

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9517 SENATE HEALTH EDUCATION & SOCIAL SERVICES



Department of Health and Social Services Division of Public Health
Karen Perdue, Commissioner Peter M. Nakamura, MD, MPH, Director
3601 C Street, Suite 540, P.O. Box 240249, Anchorage, Alaska 99524-0249 (907) 269-8000

Section of Epidemiology
John Middaugh, MD, Editor
Bulletin No. 6 February 5, 1997

HIV INFECTION - ALASKA

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

State Section of Laboratories

Through December 31, 1996, the Section of Laboratories, Division of Public Health, has conducted 129,850 HIV antibody tests on 99,725 individuals, with a total of 640 (0.6%) individuals testing HIV positive. Through December 31, 1996, 542 (1.2%) of 49 males, 94 (0.2%) of 52,625 females, and 4 (0.7%) of 551 individuals of unspecified sex have tested positive. Data below are for unduplicated individuals.

Age	Number Tested	Number Positive	% Positive
0-9	742	3	0.40
10-19	12,842	27	0.21
20-29	36,451	253	0.69
30-39	30,868	241	0.78
40-49	13,622	98	0.72
50+	5,172	18	0.35
Unk	28	0	0.00
Total	99,725	640	0.64

Year	Number Tested	Number Positive	% Positive
1985	771	76	9.9
1986	1,448	56	3.9
1987	5,786	74	1.3
1988	5,757	65	1.1
1989	6,195	51	0.8
1990	7,934	69	0.9
1991	11,852	46	0.4
1992	17,350	50	0.3
1993	16,716	45	0.3
1994	15,818	44	0.3
1995	15,346	50	0.3
1996	16,215	50	0.3

HIV Testing by Exposure Category and Ethnicity (Number Positive, Number Tested, Percent Positive) For Period May 1, 1985 thru December 31, 1996

Exposure Category	White			Native American/ Alaska Native			Black			Hispanic			Other			Not Specified			Total		
	Pos	Tested	(%)	Pos	Tested	(%)	Pos	Tested	(%)	Pos	Tested	(%)	Pos	Tested	(%)	Pos	Tested	(%)	Pos	Tested	(%)
Sexual Contact	226	1,777	12.7	29	353	8.2	18	106	17.0	15	68	22.1	7	47	14.9	3	27	11.1	298	2,378	12.5
Drug User	23	2,422	0.9	1	614	0.2	13	219	5.9	4	61	6.6	0	46	0.0	2	58	3.4	43	3,420	1.3
Sexual Contact of Person with/without Risk of AIDS	6	2,522	0.2	5	564	0.9	3	205	1.5	1	87	1.1	0	63	0.0	0	56	0.0	15	3,497	0.4
Physician Consultation w/ Blood	7	21	33.3	0	4	0.0	0	0	0.0	0	1	0.0	0	2	0.0	0	0	0.0	7	28	25.0
Others	8	1,106	0.7	4	356	1.1	0	52	0.0	0	18	0.0	0	27	0.0	0	48	0.0	12	1,607	0.7
Total	133	52,493	0.3	68	72,446	0.3	33	4,987	0.7	18	2,190	0.8	7	2,514	0.3	6	4,165	0.1	265	85,795	0.3
	403	60,341	0.7	107	24,337	0.4	67	5,569	1.2	38	2,425	1.6	14	2,699	0.5	11	4,354	0.3	640	99,725	0.6

Department of Defense

From October 1985, all persons applying for active duty or reserve military service, the service academies, and the Reserve Officer Training Corps (ROTC) have been screened for HIV infection as part of their entrance evaluation. The Department of Defense shares the resulting statistical data with states for HIV surveillance purposes. Of 15,236 individuals (12,690 males and 2,546 females) screened in Alaska from October 1985 through September 1996, 3 (0.02%) have tested positive for HIV infection. Characteristics of the three individuals with HIV infection follow.

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

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NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL**

MEMORANDUM

State of Alaska
Department of Law


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

DATE: November 16, 1990

FILE NO:

TEL. NO: 465-3423

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

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

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

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

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

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

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

Elizabeth L. Shaw
Criminal liability for

November 16, 1990
Page 2

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

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

Alaska State Legislature

Legislative Research Agency



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

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

March 7, 1995

MEMORANDUM

TO: Senator Robin Taylor

FROM: Paula d. Scavera *PKS*
Legislative Analyst

RE: Testing for HIV/AIDS in Illinois

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

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

Illinois

720 ILCS 5/12-16

Note 400

400. Excessive sentence and punishment
Five-year sentences on each of four counts of aggravated criminal sexual abuse was not excessive; sentences were midrange for offense, defendant had previous criminal record and was on parole at time of offense and victim had sustained psychological harm. People v. Edwards, App. 2 Dist.1990, 142 IllDec. 8, 195 IllApp3d 454, 552 N.E.2d 358.

VIII. REVIEW

Subdivision Index

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Plain error 453
Preservation of grounds for review 452

451. In general, review

Appropriate standard of review of challenge to conviction for sex offense is whether, after viewing evidence in light most favorable to prosecution, any rational trier of fact could have found essential elements of crime beyond reasonable doubt. People v. Haun, App. 5 Dist. 1991, 163 IllDec. 710, 221 IllApp3d 164, 581 N.E.2d 864, disagreed with 165 IllDec. 739, 585 N.E.2d 135.

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

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

Historical and Statutory Notes

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

5/12-16.2. Criminal transmission of HIV

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

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

(b) For purposes of this Section:

CRIMINAL CODE OF 1961

to be resolved was whether State's evidence was so unsatisfactory or improbable that there remained reasonable doubt of defendant's guilt. People v. Allen, App. 1 Dist.1991, 162 IllDec. 877, 220 IllApp3d 77, 580 N.E.2d 1291.

452. Preservation of grounds for review

Defendant in child sexual abuse case waived issue whether circuit court erred in allowing pediatric nurse to testify that, in her opinion, victim was being truthful in describing assault, where defendant did not object to testimony either at trial or in written posttrial motion, and specifically questioned witness about her statement at length. People v. Davis, App. 5 Dist.1991, 153 IllDec. 82, 208 IllApp3d 33, 566 N.E.2d 932.

Issue of whether examining clinical psychologist's opinion of credibility of minor who was allegedly victim of sexual abuse should not have been admitted was waived, where defendant did not object to court's questioning of psychologist at trial or raise the issue in posttrial motion. People v. Hickox, App. 2 Dist.1990, 142 IllDec. 180, 197 IllApp3d 205, 553 N.E.2d 1166, appeal denied 149 IllDec. 330, 133 Ill2d 565, 561 N.E.2d 700.

453. Plain error, review

Any error in considering examining clinical psychologist's opinion of credibility of minor who was allegedly victim of sexual abuse by her father was not of such magnitude as to require plain error review. People v. Hickox, App. 2 Dist.1990, 143 IllDec. 180, 197 IllApp3d 205, 553 N.E.2d 1166, appeal denied 149 IllDec. 330, 133 Ill2d 565, 561 N.E.2d 700.

BODILY HARM

"HIV" means the causative agent of AIDS.
"Intimate contact with a person to a bodily fluid transmission of HIV.

"Intravenous or intramuscular product, or material of injecting a substance into a person's body."

(c) Nothing in this Section with HIV has occurred transmission of HIV.

(d) It shall be an affirmative defense that the infected person was infected with HIV, and

(e) A person who commits a felony.

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

AIDS investigation information

Are AIDS-transmission by abortion? Michael L. Cloze Isaacman, 76 ABA J. 76 (1990).
Criminal sanctions for AIDS—Analysis of new Illinois law. Jeffrey Deuschman, 4 CBA

Words and Phrases (Continued)

5/12-17. Defenses

§ 12-17. Defenses.

(a) It shall be a defense of this Code where force was used by the victim consented. "Force" means sexual penetration or sexual contact without the consent of the victim or resistance or submission to the act under threat of force by the actor or the victim at the time of the act.

(b) It shall be a defense of this Code where force was used by the victim if the actor reasonably believed the force was necessary to protect himself or herself from imminent death, great bodily harm, or the commission of a crime of violence.

Laws 1961, p. 1983, § 12-17.1. Formerly Ill.Rev.Stat.1991, ch. 120, § 12-17.1.

Legislative Research Agency
Sent To You By

CODE OF 1961

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1 Dist.1991, 162
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. Jan. 11, 1989

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BODILY HARM.

720 ILCS 5/12-17

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

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

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

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

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

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

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

Cross References

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

Law Review Commentaries

Are AIDS-transmission laws encouraging abortion? Michael L. Cloven and Scott H. Isaacman, 76 ABA J. 76 (1990).

Criminal sanctions for transmission of AIDS—Analysis of new Illinois legislation. Jeffrey Deutschman, 4 CBA Rec. 32 (1990).

Neonatal HIV testing: Governmental inspection of the baby factory. Scott H. Isaacman, 24 J. Marshall L.Rev. 571 (1991).

Proposal to repeal the Illinois HIV transmission statute. Michael L. Cloven and Jeffrey S. Deutschman, 78 Ill.B.J. 592 (1990).

Library References

Words and Phrases (Perm.Ed.)

5/12-17. Defenses

§ 12-17. Defenses.

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

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

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

Formerly Ill.Rev.Stat.1991, ch. 38, ¶ 12-17.

OPINIONS OF THE ATTORNEY GENERAL

Authority of Georgia Crime Information Center to maintain records. — The Georgia Crime Information Center is authorized to maintain records of reported crime and, in some instances, to record information identifying persons charged with the commission of crime; however,

the center is not authorized to maintain records identifying persons charged with disorderly conduct except when the charge is directly connected with or directly related to certain statutory offenses including interference with custody. 1976 Op. Att'y Gen. No. 76-33.

RESEARCH REFERENCES

C.J.S. — 1 C.J.S., Abduction, § 1 et seq., 51 C.J.S., Kidnapping, § 4.

of parent or one in loco parentis, 20 ALR4th 823.

ALR. — Violation of state court order by one other than party as contempt, 7 ALR4th 893.

Liability of legal or natural parent, or one who aids and abets, for damages resulting from abduction of own child, 49 ALR4th 7.

Kidnapping or related offense by taking or removing of child by or under authority

ARTICLE 4

RECKLESS CONDUCT

Cross references. — Reckless driving, § 40-6-390.

16-5-60. Reckless conduct causing harm to or endangering the bodily safety of another; conduct by HIV infected persons.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) A person who causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his act or omission will cause harm or endanger the safety of the other person and the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation is guilty of a misdemeanor.

(c) A person who is an HIV infected person who, after obtaining knowledge of being infected with HIV:

(1) Knowingly engages in sexual intercourse or performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another person and the HIV infected person does not disclose to the other person the fact of that infected person's being an HIV infected person prior to that intercourse or sexual act;

(2) Knowingly allows another person to use a hypodermic needle, syringe, or both for the introduction of drugs or any other substance

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into or for the withdrawal of body fluids from the other person's body and the needle or syringe so used had been previously used by the HIV infected person for the introduction of drugs or any other substance into or for the withdrawal of body fluids from the HIV infected person's body and where that infected person does not disclose to the other person the fact of that infected person's being an HIV infected person prior to such use;

(3) Offers or consents to perform with another person an act of sexual intercourse for money without disclosing to that other person the fact of that infected person's being an HIV infected person prior to offering or consenting to perform that act of sexual intercourse;

(4) Solicits another person to perform or submit to an act of sodomy for money without disclosing to that other person the fact of that infected person's being an HIV infected person prior to soliciting that act of sodomy; or

(5) Donates blood, blood products, other body fluids, or any body organ or body part without previously disclosing the fact of that infected person's being an HIV infected person to the person drawing the blood or blood products or the person or entity collecting or storing the other body fluids, body organ, or body part,

is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than ten years. (Code 1933, § 26-2910, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1988, p. 1799, § 3.)

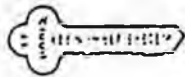
Editor's notes. — Ga. L. 1988, p. 1799, § 1, provides: "The General Assembly finds that Acquired Immunodeficiency Syndrome (AIDS) and its causative agent, including Human Immunodeficiency Virus (HIV), pose a grave threat to the health, safety, and welfare of the people of this state. In the absence of any effective vaccination or treatment for this disease, it threatens almost certain death to all who contract it. The disease is largely transmitted through sexual contacts and intravenous drug use, not through casual contact, and, while deadly, is therefore preventable. The key component of the fight against AIDS is education. Through public education and counseling our citizens can learn how the disease is transmitted and, thus, how to protect themselves and prevent its spread. The Department of

Human Resources is encouraged to continue its efforts to educate all Georgians about the disease, its causative agent, and its means of transmission. In addition, voluntary testing should be encouraged for anyone who feels at risk of infection. While education, counseling, and voluntary testing are vital to the elimination of this epidemic, other measures are needed to protect the health of our citizens, and it is the intention of the General Assembly to enact such measures in the exercise of its police powers in order to deal with AIDS and HIV infection."

Law reviews. — For survey article on criminal law and procedure, see 34 Mercer L. Rev. 89 (1982). For annual survey of criminal law, see 38 Mercer L. Rev. 129 (1986).

remand this cause to the circuit court of Cumberland County to allow defendant to file a new motion to withdraw his guilty plea and to a hearing on that motion in full compliance with Rule 64(d). If, upon completion of the proceedings on remand, defendant's motion to withdraw his guilty plea is denied, this court will address, at defendant's request, the correctness of that decision and the remaining issues raised herein. See *People v. Garrett* (1990), 130 Ill.2d 159, 165, 161 Ill.Dec. 329, 564 N.E.2d 784.

Circuit court ordered to grant writs as provided with directions.



155 Ill.2d 5e-9

196 Ill.Dec. 629

PEOPLE, State of Illinois, Respondent,

v.

Johnny GILSON, Petitioner.

No. 76090.

Supreme Court of Illinois.

April 6, 1994.

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

Petition for leave to appeal allowed.

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



155 Ill.2d 22

196 Ill.Dec. 629

The PEOPLE of the State of Illinois, Appellant,

v.

Caretha RUSSELL, Appellee.

The PEOPLE of the State of Illinois, Appellant,

v.

Timothy LUNSFORD, Appellee.

Nos. 73721, 74443.

Supreme Court of Illinois.

Jan. 29, 1994.

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

Reversed and remanded.

