

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9233 HOUSE JUDICIARY

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

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

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

IMPROVED HIV EPIDEMIC MEASUREMENT

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

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

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

PARTNER NOTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

HIV TESTING FOR SEXUAL OFFENDERS

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

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

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

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

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

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

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

HIV AND MEDICAL PROCEDURES

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

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

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

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

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

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

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

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

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

Because an HIV-infected body is still infectious even after death, and can remain so for several days¹⁷, embalmers and other funeral-service practitioners can be at risk. In fact, it is not unprecedented for HIV infection to occur during an autopsy. The HIV Prevention Act would offer protection for those who work on corpses by allowing testing to determine whether or not a body is infected.

HIV NOTIFICATION

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

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

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

INTENTIONAL TRANSMISSION OF HIV

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

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

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

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

CONFIDENTIALITY AND HIV

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

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

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 3. HEALTHLINE, "AIDS: Late Diagnoses Deprive People of Medical Care," February 1, 1996.
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American Medical Association

Physicians dedicated to the health of America

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

February 20, 1997

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

Dear Congressman Coburn:

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

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

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

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

Sincerely,

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

P. John Seward, MD

ELIZABETH SANCHEZ
BROOKLYN, NEW YORK 11206

TO: Congressman Tom A. Coburn, M. D.

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

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

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

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


Elizabeth Sanchez

A.S.A.P.

Americans for a Sound AIDS/HIV Policy

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

March 6, 1997

Congressman Tom Coburn
429 CHOB
Washington, DC 20515

Dear Congressman Coburn,

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

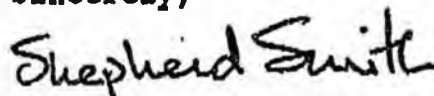
While promising people extraordinary confidentiality and privacy protections once sounded like a reasonable inducement to get people to voluntarily come forward to be tested, that sophistry has proven an abject failure. We must immediately treat HIV/AIDS as the serious public/health issue it really is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

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

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

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

Sincerely,



W. Shepherd Smith, Jr.
President

Dedicated to limiting total suffering from AIDS/HIV.



INDEPENDENT WOMEN'S FORUM

For Immediate Release

Contact: Jeff Rosenberg
301-972-2367

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

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

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

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

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

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

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

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

**Christian Coalition**

Capitol Hill Office

March 13, 1997

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

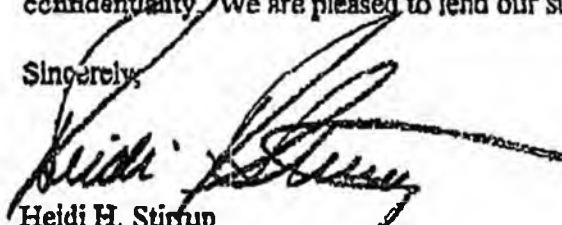
Dear Congressman Coburn:

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

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

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

Sincerely,



Heidi H. Stirrup
Director, Government Relations



March 12, 1997

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

Dear Congressman Coburn:

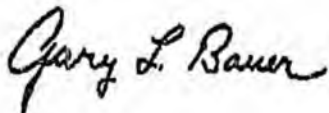
The AIDS epidemic has, thus far, avoided traditional public health treatment, but Congress now has the opportunity to pass new legislation that will reverse this deadly trend.

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

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

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

Sincerely,



Gary L. Bauer
President

Family Research Council

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

WOMEN AGAINST VIOLENCE

An advocacy group for women crime victims

Deldre Raver
Co-Founder
Elizabeth Enright
Co-Founder

(718) 849-9780
Web Address: WWW.IWF.ORG

We strongly support the HIV Prevention Act of 1997, which will guarantee rape victims the right to test their assailants for the HIV virus.

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

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

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

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

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

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

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



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

February 24, 1997

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

Dear Representative Coburn:

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Gene Rudd MD". The signature is fluid and cursive, with the "MD" clearly visible at the end.

Gene Rudd, MD
Associate Director



CHRISTIAN MEDICAL & DENTAL SOCIETY

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

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



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

February 19, 1997

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

Dear Mr. Coburn,

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

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

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

Sincerely,

Rev. Bruce A. Sonnenberg
Board President

A Ministry To Those Affected By AIDS

Board of Directors-

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Medical Institute for Sexual Health

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

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February 20, 1997

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

Dear Dr. Coburn:

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

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

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

Sincerely yours,

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

JSMcl:cm

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

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

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

From NEW YORK TIMES
ALAN J. MAYER

The Irresponsibility That Spreads AIDS

READER'S DIGEST • APRIL 1998

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

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

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

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

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

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

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

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

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

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

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

Reprints of this article are available. See page 208.



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

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

—Contributed by Erin McNamara

HIV carrier leaves legacy of fear, worry

The Associated Press

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

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

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

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

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

Investigators are searching for more possible victims.

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

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

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

NATION NEWS

Judge sides with marijuana doctors

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

Fierce weather hits Texas; man dies

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

Heart disease detected in cult leader

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

Powell doesn't feel pull of politics

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

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VOL. 66, NO. 26

A NATIONAL SURVEY OF CURRENT CASE LAW

JANUARY 13, 1998

SUMMARY AND ANALYSIS OF SIGNIFICANT COURT OPINIONS

HIGHLIGHTS

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

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

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

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

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

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

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

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

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

IN THIS ISSUE

A complete topical index of Case Alert.

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

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

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

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

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

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

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

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

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

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

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

Criminal Law—Sex Offenses

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

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

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

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

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

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

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

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

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

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

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

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

Elections—State Regulation

Term Limits for California Legislators Resurrected by En Banc Ninth Circuit

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

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

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

Issue 28
May 6, 1998

HIV update

Therapies May Lower Perinatal HIV Transmission By Up to 70%

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

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

Richmond Times-Dispatch, 5/2/98

Success Against AIDS Lulls Gays Back Into Unsafe Sex

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

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

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

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

Georgia Supreme Court Upholds HIV Testing Law

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

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

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

Associated Press, 5/4/98

Hawaii Legislature Passes Bill to Allow HIV Testing of Sexual Assailants

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

Associated Press, 5/6/98

Junkie Science

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

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

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

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

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

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

New York Post, 5/6/98

Salaries Paid to Directors of AIDS Charities Under Fire

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

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

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

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

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

a phone call seeking comment.

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

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

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

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

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

epidemic. With six-figure salaries at AIDS charities, what are the directors sacrificing?"

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

Associated Press, 5/6/98

New York Panel Set Up to Track Spread of HIV Divided

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

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

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

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

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

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

Associated Press, 4/30/98

Doctors Say AIDS Drug Assistance Programs in Crisis

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

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

Reuters, 4/30/98

Former Substitute Teacher Sentenced to Life in Prison

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

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

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

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

Associated Press, 5/6/98

Hearing Set for Father Accused of Injecting Son With HIV

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

Associated Press, 5/5/98

HIV-Infected Prostitute Sentenced to Probation

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

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

Associated Press, 5/5/98

The Next Epidemic?

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

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

AIDS Risk to Rise in Africa Over the Next Two Years

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

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HIV-Infected Prostitute Sentenced to Probation

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

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

Associated Press, 5/5/98

The Next Epidemic?

