H.A. Const. Art. I, 4 4; U.S.C.A. Const.Amend. 1.

2. Constitutional Law 91
Health and Environment 21

Criminal statute prohibiting knowing transmission of human immunodeficiency virus (HIV) to another through intimate contact did not violate defendants' federal or state constitutional rights of free association; statute did not implicate any alleged right of intimate association as one defendant was charged with engaging in consensual sexual intercourse knowing that she was infected without telling her partner and other defendant was charged with raping woman knowing that he was infected. S.H.A. 720 ILCS 5/12-16.2; S.H.A. Const. Art. I, 4 3; U.S.C.A. Const.Amend. 1.

1. Health and Environment 21

Criminal statute prohibiting knowing transmission of human immunodeficiency virus (HIV) to another through intimate contact was not unconstitutionally vague; statute was sufficiently clear and explicit and provided sufficiently definite standards for law enforcement and triers of fact; and that statute might open innocent conduct of others to prosecution was matter of pure speculation given specific conduct of two defendants, one of whom was charged with engaging in consensual sexual intercourse knowing that she was infected without telling her partner and one of whom was charged with raping woman knowing that he was infected. S.H.A. 720 ILCS 5/12-16.2; S.H.A. Const. Art. I, 4 2; U.S.C.A. Const.Amend. 14.

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

Carrie J. Hightman, Stuart I. Graff and Judith M. Feiler, of Schiff, Hardin & Waite, and John R. Hammell, Harvey Grossman, Colleen K. Conneil, Mathew S. Nosanchuk and Pilar Penn, Chicago, for appellee in No. 7443.

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

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

Gregg W. Bonelli, of Mattoon, and Michael L. Closen, Chicago, for appellee in No. 7443.

Justice HEIPLE delivered the opinion of the court:

In 1989, the Illinois General Assembly made it a crime for a knowing carrier of the HIV virus to transmit this virus to another person through intimate contact. The stated offense is designated as a Class 2 felony which, though subject to probation, carries a possible sentence of imprisonment from three to seven years (Ill. Rev. Stat. 1989, ch. 8, par. 12-16.2(a)(1) now 720 ILCS 5/12-16.2(a)(1) West 1992). We take judicial notice of the fact that the HIV virus is a precursor to AIDS, a progressive and inevitably fatal disease syndrome. We further take judicial notice of the fact that intimate sexual contact whereby blood or semen of an infected person is transferred to an uninfected person is a primary method of spreading the infection.

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

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

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

JUN 11 1994

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

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

[1] Neither the statute nor the cases before us have even the slightest connection with free speech. Consequently, pursuant to constitutional interpretations of the United States Supreme Court, defendants' overbreadth argument and their argument of facial vagueness are inapplicable. *Bates v. State Bar* (1977), 433 U.S. 350, 380, 97 S.Ct. 2091, 2707, 53 L.Ed.2d 310, 833; *Smith v. Goguen* (1974), 415 U.S. 566, 94 S.Ct. 1212, 39 L.Ed.2d 605; *Broadrick v. Oklahoma* (1973), 413 U.S. 401, 411-17, 93 S.Ct. 2908, 2915-19, 37 L.Ed.2d 330, 339-43; *Grayned v. City of Rockford* (1972), 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222; *People v. Garrison* (1980), 82 Ill.2d 444, 45 Ill.Dec. 132, 412 N.E.2d 463.

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

The subject statute provides in pertinent part:

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

(1) engages in intimate contact with another;

(b) For purposes of this Section:

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

Vagueness, like beauty, may be in the eye of the beholder. We, however, read the statute as being sufficiently clear and explicit so that a person of ordinary intelligence need not have to guess at its meaning or application. Also, it provides sufficiently definite standards for law enforcement officers and triers of fact so that its application need not depend merely on their private conceptions. *Smith v. Goguen* (1974), 415 U.S. 566, 94 S.Ct. 1212, 39 L.Ed.2d 605; *Grayned v. City of Rockford* (1972), 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222; *Interstate Circuit, Inc. v. City of Dallas* (1968), 390 U.S. 676, 88 S.Ct. 1298, 20 L.Ed.2d 225.

That the statute might open the innocent conduct of others to possible prosecution is a matter of pure speculation and conjecture which is not before us in these consolidated cases. We are here concerned only with the specific conduct of these defendants and the application of the statute to them. *People v. Garrison* (1980), 82 Ill.2d 444, 453-57, 45 Ill.Dec. 132, 412 N.E.2d 463.

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

Reversed and remanded.



242 Ill.App.3d 568

182 Ill.Dec. 784

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

v.

Randall Lee DEMPSEY, Defendant-
Appellant.

No. 5-91-0033.

Appellate Court of Illinois,
Fifth District.

March 19, 1993.

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

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

If child witness is properly found competent to testify after motion to strike testimony, there can be no prejudice to defendant as result of failure to hold pretrial competency hearing; any error in failing to hold pretrial competency hearing is harmless. Ill.Rev.Stat. 1993, ch. 38, § 106A-15-14(b)(2).

3. Criminal Law §1153(2)

Witnesses §79(1)

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

3. Criminal Law §1153(2)

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

4. Witnesses §10(1)

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

5. Witnesses §10(1)

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

6. Witnesses §79(1)

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

Sodomy §6

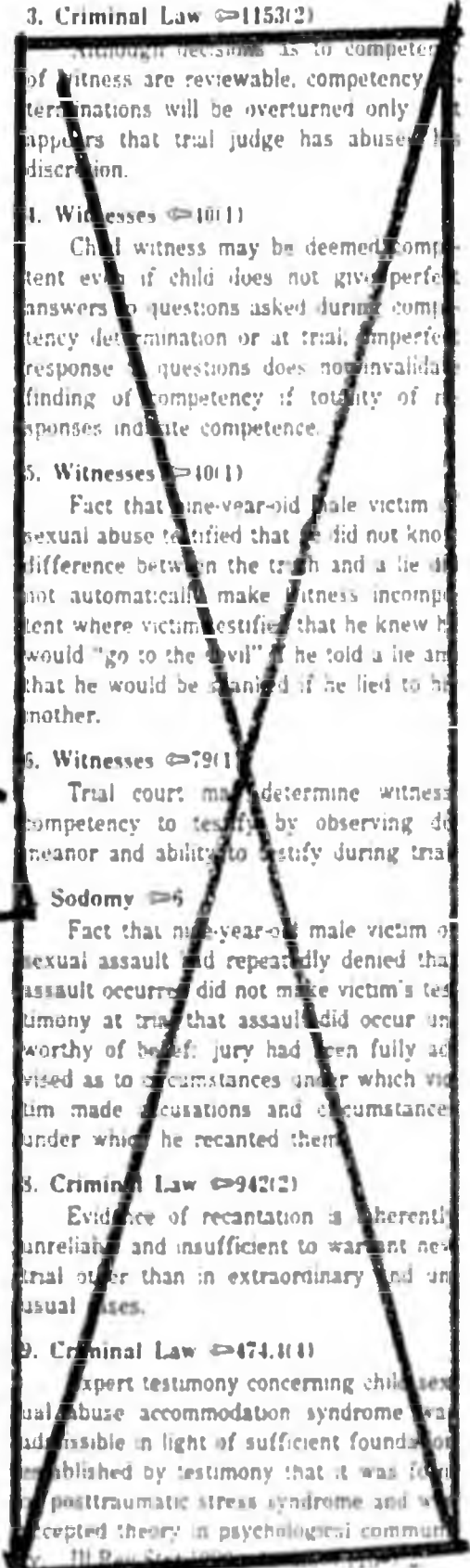
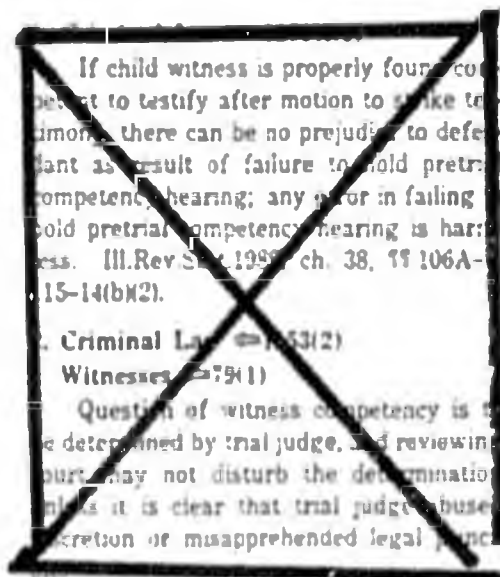
Fact that nine-year-old male victim of sexual assault had repeatedly denied that assault occurred did not make victim's testimony at trial that assault did occur unworthy of belief; jury had been fully advised as to circumstances under which victim made accusations and circumstances under which he recanted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

8. Criminal Law §942(2)

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

9. Criminal Law §474.1(1)

Expert testimony concerning child sexual abuse accommodation syndrome was admissible in light of sufficient foundation established by testimony that it was based on posttraumatic stress syndrome and was accepted theory in psychological community.



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

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

(1) engages in intimate contact with another.

(b) For purposes of this Section: 'HIV' means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome. 'Intimate contact with another' means the exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV.

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

Defendant argues that the statute is unconstitutionally vague because the term

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

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

efficiently defined and of the word "could" intimate contact encompass a range of conduct, it is not clear what behavior is intended. The term "intimate contact" is not adequately defined. Defendant argues that "bodily fluid" is not limited to saliva and can include other fluids which can transmit the virus, when defendant asserts that these are possible transmitters of the virus. Because the word "bodily fluid" encompasses such a broad range of fluids, defendant concludes that some fluids, such as penetrative oral, anal or vaginal fluids, can transmit the virus. Defendant asserts that only these fluids could transmit the virus. Defendant further argues that one could transmit the virus by biting or spitting. Defendant argues that knowingly infected with the virus is not a crime. The statute does not define "bodily fluid" as possible transmitters of the virus. Defendant argues that these fluids render it unconstitutional that it fails to give notice as to what acts are prohibited and is arbitrary and discriminatory.

Defendant must fail because, standing to raise the issue, the statute as applied to defendant, the statute is not unconstitutional as applied to defendant. That vagueness challenges which do not involve fundamental rights must be examined in the context of the facts of the case at issue. (*People v. Jihan* (1989), 127 Ill.2d 422, 425, 537 N.E.2d 385, 390. Defendant prevailed in a vagueness challenge that does not implicate fundamental concerns, a party challenging the statute is vague as to the conduct for which the statute is intended. (*Jihan*, 127 Ill.2d at 425, 537 N.E.2d 385, 390. Defendant must show that the statute gives clear notice that the

Cite as 610 N.E.2d 208 (Ill.App. 3 Dist. 1993)

party's conduct was prohibited. (*Jihan*, 127 Ill.2d at 385, 130 Ill.Dec. at 425, 537 N.E.2d at 754.) The right to challenge a statute as being vague on its face where the statute clearly applies to the conduct of the party making the challenge does not exist unless first amendment concerns are involved. (*Jihan*, 127 Ill.2d at 386, 130 Ill.Dec. at 425, 537 N.E.2d at 754.)

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

A statute need only be sufficiently certain to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by law. (*People v. Lowe* (1990), 202 Ill.App.3d 548, 653, 148 Ill.Dec. 136, 139, 560 N.E.2d 438, 441.) A person should not be subjected to a penalty for certain conduct unless the words of the statute clearly describe the conduct prohibited. (*People v. Taylor* (1990), 138 Ill.2d 204, 211, 149 Ill.Dec. 297, 300, 561 N.E.2d 667, 670.) However, a defendant may be prosecuted under a statute without violating his right of due process if his conduct falls squarely within the statute's proscriptions, even though the statute may be vague as applied to other conduct. (*Taylor*, 138 Ill.2d at 211, 149 Ill.Dec. at 300, 561 N.E.2d at 670.) The fact that there may be borderline cases wherein a degree of uncertainty exists as to the applicability of a statute does not render the statute unconstitutional as to conduct about which no uncertainty exists. (*People v. Witzkowski* (1972), 53 Ill.2d 216, 219, 290 N.E.2d 236, 239.)

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

which is recognized as allowing transmission of the virus. Thus, defendant clearly exposed the body of another to his bodily fluid in a manner that could result in the transmission of HIV. A penal statute need only convey sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. (*Taylor*, 138 Ill.2d at 217, 149 Ill.Dec. at 303, 561 N.E.2d at 673.) Defendant's conduct clearly fell within the proscription of the statute. Section 12-16.2(a)(1) is not unconstitutionally vague as applied to defendant in this case, and defendant has no standing to raise the constitutionality of the statute as it may be applied to other individuals and other acts.

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

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

"No physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient." (Ill.Rev. Stat.1985, ch. 110, par. 8-80.)

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

"(4) In all actions brought by or against the patient, his or her personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his or her estate wherein the patient's physical or mental condition is



Department of Health and Social Services
Karen Perdue, Commissioner

Division of Public Health
Peter M. Nakamura, MD, MPH, Director

Section of Epidemiology
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Bulletin No. 4 February 1, 1995

HIV INFECTION - ALASKA

There are three main sources of data on the prevalence of HIV infection in Alaska. Data from two of these sources, HIV antibody testing conducted through the State Section of Laboratories and Department of Defense data on civilian applicants for military service in Alaska, are shown below. Data from the third source, the Alaska Survey in Childbearing Women, will be reported in a separate *Epidemiology Bulletin* late in 1995. HIV infection without AIDS is not currently reportable in Alaska. The data below do not include HIV tests sent by providers to laboratories other than State or Department of Defense laboratories.

State Section of Laboratories

Through December 31, 1994, 540 (0.7%) of 75,826 individuals voluntarily tested through the Section of Laboratories, Division of Public Health, are positive for HIV infection.

HIV Testing by Race/Ethnicity			HIV Testing by Sex		
Race/Ethnicity	No. Tested	Positive (%)	Sex	No. Tested	Positive (%)
White	48726	759 (1.6)	Male	36500	473 (1.3)
Alaska Native	17330	60 (0.3)	Female	3006	63 (2.1)
Black	4302	53 (1.2)	Not Specified	379	0
Hispanic	1719	34 (2.0)	Total	75826	540 (0.7)
Other	1833	9 (0.5)			
Not Specified	1900	5 (0.3)			
Total	75826	540 (0.7)			

HIV Testing by Age			HIV Testing by Risk			
Age	No. Tested	Positive (%)	Risk Category	No. Tested	Positive (%)	Total*
0-9	550	2 (0.4)	heterosexual/heterosexual male	245/1685	114 (6.7)	211/1974
10-19	6631	22 (0.3)	by drug user	31/2791	11 (0.4)	34/2746
20-29	20007	227 (1.1)	heterosexual contact of person with/for at risk of AIDS	8/2418	43 (1.8)	13/2510
30-39	24263	205 (0.8)	homosexual	7/21	113 (5.4)	7/24
40-49	10300	72 (0.7)	transmission with blood/blood products	0/1167	16 (1.4)	17/1476
50+	3760	12 (0.3)	all others	12/2779	10 (0.4)	23/2649
Not Specified	19	0				
Total	75826	540 (0.7)	Total	4576206	10 (0.2)	4677606

*Total includes women only

Department of Defense

Since October 1985, all persons applying for active duty or reserve military service, the service academies, and the Reserve Officer Training Corps (ROTC) have been screened for HIV infection as part of their entrance evaluation. The Department of Defense shares the resulting statistical data with states for HIV surveillance purposes. Of 12,919 individuals (10,833 males and 2,086 females) screened in Alaska from October 1985 through September 1994, 3 (0.02%) have tested positive for HIV infection. Characteristics of those with HIV infection follow.