1. Constitutional Law §90.1(1)
Health and Environment §21

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

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 of the State
 Appellant.
 SELL, Appellee.
 of the State
 Appellant.
 FORD, Appellee.
 No. 7443.
 of Illinois.
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charge, in separate
 knowingly transmitting
 or virus (HIV) to an
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 M. declared criminal
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S.H.A. 720 ILCS 5/12-16.2; S.H.A.
 Art. 1, § 4; U.S.C.A. Const. Amend. 1.

1. Constitutional Law 291
 Health and Environment 221

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

2. Health and Environment 221

Criminal statute prohibiting knowing
 transmission of human immunodeficiency vi-
 rus (HIV) to another through intimate con-
 tact was not unconstitutionally vague; stat-
 ute was sufficiently clear and explicit and
 provided sufficiently definite standards for
 law enforcement and triers of fact, and that
 statute might open innocent conduct of oth-
 ers to prosecution was matter of pure specu-
 lation given specific conduct of two defen-
 dants, one of whom was charged with engag-
 ing in consensual sexual intercourse know-
 ing that she was infected without telling her
 partner and one of whom was charged with
 raping woman knowing that he was infected.
 S.H.A. 720 ILCS 5/12-16.2; S.H.A. Const.
 Art. 1, § 2; U.S.C.A. Const. Amend. 14.

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

Carrie J. Hightman, Stuart I. Graff and
 Judith M. Feller, of Schiff, Hardin & Waite,
 and John R. Hammell, Harvey Crossman,
 Colleen K. Connell, Mathew S. Nosanchuk
 and Pilar Penn, Chicago, for appellee in No.
 79721.

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

Susan J. Curry, and Mark E. Wojcik, Chi-
 cago, for amici curiae AIDS Legal Council
 of Chicago.

Gregg W. Boneili, of Mattoon, and Michael
 L. Clusen, Chicago, for appellee in No. 74433.

Justice HEIPLE delivered the opinion of
 the court:

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

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

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

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

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

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

(1) Neither the statute nor the cases before us have even the slightest connection with free speech. Consequently, pursuant to constitutional interpretations of the United States Supreme Court, defendants' overbreadth argument and their argument of facial vagueness are inapplicable. *Bates v. State Bar* (1977), 433 U.S. 350, 350, 97 S.Ct. 2691, 2707, 53 L.Ed.2d 310, 333; *Smith v. Goguen* (1974), 415 U.S. 566, 94 S.Ct. 1242, 39 L.Ed.2d 605; *Broadrick v. Oklahoma* (1973), 413 U.S. 601, 611-17, 93 S.Ct. 2008, 2015-15, 37 L.Ed.2d 330, 339-43; *Grayned v. City of Rockford* (1972), 408 U.S. 104, 92 S.Ct. 2204, 33 L.Ed.2d 222; *People v. Garrison* (1980), 82 Ill.2d 444, 45 Ill.Dec. 132, 412 N.E.2d 483.

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

The subject statute provides in pertinent part:

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

1. engages in intimate contact with another;

(b) For purposes of this Section:

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

Vagueness, like beauty, may be in the eye of the beholder. We, however, read the statute as being sufficiently clear and explicit so that a person of ordinary intelligence need not have to guess at its meaning or application. Also, it provides sufficiently definite standards for law enforcement officers and triers of fact so that its application need not depend merely on their private conceptions. *Smith v. Goguen* (1974), 415 U.S. 566, 94 S.Ct. 1242, 39 L.Ed.2d 605; *Grayned v. City of Rockford* (1972), 408 U.S. 104, 92 S.Ct. 2204, 33 L.Ed.2d 222; *Interstate Circuit, Inc. v. City of Dallas* (1968), 390 U.S. 676, 88 S.Ct. 1298, 20 L.Ed.2d 225.

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

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

Reversed and remanded.



202 Ill.App.3d 568

182 Ill.Dec. 734

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

v.

Randall Lee DEMPSEY, Defendant-
Appellant.

No. 5-91-0033.

Appellate Court of Illinois,
Fifth District.

March 19, 1993.

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

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

Criminal Law §1170½(1)

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

2. Criminal Law §1157(2)

Witnesses §79(1)

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

3. Criminal Law §1157(2)

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

4. Witnesses §10(1)

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

5. Witnesses §10(1)

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

6. Witnesses §79(1)

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

7. Sodomy §6

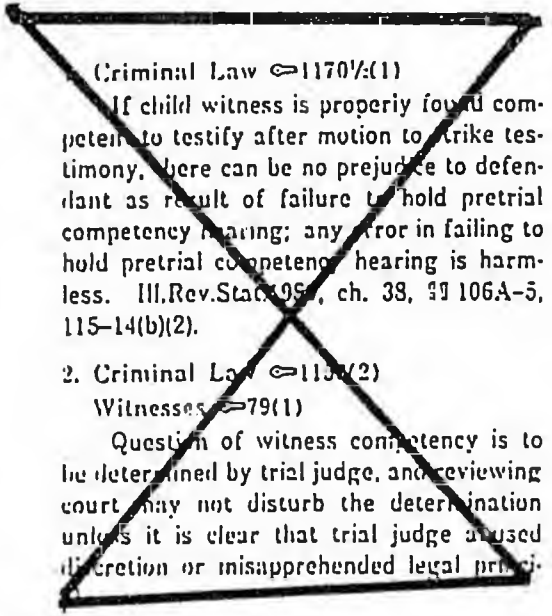
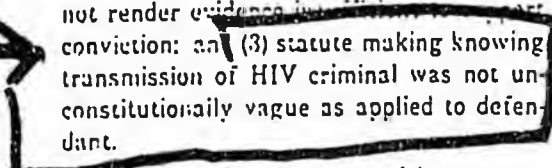
Fact that nine-year-old male victim of sexual assault had repeatedly denied that assault occurred did not make victim's testimony at trial that assault did occur unworthy of belief; jury had been fully advised as to circumstances under which victim made accusations and circumstances under which he recanted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

8. Criminal Law §942(2)

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

9. Criminal Law §474.4(4)

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



arguments. We do not think this will unduly prejudice defendant for, as we explained in *Neison*, it is only the defendant's own actions which will necessitate the use of the syndrome testimony. The evidence will not be inadmissible simply to bolster the victim's testimony unless the victim's credibility has first been brought into question.

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

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

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

(1) engages in intimate contact with another;

(b) For purposes of this Section:

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

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

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

Defendant argues that the statute is unconstitutionally vague because the term

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

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

ciently defined and of the word "could" late contact encourage of conduct. it e what behavior is the term "intimate" is not adequately Defendant argues "bodily fluid" is not conclude that saliva mit the virus, when assert that these are ble of transmitting ce, because the word uch a broad range of conclude that some etrating oral, anal or dly transmit the vi- fers that only these s could transmit the her argues that one er biting or spitting wingly infected with inal transmission of tute does not define possible transmitters ant argues that these atute render it uncon- that it fails to give s to what acts are s arbitrary and dis- on.

ent must fail because, standing to raise the e statute as applied to s, the statute is not tional as applied to d that vagueness chal- which do not involve edoms must be exam- facts of the case at *Jihan* (1989), 127 Ill.2d 122, 425, 537 N.E.2d prevail in a vagueness e that does not impli- nt concerns, a party t the statute is vague onduct for which the ecuted. (*Jihan*, 127 Dec. at 425, 537 N.E.2d must show that the e clear notice that the

party's conduct was prohibited. (*Jihan*, 127 Ill.2d at 385, 130 Ill.Dec. at 425, 537 N.E.2d at 751.) The right to challenge a statute as being vague on its face where the statute clearly applies to the conduct of the party making the challenge does not exist unless first amendment concerns are involved. (*Jihan*, 127 Ill.2d at 386, 130 Ill. Dec. at 425, 537 N.E.2d at 754.

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

A statute need only be sufficiently certain to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by law. (*People v. Lowe* (1990), 202 Ill.App.3d 648, 653, 148 Ill.Dec. 136, 139, 560 N.E.2d 438, 441.) A person should not be subjected to a penalty for certain conduct unless the words of the statute clearly describe the conduct prohibited. (*People v. Taylor* (1990), 138 Ill.2d 204, 211, 149 Ill.Dec. 207, 300, 561 N.E.2d 667, 670.) However, a defendant may be prosecuted under a statute without violating his right of due process if his conduct falls squarely within the statute's proscriptions, even though the statute may be vague as applied to other conduct. (*Taylor*, 138 Ill.2d at 211, 149 Ill.Dec. at 300, 561 N.E.2d at 670.) The fact that there may be borderline cases wherein a degree of uncertainty exists as to the applicability of a statute does not render the statute unconstitutional as to conduct about which no uncertainty exists. *People v. Witzkowski* (1972), 53 Ill.2d 216, 219, 290 N.E.2d 236, 239.

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

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

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

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

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

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

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

KNOWING EXPOSURE/TRANSMISSION
5/25/93

CRIMINAL PENALTIES FOR KNOWINGLY TRANSMITTING/EXPOSING
ANOTHER TO HIV INFECTION

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

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

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

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

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

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

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

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

✓ Illinois, HB 1471 (89) - class 2 felony for criminal transmission = intimate contact; blood, semen, tissue or organ donation; sell, exchange, etc. non-sterile IV drug paraphernalia. Provides an affirmative defense if the person exposed knew that the infected person was infected with HIV, knew that the action could result in HIV infection and consented to the action with that knowledge.

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

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

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

HB 425 (90) - felony for donating organs, skin or other human tissue; class A misdemeanor for persons who 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.

ADDITIONAL INFORMATION
PENALTIES IN OTHER

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

Maryland, SB 719, Chapter 709 (89) - misdemeanor (may not knowingly transfer or attempt to transfer)

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

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

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

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

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

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

South Carolina, HB 2807, Ramification 547 (88) - sale, donation, exchange of blood products; "exposing another person to HIV without first informing"; SB 1166 (90) - felony (upon conviction must be fined not more than \$5,000 or imprisoned for not more than 10 years) for engaging with or without consent in sexual intercourse (vaginal, anal or oral) without first informing in prostitution, selling or donating blood or other body fluids or sharing needles

Tennessee, HB 461, Chapter 281 (91) - class C felony for committing prostitution when a person knows that he or she is HIV+

Texas, SB 859 (89) - felony for "engaging in conduct likely to transfer"

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

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

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

TOTAL = 28 STATES

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."

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.

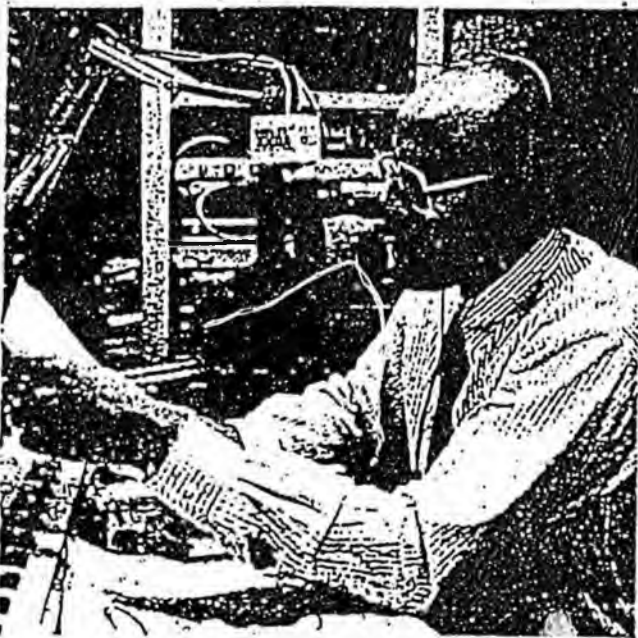
But Mr. Johnson said in an interview on Thursday that he was certain it was not his first contact with the woman.

"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,"



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 community-wide 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 got 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 district on Dallas's northwest side, he 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 Jr., a 32-year-old accountant. "It is serial killing. But true or not, promiscuity has devalued, believe me."

Coincidentally, the Dallas City Council voted Wednesday to allot \$118,650 for AIDS education and assistance programs. Although the Council budgeted \$100,000 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 Polit

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

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COMPLIMENTS OF THE ALASKA STATE LIBRARY

Jet June 10, 1991 Page 18

CRIME

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

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

But authorities fear the 25-year-old, who was paroled in March following convictions on charges of second-degree burglary and robbery, may go free and resume his grim task if the only woman who has agreed to testify against him backs down for fear of being identified by the media. The 22-year-old Oakland woman "is indicating that she is 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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← **11 Citizen Arrest:** A resident of the Mount Pleasant neighborhood of Washington, D.C. asks for help from police after area residents tied him to a sapling tree during a recent outbreak of violence that erupted after a police officer shot a Hispanic youth. Officers untied the man and let him go free.

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File 703:USA Today 1989-1995/Mar 09
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 AIDS-TRANSMISSION CONVICTION REAFFIRMED
 USA Today (US) - TUESDAY October 16, 1990
 By: Tony Mauro
 Edition: FINAL Section: NEWS Page: 07A
 Word Count: 395

MEMO:
 NOTES: Accompanies: SUPREME COURT

TEXT:

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

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

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

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

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

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

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

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

The high court's action affirms his conviction.

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

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

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

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

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

FOCUS

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

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DIALOG(R)File 632:Chicago Tribune

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HIGH COURT UPHOLDS LAW BANNING INTENTIONAL SPREAD OF AIDS VIRUS

Chicago Tribune (CT) - FRIDAY, January 21, 1994

By: Jan Crawford, Tribune Legal Affairs Writer.

Edition: NORTH SPORTS FINAL Section: CHICAGOLAND Page: 2

Word Count: 386

TEXT:

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

With the decision, prosecutors now are free to bring criminal

charges against people suspected of spreading HIV.

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

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

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

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

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

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

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

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

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

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

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

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State of Illinois
Department of Public Safety

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File 632:Chicago Tribune 1985-1995/Mar 10
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Edgar defends clemency choice for re-arrested AIDS sufferer
Chicago Tribune (CT) - FRIDAY February 7, 1992
By: Rick Pearson, Chicago Tribune
Edition: NORTH SPORTS FINAL Section: CHICAGOLAND Page: 2
Word Count: 288

TEXT:

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

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

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

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

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

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

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

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

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

threat to society."

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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 to the end of the road. Freshman at the time, the 26-year-old has picked out her 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, trying to take this secret with them. Richmond, the late auto racing star, infected them with the virus that causes AIDS.