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

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

AIDS Risk to Rise in Africa Over the Next Two Years

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

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

Africa News Service, 4/30/98

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

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

Reuters, 5/5/98

Birthrate for Teens Declines Nationwide

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

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

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

HIV update

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

From: Roland Foster

To:

Steve Bank	Liberty Alliance	Heather Sternberg
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Peter Brandt	Jeff Marohant	Jack Williams
Joel Brill	Hon. Nettie Mayerson	Rose Winters
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Dan Hazard	Hon. Cal Skinner	
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TALE OF REVENGE STIRS AIDS FUROR

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

Special to The New York Times

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

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

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

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

A Previous Letter

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

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

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

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

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

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



Mark Perlman for The New York Times

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

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

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

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

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

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

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

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

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

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

Drop in Promiscuity

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

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

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

Many Sense Politic

By ROBERT REINHOLD
Special to The New York Times

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

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

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

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

Emotional Political Issue

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

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

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

A judge in Malibu officers of demonstrators, a Metropolitan Ne

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

Advice From

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Take A Friend To Argentina

It costs 1 get away th

KNOWING EXPOSURE/TRANSMISSION
5/25/93

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

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

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

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

Colorado, HB 1255 (90) - class 5 felony for knowingly performing, offering or agreeing to perform certain sexual acts with persons other than their spouses in exchange for money or any other thing of value. Persons who are knowingly infected with HIV who patronize prostitutes are guilty of a class 6 felony

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

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

Georgia, HB 1261, Act 1440 (88) - felony (after obtaining knowledge of infection) knowing intercourse, donation, sharing syringes

Idaho, HB 663, Chapter 70 (88) - prohibits knowing or willful exposure; HB 433 (88) - felony (provides affirmative defense if sexual activity occurred between consenting adults); - felony, knowing transmission or transmit with the intent of infection

✓ Illinois, HB 1671 (89) - class 2 felony for criminal transmission = intimate contact; blood, semen, tissue or organ donation; sell, exchange, etc. non-sterile IV drug paraphernalia. Provides an affirmative defense if the person exposed knew that the infected person was infected with HIV, knew that the action could result in HIV infected and consented to the action with that knowledge.

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

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

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

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

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

KNOWING EXPOSURE/TRANSMISSION
PAGE 2

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

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

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

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

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

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

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

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

Oklahoma, HB 1798 (88) - felony (with intent to infect); HB 1012 (91) - felony punishable by a maximum of 8 years of imprisonment for knowingly engaging with intent to infect in conduct reasonably likely to result in transfer of blood or bodily fluids into the bloodstream or through the skin or other membranes of a person except during in utero transmission.

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

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

Texas, SB 969 (89) - felony for "engaging in conduct likely to transfer"

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

Virginia, HB 1974 (88) - class 6 felony, donating or selling blood, body fluids, organs or tissues

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

TOTAL = 28 STATES

Man pleads guilty to HIV transmission

By Jennifer Liberto
Daily Staff Writer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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COMPLIMENTS OF THE ALASKA STATE LIBRARY

Page 18

Yet June 10, 1991

Male Heterosexual out to get women

CRIME

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

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

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

Lt. Craig Stewart, said.

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

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

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

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

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

Victim not told by Mike



Charlotte Observer file photo

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

Lady Killer

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

By KEN RODRIGUEZ
Miami Herald

Beyond the grave of Tim Richmond lies a trail of pretty women, following him into the ground.

Freshly buried beside the tombstone of one former lover. A second ex-girlfriend, still fighting for her life, has picked out her casket. At least two former partners are in seclusion on the East Coast, awaiting the inevitable. Others — friends suspect a dozen or more — have passed on quietly, hoping to take this secret with them. Richmond, the late auto racing star, infected them with the virus that causes AIDS.

He infected women across the country when media reports leaked the cause of Richmond's death in August 1989. LaGena Lookabill Greene, Richmond's former fiancée now dying of AIDS in Charlotte, N.C., received more than two dozen calls.

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

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

Please see Page C-2, RICHMOND

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

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

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

ADULATION AND ISOLATION

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

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

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

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

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

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

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

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

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

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

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

LIVING DANGEROUSLY

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

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

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

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

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

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

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

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

Success?

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

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

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

ONE SINGLE MOMENT

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

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

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

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

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

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

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

RICHMOND: Women follow dead race car driver to the grave

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

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

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

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

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

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

Richmond proposed, LaGena accepted. They consummated their relationship.

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

WHY NOW?

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

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

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

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

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

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

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

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

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

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

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

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

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

ARE THERE OTHERS?

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

The Richmond family also denied the illness.

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

A few days later, he died in West Palm Beach at age 31.

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

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

Jackie Lookabill knows.

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

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

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

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

□ Miami Herald researcher Elisabeth Donovan contributed to this report.

SB

19

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 18, 1997

FURTHER REFERRALS:

Date of Committee Action: 4/23/97

The JUDICIARY Committee considered:

SB 19 am

SENATE BILL NO. 19 am

REPEAL FED ENFORCEMENT DUTIES/F&G COMSNR

“An Act relating to enforcement of federal laws relating to fish and game; and repealing the power and duty of the commissioner of fish and game to assist in the enforcement of federal laws relating to fish and game.”

recommends it be replaced with the following committee substitute _____ the same title
 a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

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

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) PLIB. SAFETY F&G

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>[Signature]</i>	CROFT				✓
<i>[Signature]</i>	PORTER	✓			
<i>[Signature]</i>	GREEN			✓	
<i>[Signature]</i>	JAMES	✓			
<i>[Signature]</i>	BUNDE			✓	
<i>[Signature]</i>	BERKOWITZ			✓	

CHAIR'S SIGNATURE _____

FISCAL NOTE

No. 1

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: _____ **Version:** SB 19

(S) Publish Date: 2/6/97

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to the Commissioner of Fish BRU: Fish and Wildlife Protection
Game Component: Detachments
 Sponsor: Senator Sharp
 Requestor: S. RES **COMPONENT SERIAL NO.** 0490

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)
 This Bill will not impact this Department's programs or budget.

Prepared By: Lt. Joel L. Hard Phone: 269-5409
 Division: Fish and Wildlife Protection Date: January 31, 1997
 Approved by Commissioner: *Joel Smith* Date: 1/31/97
 Agency: Ronald L. Otte, Department of Public Safety

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04/21/97

AMENDMENT

OFFERED IN THE HOUSE

BY: Representative Berkowitz

TO: House CS for Senate Bill 19 (RES)

Page 1, line

Following "is", delete "repealed"

Insert: "amended to read:

(1) to assist the United States Fish and Wildlife Service in the enforcement of federal laws and regulations pertaining to fish and game in a manner consistent with state policy, law, and regulation;"

AS 16.10.070 —
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Fisheries Entry
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(3) have necessary power to accomplish the foregoing including, but not limited to, the power to delegate authority to subordinate officers and employees of the department. (§ 4 art I ch 94 SLA 1959; am § 1 ch 110 SLA 1970)

Opinions of attorney general. — The commissioner of fish and game has the power to adopt procedural rules to implement AS 16.05.870 and to establish by regulation the standards under which permits will be issued under AS 16.05.870. March 4, 1982 Op. Att'y Gen.

Under existing statutory and regulatory provisions the progeny of birds held in captivity under a collecting permit from the Department of Fish and Game do not automatically become the property of the permittee; they remain subject to the same ownership interest the state retains in the adults, unless the permit and applicable regulations specify otherwise. Oct. 20, 1987 Op. Att'y Gen.

It is well within the authorities of the Board of Game under AS 16.05.255(a) and the Department of Fish and Game under this section to determine by regulation the point at which certain animals are deemed feral and subject to whatever game regulations the board may wish to adopt. A board or departmental regulation defining "feral animal" would be applicable statewide regardless of land ownership. July 30, 1987 Op. Att'y Gen.

In light of the commissioner's statutory charge to "manage, protect, maintain, improve, and extend the fish . . . resources of the state," emergency orders can be issued to protect sustained yield, based on conservation concerns. Aug. 1, 1990 Op. Att'y Gen.

NOTES TO DECISIONS

Veto power. — The Commissioner of the Department of Fish and Game does not have the authority to effectively veto a decision of the Board of Fisheries.

Peninsula Mktg. Ass'n v. Rosier, 890 P.2d 567 (Alaska 1995).

Sec. 16.05.030. Status of commissioner. [Repealed, § 40 ch 206 SLA 1975.]