Sex	Race/ethnicity
Males	White
Females	Black
.....	Unspecified
Age	Total number tested
20-24 years	Total number HIV positive
30+ years	

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Alaska State Legislature

Sen. Lyda Green, Chairman
Sen. Loren Leman, Vice-Chairman
Sen. Mike Miller
Sen. Johnny Ellis
Sen. Judith Salo



State Capitol
Room 123
Juneau, Alaska 99801-1182
907-465-3782

Senate Committee on Health, Education and Social Services

SB 98 "Personal Responsibility Act of 1995" SPONSOR STATEMENT

SB 98 is designed around the premise that government public assistance is a helping hand to self-sufficiency, not a replacement for self-sufficiency.

The legislation follows the lead of successful reform programs in other states; offering innovative ideas and programs in an attempt to break the cycle of dependence and to repair a broken system.

The growing number of welfare recipients nationwide and the associated costs have forced many states and the federal government to propose better and more effective alternatives. Alaska should be pro-active and learn from the mistakes of other governments by changing our welfare system to avoid the destructive situations occurring throughout the United States.

The basic premise behind this bill is to help those who are on welfare to find jobs and become self-sufficient. The current welfare system discourages work and encourages long-term dependence on government.

SB 98 is designed to alter the focus of the government's efforts: work, self-reliance and personal responsibility are to receive the highest emphasis. Recipients need to be empowered with the tools to get them back on their feet again and to be self-sufficient; this legislation offers that helping hand.

SB 98 Sponsor Statement
Page 2

In general terms, the main provisions of the bill provide for:

- * Incentives to go to work, graduate from high school or a vocational program;
- * Elimination of the 100-Hour Rule that discourages employment; raising the automobile allowance from \$2000 to \$5000 to better assist recipients with transportation to work;
- * A workfare pilot project in areas with the highest number of AFDC recipients;
- * Permanent ineligibility for individuals convicted of welfare fraud;
- * The signing of a personal responsibility agreement by recipients of AFDC;
- * A two-year time limit on benefits for those recipients in the workfare program or the JOBS program;
- * Additional 12 months of Medicaid coverage during transitional period from welfare to work;
- * No increase in cash benefits for additional children conceived on welfare;
- * A single parent 17 or under to live with parents, adult relatives or other adult-supervised arrangements in order to qualify for AFDC;
- * Reduces AFDC to federal minimums. Alaska's cash welfare payments for a family of three (\$923.00) are far above the national median (\$367.00);
- * Maximum of five years of public assistance for able-bodied recipients, with specified exceptions (does not apply to physically or mentally disabled recipients);
- * Parentage establishment at the time of AFDC application, with specified exceptions;

- * Establishes an "Immediate Referral Policy" directing new applicants into the JOBS program and assisting with developing a self-sufficiency plan for the family, prior to approval for AFDC;
- * Establishes a noncash, temporary assistance policy to help needy families through a crisis situation. The DHSS may grant food stamps, child care assistance and/or Medicaid for up to six consecutive months, instead of cash AFDC benefits.

Workfare and the JOBS program will be used for training, work experience and to instill a work ethic. Additional incentives and sanctions will encourage recipients to make sure that their children are in school on a regular basis; to finish training programs; to graduate from high school; to complete treatment programs and to retain the jobs that they secure.

The time has come to make real changes to welfare. Public assistance can, and should be, an effective transitional program for those in need of temporary assistance. SB 98 will establish a reformed welfare system that is designed to break the cycle of dependence and help welfare recipients become more productive, self-sufficient and financially independent.

IMPACTING

Families Through Work:

...tion plan for
self-sufficiency

Partnership for Personal Responsibility

APPROVED

State of Indiana

Sent To You By
Legislative Research Agency

Evan Bayh, Governor

December 15, 1994



OFFICE OF THE GOVERNOR
INDIANAPOLIS, INDIANA 46204-2797

EVAN BAYH
GOVERNOR

December 15, 1994

Fellow Hoosiers:

Acre by acre, and brick by brick, Hoosiers have worked hard building our beloved state for over 175 years. Together, we have succeeded in creating an economy and a society that today is envied by so many others.

Through good times and bad, Hoosiers have persevered because we remain committed to the same core values that guided our state's founders so many years ago: The dignity of hard work, a deep belief in family, a commitment to community, and the importance of assuming personal responsibility.

When looking for solutions to the long-standing problems of welfare, the time has come to commit ourselves — not to some new bureaucratic initiative — but to something tried and true: the same core values that have made our state great.

Regrettably the current welfare system is inconsistent with these values. Today welfare encourages dependence, not independence. It undermines the dignity of hard work. And, causing irreparable damage, welfare provides incentives to tear families apart. It is a system that does not work.

Indiana's welfare reform plan will make work pay, encourage family unity, build our communities, and demand personal responsibility.

I am pleased the federal government approved our plan to fix the welfare system, and make it consistent with the same values Hoosiers have always cherished.

Sincerely,

A handwritten signature in cursive script that reads "Evan Bayh".

Evan Bayh



OFFICE OF THE GOVERNOR
INDIANAPOLIS, INDIANA (6204-2797)

EVAN BAYH
GOVERNOR

For immediate release: Thursday, December 15, 1994

GOVERNOR BAYH ANNOUNCES COMPREHENSIVE WELFARE REFORM PACKAGE;
PLAN WILL CUT WELFARE ROLLS IN HALF

Governor Evan Bayh said today his administration has won approval of the most aggressive and comprehensive welfare reform program in the United States.

"Indiana's welfare reform program ensures that those who can work, will work," Governor Bayh said. "It will change welfare from a system that focuses on writing welfare checks to one that makes able-bodied people earn paychecks."

"We are affirming the core values Hoosiers share - work, family, opportunity and responsibility - in an aggressive, but fair manner," the governor said. "Indiana's welfare reform program makes work pay and provides assistance families need to move from dependence to independence."

The governor's reform program, consisting of 42 waivers to federal regulations governing welfare, was submitted to the federal government in June, 1994. The U.S. Department of Health and Human Services notified the state today that the majority of individual waivers are approved. Several of the requested waivers dealing with administrative matters could not be granted without changes to federal law while the others can be implemented with state plan amendments.

"No state has such a statewide, comprehensive approach to welfare reform as Indiana is taking, beginning today," Governor Bayh said.

Features of the welfare reform program include:

- * Time limited (24 months) assistance provided to certain Aid to Families with Dependent Children recipients while they look for work.

- * A family cap, halting increases in cash benefits for children born more than 10 months after a family begins receiving AFDC.
- * Requiring all AFDC applicants to sign a Personal Responsibility Agreement that ties AFDC payments to specific promises by the recipients, including promises that their children will attend school and receive appropriate vaccinations against disease at the appropriate age.
- * Allowing eligible AFDC recipients to earn a paycheck without immediately losing necessary support services such as health care.
- * Sanctions for those who abuse the system, including permanent ineligibility for individuals convicted of welfare fraud.
- * Private sector job placement and extended wage supplements.
- * Minor parents required to live with parent or responsible adult.
- * Immunization of children required on schedule or parents lose \$90/month.
- * Children must attend school or parents lose \$90/month.
- * All children will retain all Medicaid eligibility regardless of parent non-compliance.

Governor Bayh saluted both Democratic and Republican legislators who have worked closely with the administration to fashion a program with bipartisan support. "This has been a long and arduous process, but this new approach to getting people off of welfare and back to work incorporates ideas and suggestions from both Republican and Democratic legislators," the governor said, pointing out that legislators from both parties have been instrumental in fashioning the program that has received federal approval. "I will continue to meet with our bipartisan task force and look forward to pursuing our program in the General Assembly."

During the next seven years, the governor's welfare program will achieve more than \$140 million in savings and move approximately 37,000 adults to self-sufficiency, reducing the welfare rolls by nearly 50 percent. There are currently 70,505 adult AFDC recipients.

Under the governor's program, 9,000 to 12,000 AFDC adult recipients will participate in the IMPACT program's job placement track at any given time. From the date recipients are placed in this track, they will receive a maximum of 24 months of AFDC assistance and 12 additional months of transitional child care and transitional Medicaid benefits. At the end of this time period, recipients must wait three years before applying for AFDC.

IMPACT will demand that participants engage in intensive case management and job placement. Vocational and educational training will be provided only as needed. The number one priority will be to connect recipients to jobs.

Adults with the ability and circumstances that allow them to work will get no benefits if they refuse to move toward self-sufficiency. AFDC and Medicaid benefits for children of those adults, however will continue.

All AFDC applicants and recipients will sign a Personal Responsibility Agreement, beginning in January. Preparation for the 24-month time limited assistance portion of the welfare reform program is underway. Full implementation will begin no later than July 1, 1995.

The governor also restated his support for legislation that would insure that township trustees have the right to deny taxpayer money to those who have refused a job under the governor's welfare reforms.

"Indiana's trustees share our goal of putting people to work, and we want to do whatever it takes to give them the legislation they need to protect taxpayers," the governor said. He noted that members of his reform team have been consulting regularly with members and leadership of the Township Trustee Association.

"Indiana's welfare reform program is based on the belief that work is the best social program ever devised," Governor Bayh said. "It is the foundation on which we will strengthen our families and communities."

For more information: Fred J. Nation 317-232-4578
Steve Campbell 317-232-1012
Melissa Skolfield U.S. HHS--202-690-6853

OBJECTIVES OF INDIANA'S WELFARE REFORM

The objectives of Governor Evan Bayh's welfare reform are:

- ✓ To help all AFDC recipients become employed and self-sufficient through acceptance of personal responsibility for themselves and their families.
- ✓ To make work more financially rewarding than public assistance.
- ✓ To make public assistance temporary, not a permanent way of life.
- ✓ To develop a partnership between business and government to stimulate economic development to increase the capacity for new jobs.
- ✓ To develop a partnership between the public assistance recipient and government to ensure that a recipient's individual commitment to self-sufficiency complements the efforts of government to provide basic opportunities during the public assistance period.
- ✓ To punish abuses of the system by those who do not accept responsibility for themselves and their families.

"Indiana's welfare reform plan gives those on public assistance both the opportunity and strong incentive to become self-sufficient."

Evan Bayh, Governor

INDIANA'S WELFARE REFORM MOST AGGRESSIVE IN THE NATION

Georgia Illinois **Indiana** Michigan New Jersey Wisconsin

	Georgia	Illinois	Indiana	Michigan	New Jersey	Wisconsin
Statewide	✓		✓		✓	
Time Limited Benefits			✓	✓		✓
Family Cap	✓		✓		✓	✓
Personal Responsibility Agreement			✓	✓		
Extended Grant Diversion			✓			
Immunization for Children			✓	✓		
Minors Live at Home			✓			
Mandatory School Attendance			✓			✓
100 Hour Rule		✓	✓	✓		✓
Cuts Employment			✓			
More Aggressive Sanctions	✓		✓	✓	✓	✓
Resource Limits		✓	✓	✓	✓	✓
Local Government Partnerships			✓			✓
Decrease in Bureaucratic Processing			✓			
Elimination of IOBS' Exemptions			✓	✓	✓	

EXECUTIVE SUMMARY

Public assistance should be a process to self-sufficiency, with a work ethic and temporary help focus. It begins with the reasonable expectation that a family's request for public assistance is a request for temporary help, and with the understanding that self-sufficiency is a personal responsibility and not an obligation of the government.

A critical component of reforming public assistance must be to stress self-sufficiency through employment. Private businesses should be asked to play a role in developing new jobs to provide an expanded base for our communities. Businesses may be particularly well-suited to form partnerships with government to enhance economic development efforts that provide employment to public assistance recipients. This will enable recipients to receive a paycheck from an employer, instead of a handout from government.

Through the Partnership for Personal Responsibility, employers will be encouraged to hire public assistance recipients through subsidies equivalent to recipients' AFDC payments. The advantage to the employer is the employment of an employee at a subsidized rate. The recipient is given an opportunity to earn wages for work with a potential for permanent employment.

No appointment is necessary to get this process in motion. It is an opportunity for Family and Social Services Administration employees to help a family refocus its direction and begin to eliminate the barriers that brought about the need for help.

Those needing state assistance through the Aid to Families with Dependent Children program will get an appointment for a first interview, an intake session. This will include assessment of the family's needs and strengths. No benefits will be granted until an applicant signs an agreement promising to do everything possible to work toward self-sufficiency and provide a healthy and safe environment for children. This Personal Responsibility Agreement ties welfare payments to specific promises by the recipient.

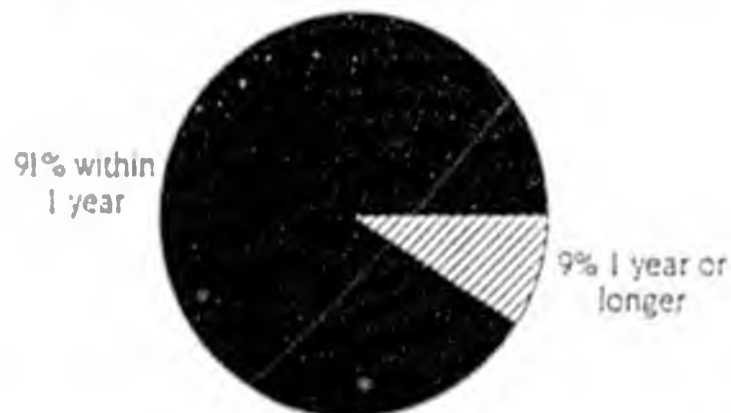
The agreement states that the family receives no additional payments for any children born while the mother is receiving AFDC. Minors who are parents or who are pregnant will promise to live with their parents or in some other adult supervised setting.

All recipients will promise to make certain their children receive all appropriate vaccinations against disease at the appropriate age.

All will promise also to accept any reasonable employment as soon as it becomes available. They also must agree to follow an Individual Self-Sufficiency plan. This is an action plan that will be developed by the family and the caseworker.

Returning to Welfare

Most who leave but return to welfare do so within a year.



EXECUTIVE SUMMARY (Cont.)

IMPACT is Indiana's version of federal JOBS legislation. An estimated 12,000 people per year will participate in the IMPACT self-sufficiency program. Allowing for turnover in the program, about 9,000 will be participating at any given time.

The agreement applicants sign will state they understand that, if placed in IMPACT's progressive job seeking track, their AFDC benefits will end two years from the date of that admission. Those who are not suited for the progressive job seeking track because of age, lack of readiness or other debilitating conditions are ineligible for progressive job placement will be placed in IMPACT's Job Readiness program.