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

"From those calls alone — only counting the ones from Charlotte — I 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

RICHMOND: Women follow dead race car driver to the grave

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

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

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

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

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

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

Richmond proposed, LaGena accepted. They consummated their relationship.

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

WHY NOW?

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

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

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

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

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

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

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

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

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

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

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

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

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

ARE THERE OTHERS?

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

The Richmond family also denied the illness.

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

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

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

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

Jackie Lookabill knows.

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

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

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

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

□ Miami Herald researcher Elisabeth Donovan contributed to this report.

SB

24



Sponsor Statement -- SB 24

"An Act relating to a requirement that a parent, guardian, or custodian consent before certain minors receive an abortion; establishing a judicial bypass procedure by which a minor may petition a court for authorization to consent to an abortion without consent of a parent, guardian, or custodian; amending the definition of 'abortion'; and amending Rules 40 and 79, Alaska Rules of Civil Procedure; Rules 204, 210, 212, 213, 508, and 512.5, Alaska Rules of Appellate Procedure; and Rule 9, Alaska Administrative Rules."

Senate Bill 24 allows enforcement of existing law requiring parental consent before an abortion can be performed on a minor. Parental consent is required under AS 18.16.010, approved by the Legislature in 1970. However, a 1976 Attorney General's opinion declared the statute unenforceable as it lacks a judicial bypass provision which would enable a minor to receive permission from a judge as an alternative to a parent. Various Supreme Court decisions have held that judicial bypass is necessary if parental consent laws are to meet constitutional muster. SB 24 adds the required bypass.

In other states, parental involvement laws have had a positive impact, reducing both the number of abortions *and* the number of teen pregnancies. During the first six years Minnesota's parental involvement law was in effect, the teen pregnancy rate fell 20.5 percent, teen abortions declined 27.4 percent, and the teen birth rate went down 12.5 percent.

SB 24 also upholds the rights of parents, which are uniquely disregarded in the area of abortion. Parental consent is required for virtually every medical procedure. An exception should not exist for abortion. In Alaska, young people under age 18 are not considered mature enough to be served alcohol, buy cigarettes, or vote in elections. Even marriage is not permitted, unless a parent consents. But a teenager can obtain an abortion, even one paid for by the state, and the parents are not even required to be notified of that fact.

A clear majority of Alaskans -- 78 percent -- expressed support for parental consent legislation considered in the 19th Legislature. Parental involvement laws are on the books in 38 states. These statutes are enforced in 27 of these states.

Sectional Analysis -- SB 24

"An Act relating to a requirement that a parent, guardian, or custodian consent before certain minors receive an abortion; establishing a judicial bypass procedure by which a minor may petition a court for authorization to consent to an abortion without consent of a parent, guardian, or custodian; amending the definition of 'abortion'; and amending Rules 40 and 79, Alaska Rules of Civil Procedure; Rules 204, 210, 212, 213, 508, and 512.5, Alaska Rules of Appellate Procedure; and Rule 9, Alaska Administrative Rules."

Prepared by: Mike Pauley, Staff to Sponsor SENATOR LOREN LEMAN

Last updated: Monday, January 27, 1997

Section 1: Purpose and Legislative findings

- Intent of legislation is to protect the health and welfare of minors, foster and preserve the family structure as a viable social unit, and protect the rights of parents to rear their children.
- The legislature finds that parents often possess information on the medical history of the minor that is essential to a physician's or surgeon's medical judgment.
- The legislature also finds that minors stand to benefit from parental counsel; the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related.

Section 2: Amends Title 18 of Alaska Statutes (Health & Safety)

- Repeals existing language on parental consent [AS 18.16.010(a)(3)] and replaces it with language requiring *either* parental consent or court authorization before an abortion can be performed on an unemancipated minor. The bill establishes a rebuttable presumption that an unmarried woman under 18 is unemancipated.

Section 3: Establishes new subsections under AS 18.16.010 (Regulation of Abortions)

- Person who performs an abortion without obtaining the required consent is civilly liable to the minor's parent(s) or guardian for compensatory and punitive damages.
- It is an affirmative defense to prosecution if the person performing the abortion was provided by the pregnant minor with false, misleading, or incorrect information about age, marital status, or emancipation.

- It is an affirmative defense to prosecution if the person performing the abortion could not comply with the consent requirement because the continuation of the pregnancy posed an immediate threat of serious risk to the life or physical health of the pregnant woman, necessitating an immediate abortion.

Section 4: Establishes new sections under AS 18.16 (Regulation of Abortions)

- **Sec. 18.16.020** provides that an abortion may not be performed on an unemancipated minor unless...
 - 1) one of the minor's parents or the minor's guardian has consented to the procedure in writing; or
 - 2) a court has issued an order permitting the minor to consent to the abortion without obtaining consent of a parent or guardian; or
 - 3) a court by its inaction has constructively authorized a minor to consent to the abortion (*see Sec. 18.16.030*).
- **Sec. 18.16.030** outlines the procedure for seeking a court order (judicial bypass) allowing a minor to consent to an abortion without first securing parental consent. Complaints must be filed in superior court. Complaint must be under oath and include a statement that the complainant is pregnant, unmarried, under age 18, unemancipated, and wishes to have an abortion without obtaining parental consent. In addition, the complainant must allege that she is sufficiently mature and well-informed to make an abortion decision without parental consent *and/or* that one or both of her parents or her guardian is abusing the complainant physically, sexually, or emotionally; or that securing consent is otherwise not in the woman's best interest. Sec. 18.16.030 also sets time limits for hearing complaints; establishes an appeals process; requires appointment of an attorney for complainants who have not retained counsel; provides for the anonymity of the complainant. If a court does not act on a complaint within the time limits established in the legislation, it shall be considered a "constructive order" allowing the minor to consent to the abortion without the consent of a parent or guardian.
- **Sec. 18.16.090** defines the terms "abortion" and "unemancipated".

Section 5: Amends Title 44 of Alaska Statutes (State Government)

- **Sec. 44.21.410(a)** is amended to require the Office of Public Advocacy to provide legal representation for minors seeking a court order for an abortion without parental consent.

Section 6: Repeals Alaska Statute 18.16.010(d)

- The existing definition of abortion under AS 18.16 (Regulation of Abortions) is repealed (*replaced with new definition @ Sec. 18.16.090*).

Section 7: Amending Rule 40, Alaska Rules of Civil Procedure

- Sec. 18.16.030(c) of the bill has the effect of amending Rule 40 by setting time limits for hearing judicial bypass cases.

Section 8: Amending Rules 204, 210, 212, and 213, Alaska Rules of Appellate Procedure

- Sec. 18.16.030(j) of the bill has the effect of amending Rules 204, 210, 212, and 213, by setting time limits for judicial bypass appeals, and also by liberally modifying or dispensing with formal requirements for the form and content of appellants' briefs.

Section 9: Amending Rule 512.5, Alaska Rules of Appellate Procedure

- Sec. 18.16.030(k) of the bill has the effect of amending Rule 512.5 by making certain appellate records and papers confidential.

Section 10: Amending Rule 9, Alaska Administrative Rules; Rule 79, Alaska Rules of Civil Procedure; and Rule 508, Alaska Rules of Appellate Procedure.

- Sec. 18.16.030(m) of the bill has the effect of amending Rule 9, Rule 79, and Rule 508 by prohibiting filing fees and court cost assessments in judicial bypass cases.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Parental consent before a minor's BRU: Trial Courts
abortion Component: _____
 Sponsor: Sen. Leman
 Requestor: Senate HESS COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	10.0	10.0	10.0	10.0	10.0	10.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	10.0	10.0	10.0	10.0	10.0

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

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	10.0	10.0	10.0	10.0	10.0	10.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	10.0	10.0	10.0	10.0	10.0	10.0

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CSC*
 Agency: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CSC*
 Agency: Alaska Court System

Phone: 264-8228

Date: 01/28/97

Date: 01/28/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

ALASKA COURT SYSTEM
FISCAL ANALYSIS
SB 24

SB 24 provides that a person may not knowingly perform an abortion upon a woman who is unmarried, under 18 years of age, and unemancipated, unless, before the abortion, one of the woman's parents or the woman's guardian or custodian has consented to the abortion in writing; a court issues an order authorizing the woman to consent to the abortion; or a court, by its inaction, constructively authorizes the woman to consent to the abortion. A woman who seeks a court order authorizing an abortion is required to have an attorney. If she cannot afford an attorney, one must be appointed by the court from the Office of Public Advocacy (OPA). Because we are dealing with unemancipated minors, it must be assumed that all attorneys will be paid for by the state. OPA has estimated that 112 minor females will seek judicial approval for an abortion each year.

SB 24 requires a superior court judge to hold a hearing in these cases on an expedited basis. This note assumes that the review of documents, the hearing, the decision process and the preparation of the order will average two hours of judicial time. This note also reflects clerical costs associated with processing 112 filings which involve expedited hearings and which require court clerks to actively follow cases to make certain that time limits are met and that constructive consent has been given in cases in which a court takes no action within the specified period. This note does not reflect costs for appeals in cases where a court denies permission for an abortion.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date: 1/28/97 3:30 pm.
 Title: "An Act relating to a requirement that a parent, guardian, or custodian consent before certain minors receive an abortion:..."
 Sponsor: Senator Leman
 Requestor: (S) HESS

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	168.0	168.0	168.0	168.0	168.0	168.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	168.0	168.0	168.0	168.0	168.0	168.0

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

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

FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	168.0	168.0	168.0	168.0	168.0	168.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	168.0	168.0	168.0	168.0	168.0	168.0

Estimate of any current year (FY 97) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The judicial bypass provisions of this bill contemplate a hearing at which an unemancipated minor may seek the court approval of her wish to have an abortion. The bill mandates the appointment of counsel for the minor but does not identify which agency would provide these services. This fiscal note assumes that Office of Public Advocacy (OPA) would be appointed because that agency currently represents children in most other civil cases. The fiscal note is based on the following assumptions: (1) 2,400 abortions per year are performed in Alaska; (2) 12 percent of abortions per year (288) are performed on women aged 17 or younger; (3) 39 percent of young women (112) wishing to obtain an abortion would seek a judicial bypass, based on the fact that 61 percent of parents are informed of abortions in those states which do not require parental notice or consent.

(continued)

Prepared by: Brant McGee, Public Advocate
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Administration

Date: 1/28/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 24

ANALYSIS: (continued)

Thus, OPA could be expected to provide attorney representation to 112 young women each year in judicial proceedings in which the minor sought to obtain approval for an abortion. The legal representation in these cases would be short but intense. The Office of Public Advocacy estimates that such services would cost an estimated \$1,500 per case for a total of \$168.0 per year.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date: _____
 Title: "An Act relating to a requirement that a parent, guardian, or custodian consent before certain minors receive an abortion..."
 Sponsor: Senator Leman
 Requestor: (S)HESS

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

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE:

(Thousands of Dollars)

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

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The bill would require parental, guardian or custodian consent in writing before an abortion for an unmarried, pregnant unemancipated woman under 18 years of age. A judicial process is set up to bypass the consent requirement by the filing of a complaint in superior court. A lawyer shall be appointed to represent the complainant if she has not retained an attorney, but Section 5 of the bill provides those lawyers will be from the Office of Public Advocacy. Therefore, there will be no fiscal impact on the Public Defender Agency.

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

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 1/28/97

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date: _____
 Title: Relating to parental consent before
certain minors receive an abortion
 Sponsor: Leman
 Requestor: _____

Dept. Affected: Health and Social Services
 BRU: Medical Assistance
 Component: Medicaid Non-Facility
 COMPONENT SERIAL NO. 229
 See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

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

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

CHANGES IN REVENUES						
----------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

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

Enactment of this legislation would have very little impact on the funding of abortions under the General Relief Medical Assistance and Medicaid Programs. Very few abortions funded by these programs are performed on minors.

Prepared by: Nancy Weller
 Division: Medical Assistance

Phone: 465-5825
 Date: 01/10/97

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

Date: 1/24/97

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NATIONAL ASSOCIATION OF SOCIAL WORKERS
ALASKA CHAPTER

525 Main Street, Juneau AK 99801
586-4438 1-800-478-6279 Fax: 586-4439
naswak@alaska.net

Testimony Regarding

SB 24 - PARENTAL CONSENT FOR ABORTION

Before the
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE
ALASKA SENATE
January 28, 1997

Presented by
Angela M. Salerno, ACSW
Executive Director,
National Association of Social Workers Alaska Chapter



NATIONAL ASSOCIATION OF SOCIAL WORKERS ALASKA CHAPTER

525 Main Street, Juneau AK 99801
586-4438 1-800-478-6279 Fax: 586-4439
naswak@alaska.net

The National Association of Social Workers (NASW) is the world's largest organization of professional social workers. NASW's 155,000 members nationwide and 460 in Alaska work in a wide range of settings at all levels in the public and private sectors. Professional social workers focus on vulnerable populations and promote state and federal policies which enhance the lives of the people we serve.

Thank you for the opportunity to address the Committee on SB 24 - Parental Consent for Abortion.

NASW opposes SB 24 and does not recommend its passage.

A pregnant woman's constitutional right to choose between childbirth and abortion was established in 1973 by the Supreme Court's landmark ruling in *Roe V. Wade*. All women, including those under 18, are entitled to a safe, legal abortion.

Of the more than one million teenage pregnancies that occur in the United States each year, over 80 percent are unintended. Nearly all pregnant teens are unwed, and some 40% of them choose abortion. The bill before you will require that young women seeking to terminate an unwanted pregnancy receive the permission of parents, guardians or the court before receiving a safe, legal abortion.

This proposal will not act to promote desirable parental consultation. Ideally, a teenager should be able to tell her parents about her pregnancy, obtain their love and support and arrive at critical decisions about her future through family discussions. In fact, the majority of pregnant teenagers do tell at least one parent about their pregnancies. Based on a national survey of more than 1,600 unmarried minors having abortions in states without parental consent laws, 61% discussed the decision to have an abortion with at least one of their parents. The younger the minor, the more likely she was to have voluntarily discussed the abortion with her parents.