Sec. 16.05.040. Compensation of commissioner. The commissioner is entitled to the compensation fixed by law and, subject to appropriate state travel regulations, is entitled to reimbursement for actual and necessary traveling and other expenses incurred in the discharge of official duties. (§ 5 art I ch 94 SLA 1959)

Sec. 16.05.050. Powers and duties of commissioner. The commissioner has, but not by way of limitation, the following powers and duties:

(1) to assist the United States Fish and Wildlife Service in the enforcement of federal laws and regulations pertaining to fish and game;

(2) through the appropriate state agency and under the provisions of AS 36.30 (State Procurement Code), to acquire by gift, purchase, or lease, or other lawful means, land, buildings, water, rights-of-way, or other necessary or proper real or personal property when the acquisition is in the interest of furthering an objective or purpose of the department and the state;

(3) under the provisions of AS 36.30, to design and construct hatcheries, pipelines, rearing ponds, fishways, and other projects beneficial for the fish and game resources of the state;

(4) to accept money from any person under conditions requiring the use of the money for specific purposes in the furtherance of the protection, rehabilitation, propagation, preservation, or investigation of the fish and game resources of the state or in settlement of claims for damages to fish or game resources;

(5) to collect, classify, and disseminate statistics, data and information that, in the commissioner's discretion, will tend to promote the purposes of this title except AS 16.51 and AS 16.52;

(6) to take, capture, propagate, transport, buy, sell, or exchange fish or game or eggs for propagating, scientific, public safety, or stocking purposes;

(7) under the provisions of AS 36.30, to provide public facilities where necessary or proper to facilitate the taking of fish or game, and to enter into cooperative agreements with any person to effect them;

(8) to exercise administrative, budgeting, and fiscal powers;

(9) under the provisions of AS 36.30, to construct, operate, supervise, and maintain vessels used by the department;

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322
FAX: (907) 465-4362

April 8, 1997

The Honorable Bert Sharp
Alaska State Senate
Alaska Capitol, Room 516
Juneau, AK 99801-1182

Dear Senator Sharp:

I am very concerned about the impact of Senate Bill 19 on the ability of the Division of Fish & Wildlife Protection (FWP) to cooperate and work with federal agencies in protecting Alaska's fish and game resources. During a phone conversation with Deputy Commissioner Smith earlier this session you indicated the legislation was not intended to effect FWP in their enforcement activities. However, it appears from the bill's current language that it may well have an effect on FWP officers in the performance of their enforcement duties.

I have enclosed a letter from the Attorney General which sets out the legal issues the Department of Law feels will be issues if the legislation becomes law. While I cannot comment with any degree of authority on the legal issues, I do see operational problems for FWP personnel.

Currently FWP troopers are "cross designated" and can enforce federal wildlife laws. It appears that under the current wording of the proposed legislation they may be precluded from taking any enforcement action on federal violations. Even if their involvement was limited to the gathering of evidence the defendants would most certainly make an effort to prevent the introduction of the evidence based on the language in SB 19 if it becomes law.

Additionally, "cross designation" works both ways and federal officers are not likely to provide assistance to the state officers since the state officers do not provide reciprocal assistance to them.

I see the above examples as potentially detrimental to the fish and games resources of the State of Alaska. Therefore, I urge you to craft language that will not tie the hands of the FWP troopers who work daily to ensure that Alaskans can enjoy and utilize the fish and wildlife bounty of this great state.

Sincerely,



Ronald L. Otte
Commissioner

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

April 8, 1997

Representative Bill Hudson, Co-Chair
Representative Scott Ogan, Co-Chair
and members
House Resources Committee
Alaska State Legislature, State Capitol

Dear Representatives Hudson, Ogan,
and members of the House Resources Committee:

The present version of Senate Bill 19 prohibits a state employee from assisting with the enforcement of federal fish and game laws that are "in conflict with" Alaska fish and game laws. The Department of Law has the following concerns about implementing that bill if it becomes law.

I believe the principal purpose of the bill is to prevent the state from assisting with implementation of the federal subsistence law, Title VIII of ANILCA. That law, following the *McDowell* decision, differs from the present state law, AS 16.05.258, regarding who is eligible for the subsistence priority.

The term "in conflict with," however, could be applied outside of the subsistence context. That is because the term is inherently vague. Courts have given it various meanings.

A common interpretation is that there is "conflict" between two laws when one law allows an activity that the other law prohibits, and vice versa. *Cozart v. Carran*, 11 N.E.2d 245 (Ohio 1937); *Otto v. Wearty*, 27 N.E. 2d 190, 192 (Ohio App. 8 Dist., 1940); *City of Columbus v. Glascock*, 189 N.E.2d 889, 891 (Ohio App. 1962); *Village of Struthers v. Sokol*, 140 N.E. 519, 521 (Ohio 1923); *City of Portland v. Jackson*, 826 P.2d 37, 43 (Or.App. 1992). Thus, laws that are different but are "compatible as a whole" are not in conflict. *Id.* Similarly, "in conflict with" does not necessarily mean different from. *In re Robertson*, 20 F.Supp. 270, 273 (N.D.Tex. 1936). For two laws to be "in conflict", it is not necessary that they are directly opposite, but rather that they are incompatible such that both could not apply in a given situation. *Spencer v. State*, 520 N.E.2d 106, 109 (Ind.App. 1 Dist. 1988).¹

¹ Ironically, under that interpretation, the federal and state subsistence laws may not be "in conflict." Since ANILCA applies only to "public lands" and AS 16.05.258 applies elsewhere, there is no instance where they would legally overlap, that is, "apply in a given situation."

The courts themselves are in conflict over the meaning of the term. In one opinion, laws that punished the same act were "in conflict." *People v. Zook*, 197 P.2d 851, 852 (Cal. App. 1948). In another opinion, laws that identically defined and prohibited an act, and even imposed different penalties, were not "in conflict." *Cincinnati v. Thompson*, 643 N.E.2d 1157, 1172 (Ohio App. 1994).

Besides legal ambiguity, there are practical situations where the bill's impact is unclear. Presently, state fish and wildlife protection officers are "cross deputized" to enforce federal wildlife laws. The present bill would likely prevent a state officer from arresting, reporting, or even collecting evidence of violations of federal subsistence laws. In that event, the officer may have to formally revoke any oath he or she has taken to uphold and enforce federal law. If a state official were inadvertently or indirectly involved in gathering any particular evidence, the defendant could ask the court to prohibit that evidence from being introduced at trial. It could handicap the entire prosecution of the crime. *See Wallace v. State*, Op. No. 1514 (Alaska App., Feb. 28, 1997).

In addition to the federal subsistence law, Alaska fish and wildlife protection officers are called on to assist the enforcement and prosecution of other federal wildlife laws, such as the Marine Mammal Protection Act ("MMPA"), the Endangered Species Act ("ESA"), the Magnuson Act ("MFCMA"), and the Migratory Bird Treaty Act. Except for the ESA (See AS 16.20.180-.210), there are no Alaska equivalents to those laws, and therefore, no direct conflict between federal and state enactments. There are, however, disagreements about how the federal laws are being implemented. For example, Alaska has objected to proposed listings under the ESA and to federal management actions inside state waters under the MFCMA.

There are also instances where the courts have concluded that federal laws have preempted state laws in certain areas. For example, Alaska laws regulating certain activities on the Walrus Island State Game Sanctuary are preempted by the MMPA. *State v. Arnariak*, 893 P.2d 1273 (Alaska 1995). The only effective way for state managers of the Sanctuary to protect the walrus population is through that federal law. It is uncertain whether those situations -- where the state differs with certain steps taken to implement federal law or where the federal law has displaced state law - would be interpreted as "conflicts" under this bill.

Cross deputization works both ways. If the state stops assisting with the enforcement of federal wildlife laws, officers of the National Marine Fisheries Service (NMFS), the Fish and Wildlife Service, and the Bureau of Land Management would have little incentive to enforce Alaska wildlife laws.

It is important to realize that combined enforcement actions have been very successful. For example, in 1992 an effort involving U.S. Coast Guard vessels and aircraft, NMFS agents, and state officers documented illegal bottom trawling in state waters. Joint teams boarded and inspected approximately fifty vessels, and in the end, thirteen vessels were convicted. The state recovered more than six million dollars in criminal and civil fines. Illegal trawling has not been

Rep. Bill Hudson, Co-Chair
Rep. Scott Ogan, Co-Chair

April 8, 1997
Page 3

detected since.

If federal cooperation is withdrawn in response to this bill, the Department of Public Safety does not have resources to fill the gap. As a result, fewer overall violations of Alaska fish and game law would be detected and prosecuted.