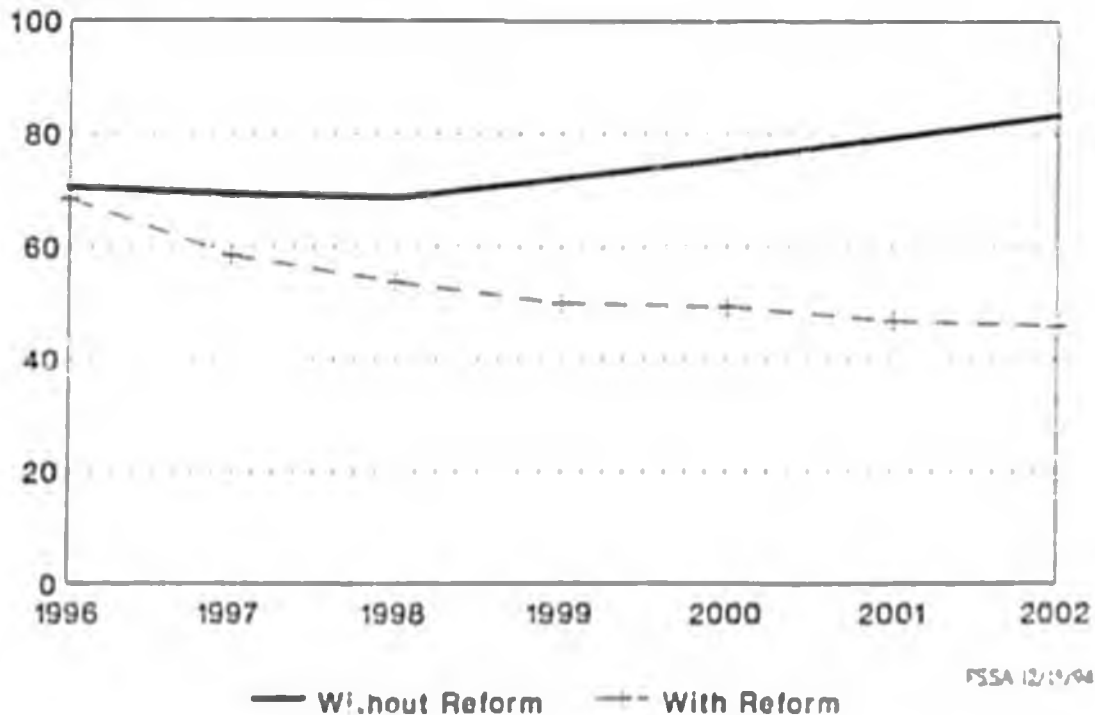
Parents under age 18 who must care for a child under age 3 and who have not completed high school or the equivalent may be provided care coordination services. Periodic reassessments will be provided.

The state will commit itself to assist the family in meeting the agreement by providing appropriate benefits and services. These can include counseling, training, education, child care, family planning and other services. The state will allow recipients to keep their paycheck, while diverting the recipients' AFDC grant to an employer for business development and employee benefits.

IMPACT will help employers recruit and train quality employees. To ease the risk for employers, IMPACT will provide on-the-job training funds, work supplementation funds and targeted job tax credits.

WELFARE REFORM: FOCUSING ON EMPLOYMENT

Number of Single Parent AFDC Families
In Thousands



FSSA 12/19/94

TWO YEAR PROCESS TO SELF-SUFFICIENCY

**SELF-SUFFICIENCY
PLAN**
(Within 30 Days)

- Family Assessment.
- Personal responsibility agreement signed.
- Self-Sufficiency Plan developed.



**JOB SEARCH
OR
JOB READINESS**
(30 - 90 Days)

- In-depth educational and vocational assessment.
- Self-Sufficiency Plan initiated.
- Time limited assistance while looking for work.



JOB PLACEMENT

- Employment supportive services (Child Care, Transportation, Medicaid).
- Monthly review of progress continues.



**TRANSITION
AND
SELF-SUFFICIENCY**

- Case management services available.
- Limited transitional services begin (Medicaid & Child Care).

- Denial of AFDC benefits to individuals who quit a job within the three month period immediately preceding receipt of the first check for benefits.
- Require school attendance for the teen parent.

State Plan amendments include:

- Deny AFDC benefits to parents who obtain physical custody of their children for the sole purpose of attaining AFDC eligibility.
- Require a minor parent to live with a parent or other responsible adult.
- Require permanent ineligibility for an individual convicted of welfare fraud.

INDIANA'S WELFARE REFORM PLAN: FOCUSING ON FAMILIES

Indiana's welfare reform plan focuses on families. Families must enter into a partnership with the state to achieve self-sufficiency.

State agencies, in turn, will enter into partnerships among themselves and with businesses to assist families moving from dependence to independence.

Taxpayers also are part of this partnership. They provide the money that pays for welfare. Taxpayers will benefit from reforms that ensure welfare is a temporary condition, not a way of life and ensure Indiana's welfare system demands responsibility and independence, not dependence.

The responsibilities and roles of these partners are outlined on the following pages.

PARTNERSHIPS WITH FAMILIES

FAMILIES SHALL:

- Understand welfare is temporary assistance, not a way of life.
- Develop a self-sufficiency plan and go to work as quickly as possible.
- Recognize sanctions will be imposed for quitting a job, refusing to accept a job or dropping out of IMPACT.
- Take responsibility for children receiving all appropriate vaccinations against disease at the appropriate age.
- Ensure children attend school.
- Understand AFDC benefits will be limited to number of children in family within the first 10 months of qualifying for AFDC.
- Live with parents or other adults if the recipient is a teenager.
- Understand AFDC assistance will last only two years once placed in the IMPACT job Placement Track.

PARTNERSHIPS WITH STATE GOVERNMENT

FAMILY AND SOCIAL SERVICES ADMINISTRATION SHALL:

- Provide child care for up to 3 years, including 24 months of child care AFDC recipients receive while on IMPACT, and 12 months of transitional child care.
- Provide Medicaid for up to 3 years, including 24 months of Medicaid benefits AFDC families receive while on IMPACT, and 12 month of transitional Medicaid benefits.
- Freeze the food stamp benefit for the first six months AFDC recipient is employed.
- Stop penalizing two parent families by eliminating the rule that limits either parent from working more than 100 hours a month.
- Provide job training and job placement assistance for up to two years.
- Permit earned income up to 100 percent of the federal poverty level.
- Identify one caseworker per family to ensure the self-sufficiency plan is implemented.
- Aggressively continue to collect child support on behalf of AFDC recipients. Indiana child support collections have increased more than 476 percent since 1985, growing steadily every year. Collections in 1994 are likely to total \$170 million, compared to \$149.7 million in 1993.

DEPARTMENT OF HEALTH SHALL:

- Work with hospitals to provide an opportunity to new parents for establishing paternity.
- Work with FSSA to ensure immunizations are available to all AFDC families.

DEPARTMENT OF WORKFORCE DEVELOPMENT SHALL:

- Identify job openings on a county-by-county basis and share information with FSSA's Division of Family and Children county offices.
- Install kiosks in a number of FSSA's Division of Family and Children county offices for families to identify available jobs rather than enrolling in AFDC.

BUREAU OF MOTOR VEHICLES SHALL:

- Exchange data with FSSA that will assist in eligibility determination and fraud investigation.

DEPARTMENT OF EDUCATION SHALL:

- Work with FSSA to ensure children attend school.
- Enable a limited number of FSCA caseworkers to be placed in some schools to help reduce the dropout rate of teen parents.

PARTNERSHIPS WITH BUSINESSES

- AFDC grants diverted to employers for up to 24 months for new jobs.
- IMPACT employees trained in basic skills.
- AFDC grants can be used for on-the-job training.
- Employers can receive a federal tax credit of up to \$2400 for hiring IMPACT employees.

PARTNERSHIP WITH TAXPAYERS

- When welfare reform is implemented, taxpayers will benefit.
- The cost of AFDC is shared by county, state and federal governments. The county's share is 14.5 percent, the state's share is 22 percent and the federal share is 63.5 percent. As welfare rolls are reduced, the drain on scarce resources for public assistance will lessen.
- During the seven year demonstration period of welfare reform, more than \$140 million in state dollars will be saved by moving approximately 37,000 adults to self-sufficiency.

STATUS OF FAMILIES ON AFDC

- In State Fiscal Year 1994, \$206,188,773 in AFDC benefits were distributed to Hoosier Families.
- On an average monthly basis, approximately 195,000 people receive AFDC. 125,000 are children and 70,000 are adults.
- The percent of population in Indiana receiving AFDC averages 3.5 percent, compared to 5.3 percent nationwide.
- Approximately 190,000 families made up of 510,000 individuals receive food stamps at an annual cost of \$417 million.
- Approximately 90 percent of the adult AFDC recipients are female.
- The average age of an adult AFDC recipient is 28. Seven percent of AFDC recipients are teenage mothers.
- Approximately 5,200 children are born annually to a mother who is receiving AFDC.
- The average number of people in an AFDC family is three; the average number of children is two. The average AFDC monthly benefit is \$288.
- Forty-six percent of parents receiving AFDC have a high school degree or GED. Eleven percent have some post high school education and one percent have a college degree.
- Thirty-three percent of families on AFDC remain on the program for less than one year; 21 percent remain on AFDC for two years; 13 percent remain on the program two to three years; and 33 percent remain on AFDC three years or more.
- In 1992, the identity of the father was not determined for 24.7 percent of the children born to AFDC families, compared to 29.5 percent nationwide.
- The unemployment rate averages 4.4 percent in Indiana, compared to 5.6 percent for the nation.
- A parent and two children, with an annual income of \$12,320, are at 100 percent of the 1994 federal poverty guidelines.

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Va. Overhauls Welfare, Giving Allen a Victory
Revisions Are Among Nation's Toughest

By Spencer S. Hsu

Donald P. Baker

Washington Post Staff Writers

COMPLIMENTS OF THE
ALASKA STATE LIBRARY

RICHMOND, Feb. 25 -- The Virginia General Assembly passed one of the most restrictive welfare overhaul programs in the country tonight, ending a tumultuous session by bowing to Gov. George Allen's plan to force recipients into jobs after 90 days and to cut off their benefits after two years.

In a final day of feints and thrusts before the 1995 session adjourned, Democratic leaders reined in House members furious over what they considered Allen's premature announcement that an accord had been reached 24 hours earlier.

Shortly before 7 p.m., the House of Delegates voted 90 to 9 in favor of Allen's compromise. Minutes later, the Senate concurred 33 to 6. All 13 members of the Legislative Black Caucus dissented.

"It's been a tough session. There's been a lot of missed opportunities," Allen said as the final votes were held. But he gushed over his victory. "It looks very good. This will be as tough as any in the nation."

Lt. Gov. Donald S. Beyer Jr. rejected angry charges from poverty groups and his party's liberal wing that the Democrats had capitulated to the governor, insisting that Democratic negotiators had strengthened case worker and benefit portions of the legislation. The adjustments, however, were largely technical.

"Any successful negotiation is win-win. . . . We have a bill here stronger than either approach we started with," Beyer said. "We're so close it's almost impossible to tell the difference." The legislation's ultimate passage left one pillar of Allen's conservative agenda standing amid the ruins of the broadest legislative repudiation of a Virginia executive in memory. Over the last six weeks, legislators have killed Allen's bids to cut income and business taxes by \$2.1 billion, repeal mandatory sex education and allow state-funded "charter schools," and to slash funding for many programs by \$403 million, including social services, arts and higher education.

Allen believes his vision of smaller government and social change still

will be redeemed by this fall's election -- which frequently seemed a major factor in debate during the last six weeks. With all 140 seats in the General Assembly up for election, Republicans need to gain just four in the House and three in the Senate to take control for the first time.

Yet even Allen's fellow Republicans concede the governor badly misjudged how to play the session, especially compared with his legislative sweep last year. As he pushed conservative initiatives that would have transformed much of Virginia government, he alternately ignored his own party leaders and called their Democratic counterparts "dinosaurs" and "fat cats."

Del. William C. Mims (R-Leesburg) resorted to football analogies today. "On Allen's first play from scrimmage in 1994, he completed a long bomb," Mims said. "On the second play in 1995, he was caught behind the line of scrimmage."

As reflected in polls, Allen's failures have, at least for now, diminished his stature. "I don't think he's as damaged goods as Clinton was," said Mason-Dixon Poll analyst Del. Ali, "but this rising-star thing has been put on hold temporarily."

Still, the Democrats' success at blocking Allen's activism carried its own price. For the first time in several years, lawmakers passed little major legislation. Virtually no new transportation projects moved forward. No progress was made on equalizing state funds to school districts.

"When you think about it, there really wasn't a lot done. It's gridlock," said Del. Vincent F. Callahan Jr. (R-McLean), co-chairman of Northern Virginia's 34-member legislative delegation. "The major news is restoration of [Allen's proposed] cuts, but all we've done is the same as where we were last year. Nothing's changed."

Welfare revision was the session's sole surviving drama, one that would affect 74,000 poor women and their children across the state. Both the Democrats' plan and Allen's eleventh-hour effort would require teenage mothers to live with their parents and identify the fathers of their children. It also would deny payments to additional children born to aid recipients. Only Massachusetts has approved such restrictive provisions.

Allen emphasized that his plan would save money -- \$136 million over five years -- and commit Virginia to the philosophy of self-sufficiency, but Democrats offered a different focus. They said theirs would provide a carrot as well as a stick, easing barriers to working by providing more generous health and child care, a car allowance and income credits.

Today's suspense grew largely from divisions among Democrats over whether to go along with Allen or reject him once again. Friday evening, Allen had announced success in reaching an accord that would require many of

COMPLIMENTS OF THE ALASKA STATE LIBRARY

the single mothers on welfare to find jobs in private companies or community service within 90 days of receiving their first check. Democrats wanted to allow up to a year, although they, like Allen, would end all assistance after two years.

Beyer, the Democratic party's titular head and chief negotiator with Del. David G. Brickley (D-Woodbridge), had crafted the compromise with the administration and was pushing colleagues to accept it. But House Majority Leader C. Richard Cranwell (D-Vinton) threatened for hours to throw out the governor's proposal and force him to veto a similar Democratic plan.

All day, the two negotiators shuffled between their chambers and the governor's office. At midday, they handed Allen a list of seven changes they needed to satisfy critics in the Legislative Black Caucus. Allen agreed to four of them.

That made little difference to liberal Democratic lawmakers and the Legislative Black Caucus, which refused to back what it called an irresponsible and insensitive law.

"I beg you not to play politics with the lives of poor women, poor children and poor people," said Del. Jerrauld C. Jones (D-Norfolk), black caucus chief. He said the law was "unnecessarily punitive; it's all politics." With his comments, Jones insinuated that Democratic leaders wanted to prevent Republicans from claiming the issue this fall.

Only a few votes on other issues remained by today. Late this week, the assembly passed a law making it possible for virtually any law-abiding citizens over the age of 21 to obtain a permit for carrying a concealed weapon. The measure succeeded despite a frenzied lobbying effort by gun control forces and a personal appearance by former Reagan aide James S. Brady, who was critically injured in the 1991 assassination attempt on the president.

Allen did get his way on a host of deregulatory and market initiatives, such as a bill granting civil amnesty to companies that detect their own pollution problems and begin to clean them up. Other laws heading to his desk for signature include one turning over regulation of auto dealers to a board dominated by dealers and another that will legalize private-public authorities to fund transportation projects.

But a proposal to allow riverboat gaming was killed in the Senate for another year, as was an effort to limit campaign donations to candidates for state office. The campaign bill passed the Senate but stalled as House members refused to vote, complaining its rules were too complicated.

Lawmakers slashed Allen's \$403 million prison-building program to \$104 million, only months after eliminating parole at the governor's request.

Their decision led Allen to warn that with Virginia facing a massive inmate influx, state leaders were risking federal lawsuits over crowding in state and local prisons.

Allen also was rebuffed on a parental notice requirement for teenagers 17 and under who sought an abortion. Allen vetoed a measure last year that he considered too lenient.

Staff writer Peter Baker contributed to this report.