Parental involvement laws do not strengthen family relationships. The need to reinforce family relationships is the reason most often cited to justify state laws requiring parental consent before abortion. But such laws are unnecessary for stable and supportive families, and they are ineffective and cruel for unstable, troubled families. Some teenagers cannot tell their parents. Some are victims of incest or other forms of family violence - one study showed that 14% of minors having abortions believed that, if forced to tell their parents about their pregnancies, they would face physical abuse, and 11% feared violence between their parents. Mandatory parental consent cannot transform abusive families into supportive ones.

Mandating parental involvement poses health risks to teenagers. Young women already are more likely than older women to have later abortions, and parental involvement laws only cause further delays either because of fears of telling their parents or because of the inevitable delays in going to court for a judicial bypass hearing. While abortion at all stages of pregnancy is safer than childbirth, the risk of major complications increases 15 - 30% per week. Statistics compiled by the Federal Centers for Disease Control indicate that the risk of death from childbirth is, on average, 24 times higher than the risk of death from abortion up to 12 weeks of pregnancy. Following enactment of Minnesota's parental notification laws, second-trimester abortions among minors increased by 18%. Minors who cannot obtain an abortion in their small towns or villages must travel to other sites to have the procedure, are forced to carry their pregnancies to term, or resort to illegal abortion. Under Minnesota notification statute, the birth rate in Minneapolis for 15 -17 year olds rose 38%. The American Medical Association has long recognized that parental notification and consent requirements deter minors from seeking necessary health care. The desire to maintain secrecy has been one of the leading reasons for illegal abortion deaths since the Supreme Court recognized the constitutional right to abortion in

1973. Further, the AMA believes some minors may be physically or emotionally harmed if required to involve a parent in the abortion decision.

Teenagers faced with the choice between childbirth and abortion can make a responsible decision without parents or courts. The American Psychological Association has found that minors are usually able to make intelligent, informed decisions about pregnancy. Even young women from severely troubled families often show great maturity and sensitivity when seeking confidential birth services.

A judicial bypass option is inadequate and discriminatory in Alaska. Young women using this procedure often experience fear, anxiety and shame as they are forced to reveal detail of their private lives to strangers in the courtroom. Mandatory representation by the currently overburdened Office of Public Advocacy will surely result in delays or inadequate representation. In rural Alaska, confidentiality will be severely compromised as a young woman will most likely be recognized by the judge or other court personnel.

In Alaska, the courts are moving toward assigning teenagers greater responsibility for their actions, not imposing further restrictions. During the last legislative session lawmakers were successful in passing laws to treat certain juvenile offenders as adults. In the 20th Legislature, bills have been introduced to remove the protections of immaturity from teenagers who commit minor offenses. It is unfair to treat pregnant teens differently with proposals to strip personal responsibility in decisions about reproductive matters.

Parental consent laws are an unconstitutional attack on a women's right to abortion, and in Alaska, on an individual's right to privacy. *Roe v. Wade* entitled all women to legal, safe abortion. Parental consent as well as other provisions of SB 24 such as the creation of civil liability for performing abortion, are barriers manufactured to interfere with this constitutional guarantee. Should this bill become law in Alaska, there will most certainly be court challenges, as the Constitution of the State of Alaska specifically guarantees each citizen the right to privacy.

While NASW supports strong families and believes that parents have profound interests in their children's well-being, in the case of pregnancy, a teenager's privacy rights must be paramount. Courts have found that teenagers who want to keep their pregnancies a secret almost always have sound reasons. When there is a reason to expect an extremely abusive parental reaction to a young woman's unplanned pregnancy, her right to privacy must come first since she is in the best position to know whether or not she is in danger. A legislature that is unfamiliar with a young woman's particular situation is not in a position to force her to involve her parents. Where abortion is concerned, privacy can be a life or death matter for teenagers.

In acknowledging and affirming the social work profession's commitment to respecting diverse value systems in a pluralistic society, we recognize that the issue of abortion is controversial because it reflects the different value systems of different groups. Consequently, NASW does not take a position concerning the morality or immorality of abortion.

NASW's position concerning abortion services is based on the principle of self-determination. Every individual must be free to participate or not participate in abortion services. In the event that a woman choose abortion the following services should be available to her:

- *counseling and referral provided by professionally trained staff who are knowledgeable of the social and psychological dynamics of unwanted pregnancy and abortion*
- *safe surgical care, including pre- and post-operative services*
- *counseling regarding the use of contraception and the prevention of unwanted pregnancies*
- *provision of appropriate contraceptive devices. These devices should be available to all women.*

January 28, 1997

Kimberly Miller
3151 Norm Circle
Anchorage, AK 99507

Senator Gary Wilken
State Capitol
Juneau, AK 99801-1182

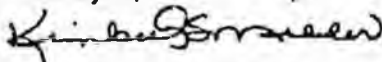
Dear Senator Wilken:

I am writing to express my opposition to SB 24 regarding requiring parental consent for minors seeking an abortion. I feel that SB 24 is an attempt to end safe and legal abortions by erecting insurmountable barriers for young women. The argument that SB 24 would enhance teen-parent communication is inaccurate. The following is a list of reasons why I am adamantly opposed to SB 24:

- * Studies have shown that nationally the majority (61%) of minors who have abortions do so with at least the knowledge of one parent. The younger the minor the more likely she is to voluntarily discuss the abortion with a parent. The study looked at states without parental consent laws.
- * Studies have shown that parental consent laws do not encourage young women to tell their parents. The minority of minors who do not tell their parents come from families where communication is difficult or dangerous due to a variety of circumstances. The belief that telling their parents would result in further abuse, family violence, or increased drug/alcohol use for example is real. Thus, SB 24 would act to further victimize these young women.
- * The judicial bypass process is not an adequate safety valve for these young women. The judicial process can be a fearful, anxiety and shame producing experience where a young woman who is already in a vulnerable and difficult situation is subjected to further barriers in finding a resolution to her situation. The judicial system is not an appropriate venue for this type of decision to be made.
- * Minors in rural Alaska will have to maneuver additional obstacles to receive safe and legal abortions if SB 24 is enacted. If the young woman's situation was such that she could not tell her parents she would be forced to go to a local judge who more than likely knows her to seek a judicial bypass. The process, coupled with the fact that she already has to travel to a strange place to receive an abortion, makes young women in rural communities even more penalized by SB 24.

The net effect of SB 24 will be to chip away at women's legal right for a safe abortion. After enacting a parental consent law in Minnesota the state had a 18% increase in second-trimester abortions among minors, and the birth rate in Minneapolis for 15-17 year olds increased by 38.4%. These statistics show how detrimental SB 24 will be for Alaskan's. I urge you to take Alaska in a safe, healthy and positive direction rather than cause more hardship for Alaska's children and families.

Thank you,



Kimberly Miller, MSW

Alaska Women's Lobby
P.O. Box 210685 Anchorage 99521
211 Fourth Street Juneau #108 99801
586-1107
fax: 586-1097

POSITION PAPER

SB 24: Parental Consent Before Minor's Abortion

The Alaska Women's Lobby is a statewide advocacy organization representing thousands of Alaskans working toward expanded opportunities, equal access, and enhanced representation for women. The Lobby is supported solely by contributions.

The Alaska Women's Lobby opposes Senate Bill 24. We wholeheartedly encourage open and honest communication between parents and their children, and support efforts to prevent teenage pregnancy. We don't believe, however, that SB 24 will accomplish either of those goals.

SB 24 places an untenable judicial burden on young women who, by virtue of their situation, are already facing difficult decisions. By requiring a teenager to seek judicial redress, SB 24 assumes that young women in these situations not only have the resources to seek but also the access to obtain such redress.

In its 1992 decision in Planned Parenthood of Southeastern Pennsylvania v. Casey, the U.S. Supreme Court made it clear that states may not veto a woman's decision to terminate her pregnancy, but that states could impose restrictions so long as those restrictions don't have the "purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion." By requiring young Alaskan women to obtain judicial approval in order to terminate a pregnancy, SB 24 creates just the kind of "substantial obstacle" the U.S. Supreme Court decision prohibits.

SB 24 will not reduce the rate of teenage pregnancy, encourage teens to talk to their parents, or transform dysfunctional families into stable ones. It will force teens to take unwanted pregnancies to term, to have illegal abortions, or face the results of exacerbating an already troubled or dangerous home life.

The thousands of Alaskans represented by the Alaska Women's Lobby oppose SB 24.

January 29, 1997

Dear Members of the Senate Health, Education, and Social Services Committee:

The Juneau Coalition for Pro-Choice (JCPC) would like to go on record opposing the passage of SB 24 which would restrict a young woman's ability to act on her Constitutionally protected right to choose. JCPC strongly encourages all young women who become pregnant, and the putative fathers, to discuss options with their parents if they are able, but such communication cannot be achieved through passage of this bill. The majority of young women who do not involve their parents in making decisions about a pregnancy have problems with their family which precludes discussion about the issue. SB 24 only serves to put minors at risk.

Judicial bypass procedures are not the answer either, as this option is intimidating to a young woman and only results in delay which makes an abortion riskier if the minor gets approval from the judge for an abortion. As an appellate court in California stated "the judicial bypass procedure creates a substantial obstacle whose only effect is to hinder the minor from obtaining an abortion. Whether a minor is capable of giving informed consent to undergo an abortion is a question which can be more easily decided by a physician than a judge." The judicial bypass is particularly unworkable in Alaska where rural communities may not have access to a court, resulting in a law that unreasonably impacts rural Alaskans.

SB 24 does not protect young women who are at risk from physical or emotional abuse by their parents and unconstitutionally restricts a young woman's right to choose to terminate a pregnancy.

Sincerely,



Shannon O'Fallon
President
Juneau Coalition for Pro-Choice

Sec. 18.16.010. Abortions. (a) An abortion may not be performed in this state unless

(1) the abortion is performed by a physician or surgeon licensed by the State Medical Board under AS 08.64.200;

(2) the abortion is performed in a hospital or other facility approved for the purpose by the Department of Health and Social Services or a hospital operated by the federal government or an agency of the federal government;

(3) consent has been received from the parent or guardian of an unmarried woman less than 18 years of age; and

(4) the woman is domiciled or physically present in the state for 30 days before the abortion.

(b) Nothing in this section requires a hospital or person to participate in an abortion, nor is a hospital or person liable for refusing to participate in an abortion under this section.

(c) A person who knowingly violates a provision of this section, upon conviction, is punishable by a fine of not more than \$1,000, or by imprisonment for not more than five years, or by both.

(d) In this section, "abortion" means an operation or procedure to terminate the pregnancy of a nonviable fetus. (§ 65-4-6 ACLA 1949; am § 1 ch 103 SLA 1970; am § 22 ch 166 SLA 1978)

Revisor's notes. — Formerly AS 11.15.060. Renumbered in 1978.

In 1986, the section was reorganized to conform to the style of the Alaska Statutes. Subsection (b) was formerly the last sentence of (a); subsection (c) was formerly (b); and subsection (d) was formerly the second sentence of (a).

Cross references. — For power of the State Medical Board to regulate abortion procedures, see AS 08.64.105.

Editor's notes. — For the constitutionality of statutes similar to this one, see *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), *Doe v. Bolton*, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973), *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52, 96 S. Ct. 2831, 49 L. Ed. 2d 788 (1976), *Sendak v. Arnold*, 429 U.S. 968, 97 S. Ct. 476, 50 L. Ed. 2d 579 (1976), *Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687 (1983), *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 106 S. Ct. 2169, 90 L. Ed. 2d 779 (1986), *Webster v. Reproductive Health Services*, 492 U.S. 490, 109 S. Ct. 3040, 106 L. Ed. 2d 410 (1989), *Hodgson v. Minnesota*, 497 U.S. 417, 110 S. Ct. 2926, 111 L. Ed. 2d 344 (1990), *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502, 110 S. Ct. 2972, 111 L. Ed. 2d 405 (1990), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, U.S. , 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992). See also 1 Am. Jur. 2d,

Abortion and Birth Control, § 3 and 1 C.J.S., *Abortion*, § 2.

Legislative history reports. — For report on ch. 103, SLA 1970 (CSSB 527 (HWE)), see 1970 Senate Journal Supplement No. 10; 1970 Journal Supplements Nos. 12 and 13. Also refer to the following relevant reports on abortion bills: 1970 Senate Journal Supplements Nos. 1 and 4 (re SB 411); 1970 House Journal Supplement No. 11 (re CS HB 776).

Opinions of attorney general. — Separation of responsibilities in AS 18.16.010 is clear: the approval of facilities is granted to the Department of Health and Social Services; the ethical and professional responsibilities of medical doctors are committed to the supervision of the State Medical Board. No language in AS 08.64.105 vitiates any of the responsibilities granted in paragraph (a)(2) to the Department of Health and Social Services. October 7, 1974 Op. Att'y Gen.

Under the language of subsection (a) only paragraph (1) is clearly constitutional; paragraph (2) could be validated by limiting its effect to abortions performed after the end of the first trimester of pregnancy; paragraph (3) is clearly unconstitutional as written; and paragraph (4) is subject to constitutional challenge, as neither the Alaskan or U.S. Supreme Court has dealt with durational residency requirements in the context of abortion. October 21, 1976 Op. Att'y Gen.

NOTES TO DECISIONS

Quoted in *Cleveland v. Municipality of Anchorage*, 631 P.2d 1073 (Alaska 1981).

Cited in *Bird v. Municipality of Anchorage*, 787 P.2d 119 (Alaska Ct. App. 1990).

Collateral references. — 1 Am. Jur. 2d, *Abortion and Birth Control*, § 1 et seq.

1 C.J.S., *Abortion*, § 1 et seq.

Necessity, to warrant conviction of abortion, that fetus be living at time of commission of acts. 16 ALR2d 949.

Pregnancy as element of abortion or homicide based thereon. 46 ALR2d 1393.

Validity of statute or ordinance forbidding or regulating sale or advertisement of contraceptives or abortives, or dissemination of birth control information. 96 ALR2d 955.

Applicability in criminal proceedings of privilege as to communications between physician and patient. 7 ALR3d 1458.

Earlier prosecution for offense during which homicide was committed as bar to prosecution for homicide. 11 ALR3d 834.

Woman upon whom abortion is committed or attempted as accomplice for purposes of rule requiring corroboration of accomplice testimony. 34 ALR3d 858.

Right of action for injury to or death of woman who consented to illegal abortion. 36 ALR3d 630.

Homicide based on killing of unborn child. 40 ALR3d 444.

Minor's right to have abortion performed without parental consent. 42 ALR3d 1406.