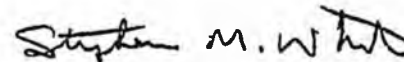
It is not clear whether the bill governs more than law enforcement. Presently, state officials exchange information with federal subsistence counterparts, and they comment on proposals to the Federal Subsistence Board. They also desire to participate in a joint committee that reviews technical information in proposals to the Federal Subsistence Board. If those activities are prohibited, Alaska may miss opportunities to positively affect federal subsistence decisions.

I offer these comments hoping that the intent for Senate Bill 19 will be clarified as the bill is being considered by the House Resources Committee.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Stephen M. White
Assistant Attorney General

cc: Senator Bert Sharp
Commissioner Ron Otte
Colonel John Glass
Pat Pourciot
Deborah Behr
Chrystal Smith

SMW:lt

0-LS0173\VE
Utermohle
4/15/97

HOUSE CS FOR SENATE BILL NO. 19(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS SHARP, Taylor, Donley

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to enforcement of federal laws relating to fish and game; and
2 repealing the power and duty of the commissioner of fish and game to assist
3 in the enforcement of federal laws relating to fish and game."

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

5 *Section 1. AS 16.05.050(1) is repealed.

S B

3 8

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO: _____

No. 2

Bill Version: SSSB 38

(S) Publish Date: 2-3-97

Revision Date: _____
 Title: An Act relating to anatomical gifts, living wills,
and do not resuscitate orders

Dept Affected: Public Safety
 BRU: Motor Vehicles
 Component: Field Services

Sponsor: Senator Taylor
 Requestor: S. H. Jones

COMPONENT SERIAL NO. 0502

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES () Revenue Code						
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FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 97) impact: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will not fiscally impact the Division of Motor Vehicles

Prepared By: Juanita M. Hensley
 Division: Motor Vehicles

Phone: 465-2650
 Date: 1/24/97

Approved by Commissioner: Ronald L. Otte
 Agency: Ronald L. Otte, Dept. of Public Safety

Date: 1/29/97

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STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. _____

Bill Version: SSSB 38

(S) Publish Date: 2-3-97

Revision Date: _____
Title: Anatomical gifts, living wills and do not resuscitate orders
Sponsor: Taylor
Requestor: Senate HES

Dept. Affected: Health and Social Services
BRU: State Health Services
Component: Community Health/EMS Services
COMPONENT SERIAL NO. 2078
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	2.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	2.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

This bill would require that the Division of Public Health contract for a graphic artist, \$2.0, to design the symbols to be used on bracelets, necklaces and ID cards to alert medical attendants of their choices.

Prepared by: Peter M. Nakamura, MD, MPH
Division: Public Health

Phone: (907) 465-3090
Date: 01/29/97

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Date: 1/30/97

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 5, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/25/97

The JUDICIARY Committee considered:

CSSSSB 38(JUD)

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 38(JUD)

ANATOMICAL GIFTS, LIVING WILLS & DNR ORDER

"An Act relating to anatomical gifts, living wills, and do not resuscitate orders."

recommends it be replaced with the following committee substitute HCS CSSSSB 38(JUD) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

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

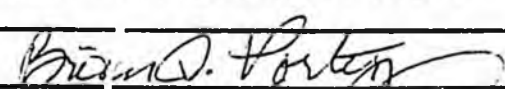
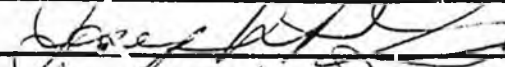
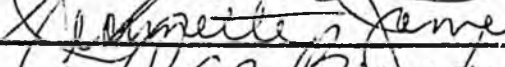
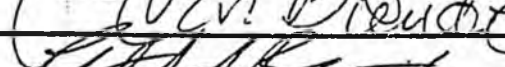

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) HSS

zero fiscal note(s) _____

zero fiscal note(s) PUB SAFETY

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	PORTER	✓			
	GREEN	✓			
	JAMES	✓			
	BUNDE	✓			
	BERKOWITZ	✓			

CHAIR'S SIGNATURE 

Alaska State Legislature

Chairman,
Judiciary Committee

Member,
Resources Committee
Rules Committee
Committee on Committees



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3873
Fax: (907) 465-3922

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(907) 225-8088
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Senator Robin L. Taylor
Senate Majority Leader

MEMORANDUM

To: Representative Joe Green, Chairman
House Judiciary Committee

From: Senator Robin L. Taylor *R.L.T.*

Date: 4/7/97

Ref: "Revised" hearing request - SB 38

This is in follow up to my earlier request for a hearing before the House Judiciary Committee on Senate Bill 38.

In submitting that request, I also submitted a proposed committee substitute for your consideration. Attached is a revised version of that substitute.

In discussions with the EMS folks at the Dept. of Health and Social Services it became apparent that the language changes in the original CS needed additional work.

The attached CS meets the needs of EMS responders as well as the other proponents of SB 38.

I again request that you schedule this legislation for hearing as soon as possible.

Thank you.

District A:

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

HOUSE CS FOR CS FOR SS FOR SENATE BILL NO. 38()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR TAYLOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to anatomical gifts, living wills, and do not resuscitate orders."

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

3 * Section 1. AS 13.50.010(a) is amended to read:

4 (a) A competent person [OF SOUND MIND] who is 18 or more years of age
5 may make a gift to take effect upon death [,] of all or a part of the person's body for
6 a purpose specified in AS 13.50.020.

7 * Sec. 2. AS 13.50.030(b) is repealed and reenacted to read:

8 (b) A gift of all or a part of the body under AS 13.50.010(a) may be made by
9 a document other than a will, and including a declaration under AS 18.12. The gift
10 takes effect upon the death of the donor. The document, which may be a card
11 designed to be carried on the person, shall be signed by the donor, or another person
12 at the donor's direction. If signed by another person at the donor's direction, the
13 signer shall sign in the presence of two persons or a person who is qualified to take
14 acknowledgments under AS 09.63.010. Delivery of the document of gift during the
15 donor's lifetime is not necessary to make the gift valid.

1 * Sec. 3. AS 13.50.030(d) is amended to read:

2 (d) The donor may designate in a will, card, or other document of gift,
3 including a declaration under AS 18.12, the surgeon or physician to carry out the
4 appropriate procedure for removing or transplanting a part of the decedent's body. In
5 the absence of a designation or if the designee is not available, the donee or other
6 person authorized to accept the gift may employ or authorize any surgeon, any [OR]
7 physician, or any appropriate Alaska organ or tissue bank, for the purpose of
8 removing or transplanting a part of the decedent's body.

9 * Sec. 4. AS 13.50.030 is amended by adding a new subsection to read:

10 (f) A gift may, but need not be, in the following form:

11 In the event of my death, I donate the following part(s)
12 of my body for the purposes identified in AS 13.50.020:

13 Tissue:

- 14 _____ Eyes
- 15 _____ Bone and connective tissue
- 16 _____ Skin
- 17 _____ Heart
- 18 _____ Other: _____

19 Limitations: _____

20 Organ:

- 21 _____ Heart
- 22 _____ Kidney(s)
- 23 _____ Liver
- 24 _____ Lung(s)
- 25 _____ Pancreas

26 Other: _____

27 I designate _____ (name of surgeon or physician)

28 to carry out the appropriate procedure(s) for removing or
29 transplanting the body part(s) identified above.

30 * Sec. 5. AS 13.50.050 is amended by adding a new subsection to read:

31 (d) A gift made in a declaration under AS 18.12 may be amended as provided

1 in (a) of this section, and may be revoked as provided in AS 18.12.020(a) or in (a) of
2 this section.

3 * Sec. 6. AS 13.50 is amended by adding a new section to read:

4 Sec. 13.50.075. Recognition of gifts executed, issued, or authorized in other
5 states. A gift executed, issued, or authorized in another state or a territory or
6 possession of the United States in compliance with the law of that jurisdiction is
7 effective for the purposes of this chapter.

8 * Sec. 7. AS 18.12.010(a) is repealed and reenacted to read:

9 (a) A competent person who is at least 18 years old may execute a declaration
10 at any time directing that life-sustaining procedures be withheld or withdrawn from
11 that person. The declaration is given operative effect only if the declarant's condition
12 is determined to be terminal and the declarant is not able to make treatment decisions,
13 except that, if the declaration contains an anatomical gift under AS 13.50, the gift
14 takes effect upon the death of the person. The declaration shall be signed by the
15 declarant, or another person at the declarant's direction. If signed by another person
16 at the declarant's direction, the signer shall sign in the presence of two persons or a
17 person who is qualified to take acknowledgements under AS 09.63.010. A person may
18 not charge a fee for preparing a declaration.

19 * Sec. 8. AS 18.12.010(b) is amended to read:

20 (b) Except as provided under AS 13.50.014 - 13.50.016 for an anatomical
21 gift contained in the declaration, it [IT] is the responsibility of the declarant to
22 provide a copy of the declaration to the declarant's physician. A physician or other
23 health care provider who is provided a copy of the declaration shall make it a part of
24 the declarant's medical records.

25 * Sec. 9. AS 18.12.010(c) is amended to read:

26 (c) A declaration may, but need not, be in the following form:

27 DECLARATION

28 If I should have an incurable or irreversible condition that will
29 cause my death within a relatively short time, it is my desire that my
30 life not be prolonged by administration of life-sustaining procedures.

31 If my condition is terminal and I am unable to participate in

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decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain. I [] do [] do not desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.

Notwithstanding the other provisions of this declaration, if I have donated an organ under this declaration or by another method, and if I am in a hospital setting and less than 71 years of age when a do not resuscitate order is to be implemented for me, I do not want the do not resuscitate order to take effect until the donated organ can be evaluated to determine if the organ is suitable for donation.

OPTIONAL: In the event of my death, I donate the following part(s) of my body for the purposes identified in AS 13.50.020:

- Tissue:
- _____ Eyes
 - _____ Bone and connective tissue
 - _____ Skin
 - _____ Heart
 - _____ Other: _____

Limitations: _____

- Organ:
- _____ Heart
 - _____ Kidney(s)
 - _____ Liver
 - _____ Lung(s)
 - _____ Pancreas
 - _____ Other: _____

Signed this _____ day of _____, _____
Signature _____

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Place _____

If another person is to sign for the declarant at the declarant's direction, the person signing for the declarant must sign in the presence of two persons or a person who is qualified to take acknowledgments under AS 09.63.010. The witness form below may be used for the two witnesses. The acknowledgement form below may be used for the person qualified to take acknowledgements. [THE DECLARANT IS KNOWN TO ME AND VOLUNTARILY SIGNED OR VOLUNTARILY DIRECTED ANOTHER TO SIGN THIS DOCUMENT IN MY PRESENCE.]

WITNESS FORM

Witness _____
Address _____
Witness _____
Address _____
State of _____
_____ Judicial District

ACKNOWLEDGEMENT FORM

The foregoing instrument was acknowledged before me this (date) by (name of person who acknowledged).

Signature of Person Taking
Acknowledgement

Title or Rank

Serial Number, if any

[THIS DECLARATION MUST BE EITHER WITNESSED BY TWO PERSONS OR ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGEMENTS UNDER AS 09.63.010].

* Sec. 10. AS 18.12.010(d) is amended to read:

1 (d) A physician or health care provider may presume, in the absence of actual
2 notice to the contrary, that the declaration complies with this chapter, that an
3 anatomical gift in the declaration complies with this chapter and AS 13.50, and
4 that the declaration, including any anatomical gift contained in the declaration,
5 is valid.

6 * Sec. 11. AS 18.12.020(a) is amended to read:

7 (a) Except as provided in AS 13.50.050 for an anatomical gift, a [A]
8 declaration may be revoked at any time and in any manner by which the declarant is
9 able to communicate an intent to revoke, without regard to mental or physical
10 condition. A revocation is only effective as to the attending physician or any health
11 care provider acting under the guidance of that physician upon communication to the
12 physician or health care provider by the declarant or by another to whom the
13 revocation was communicated.

14 * Sec. 12. AS 18.12.035 is amended by adding new subsections to read:

15 (d) Notwithstanding (c) of this section, if a person has made an anatomical gift
16 of an organ under AS 13.50 or this chapter, and is in a hospital and less than 71 years
17 of age when a do not resuscitate order is to be implemented for the person, the do not
18 resuscitate order may not be implemented until the donated organ can be evaluated to
19 determine if it is suitable for donation.

20 (e) A physician may not revoke a do not resuscitate order at the request of a
21 person, and a person may not make a do not resuscitate order ineffective, unless the
22 person making the request or proposing to make the order ineffective is the person for
23 whom the order has been issued, or, if the person for whom the order has been issued
24 is not capable of expressing an opinion on the subject,

25 (1) the parent or guardian of the person for whom the order has been
26 issued if the person for whom the order has been issued is under 18 years of age;

27 (2) the guardian appointed under AS 13.26.116 for the person for
28 whom the order has been issued if the guardian has the authority under the
29 appointment to make a do not resuscitate order ineffective;

30 (3) a person to whom the person for whom the order has been issued
31 has communicated the decision to make the order ineffective; or

1 (4) a person who holds a power of attorney for the person for whom
2 the order has been issued if making the do not resuscitate order ineffective is within
3 the authority of the power of attorney and the power of attorney becomes or remains
4 effective under AS 13.26.350 on the disability or incompetence of the person.

5 * Sec. 13. AS 18.12.037 is amended to read:

6 Sec. 18.12.037. Living will, organ donation, and DNR identification. The
7 Department of Health and Social Services shall develop standardized designs and
8 symbols for DNR identification cards, forms, necklaces, and bracelets that signify,
9 when carried or worn, that the possessor has executed a declaration under this chapter,
10 that the declaration contains an anatomical gift, or that the possessor is a patient
11 for whom a physician has issued a do not resuscitate order.

12 * Sec. 14. AS 18.12.040(a) is amended to read:

13 (a) A qualified patient or a patient for whom a physician has issued a do not
14 resuscitate order has the right to make decisions regarding use of cardiopulmonary
15 resuscitation and other life-sustaining procedures as long as the patient is able to do
16 so. If a qualified patient or patient for whom a physician has issued a do not
17 resuscitate order is not able to make these decisions, the declaration or do not
18 resuscitate protocol governs decisions regarding use of cardiopulmonary resuscitation
19 and other life-sustaining procedures, unless the do not resuscitate order is revoked
20 or made ineffective under AS 18.12.035(e).

21 * Sec. 15. AS 18.12.060(a) is amended to read:

22 (a) In the absence of actual notice of the revocation of a declaration or do not
23 resuscitate order, as applicable, the following, while acting in accordance with the do
24 not resuscitate protocol adopted under AS 18.12.035 or with the other requirements of
25 this chapter, are not subject to civil or criminal liability or guilty of unprofessional
26 conduct:

27 (1) a physician who causes the withholding or withdrawal of life-
28 sustaining procedures from a qualified patient or the withholding or withdrawal of
29 cardiopulmonary resuscitation from a patient for whom a do not resuscitate order has
30 been issued or who possesses DNR identification;

31 (2) a person who participates in the withholding or withdrawal of

1 cardiopulmonary resuscitation or other life-sustaining procedures under the direction
2 or with the authorization of a physician or upon discovery of DNR identification upon
3 a person;

4 (3) persons, including emergency medical technicians, who cause or
5 participate in providing cardiopulmonary resuscitation or other life-sustaining
6 procedures under AS 18.12.035(d) or because a person has made a do not
7 resuscitate order ineffective under AS 18.12.035(e) [AFTER AN ORAL OR
8 WRITTEN REQUEST COMMUNICATED TO THEM BY A PERSON WHO
9 POSSESSES DNR IDENTIFICATION];

10 (4) the health care facility in which the providing, withholding, or
11 withdrawal occurs.

12 * Sec. 16. AS 18.12.090 is amended to read:

13 Sec. 18.12.090. Recognition of declarations and orders executed, [OR]
14 issued, or authorized in other states. A declaration, including a declaration
15 containing an anatomical gift, do not resuscitate order, or DNR identification
16 executed, issued, or authorized in another state or a territory or possession of the
17 United States in compliance with the law of that jurisdiction is effective for purposes
18 of this chapter.

19 * Sec. 17. AS 18.12.100 is amended by adding a new paragraph to read:

20 (12) "anatomical gift" means an anatomical gift under AS 13.50.

21 * Sec. 18. AS 18.65.311 is amended to read:

22 Sec. 18.65.311. Anatomical gift or living will. (a) The department shall
23 provide, at the time that an identification card is issued, a form for a document by
24 which the card holder may make an anatomical gift under AS 13.50 (Uniform
25 Anatomical Gifts Act) or a living will under AS 18.12 (Living Wills and Do Not
26 Resuscitate Orders). The document (1) may not be larger than an identification card,
27 (2) must contain sufficient space for the signature of two witnesses or a person who
28 is qualified to take acknowledgments under AS 09.63.010, [TO THE DONOR'S
29 ACT IF THE DONOR CANNOT SIGN, AND] (3) must use the forms and designs
30 developed under AS 18.12.037, and (4) must provide a means by which the card
31 holder [DONOR] may cancel the gift or the living will. If the document [MAKING

1 AN ANATOMICAL GIFT] is executed by the applicant, it shall be sealed in plastic
2 and attached to the identification card. A symbol developed under AS 18.12.037
3 indicating the existence of the anatomical gift or living will document must be
4 displayed in the lower right-hand corner on the face of the identification card.

5 (b) An employee of the department who processes an identification card
6 application, other than an application received by mail, shall ask the applicant orally
7 whether the applicant wishes to execute an anatomical gift or a living will. The
8 department shall, by placement of posters and brochures in the office where the
9 application is taken, and by oral advice, if requested, make known to the applica.. the
10 procedure necessary to execute a gift under AS 13.50 or a living will under AS 18.12.

11 * Sec. 19. AS 28.10.021(c) is amended to read:

12 (c) An employee of the department who processes an application for
13 registration or renewal of registration, other than an application received by mail, shall
14 ask the applicant orally whether the applicant wishes to execute an anatomical gift or
15 a living will. The department shall make known to all applicants the procedure for
16 executing a gift under AS 13.50 (Uniform Anatomical Gifts Act) or a living will
17 under AS 18.12 (Living Wills and Do No Resuscitate Orders) by displaying posters
18 in the offices in which applications are taken, by providing a brochure or other written
19 information to each person who applies in person or by mail, and, if requested, by
20 providing oral advice.

21 * Sec. 20. AS 28.15.001(d) is amended to read:

22 (d) An employee of the department who processes a driver's license
23 application, other than an application received by mail, shall ask the applicant orally
24 whether the applicant wishes to execute an anatomical gift or a living will. The
25 department shall make known to all applicants the procedure for executing a gift under
26 AS 13.50 (Uniform Anatomical Gifts Act) or a living will under AS 18.12 (Living
27 Wills and Do Not Resuscitate Orders) by displaying posters in the offices in which
28 applications are taken, by providing a brochure or other written information to each
29 person who applies in person or by mail, and, if requested, by providing oral advice.

30 * Sec. 21. AS 28.15.111(b) is amended to read:

31 (b) The department shall provide, at the time that an operator's license is

1 issued, a form for a document by which the owner of a license may make an
2 anatomical gift under AS 13.50 or a living will under AS 18.12. The document (1)
3 may not be larger than an operator's license, (2) must contain sufficient space for the
4 signature of two witnesses or a person who is qualified to take acknowledgments
5 under AS 09.63.010, [TO THE DONOR'S ACT OF EXECUTION OF THE
6 DOCUMENT, AND] (3) must use the forms and designs developed under
7 AS 18.12.037, and (4) must provide a means by which the owner [DONOR] may
8 cancel the gift or the living will. If the document [MAKING AN ANATOMICAL
9 GIFT] is executed by the applicant, it shall be sealed in plastic and attached to the
10 license. A symbol developed under AS 18.12.037 indicating the existence of the
11 anatomical gift or living will document must be displayed in the lower right-hand
12 corner on the face of the driver's license.

HOUSE CS FOR CS FOR SS FOR SENATE BILL NO. 38(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATOR TAYLOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to anatomical gifts, living wills, and do not resuscitate orders."

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

3 * Section 1. AS 13.50.010(a) is amended to read:

4 (a) A competent person [OF SOUND MIND] who is 18 or more years of age
5 may make a gift to take effect upon death [,] of all or a part of the person's body for
6 a purpose specified in AS 13.50.020.

7 * Sec. 2. AS 13.50.030(b) is repealed and reenacted to read:

8 (b) A gift of all or a part of the body under AS 13.50.010(a) may be made by
9 a document other than a will, and including a declaration under AS 18.12. The gift
10 takes effect upon the death of the donor. The document, which may be a card
11 designed to be carried on the person, shall be signed by the donor, or another person
12 at the donor's direction. If signed by another person at the donor's direction, the
13 signer shall sign in the presence of two persons or a person who is qualified to take
14 acknowledgments under AS 09.63.010. Delivery of the document of gift during the
15 donor's lifetime is not necessary to make the gift valid.

1 * Sec. 3. AS 13.50.030(d) is amended to read:

2 (d) The donor may designate in a will, card, or other document of gift,
 3 including a declaration under AS 18.12, the surgeon or physician to carry out the
 4 appropriate procedure for removing or transplanting a part of the decedent's body. In
 5 the absence of a designation or if the designee is not available, the donee or other
 6 person authorized to accept the gift may employ or authorize any surgeon, any [OR]
 7 physician, or any appropriate Alaska organ or tissue bank, for the purpose of
 8 removing or transplanting a part of the decedent's body.

9 * Sec. 4. AS 13.50.030 is amended by adding a new subsection to read:

10 (f) A gift may, but need not be, in the following form:

11 In the event of my death, I donate the following part(s)
 12 of my body for the purposes identified in AS 13.50.020:

13 Tissue:

14 _____ Eyes

15 _____ Bone and connective tissue

16 _____ Skin

17 _____ Heart

18 _____ Other: _____

19 Limitations: _____

20 Organ:

21 _____ Heart

22 _____ Kidney(s)

23 _____ Liver

24 _____ Lung(s)

25 _____ Pancreas

26 Other: _____

27 I designate _____ (name of surgeon or physician)

28 to carry out the appropriate procedure(s) for removing or
 29 transplanting the body part(s) identified above.

30 * Sec. 5. AS 13.50.050 is amended by adding a new subsection to read:

31 (d) A gift made in a declaration under AS 18.12 may be amended as provided

1 in (a) of this section, and may be revoked as provided in AS 18.12.020(a) or in (a) of
2 this section.

3 * Sec. 6. AS 13.50 is amended by adding a new section to read:

4 **Sec. 13.50.075. Recognition of gifts executed, issued, or authorized in other**
5 **states.** A gift executed, issued, or authorized in another state or a territory or
6 possession of the United States in compliance with the law of that jurisdiction is
7 effective for the purposes of this chapter.

8 * Sec. 7. AS 18.12.010(a) is repealed and reenacted to read:

9 (a) A competent person who is at least 18 years old may execute a declaration
10 at any time directing that life-sustaining procedures be withheld or withdrawn from
11 that person. The declaration is given operative effect only if the declarant's condition
12 is determined to be terminal and the declarant is not able to make treatment decisions,
13 except that, if the declaration contains an anatomical gift under AS 13.50, the gift
14 takes effect upon the death of the person. The declaration shall be signed by the
15 declarant, or another person at the declarant's direction. If signed by another person
16 at the declarant's direction, the signer shall sign in the presence of two persons or a
17 person who is qualified to take acknowledgements under AS 09.63.010. A person may
18 not charge a fee for preparing a declaration.

19 * Sec. 8. AS 18.12.010(b) is amended to read:

20 (b) Except as provided under AS 13.50.014 - 13.50.016 for an anatomical
21 gift contained in the declaration, it [IT] is the responsibility of the declarant to
22 provide a copy of the declaration to the declarant's physician. A physician or other
23 health care provider who is provided a copy of the declaration shall make it a part of
24 the declarant's medical records.