**THE FOLLOWING PAGES
WERE TREATED AS A UNIT
IN THE ORIGINAL FILE**

August 1994

Reader's Digest

August 1994 \$2.25

World's Most Widely Read Magazine

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SIX GREAT ON VES

ARTICLES

AMERICA'S SHOCKING DISABILITY SCAM

America's Shocking Disability Scam

BY RANDY FITZGERALD

Wanted: drunks, junkies, child abusers and other misfits willing to share \$25 billion from taxpayers. Contact the federal government for details

It's the first of the month in New York City, and several dozen occupants of the seedy Concourse Hotel in the Bronx are waiting anxiously outside for the mail carrier to deliver their U.S. Treasury Supplemental Security Income (SSI) checks. A red Buick slowly circles the block like a shark sizing up its prey.

Once the stack of envelopes has been distributed, the residents parade to a check-cashing store two blocks away. Then one by one, cash in hand, they approach the Buick, now parked in front of the hotel. "How much you need?" a passenger asks 33-year-old Elizabeth, whose skeletal, twitching hands clutch a wad of \$20 bills.

"Enough to get me through the week," she replies hoarsely. He takes the money and gives her a handful of vials containing crack cocaine. Over the next hour, tens of thousands of dollars will be spent in the neighborhood on cocaine and heroin, courtesy of U.S. taxpayers.

SSI, one of the nation's largest and fastest growing cash welfare programs, was established by Congress in 1974 to assist low-income Americans who were elderly, blind or otherwise unable to work. This year six million recipients will pocket \$25 billion in SSI benefits, up from 4.8 million recipients and \$16.1 billion just four years ago. What's more, 2.2 million new SSI applications were filed last year, swamping local agencies that review cases.

Once on SSI, the vast majority of recipients get cash—often retroactive lump-sum benefits—but no rehabil-

itation or job training. The result: few people—including addicts and those who could be trained—ever leave SSI, making the program an entitlement for life.

"SSI tends to perpetuate the very conditions—alcoholism, drug addiction, certain forms of mental illness—that preclude work and promote dependency," says Carolyn Weaver, director of Social Security and Pension Studies at the American Enterprise

...payer dollars are used directly to subsidize and perpetuate drug and alcohol abuse."

250,000 alcoholics and drug addicts receive nearly \$5 billion a year from SSI and its companion program, Social Security Disability Insurance (SSDI). But only three percent are known to be receiving the required treatment for their addictions. (SSDI is for workers who paid into the Social Security system and who are now disabled, while SSI is for the poor.) "Taxpayer dollars are used directly to subsidize and perpetuate drug and alcohol abuse," according to a minority staff report earlier this year by the US Senate Special Committee on Aging.

Death by Installment. In the office of the homeless shelter Bob Coté runs in Denver hang nine photographs. There's sad eyed Clark Pittman, 53 years old when his heart stopped. After receiving his first SSI check, he bought two fifths of high-proof bourbon instead of the cheap wine he had used for years. Over the next six hours, he drank himself to death.

Nearby is a photo of Billy Palmer, 62 years old when he got a lump-sum SSI payment of \$6000 and left Coté's shelter. He died of an alcoholic seizure after weeks on a binge. Then there's Bob Paxton, a bus mechanic from Iowa who cashed his SSI checks at a nearby liquor store and died, in a drunken stupor, at 57.

Coté first became aware of what he calls SSI's "suicide on the installment plan" in 1970. He mailed free federal workers on Denver's skid row putting pamphlets in the hands of drunks passed out on the sidewalk. Coté picked up one of the brochures, published by the Social Security Administration (SSA). "Are you an alcoholic or a drug addict?" it asked. "Then you may qualify for SSI." Law firms that specialized in SSI created billboards advertising skid row business.

Steve and Ray are typical of those who signed up. Steve and his wife had been heroin addicts for two decades when they got lump-sum SSI payments of \$2500 each in 1970.

"We bought drugs," Steve admits. "It only kept us going about a month. Then we had to buy [drugs] again. I don't know of anyone on SSI who's made a clean break from drugs or

AMERICA'S SHOCKING DISABILITY SCAM

alcohol." Steve's wife has since died, and today Steve's monthly checks reach him through his brother, a "representative payee" who is supposed to look out for Steve. His brother, too, is a heroin addict.

Ray got on SSDI in 1971. The first of every month he rents a motel room with his \$530 SSDI check, buys whiskey, cocaine and marijuana, invites friends over and parties for two or three days until the money is gone. Asked if this was a responsible use of taxpayer money, Ray replied, "It's none of anybody's business."

In Chicago, Administrative Law Judge Francis O'Byrne has spent the past 20 years handling SSI cases. But he has never been as frustrated by the system as he is today. He has a backlog of 500 appeals, and under current rules he finds himself approving benefits in 70 percent of them. "We've created a monster," Judge O'Byrne says. "No one who is incompetent to handle their own money should have their hands on taxpayers' money."

Not since 1972 has Raymond Corrao, 56, been legally employed. He has supported himself and his heroin addiction by dealing drugs in California. In 1983 Corrao applied for SSI, claiming he was disabled by heroin and alcohol addiction. But a year later, a judge ruled that Corrao was ineligible because his drug dealing constituted "substantial gainful activity."

Corrao sued in federal court to reverse the ruling. Last April, the US Court of Appeals remanded the case to the district court for reconsideration. If the lower court rules in his

favor, Corrao could receive a lump-sum SSI payment of more than \$30000, along with continued monthly benefits.

"Something is wrong with this system," laments Sen. William Cohen (R, Maine). "The message is, show us you are a hard core drug addict and, as long as you continue to shoot up or drink up, the money is going to keep coming."

Shopping Spree. Before Administrative Law Judge David Tennant of Raleigh, N.C., stood a frightened eight-year-old and her parents. The girl had terrible scars all over her body, where her father had burned her with cigarettes. She was under psychiatric care at a government clinic. Now her parents were seeking SSI children's disability benefits for the very condition they had caused.

Judge Tennant had no illusion that the SSI checks would be spent on the girl's care. If he approved the application, the SSA would be subsidizing an abusive father and an indifferent mother. Yet Tennant had no choice. Under current law the parents were entitled, on the child's behalf, to receive the monthly largest

Applications for children's disability have exploded in volume since the Supreme Court ruled in 1970 that children should be evaluated for

Once a month Ray rents a room with his \$530 SSI check, buys cocaine and invites friends over for a party.

SSI in a manner similar to that for adults. In response, SSA issued new rules defining certain behavior in children—such as extreme shyness or public disruptiveness—as indicative of a disabling impairment. Suddenly some 230,000 children who had been denied benefits under the previous narrower rules were awarded lump-sum back payments averaging \$10,000 each, for a total of \$2.3 billion.

Unfortunately, Congress had previously legislated that back payment of all but \$2000 had to be spent within six months if a family wanted to remain eligible for SSI. The result: a shopping spree at taxpayer expense. Consider a

overweight and qualify as the victim of an eating disorder. In Tampa, Fla., principal Stephanie Moffitt of the Sulphur Springs Elementary School heard from staff members that more than a dozen students admitted to being coached by their parents to act up in school so the family could get an SSI check each month. How did the parents learn of SSI? Through "public service" ads on TV and word of mouth.

In eastern Arkansas, monthly SSI checks are known as "crazy money." In some counties, children's disability cases have soared as much as 255 percent in two years. One family managed to get all 11 children on SSI rolls. Cost to taxpayers: \$61,512 a year. "What the children who honestly qualify for SSI need most is free medical care," says Judge Tennant. "Give them medical services, not money. Judges should also have case review power after a year. Taxpayers deserve to see how their money is spent."

A Laotian refugee was so outraged by SSI fraud in Southern California that he complained to state officials. They asked him to adopt a new identity, "John," and wear a hidden microphone to document the scam.

John employed what is known in immigrant communities as a middleman—an expert for hire who navigates the maze of government benefit programs. Middlemen fill out the SSI forms, coach applicants on how to act with the physician, and interpret during these sessions.

"The 'body mike' John wore captured his middleman's instructions: 'Just say headache, nightmares, loss

of memory. You can receive a lot of money, seven or eight thousand the first year. You pay me three thousand, and the rest you get to spend, okay?'"

John was then driven with nine other immigrants to a clinic. All ten had a 7 p.m. appointment with the same doctor. As they waited, John overheard the others joking about the "free money" they were about to receive. Doctors filled out the forms in a veritable assembly line.

At the next interview, with an SSA representative who spoke only English, the middleman again acted as interpreter. The middleman reported that John had back pain from an old rib injury. Unable to challenge the story, the examiner dutifully verified the doctor's findings. John could now obtain up to \$603 a month—indexed for inflation—for the rest of his life.

At one clinic in Orange County, California, state investigators found the names of almost 2000 immigrants receiving SSI who had been brought in by middlemen. As of last November, this one group had collected \$39 million in SSI payments in less than three years.

"We think this is happening in virtually every immigrant community in the nation," reports Chris Rodriguez, a deputy chief investigator for the California Department of Justice. According to one estimate, the middleman problem may cost US taxpayers more than \$600 million a year in California alone.

Dumping Ground. During an investigation, the California Department of Justice also stumbled across a new

AMERICA'S SHOCKING DISABILITY SCAM

scam: state prison inmates collecting SSI for drug addiction and alcoholism while behind bars. At a single facility, investigators discovered 100 inmates on SSI. Last year Bureau County, Illinois, state's attorney Marc Bernabei notified the SSA that SSI checks—\$771 a month—were going to Lee Adams, who had been sentenced in 1993 to life in prison for stabbing to death his nine-month-old son.

Another reason federal disability spending has nearly doubled in the past four years is that state and city officials are using the federal program as a dumping ground to relieve the financial stress on their own welfare systems. In Illinois lawyers are paid a \$1300 bounty by the state for each person they transfer from state welfare rolls onto SSI.

Disability applicants have told Judge O'Byrne how social workers threatened to drop them from the state's roll if they did not apply to the federal program. Similarly, New York City caseworkers encourage recipients to apply for SSI, which pays over \$150 per month extra.

"HRA [the Human Resources Administration] encourages clients to apply for all benefits to which they may be entitled, including SSI," remarks Cesar A. Peraks, former deputy mayor

in Kansas, "All checks are now as 'crazy money,' and children's disability cases have soared."

Middlemen may cost taxpayer more than \$600 million a year in California alone

woman who got \$13,000 in 1992 for her hyperactive 11-year-old. She splurged on a car, refrigerator, stove, washer, dryer, television and computer.

After the court decision, SSA pursued an outreach program to recruit children onto the rolls. In less than four years, the children's SSI caseload more than doubled to 775,000, and outlays soared to \$3.1 billion. Because most recipients automatically qualify for Medicaid, that entitlement program's budget is rising sharply as well.

Coaching Sessions. With outreach comes abuse. In Chicago a woman knee falter was so he would be grandly

READER'S DIGEST • AUGUST 1994

for Health and Human Services. "It is in the city's fiscal and programmatic interest to ensure that all eligible clients receive federal assistance."

Double Jeopardy. Last March the U.S. Senate approved a proposal by Senator Cohen to require drug addicts and alcoholics to enter treatment in return for benefits. Payments would stop after three years if substance abuse was the basis of a disability claim. In May the U.S. House approved similar legislation, adding the provision that retroactive payments be made over a period of months rather than in a lump sum.

Legislative authorities predict that even after Congressional action, it will take the SSA at least a year to implement these changes. There is also no guarantee that the agency will administer the reforms in the spirit Congress intended. For example, most substance abusers develop medical conditions as a result of the addictions, and these conditions could still qualify them for benefits whether or not they are in treatment. The SSA's continued emphasis on using its resources for "out-reach" rather than "caseload review" may undermine the intent of Congress.

Even more can and should be done to protect taxpayers:

1. Illegal acts—including drug possession and sales—should be grounds for the revocation of disability benefits.

2. Instead of lump sums or monthly cash, SSI recipients should be given vouchers for use in obtaining appropriate treatment.

3. Congress must demand a systematic SSA review to weed out recipients who no longer qualify.

4. Administrative law judges should receive the power to review cases periodically to help protect children subject to abuse.

5. The SSA must be given authority to levy monetary sanctions against physicians and clinics making false statements in SSI filings.

6. The SSA should hire employees with foreign-language skills, to eliminate the use of middlemen as interpreters.

Waste, fraud and abuse in SSI victimize both the truly disabled and those who pay the bills. Says Thomas Schatz, president of Citizens Against Government Waste, "Perhaps no single government social program mocks our best-laid plans more than SSI."

Reprints of this article are available. See page 202.



Siren Song

A **tourist** executive was speeding down a Detroit street, talking on his car phone. The police man pulled him over. The executive completed his call and looked up at the officer. "Yes?" he said.

"I bet you don't even know why I stopped you!" the officer replied. Said the executive, "You want to use my phone?"

Contributed by Evelyn P. Hannon

BOOK SECTION • AUGUST 1994

scan appointment, Dr. Kassell looked very serious. He waited till we both sat down, then said, "I'm sorry, but things are worse than I thought. The tumor is far too large for the gamma knife."

"Isn't there anything you can do?" I asked.

Dr. Kassell hesitated. "We could carry out a surgical operation to reduce the tumor to a size where we could use the gamma knife. But the tumor is in a very bad place. Craig could die on the operating table. The most I think it would give him would be another six to nine months of life."

Poor Ernie was gulping. I felt numb. Dr. Kassell looked at the floor.

"Have you got children, Dr. Kassell?" I asked.

He nodded. "Three daughters." "If one of them were in this situation, would you operate on her?"

He looked taken aback. "Marion, I don't know." He shook his head. "Only you and Craig can decide if it's a risk you want to take. Go home for Christmas. Talk to your family and your doctors, and think hard about what I've said."

Then he added quietly, "If you decide to go ahead, I'm willing to operate."

By the time we had returned to England, Ernie's mind was made up. "There's no question about it, Mal. We've got to go back," but I was frightened. One night I prayed, "Please, God, tell me what to do." When I woke, I knew I had to talk to Craig.

REPRINTS

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WELFARE'S SCANDALOUS COUSIN

President Clinton, in his State of the Union address, referred his audience to a group of men and women who have volunteered for his imaginative community-service program. But there is another class of citizens—the untold hundreds of thousands who have been involved in the abuse of the trust and sacrifices of their fellow citizens. The engine of their mischief is the Supplemental Security Income program, which has had little attention compared with the Aid to Families with Dependent Children program.