Woman's right to have abortion without consent of, or against objections of, child's father. 62 ALR3d 1097.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged. 5 ALR4th 1128.

Entrapment defense in sex offense prosecutions. 12 ALR4th 413.

Validity of state statutes and regulations limiting or restricting public funding for abortions sought by indigent women. 20 ALR4th 1166.

Medical malpractice in performance of legal abortion. 69 ALR4th 875.

Recoverability of compensatory damages for mental anguish or emotional distress for tortiously causing another's birth. 74 ALR4th 798.

Chapter 20. Hospitals.

Article

1. Regulation of Hospitals (§§ 18.20.010 — 18.20.130)
2. Alaska Hospital and Medical Facilities Survey and Construction Act (§§ 18.20.140 — 18.20.220)
3. Payment of Hospital Charges (§§ 18.20.230 — 18.20.260)
4. Quality of Care in Nursing Facilities (§§ 18.20.300 — 18.20.390)

Article 1. Regulation of Hospitals.

Sections

10. Purpose
20. License required
30. Application and fees
40. Issuance and renewal of license and posting
50. Denial, suspension, or revocation of license
60. Regulations and standards
70. Compliance with regulations
75. Risk management

Section

80. Inspection and consultation for alterations
85. Hospital records retention
90. Information confidential
110. Misdemeanor to establish or conduct hospital without license
120. Injunction or other process to prevent establishment or operation without a license
130. Definitions

NOTES TO DECISIONS

Liability for negligence of emergency room physician. — A general acute care hospital has a nondelegable duty to provide nonnegligent physician care in its emergency room and, therefore, the hospital may be held vicariously liable for negligent health

care rendered by an emergency room physician who is not an employee of the hospital, but is, instead, an independent contractor. *Jackson v. Power*, 743 P.2d 1376 (Alaska 1987).

Collateral references. — 40 Am. Jur. 2d, Hospitals and Asylums, § 1 et seq.; 51 Am. Jur. 2d, Licenses and Permits, § 4 et seq.

41 C.J.S., Hospitals, § 1 et seq.

Nonprofit charitable institutions as within operation of labor statutes. 26 ALR2d 1020.

Tax exemption of Blue Cross, Blue Shield, or other hospital or medical service corporation. 88 ALR2d 1414.

Liability of hospital for refusal to admit or treat patient. 35 ALR3d 841.

Exclusion of or discrimination against physician or surgeon by hospital. 37 ALR3d 645.

Propriety of hospital's conditioning physician's staff privileges on his carrying professional liability or malpractice insurance. 7 ALR4th 1238.

Sec. 18.20.010. Purpose. The purpose of AS 18.20.010 — 18.20.130 is to provide for the development, establishment, and enforcement of standards for

(1) the care and treatment of individuals in hospitals, convalescent homes, nursing homes and public health centers, community mental health centers, and facilities for the mentally retarded; and

(b) If the interviewing board member determines that the interview is not adequate to allow license or permit approval without consultation with the board, an in-person interview before a quorum of the board is required. (Eff. 4/10/88, Register 106)

Authority: AS 08.64.100

AS 08.64.255

ARTICLE 2. ABORTIONS.

Section	Section
60. Termination of pregnancy	110. Abortion procedures
70. Informed consent	120. Standards for hospitals and facilities
80. Medical procedures	130. Records
90. Evaluation	140. Limitation
100. Consultation requirements	

12 AAC 40.060. TERMINATION OF PREGNANCY. Termination of pregnancy must be requested by the pregnant woman, unless she has been adjudged mentally incompetent or is unmarried and under 18 years of age, in which case the request must be made by her parent or guardian. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 11.15.060(a)

AS 08.64.105

12 AAC 40.070. INFORMED CONSENT. Unless otherwise provided in 12 AAC 40.060, a written informed consent shall be obtained from the patient or from any other person whose consent is required before termination of a pregnancy. Such written informed consent shall be on the patient's chart. The patient and other persons whose consent is required shall be advised of the medical implications and the possible emotional and physical sequelae of the procedure. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.080. MEDICAL PROCEDURES. The patient shall be examined by a physician licensed in Alaska, and a written record of the patient's physical and emotional health shall be prepared before performing an abortion procedure as set out in 12 AAC 40.110. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.090. EVALUATION. The attending physician shall make an evaluation of the patient and an estimation of the duration of gestation based upon the patient's history, examination and test results. This information shall be recorded on the patient's chart. (Eff. 12/20/70, Register 36)

Authority: AS 08.64.105

AS 08.64.105 gives the State Medical Board authority to adopt regulations to carry into effect the provisions of AS 18.16.010.

12 AAC 40.100. CONSULTATION REQUIREMENTS. Abortions interrupting a pregnancy up to and including the twelfth week of gestation may be performed without consultation. Abortions performed after the twelfth week of gestation shall be preceded by consultation with another physician. The consultation shall include an opinion as to the preferred method of termination of pregnancy. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.110. ABORTION PROCEDURES. During the second or third trimester of a pregnancy, acceptable procedures include dilatation and curettage, suction aspiration of the uterus, injection of pharmacological agents, hysterectomy and hysterotomy. The exact procedure to be used will depend upon the patient's total health, age, associated disease and pathology, and anomalies such as skeletal defects and other medical indications. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.120. STANDARDS FOR HOSPITALS AND FACILITIES. (a) During the second or third trimester of a pregnancy, abortions shall be performed under sterile conditions. A bed and a registered nurse shall be available for a minimum recovery period of one-half hour. A registered nurse shall be present during the procedure.

(b) During the second or third trimester of a pregnancy, blood, blood derivatives, blood substitutes or plasma expanders shall be immediately available when an abortion is performed, and an operating room appropriately staffed and equipped for major surgery in accordance with regulations adopted under AS 18.20.060 shall be immediately available. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.130. RECORDS. During the second or third trimester of a pregnancy, the attending physician shall record a medical history, findings of the physical examination, operative report of the abortion procedure and pathology report as part of the clinical record to be maintained by the hospital or facility. The physician and hospital or facility shall treat the patient's identity and medical record as confidential information. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105

12 AAC 40.140. LIMITATION. A fetus which has not developed beyond 150 days after the first day of the last menstrual period may be

considered non-viable for purposes of AS 11.15.060(a). In the performance of an abortion after that date, the physician shall be guided by a reasonable judgment as to whether the fetus is viable in fact. (Eff. 12/20/70, Register 36; am 8/29/73, Register 47)

Authority: AS 08.64.105 AS 11.15.060(a)

ARTICLE 3. CONTINUING MEDICAL EDUCATION.

Section

- 200. General requirements
- 210. Credit hours
- 220. Certification of compliance

Editor's note: For new location of the substance of former 12 AAC 40.160, see 12 AAC 40.990.

12 AAC 40.200. GENERAL REQUIREMENTS. (a) A physician seeking renewal of a license on or after January 1, 1986 shall obtain an average of 17 credit hours of continuing medical education during each year of the previous license period.

(b) If a licensee fails to meet continuing medical education requirements due to illness or other extenuating circumstances, the board will, in its discretion, grant an extension of time in compliance with AS 08.64.312(c). The board will consider each case on an individual basis. (Eff. 10/8/81, Register 80)

Authority: AS 08.64.100 AS 08.64.312(b)

12 AAC 40.210. CREDIT HOURS. (a) Except as provided in (b) of this section, a licensee may meet the continuing medical education requirements set out in 12 AAC 40.200(a) only by obtaining credit hours in a Category I continuing medical education program accredited by the American Medical Association.

(b) The board will accept the following as the equivalent of the credit hours required under 12 AAC 40.200(a):

(1) a current physician's recognition award from the American Medical Association, American Podiatry Association, American Osteopathic Association, or a recognized subspecialty board; or

(2) initial certification or recertification during the concluding licensing period by a specialty board recognized by the American Medical Association. (Eff. 10/8/81, Register 80; am 5/1/94, Register 130)

Authority: AS 08.64.100 AS 08.64.312(b)

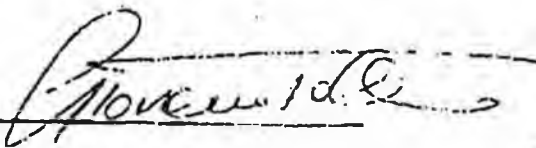


Alaska State Legislature

Please enter into the record my testimony to the Senate H.E.S.S.
 committee name
 committee on SB 24 / Parental Consent, dated 1/29/97
 bill/subject

I urge the committee to PASS this bill.

Parental consent is mandatory for tonsillectomies, appendectomies, and the treatment of infected ingrown toenails in a hospital or clinic. Also, parental consent is required by schools for the students' involvement in sports. It seems pretty obvious to me that it should also be required for abortion when the pregnant woman is a minor. As the father of a girl, I myself would want to know if my daughter is going to risk her life undergoing something more dangerous than an ingrown toenail operation on a basketball game. Also, I would not want my own grandchild to be terminated without my knowledge or approval.

Signed: GIOVANNI TALLINO 
 Testifier

Vice-Chairman, Kodiak Republican Party (But am testifying on my
on my own behalf
 Representing (Optional)

PO Box 4496 Kodiak, AK 99615

Address
 907-486-3043

Phone No.



NATIONAL ASSOCIATION OF SOCIAL WORKERS
ALASKA CHAPTER

525 Main Street, Juneau AK 99801
586-4438 1-800-478-6279 Fax: 586-4439
naswak@alaska.net

January 30, 1997

Senator Gary Wilkin, Chair
Health, Education and Social Services Committee
Alaska State Senate

Dear Senator Wilkin:

Thank you for the opportunity to testify before the Senate HESS Committee concerning SB 24, Parental Consent for Abortion. I'd like to offer some additional information for the public record.

Safety of Abortion

Public testimony alluded to the belief that abortion was an unsafe procedure. The facts do not bear this out:

- 97% of women who obtain abortions before 13 weeks of pregnancy report no complications. (American Medical Association Council Report, *Induced Termination of Pregnancy Before and After Roe v. Wade*, 1992).
- Abortion is 11 times safer than carrying a pregnancy to term. (Gold, R. B, *Abortion and Women's Health: A Turning Point for America?*, 1990).
- **Teenage girls are more than 24 times more likely to die from childbirth than from a first trimester, legal abortion.** (Ory, H W, "Mortality Associated with Fertility and Fertility Control," *Family Planning Perspectives*, vol. 15, no. 2).
- Of the 3.4 million woman who become pregnant unintentionally in the U.S. each year, approximately 1.6 million terminate their pregnancies by medically safe, legal abortion. (Gold, R. B, *Abortion and Women's Health: A Turning Point for America?*, 1990).

Health Risks to Women

One of the bill's stated purposes is to "protect the health of minor women." This bill will potentially **endanger the health of minor women** who want to keep their pregnancies secret or who must use the judicial bypass process, and therefore experience delays in receiving an abortion.

- Legislation mandating parental involvement in decisions about abortion does **increase the risk of harm to the adolescent** by delaying access to appropriate medical care. (American Academy of Pediatrics, Committee on Adolescence, "The Adolescent's Right to Confidential Care When Considering Abortion," *Pediatrics*, vol. 97, no 3).
- Complication rates increase for abortions performed between 13 and 24 weeks. (American Medical Association Council Report, *Induced Termination of Pregnancy Before and After Roe v. Wade*, 1992).

- The American Medical Association noted that "because the need for privacy may be compelling, minors may be driven to desperate measures to maintain the confidentiality of their pregnancies. They may run away from home, obtain a "back alley" abortion, or resort to self-induced abortion. The desire to maintain secrecy has been **one of the leading reasons for illegal abortion deaths since...1973.** (AMA, "Mandatory Parental Consent," 83.).

Possible Links Between Abortion and Breast Cancer

The theory behind a possible link between pregnancy termination and breast cancer is based on the hormonal disruption that occurs when a woman's pregnancy is interrupted. However, numerous epidemiological studies on the risk of breast cancer in women who have had one or more abortions have proved to be inconclusive.

- Only about 20 studies have examined the risk of developing breast cancer for women who have had abortions. (National Women's Health Network Fact Sheet: "*Abortion and Breast Cancer: The Unproven Link.*" January, 1994).
- Cancer researchers at the **National Cancer Institute**, the **American Cancer Society**, and major universities say that the most reliable studies show no increased risk, and they call the entire body of research inconclusive.
- **Harvard School of Public Health** researchers concluded in the January issue of *Cancer Causes and Control*, that abortion does not appreciably increase or decrease a woman's risk for breast cancer.

Long-Term Effects of Abortion

Testimony was introduced which alluded to the emotional trauma supposedly brought on by receiving an abortion. At least one member of the committee expressed interest in more information on the long-term psychological effects of abortion. Moreover, one of the stated findings of the bill is that "the physical, emotional, and psychological consequences of abortion are serious and can be lasting particularly when the patient is immature." Again, the facts prove this assumption untrue.

Research studies indicate that **responses to legally induced abortion largely are positive.** Anti-choice extremists, however, are circulating unfounded claims that a majority of American women who choose to terminate their pregnancies suffer severe and long-lasting emotional trauma as a result. They call this largely nonexistent phenomenon "post-abortion trauma," or "post-abortion syndrome." They hope that terms like these will gain wide currency and credibility despite the fact that **neither the American Psychological Association nor the American Psychiatric Association recognizes their existence.**

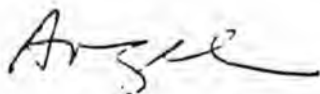
- For most women who have had abortions, the procedure represents a maturing experience, a successful coping with a personal crisis situation. In fact, **the most prominent emotional response of most women to first-trimester abortion is relief.** (Zabin, L.S. et al. "When Urban Adolescents Choose Abortion: Effects on Education, Psychological Status and Subsequent Pregnancy." *Family Planning Perspectives*, 21(6), Nov/Dec 1989; Adler, N. et al. "Psychological Responses After Abortion." *Science*, April 6, 1990; Lazarus, A. "Psychiatric Sequelae of Legalized Elective First Trimester Abortion." *Journal of Psychosomatic Obstetrics & Gynecology*, 43(3), September 1985; Russo, N.F. and Zierk, K.L. "Abortion, Childbearing, and Women's Well-Being." *Professional Psychology: Research and Practice*, 23(4), 1992; Armsworth, M.W. "Psychological Response to Abortion." *Journal of Counseling and Development*, 69, March/April 1991.).