25 * Sec. 9. AS 18.12.010(c) is amended to read:

26 (c) A declaration may, but need not, be in the following form:

27 **DECLARATION**

28 If I should have an incurable or irreversible condition that will
29 cause my death within a relatively short time, it is my desire that my
30 life not be prolonged by administration of life-sustaining procedures.

31 If my condition is terminal and I am unable to participate in

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decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain. I [] do [] do not desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.

Notwithstanding the other provisions of this declaration, if I have donated an organ under this declaration or by another method, and if I am in a hospital when a do not resuscitate order is to be implemented for me, I do not want the do not resuscitate order to take effect until the donated organ can be evaluated to determine if the organ is suitable for donation.

OPTIONAL: In the event of my death, I donate the following part(s) of my body for the purposes identified in AS 13.50.020:

Tissue:

- _____ Eyes
- _____ Bone and connective tissue
- _____ Skin
- _____ Heart
- _____ Other: _____

Limitations:

Organ:

- _____ Heart
- _____ Kidney(s)
- _____ Liver
- _____ Lung(s)
- _____ Pancreas
- _____ Other: _____

Signed this _____ day of _____, _____.

Signature _____

Place _____

If another person is to sign for the declarant at the declarant's direction, the person signing for the declarant must sign in the presence of two persons or a person who is qualified to take acknowledgments under AS 09.63.010. The witness form below may be used for the two witnesses. The acknowledgement form below may be used for the person qualified to take acknowledgements. [THE DECLARANT IS KNOWN TO ME AND VOLUNTARILY SIGNED OR VOLUNTARILY DIRECTED ANOTHER TO SIGN THIS DOCUMENT IN MY PRESENCE.]

WITNESS FORM

Witness _____
Address _____
Witness _____
Address _____
State of _____
_____ Judicial District

ACKNOWLEDGEMENT FORM

The foregoing instrument was acknowledged before me this (date) by (name of person who acknowledged).

Signature of Person Taking
Acknowledgement

Title or Rank

Serial Number, if any

[THIS DECLARATION MUST BE EITHER WITNESSED BY TWO PERSONS OR ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGEMENTS UNDER AS 09.63.010].

* Sec. 10. AS 18.12.010(d) is amended to read:

(d) A physician or health care provider may presume, in the absence of actual

1 notice to the contrary, that the declaration complies with this chapter, that an
 2 anatomical gift in the declaration complies with this chapter and AS 13.50. and
 3 that the declaration, including any anatomical gift contained in the declaration,
 4 is valid.

5 * Sec. 11. AS 18.12.020(a) is amended to read:

6 (a) Except as provided in AS 13.50.050 for an anatomical gift. a [A]
 7 declaration may be revoked at any time and in any manner by which the declarant is
 8 able to communicate an intent to revoke, without regard to mental or physical
 9 condition. A revocation is only effective as to the attending physician or any health
 10 care provider acting under the guidance of that physician upon communication to the
 11 physician or health care provider by the declarant or by another to whom the
 12 revocation was communicated.

13 * Sec. 12. AS 18.12.035 is amended by adding new subsections to read:

14 (d) Notwithstanding (c) of this section, if a person has made an anatomical gift
 15 of an organ under AS 13.50 or this chapter, and is in a hospital when a do not
 16 resuscitate order is to be implemented for the person, the do not resuscitate order may
 17 not be implemented until the donated organ can be evaluated to determine if it is
 18 suitable for donation.

19 (e) A physician may not revoke a do not resuscitate order at the request of a
 20 person, and a person may not make a do not resuscitate order ineffective, unless the
 21 person making the request or proposing to make the order ineffective is the person for
 22 whom the order has been issued, or, if the person for whom the order has been issued
 23 is not capable of expressing an opinion on the subject,

24 (1) the parent or guardian of the person for whom the order has been
 25 issued if the person for whom the order has been issued is under 18 years of age; or

26 (2) a person to whom the person for whom the order has been issued
 27 has communicated the decision to make the order ineffective.

28 * Sec. 13. AS 18.12.037 is amended to read:

29 Sec. 18.12.037. Living will, organ donation, and DNR identification. The
 30 Department of Health and Social Services shall develop standardized designs and
 31 symbols for DNR identification cards, forms, necklaces, and bracelets that signify,

1 when carried or worn, that the possessor has executed a declaration under this chapter,
 2 that the declaration contains an anatomical gift, or that the possessor is a patient
 3 for whom a physician has issued a do not resuscitate order.

4 * Sec. 14. AS 18.12.040(a) is amended to read:

5 (a) A qualified patient or a patient for whom a physician has issued a do not
 6 resuscitate order has the right to make decisions regarding use of cardiopulmonary
 7 resuscitation and other life-sustaining procedures as long as the patient is able to do
 8 so. If a qualified patient or patient for whom a physician has issued a do not
 9 resuscitate order is not able to make these decisions, the declaration or do not
 10 resuscitate protocol governs decisions regarding use of cardiopulmonary resuscitation
 11 and other life-sustaining procedures, unless the do not resuscitate order is revoked
 12 or made ineffective under AS 18.12.035(e).

13 * Sec. 15. AS 18.12.060(a) is amended to read:

14 (a) In the absence of actual notice of the revocation of a declaration or do not
 15 resuscitate order, as applicable, the following, while acting in accordance with the do
 16 not resuscitate protocol adopted under AS 18.12.035 or with the other requirements of
 17 this chapter, are not subject to civil or criminal liability or guilty of unprofessional
 18 conduct:

19 (1) a physician who causes the withholding or withdrawal of life-
 20 sustaining procedures from a qualified patient or the withholding or withdrawal of
 21 cardiopulmonary resuscitation from a patient for whom a do not resuscitate order has
 22 been issued or who possesses DNR identification:

23 (2) a person who participates in the withholding or withdrawal of
 24 cardiopulmonary resuscitation or other life-sustaining procedures under the direction
 25 or with the authorization of a physician or upon discovery of DNR identification upon
 26 a person;

27 (3) persons, including emergency medical technicians, who cause or
 28 participate in providing cardiopulmonary resuscitation or other life-sustaining
 29 procedures under AS 18.12.035(d) or because a person has made a do not
 30 resuscitate order ineffective under AS 18.12.035(e) [AFTER AN ORAL OR
 31 WRITTEN REQUEST COMMUNICATED TO THEM BY A PERSON WHO

1 POSSESSES DNR IDENTIFICATION];

2 (4) the health care facility in which the providing, withholding, or
3 withdrawal occurs.

4 * Sec. 16. AS 18.12.090 is amended to read:

5 **Sec. 18.12.090. Recognition of declarations and orders executed, [OR]**
6 **issued, or authorized in other states. A declaration, including a declaration**
7 **containing an anatomical gift, do not resuscitate order, or DNR identification**
8 **executed, issued, or authorized in another state or a territory or possession of the**
9 **United States in compliance with the law of that jurisdiction is effective for purposes**
10 **of this chapter.**

11 * Sec. 17. AS 18.12.100 is amended by adding a new paragraph to read:

12 (12) "anatomical gift" means an anatomical gift under AS 13.50.

13 * Sec. 18. AS 18.65.311 is amended to read:

14 **Sec. 18.65.311. Anatomical gift or living will.** (a) The department shall
15 provide, at the time that an identification card is issued, a form for a document by
16 which the card holder may make an anatomical gift under AS 13.50 (Uniform
17 Anatomical Gifts Act) **or a living will under AS 18.12 (Living Wills and Do Not**
18 **Resuscitate Orders)**. The document (1) may not be larger than an identification card,
19 (2) must contain sufficient space for the signature of two witnesses **or a person who**
20 **is qualified to take acknowledgments under AS 09.63.010, [TO THE DONOR'S**
21 **ACT IF THE DONOR CANNOT SIGN, AND] (3) must use the forms and designs**
22 **developed under AS 18.12.037, and (4) must provide a means by which the card**
23 **holder [DONOR] may cancel the gift or the living will. If the document [MAKING**
24 **AN ANATOMICAL GIFT] is executed by the applicant, it shall be sealed in plastic**
25 **and attached to the identification card. A symbol developed under AS 18.12.037**
26 **indicating the existence of the anatomical gift or living will document must be**
27 **displayed in the lower right-hand corner on the face of the identification card.**

28 (b) An employee of the department who processes an identification card
29 application, other than an application received by mail, shall ask the applicant orally
30 whether the applicant wishes to execute an anatomical gift **or a living will.** The
31 department shall, by placement of posters and brochures in the office where the

1 application is taken, and by oral advice, if requested, make known to the applicant the
2 procedure necessary to execute a gift under AS 13.50 or a living will under AS 18.12.

3 * Sec. 19. AS 28.10.021(c) is amended to read:

4 (c) An employee of the department who processes an application for
5 registration or renewal of registration, other than an application received by mail, shall
6 ask the applicant orally whether the applicant wishes to execute an anatomical gift or
7 a living will. The department shall make known to all applicants the procedure for
8 executing a gift under AS 13.50 (Uniform Anatomical Gifts Act) or a living will
9 under AS 18.12 (Living Wills and Do No Resuscitate Orders) by displaying posters
10 in the offices in which applications are taken, by providing a brochure or other written
11 information to each person who applies in person or by mail, and, if requested, by
12 providing oral advice.

13 * Sec. 20. AS 28.15.061(d) is amended to read:

14 (d) An employee of the department who processes a driver's license
15 application, other than an application received by mail, shall ask the applicant orally
16 whether the applicant wishes to execute an anatomical gift or a living will. The
17 department shall make known to all applicants the procedure for executing a gift under
18 AS 13.50 (Uniform Anatomical Gifts Act) or a living will under AS 18.12 (Living
19 Wills and Do Not Resuscitate Orders) by displaying posters in the offices in which
20 applications are taken, by providing a brochure or other written information to each
21 person who applies in person or by mail, and, if requested, by providing oral advice.

22 * Sec. 21. AS 28.15.111(b) is amended to read:

23 (b) The department shall provide, at the time that an operator's license is
24 issued, a form for a document by which the owner of a license may make an
25 anatomical gift under AS 13.50 or a living will under AS 18.12. The document (1)
26 may not be larger than an operator's license, (2) must contain sufficient space for the
27 signature of two witnesses or a person who is qualified to take acknowledgments
28 under AS 09.63.010, [TO THE DONOR'S ACT OF EXECUTION OF THE
29 DOCUMENT, AND] (3) must use the forms and designs developed under
30 AS 18.12.037, and (4) must provide a means by which the owner [DONOR] may
31 cancel the gift or the living will. If the document [MAKING AN ANATOMICAL

1 GIFT] is executed by the applicant, it shall be sealed in plastic and attached to the
2 license. A symbol developed under AS 18.12.037 indicating the existence of the
3 anatomical gift or living will document must be displayed in the lower right-hand
4 corner on the face of the driver's license.

Alaska State Legislature

Chairman,
Judiciary Committee

Member,
Resources Committee
Rules Committee
Committee on Committees




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Senator Robin L. Taylor
Senate Majority Leader

MEMORANDUM

To: Representative Joe Green, Chairman
House Judiciary Committee

From: Joe Ambrose 

Date: 4/16/97

Ref: Packet Information - SB 38

Attached is the sponsor statement and other background information on Senate Bill 38.

I will be presenting the bill in Senator Taylor's absence. If possible, it would be easier to address this if the committee substitute we submitted (LS0183\L dated 4/4/97) could be adopted for discussion purposes before my presentation.

We anticipate testimony from Anchorage on this bill and would appreciate the Anchorage LIO being included on the teleconference network.

Thank you.

District A:

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

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Senator Robin L. Taylor

Sponsor Statement

Senate Bill 38

This legislation modifies existing statute dealing with living wills and would add to that statute a provision by which those who execute living wills can choose to become organ or tissue donors. By adding this provision to the statutory language of a living will, loved ones and health professionals would be fully informed of the wishes of family members and patients.

We live in a technological age in which the need for tissue and organ donation has found a much greater demand than supply. While it is not a legitimate function of government to dictate whether or not a person should become an organ or tissue donor, it is certainly a wise practice for government to facilitate this process.

In addition to adding anatomical gifts to the language of a living will, Senate Bill 38 would also instruct the Division of Motor Vehicles to indicate on drivers' licenses not only the fact that the bearer has elected to become an organ donor, but also that the individual has a living will.

Other than nominal expenses, this legislation should cost little to enforce, but may become invaluable if it increases Alaskans' participation in organ and tissue donation. Certainly any one of us, our families and loved ones, could benefit by an organ or tissue donation made less complicated by this bill.

To get an idea of the scope of organ transplants involving Alaskans, we contacted the Center for Transplant Services at the University of Washington Hospital.

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Sponsor Statement - SB 38

Page Two

Since 1989, 19 Alaskans have received kidney transplants through that facility. Twelve Alaskans have received liver transplants and one state resident received both a kidney and a pancreas.

To understand the need to make organ donation as uncomplicated as possible, I would like to point out that as of January 24, 1997, this one facility had a waitlist of 20 Alaskans in need of kidney transplants, 11 seeking donor livers and one state resident waiting for a donated pancreas.

The Virginia-based United Network for Organ Sharing, the national clearing house for organ transplants, has 68 Alaskans on their waitlist.

Since 1988, the United Network for Organ Sharing documents 207 Alaskans who have received donor organs.

I ask your support for Senate Bill 38.

Anchorage Daily News



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Kent Pollock
Editor

Michael Carey, Editorial Page Editor

Gerald E. Grilly, Publisher, 1984-1993
Katherine Fanning, Editor and Publisher, 1971-1983
Lawrence Fanning, Editor and Publisher, 1967-1971
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Extending life

Organ and tissue donations provide way

In the midst of grief, an Alaska mother made a decision last year that gave two children a second chance at life. When Christina Ely's own kids — 5-year-old Jessica and 4-year-old Corey — were shot and killed by their father, Ms. Ely agreed to donate tissue from the bodies of both children.

Hers was an act of courage.

And it is an inspirational act that is repeated dozens of times a year in Alaska. Most recently, the family of Matthew Troutman, the toddler killed in Turnagain Arm, chose to donate his heart valves.

Last year, families of 149 donors allowed medical personnel to remove body organs and/or body tissue from dead or brain-dead loved ones for transplant. 'It's rather incredible the neighbor-helping-neighbor attitude that we see so many times,' says Jens Saakvitne of Life Alaska

About 70 percent of bereaved families contacted by the nonprofit Life Alaska Transplant agree to organ or tissue donations, says executive director Jens Saakvitne. High-pressure tactics aren't used, either. "We will never, ever, ever ask a family to donate," he notes. "We will say, 'One of your options may be that of tissue donation, but there's no wrong decision.'"

Last year, families of 149 donors allowed medical personnel to remove body organs and/or body tissue from dead or brain-dead loved ones for transplant. "It's rather incredible the neighbor-helping-neighbor attitude that we see so many times," says Mr. Saakvitne.

Transplant.

Because of that generosity of spirit, a 3-year-old Chicago girl received Jessica Ely's aortic heart valve earlier this month, and a Seattle newborn received her pulmonary valve at, appropriately enough, Thanksgiving time. (Life Alaska's policy is to first offer donated tissue to Alaska patients and physicians before making it available outside the state.)

Alaskans who sign on as organ donors when they apply for or renew their state driver's or operator's license, identification card or vehicle registration may be surprised to know that their stated wish may not be honored. "The problem, most of the time, is that donor cards are not found," explains Mr. Saakvitne. To complicate matters, the medical community cannot tap into state Department of Motor Vehicle records to see if a dead or dying person wanted to be an organ and tissue donor.

A bill introduced by Sen. Robin Taylor may alleviate some of the confusion. It would require the department to design a symbol for, say, a driver's license to notify emergency or medical personnel of the cardholder's donor status. The symbol, which also could be used on necklaces or bracelets, also would apply to Alaskans with living wills or standing do-not-resuscitate orders.

The changes wouldn't be foolproof. Saakvitne of Life Alaska thinks the ideal solution would be 24-hour computer access to state DMV records pertaining to living wills, organ donations and do-not-resuscitate orders. But the proposed changes would be a step forward for Alaskans who want their life's end to provide a new beginning for someone else.