The original idea of SSI was splendid. It was to help old, disabled and blind Americans. It is no longer recognizable. Consider:

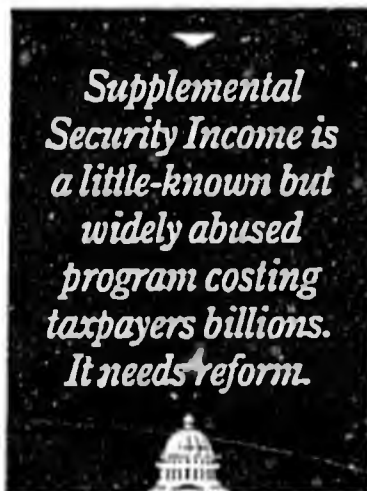
- Old people legally brought to America by their families can qualify for SSI after three years on the basis of poverty. About 400,000 now qualify, turning SSI into a retirement program for people who have never contributed a cent to the Social Security funds during their working lives.
- Refugees—a loose term—can begin collecting hundreds of dollars a month the moment they are admitted. Some 700,000 cost us almost \$4 billion a year. Thousands have been encouraged by entrepreneurial “social workers” to qualify for SSI by fabricating tales of political and other wartime suffering that has left them too traumatized to hold a job.
- Drug addicts and alcoholics can qualify as disabled, making it possible for virtually anyone hooked on dope or booze to get a monthly check, even if he has no other disability. Today the federal government is paying some \$1.4 billion annually to 250,000 substance abusers—who often spend the money on the substance, not on treatment. Example: A Denver liquor store owner has been receiving \$160,000 to run a tab for 40 alcoholics.
- Many disability claimants now allege “vocational impairment” when their claims for physical impairments are denied. Heather Mac Donald in the current *City Journal* cites the example of Linda Zeitz, 42, a former sales rep for Coca-Cola who contends that she has suffered agoraphobia since 1978 because of her consumption of “birth control pills, junk food and large amounts

of Tab.” Such an applicant nowadays merely has to show that the impairments prevent the performance of past work, or, in the light of age, education and experience, any other work. Such subjective standards are too often a cover for social handicaps that no doctor can cure—the lack of an education, a self-destructive lifestyle, a poor work ethic and other behavior patterns that the average American would simply consider to be antisocial or even criminal. A disability industry has been created for attorneys, clinics and doctors who earn fees by helping claimants qualify. It has come to the point where work itself can be described as dangerous to mental and emotional stability, especially if the work can be described as “competitive.”

- Children with violent and destructive behavior can be rated as “disabled” rather than simply undisciplined. The courts have declared as impairments factors that limit the child’s ability to engage in “age-appropriate activities.” But the standards are hopelessly subjective—so much so that parents intent on abusing the system are encouraging children to misbehave in school or are holding their kids out of class so that they fail the age-appropriate tests.

Too many of the incentives of the SSI program are perverse. When recipients receive cash assistance, but no rehabilitation or job training, there is a disincentive to work. When the SSI payments are higher than AFDC payments, parents are egged on to qualify their children as disabled. The system gives cash awards for bringing up children badly. Drug addicts, offered cash for up to three years, have little incentive to conquer the addiction because it means losing SSI benefits. And states have an incentive to support a shift to SSI from AFDC since they bear about 45 percent of the cost of AFDC but none of SSI.

SSI—it should be renamed Social Security Iniquity—has created a set of incentives for fraud and failure. The loopholes should be closed. The sections on disability should be reformed so that compensation is reserved for the physically and mentally handicapped. The American taxpayer is willing to help those who genuinely merit help, but no longer to subsidize the addicted, the ignorant, the mischievous and the work-shy. ■



GOVERNMENT & SOCIETY

Let the Welfare Debate Begin

The role of government is at the core of congressional proposals to solve the problem of public aid

By Barbara Vobejda and Judith Haveman
Washington Post Staff Writers

Fresh from a recent meeting with congressional leaders, Republican Wisconsin Gov. Tommy G. Thompson swept his arms from left to right, gesturing to show the dramatic shift that has taken place in the debate over how to rebuild America's welfare system.

REFORM

"We made a light-year of advance in the last three months," Thompson said. "I never thought I would see the day."

As Congress opens its hearings on welfare reform, the discussion has moved far beyond the changes proposed by President Clinton last June, driven by the Republican electoral victory and a bipartisan recognition of the popularity of the issue.

The contentious fight that lies ahead is over deeply held beliefs about the role of government and its treatment of the nation's disadvantaged population. Congressional Republicans want not only to cut costs, but also create policies that discourage welfare dependence and attack what they see as a national crisis—the increase in out-of-wedlock births. Republicans, however, do not agree on the best way to accomplish this.

Governors like Thompson argue that they know best how to accomplish these goals and that Washington should turn over the money to them with few strings attached. And on the sidelines are the people who began this debate, President Clinton and the Democrats, who are struggling to secure a role in the process.

Whatever the outcome, the debate that has begun before a House Ways and Means human resources subcommittee is itself historic, a wholesale rethinking of four decades of social policy. Prompted by growing welfare rolls and increasing costs, elected leaders across the political spectrum agree on the need to change what they say is a deeply flawed program.

"We ended welfare as we know it in 1980, but six to seven years later it is clear that we did not really change the system," says Ways and Means Committee Chairman Bill Archer of Texas, referring to passage of the Family Support Act, the last round of welfare reform. Welfare, he says, "remains a cruel hoax that has to its own beneficiaries."

But the Republican proposals before the committee are also a major controversy. If conservatives are objecting the competition in Washington to offer more and more revolutionary plans, liberals are warning at the prospect of families being pushed off welfare.

Major battles are brewing over a number of issues, including the wisdom of providing unrestricted cash payments to the states and whether it is fair to deny benefits to unwed teenage mothers, children whose paternity has not been established and legal immigrants who have not become citizens.

Still, the enthusiasm—among Democrats and Republicans—to rewrite welfare policy is somewhat reminiscent of the euphoria early in the health care debate last year.

Rep. E. Clay Shaw Jr. of Florida, who is chairing the hearings, said at a briefing for reporters that he wants to "break down partisan lines" because "everybody is trying to save the welfare reform agenda."

But, as in health care reform, the euphoria could wither when details of the plan are scrutinized.

gut-wrenching debate on welfare that we had on health care reform and come out producing a mouse," says Robert H. Haveman, economics professor at the University of Wisconsin's Institute for Research on Poverty.

Already, there is some disarray among Republicans. Although the proposal contained in the GOP "Contract With America" calls for cutting off cash assistance to legal immigrants who have not become citizens, House Speaker Newt Gingrich of Georgia says he thinks the party should "revisit the question" of a permanent ban on non-citizen benefits.

But Shaw says he has no plans to remove it from the bill. "I am not going to take an off-hand comment at a press conference as instructions," he says. And Archer says, "We do not believe that people who come to this country for opportunity and freedom should expect a handout."

DEMOCRATS HAVE THEIR OWN PROBLEMS

The White House has not gotten together to come up with an alternative," says Democratic Rep. Charles W. Rangel of New York, a member of the subcommittee. "The Democrats in the House have not gotten together to come up with an alternative. Everybody is so stunned by defeat we have become incoherent."

The debate in Washington will ultimately be felt on a diverse collection of disadvantaged families across the country. The largest program, Aid to Families with Dependent Children, includes 14 million recipients, nearly 70 percent of them children.

The average welfare family receives a monthly payment of about \$380, as well as food stamps and Medicaid. State studies have shown that fewer than 15 percent of those on welfare receive AFDC continuously for five years, according to the American Public Welfare Association. Much more typical is a family that cycles on and off. Half of single parents who apply for welfare leave the program within a year, but nearly half of those return to the program within a year of leaving.

It is these parents and their children who

could be harmed, warned Mattan Wright Edelman, president of the Children's Defense Fund. "Congress needs to slow down, lay out the facts and the consequences of their actions," she said at a recent news conference. "While the American people voted for change, and for less government, they did not vote for callous government or to hurt millions of children."

The current round of welfare reform has been anticipated for more than two years, since Clinton promised during the 1992 campaign to "end welfare as we know it." When the administration introduced its proposal, which would force welfare recipients into work programs after two years, it was derided by advocates for the poor and some congressional Democrats as unduly strict.

The Democratic-led Congress and the administration decided not to push forward quickly with welfare reform, largely because Congress was mired in health care legislation. But that, many say now, was a mistake. The fall election essentially handed the Republicans an opportunity to push their own plan. At the same time, Republican governors—now numbering 30—were given a stronger voice than ever before.

That turn of events has led to the current state of play, a committee beginning hearings even as it continues negotiating with governors over what the legislation will ultimately look like.

Following an appeal after the election by governors for more spending flexibility, congressional leaders agreed to begin negotiating over a proposal to create huge block grants to the states, replacing more than 300 federal programs. Those negotiations have involved an extraordinary exchange between the staffs of House Republicans and a group of four Republican governors who have been active in welfare reform, leading to an announcement that several of the block grants had been agreed upon. That proposal, Republicans say, will ultimately replace the welfare legislation contained in the "Contract With America." The governors, led by Michigan Gov. John Engler, have pushed for block grants that would consolidate programs in several areas, including food and nutrition, cash assistance, such as Aid to Families with Dependent

Children and child care. The states would agree to no funding increases for five years.

That would mean a significant change in the current status. Individuals meeting eligibility criteria would no longer be guaranteed benefits, meaning if a state has spent its funds and a recession winds more families into poverty, they could be denied food stamps, for example, or be put on waiting lists.

But the block grant negotiations are far from complete and, while they enjoy broad support in Congress, are likely to face political and technical obstacles when the spending formulas and other details are hammered out.

THE FOOD AND NUTRITION BLOCK

grant, for example, may face opposition from farm state legislators, growers and members of Congress whose states could lose funding.

An analysis by the Center on Budget and Policy Priorities, an advocacy group for the poor, calculated that, under the block grant formula proposed by Republican governors, many states could face substantial losses in federal food assistance, such as food stamps. If the formula had been in effect since 1990, for example, California and Florida would have lost nearly half of the aid they received last year.

Thompson, Engler and other governors argue that they are willing to accept less funding because they believe the elimination of federal regulations and added flexibility will save substantial sums.

Also, it appears that members of Congress may agree to eliminate what has been an important principle in federal state spending regulations for welfare, the "maintenance of effort" requirement that prohibits states from reducing their own spending when federal funds increase.

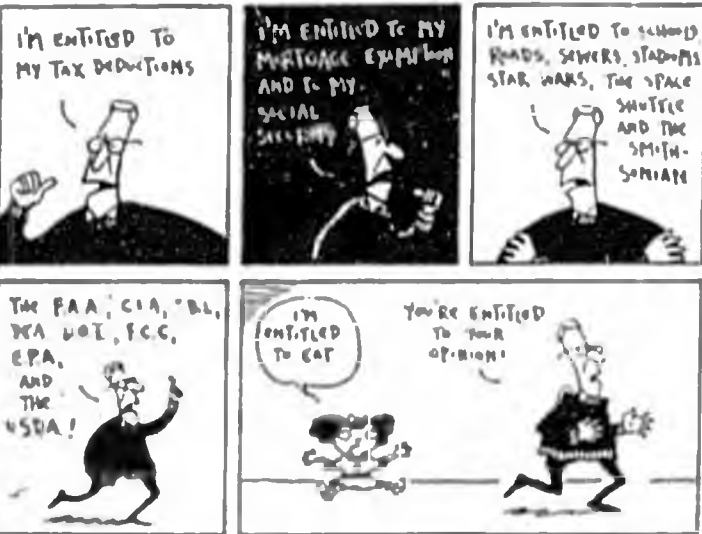
Still, there is not unanimity among governors, some of whom are concerned that they may find themselves picking up the tab for assistance to families formerly covered under federal entitlements. Others are concerned about the provision denying aid to legal immigrants, and many have asked that they not be required to follow other provisions contained in the "Contract With America" bill, such as an end to cash benefits for unwed teenage mothers.

Despite the lack of consensus on what a welfare bill should contain, there are wide areas that seem acceptable both to Republicans and moderate Democrats, including requirements that teenage mothers live with a parent or guardian, that the benefits be reduced, that child support enforcement be stepped up, that work be required as a condition of receiving welfare, at least for some recipients, and that states be allowed—to request—to deny additional benefits to welfare mothers who have more babies.

"These are things that Republicans and Democrats campaigned on," says Douglas Berkman, a scholar at the American Enterprise Institute. "In these areas, there is very widespread agreement."

Shaw says he hopes to launch his hearings by the end of January, begin marking up a bill early in February and send it to the full committee by the middle of next month.

Although Republican leaders have promised to act on the provisions of the "Contract With America" including welfare reform, within 100 days, Shaw says, "I wonder if we'd have done that if we knew we were going to win."



True Welfare Reform

Bringing on the orphanages and removing children from bad—but not necessarily poor—homes

By John F. Dinkelspiel

What can—and should—the government do to help the children who are in orphanages and who are being removed from their homes? The answer is not simple, but it is not impossible. The government has a responsibility to protect the children who are in orphanages and who are being removed from their homes. It has a responsibility to provide for their needs and to ensure that they are treated with dignity and respect. The government should also work to prevent children from being placed in orphanages in the first place. This can be done by providing more support for families who are struggling to care for their children. The government should also work to improve the quality of care in orphanages. This can be done by providing more training for staff and by ensuring that the children are receiving the best possible care. Finally, the government should work to ensure that children who are removed from their homes are placed in the best possible homes. This can be done by providing more support for foster families and by ensuring that the children are placed in homes that are safe and stable.

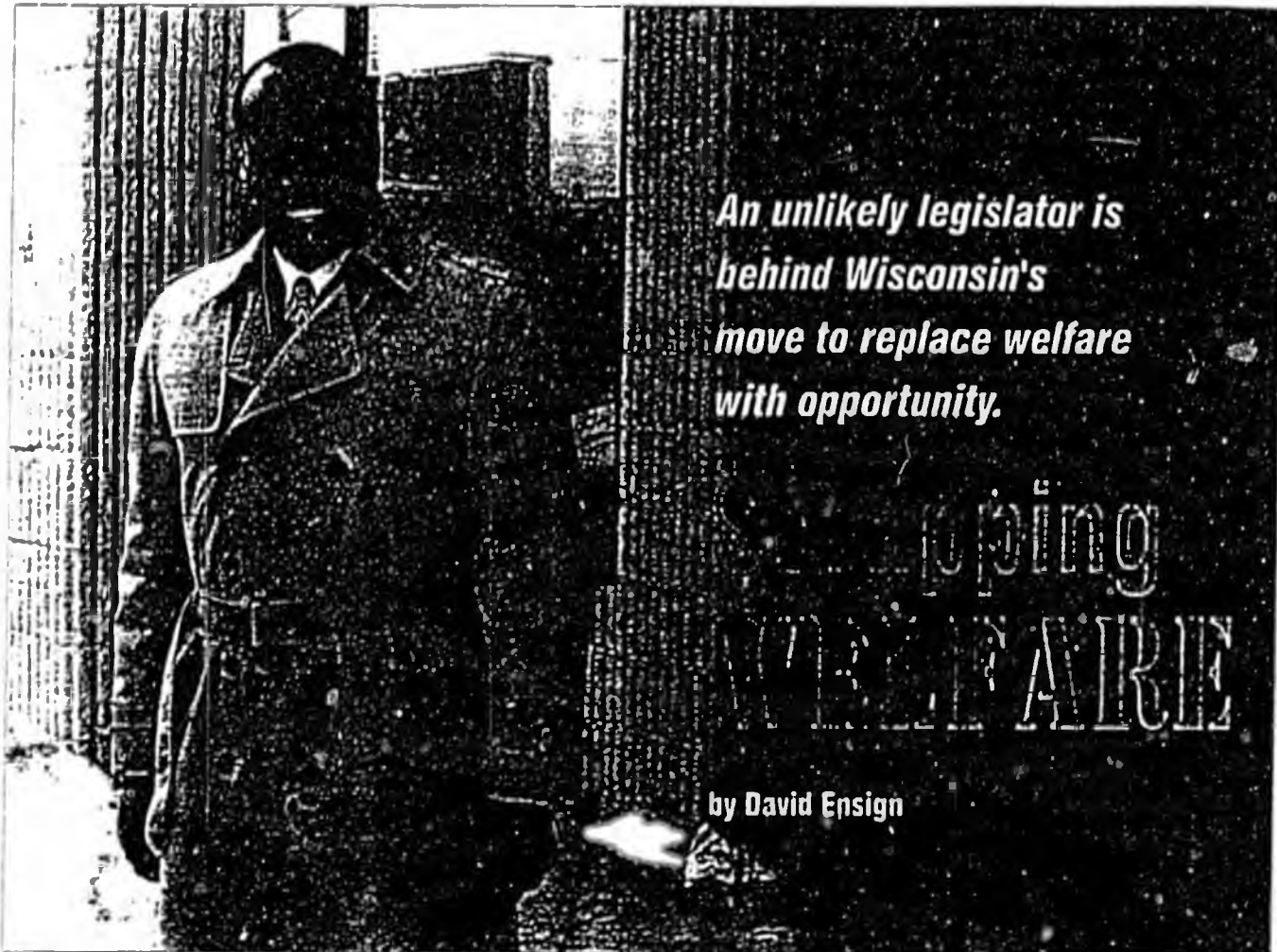


BUT THE CHILDREN WHO ARE IN ORPHANAGES AND WHO ARE BEING REMOVED FROM THEIR HOMES ARE NOT NECESSARILY POOR. MANY OF THEM ARE FROM MIDDLE-CLASS FAMILIES WHO ARE STRUGGLING TO CARE FOR THEIR CHILDREN. THE GOVERNMENT SHOULD WORK TO PROVIDE MORE SUPPORT FOR THESE FAMILIES AND TO PREVENT CHILDREN FROM BEING PLACED IN ORPHANAGES IN THE FIRST PLACE. THIS CAN BE DONE BY PROVIDING MORE TRAINING FOR STAFF AND BY ENSURING THAT THE CHILDREN ARE RECEIVING THE BEST POSSIBLE CARE. FINALLY, THE GOVERNMENT SHOULD WORK TO ENSURE THAT CHILDREN WHO ARE REMOVED FROM THEIR HOMES ARE PLACED IN THE BEST POSSIBLE HOMES. THIS CAN BE DONE BY PROVIDING MORE SUPPORT FOR FOSTER FAMILIES AND BY ENSURING THAT THE CHILDREN ARE PLACED IN HOMES THAT ARE SAFE AND STABLE.