- A study of a group of teenage black women who obtained pregnancy tests at one of two Baltimore clinics found that the young women who choose to have abortions were **are more likely to graduate from high school** than those of similar socioeconomic status who carried their pregnancies to term or who were not pregnant. They showed no greater levels of stress at the time of the pregnancy and abortion and no greater rate of psychological problems two years after the abortion that did the other women. (Zabin, L.S. et al. "When Urban Adolescents Choose Abortion: Effects on Education, Psychological Status and Subsequent Pregnancy." *Family Planning Perspectives*, 21(6)).
- Up to 98% of the women who have abortions **have no regrets and would make the same choice again** in similar circumstances. (Dagg, P.K.B., MD "The Psychological Sequelae of Therapeutic Abortion - Denied and Completed." *American Journal of Psychiatry*, 148(5), May 1991).
- In July 1987, President Ronald Regan directed Surgeon General C. Everett Koop to provide the administration with a report on the health effects of induced abortion. In a letter to the president dated January 8, 1989, Dr. Koop stated that he could not form a conclusion with the available data. (Koop, C. Everett, letter to President Regan, January 9, 1989. Reproduced in "A Measured Response: Koop on Abortion," *Family Planning Perspectives*, 21(1), Jan/Feb, 1989.
- In a 1988 closed meeting, Surgeon General Koop told representatives from several anti-abortion organizations that the risk of **significant emotional problems following abortion was "minuscule"** from a public health perspective. (House Committee on Government Operations. "*The Federal Role in Determining the Medical and Psychological Impact of Abortions on Women*, H.R. Rep. No. 329, 101st Congress, 2d Sess. 14 (1989)).
- In 1989, a panel of experts assembled by the **American Psychological Association** concluded unanimously that legal abortion "**does not create psychological hazards for most women undergoing the procedure.**" The panel noted that, since approximately 21% of all U.S. women have had an abortion, if severe emotional reactions were common there would be an epidemic of women seeking psychological treatment. There is no evidence of such an epidemic. (Adler, N., University of California at San Francisco, statement on behalf of the American Psychological Association before the Human Resources and Intergovernmental Relations Subcommittee of the Committee on Government Operations, U.S. House of Representatives, March 16, 1989.)

Thank you for the opportunity to introduce additional facts on some of the committee members' concerns. I ask that you include them in the public record of testimony on SB 24. I would further ask that you consider these facts outside the highly emotional atmosphere that surrounds this issue. The teenagers and all the people of Alaska deserve the most careful and rational discussion of this potentially life and death matter.

I am available to answer questions at any time. You may reach me at 585-4438 until Thursday evening. From Friday through Sunday, you may reach me at 563-4502. Thanks again.

Sincerely,



Angela M. Salerno, ACSW
Executive Director, NASW Alaska Chapter

TESTIMONY ON SB 24

**Senate Health and Social Services Committee
January 29, 1997**

Mr. Chairman and members of the Committee,

Thanks you for the opportunity to testify on SB 24, a bill that would require parental consent before a minor's abortion.

My Name is Dr. Peter Nakamura.

I am the Director of the Division of Public Health within the Department of Health and Social Services. I am also a family practitioner and pediatrician. I have provided medical care or supervised health care programs in diverse International settings, on American Indian Reservations, Native American communities, and within the urban setting of Anchorage. I managed the health program for the Yukon Kuskokwim area from 1970 to 1972 and provided clinical care in several of the remote communities. I share this information to demonstrate that I have had the opportunity to experience the influence of small and culturally diverse communities on the behavior of their youth.

A State law that would mandate parental notification or consent for minor women who choose to have an abortion pose significant dilemmas for the minor and her chosen health care professional. The health care professional may be forced to delay care, abrogate patient confidentiality, and , in some cases expose the minor woman to actual physical harm.

Health care professionals routinely encourage their minor patients to consult with parents or guardians about health care treatment. A state law that mandates parental involvement in all circumstances, however, is impractical, unjustified, and possibly unwise. Health professionals agree that without confidentiality, many adolescents will not seek timely or appropriate care. The American Academy of Pediatrics, American Academy of Family Physicians, American College of Obstetricians and

Gynecologists, and over 40 organizations with an interest or investment in health care have endorsed this position.

Basic principles of law and society hold that parents should be involved in and responsible for assuring appropriate medical care for their children, that parents ordinarily act in the best interest of their children, and the minors benefit from the advice and emotional support of their parents. Legislation mandating parental involvement in abortion are promoted on the basis of the theoretical benefits on strengthening family responsibility and communication.

Experience has shown that 61% of unmarried minors have informed one or both parents of their pregnancy. Over 20% of unmarried minors did not inform their parents but they did involved at least one responsible adult such as the clergy, another relative, teacher, counselor, or professional other then the principle physician. The most frequent reasons minors site for not informing their parents include the belief that the knowledge would damage their relationship, the fear that it would elevate conflict or coercion, and the desire to protect a vulnerable parent from stress and disappointment. One third of minors who do not inform parents already have experienced family violence and fear it will recur. Although parental involvement in many cases may be helpful, in others it may be punitive, coercive, or abusive.

Legislation that threatens a physician with a civil crime subjective to punitive damages for allowing his clinical judgment and practice to be guided by what is best for the individua? patient is not at all supportive of the best practice of medicine. This may in many cases subject the young woman to increased risk to her health and well being. In a similar manner, legislation that preclude any consideration for psychological or emotional damage to the client is denying the serious consequences that can result from such omissions.

Provisions are made in the proposed bill to accommodate a judicial bypass procedure which is meant to allow a teenager to appear before a judge to request a waiver of the parental involvement. Young women often will avoid or delay access to this intimidating procedure because of the anticipated fear, anxiety, shame and concern for loss of confidentiality often associated with this action. In small rural

communities it is almost impossible for a young adolescent to access medical care much less to appear in a judicial setting. If successful it would generally not be done without personal recognition. Access for young woman in the rural communities is often compromised by the lack of knowledge and by the great distance to a judicial system. There is no mechanism in most rural communities whereby confidentiality could be preserved during the effort to identify the true parent, guardian, or legal custodian.

Further restricting access to professional guidance and safe medical procedures can only increase the risks to life and to the health of our children.

For the many reasons identified, the administration is in opposition to SB 24.

DATE: Wednesday, January 29, 1997

TO: Senator Gary Wilken
Chairman, HESS Committee
465-4714/fax

FROM: Karen Miller
10021 Crest View Lane
Eagle River, AK 99577
907-694-2710/phone

RE: SB24

Senate Bill 24 has just come to my attention. I would respectfully disagree with its provisions regarding the necessary parental consent for abortion for a child under 16. I was just watching Gavel to Gavel and I thought I heard that the age limit has been increased to 18.

I share the desire to adopt measures to increase family involvement and communication in important life decisions. I do not believe and statistics do not support that this measure would achieve that goal.

There are many reasons that this measure may do more harm than good. One that particularly concerns me is that the judicial bypass measure of this bill is not appropriate for Rural Alaskan residents.

I ask that you and the members of your committee carefully review the statistics that have been published in regard to this issue. Decreasing abortion rates and improving family communications are laudable goals but this bill will not achieve that end.

G
1/30/97

Bob LYNN's
Testimony
SB24

Good morning, my name is Bob Lynn, 4400 Trapline Drive, Anchorage, Alaska. I'm ^{representing over 60,000 members and supporters} the Vice President of Alaska Right to Life - but more importantly, I'm the father of [^] six children, of whom four are young ladies.

The bill, which I hope and pray you'll adopt, requires parental consent for a minor child to procure an elective abortion. This bill is exceedingly important. In reality, however, it's a vote on the Principle that parents and family are the bedrock of civilization.

It's schizophrenic for the government to hold parents responsible for the communication of Values, and the physical and emotional care of their children - on the one hand - and then on the other hand, to prohibit those same parents from making informed decisions for a procedure which could emotionally traumatize, injure, or even kill their daughter - and destroy their grandchild for sure.

In this country, and the State of Alaska, a child's Values, care, sustenance, shelter, emotional support, and decisions on appropriate medical procedures, should be entrusted to parents, not the state legislature, or any other branch of government. If parents appear to be unwilling, or unable, to meet these responsibilities, or to take care of their children properly, there's due process procedures on the books to take care of that.

RECEIVED
JAN 29 1997

Post-It™ brand fax transmittal memo 7671		# of pages » 3
To Jan. Wilken	From Anch L10	
Co (S) HESS Chair	Co.	
Dept.	Phone # 258-8111	
Fax # 465-4714	Fax #	

You may remember the old commercial, "Parents, it's ten o'clock. Do you know where your children are?" The way the law stands now, a parent could answer, "No, I don't know where my little girl is. For all I know, she's at the neighborhood abortion clinic, and she may be in danger - but the legislature keeps me from knowing that, doesn't let me do anything about it, and doesn't let me be with my child when she needs me."

The children and families of Alaska need your help.

Your good vote on this bill would help counterbalance the tender marketing skills of the abortion industry, and its fellow travelers. Abortion is not a safe procedure, regardless of propaganda to the contrary, and abortionists do not occupy the upper stratum of the medical profession - by anyone's standards.

The pro-abortion folks would attempt to hang their hat on so-called "right to privacy" from intrusive government - yet those same "pro-choice/ whatever the choice/ people" would deny the right to privacy from government intrusion into the privacy of parent-child relationships. Privacy applies not just to women, or to little girls - privacy applies also to parents and to families.

We're all concerned about the physical, emotional, and even economic welfare, of a child who becomes pregnant, for whatever the reason - and we understand how distraught a child might be - especially a sensitive and frightened child - in having to tell their parents they got pregnant. It's a given that some parents are

better at parenting skills and compassion than other parents. Nonetheless, if the legislature keeps parents removed, carte blanche, from any decision making process in the emotional and medical care - and responsibility for their own children - the legislature will have traded a "maybe problem," in a few cases, for a much larger set of problems, far far worse - for the individual family, and society in general.

Please - with your vote - return to us the safety of our children, and the privacy of our families. I respectfully ask your favorable consideration of this bill.

Thank you.

JAN 29 1997



Alaska State Legislature

Please enter into the record my testimony to the HESS COMMITTEE
 committee name
 committee on SB24 , dated 1-29-97
 bill/subject

As a parent + fellow Alaskan - I ask your support of SB24. This is a very important bill for families - for family freedom, for family cohesiveness,^(SP) For parental responsibility.

The privacy propaganda + unconstitutionality that the assistant Attorney General presented is bunk - pure + simple. Indeed - it is liberal judges with the same mind set as this assistant Attorney General (which testified) that have in fact - invaded family "privacy" to allow a parent's child abortion surgery without a parent's knowledge or consent. Parental consent + knowledge was constitutional for the 1st 200 years in this nation and still is. If the state intervenes in the parent/child relationship and takes the parents responsibility away from them in a life + death situation, as well as major surgery decision such as abortion on their child - the state is close to taking all responsibility from parents for raising their children.

Please support SB 24 for the sake of Alaskan Families.

Signed: Mandi N. Melchior
 Testifier

Representing (Optional)

PO Box 595 STERLING, AK 99672

Address

262-9319

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HES
 committee on SB 24, dated 29 JAN, 1997.
committee name
bill/ subject

My thoughts + statement, as a parent, are simple.
 It seems illogical to me that altho parents
 need to give permission, + rightly so, for routine
 matters pertaining to their minor children,
 including school field trips, ~~the~~ ^{the} receiving of
 aspirin at school, + many other matters, ---
 + yet a surgical procedure such as abortion,
 w/ the risks associated with any surgery,
 could be performed without their consent
 or even knowledge. — It really defies
 all logic --

Therefore I strongly recommend a YES
 vote regarding parental consent.

Signed: BARBARA RAWALT
Testifier
DIST 35 RPA - FINANCE CHAIR
Representing (Optional)
PO Box 823 - DELTA JCT AK
Address
(907) 895-1946
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HES
 committee on SB 24, dated 1/29/97 committee name
 bill/ subject

Please approve this bill. As a parent of 4 children I would certainly not want my girls or my boys' girlfriend to undergo such a serious surgical procedure and such a major life decision without consulting their parents. It is too much of an emotional decision to be made without the more mature advice of the parents that are also affected by this procedure.

Signed: Linda Bowhe
 Testifier
114 35 West St.
 Representing (Optional)
P.O. Box 1047 Sitka, Alaska
 Address
895-4328
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the HES
 committee on SB24, dated 1-29-97 committee name
 bill/ subject

Please vote yes on this Bill.
 Responsible parents will thank you. Certainly
 if our children need parental consent for
 trivial matters such as participation in
 sports or field trips, they should need
 parental consent for such a serious medical
 procedure.

Signed:

Debra Joslin Delgado-John
 Testifier RPA, District 35
 Representing (Optional) PO Box 377 Delta Jct. AK 99737
 Address (907) 895-4565
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the SHESS
 committee on SB 24, dated 1/29/97, committee name
 bill/ subject

Dear Senators:

When an event as troubling as an unplanned pregnancy happens in a young girls life, I implore all of you to strongly seek legislation to implement the parental consent law SB 24.

A young person does not have the logical reasoning process when she is terrified and left abandoned to solely decide the fate of an unborn child. All she is instinctively feeling is fear of having done something wrong and not wanting her parents to find out about what she has been up to, and to quickly cover the mistake to hide her shame. A youth does not realize the emotional effects that she will suffer the rest of her life. (The birthdays of her unborn child, the hidden secret she has kept to herself and her distancing herself from her family).

I witnessed testimonies from young teens who have gone through this procedure without their parents support, and seen a deep anguish and depression and the inability to establish healthy relationships, their souls always being troubled. I witnessed a teen get up in front of over 300 people and sob as she shared her experience of having a unsupported abortion.

SB 24 should be passed. I am a parent of a teenager now, I have to sign permission slips for days missed at school, sports physicals, to obtain a learners permit, for a trip to the emergency room to be sewed up. I find it inconceivable that a life threatening procedure can be performed without the consent of a minors parents.

If that child should die during a legalized unconsented abortion, who is responsible for her death? Wouldn't it be a shock to get a phone call? I believe the State of Alaska has a moral obligation to ALL parents by passing this bill. It is a safeguard to all of us.