THE CHILDREN WHO ARE IN ORPHANAGES AND WHO ARE BEING REMOVED FROM THEIR HOMES ARE NOT NECESSARILY POOR. MANY OF THEM ARE FROM MIDDLE-CLASS FAMILIES WHO ARE STRUGGLING TO CARE FOR THEIR CHILDREN. THE GOVERNMENT SHOULD WORK TO PROVIDE MORE SUPPORT FOR THESE FAMILIES AND TO PREVENT CHILDREN FROM BEING PLACED IN ORPHANAGES IN THE FIRST PLACE. THIS CAN BE DONE BY PROVIDING MORE TRAINING FOR STAFF AND BY ENSURING THAT THE CHILDREN ARE RECEIVING THE BEST POSSIBLE CARE. FINALLY, THE GOVERNMENT SHOULD WORK TO ENSURE THAT CHILDREN WHO ARE REMOVED FROM THEIR HOMES ARE PLACED IN THE BEST POSSIBLE HOMES. THIS CAN BE DONE BY PROVIDING MORE SUPPORT FOR FOSTER FAMILIES AND BY ENSURING THAT THE CHILDREN ARE PLACED IN HOMES THAT ARE SAFE AND STABLE.

COMMENTARY

COMPLIMENTS OF THE ALASKA STATE LIBRARY



*An unlikely legislator is
behind Wisconsin's
move to replace welfare
with opportunity.*

by David Ensign

Photo by David Ensign

Wisconsin Rep. Antonio Riley wants welfare reform to help lift people in inner-city Milwaukee out of poverty.

Not too many freshmen lawmakers find themselves the subject of a *National Enquirer* piece. But then, not too many freshmen lawmakers are former welfare recipients leading the charge to scrap Aid to Families with Dependent Children. Add to his agenda the fact that Rep. Antonio Riley is a young African-American, and you get the kind of stereotype-shattering story that has brought network news cameras and national attention to the 30-year-old Wisconsin legislator.

Promises to "end welfare as we know it" have quickly become campaign clichés in many places, but Wisconsin gave its pledge the force of law late last year when Gov. Tom-

my G. Thompson signed the Riley-co-sponsored bill that, pending a federal waiver, will end the state's \$450 million-a-year participation in AFDC. The move makes Wisconsin the first state to opt out of the Depression-era program that has become the nation's major form of welfare.

While many of those carrying the torch for welfare reform get their ideas from places like the Heritage Foundation, Riley gets his inspiration from inner-city Milwaukee and the people in his mostly poor district.

"The people that I represent want the opportunity to help themselves," says Riley. "The people who I talk to in my district who are on welfare, they want off of welfare."

AFDC clients in Riley's district and across Wisconsin have grown

used to the idea of welfare reform. For several years, would-be welfare reformers have watched as the governor hatched a variety of programs such as Bridefare, Learnfare and the recently announced Crimefare. These controversial programs were designed to tackle problems of welfare mothers having additional children to collect benefits, children on welfare dropping out of school and welfare recipients participating in crimes. Thompson upped the ante last year when the federal government approved a waiver for this "Work Not Welfare" pilot proposal that will cut off AFDC benefits to recipients after two years. But lawmakers responded by amending the Work Not Welfare bill to repeal AFDC in Wisconsin altogether. They also extended the governor's pilot

David Ensign is publications manager in the CSG Midwestern office

program beyond two counties with relatively light AFDC caseloads to include Milwaukee County, which has more welfare recipients than any other county in the state.

While the governor used his veto powers to remove Milwaukee County from the pilot program, he accepted the legislature's challenge to remake welfare.

As Thompson told the *Milwaukee Journal*, "Wisconsin is probably in the best shape to do this because of our progressive nature, our good economy and the fact we have tried many welfare programs that have been successful."

Still, while critics of the most recent move say it goes too far, Riley says the other Thompson reforms miss the central problems. While acknowledging that the governor's efforts have had some success, Riley argues that those reforms have aimed at the recipients of welfare and not at the system itself.

"The beauty of this debate we are having now in Wisconsin is that we have successfully changed the focus from the recipient onto the system that tends to breed and to reward certain kinds of behavior that tends to create the cycle of dependency," he says.

Policy-makers from across the political spectrum have sounded a similar refrain in blasting a welfare system fraught with work disincentives.

"I see the impact of this system on a daily basis, the poverty pimps, the little corner stores that rip off the WIC (Women, Infants and Children) system and the children, who in most cases are the victims," says Riley.

Poverty among children in Wisconsin, as in many states, has increased dramatically in recent years. Nationally, the poverty rate for those under 18 reached 21 percent in 1991, the highest since 1965. The adult poverty rate stood at 11 percent. The U.S. youth poverty rate is the highest among Western nations, as is the gap here between youth and adult poverty rates. The increasing number of

children raised in poverty has added a poignant new dimension to the rhetoric about the cycle of poverty.

The increasing number of children raised in poverty has added a poignant new dimension to the rhetoric about the cycle of poverty.

Having broken out of that cycle himself, Riley has a perspective on the issue unusual for a lawmaker. The self-described "bastard child of a bartender who was shot to death," Riley was born in Chicago but grew up in Milwaukee with his eight siblings, his mother and stepfather. When his stepfather, whom Riley refers to as Dad, was forced by a heart attack to quit his job as a cab driver in the early 1970s, the Riley family went on welfare. At times, he says, all he had to eat came from school breakfast and lunch programs.

But he managed to finish high

"The people who I talk to in my district who are on welfare, they want off of welfare."

— Wisconsin Rep. Antonio Riley

school and become the first person in his family to earn a college degree. Even that experience included a short stint on general assistance one summer during the early 1980s recession when employment was scarce and money his mother made from selling candy out of her home was not enough to pay tuition. After graduating in 1987 from Carroll College in Waukesha, Wis., Riley took a job selling cosmetics. In 1990 he worked for the Democratic candidate for governor, and later as an aide to Milwaukee Mayor John Norquist. The local Democrats, in search of a candidate for an open Assembly seat, asked Riley to run in 1992, and he won a four-candidate race.

In Madison, Assembly Speaker

Walter Kunicki appointed Riley vice chair of the welfare reform committee chaired by Rep. Barbara Notestein. From that position, Riley and Notestein set forth the proposals that, with Thompson's signature, have grabbed attention across the country.

The attention will wane in time, but the hard work is just beginning.

"The next steps, hopefully, involve a bipartisan effort to develop a program that would replace the AFDC program with one that emphasizes work and employment," says Notestein.

Thompson sounded a similar note at the bill-signing in December, saying "the new system should be less about welfare and more about work."

Work is exactly what most of Riley's constituents want. Nevertheless, his role in calling for an end to the system that supports many of his constituents has not been easy. People were skeptical as the policy developed, but support has solidified as they began to see the move as an opportunity to reinvent a system that most agree is not working.

"People who are professionals, people who are on welfare, people on general relief, people who don't have much of anything come up to me and they say, 'Mr.

Riley, man, I'm with you. I know what you're trying to do, and it's about time.'"

For Antonio Riley, it's exactly the right time. While the media attention — with the notable exception of certain inquiring minds — has been gratifying, it's the memory of other times that drives him to take on one of the most daunting challenges facing state policy-makers.

"I've been there," says Riley. "But I haven't really found my way until I've reached behind me and brought others along. I remember so vividly what happened to me and my family, and when I see people that I represent, and I talk to them — they need me to fight for them. And I fight for them by doing this." □

nesses and part of that time in classes.

The courses are designed around the mall itself. Thus, a student taking a course on environmental issues would broaden his understanding of how businesses and communities deal with recycling and waste by working with Browning Ferris Industries, the mall's waste contractor,

which gave a \$1 million grant to subsidize the project. Other courses explore career choices, entrepreneurship and business, and even "Arts in the Marketplace."

About 15 students are enrolled in each of the five mall courses. Some general state aid, which follows the students wherever they go, is transferred from the school districts to the mall's

Learning Center.

Some educators have been critical of the mall school, arguing that the courses are contorted around the needs of business and corporate interests rather than those of students.

But supporters point out that parents and teachers have a voice in deciding what the students do and that the internships are

monitored closely. "What we were looking to do," says Mary Ann Nelson, a St. Louis Park assistant school superintendent, "is to make a change in delivery systems and to use the mall as a laboratory for us to try some new ideas."

—James L. Dunn Jr.

For more information, contact Mary Ann Nelson, Assistant Superintendent of Schools, 6425 W. 33rd St., St. Louis Park, MN 55426; phone 612-928-6067.

ANTONIO RILEY: SPEAKING FROM EXPERIENCE

There are politicians all over the country clamoring for an end to the current welfare system. But there aren't many who see the problem the way Antonio Riley does in Wisconsin—from the perspective of a 30-year-old legislator who grew up on welfare himself in the 1970s, had to accept it again as a college student in the 1980s and now represents an inner-city Milwaukee district in which a large proportion of the residents are on AFDC.

Given all that history, one might expect Riley to be suspicious about current attempts to do away with AFDC, perhaps seeing them as likely to take away what little his constituents currently have.

But a few months ago, when conservative Republican Governor Tommy G. Thompson proposed a pilot program cutting off welfare benefits after two years, Riley led a successful effort to outdo him—and end AFDC altogether in Wisconsin in 1999. If the Clinton administration provides a waiver, the entire program will expire in Wisconsin that year, to be replaced, as Riley sees it, by a combination of supports that enable people to earn a decent wage.

"The issue for me is tough, given my district," Riley says. But he believes it is a risk worth tak-



ing. In his view, the current welfare system is simply a disaster. He calls it a jailer of people. "Look at the staggering number of poor in this state. The current system has failed," he says. "I don't think it's unrealistic to say we can do better."

Riley's father, a bartender, was murdered in a robbery on the streets of Chicago. His family moved to Milwaukee, where they had to accept relief when his stepfather, a cabdriver, suffered a heart attack. But he worked his way through college, prosper-

pered quickly as a cosmetics salesman, became an aide to Milwaukee Mayor John O. Norquist and made it to the Assembly in 1992.

Riley was assigned as a freshman to the welfare reform committee, where he took the lead in crafting a Democratic substitute to Thompson's "two years and out" welfare reform plan. To the surprise of many, Thompson endorsed parts of Riley's more ambitious but still vague idea of total overhaul. And Riley and the governor stood next to each other as the entire package was signed into law. "I had mixed emotions," Riley admits. "There is uncertainty when you want to change the system. But I felt relief that there would be no more tinkering, that the real work could commence." —Penelope Lemov

Three Towns Find a Way to Contain Crime: Loan-a-Cop

If there's a certain point where a city's problem becomes a region's problem, East Palo Alto, California, reached it in 1992, when 42 homicides occurred in the city of 25,000 people.

That was the year the FBI branded the 24-square-mile municipality the murder capital of the nation. The news, however, didn't shock residents of East Palo Alto, where poverty, racial tension and drug trafficking contrast with life in the adjoining and more affluent communities of Palo Alto and Menlo Park. When East Palo Alto's violence began spilling out of its borders, the mayors of the three cities convened to see what could be done.

Since that meeting last March, a number of steps have been taken, but the one that has had the most

CLINTON AND THE COUNTRY

Doling Out Welfare Reform

For the president's plan to work, states and localities will have to do the heavy lifting.

BY DAVID RAPP

The idea that Washington and the states should provide for the basic welfare of poor children and their mothers has been an established national policy for 60 years. The main federal-state welfare program, Aid to Families with Dependent Children, now covers some 14 million people, including 9 million children, at a cost that approaches \$25 billion a year.

The idea that the administrators of this largest state and county government—should be spending most of their time and energy getting the beneficiaries off the dole has been official policy only since 1988. That was the year when, thanks in large part to the aggressive lobbying efforts of one Arkansas governor, Congress created the Jobs Opportunities and Basic Skill Program. JOBS was the first explicit federal policy statement that welfare should be a transitional period to self-sufficiency rather than a way of life.

Obviously, the states have had more experience at maintaining their basic welfare programs than at educating and training people for self-sustaining employment. Yet Bill Clinton, now ensconced atop the huge federal welfare bureaucracy, is staking much of his political future on the bet that states and localities can make good on his campaign pledge to "end welfare as we know it."

The central tenet of Clinton's legislative promise, which he has now sent to Congress, is that most adult welfare recipients should count on only two years of help from the government before they must fend for themselves. It's a surefire applause line in Washington, but one that carries a sobering message to state and local governments: Who, after all, is going to educate and train millions of young mothers—many of them teenagers—to enter the private-sector work force? And failing that, who will keep them busy in community service jobs after they reach the welfare time limit?

Community service jobs, for one thing, are not that easy to create. The Comprehensive Employment and Training Act of the 1970s created 750,000 public service jobs, but they were of uneven (some say suspect) quality and, as such, created a storm of controversy for all levels of government. State and local initiatives have not fared much better.

Under Mayor Edward Koch, for instance, New York City was able to put 3,500 to 4,000 people to work in community service jobs during an average month—out of an AFDC caseload of 250,000.

So the real test for states and localities is going to be in getting welfare recipients ready for real-world jobs. Again, governments at every level have created a dizzying array of programs to train people for jobs, but as often as not, these entail little more than showing participants how to write a résumé and dress for an interview.

Ending welfare "as we know it," then, clearly will take something on the order of what Riverside

County has done with California's welfare experiment, called Greater Avenues for Independence, or GAIN. Riverside County officials have instituted an almost evangelistic program that communicates one message to every able-bodied person who walks in the door: You

are here to get a job. Every element of the program, from orientation to education seminars to job searching, is provided under high expectations for both welfare recipients and welfare office staff. Under this regime, various outside experts have observed, "welfare feels temporary."

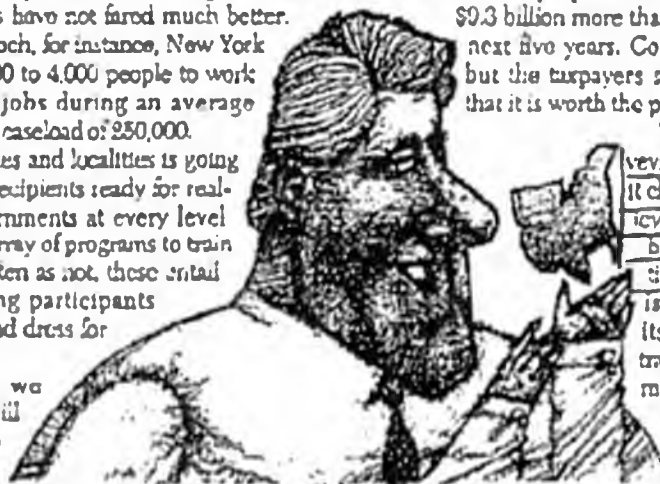
But Riverside is one county that was pretty much allowed under the 1988 federal JOBS law to frame and conduct its own demonstration project. As a result, entrepreneurial local leaders have been able to overturn and transform an entrenched bureaucratic mindset.

So what happens in states that don't have the freedom to experiment or the resources to spend large amounts on adult education and training? The JOBS experience shows what it will probably take. Tennessee, for instance, decided that the best way was to promote collaboration and integration of existing state and county programs for business, higher education and housing. The state has been able to meet its federal participation rate only through a highly orchestrated campaign of shared responsibility. Private industry councils, adult education programs, local housing and health programs, state universities and community colleges each have a role in getting welfare recipients into the work force.

Officials in Riverside County, in Tennessee and in other innovative places believe they are already moving in the direction Clinton wants to take welfare. But they also say it will require much more than JOBS has promised to make anything more than a dent in the problem. In other words, it will take more money.

This raises the political stakes even higher for Clinton, who has already had to scale back his original idea because he cannot find the money to pay for it. Applying the two-year time limit just to those recipients born after 1971, as Clinton now proposes, will still cost the U.S. Treasury \$9.3 billion more than the current program over the next five years. Congress will probably go along, but the taxpayers still will have to be convinced that it is worth the price.

What will convince them? Surveys and focus-group studies make it clear that voters want welfare policy to reflect what they value—hard work, responsibility, initiative and self-improvement. There is no way that Washington by itself can mandate that kind of transformation in welfare. As former Governor Bill Clinton is well aware, the responsibility for success will rest on governments closest to the problem. □



The Welfare Monster

States and the federal government have created a welfare monster that fosters reliance on an antiquated, fragmented system. Five states are experimenting with ways to turn people from dependence to independence.

Dianna Gordon

To reform the antiquated welfare system, states battle the mythical Hydra. For every problem solved, two more crop up like regenerating heads. If you cut off one head by putting people in jobs, they lose vital health and child care. Tighten up on who is eligible, and children may go hungry. Attack hunger by increasing benefits, and there is less incentive for people to leave the system.

As in the myth where two heads grew for every one Hercules cut off, the welfare system has become a multi-headed monster of conflicting and duplicative programs that not only allow dependence, but in many cases encourage it.

All told, at least 75 separate federal programs are operating to aid the needy. Three that particularly affect the states and are critical to reform are Aid to Families with Dependent Children (AFDC), food stamps and Medicaid. Food stamps are subsidized by the federal government with administrative costs shared by the states. Medicaid and AFDC expenses are split between the states and the federal government.

AFDC originated in 1935 as a way to help widows and orphans. Operated by the U.S. Department of Health and Human Services (HHS), in 1992 the program served an estimated 13.5 million people at an approximate cost of \$22 billion. Food stamps, instituted in the 1960s as a way to distribute surplus government food to needy families, are administered by the U.S. Department of

Agriculture and provide coupons for food. The program helped feed 27.4 million people in 1993 at a cost of \$24 billion. Medicaid arrived in 1965 and was designed to pay for health care for the poor. Expenditures have grown to an estimated \$120 billion and participation has increased 40 percent since 1982 to 30 million recipients in FY 1992.

Excluding Medicaid, welfare programs cost the federal government about \$53.4 billion annually. The states kick in around \$15.3 billion each year.

In human terms, the number of people on AFDC or food stamps has risen virtually every month since 1989, approximately 36 percent between July 1989 and December 1993. An unprecedented number of people need assistance: One child in seven nationwide is a recipient of AFDC while one person in 10 is on food stamps.

While fulfilling the original, Depression-era goals of helping the desperate and downtrodden, welfare programs now have burgeoned into complicated bureaucratic systems that are costly and foster dependence instead of independence and self-sufficiency. It's little wonder that states have taken the lead in seeking ways to "end welfare as we know it."

"The public hates it, recipients hate it, politicians hate it, business hates it," says Representative Bill Purcell of Tennessee. "We must reward work rather than welfare."

Efforts to revamp an archaic system have been helped by a federal administration willing to grant waivers to states that want to experiment with new programs, although the process is still

fraught with burdensome paperwork and myriad rules and regulations.

Recently Colorado, Florida, Iowa, Vermont and Wisconsin received waivers for demonstration projects. All of them seek to limit the time a recipient can stay on welfare, but in different ways.

"I think looking at those five, you can see how states can use the same language or time limits and mean totally different things," notes Mark Greenberg of the Center for Law and Social Policy.

Furor in Wisconsin

The idea of time limits was broached nationally by Bill Clinton, who suggested during his 1992 presidential campaign and reiterated in his January 1994 State of the Union message a possible formula of two years and out for welfare recipients with a transitional program followed by work. The president had in mind various exceptions to that formula and a safety net for families unable to comply.

But no one took the statement more literally than Wisconsin, where the federal bent bolstered Governor Tommy Thompson's efforts to put a strict two-year time limit on benefits. When Wisconsin submitted its waiver request last July, the plan called for dropping welfare recipients off the rolls after 24 months. It also denied benefits to any child conceived while a mother was on AFDC.

The governor says the program, Work Not Welfare, would make welfare "what it was meant to be—a temporary hand up, not a permanent handout."

Thompson calls the plan the "nation's most no-nonsense experiment with time-limited cash benefits in the AFDC program."

The federal government, however, stipulated that Wisconsin provide some protection for recipients living in an area where jobs were not available. Medicaid will continue for people who lose welfare benefits, and AFDC cover-

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age continues, under certain circumstances, for children born while a mother is in the welfare program.

As approved by federal and state officials, the plan will:

- Require recipients to sign a statement pledging to work for benefits.
- Eliminate the "100-hour rule" that specifies that a principal wage-earner in a two-parent family enrolled in AFDC-UP (unemployed parents) can work no more than 100 hours per month.
- Set up "Independence Accounts" of cash in lieu of benefits that can be used over 48 months.
- Provide an additional year of transitional medical and child care benefits for recipients who find jobs.
- Makes recipients ineligible to receive any benefits for 36 months after initial grants run out.

The program, slated to begin after January 1995, will involve 1,000 people in two Wisconsin counties with good economic bases. Some say this is not a good test area.

"It's only about 1 percent of the 30-some-thousand families on welfare in this state," says Representative Antonio Riley, whose district includes inner city Milwaukee and Milwaukee County where 30 percent of the state's AFDC cases can be found. There's also a 25 percent unemployment rate for African American men in his district.

"We need to look at the 37,000 people on welfare in Milwaukee County. [The county] should have been included in the demonstration to find out if it will work," he says.

Under the legislation creating the Work Not Welfare project, Wisconsin will abolish AFDC Jan. 1, 1999—the first state to do so since the program was established in the 1930s. A proposal to replace it must be presented in 1995.

Reform legislators are already working on a plan. "We realize that one size is not going to fit all," Riley points out. "What we want to do is move people from welfare to work and from work out of poverty."

"And we must have programs for those who cannot help themselves," he adds.

In what amounts to a definitive description of the welfare system nationwide, Riley says, "This issue goes beyond welfare—it is a working poor issue. We need to provide them with the tools they need to stay in the workforce.

The Growing AFDC Caseload

July 1989 to November 1993

State	Cases (in thousands)		
	July 1989	November 1993	Percent Change
New Hampshire	5.3	11.2	+ 111.3
Florida	121.6	254.5	109.3
Arizona	37.0	72.7	96.5
Nevada	7.4	13.7	85.1
Alaska	7.3	12.4	69.9
North Carolina	78.3	131.2	67.6
New Mexico	20.1	32.9	63.7
Delaware	7.3	11.5	57.5
Guam	1.1	1.7	54.5
Texas	183.6	283.4	54.4
Connecticut	37.7	58.0	53.8
Georgia	93.1	141.5	52.0
Tennessee	70.6	105.7	49.0
South Carolina	35.5	52.5	47.9
District of Columbia	18.1	26.7	47.5
California	604.7	888.1	46.9
Rhode Island	15.2	22.3	46.7
Indiana	51.0	74.8	46.2
Hawaii	13.9	19.9	43.9
Idaho	5.8	8.3	43.1
Vermont	7.0	9.8	40.0
Kentucky	58.3	79.7	36.7
Oregon	30.6	41.8	36.6
Virginia	54.2	74.0	36.5
Missouri	67.4	91.1	35.2
New York	336.6	443.7	31.8
Oklahoma	35.7	46.6	30.8
Washington	78.1	101.5	30.0
Montana	9.0	11.6	28.9
Massachusetts	87.6	112.7	28.7
Maine	18.0	22.9	27.2
Maryland	63.0	79.3	25.9
Colorado	33.2	41.1	23.8
Virgin Islands	0.9	1.1	22.2
Utah	14.8	18.0	21.6
New Jersey	100.1	121.6	21.5
Kansas	24.7	30.0	21.5
Pennsylvania	174.5	206.9	19.3
Illinois	198.5	236.7	19.2
Minnesota	53.7	63.4	18.1
Ohio	218.6	253.2	15.8
West Virginia	35.1	40.6	15.7
Alabama	44.5	51.0	14.6
Iowa	33.7	38.6	14.5
Wyoming	5.0	5.7	14.0
Nebraska	14.1	16.0	13.5
North Dakota	5.4	6.0	11.1
Arkansas	21.0	26.1	9.8
Michigan	210.2	226.7	7.8
South Dakota	6.6	7.0	6.1
Puerto Rico	59.4	59.6	0.3
Wisconsin	79.0	78.0	-1.3
Mississippi	59.2	58.0	-2.0
Louisiana	91.8	88.6	-3.5
United States	3,746.1	5,011.6	33.8

Source: American Public Welfare Association.

Federal Welfare Reform Debate Begins

A welfare system that has evolved over 50 years will never be transformed overnight. Congress and the administration are preparing proposals for a debate to "end welfare as we know it" that will certainly continue throughout the summer and during the fall campaigns.

As New York State Senator Jim Lack cautioned the U.S. Senate Finance Committee, "We are committed to working closely with you to fashion legislation that will comprehensively provide education, training and employment of welfare recipients and ensure that those who work will rise above poverty, and to improve child support collections. For state legislators, this means a new welfare reform policy we can implement, that takes into account how state laws are enacted, that gives the states the flexibility to innovate and address local needs and does not shift costs to the states."

In November, with 162 of 176 members signed on, House Republicans introduced their welfare reform proposal, HR 3500. "This bill emphasizes the view that the majority of people now on welfare want to support themselves and their families and will do so if given the proper encouragement and support," said Congressman Rick Santorum of Pennsylvania, co-chair of the Republican welfare task force. "Republicans want to provide the needed balance between new benefits to support the transition to the workplace and new requirements for benefits to motivate some welfare recipients."

The bill requires 90 percent of AFDC recipients to work for their benefits after two years of assistance, emphasizes the responsibility of parents to support their children, encourages states to refuse welfare to unmarried parents and requires unmarried minor mothers to live with their parents.

HR 3500 provides approximately \$10 billion to the states and \$9 billion toward deficit reduction by ending income support programs (including AFDC, food stamps, Medicaid and Supplemental Security Income) for legal immigrants. This has the potential

of shifting the costs of serving legal immigrants to the states.

In the Senate, two notable Republican proposals echo demonstration programs under way in Iowa, Vermont and Florida. Minority Leader Bob Dole of Kansas and Colorado Senator Hank Brown have introduced a proposal to require a binding social contract between recipients and the welfare agency that requires recipients to prepare for a job. After two years, they must either have work or be placed in community service for benefits with sanctions for noncompliance.

U.S. Senator Nancy Kassebaum of Kansas recently introduced a new concept to the welfare reform debate—"the swap." She proposes that the federal government take full financial responsibility for Medicaid in exchange for states funding the total cost of the AFDC and Women, Infants and Children programs.

"Giving the states both the power and the responsibility for welfare—with their own money at stake—would create powerful incentives for finding more effective ways to serve families in need," she said in March. "Washington does not have a magic answer to the welfare problem. The governors and state legislatures have no magic solutions either, but they have the potentially critical advantage of being closer to the people involved and closer to the day-to-day realities of making welfare work."

House Democrats are split into several ideological groups that are developing competing welfare reform proposals.

Seventy-seven members of the moderate Mainstream Forum have urged Clinton not to give up on his campaign promise and to move forward on time-limited welfare reform. Eighty-six House Democrats led by Hawaii Representative Patsy Mink sent a letter to the president opposing time-limited benefits as "unacceptably arbitrary." Ways and Means Chairman Dan Rostenkowski of Illinois has stated firmly that welfare reform will have to wait until next year.

New York Senator Daniel Patrick

Moyrhan, who wrote the Family Support Act of 1988 and now, as chairman of the Senate Finance Committee, will be crucial to the passage of any welfare reform proposal, has said: "We do have a welfare crisis. And we can do both health care and welfare reform."

Through the American Public Welfare Association, state welfare commissioners have unveiled a time-limits proposal that builds on the current JOBS program and requires the federal government to provide 90 percent of the funds for reform.

An administration working group is preparing a proposal that the president will introduce in the spring. While no final decisions have been made, widely circulated drafts and newspaper accounts reveal a time-limited program phased in slowly, primarily for those born before 1972. The transitional program will emphasize an intensive two-year education and training period followed by work for wages in the private or public sector.

The cost of this reform could be as high as \$7 billion annually, and the working group is grappling with how to find sufficient cuts in other programs and other means to fund the program.

Many questions remain about the details of these proposals. Can welfare recipients achieve self-sufficiency in the low-wage labor market? Are there enough jobs available, and how can states train recipients to compete for them? Will sufficient funding be available for child care? Will increased funding for welfare reform come at the expense of states through elimination of programs, cost-shifting and unfunded mandates?

"True welfare reform will only come in a partnership between the states, localities and the federal government," says Representative Bill Purcell, majority leader of the Tennessee House. "Our concern for children must remain paramount. But in order to support these children, we must find ways to enable their parents to support themselves. We must reward work rather than welfare."

—Shari Stessel, NCSI

So You Think You Want a Waiver?

Despite a federal push to "end welfare as we know it," states wanting to experiment with reform are still hindered by a cumbersome bureaucratic machinery that slowly grinds out waivers to existing law.

To request a waiver, state officials are required to document their proposal extensively, listing all federal laws that must be waived for a demonstration project, including statutes and regulations for Aid to Families with Dependent Children (AFDC) and related changes, if needed, in Medicaid and food stamp procedures.

Governed by Section 1115 (a) of the Social Security Act, the secretary of the U.S. Department of Health and Human Services has the authority to grant waivers to states that comply with two major conditions:

- All programs must be budget neutral to the federal government; the state must bear any additional costs that a reform project may incur.
- All programs must undergo rigorous evaluation, with the state sharing that cost. There is random assignment

of welfare recipients to the demonstration project, and the state must designate a control group of recipients who remain under the old system to provide a comparison.

Cost neutrality may be one of the biggest hindrances to innovative programs for welfare reform. Washington state can serve as a warning to lawmakers of what happens when that provision is violated. It cost the state \$29 million more than expected last year when its successful Family Independence Program (FIP) ended because of federal time limits on waivers.

"When we got our waiver from the feds, the state agreed that it would fund any increase in caseload," says David Knudson, a House senior research analyst. Because the program offered education and training, a large number of residents wanted to switch from AFDC to FIP. The training components, however, also lengthened the time that benefits were paid. Despite limiting FIP to specific sites, Washington faced a cost overrun of about \$29 million. And despite FIP's success, the federal govern-

ment took little pity, making the state ante up that amount, which, as Knudson points out, is significant in a state with only 5 million people.

Limiting numbers, another condition for federal approval, can also erect barriers to state innovations. In many instances, lawmakers want to open a demonstration project to all state residents, but cannot because of the rules mandating random assignments to the program and the establishment of a control group.

Evaluations required by federal law (which must be paid for in part by the state) do not always indicate the success of a program. Wisconsin's Learnfare program was criticized by the Bush administration and the governor after it was reported that the graduation rates for Learnfare recipients (who were required to attend school or risk their family's benefits) were no different than for students who were not in the program.

A check of Learnfare by the Wisconsin state auditor's office, however, found that sloppy record keeping on the part of some school districts was

There's a transitional period when they [primarily women, the bulk of AFDC recipients] are ready to go to full-time employment, and they can't because they will lose child care, health care and money from their earnings to higher taxes. This system has to be deconstructed. People are suffering in the process."

Colorado Makes Work Pay

As in the other states, Colorado lawmakers aim to remove the "disincentives" for employment. Their plan is based on a Colorado study that identified "cliffs to self-sufficiency"—the points where a family begins losing money through job-related expenses and taxes.

Cliffs occur when an AFDC recipient takes a minimum wage job. Even with the wages, the standard of living won't improve, and the family might not be able to get off public assistance. As earnings from a job increase, the family is hit with a substantial decrease in spendable income.

"Folks on welfare who get jobs and go out on their own hit these barriers,"

explains Senator Claire Traylor, co-sponsor of the bipartisan Colorado Personal Responsibility and Employment Program that attempts to overcome these disincentives. "They can't even accept a raise—something like a 10-cent raise affects their asset limits, their housing, their food stamps. So they have to choose not to accept the raise or go back on welfare."

Colorado's waiver, granted in January, involves 4,000 families in five counties. The pilot program will:

- Combine AFDC, food stamp and child care benefits into a monthly cash payment to teach families fiscal responsibility.
- Allow recipients to earn more income by cutting fewer benefits when they get a job.
- Make it easier for recipients to own a car in order to travel to and from work.

In addition, Colorado will:

- Decrease aid to parents who do not immunize children under 24 months of age.
- Stop monthly payments to recipients after two years if they have not partici-

pated in educational or job training programs.

"Benefits will extend beyond two years if a family is working toward its goals. If the AFDC recipient is not trying, by the end of two years she will be phased out," Traylor says.

The Colorado program counts on business involvement. "We have a lot of organizations or companies that will look at opportunities to work with folks in pre-training or developing job skills for long-time employment that would provide a living for them and their families," Traylor says.

Local social service departments have been instructed to help match employers with recipients who have or can develop the skill levels the companies need. Caseworkers will also identify job possibilities for recipients.

Iowa: Malleable Social Contracts

Iowa is banking on a social contract between the state and recipients to sort out those capable of working and those who need some sort of public assistance to survive.

more to blame than the program itself. Another consultant has been hired to track Learnfare progress.

One obvious weakness of the waiver process is that legislators may get in on the act after the fact.

Under their executive powers, governors can apply for waivers without giving legislatures the opportunity to act. However, any changes in state law the project may need must be passed by legislators. "Too often, legislators are not included in the federal waiver process until after a waiver is granted," says Ohio Representative Jane Campbell. "Federal waivers should be granted only with the passage of state laws and when state legislators are consulted."

Going over the head of the legislature may not necessarily be a wise move—as California Governor Pete Wilson found out. He received a federal waiver in July 1992 for a welfare reform proposal opposed by the Legislature. The laws necessary for initiating the program were not enacted. The plan was then taken to the voters as a statewide referendum where it also failed.

And a waiver will not protect a state from litigation arising from a welfare reform move. California's pro-

gram to provide benefits equal to the state from which new residents had moved (if those benefits were lower) was suspended by the state Supreme Court, which found that it restricted the constitutional right to relocate. A lawsuit was recently filed in New Jersey to challenge its family cap program that limits benefits based on the size of the family at the time they apply.

The most recent round of welfare waivers has been aimed at limiting the time—usually to five years—that a recipient can collect benefits. But it takes five to six years to evaluate the success or failure of the program. In fact, states are still waiting for the results of evaluations of the 1988 federal JOBS program.

If a program appears successful, renewals are hard to get unless the federal government agrees to take the program over or uses it as a model for other states.

Because of the initial paperwork and red tape involved in presenting a waiver request to Washington, D.C., the Clinton administration has urged states to begin the process as soon as they have drafted a viable plan for welfare reform. And since welfare has become a matter of concern for most of

the nation, at last count 40 states have discussed possible reform projects with HHS, according to Mary Jo Bane, HHS assistant secretary. Since welfare reform was one of the major issues of his campaign, President Clinton has hoped to give the states leeway in their efforts, saying that waivers will be approved whether he agrees with the focus of the project or not. The requests must, however, meet the administration's policy requirements.

In Wisconsin, the Work Not Welfare program was not given federal approval until the state agreed to continue Medicaid assistance for those who were removed from the rolls through time limits.

As federal officials labor at revamping the welfare system, an offshoot that would be welcomed by the states would be a reform of the entire waiver process.

"We'd like to see the federal government give us leeway to amend our state plans, instead of requiring us to go through the waiver process," Knudson suggests. "And, realistically, if you don't want to spend the money, you are not going to reform welfare. So we'd be interested in getting away from the budget neutrality requirements."

—Shari Steisel, NCSL

"We're not ready to say, 'Tough,' but neither are we satisfied with a system that is supporting people who are capable of supporting themselves," explains Representative Lee Plasier.

Iowa's Family Investment Plan, which took effect Nov. 1, 1993:

- Requires clients to sign a family investment agreement, participate in the state/federal Job Opportunity and Basic Skills (JOBS) training program and agree that on a certain date they will leave AFDC. Or clients can opt for a limited benefit plan that pays in full for three months and ends after six months.
- Disregards for benefit purposes 100 percent of the income earned the first four months of employment for families making less than \$1,200 a month.
- Extends child care benefits for 24 months after families leave AFDC.
- Increases the amount of liquid assets a family may have.
- Eliminates the 100-hour rule.

"Iowa has provided powerful incentives to make work pay," Plasier explains. "In some cases, people will leave the system. Some will stay on it with

limited levels of financial support and with earnings supplementing their welfare grants."

The statewide Iowa program applies to 35,000 people on welfare. About 4,000 others will receive benefits under the state's old system to meet federal requirements for a control group.

And what happens if a family does not fulfill its written contract? The plans can be rewritten or adjusted to allow for factors beyond human control, such as a downturn in the job market. If, however, a recipient is not making a good faith effort to find a job or continue education or training, benefits are reduced. At the end of six months if there is still no effort, benefits end.

Frazier says early indications are that the number of welfare cases has increased, but the state is actually spending less. Because the thresholds for eligibility were lowered, recipients are allowed to make more money and require less in welfare benefits.

Vermont Looks at Options

In a project that will start this July,

Vermont is testing time limits and social contracts with three separate groups encompassing 80 percent of the state's welfare recipients.

Vermont's Family Independence Program features:

- Requirements that after 30 months on AFDC (15 for two-parent families) recipients find a job or do community work. The recipient's welfare grant will be diverted to the community employer to be paid out as a salary.
- Increases in the "earnings disregard." The first \$150 a family makes is ignored and so is 25 percent of their salary after that.
- Child care, transportation, career counseling, vocational rehabilitation and medical assistance.
- A requirement that teen parents live with their parents or in a supervised setting.
- Transitional Medicaid for 36 months for families earning up to 185 percent of the federal poverty level.
- Elimination of the 100-hour rule.

A unique feature of the Vermont plan is the three groups in the project. Sixty

percent of new welfare recipients will be enrolled in the time-limited program. Twenty percent of the new recipients will be on the new program, but will not face any penalties. Twenty percent of the welfare population will remain under the current system.

The state will be allowed to create some jobs for those who cannot find employment, but the bulk of the bill is focused on real jobs, Backus says.

And what if a recipient flatly refuses to work? The state intends to make slackers totally dependent on public assistance.

"If you don't make the transition off welfare, we have what is known as the hassle factor—super dependency and loss of dignity," explains Senator Jan Backus.

Able-bodied people who choose to remain on welfare will not be penalized by a cut in benefits, but they will become dependent on state vouchers for their needs. "You'll get food stamps so you can eat; your rent will be paid; your electricity will be taken care of by the state." And the recipient will face the embarrassment of making more trips to the welfare office for handouts.

Another focal point of the Vermont reform is a family plan, much like Iowa's contracts.

"A family plan has to be made by mutual agreement," Backus explains. "The recipients must work with their caseworkers and set goals for training and job experience. There must be a mutual buy-in to the plan, and if you don't like your plan you can change it."

To make the system work, Backus says, there has to be a "change in the mindset of welfare workers" toward helping people get off the rolls. "We need to retrain our own people [in social services], reallocate how we use staff, teach them how to educate and train people for jobs; help welfare recipients find jobs, help them find a future."

Florida to Train Caseworkers

Making major changes in how social workers perceive their jobs is also a big part of Florida's reform effort, the Family Transition Program.

The project decreases the number of clients per caseworker from 400 to 90. With fewer clients, social workers will be expected to "become very creative

and proactive" in helping families succeed, according to Representative Cynthia Chestnut.

"We have never provided the support system that would make welfare families whole," she says. "As for child care, transportation, health care—as soon as they got a job, the rug was

families attend school or the family loses benefits.

- Requires parents to immunize children.

Chestnut says the cornerstone of the Florida reform is education and training. "We want people to be able to qualify for a job in their community, but one that is above \$5 an hour. If you go flip burgers, you don't make enough money. You make more on welfare in Florida than at a \$4.25 an hour job.

"I think we've turned out all the secretaries and clerks they'll need for awhile." She hopes people seeking to leave the dole can be steered toward such occupations as nurse's aide, operating room technician, paramedic or toward a similar field that will pay more than minimum wage.

Florida's pilot programs began this spring in two different counties—one voluntary, the other mandatory, for new welfare enrollees.

"I think we're going to see success with the voluntary model," Chestnut says. "If people want to change, if they care enough to volunteer, I think they will be more inclined to be productive and work hard to get off welfare."

"What we want to do is move people from welfare to work and from work out of poverty."

pulled out from under them. We want to provide a prescription for a family to make them self-sufficient."

The Florida plan:

- Restricts future recipients to 24 months of benefits in a five-year period, but allows people with limited skills and no work history 36 months of welfare in a six-year period.
- Increases the family's allowable assets.
- Increases the amount of earnings disregarded.
- Provides transitional child care for two years.
- Requires that children of welfare

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Welfare Waiver Ideas: Approved, Pending and on the Drawing Board

Reform Features	States
Individuals required to work or participate in education or training	Colorado, Wisconsin
Family planning services and parental skills instruction offered by state to all AFDC recipients	Georgia
Learnfare: Incentives or sanctions aimed at keeping children in school; incentives to get high school diploma or GED; incentives for pregnant or parent teens to remain in school; requirement for teen participation in JOBS education program.	Arkansas ¹ , California ² , Florida, Illinois, Maryland, Oklahoma, Mississippi ⁴ , Missouri, Oregon, Virginia, Wyoming, Wisconsin
Able-bodied individuals required to work in private or public sector	Florida, Georgia, Mississippi ⁴ , South Carolina ¹ , Vermont, Wyoming
Time limits (wide variation in state approaches)	Colorado, Florida, Iowa, Vermont, Wisconsin, Virginia ³
JOBS participation required	Illinois, Oregon, Utah
Noncustodial parents eligible for JOBS	Illinois, Michigan
Education, training or employment-related activities required	New Jersey
Medicaid and/or food stamps available to those terminated from AFDC	Georgia, Wisconsin
Certain benefits (ie food stamps, child care) provided as cash payment	Colorado, Mississippi ⁴ , New York ⁵ , Wisconsin
Earnings disregard increased	Colorado, Florida, Illinois, Iowa, Minnesota, Mississippi ⁴ , New York ⁵ , Vermont, Wisconsin
Asset limit raised	Florida, Illinois, Iowa, Mississippi ⁴ , Missouri, Utah, Virginia, Wyoming, Colorado
Vehicle, fully or partially, exempted from allowable assets or asset limit raised	Colorado, Florida, Iowa, Utah, Vermont, Wisconsin
Child support: Payments disregarded, disbursed directly to family	Missouri, Vermont
Child support "insurance" payments to current recipients; custodial parent required to get court order for child support to be eligible for program; child support "insurance" payments to former recipients	New York ⁵ , Virginia
Family cap: No increase in total AFDC payment for new child born while mother on AFDC	Arkansas ¹ , California ² , Georgia, New Jersey, Wisconsin
Payments to new residents the same as in the state where they previously lived (if lower)	California ² , Illinois ² , Wisconsin
AFDC marriage penalty eliminated; stepparent income formula changed	New Jersey, Virginia
Insurancation of children required	Colorado, Florida, Georgia, Mississippi ⁴ , Maryland
Prenatal, preventive care for children required	Maryland
Transitional child and/or Medicaid	Florida, Iowa, Vermont, Virginia, Wisconsin, New Jersey
Support for child care, transportation, etc. (as available) to working recipients	Illinois, Vermont
Participants required to contribute to JOBS child care	Massachusetts ¹
Actual contact with state required; self-sufficiency plan required	Iowa, Michigan, Wisconsin, Utah
Employer incentives: Subsidies to provide wages in lieu of benefits; matching wage allowed equal to previous month's benefits	Illinois ¹ , Missouri, Virginia, Mississippi ⁴ , Oregon ⁴
Provision of special (individual development) accounts exempt from eligibility guidelines	Iowa, Wisconsin
30-hour work rule eliminated	Iowa, Michigan, Missouri, Texas, Wisconsin
Income earned by dependent children who are students disregarded	Michigan
Business-sponsored apprenticeships in public schools	Minnesota
Pre-employment requirements	California

Footnotes:
1 Waiver applied for
2 Waiver approved, voter referendum to initiate failed
3 Waiver approved, program ruled unconstitutional
4 Waiver request not yet submitted
5 Program congressionally approved through OBRA
Source: Laura Hill, NCLR

Note: Data is current through February 1994.
Not all approved waivers are currently implemented.
States are approved unless noted.