A youth is nothing but scared! Wouldn't the short term fear of telling a parent that she is pregnant be less damaging then the results that will hide within the walls of her young heart when she has to bear the responsibility for terminating a life all to herself. Death is permanent. Mommy and Daddy please forgive me!

With Hopes of Passage.

Jeanne Pankelma

Signed:

Jeanne Pankelma
 Testifier

Representing (Optional)
Dist 336 Delta Jct AK

Address
907 895-5250

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the SHES
 committee name .
 committee on SB 24 , dated 1/29/97
 bill/subject

I BELIEVE STRONG PARENTAL INVOLVEMENT IS TO BE NOTED HERE. I DISAGREE WITH PARENTAL RIGHTS BEING GIVEN OVER TO THE STATE. EXAMPLE: A METHOTREXATE-MISOPROSTOL (CYTOTEC) CHEMICAL ABORTION CAN TAKE THREE WEEKS TO RESOLVE. PICTURE YOUR YOUNG DAUGHTER OR GRANDDAUGHTER ANGUISHING OVER PROLONGED CRAMPING AND BLEEDING WITH A STATE (APPROVED) APPOINTED GUARDIAN AD LITEM. AND, WHERE WOULD YOU FIT IN? YOU WOULDN'T.

IT IS IMPORTANT THAT A YOUNG GIRL BE OFFERED THE FAMILY SUPPORT TO CARRY HER PREGNANCY TO TERM, OR SHOULD FAMILY DECIDE TO ABORT, SHE AT LEAST HAS FAMILIAR SURROUNDINGS TO CARRY HER THROUGH THIS TIME.

I SUPPORT STRONG PARENTAL INVOLVEMENT REGARDING TEEN ~~PER~~ ABORTION ISSUES (BEFORE THE FACT). I SUPPORT SB24

Signed: Teresa Lundy
 Testifier

Representing (Optional)

P.O. Box 2975 SITKA AK 99835

Address

907-966-2204

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senate HES
 committee on SB/24D Parental Consent dated 1-29-97
 bill/subject

As a parent I acknowledge the responsibilities - both the joys and the sorrows of raising children. I'd appreciate consistency in applying medical guidelines - I'm sure there are existing provisions for life and death situations.

It is very inconsistent to charge all the law to possibly benefit a miniscule percentage.

I strongly support passage of SB24.

Signed: Coralyn Jones
 Testifier

Representing (Optional)
2414 HPR, Sitka, AK 99835
 Address
907-747-6732
 Phone No.

Alaska State Legislature

Please enter into the record my testimony to the Senate H.E.S.S committee on SB 24 "Parental Consent before a minor receives an abortion with a judicial by pass option. dated January 29, 1997.

In every case that I worked with, I have seen family bonds strengthend when a minor told her parents she was pregnant. Most parents love and care for their children and any thing that weakens the bond between parents and child destorys the family bonds of trust. It is inconceivable to me why any one who is not receiving money or personal satisfaction from weaking the bonds between parent and child, would want to help a minor sneak behind her parents back and have such an intrusive surgical procedure as an abortion. Remember it is the parents who are the ones who are left with their child's emotional and physical problems after an abortion.

Please pass SB 24. Thank You.

Remember - Fred Hutchins CANCER CENTER has documented A STRONG correlation between breast cancer and Abortion -

Signed Virginia C. Phillips
Testifier

Self
Representing(Optional)

404 LAKE ST., 2-D, SITKA,

Address 907-747-9074

Phone Number

AK 99835

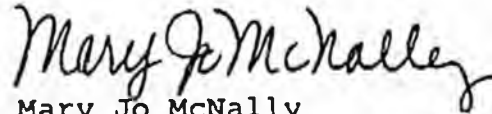
January 29, 1997

TO: Members of the Senate HESS Committee
RE: SB 24

Please do all you can to require parental consent before a minor can have an abortion. The decision to have an abortion is very complex and can have long-lasting ramifications; a minor is not mature enough to make that type of decision on her own. She needs the benefit of as much counsel as she can get so as not to make a permanent solution to a temporary problem.

Finally, from the parents' perspective, as they are responsible for their children in all other regards, including paying restitution for damages their child may have caused, they should be permitted to have input on this life and death situation. Parental consent is required for a child to play in sports and to travel for school activities, etc., so should also be required for a minor to have an abortion.

Thank you.



Mary Jo McNally
608 Sawmill Creek Road
Sitka, Alaska 99835
907-747-3877

To: Senate Health, Education and Social Services Committee
Thru: Chairman Senator Gary Wilken

From: Mary Lauer
510 Kinkead
Sitka, AK 99835
907-747-5752

Mary Lauer

Date: 1/29/97

RE: Parental Consent Bill SB 24

I strongly urge passage of SB 24 relating to a requirement that a parent, guardian or custodian grant permission before performing abortion.

This bill adds the required judicial bypass and will uphold the statute now in place, but unenforcable because it lacks this bypass.



Alaska State Legislature

Please enter into the record my testimony to the S. HESS committee name
 committee on SB 24 ^{Parental consent} ~~before minors~~ _{abortion}, dated 1/29/97
 bill/subject

I support SB 24. Parental involvement will bring kids back into the home + off the streets.
 Parents need to be involved in crisis pregnancies, not the courts.
 My own birth mother, although raped + abandoned, had the courage to adopt me out. I think she realized I was not to blame, nor was I to be punished. Her family supported her.
 I don't know what became of her, but I'd like to thank her for her courage.
 And you for yours.
 Please support adoption, not abortion.
 Parental involvement will lower teen pregnancy, teen abortions, and teen birthrate.

Signed: Mary S. Soltis
 Testifier

Representing (Optional)
405 Verstovia Sitka AK 99835
 Address
907-747-5624
 Phone No.

P.O.Box 804
Petersburg, Alaska 99833

January 28, 1997

To Whom It May Concern:

We request that all lawmakers vote to ^{require} parental consent in the case of abortions performed on a minor. It is not the business of government to take over the role of parent. Parents should provide the financial, emotional, and physical care for their children. Providing abortions for minors drives another wedge between parents and civil authorities, generating more confusion in our young over who's in charge.

Respectfully submitted,

Elizabeth & William Pawuk

Elizabeth and William Pawuk



Alaska State Legislature

Please enter into the record my testimony to the Senate H.E.S.S.
 committee name

committee on SB 24 / Parental Consent, dated 1/29/97
 bill/subject

I urge the committee to PASS this bill.

Parental consent is mandatory for tonsillectomies, appendectomies, and the treatment of infected ingrown toenails in a hospital or clinic. Also, parental consent is required by schools for the students' involvement in sports. It seems pretty obvious to me that it should also be required for abortion when the pregnant woman is a minor. As the father of a girl, I myself would want to know if my daughter is going to risk her life undergoing something more dangerous than an ingrown toenail operation on a basketball game. Also, I would not want my own grandchild to be terminated without my knowledge or approval.

Signed:

GIOVANNI TALLINO *[Signature]*
 Testifier

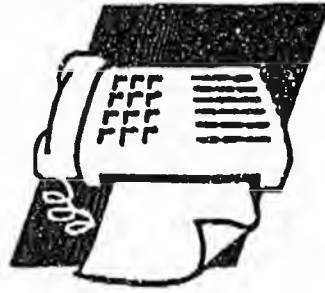
Vice-Chairman, Kodiak Republican Party (But am testifying on my
Representing (Optional) on my own behalf

PO Box 4496 Kodiak, AK 99616

Address
907-486-3043

Phone No.

AUL



FAXLINE

TALKING POINTS re: the Danish abortion study by Melbye et al., published in the 1/9/97 New England Journal of Medicine (NEJM)

1. Study's enormity is exaggerated: Database is highly skewed

- Of the 1.5 million women studied, 1.2 million neither have had exposure to induced abortion nor have developed breast cancer.
- Of the 281,000 women who had induced abortions, most are too young to have developed breast cancer (Some are still teenagers).
- Of the 10,000 women who developed breast cancer, most are too old to have their abortion histories on record, since the abortion registry only goes back to 1973 (when the oldest women were 38).
- Of the 1338 women who had abortions and did develop breast cancer, over 81% had abortions recorded only at age 30 or over; 54% at age 35 or over.

2. Important data are omitted or de-emphasized

- Among the women who had abortions as teenagers the study actually found essentially the same increased risk (29%) as had been reported in Brind et al.'s Comprehensive Review and Meta-analysis of 23 worldwide studies (a statistically significant 30% overall elevated risk), published last October. However, Melbye et al.'s finding is not statistically significant, because their statistical power is too low.
- The Melbye study actually found a statistically significant trend of a 3% risk increase for each week of gestation before abortion, even within the first trimester: Women who had an abortion of an 11-12 week fetus showed a 12% higher breast cancer risk, with the risk increase rising to 89% for abortions after 18 weeks (but it wasn't in the study's "Conclusions").
- Much data was missing from the paper: No information was given on the independent effect of other variables that influence breast cancer risk, and we are shown only relative risk data after adjustment for these variables. Somehow, an unadjusted overall relative risk of 1.44 is adjusted down to 1.00.

3. Previous studies are attacked or misrepresented

- Melbye et al. attacked the validity of the meta-analysis and all case-control (Interview-based data) on the basis of alleged response-bias, citing a 1991 Swedish study. However, the only significant evidence of response bias depends on the assumption that 7 Swedish breast cancer patients reported abortions that never took place (alleged "overreporting"). Response bias is the "Loch Ness Monster" of abortion-breast cancer research: No credible evidence of it has yet been produced.
- 4 previous cohort studies are cited as reporting similar findings of no increased risk with induced abortion. But 2 of the studies are exclusively on spontaneous abortion (miscarriage), and one is mostly on spontaneous abortion and does not report any specific data on induced abortion.

A scientific perspective on the Danish abortion study
published in the 1/9/97 New England Journal of Medicine (NEJM)

MYTHS AND FACTS. Prepared by Joel Brind, Ph.D., Professor of endocrinology, Department of Natural Sciences, Baruch College, City University of NY, 1/13/97

Myth 1

The Danish study's lead author, Dr. Mads Melbye, told the Wall Street Journal (1/9/97):

"I think this settles it. Definitely—there is no overall increased risk of breast cancer for the average woman who has had an abortion."

Dr. Patricia Hartzg of the National Cancer Institute, in a NEJM Editorial accompanying the Danish study, echoed "the clear central finding that there is no overall risk", and concluded: "In short, a woman need not worry about the risk of breast cancer when facing the difficult decision of whether to terminate a pregnancy."

Fact

Said Dr. Karin Michels of Harvard Medical School, as quoted in the 1/9/97 Wall Street Journal: "You should never end a debate with one study and say this is the definitive study"

In fact, this one study from Denmark is the 30th separate study published since 1957 to report specific data on induced abortion and breast cancer. It is only the sixth one not to show an overall increased risk, compared to 24 that do show an increased risk, 18 of which are statistically significant on their own.

Contrary the implication of most current media reports, the Brind study, the comprehensive review and meta-analysis, published in the October, 1996 Journal of Epidemiology and Community Health the epidemiology journal of the British Medical Association, is not one of the 30 studies: It is a compilation of the entire worldwide literature, which pooled the results of the 23 separate studies available at the time of its preparation. This study of studies found a statistically significant, 30% overall risk increase.

Myth 2

The Danish study is different. One reason it is definitive is its enormous size, including over 1.5 million women (most Danish women), over 280,000 of whom had one or more induced abortions. Moreover, the study includes over 10,000 women with breast cancer.

Fact

The enormous size of the Danish study is enormously misleading, because this is a cohort study, in which an entire population (or cohort) of women is followed for many years, to track exposures to the alleged risk factor (induced abortion) and the incidence of the disease in question (breast cancer). Consequently, most of the women in the cohort (over 1.2 million of the 1.5 million) have neither the exposure nor the disease in question, but their presence in the cohort inflates the size of the study.

Myth 3

Even so, the number of women with abortion and breast cancer is very large, which gives this study unusually large statistical power. According to Dr. Hartzg, in her NEJM editorial:

"In this cohort of 1.5 million women, 1338 cases of breast cancer were diagnosed in women who had

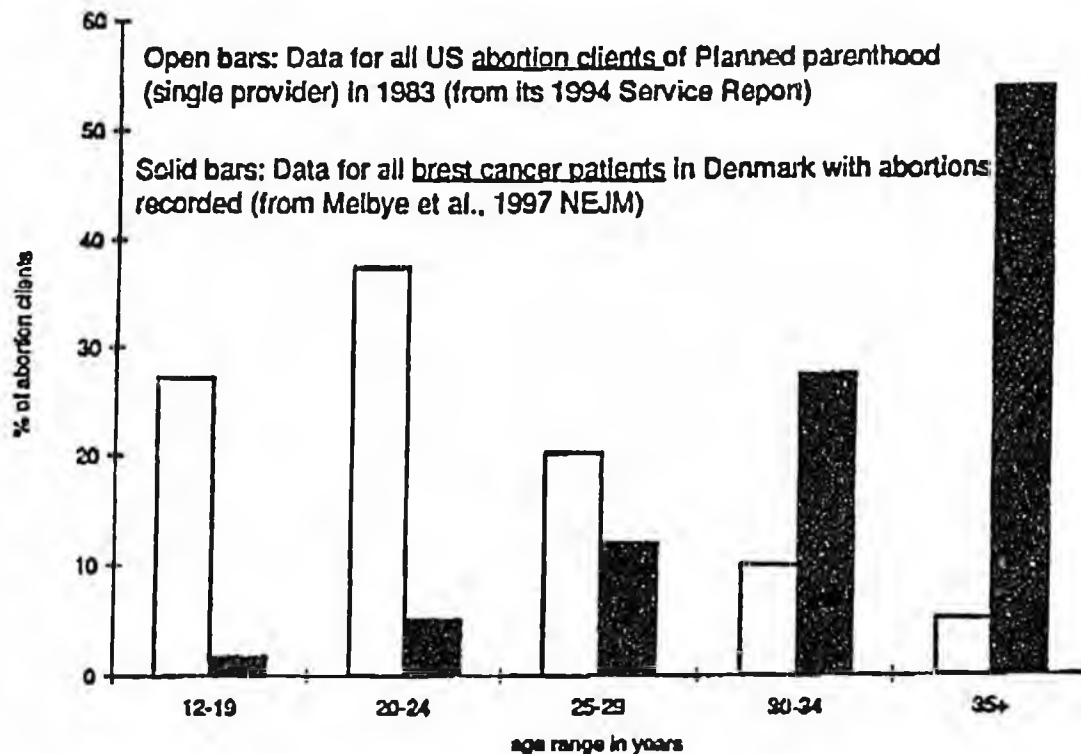
terminated pregnancies. By comparison, large case-control studies in the United States each have included 200 to 300 cases of breast cancer in women who had abortions."

Fact

The selection of such a large part of the Danish population (i.e., women born back to 1935), yields a data base which is very distorted because only abortions occurring since 1973 are on record. Consequently, the majority of breast cancer patients in the Danish study who are on record as not having had any abortions (8,908 women) were in their 30's when abortion data were first collected. Consequently, their abortion history is largely unknown. Keep in mind that we are speaking of a very small proportion of the entire cohort— but the majority of breast cancer victims—since breast cancer is found overwhelmingly among the oldest members of the cohort.

Among the 1338 breast cancer patients whose abortions are on record, the majority of them are on record as having had abortions only at age 35 or over. In fact, over 81% of them have abortions recorded only at age 30 or over!

The egregious distortion of the age distribution of abortion clients is best illustrated by a graphic comparison with US data for the average year (1983) for which the abortions are recorded:



From the above graph, it is easily seen that the Danish (Melbye) study is therefore considerably weaker than its authors and proponents indicate: The statistical power of the study relies largely on a database which is questionable for three reasons:

- 1) It consists mostly of women too young for cancer to develop (those who had abortions and did get breast cancer having had their abortions when they were atypically old);
- 2) The abortion histories of the oldest women in the cohort (which includes most of the women who did get breast cancer) before their fourth decade of life are largely unknown.

3) Concerning the fate of women who have abortions at younger ages—particularly in their teens—the study has almost no statistical power. That is why, even though it shows a 29% risk increase for women who had any abortions as teenagers (the same magnitude of the overall risk increase calculated for women in the Brind meta-analysis), the figure is not statistically significant:

The database only contains a total of 23 cases of breast cancer among women with teenage abortions, and a grand total of only 252 cases of breast cancer for all women who had abortions before the age of 30. That puts the study's real statistical power in the same range as the American studies Dr. Hartge refers to in her editorial.

Unfortunately, the effect of including all the older women (who have most of the breast cancer, but a relatively small portion of the recorded abortions) and all the younger women (who have most of the abortions, but almost none of the breast cancer), is to dilute the statistics, making the calculated relative risk appear lower and at the same time, more precise than it really is. (The summary finding of the Melbye study is an overall relative risk of 1.00 [i.e., no risk increase with induced abortion], and a 95% confidence interval of 0.94-1.06.)

Myth 4

Even though the sample size for women with abortion at younger ages is limited, the Danish data should show some sort of trend, if there were a real risk increase due to abortion. But there is no trend, Dr. Melbye arguing "the oldest women have exactly the same (relative) risk as the younger women."

Fact

As noted above, women who got abortions in their teens showed a 29% higher risk of breast cancer. This was, in fact, noted in the text of the results section (but interestingly, not in the discussion or the abstract):

"Age at the time of the induced abortion did not significantly influence the overall risk, but there was a tendency toward a higher risk of breast cancer among women in the lowest age category—between 12 and 19 years of age (relative risk, 1.29; 95% confidence interval, 0.80 to 2.08)." The lack of significance and lack of effect on observed overall risk is a direct consequence of the lack of statistical power of this supposedly definitive study.

Myth 5

The credibility of the overall finding of no increased risk in the Melbye study is supported by previous research. According to the first paragraph of the authors' Discussion section: "This result is very much in line with the results of previous retrospective cohort studies 9,10,15,16".

Fact

This statement is a flat-out misrepresentation of the medical literature: Three of the four studies cited (as footnotes) to back it up are entirely irrelevant. Two concern spontaneous abortion (miscarriage) exclusively 9,16 and one concerns spontaneous abortion mostly, and does not present any data relating specifically to induced abortion.10

Myth 6 (The "Loch Ness Monster")

It isn't just the statistical power of the study that's important, but the fact that the data are collected

prospectively (i.e., at time of abortion) means they do not depend on the accuracy of study subjects' own reporting of past, personally sensitive events. According to Dr. Hartge, in her NEJM editorial:

"By relying on uniformly collected data on abortion in Danish registries, Melbye et al. avoided the major problem that has plagued case-control interview studies: differential reporting of abortions (response bias)".

Melbye et al. used this argument to attack the Brind meta-analysis directly: "However, since almost all 23 studies included in the analysis were case-control studies, it is not unreasonable to assume that many of them were inherently biased, making the pooled conclusions biased as well."

Fact

Many scientists insist that this potential source of error is responsible for the result whenever a study shows that abortion is associated with increased breast cancer risk. In fact, this is the third time in a little over two years that the National Cancer Institute has used the response bias argument, via medical journal editorials, to attack such research. Like the famous mythological Loch Ness Monster, they insist that it is there. But every time a study actually looks for evidence of its presence, the only credible evidence they can ever find is against it.

When comparing the abortion histories of breast cancer patients with those of healthy women, a finding of more abortions among the patients will show up statistically as an increased risk. The argument is essentially this: If the cancer patients report more of their abortions than the healthy women do, then their breast cancer risk will appear artificially increased, due to this response bias (bias meaning difference between the two groups).

Melbye et al. are less than forthright in their Danish study in their attack on the Brind meta-analysis: One could hardly tell from their discussion that the meta-analysis spent over 1,000 words of text meticulously analyzing the alleged evidence of such bias. Yet still, they hark back to a 1991 Swedish study which compared computer prospective cohort data with case control interview-based data on the same population of Swedish women. That study claimed statistically significant evidence of underreporting of previous induced abortions among controls relative to overreporting among cases. In other words, the significance of the finding was largely dependent upon the belief that the seven breast cancer patients who reported having had abortions of which the computer registry had no record, had overreported them, i.e., had made them up!

Until the Danish study's appearance in the 1/9/97 NEJM, the most recent citing of the monster was in the 12/4/96 Journal of the National Cancer Institute (JNCI). That issue of the JNCI contained a Dutch case-control study which attributed the 90% increased risk it found among women with abortions to response bias. However, a careful reading of the study reveals the authors found significant evidence of response bias between healthy women from different regions of Holland, but no bias between breast cancer patients and healthy women at all. That didn't stop NCI editorialists from hyping these results and unleashing the monster: . . . a Swedish study . . . show(ed) that healthy women consistently and widely underreport their history of induced abortion.

Meanwhile, strong evidence against the response bias argument has surfaced repeatedly: 1) A 1989 New York State computerized registry study found a 90% increased breast cancer risk among women with induced abortions; 2) A 1994 Seattle, Washington study found a 50% increased risk and used cervical cancer data to test specifically for response bias among these women—and found none; 3) A 1995 study among Greek women found a 51% increased risk, and cited other studies among Greek women in drawing their conclusion that healthy women in Greece report reliably their history of induced abortion.

Myth 7

According to a 1/10/97 New York Times editorial: The only uncertainty in the Melbye study) was a suggestion that women who had abortions in the second or third trimester did have an increased risk of breast cancer, but the number of women in this category was too small to warrant firm conclusions.

The falsehood of the first phrase is obvious to anyone familiar with any epidemiological study: All findings are subject to varying degrees of uncertainty. The rest of the statement is a masterpiece of understatement.

Consider the actual relevant part of the Results section of the paper: With each one-week increase in the gestational age of the fetus, however, there was a three percent increase in the risk of breast cancer. In fact, the relative risk rose from a 19% (non-significant) risk decrease for women whose abortions occurred at less than seven weeks gestational age, to a significant 89% risk increase for women with post 18-week abortions. Moreover, a risk elevated above the norm started showing up for women with late first trimester abortions (11-12 weeks).

In fairness to the New York Times, however, the authors themselves de-emphasized the finding, failing even to mention it among the "Conclusions" in the paper's abstract. Thankfully, this error of omission did not go unnoticed, drawing sharp criticism from Dr. George Bonney, Chairman of Biostatistics at the Fox Chase Cancer Center in Philadelphia, who told the Washington Post: "This is a powerful group (Melbye et al.), that should know better".

Yet the most important aspect of this finding of significantly increased risk with increasing gestational age at abortion is that Melbye et al. acknowledged it as supporting the biological basis of abortion as a breast cancer risk factor. That is, growth promotion of primitive (and potentially cancer forming) breast cells by surging estrogens during pregnancy may increase breast cancer risk if the pregnancy is aborted. Theoretically, the longer the exposure to this hormonal stimulus, the greater the risk increase. Although other studies have not found a consistent difference in early v. late first trimester abortions, this one did, and the authors call this finding to be "in line with the hypothesis".

Concluding Remarks

Ample evidence has been presented above to show that the authors' "Conclusions: Induced abortions have no overall effect on the risk of breast cancer." is, to say the least, a gross oversimplification. But there are additional concerns: First, a great deal of information about the effects of other variables is missing from the paper, as well as the unadjusted relative risk calculations. In fact, the unadjusted overall relative risk can be calculated at 1.44—a 44% risk increase. Of course, this figure doesn't mean much without adjustment, but how it manages to decrease to 0% increased risk is a disturbing mystery. Dr. Melbye (personal communication) says that they had to shorten the paper considerably for publication, but then one wonders why there is then so much redundancy in it: most of the data in the paper's only table is repeated in the text.

Second, it must be noted that one of the variables adjusted for in this (and most other) studies, is age at first full term pregnancy. That's because delaying the first full term pregnancy is universally recognized to increase breast cancer risk. Induced abortion surely increases risk when performed on young childless women, since it delays the full term delivery that would otherwise naturally have occurred. This increase, being specifically subtracted out, does not show up in any study (including the Brind meta-analysis) that is looking for the specific effect of induced abortion on breast cancer risk.

Finally, it must be acknowledged that computerized cohort data are generally of better quality than interview-based data, all other things being equal. The difficulty with computerized data on the risk of a disease like breast cancer is that it takes years—perhaps 5 to 50 years—for cancer to show up in exposed women. And abortion registries are not generally that old. Computerized registry data are most useful when the outcome in question does not require such a long follow up period. A perfect example is a 1996 study using the Finnish abortion registry. In this British Medical Journal paper, Dr. Mika Gissler et al. found a very reliable, almost sixfold (4888) increase in the rate of suicide by women who had had an induced abortion in the previous year, compared to women who had a baby.

can Osteopathic Association;

(2) clearance from the United States Department of Justice, Drug Enforcement Administration;

(3) clearance from the Federation of State Medical Boards regarding

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ARTICLE 2. ABORTIONS

Section

- 60. Termination of pregnancy
- 70. Informed consent
- 80. Medical procedures
- 90. Evaluation
- 100. Consultation requirements
- 110. Abortion procedures
- 120. Standards for hospitals and facilities
- 130. Records
- 140. Limitation

12 AAC 40.060. TERMINATION OF PREGNANCY. Termination of pregnancy must be requested by the pregnant woman, unless she has been adjudged mentally incompetent or is unmarried and under 18 years of age, in which case the request must be made by her parent or guardian.

12 AAC 40.070. INFORMED CONSENT. Unless otherwise provided in 12 AAC 40.060, a written informed consent shall be obtained from the patient or from any other person whose consent is required before termination of a pregnancy. Such written informed consent shall be on the patient's chart. The patient and other persons whose consent is required shall be advised of the medical implications and the possible emotional and physical sequelae of the procedure.

12 AAC 40.080. MEDICAL PROCEDURES. The patient shall be examined by a physician licensed in Alaska, and a written record of the patient's

physical and emotional health shall be prepared before performing an abortion procedure as set out in 12 AAC 40.110.

12 AAC 40.090. EVALUATION. The attending physician shall make an evaluation of the patient and an estimation of the duration of gestation based upon the patient's history, examination and test results. This information shall be recorded on the patient's chart.

12 AAC 40.100. CONSULTATION REQUIREMENTS. Abortions interrupting a pregnancy up to and including the twelfth week of gestation may be performed without consultation. Abortions performed after the twelfth week of gestation shall be preceded by consultation with another physician. The consultation shall include an opinion as to the preferred method of termination of pregnancy.

12 AAC 40.110. ABORTION PROCEDURES. During the second or third trimester of a pregnancy, acceptable procedures include dilation and curettage, suction aspiration of the uterus, injection of pharmacological agents, hysterectomy and hysterotomy. The exact procedure to be used will depend upon the patient's total health, age, associated disease and pathology, and anomalies such as skeletal defects and other medical indications.

12 AAC 40.120. STANDARDS FOR HOSPITALS AND FACILITIES.
(a) During the second or third trimester of a pregnancy, abortions shall be performed under sterile conditions. A bed and a registered nurse shall be available for a minimum recovery period of one-half hour. A registered nurse shall be present during the procedure.

(b) During the second or third trimester of a pregnancy, blood, blood derivatives, blood substitutes or plasma expanders shall be immediately available when an abortion is performed, and an operating room appropriately staffed and equipped for major surgery in accordance with regulations adopted under AS 18.20.050 shall be immediately available.

12 AAC 40.130. RECORDS. During the second or third trimester of a pregnancy, the attending physician shall record a medical history, findings of the physical examination, operative report of the abortion procedure and pathology report as part of the clinical record to be maintained by the hospital or facility. The physician and hospital or facility shall treat the patient's identity and medical record as confidential information.

12 AAC 40.140. LIMITATION. A fetus which has not developed beyond 150 days after the first day of the last menstrual period may be considered nonviable for purposes of AS 11.15.060(a). In the performance of an abortion after that date, the physician shall be guided by a reasonable judgment as to whether the fetus is viable in fact.

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/13/97

FURTHER: Judiciary
Finance

Date of 5-Day Notice: 1/23/97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/3/97

Health, Education and Social Services Committee considered SENATE BILL NO. 24

Require consent before minors receive an abortion; amend Rules 40 and 79, Alaska Rules of Civil Procedure; Rules 204, 210, 212, 213, 508, and 512.5, Alaska Rules of Appellate Procedure; and Rule 9, Alaska Administrative Rules.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>		X	
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
CHAIR: <i>[Signature]</i>		CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Alaska Court System	1/28/97		✓
Public Dept of Admin - Defender	1/28/97	✓	
Social Dept of Health + Services	1/29/97	✓	
Public Dept of Admin - Advocacy	1/28/97		✓

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill