

AMERICAN LIBRARY COMPANY, INC. 2007-2008 / 2

11485 HOUSE JUDICIARY

As a Manager

As a former senior manager of the State's procurement system, I can honestly say that the tools Alaska Supply Chain Integrators are providing are well-tailored to the job and fit for purpose. They will create efficiencies which will increase the productivity of the users. They are the best tools I have ever seen for bringing e-commerce to Alaska's State Government.

Transition

The tools and services provided by Alaska Supply Chain Integrators are dramatic changes. There will be challenges due to complexity, entrenched adverse attitudes, resistance-to-change, and the potential for job loss. However, given this sea-change in systems, I believe the transition is going well.

The Union Argument

Stripped of the Union's spin, they put forward one main argument and one goal. The argument is defective, and the goal is historically unattainable.

First is the argument that the Union could do the same thing as the Contractor if they were just given the tools, and they'd do it cheaper.

If the Union believes in fair play, as they have espoused in their testimony about preserving the protections of the procurement code, then no one is going to give the Union the necessary e-commerce tools free of charge, and yet require their competitors to build their own tools at their own expense.

If the Unions want to compete to provide e-commerce tools and services, they better fire up their venture capitalists and create the capacity to develop the software technology and service systems to get the job done. And they better have started a few years ago, because the need is in front of us today.

If we were to speculate and were it possible to turn back the clock and provide for the Unions to act as a joint venture proposer for the Pilot Project RFP, is it the Unions' position that they could have won the RFP as a straight-up competitor to the other Proposers, and preserved every one of those jobs that were lost? Who's kidding who, here?

The only way the RFP services could possibly be performed at a lower cost than the State's is to save costs by employing technological solutions that allow fewer employees to accomplish the work. This is because the source of funding for the Contract is the staffing budget for the procurement function of Southeast Region of DOT. To put it bluntly, the Unions would have needed an e-commerce system at least equal to Alaska Supply Chain Integrators, and they would have had to cut even more jobs, if they wanted to win by being a competitor.

For the Unions to deliver similar results, you have to accept the notion that they would deploy technology effectively and then deliver the staff reductions made possible. I would submit to you that this is unlikely. Therefore, the only likely outcome is more cost for technology, but no savings delivered.

We can see an example of this in the State's current experience with procurement technology – the BuySpeed program. DOT implemented this several years ago, but it is implemented poorly and serves only to require re-input of paper records and to absorb tens of thousands annually in licensing costs. The number of people who are capable of using it fully can probably be counted on the fingers of one hand.

Second is the Union's goal of preserving every job regardless of the march of progress. This battle has been lost over and over by unions all over the world. The goal can't be reached in the long run. In industry, including the industry of government, technological progress usually reduces or transforms staffing requirements.

Instead, enlightened Unions have found another perspective, one which is ultimately much more valuable to union members. That perspective is not to oppose the adoption and advancement of technology, but to bargain for ways to re-train, re-educate, and re-equip their members to compete anew in the working world, whether with the same employer or a new one.

Attempting to block the march of progress because it might cost the jobs of members is a classic Union tactic which hasn't worked in the past 100 years and won't work here, now. Regardless of who implements it, including the Union itself, e-commerce technology will result in staff reductions – or at least it will if it successfully delivers efficiencies. Helping those who will be affected to prepare for and find other desirable employment is the correct role for the Unions to pursue.

The Hostile Environment

I would like to offer some observations on how this program is being received in the Executive branch.

- There is a natural resistance to change. This is normal. Especially in government. Privatization is not something the Institution will typically jump forward and eagerly embrace.
- Programs of this sort are not naturally attractive to Departments and their managers. They amount to a reduction of turf. They can cause disruption. Therefore, leadership at the policy level, by those who control purse strings, is absolutely essential for this to work. You should not be surprised by mixed, or tepid, support from Executive agencies. You should expect it and think in terms of overcoming it.

- These things could be why we are seeing excessive scrutiny, a slow roll-out of the pilot, failure to capitalize on a huge investment in training, and other such things.
- In my experience, the institution as a whole has a way of fighting policy initiatives it doesn't like by hunkering down, giving it the slow roll, and outlasting the Administration. I've seen it many times in my years of service, and I know it when I see it. Even if a Commissioner is supportive, there is only so much time in the day, and so much energy that can be devoted to a single problem. The adverse managers and rank and file can make things very difficult even if there is extraordinary support at the upper levels. They know how to do it.
- Your approval of this bill will send a critical signal at a critical time that the strategy of simply waiting out this policy initiative isn't going to work, that the Legislature's policy direction set two years ago was not a passing whim. This will be extremely helpful to the program.

We Can All See the Wreck Coming

The State is unlikely to make the multi-million dollar investment and expend years of time staff time to develop its own e-commerce procurement system.

Yet, the fiscal train wreck is coming. We can all see it approaching just around the corner. When it arrives, the wreck will not magically leave purchasing positions untouched. The scenario of drastic reductions in vital programs and the attendant reductions in staff levels has been lucidly described by both the Governor and the Legislature. Failing to enable e-commerce now means trying to do the State's business with a severely crippled procurement system in the future.

In fact, if history is a guide, administrative functions, such as procurement, will suffer even more staffing declines than the operating functions, when the cuts arrive. Massive delays in procurement of vital goods and services, coupled with the proportionately increasing drag of a paper-driven system which is understaffed will have the potential for a grinding gridlock in the State's ability to conduct its business.

Does anyone dispute that substantial staffing cuts throughout State government are likely over the next few years, once the temporary oil price reprieve has passed? Does anyone believe, in the face of that probability, that the State is going to put up huge sums of money, and divert precious manpower resources for several years in order to build a state-of-the-art e-commerce system, when the money and time will be more urgently needed to keep the most vital functions of Alaska's government functioning?

This bill presents one of those rare opportunities to look into the future and know what to do to make things better. Taking the step of passing this legislation now

will allow the State to avoid an unnecessary expenditure of public funds and at the same time save significant amounts of money, increase efficiency, and incrementally extend the use of e-commerce tools throughout State government over the next few years.

I believe the introduction into State procurement of e-commerce tools and services, specifically the tools and services created and provided by Alaska Supply Chain Integrators, is an unalloyed good.

The technology is available now, the capacity to implement it is present, the cost reduction is real; all that is needed is the resolve to do the obvious.

Thank you for this opportunity to be heard.

BARRY JACKSON
3351 SEPPALA DR.
ANCHORAGE, ALASKA 99517

This represents only the "Cost of Goods" portion of DGS' quarterly pilot contract audit. The final report will include all remaining sections: time to process, Alaska vendor utilization, workload comparison and mistakes/errors.

Cost of Goods Audit Report

The following is the Cost of Goods audit report for the second quarter of FY05 concerning Contract Award 2004-9900-4556, Procurement Services, Supply Chain Management, and Electronic Purchasing Tools.

Purpose

This audit is used as a benchmark for the Cost of Goods purchased by Alaska Supply Chain Integrators (ASCI) under contract award 2004-9900-4556. A copy of the contract award is available from the Division of General Services (DGS).

Methodology

ASCI data from the 2nd quarter FY05 (October through December 2004) has been compared to Southeast Region (SER) data. In an effort to develop a fair and random pool of comparison items, the MS Excel random number generator was used to create the comparison pool.

Four random samples of 100 line items purchased by ASCI during the second quarter FY05 were created to develop the comparison pool. Each pool of 100 was searched for comparison purchases to be evaluated against previous purchases made by the SER procurement office. To find comparisons, a search of previous SER purchases was conducted in the BuySpeed database by part number, similar make, and item description.

The cost of like items purchased by ASCI was then compared to SER procurement data.

Conclusion

During the period, ASCI processed a total of 1,176 delivery orders. Of this amount, 372 delivery orders were placed in accordance with state contracts. As a result of removing the 372 delivery orders placed in accordance with state contracts, this audit consists of 804 delivery orders with a total of 2,897 line items. The table below illustrates the dollar values for all delivery orders issued by ASCI during the period:

Type of Delivery order	Number of Delivery Orders	Dollar Value of Delivery Order
DC's placed	1,176	\$ 1,378,186.70
State Contract DO's placed	372	\$ 525,304.60
DO's in audit pool	804	\$ 852,882.10

Every effort was made to find 40 comparison purchases. However, as indicated in Attachment A, tables 1 & 2, the comparison pool of 40 contained a final total of 31 actual comparable purchases - nine line items were removed after further review indicated the items were not comparable. Of the 31 true comparisons, only 17 (table 1) line items could be compared to SER 4th qtr FY 04 purchases. The remaining 14 (table 2) comparison line items were last purchased by SER prior to the 4th qtr FY 04 period, and in two instances the last state purchases date back to 2003.

As indicated in tables 1 & 2, many of the comparison line items were purchased in different quantities. In addition, delivery time frames, freight costs and comparison time frames have not been studied in depth. The Division of General Services, after consultation with Legislative Audit, does not believe the data can be extrapolated in order to draw firm cost increase/decrease conclusions, but the data may serve to identify potential areas for improvement. The data documents less than 1% of the purchases made by the contractor during the 2nd qtr of FY 05.

Below are results based on the 31 comparison line items:

- 17 (Attachment A, Table 1) ASCI line items were compared within the SER 4th qtr data
- Total state expenditures (ASCI purchased) for the 17 line items was \$1,049.82
- Total state expenditures (SER purchased) for the 17 line items was \$1,016.20
- Total state expenditures increased by 3.31% for the 17 line items within the audit period. Additional cost to the state \$33.62.

- The remaining 14 (Attachment A, Table 2) ASCI line items could not be compared within SER 4th qtr data, but have been compared to the most recent SER purchase of similar items.
- Total state expenditures (ASCI purchased) for the 14 line items was \$552.74
- Total state expenditures (SER purchased) for the 14 line items was \$324.36
- Total state expenditures increased by 70.41% for the 14 line items within the audit period. Additional cost to the state \$228.38.

Table 1 Items purchased by SER in 4th qtr FY 04

ASCI PO No.	Date	Unit Cost	Order Qty	Freight Notes	State PO No.	Date	Unit Cost	Order Qty	Freight Notes	Change	Notes
1 751 8	12/13/04	\$ 4.08	5	Freight included	340589 3	08/18/04	\$ 3.22	1	Freight included	26.70%	Increase Different Vendors
2 905 1	12/22/04	\$ 29.50	6	Freight included	339591 14	03/24/04	\$ 25.25	20	Freight included	16.80%	Increase Different Vendors
3 341710 1	12/28/04	\$ 162.00	1	Picked Up	338768 3	05/13/04	\$ 154.99	2	Freight included	4.50%	Increase Different Vendors
4 331 1	11/10/04	\$ 19.20	1	Freight not included	338481 1	04/24/04	\$ 18.50	1	Freight not included	3.80%	Increase Different Vendors
5 422 2	11/17/04	\$ 185.00	1	Freight included	339018 2	05/28/04	\$ 183.00	1	Freight included	6.60%	Increase Same Vendor Price Increase
6 429 2	11/22/04	\$ 98.75	2	Freight not included	335062 18	09/09/04	\$ 82.33	1	Freight not included	7.00%	Increase Different Vendors
7 462 2	11/22/04	\$ 0.97	2	Freight included	333170 1	06/10/04	\$ 0.59	10	Freight included	64.40%	Increase Different Vendors
8 820 5	12/18/04	\$ 8.55	8	Freight not included	338238 2	04/14/04	\$ 8.51	10	Freight not included	0.01%	Increase Same Vendor Price Increase
9 341317 1	10/01/04	\$ 2.29	12	Freight not included	338551 14	04/29/04	\$ 1.95	4	Freight included	17.40%	Increase Same Vendor Price Increase
10 341387 1	10/08/04	\$ 3.01	10	Freight included	339623 10	08/28/04	\$ 1.39	10	Freight included	185.50%	Increase Different Vendors
11 341442 2	10/18/04	\$ 1.06	12	Freight included	339275 18	06/10/04	\$ 1.06	56	Freight included	0.00%	No Change Different Vendors
12 820 1	12/18/04	\$ 7.25	5	Freight not included	339551 3	06/23/04	\$ 7.25	5	Freight not included	0.00%	No Change Same Vendor
13 895 1	12/09/04	\$ 22.29	36	Freight included	339266 1	08/10/04	\$ 22.29	54	Freight not included	0.00%	No Change Different Vendors
14 341370 4	10/07/04	\$ 14.50	8	Freight not included	339380 9	08/16/04	\$ 14.50	20	Freight not included	0.00%	No Change Same Vendor
15 849 1	12/21/04	\$ 8.40	25	Freight included	338811 1	05/18/04	\$ 8.40	25	Freight included	0.00%	No Change Same Vendor
16 1058 2	12/30/04	\$ 8.97	12	Freight included	339545 9	06/23/04	\$ 8.97	12	Freight included	0.00%	No Change Same Vendor
17 341330 1	10/01/04	\$ 464.00	1	Freight not included	339207 1	06/08/04	\$ 464.00	1	Freight not included	0.00%	No Change Same Vendor

ASCI Purchase Total \$ 1,049.82 SER Purchase Total \$ 1,018.20
 Additional Cost to State \$ 33.62 3.308% Increase

Table 2 Items purchased by SER outside of 4th FY 04

ASCI PO No.	Date	Unit Cost	Order Qty	Freight Notes	State PO No.	Date	Unit Cost	Order Qty	Freight Notes	Change	Notes
1 1025 7	12/29/04	\$ 7.93	2	Freight included	338384 7	07/21/04	\$ 7.99	1	Freight not included	0.01%	Decrease Same Vendor Price Decrease
2 703 16	12/13/04	\$ 1.36	1	Freight not included	337494 8	02/23/04	\$ 1.32	24	Freight included	3.10%	Increase Same Vendor Price Increase
3 751 4	12/13/04	\$ 1.80	5	Freight included	340290 10	08/03/04	\$ 0.99	2	Freight included	81.80%	Increase Different Vendors
4 341461 5	10/20/04	\$ 418.00	1	Freight included	337590 2	02/27/04	\$ 209.00	5	Freight included	100.00%	Increase Different Vendors
5 341492 3	10/25/04	\$ 1.80	3	Freight included	337716 4	03/09/04	\$ 1.73	48	Freight included	4.00%	Increase Same Vendor Price Increase
6 367 2	11/11/04	\$ 9.99	1	Freight included	336109 1	11/12/03	\$ 8.99	3	Freight included	11.10%	Increase Same Vendor Price Increase*
7 341387 5	10/08/04	\$ 9.89	2	Freight included	334939 7	09/02/04	\$ 9.54	3	Freight included	3.70%	Increase Same Vendor Price Increase
8 341442 5	10/18/04	\$ 2.92	24	Freight included	337615 12	03/01/04	\$ 2.84	300	Freight not included	2.50%	Increase Different Vendors
9 573 3	12/02/04	\$ 2.39	4	Freight included	337716 4	03/09/04	\$ 1.73	48	Freight included	38.20%	Increase Different Vendors
10 341709 1	12/28/04	\$ 69.00	1	Freight not included	340093 3	02/25/00	\$ 56.99	1	Freight not included	21.10%	Increase Different Vendors
11 341492 5	10/25/04	\$ 6.81	3	Freight included	337617 1	03/01/04	\$ 2.19	60	Picked Up	201.80%	Increase Different Vendors
12 906 1	12/21/04	\$ 4.60	12	Freight included	334167 3	07/24/03	\$ 4.60	12	Freight included	0.00%	No Change Same Vendor**
13 273 1	11/08/04	\$ 7.95	6	Freight not included	337214 18	01/30/04	\$ 7.95	3	Freight not included	0.00%	No Change Same Vendor
14 657 8	12/07/04	\$ 8.50	4	Freight not included	337649 18	03/03/04	\$ 8.50	10	Freight not included	0.00%	No Change Different Vendors

ASCI Purchase Total \$ 552.74 SER Purchase Total \$ 324.36
 Additional Cost to State \$ 228.38 70.40% Increase

* - The unit cost entered for ASCI on the Master was \$12.86, but should have been \$9.99 this sheet shows the correct price.
 ** - The unit cost entered for ASCI was the case cost (\$55.20/12), \$4.60 should have been the unit cost. The vendor also confirmed SER paid \$4.60.

ASCI Combined Purchase Total \$ 1,602.56 SER Combined Purchase Total \$ 1,340.56
 Combined Additional Cost to State \$ 261.99 16.348% Increase

Contractor Prepared Cost of Goods Analysis

In response to the state's request to provide information regarding significant price increases or decreases, ASCI prepared a detailed cost of goods analysis for the second and third quarters of fiscal 2005. The analysis is based on the 4950 item catalog that ASCI has built for the State of Alaska based on past purchases of items. The analysis includes 971 transactions during the time period covering 452 unique items. Another 25 lines were discarded by the contractor from the analysis based on apparent data anomalies. The state has not reviewed the contractor's methodology, data or analysis. The table below was provided by ASCI:

	2004 Q4	2005 Q1	To Date
Total Lines	306	600	972
# Lines Price increase	149	319	507
# Lines Price decrease	75	189	283
# of distinct products	183	333	451
Total Spend - Actual	\$ 25,070.30	\$ 152,381.95	\$ 184,768.54
Total Spend - Baseline	\$ 24,280.43	\$ 157,032.13	\$ 188,415.19
\$ increase/decrease	\$ 789.87	\$ (4,650.18)	\$ (3,646.65)
% increase/decrease	3.3%	-3.0%	-1.9%

Prices have been corrected for differences in Units of Purchase.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE LESLIE MCGUIRE
HOUSE DISTRICT 28

Chair
Judiciary Committee

Member
House Leadership
Rules Committee
Health, Education
& Social Services
Committee

Oil & Gas Committee
Military & Veterans'
Affairs Committee

SPONSOR STATEMENT HB 257

"An Act relating to a procurement and electronic commerce tools program for state departments and instrumentalities of the state; and providing for an effective date."

Although Alaska is currently enjoying a temporary revenue windfall, it is very important that the Legislature remain focused on the need to deliver long-term reductions in the cost of government. Therefore, this bill renames, expands and extends the pilot procurement, eCommerce and supply chain management program authorized by HB 313 in the 2003 Legislative Session. It will now be called the "Supply Chain Modernization Program".

The program is already delivering savings in the cost of overhead and administration. During the first two years, it is expected to save over \$150,000 in overhead administration costs, even though it has been implemented in only one region of one agency (DOT/PF). It needs to be expanded and extended in order to reach its full potential.

Overhead costs represent a significant portion of the total cost of government. However, the State of Alaska generally performs overhead functions using outmoded tools and methods. Private industry has delivered considerable gains in productivity during the past two decades by contracting out back-office functions to specialist firms and installing modern computer-based systems. It is time that State government embraces these techniques and participates more fully in the U.S. productivity boom.

As funds previously used for overhead administration are saved, they will be available to fund programs such as education, public safety and other programs of direct importance to a broad range of Alaska residents.

The prices the State pays for goods and services can also be reduced by this program. Cataloging goods and services, combining volumes across multiple agencies, streamlining and automating repetitive processes and allowing for greater staff specialization, can gradually obtain better pricing.

By adopting this bill the Legislature will be directing the Administration to implement the Supply Chain Modernization Program in a timely and orderly manner.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 257
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title State Procurement Electronic Tools BRU Alaska Court System
 Component Trial Courts
 Sponsor House Judiciary Committee
 Requester _____ Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 257.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 4/8/05 7:41 AM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 4/8/2005
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number. _____
 Bill Version: HB257-DOA-DGS-4-8-05
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Statewide
 Title An Act relating to a procurement and electronic RDU Statewide
commerce tools program for state programs Component Statewide
 Sponsor House Judiciary Committee
 Requester House Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Various in all state agencies						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: _____
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will authorize the Department of Administration to contract with private sector firms to provide procurement services and electronic commerce tools. The bill would include additional procurement preferences and eliminate the sunset date and/or restrictions on the number of departments/ instrumentalities allowed within the program established under CH. 51, SLA 2003. The department has an existing contract for these services and tools. Only the Southeast Region of the Department of Transportation and Public Facilities is currently included under that contract. The contract may be amended to include additional state departments and instrumentalities.

The Department of Administration is not able to determine potential costs or savings that may result from this bill. The department continues to examine savings that may result from the existing procurement services and electronic commerce tools contract.

Prepared by: Vern Jones, Chief Procurement Officer Phone 465-5684
 Division General Services Date/Time 4/8/05 9:43 AM
 Approved by: Mike Tibbies, Deputy Commissioner Date 4/8/2005
 Agency Administration

HB

258

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB258-Courts-2-16-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Sexual Assault by Persons With HIV/Aids RDU Alaska Court System
 Component Trial Courts
 Sponsor Representative Lynn
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 258.

Prepared by: Doug Wooliver, Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 2/16/06 3:30 PM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 2/15/2006
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 258
 () Publish Date: _____

Revision Date/Time (Note if correction): 2/28/06 3:38 p.m. Dept. Affected: Administration
 Title "An Act relating to aggravating factors at sentencing." RDU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Rep. Lynn
 Requester (H) HES Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill create a new aggravating factor under AS 12.55.155 when a defendant is convicted of an offense under AS 11.41.410 - 11.41.455 and the defendant had been previously diagnosed as having or having tested positive for HIV or AIDS.

 This bill is not expected to have a significant fiscal impact on the Public Defender Agency operations.

Prepared by: Quinlan Steiner, Director Phone (907) 334-4414
 Division Public Defender Agency Date/Time 2/28/06/ 3:38 p.m.
 Approved by: Mike Tibbles, Deputy Commissioner Date 2/28/2006
 Agency Administration

FISCAL NOTE

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB258
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "Sexual Assault by Persons with HIV/AIDS" RDU Institutional Facilities
 Component Institution Director's Office
 Sponsor Representative Lynn
 Requester Judiciary, Health Education & Social Services Component No. 524

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
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
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Department of Corrections medical staff reports that currently there are five inmates (out of 5001) who have been diagnosed with HIV/AIDS, and none of these inmates are incarcerated for a sexual crime. Medical staff also reports that there are about four to five additional inmates who often are booked and released from Alaska correctional facilities on minor charges or for a non-criminal hold (Title 47) who have been diagnosed with HIV/AIDS, but again none are sex offenders. Based on the information available, it is difficult for the department to predict with any accuracy if a case may arise that may be impacted by the changes contained in the legislation. But, it is estimated that the impact will be minimal due to the very small number of total HIV/AIDS cases. Therefore, the Department of Corrections does not anticipate a significant fiscal impact due to the passage of this legislation.

Prepared by: Sharleen Griffin, Acting Director Phone 465-3339
 Division: Administrative Services Date/Time 2/28/06 12:04 PM
 Approved by: Portia C.K. Parker, Deputy Commissioner Date 2/28/2006
 Agency: Department of Corrections

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB258-LAW-CJL-2-21-06
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to aggravating factors at RDU' CRIMINAL
sentencing." Component Criminal Justice Litigation
 Sponsor Representative Lynn
 Requester House Health, Education and Social Services Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 12.55 by adding a diagnosis of testing positive for or having HIV or AIDS as an aggravating factor in sentencing for sexual assault offenses, sexual abuse or unlawful exploitation of a minor

Passage of this legislation is not expected to have a fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhetea, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 2/21/06 11:59 AM
 Approved by: Kathryn Daughhetea for David Márquez, Attorney General Date 2/21/2006
 Agency: Department of Law

Alaska State Legislature

Chairman

Military & Veterans' Affairs Committee

Member

Labor and Commerce Committee

State Affairs Committee

Economic Development, Trade & Tourism
Committee

Education Committee

Joint Armed Services Committee

Finance Subcommittees

Labor & Workforce Development

Community & Economic Development

Military & Veterans' Affairs



A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" AlaskaDistrict31.blogspot.com

Session:
Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
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Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

SPONSOR STATEMENT CSHB 258(HES)
"An Act relating to aggravating factors at sentencing."
By Representative Bob Lynn
Released: March 24, 2006

CSHB 258(HES) would make sexual assault by persons who have been previously diagnosed as having or having tested positive for HIV or AIDS an aggravating factor at sentencing.

Sexual assault is painful enough. The mere possibility of HIV-transmission – accompanied by the sheer terror of six months or more of testing that may reveal a life-threatening infection – raises this crime to a more heinous level.

How or why a perpetrator of rape or sexual assault acquired HIV/AIDS is not the issue. The sexual orientation of the perpetrator is not the issue. Any perceived stigma someone associates with this life-threatening disease – by a person guilty or innocent – is not the issue. Those topics are not the issue and have nothing whatsoever to do with this bill.

This bill is only – and I repeat only – about whether a convicted rapist or sexual predator previously diagnosed with HIV/AIDS should be subject to an aggravating factor at sentencing for their horrific and life-changing crime.

Across the nation, those entrusted with the safety and public health of Americans are realizing the devastating effects of sexual assault by persons infected with this life-threatening, sexually transmitted disease.

Twenty-seven states and selected possessions have some type of law that specifically criminalizes the exposure or transmission of HIV in their jurisdictions, according to a 2000 report from the HIV Criminal Law and Policy Project.

Everything possible and practical should be done to deter such criminals, or at least make sure these offenders are put behind bars for a long time.

This bill is needed to protect all of us, but especially those most at risk, women who are the victims of rape. Your favorable consideration of CSHB 258(HES) is respectfully requested.

Alaska State Legislature

Chairman

Military & Veterans' Affairs Committee

Member

Labor and Commerce Committee

State Affairs Committee

Economic Development, Trade & Tourism
Committee

Education Committee

Joint Armed Services Committee

Finance Subcommittees

Labor & Workforce Development

Community & Economic Development

Military & Veterans' Affairs



A Communication From

REPRESENTATIVE BOB LYNN

District 31 Anchorage

**E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" AlaskaDistrict31.blogspot.com**

Session:

Alaska State Capitol
Juneau, AK 99801-1182

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Anchorage, AK 99501-2133

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Sectional Analysis for HB 258: Sexual assault by person with HIV/AIDS

Released: February 16, 2006

Michael Sica, staff for Rep. Bob Lynn

- Section 1.** Adds a new paragraph making it an aggravating factor for felonies specified in AS 11.41.410-11.41.455 committed by a defendant previously diagnosed as having or having tested positive for HIV or AIDS.
- Section 2.** Adds a new section to the uncodified law of the State of Alaska establishing that this Act applies on or after the effective date of this Act.

Alaska State Legislature

Chairman

Military & Veterans' Affairs Committee

Member

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State Affairs Committee

Economic Development, Trade & Tourism
Committee

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Explanation of the change from original HB 258 to CSHB 258(HES) in the Health, Education and Social Services Committee:

There was a minor change made to the bill relating to the number of the
aggravator:

Line 4: (31) was changed to (33).

Alaska State Legislature

Chairman

Military & Veterans' Affairs Committee

Member

Labor and Commerce Committee

State Affairs Committee

Economic Development, Trade & Tourism

Committee

Education Committee

Joint Armed Services Committee

Finance Subcommittees

Labor & Workforce Development

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A Communication From

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HB258 QUESTIONS & ANSWERS

Released: March 24, 2006

Below are questions that have been asked about House Bill 258, and our answers based on research and interviews with medical, legal and law enforcement officials as well as Alaska agencies for victims of violence and sexual assault.

QUESTIONS: How do you know a sexual assailant has HIV or AIDS?

ANSWER: When there is a rape or sexual assault and police charge a defendant with a sexual offense, the law enforcement agency would then seek a search warrant for the sexual offender's medical records. The court could also issue an order or subpoena for release of medical records.

Under current state law (Sec. 18.15.300-310), sexual assault victims have the right to request that a defendant be tested for HIV or other sexually transmitted diseases, and results be made available to them. So, access to these records is nothing new; it's already happening in many cases.

QUESTION: How does this release of confidential health information relate to the federal requirements under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)?

ANSWER: HIPAA allows for the disclosure of protected health information, without an individual's authorization, for several purposes, including "Public Health and Benefit Activities." This includes the release of confidential medical records for law enforcement purposes as well as judicial and administrative proceedings.

We also believe that sexual predators who are willing to share their semen, blood and bodily fluids by force should also be willing to share their relevant medical records by force as well.

QUESTION: Why identify only HIV or AIDS and not other sexually transmitted diseases in your bill?

ANSWER: Most cases of HIV today are the result of transmission through sexual behavior. According to a summary fact sheet by the Office of National AIDS Policy posted on the White House website, nearly 60 percent of men and 75 percent of women who have the virus or disease were infected through sex with other partners. Other information sources show even higher transmission rates through sexual activity.

Despite advances in medical treatment, there is no cure for the disease and some strains of the virus cannot be as effectively treated with drugs. HIV/AIDS is a life-threatening STD that is transmitted primarily through sexual behavior and often carries with it catastrophic medical, financial and personal consequences.

The Centers for Disease Control as well as many agencies for victims of rape and sexual offenses identify "HIV transmission" as a major concern among survivors of sexual assault.

QUESTION: Hepatitis C and genital herpes are also sexually-transmitted, lifelong afflictions. Why not include them in your bill as well?

ANSWER: Hepatitis C can be life-threatening but its main route of transmission is through blood from infected persons, commonly with shared needles when "shooting" drugs, according to the CDC. Sexual behavior is not the major route of transmission for the disease. The CDC does not even recommend testing for Hepatitis C for people having sex with multiple partners or people having sex with an infected steady partner.

Genital herpes is primarily transmitted through sexual behavior and has no cure, but it is not considered a life-threatening disease. According to the California STD/HIV prevention training center, "Genital herpes is not usually considered a severe or dangerous infection, but it can be painful."

QUESTION: Must the court enhance the sentence for a convicted sexual offender who has been previously diagnosed with HIV or AIDS?

ANSWER: At sentencing, the Judge is not required to increase the sentence of a defendant because an aggravator has been found. The Judge must consider all circumstances and then may increase the sentence, either active time to serve or suspended time, based upon the aggravator.

QUESTION: What are some examples of aggravators currently included in state law?

ANSWER: Under Sec. 12.55.155, some factors in aggravation that may be considered at the time of sentencing for a defendant relate to physical injury, deliberate cruelty and so-called hate crimes. These factors should be aggravators, but so should exposure to a life-threatening disease such as HIV by a convicted rapist or sexual offender.

QUESTION: Some of the sexual offenses listed under this bill may not include penetration, the most common route of transmission of the HIV virus. Is it fair to enhance the sentence of a sexual offender who is convicted of a crime that does not specifically mention penetration?

ANSWER: Many cases of rape and other sexual penetration offenses end up, through plea agreements, in convictions for crimes that don't include penetration. Nevertheless, penetration and exposure to sexually transmitted diseases has taken place and should be considered as an aggravator at sentencing.

Again, the court can take the circumstances into account when deciding whether to enhance the sentence of a convicted sexual offender.

QUESTION: Aren't you discriminating against people with HIV or AIDS by singling out that virus and that disease in your bill?

ANSWER: We are not discriminating against the victims of this terrible disease. We have nothing but concern for those with HIV and AIDS. In fact, the life-changing and life-threatening impacts of the disease helped create this bill. We want to punish and hopefully deter sexual offenders who would expose innocent victims to the HIV virus. If we are discriminating against anybody, it's against rapists and sexual predators.

QUESTION: What about the stigma that some claim may be reinforced by only listing HIV or AIDS, and not other STDs, in your bill?

ANSWER: There is a stigma attached to many things in life. A man crossing paths with a woman on a lonely street deals with the stigma of being a considered potential rapist. There is a stigma attached to cigarette smoking, yet states pass laws protecting others from smokers in public places.

If there is a stigma attached to having HIV or AIDS, what about the additional pain and suffering this causes the innocent victims of rape or sexual assault by a convicted defendant with the disease? The stigma that some unthinking individuals may attach to the disease is as much an argument for, not against, including it as an aggravator at sentencing for HIV-infected rapists and sexual predators.

Also, HIV and AIDS is already defined in state law in Sec. 18.15.310, not as a stigma or a mark of shame, but as a specific virus and disease as it relates to testing of defendants of sexual crimes. This bill does nothing to change that.

QUESTION: With all the advancements in HIV and AIDS treatment, can you really consider AIDS a death sentence – or even a life sentence?

ANSWER: Many HIV/AIDS patients are living longer today but the increase in life expectancy depends on many factors, such as early treatment and positive response to medical therapies.

Dr. Renslow Sherer, with the University of Chicago Hospitals, tells his HIV patients that they can have a normal life expectancy but, even under the best circumstances, "this will not be easy."

"Adherence to daily medications is extremely demanding, even if there are no untoward side effects," Dr. Sherer said in Jan. 14, 2006 article on a website called, The Body, the Complete HIV/AIDS Resource. "Life with HIV is still a hard life, even if the medication part becomes simple and routine."

In a 2002 study published in the Archives of Internal Medicine, the projected life expectancy for a 37-year-old HIV patient receiving antiretroviral therapy was nearly three years longer than a patient receiving delayed therapy (16.54 years vs. 13.73 years). It is a sobering thought that some prisoners on Death Row live longer than some people infected with HIV/AIDS.

Try telling rape victims infected with HIV that it's not a death sentence. Try telling them that, knowing they may not see their children and grandchildren grow up. At the very least, it is a life sentence – a life sentence that condemns victims to reliving their sexual assault each time they take medications to ward off a terrible disease transmitted by an HIV-infected rapist or sexual predator.

HB258 Q&A Background Information

Reports, studies, fact sheets, statutes and other supporting information referred to in the Sponsor's Q&A Paper are available upon request

Brenda K Stanfill
PO Box 81012
Fairbanks, AK 99708

February 17, 2006

Alaska State Legislature
Juneau, AK 99811

Dear Members of the House and Senate,

I am writing this letter as both an individual and a professional who works in the field of assisting sexual assault victims.

In my personal life I have experienced the pain of watching a friend and a family member attempt to reclaim their life after experiencing a sexual assault, one from a stranger, one from another family member. In both situations there was a concern over whether the perpetrator had been exposed to or was HIV positive. Both had HIV tests done and continued to have them done for six months after the RAPE.

Each time they went in for the HIV test they relived the horror of the sexual assault. They could not begin the healing process during this time, due to the devastating thought that not only had this man taken something from them that was not his but he may have left a disease that would impact them for the remainder of their lives. Once again, a continual reminder of a horrible life-changing event.

As the Executive Director of the Interior Alaska Center for Non-Violent Living in Fairbanks, I have also experienced this situation many times in working with victims of sexual assault at the agency. I have known of two cases where the victim did contract AIDS as a result of the sexual assault. In both cases the perpetrator knew he had AIDS. I feel strongly that this fact should have been considered as an aggravator in sentencing and a longer prison sentence given.

It is one crime to RAPE someone and it is another crime to knowingly expose someone to a disease that has the potential to cause their death. Please support using this fact as an aggravator at sentencing by supporting HB258.

Thank you for your focus on the issue of sexual assault.

Sincerely,

Brenda K. Stanfill
Alaska Resident, Fairbanks
Executive Director, Interior Alaska Center for Non-Violent Living

February 18, 2006

Representative Bob Lynn
Alaska House of Representatives
Capitol Room 415
Juneau, Alaska 99801-1182

Dear Representative Lynn:

I am writing in support of House Bill 258, which would make sexual assault by defendants knowingly infected with HIV an aggravating factor at sentencing.

In my 19 years of experience as a family therapist, I have worked almost exclusively with people who have either been diagnosed or feared they have been infected with the HIV virus. During that time, I have seen the isolation as well as emotional trauma that individuals and patients go through fearing they have the disease. Family members, friends and associates tend to avoid and even shun people who have either contracted the virus or are in the process of being tested for infection.

I have seen the toll on individuals dealing with the burden of uncertainty for months while waiting for test results. For the victims of rape and sexual assault, this is especially cruel and unfair. Exposure to HIV by a sexual predator makes a terrible crime even more devastating and should be punished with an enhanced sentence.

Sincerely yours,



Robert A. Bassett, Jr.
Masters in Family Therapy (MFT)
Certified HIV/AIDS counselor and educator, State of Connecticut



Municipality of Anchorage

4501 Brigaw Street • Anchorage, Alaska 99507-1500 • Telephone (907) 786-8500 • <http://www.muni.org>



Mayor Mark Begich

Anchorage Police Department

February 23, 2006

Representative Bob Lynn
House of Representatives
Alaska State Legislature

Re: Letter of Support for HB 258

Representative Lynn,

I wish to add my support for this valuable piece of legislation. We in law enforcement are adept in training ourselves in confronting suspects armed with guns, knives, clubs, and a host of other weapons. Through training and experience, we enter such confrontations confident that we will likely prevail and secure the suspect without the necessity of actually using deadly force. Meaning that usually no one is harmed, victims are rescued, the suspects are taken into custody, and the officer goes home to his or her family and survives to fight another day.

What can be insidious with some of those unfortunates who knowingly have been diagnosed with the "HIV" and "AIDS" virus is that they, for reasons of their own, can utilize their disease as a weapon to again strike out with the intent to harm. It would not be the handgun or edged weapon that police and others would recognize as the threat and react appropriately, but rather a silent and inconspicuous assault that undetected and/or untreated threatens not only the victim, but also the victim's loved ones.

So until there is a cure for these viruses, such assaults must be met with the same level as the threat it presents.

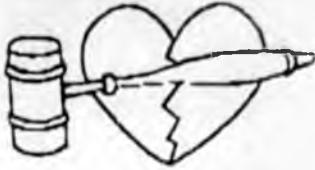
I again state my support for this legislation, both for those who are tasked to protect and for those whom we protect.

Respectfully submitted,

Walt Monegan
Chief of Police
Anchorage Police Department

Community, Security, Prosperity

VICTIMS



1057 W. Fireweed Lane, Suite 101 • Anchorage, AK 99503
For Justice, Inc. (907) 278-0977 • Fax: (907) 258-0740 • e-mail: vjf@alaskalife.net

February 16, 2006

Representative Bob Lynn
House of Representatives
Juneau, Alaska

Dear Representative Lynn:

We are writing in support of your bill, HB 258, making a known positive HIV-AIDS status an aggravating factor in sentencing for rape.

We agree that adding months of terror, and possibly years of illness and a shortened life, to the horror of a rape, makes an attack by an HIV-AIDS positive rapist a horrendous assault. An assailant who knowingly adds potential murder to the crime of rape should receive a sentence that reflects the seriousness of the offence, and one that will separate the perpetrator from society for a very long time.

Thank you for your work on this issue.

A handwritten signature in cursive script that reads "Susan Sullivan".

Susan Sullivan
Executive Director
Victims for Justice

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

VIOLENT CRIMES COMPENSATION BOARD

FRANK H. MURKOWSKI, GOVERNOR

PO BOX 110230
JUNEAU, ALASKA 99811-0230
PHONE: (907) 465-3040
TOLL FREE: 1-800-764-3040
FAX: (907) 465-2379

February 27, 2006

The Honorable Representative Lynn
State Capitol, Room 415
Juneau, AK 99801-1182

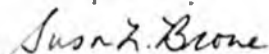
RE: HB 258
An act relating to aggravated factors
at sentencing

Dear Representative Lynn:

The Violent Crimes Compensation Board supports HB 258 and agrees with its provisions. This bill provides for an additional consideration by the court when sentencing certain felonious offenders. Victims of sexual assault without these additional aggravating circumstances are traumatized enough. Trying to deal with the additional heartache of a HIV or AIDS diagnosis makes it unthinkable.

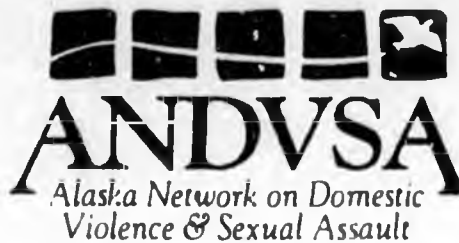
We encourage passage of this bill as a sign of respect, compassion, and understanding of the trauma experienced by victims of serious sexual offenses. Please contact Board Administrator, Susan Browne, at 465-5525 if we can provide any additional information. The Board wishes to thank the bill sponsors(s) and for their hard word work on behalf of Alaska crime victims.

Respectfully,



Gerard Godfrey
Chair

Juneau Office
130 Seward St #209
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Fax: (907) 463-4493
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Sitka Office
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Sitka, Alaska 99835
Phone: (907) 747-7545
Fax: (907) 747-7547

February 14, 2006

The Honorable Representative Lynn
State House of Representatives
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Lynn:

The Alaska Network on Domestic Violence & Sexual Assault is a statewide coalition of member shelter and community based programs that provide direct services and advocacy for victims of domestic violence and sexual assault. We would like to thank you for introducing House Bill 258, "An Act relating to aggravating factors at sentencing", and offer our support.

Sexual assault alone is a heinous crime for which perpetrators much be held fully accountable. When a sexual predator who is knowingly infected with HIV or AIDS commits an assault that could transmit the virus, it puts a victim at even greater risk and emotional distress. In order to hold the perpetrator fully accountable, the sentences of these sexual predators should be enhanced. We fully support your legislation to add these circumstances to AS 12.55.155 Factors in Aggravation and Mitigation.

Thank you for your leadership in addressing this issue.

Please let me know if I can offer other support for this legislation.

Sincerely,

Peggy Brown
Executive Director

Member Programs

Anchorage AWAIC, AWRC, STAR Barrow AWIC Bethel TWC Cordova CFRC Dillingham SAFE Fairbanks LAC
Homer SPHH Juneau AWARE Kenai LeeShore Center Ketchikan WISH Kodiak KWRCC Kotzebue MFCC
Nome BSWG Palmer AFS Seward SCS Sitka SAFV Unalaska USAFV Valdez AVV



State of Alaska

Department of Public Safety

Council on Domestic Violence & Sexual Assault

Frank H. Murkowski, Governor
William Tandeske, Commissioner

February 23, 2006

The Honorable Representative Bob Lynn
State Capitol
Room 415
Juneau, AK 99801-1182

Dear Representative Bob Lynn:

The Council of Domestic Violence and Sexual Assault would like to thank you for sponsoring HB 258.

As you know, sexual assault is one of the most personal violations that a person can experience. Repercussions of that crime may last throughout a victim's lifetime, with damaging consequences to their relationships, families, friends and communities. Many victims of violence may end up divorced or unable to maintain intimate relationships. Because sexual assault is such an invasive crime, many victims end up feeling that the world is a very threatening place and thus are unable to live their lives in a way that many of us take for granted. Working, attending community events, marriage, friendships, and socializing may all become activities that a victim may no longer be willing to risk.

The only way to make this already destructive crime even more difficult is to add the complications and fears of HIV and AIDS. Because of this additional threat the victim now also has to worry about a potentially life threatening disease and how this affects their personal relationships. Holding the offender accountable by making this an aggravator in the crime of sexual assault is very appropriate, and is supported by the Council on Domestic Violence and Sexual Assault.

Sincerely,

Barbara E. Mason
Executive Director
(907) 465-5504 Phone
(907) 465-3627 Fax

Council on Domestic Violence & Sexual Assault
P.O. Box 111200 - Juneau, AK 99811 - Voice (907) 465-4356 - Fax (907) 465-3627



Alaska Association of Chiefs of Police

February 21, 2006

Representative Bob Lynn
State Capitol, Room 415
Juneau, AK 99801-1182

Reference: House Bill 258

Dear Representative Lynn,

I would like to take this opportunity to voice my support of HB 258.

Sexual Assault causes untold pain to the victim. However, for the victim to later learn that the assailant is infected with HIV or AIDS and to face the possibility of transmission, would be crippling.

An individual who knows they are infected with HIV or AIDS and commits sexual assault, should face additional punishment for this crime. It is reasonable that this should be considered as an aggravating factor at sentencing.

If I can be of further assistance to you in getting this bill passed please don't hesitate to contact me. Your introduction of this house bill demonstrates your commitment to the citizens of Alaska.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Clemons".

Chief Thomas Clemons

President

Alaska Association of Chiefs of Police



ALASKA CORRECTIONAL OFFICERS ASSOCIATION

"Walking Alaska's toughest beat"

Alaska Correctional Officers Association supports HB 258.

**Prepared by: Alaska Correctional Officers Association
February 21, 2006**

As Correctional Officers, we are exposed to bodily fluids during the course of our duties and at times are assaulted by prisoners with bodily fluids. It is one thing to be in an environment in which the chance of being assaulted is an inherited risk and something we train for, but being the innocent victim of an assault by a person with HIV or AIDS is hard to fathom! Not only does the victim have to deal with being assaulted they now have to face the uncertainty of being infected with a deadly virus. Persons who commit a crime like this needs to be prosecuted to the fullest extent of the law. ACOA applauds Representative Lynn and his staff for protecting Alaskan citizens from assaults of this nature and we ask that you join them in their efforts!

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HIV-Specific Criminal Transmission Laws

Every state and territory has generic criminal statutes that could apply to conduct that exposed others to HIV. This section presents the results of research to document the existence of more HIV specific statutes. Twenty-seven states and selected possessions have some type of law that specifically criminalizes the exposure or transmission of HIV in their jurisdictions.

HIV-Specific Exposure/Transmission Laws, US and Selected Possessions, 2000



HIV-Specific Exposure or Transmission Laws

24 states have adopted statutes that criminalize exposure or transmission of HIV generally or specifically by at least some form of specific behavior such as spitting, donating blood, or sexual intercourse.

- [Arkansas \(AR\)](#)
- [California \(CA\)](#)
- [Florida \(FL\)](#)
- [Georgia \(GA\)](#)
- [Idaho \(ID\)](#)
- [Illinois \(IL\)](#)
- [Indiana \(IN\)](#)
- [Iowa \(IA\)](#)
- [Kentucky \(KY\)](#)
- [Louisiana \(LA\)](#)
- [Maryland \(MD\)](#)
- [Michigan \(MI\)](#)
- [Missouri \(MO\)](#)
- [Nevada \(NV\)](#)
- [New Jersey \(NJ\)](#)
- [North Dakota \(ND\)](#)
- [Ohio \(OH\)](#)

- [Oklahoma \(OK\)](#)
- [Pennsylvania \(PA\)](#)
- [South Carolina \(SC\)](#)
- [South Dakota \(SD\)](#)
- [Tennessee \(TN\)](#)
- [Virginia \(VA\)](#)
- [Washington \(WA\)](#)

Other HIV-Specific Crimes or Sentence Enhancements

15 states have passed statutes that deal specifically with acts that are already crimes, including prostitution, rape or assaulting a peace officer, but are punished separately or more severely when the perpetrator knows he or she has HIV.

- [California \(CA\)](#)
- [Colorado \(CO\)](#)
- [Florida \(FL\)](#)
- [Georgia \(GA\)](#)
- [Indiana \(IN\)](#)
- [Kentucky \(KY\)](#)
- [Louisiana \(LA\)](#)
- [Nevada \(NV\)](#)
- [Ohio \(OH\)](#)
- [Oklahoma \(OK\)](#)
- [Pennsylvania \(PA\)](#)
- [South Carolina \(SC\)](#)
- [Tennessee \(TN\)](#)
- [Utah \(UT\)](#)
- [Wisconsin \(WI\)](#)

HIV-Specific Statutes Search

Use this form to search the contents of the HIV-specific state statutes.

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Alaska has no HIV-specific laws that criminalize HIV exposure or relate to other HIV-specific crimes and/or sentence enhancements.

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STD/Communicable Disease Criminal Laws

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Alaska has no public health laws that criminalize exposure to communicable or sexually transmitted diseases.

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Sodomy Statutes

Since the beginning of the AIDS epidemic, Alaska has had no laws that criminalize sodomy. In general, sodomy laws criminalize oral or anal sex, between consenting adults even in the privacy of their homes. As recently as the early 1960s, all 50 states had some sort of criminal law that outlawed consensual sodomy.

Web Sites of Interest

- [Alaska Court System](#)
- [Alaska Legislature](#)
- [Alaska Section of Epidemiology](#)
- [Alaska Statutes](#)
- [Department of Health and Social Services](#)
- [Division of Public Health](#)
- [State of Alaska](#)

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HIV/AIDS Legislation

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Overview

In recent years, most states have enacted laws concerning the testing of criminal offenders and their victims for infection and transmission of the *human immunodeficiency virus* (HIV). HIV causes *acquired immune deficiency syndrome*, (AIDS). Such laws were passed in response to the recognized possibility of the transmission of

HIV/AIDS during sexual assault or abuse, as well as other crimes where an exchange of bodily fluids takes place. They were also the result of a new understanding of the added trauma a sexual assault victim endures when faced with the possibility of having contracted a terminal disease. In a study conducted by the National Center for Victims of Crime and the National Crime Victims Research and Treatment Center, 40 percent (40%) of sexual assault victims indicated that the fear of contracting HIV/AIDS was a major concern. ⁽¹⁾

In general, crime victim-related HIV laws require the testing of alleged and convicted sex offenders for HIV/AIDS, and the disclosure of the results of the offenders' tests to the victims. By 1997, 45 states and the District of Columbia had adopted laws requiring HIV/AIDS testing of sexual offenders, if certain conditions are met, in cases involving sexual penetration or other exposure to an offender's bodily fluids. Some of those apply to pre-conviction testing, others to post-conviction testing, and some states have laws that apply both pre-conviction and post-conviction.

Thirty-six states have laws that apply to convicted adult offenders or adjudicated juvenile offenders in sexual assault cases:

- Alabama
- Arkansas;
- Arizona;
- California;
- Connecticut;
- District of Columbia;
- Florida;
- Georgia;
- Illinois;
- Indiana;
- Iowa;
- Kansas;
- Kentucky;
- Louisiana;
- Maine;
- Maryland;
- Michigan;
- Minnesota;
- Mississippi;
- Missouri;
- Montana;
- Nebraska;
- New Hampshire;
- New Jersey;
- New Mexico;
- New York;
- Oregon;
- Pennsylvania;
- Rhode Island (mandatory for persons sentenced to prison);

- South Carolina;
- Utah;
- Virginia;
- Washington;
- West Virginia;
- Wisconsin; and
- Wyoming.

Eighteen of the states require testing of those arrested or indicted for an offense:

- Alaska;
- Arizona;
- Colorado;
- Delaware;
- Florida;
- Idaho;
- Kansas;
- Louisiana;
- Michigan;
- Nevada;
- New Jersey;
- North Carolina;
- North Dakota;
- Ohio;
- Oklahoma;
- Tennessee;
- Virginia; and
- Wisconsin.

Some states require testing both upon arrest and upon conviction, or make testing at one point discretionary and the other mandatory. South Dakota and Texas do not require testing at any stage, but give courts discretion to order testing at the pre-conviction stage.

In most states, the victim must request that the offender be tested. In some states the victim petitions the court directly; in others, the prosecutor files a petition at the request of the victim. Most of the laws mandating the testing of offenders before conviction require a finding of probable cause that the defendant committed the offense, and that the circumstances of the offense resulted in significant exposure of the victim to the semen or other bodily fluids of the offender, placing the victim at risk of transmission of HIV/AIDS.

Even where a state does not have a law specifically relating to the testing of sex offenders, it may have a law that permits any person to seek a court order for disclosure of another person's *confidential* HIV/AIDS information. The individual seeking the information must be able to demonstrate a compelling need for access to the information.

In nearly every state that allows disclosure of the test results to the victim, where the victim is a minor the information is disclosed to the parents or guardian. Often, in cases where the victim is incompetent, the law specifies that the results shall be disclosed to the victim's guardian. The law may permit the victim to disclose the matter to his or her spouse or sexual partner, or to his or her physician or counselor. Alaska states that the information shall be confidential, but may be used by the victim in any subsequent civil action. ⁽²⁾ Mississippi requires that the victim and the victim's spouse be notified of the test results. ⁽³⁾

Laws may provide for counseling of the victim, but these vary. For instance, in California and Iowa, victims are to be counseled regarding the transmission of HIV/AIDS and the nature and reliability of the test prior to requesting a hearing on testing or prior to requesting the test results. Such a requirement lessens the possibility that a victim will have unrealistic expectations about the nature of the test results. States may require that test results only be disclosed to a victim by a trained health professional or counselor. In other states, a victim is to be notified of the results of the test by a criminal justice official, and then may be referred to counseling on request. Counseling generally also includes referral to health care and support services, as appropriate.

Many of the laws specify the agency that is required to pay for HIV/AIDS testing and counseling, which may include HIV/AIDS testing of the victim. This is often the public health department, but may be the state victim compensation board, or another governmental branch. In several states, the defendant, upon conviction, may be required to reimburse the state for the costs of testing and counseling.

A 1990 Federal law provides that a state will lose a portion of its grant funds if it does not have a law that requires testing of convicted adult or juvenile sex offenders at the request of the victim, as well as counseling and testing of victims. ⁽⁴⁾

At the Federal level, a victim may petition the court for an order requiring pre-conviction HIV testing of a defendant. The law includes provisions for follow-up testing and for confidentiality of the test results ⁽⁵⁾.

It should be emphasized that victims who believe there may have been a transfer of bodily fluids to them by the perpetrator of the crime -- whether by sexual assault or another crime -- should not wait for the offender to be tested, and should not rely solely upon any test of the offender. Instead, victims should be tested themselves at the earliest possible time, and periodically thereafter.

For more information on the laws in your state, please contact the rape crisis center in your area, your local law enforcement or prosecutor's office, your state legislator or Attorney General. You may also want to contact the Centers for Disease Control's **National HIV/AIDS Hotline** and/or the CDC **National AIDS Clearinghouse** for more information, assistance, and referrals. Additional information can also be found in the **INFOLINK** bulletins entitled, *Sexual Assault and HIV/AIDS and Victim Services*.

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For additional information, please contact:

**Centers for Disease Control
National HIV/AIDS Hotline
American Social Health Association**
P.O. Box 13827
Research Triangle Park, NC 27709

(800) 342 - AIDS
(800) 344 - SIDA (Spanish)
(800) 243 - 7889 (TDD)

Provides information 24 hours a day, 7 days a week, about HIV/AIDS and will send free, written information. Makes referrals to any organization/agency that provides information, including legal services, counseling and therapies

**National AIDS Clearinghouse
Centers for Disease Control**
P.O. Box 6003
Rockville, MD 20849
(800) 458 - 5231
(800) 243 - 7012 (TDD)

Distributes a variety of educational materials to the public. Provides expert referrals.

**National Native American
AIDS Prevention Center**
2100 Lakeshore, Suite A
Oakland, CA 94606

(800) 283 - AIDS
(Hours: 8:30am - 1pm; 2pm - 5pm, PST)

National Association of People with AIDS (NAPWA)
1413 K Street, NW
Washington, DC 20005

(202) 898 - 0414
(202) 789 - 2222 (FAX: AIDS information facts on demand)

NAPWA is a nonprofit organization that provides information services, educational resources, national advocacy, and technical assistance for community-based organizations.

End Notes

1. National Center for Victims of Crime and National Crime Victim Research and Treatment Center. (1992). *Rape in America: A Report to the Nation*. Arlington, VA.
2. Alaska Code § 18.15.310.
3. Mississippi Code § 99-19-203.
4. 42 U.S.C. § 3756(f).
5. 42 U.S.C. § 14011.

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Submit Query

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State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
Alabama	Ala. Code § 22-11A-21	Class C Misdemeanor	Any person afflicted with an STD who knowingly transmits, assumes the risk of transmitting, or does any act which will probably or likely transmit such disease to another person is guilty of a class C misdemeanor.
Alaska	N/A		
Arizona	N/A		
Arkansas	Ark. Code Ann. § 5-14-123	Class A Felony	It is a class A felony for a person who knows that he or she has tested positive for HIV to expose another to HIV (1) through the transfer of blood or blood products or (2) by engaging in sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, <i>however slight</i> , of any part of a person's body or of any object into the genital or anal openings of another person's body, without first having informed the other person of the presence of HIV. The emission of semen is not a required element of the crime.
	Ark. Code Ann. § 20-15-903	Class A Misdemeanor	A person who is HIV positive must, prior to receiving any health care services of a physician or dentist, advise such physician or dentist that the person has HIV. Failure to do so is a class A misdemeanor.
California	Health and Safety Code § 120291	Felony	Any person who exposes another to HIV by engaging in unprotected sexual activity (anal or vaginal intercourse without a condom) when the infected person knows at the time of the unprotected sex that he or she is infected with HIV, has not disclosed his or her HIV-positive status, and acts with the specific intent to infect the other person with HIV, is guilty of a felony. A person's knowledge of his or her HIV-positive status, without additional evidence, is not sufficient to prove specific intent.
	Health and Safety Code § 1621.5	Felony	It is a felony for any person who knows that he or she has HIV or AIDS to donate blood, body organs or other tissue, semen, or breast milk to any medical center, breast milk bank or semen bank. Exempted: autologous donations.
	Penal Code § 12022.85	Sentence enhancement	Any person who commits a sexual offense with the knowledge that he or she is infected with HIV at the time of commission shall receive a three-year enhancement for each violation in addition to the sentence provided for the sexual offense itself. Sexual offenses included under this provision are rape, unlawful intercourse with a person under 18 years of age, and rape of a spouse. Sodomy and oral copulation are also included, but under California law these are punishable as sexual offenses only in narrow circumstances, such as when they are accompanied by intoxication, violence, the threat of violence, or when they involve a minor.

Lambda Legal HIV Project 9/9/2002

State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
Colorado	Colo. Rev. Stat. § 18-3-415.5	Sentence Enhancement	If it is proven beyond a reasonable doubt that a person had notice of his or her HIV infection prior to the date that he or she committed a sexual offense, the judge shall sentence said person to a mandatory term of incarceration of at least three times the upper limit of the presumptive range for the level of offense committed, up to the remainder of the person's life. <i>See also</i> Colo Rev. Stat. § 16-13-80A.
	Colo. Rev. Stat. § 18-7-205.7	Class 6 Felony	Any person with knowledge of being infected with HIV who patronizes a prostitute is guilty of a class 6 felony. Patronizing a prostitute means engaging in an act of sexual intercourse or of deviate sexual conduct with a prostitute. This law does not apply to spouses. <i>See</i> Colo. Rev. Stat. § 18-7-205.
	Colo. Rev. Stat. § 18-7-201.7	Class 5 Felony	Any person who, in exchange for money or any other thing of value, performs or offers or agrees to perform any act of sexual intercourse, oral sex, masturbation or anal intercourse and does so having tested positive for HIV, is guilty of a class 5 felony.
Connecticut	N/A		
Delaware	Del. Code Ann. tit. 16 § 2801	Class E Felony	For the purposes of (1) artificial insemination or (2) cornea, bone, organ or tissue transplantation, transfusion or injection, no person may knowingly, recklessly or intentionally use the semen, corneas, bones, organs or other human tissue of a donor who has tested positive for exposure to HIV or any other identified causative agent of AIDS.
District of Columbia	N/A		
Florida	Fla. Stat. Ann. § 384.24	N/A	It is unlawful for any person who has HIV (or other STDs listed in the statute) , knowing of such infection and having been informed that he or she may communicate the disease to others through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of HIV (or the STD) and has consented to the sexual intercourse.
	Fla. Stat. Ann. § 381.0041	Third Degree Felony	Any person who has HIV, who knows he or she is infected and who has been informed that he or she may communicate the disease by donating blood, organs or human tissues who donates blood, organs or human tissue is guilty of a felony of the third degree.
	Fla. Stat. Ann. § 381.0041	First Degree Misdemeanor	Any person (i.e. health care worker) who fails to test the blood, plasma, organs, skin or other human tissue which is to be transfused or transplanted is guilty of a misdemeanor in the first degree.

Lambda Legal HIV Project 9/9/2002

State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
Florida (contd.)	Fla. Stat. Ann. § 796.08	Third Degree Felony	A person who commits prostitution, offers to commit prostitution or, by engaging in sexual activity likely to transmit HIV, procures another for prostitution, and who tested positive for HIV before the crime and knew or had been informed of the test result and of the possibility of transmission to others through sexual activity commits criminal transmission of HIV.
	Fla. Stat. Ann. § 775.0877	Third Degree Felony	A person who pleads guilty or nolo contendere to or is convicted of one of the crimes listed in subsection (1) of this statute, who subsequently tests positive for HIV and is informed of that test result, and who then commits one of the crimes listed in subsection (1) <i>again</i> is guilty of criminal transmission of HIV, a felony of the third degree. This is punishable by any penalty provided by law for the subsection (1) offense committed; the court may also require an offender to serve a term of criminal quarantine community control. The offenses listed in subsection (1) include assault, battery, incest, child abuse, abuse of the elderly, sexual performance by minors, prostitution, and donation of contaminated blood.
Georgia	Ga. Code Ann. § 16-5-60	Felony	Any person who knows that he or she is HIV infected is guilty of a felony if he or she, without disclosing his or her HIV status, (1) has sexual intercourse including oral sex, with another person (2) knowingly shares a hypodermic needle or syringe with another person, (3) offers or consents to perform an act of sexual intercourse for money, (4) solicits another to perform or submit to an act of sodomy for money, or (5) donates blood or body tissue.
	Ga. Code Ann. § 44-5-151	Misdemeanor	Health care providers and others who work with donated human blood, body parts and tissues that may carry HIV are required to test the donor or the donated bodily materials for HIV, and, if the test is positive, to dispose of the materials or make them available for medical research, but not make them available for use in the body of another human being. Violation of this requirement is a misdemeanor.
Hawaii	N/A		
Idaho	Idaho Code § 39-608	Felony	Any person who exposes another in any manner with the intent to infect or, knowing that he or she has HIV or AIDS, transfers or attempts to transfer any of his or her body fluid, tissue or organs to another person is guilty of a felony and shall be punished by imprisonment in the state prison for a period not to exceed 15 years, by a fine not in excess of \$5000, or both. It is an affirmative defense that the sexual activity took place between consenting adults after full disclosure by the accused of the risk of HIV transmission. It is also an affirmative defense that the transfer of body fluid, tissue or organs occurred after advice from a licensed physician that the accused was noninfectious.

State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
Illinois	720 Ill. Comp. Stat § 5/12-16.2	Class 2 Felony	A person commits criminal transmission of HIV when he or she, knowing that he or she is infected with HIV (1) engages in contact with another person involving the exposure of the body of one person to a bodily fluid of another in a manner that could result in HIV transmission (2) transfers, donates or provides his or her blood, tissue, semen, organs or other potentially infectious body fluids for administration to another person, or (3) in any way transfers to another any nonsterile IV or intramuscular drug paraphernalia. The actual transmission of HIV is not a required element of this crime. It is an affirmative defense that the person exposed knew that the infected person was infected with HIV, knew that the action could result in infection, and consented with that knowledge.
	20 Ill. Comp. Stat. § 2310 / § 2310-325	Class A Misdemeanor	In performing the technique of human artificial insemination, no person shall intentionally, knowingly, recklessly, or negligently use the semen of a donor who has not been tested for HIV or who has tested positive for HIV or any other identified causative agent of AIDS.
	20 Ill. Comp. Stat. ? 2310 / 2310-330	Class 4 Felony	No person may intentionally, knowingly, recklessly, or negligently use the semen, corneas, bones, organs or other human tissue of a donor unless these bodily materials have been tested for HIV. No person may intentionally, knowingly, recklessly, or negligently use any of these bodily materials if the donor has tested positive for HIV or other identified causative agents of AIDS. Violation of these prohibitions is a class 4 felony. There is an exception to the testing requirement when an attending physician deems that the life of a recipient of the human material would be jeopardized by delays caused by the HIV testing. ?Human tissue? does not include whole blood or its component parts.
Indiana	Ind. Code § 35-42-1-7	Class C Felony, Class A Felony	A person who recklessly, knowingly, or intentionally donates, sells or transfers blood, a blood component, or semen for artificial insemination that contains HIV commits ?transferring contaminated body fluids.? a class C felony. However, the offense is a class A felony if it results in the transmission of HIV to any person other than the defendant. These provisions do not apply to a person who, for reasons of privacy, donates blood to a blood center after the person has notified the blood center that the blood must be disposed of. Nor do the provisions apply to those that transfer HIV positive body fluids for research purposes.

State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
Indiana (contd.)	Ind. Code § 35-42-6	Class D Felony, Class C Felony, Class A Felony	A person who knowingly or intentionally in a rude, insolent, or angry manner places (or coerces another to place) blood or another body fluid or waste on a law enforcement or corrections officer identified as such and at that moment on duty commits battery by body waste, a class D Felony. The offense is a class C felony if the person knew or recklessly failed to know that the blood, fluid or body waste was infected with HIV. The offense is a class A felony if the person knew or recklessly failed to know that the blood, fluid or body waste was infected with HIV and the offense results in the transmission of HIV.
	Ind. Code § 35 42-2-6	Class A Misdemeanor, Class D Felony, Class B Felony	A person who knowingly or intentionally in a rude, an insolent, or an angry manner places human blood, semen, urine or fecal waste on another person commits battery by body waste, a class A misdemeanor. The offense is a class D felony if the person knew recklessly failed to know that the blood, fluid or waste was infected with HIV. It is a class B felony if the person knew or recklessly failed to know that the blood, fluid or waste was infected with HIV and the offense results in the transmission of HIV.
	Ind. Code § 35-45-16-2	Class B Misdemeanor, Class D Felony, Class B Felony	A person who recklessly, knowingly, or intentionally places human blood, semen, urine or fecal waste in a location with the intent that another person will involuntarily touch it commits malicious mischief, a class B misdemeanor. The offense is a class D felony if the person knew or recklessly failed to know that the blood, urine, or waste was infected with HIV. It is a class B felony if the person knew or recklessly failed to know that the waste was infected with HIV and the offense results in the transmission of HIV to the other person.
	Ind. Code § 35-45-16-2	Class A Misdemeanor, Class D Felony, Class B Felony	A person who recklessly, knowingly, or intentionally places human blood, fluid, or fecal waste in a location with the intent that another person will ingest it commits malicious mischief with food, a class A misdemeanor. The offense is a class D felony if the person knew or recklessly failed to know that the blood, fluid or waste was infected with HIV. The offense is a class B felony if the person knew or recklessly failed to know that the blood, fluid or waste was infected with HIV and the offense results in the transmission of HIV to the other person.
	Ind. Code Ann. § 16-41-12-13	Class A Misdemeanor	A blood center shall perform a screening test on a donor's blood and obtain the results before the blood is distributed for use. An employee who is responsible for conducting the screening test who knowingly or intentionally fails to do so commits a class A misdemeanor.

State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
Iowa	Iowa Code § 709C.1	Class B Felony	A person commits criminal transmission of HIV if the person, knowing of his or her HIV positive status, engages in intimate contact with another person, provides blood or bodily fluids for administration to another person, or in any way transfers to another person any nonsterile intravenous or intramuscular drug paraphernalia previously used by the person infected with HIV. ?Intimate contact? means the intentional 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. Actual transmission of HIV is not a necessary element of this crime. It is an affirmative defense that the person exposed to HIV knew of the other person?s HIV positive status, knew that the action of exposure could result in transmission of HIV, and consented to the action of exposure with that knowledge.
Kansas	Kans. Stat. Ann. § 65-6005	Class C Misdemeanor	Any person violating, refusing or neglecting to obey any provision of the rules and regulations adopted by the Secretary of Health for the prevention and control of AIDS shall be guilty of a class C misdemeanor.
Kentucky	Ky. Rev. Stat. Ann § 311.990	Class D Felony	Any person infected with HIV, knowing that he is infected and having been informed that he may communicate the infection by donating human organs, skin or tissues, who donates organs, skin or other human tissue is guilty of a class D felony.
	Ky. Rev. Stat. Ann. § 311.990	Class A Misdemeanor	Any person who fails to test organs, skin or other human tissue which is to be transplanted is guilty of a class A misdemeanor.
	Ky. Rev. Stat. Ann § 529.090	Class D Felony	Any person who commits, offers, agrees to commit or procures another to commit prostitution by engaging in sexual activity in a manner likely to transmit HIV and who, prior to the commission of the crime, had tested positive for HIV and knew or had been informed that he had tested positive and that he could possibly communicate the disease to another through sexual activity is guilty of a class D felony.
Louisiana	La. Rev. Stat. Ann. § 14:43.5	Not specified	No person shall intentionally expose another to any AIDS virus through sexual contact or through any other means or contact without the knowing and lawful consent of the victim. Those who commit this crime shall be fined not more than \$5000, imprisoned with or without hard labor for not more than 10 years, or both. If the victim is a police officer, the fine will be not more than \$6000 and the imprisonment not more than 11 years.
	La. Rev. Stat. Ann. § 40.1062:1	Not specified	A health facility, agency, or physician which violates the provisions on testing donated semen for HIV shall be fined not more than \$2000 and shall be liable for damages in a civil action.

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State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
Maine	N/A		
Maryland	Md. Code. Ann., Health General § 18-601.1	Misdemeanor	A person with HIV who knowingly transfers or attempts to transfer the virus to another individual is guilty of a misdemeanor, punishable by a fine not exceeding \$2,500 or imprisonment not exceeding 3 years, or both.
Massachusetts	N/A		
Michigan	Mich. Comp. Laws Ann. § 14.15 (5210)	Felony	A person who knows that he or she has or has been diagnosed as having AIDS or who knows that he or she is HIV positive, and who engages in sexual penetration with another person without informing that person of his HIV positive status or AIDS condition, is guilty of a felony. ?Sexual penetration? means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, <i>however slight</i> , of any part of a person?s body or of any object into the genital or anal openings of another person?s body. It is irrelevant for purposes of this offense whether semen has been emitted.
Minnesota	N/A		
Mississippi	Miss. Code Ann. § 41-23-29	Misdemeanor	The state board of health has to the power to isolate, quarantine or otherwise confine a person afflicted with an infectious STD. The board may create rules and regulations relevant to this power. Violation of those rules and regulations will be deemed a misdemeanor and is punishable by fine or imprisonment or both.
	Miss. Code Ann. § 41-23-29	Misdemeanor	Any person suspected of being afflicted with an infectious STD may be subject to physical examination and inspection by any representative of the state board of health. Failure or refusal to allow such inspection or examination is a misdemeanor.
Missouri	Mo. Rev. Stat. § 191.677 (2002)	Class B Felony. Class A Felony	It is unlawful for a person knowingly infected with HIV to be (or attempt to be) a donor of blood, blood products, organs, sperm or tissue, except as deemed necessary, for medical research. It is also unlawful for a person knowingly infected with HIV to act in a reckless manner by exposing another person to HIV without the knowledge and consent of that person, in any of the following three manners: (1) through contact with blood, semen or vaginal secretions during oral, anal or vaginal sex, (2) by sharing needles, or (3) by biting another person or purposely doing anything else which causes the HIV infected person?s semen, vaginal secretions, or blood to come into contact with the mucous membranes or nonintact skin of another person. The use of a condom is not a defense. A violation of these provisions is a class B felony, unless the victim contracts HIV from the contact, in which case it is a class A felony.

State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
Missouri (contd.)	Mo. Rev. Stat. § 567.020	Class B Felony	Performing an act of prostitution, which is normally a class B misdemeanor, becomes a class B felony if the prostitute knew prior to performing the act of prostitution that he or she was infected with HIV. The use of a condom is not a defense.
Montana	Mont. Code. Ann. § 50-16-1008	Misdemeanor	A prospective donor of blood, tissue, or an organ must be tested for HIV before the donation takes place, unless the transplantation is necessary to save a patient's life and there is not enough time to perform the HIV test. A knowing or purposeful violation of this provision is a misdemeanor punishable by a fine of up to \$1,000 or imprisonment of up to 6 months, or both.
	Mont. Code. Ann. § 50-18-112 and 50-18-113	Misdemeanor	A person infected with an STD may not knowingly expose another person to infection. Violation of this provision is a misdemeanor.
Nebraska	N/A		
Nevada	Nev. Rev. Stat. Ann. § 201.205	Class B Felony	A person who has received notice that he or she is HIV positive and who intentionally, knowingly or willfully engages in conduct in a manner that is intended to or is likely to transmit the disease to another person is guilty of a category B felony. This is punishable by imprisonment for at least 2 years but not more than 10, or by a fine of not more than \$10,000, or by both fine and imprisonment. It is a defense to this offense that the person subject to exposure to HIV knew that the defendant was HIV positive, knew the conduct could result in exposure to HIV, and consented to engage in that conduct.
	Nev. Rev. Stat. Ann. § 441A.300	Not specified	A person diagnosed with AIDS who fails to comply with a written order of a health authority, or who engages in behavior through which the disease may be spread to others, is subject to confinement by order of a court.
	Nev. Rev. Stat. Ann. § 201.358	Class B Felony	A person who works as a prostitute after testing positive for HIV and after receiving notice of that fact is guilty of a category B felony. Punishment is at least 2 years imprisonment but not more than 10, or a fine of not more than \$10,000, or both fine and imprisonment.
New Hampshire	N/A		
New Jersey	N.J. Stat. Ann. § 2C: 34?5	Crime of the Fourth Degree, Third Degree	A person is guilty of a crime of the fourth degree if, knowing that he or she is infected with an STD, he or she commits an act of sexual penetration without the informed consent of the other person. The crime is of the third degree if the disease is HIV.

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State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
New Mexico	N/A		
New York	N/A		
North Carolina	N/A		
North Dakota	N.D. Cent. Code § 12.1-20-17	Class A Felony	A person who, knowing that he or she has HIV or AIDS or AIDS related symptoms, willfully transfers any of his or her body fluid to another person is guilty of a class A felony. It is an affirmative defense that, if the transfer was by sexual activity, the activity took place between consenting adults after full disclosure of the risk of the activity and with the use of an appropriate prophylactic device.
Ohio	Ohio Rev. Code Ann. § 2903.11	Second Degree Felony, First Degree Felony	No person, with knowledge that the person has tested positive for HIV, shall do any of the following: (1) Engage in sexual conduct with another person without disclosing his or her HIV positive status to the other person prior to engaging in the sexual conduct, (2) Engage in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender is HIV positive, or (3) Engage in sexual conduct with a person under 18 who is not the spouse of the offender. Violation of this provision is felonious assault, a felony of the second degree. If the victim is a peace officer and suffers serious physical harm as a result of the offense, it is a felony in the first degree.
	Ohio Rev. Code Ann. § 2907.25	Third Degree Felony	No person, with knowledge that the person has tested positive for HIV, shall engage in sexual activity for hire. Violation of this provision is a third degree felony.
	Ohio Rev. Code Ann. § 2907.24	Third Degree Felony	No person, with knowledge that the person has tested positive for HIV, shall solicit another person to engage in sexual activity for hire.
	Ohio Rev. Code Ann. § 2907.241	Fifth Degree Felony	A person who commits ?loitering to engage in prostitution? commits a fifth degree felony if the person commits the offense with the knowledge that he or she has tested positive for HIV.
	Ohio Rev. Code Ann. § 2921.38	Third Degree Felony	No person who is confined in a detention facility, with knowledge that the person is HIV positive and with the intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance. Violation of this provision is a third degree felony.

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State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
Ohio (contd.)	Ohio Rev. Code Ann. § 2927.13	Fourth Degree Felony	No person, with knowledge that he or she is HIV positive, shall sell or donate his/her blood, plasma, or a product of his/her blood, if he or she knows or should know the blood, plasma, or product of his/her blood is being accepted for the purpose of transfusion to another individual.
Oklahoma	Okla. Stat. tit. 21, § 1031	Felony	Any person who engages in prostitution with knowledge that they are infected with HIV shall be guilty of a felony punishable by imprisonment for not more than five years.
	Okla. Stat. tit. 21, § 1192.1	Felony	It shall be unlawful for any person, knowing that he or she has AIDS or HIV and with intent to infect another, to engage in conduct reasonably likely to result in the transfer of the person's own blood, semen or vaginal secretions into the bloodstream of another, or through the skin or other membranes of another person. It is a defense that the transmission was in utero, or that the other person consented to the transmission of the blood or fluid with knowledge of the HIV positive status.
	Okla. Stat. tit. 63, § 1-519	Felony	It is a felony for any person, after becoming infected with a venereal disease and before being pronounced cured by a physician in writing, to marry any other person or to expose any other person by the act of copulation or sexual intercourse to such venereal disease.
Oregon	N/A		
Pennsylvania	Pa. Stat. Ann. tit. 18, § 2703	Second Degree Felony	A person who is confined in any jail, prison or correctional institution is guilty of a felony of the second degree if he, while so confined, intentionally or knowingly causes another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material when, at the time of the offense, the person knew, had reason to know or should have known that such fluid or material was infected with a communicable disease, including HIV.
	Pa. Stat. Ann. tit. 18, § 2704	Felony	If a person sentenced to death or life imprisonment intentionally or knowingly causes another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material when, at the time of the offense, the person knew, had reason to know, or should have known that the fluid or material was infected with a communicable disease, including HIV, then the person is guilty of a crime, the penalty for which shall be the same as the penalty for murder of the second degree.
	Pa. Stat. Ann. tit. 18, § 5902	Third Degree Felony	It is a felony in the third degree for a person to engage in prostitution knowing he or she is HIV positive, to promote prostitution of one who is HIV positive, or for a person, knowing him or herself to be HIV positive, to patronize a prostitute.

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State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
Rhode Island	R.I. Gen. Laws § 23-11-1	Not specified	It shall be unlawful for anyone knowingly, while in the infectious condition with an STD, to expose another person to infection. Violation of this provision is punishable by a fine of not more than \$100 or imprisonment for not more than 3 months.
South Carolina	S.C. Code Ann. § 44-29-145	Felony	It is unlawful for a person who knows that he is infected with HIV to: (1) knowingly engage in sexual intercourse (vaginal, anal, or oral) with another person without first informing that person of his HIV infection; (2) knowingly commit an act of prostitution with another person; (3) knowingly sell or donate blood, blood products, semen, tissue, organs, or other body fluids; (4) forcibly engage in sexual intercourse (vaginal, anal or oral) without the consent of the other person, including one's legal spouse; or (5) knowingly share with another person a hypodermic needle, syringe, or both, for the introduction or withdrawal of any substance into or from another person's body without first informing that person that the needle or syringe has been used by someone infected with HIV. Violation of these provisions is a felony punishable by a fine of not more than \$5000 or imprisonment for not more than 10 years.
	S.C. Code Ann. § 24-13-470	Felony	It is unlawful for an inmate, a detainee, a person in custody or a person under arrest to attempt to throw or to throw body fluids (including urine, blood, feces, vomit, saliva or semen) on an employee of a state or local correctional facility, on a state or local law enforcement officer, on a visitor of a correctional facility, or on any other person authorized to be present in a correctional facility in an official capacity. Upon conviction for violating this provision, the offender must be imprisoned not more than 15 years. A sentence under this provision must be served consecutively to any other sentence the inmate is serving. These provisions do not prohibit the prosecution of an inmate for a more serious offense if the inmate is determined to be HIV positive or has another disease that may be transmitted through body fluids.
	S.C. Code Ann. § 44-29-60; S.C. Code Ann. § 44-29-140	Misdemeanor	It is unlawful for anyone infected with an STD, including all venereal diseases, to knowingly expose another to infection. Violation of this provision is a misdemeanor punishable by a fine of not more than \$200 or imprisonment for not more than 30 days.

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State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
South Dakota	S.D. Codified Laws § 22-18-31; § 22-18-33; § 22-18-34	Class 3 Felony	It is unlawful for any person, knowing himself or herself to be infected with HIV, to intentionally expose another person to infection by (1) engaging in sexual intercourse or other intimate physical contact with another person; (2) transferring, donating or providing blood, tissue, semen, organs or other potentially infectious body fluids or parts for administration to another person in any manner that presents a significant risk of HIV infection; (3) transferring in any way to another person any nonsterile intravenous or intramuscular drug paraphernalia that has been contaminated by himself or herself; or by (4) causing blood or semen to come in contact with another person for the purpose of exposing that person to HIV infection. Violation of these provision is a class 3 felony. The actual transmission of HIV is not a required element of this offense. It is an affirmative defense to prosecution, if proven by a preponderance of the evidence, that the person exposed to HIV knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and gave advance consent to the action with that knowledge.
	S.D. Codified Laws § 34-23-1	Class 2 Misdemeanor	It is a class 2 misdemeanor for anyone infected with syphilis, gonorrhea, or chancroid to expose another person to infection. This statute does not cover HIV.
Tennessee	Tenn. Code Ann. § 39-13-109	Class C Felony	It is unlawful for a person, knowing that such person if infected with HIV, to knowingly (1) engage in intimate contact with another; (2) transfer, donate or provide any potentially infectious body fluid or part for administration to another person in an way that presents a significant risk of HIV transmission; or (3) transfer in any way to another any nonsterile intravenous or intramuscular drug paraphernalia. For purposes of this statute, "intimate contact with another" means the exposure of the body of one person to a bodily fluid of another person in any manner that presents a significant risk of HIV transmission. Violation of these provisions is a class C felony. It is an affirmative defense to prosecution under this section that, if proven by a preponderance of the evidence, the person exposed to HIV knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and gave advance consent to the action with that knowledge. The actual transmission of HIV is not a required element of this offense.
	Tenn. Code Ann. § 39-13-516	Class C Felony	A person commits aggravated prostitution when, knowing that such person is infected with HIV, the person engages in sexual activity as a business or is an inmate in a house of prostitution or loiters in a public place for the purpose of being hired to engage in sexual activity. Aggravated prostitution is a class C felony.

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State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
Tennessee (contd.)	Tenn. Code Ann. § 68-10-107; § 68-10-11	Class C Misdemeanor	It is a class C misdemeanor for any person infected with an STD to expose another person to such infection.
Texas	N/A		
Utah	Utah Code Ann. § 76-10-1309	Third Degree Felony (enhanced penalty)	A person who is convicted of prostitution, patronizing a prostitute, or sexual solicitation is guilty of a third degree felony if he or she: (1) is HIV positive, (2) has actual knowledge of his or her HIV positive status, and (3) has received written personal notice of the positive test result from a law enforcement agency.
Vermont	Vt. Stat. Ann. tit. 18, § 1106	Not specified	A person who has sexual intercourse while knowingly infected with gonorrhea or syphilis in a communicable stage shall be imprisoned not more than two years or fined not more than \$500.00, or both. This statute does not include HIV or AIDS.
Virginia	Va. Code Ann. § 18.2-67.4:1	Class 6 Felony	Any person who, knowing he is infected with HIV, syphilis, or hepatitis B, has sexual intercourse, cunnilingus, fellatio, analingus or anal intercourse with the intent to transmit the infection to another person shall be guilty of a class 6 felony.
	Va. Code Ann. § 32.1-289.2	Class 6 Felony	Any person who, knowing that the donor is or was HIV positive, donates or sells, attempts to donate or sell, or consents to the donation or sale of blood or body parts is guilty of a class 6 felony. This provision only applies to those who have been instructed that such blood or body parts may transmit HIV infection. The provision does not apply to the donation of infected blood or body parts for use in research.
Washington	Wash. Rev. Code Ann. § 9A.36.011	Class A Felony	A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm, administers, exposes, or transmits to or causes to be taken by another, poison, HIV, or any other destructive or noxious substance.
	Wash. Rev. Code Ann. § 70.24.140	Gross Misdemeanor	Covers STDs other than HIV. It is unlawful for any person who has a sexually transmitted disease, except HIV infection, when such person knows he or she is infected with such a disease and when such person has been informed that he or she may communicate the disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmitted disease.
West Virginia	N/A		

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State Criminal Statutes on HIV Transmission

State	Statute	Type of Crime	Summary
Wisconsin	Wis. Stat. § 969.322	Sentence enhancement	Maximum term of imprisonment for serious sex crimes may be increased by up to 5 years if all of the following are true: (a) the offender has HIV, an STD, or has tested positive for HIV, (b) the offender knows that he or she has HIV or an STD, and (c) the victim of the serious sex crime was significantly exposed to HIV or STD by the acts constituting the serious sex crime.
Wyoming	N/A		

Notes: This is a reformatted version of the tables in LRS Report 05-158, "Criminal Statutes on Transmission of HIV and AIDS. The information in this table is identical to that of the tables in the original report.
Source: Lambda Legal, <http://www.lambdalegal.org/cgi-bin/iowa/news/resources.html?record=361>

FACTORS IN ~~AGGRAVATION~~ AND MITIGATION

Sec. 12.55.155. Factors in ~~aggravation~~ and mitigation.

(a) Except as provided in (e) of this section, if a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) and

(1) the low end of the presumptive range is four years or less, the court may impose any sentence below the presumptive range for factors in mitigation or ~~may increase~~ the active term of imprisonment up to the maximum term of imprisonment for factors in aggravation;

(2) the low end of the presumptive range is more than four years, the court may impose a sentence below the presumptive range as long as the active term of imprisonment is not less than 50 percent of the low end of the presumptive range for factors in mitigation or ~~may increase~~ the active term of imprisonment up to the maximum term of imprisonment for factors in aggravation.

(b) Sentences under this section that are outside of the presumptive ranges set out in AS 12.55.125 shall be based on the totality of the aggravating and mitigating factors set out in (c) and (d) of this section.

(c) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence above the presumptive range set out in AS 12.55.125 :

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(7) a prior felony conviction considered for the purpose of invoking a presumptive range under this chapter was of a more serious class of offense than the present offense;

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;

(9) the defendant knew that the offense involved more than one victim;

(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(11) the defendant committed the offense under an agreement that the defendant either pay or be paid for the commission of the offense, and the pecuniary incentive was beyond that inherent in the offense itself;

(12) the defendant was on release under AS 12.30.020 or 12.30.040 for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

(13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

(14) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group;

(15) the defendant has three or more prior felony convictions;

(16) the defendant's criminal conduct was designed to obtain substantial pecuniary gain and the risk of prosecution and punishment for the conduct is slight;

(17) the offense was one of a continuing series of criminal offenses committed in furtherance of illegal business activities from which the defendant derives a major portion of the defendant's income;

(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit made up of those living together in the same dwelling as the defendant;

(B) specified in AS 11.41.410 - 11.41.458 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or another victim; or

(C) specified in AS 11.41 that is a crime involving domestic violence and was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence occurred;

(19) the defendant's prior criminal history includes an adjudication as a delinquent for conduct that would have been a felony if committed by an adult;

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction that would be considered a prior felony conviction under AS 17.55.145 (a)(1)(B);

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;

(23) the defendant is convicted of an offense specified in AS 11.71 and

(A) the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise; or

(B) at the time of the conduct resulting in the conviction, the defendant was caring for or assisting in the care of a child under 10 years of age;

(24) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(25) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(26) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance;

(27) the defendant, being 18 years of age or older,

(A) is legally accountable under AS 11.16.110 (2) for the conduct of a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant; or

(B) is aided or abetted in planning or committing the offense by a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant;

(28) the victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;

(29) the defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang;

(30) the defendant is convicted of an offense specified in AS 11.41.410 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to the victim in furtherance of the offense with the intent to make the victim incapacitated; in this paragraph, "incapacitated" has the meaning given in AS 11.41.470 ;

(31) the defendant's prior criminal history includes convictions for five or more crimes in this or another jurisdiction that are class A misdemeanors under the law of this state, or having elements similar to a class A misdemeanor; two or more convictions arising out of a single continuous episode are considered a single conviction; however, an offense is not a part of a continuous episode if committed while attempting to escape or resist arrest or if it is an assault upon a uniformed or otherwise clearly identified peace officer; notice and denial of convictions are governed by AS 12.55.145 (b), (c), and (d);

(32) the offense is a violation of AS 11.41 or AS 11.46.400 and the offense occurred on school grounds, on a school bus, at a school-

sponsored event, or in the administrative offices of a school district if students are educated at that office; in this paragraph,

(A) "school bus" has the meaning given in AS 11.71.900 ;

(B) "school district" has the meaning given in AS 47.07.063 ;

(C) "school grounds" has the meaning given in AS 11.71.900 .

(d) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence below the presumptive range set out in AS 12.55.125 :

(1) the offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim;

(2) the defendant, although an accomplice, played only a minor role in the commission of the offense;

(3) the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but that significantly affected the defendant's conduct;

(4) the conduct of a youthful defendant was substantially influenced by another person more mature than the defendant;

(5) the conduct of an aged defendant was substantially a product of physical or mental infirmities resulting from the defendant's age;

(6) in a conviction for assault under AS 11.41.200 - 11.41.220, the defendant acted with serious provocation from the victim;

(7) except in the case of a crime defined by AS 11.41.410 - 11.41.470, the victim provoked the crime to a significant degree;

(8) the conduct constituting the offense was among the least serious conduct included in the definition of the offense;

(9) before the defendant knew that the criminal conduct had been discovered, the defendant fully compensated or made a good faith effort to fully compensate the victim of the defendant's criminal conduct for any damage or injury sustained;

(10) the defendant was motivated to commit the offense solely by an overwhelming compulsion to provide for emergency necessities for the defendant's immediate family;

(11) after commission of the offense for which the defendant is being sentenced, the defendant assisted authorities to detect, apprehend, or prosecute other persons who committed an offense;

(12) the facts surrounding the commission of the offense and any previous offenses by the defendant establish that the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;

(13) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home;

(16) in a conviction for assault or attempted assault or for homicide or attempted homicide, the defendant acted in response to domestic violence perpetrated by the victim against the defendant and the domestic violence consisted of aggravated or repeated instances of assaultive behavior;

(17) except in the case of an offense defined by AS 11.41 or AS 11.46.400 or a defendant who has previously been convicted of a felony, the defendant, at the time of sentencing, is actively participating in or has successfully completed a state-approved treatment program that is relevant to the offense and that was begun after the offense was committed;

(18) except in the case of an offense defined under AS 11.41 or AS 11.46.400 or a defendant who has previously been convicted of a felony, the defendant committed the offense while suffering from a mental disease or defect as defined in AS 12.47.130 that was insufficient to constitute a complete defense but that significantly affected the defendant's conduct.

(e) If a factor in aggravation is a necessary element of the present offense, or requires the imposition of a sentence within the presumptive range under AS 12.55.125 (c)(2), that factor may not be used to impose a sentence above the high end of the presumptive range. If a factor in mitigation is raised at trial as a defense reducing the offense charged to a lesser included offense, that factor may not be used to impose a sentence below the low end of the presumptive range.

(f) If the state seeks to establish a factor in aggravation at sentencing

(1) under (c)(7), (8), (12), (15), (19), (20), (21), or (31) of this section, or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence; the factors in aggravation listed in this paragraph and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury; all findings must be set out with specificity;

(2) other than one listed in (1) of this subsection, the factor shall be presented to a trial jury under procedures set by the court, unless the defendant waives trial by jury, stipulates to the existence of the factor, or consents to have the factor proven under procedures set out in (1) of this subsection; a factor in aggravation presented to a jury is established if proved beyond a reasonable doubt; written notice of the intent to establish a factor in aggravation must be served on the defendant and filed with the court

(A) 20 days before trial, or at another time specified by the court;

(B) within 48 hours, or at a time specified by the court, if the court instructs the jury about the option to return a verdict for a lesser included offense; or

(C) five days before entering a plea that results in a finding of guilt, or at another time specified by the court.

(g) Voluntary alcohol or other drug intoxication or chronic alcoholism or other drug addiction may not be considered an aggravating or mitigating factor.

(h) In this section, "serious provocation" has the meaning given in AS 11.41.115(f).

SENTENCING AND PROBATION FOR ~~SEXUAL OFFENSES~~

Sec. 12.55.125. Sentences of imprisonment for felonies.

(a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture; or

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an

adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five to eight years;

(2) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven to 11 years;

(3) if the offense is a second felony conviction, 10 to 14 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (i) of this section, 15 to 20 years.

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, one to three years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085 if, as a condition of probation under AS 12.55.086, the defendant is required to serve an active term of imprisonment within the range specified in this paragraph, unless the court finds that a mitigation factor under AS 12.55.155 applies;

(2) if the offense is a first felony conviction, the defendant violated AS 11.41.130, and the victim was a child under 16 years of age, two to four years;

(3) if the offense is a second felony conviction, four to seven years;

(4) if the offense is a third felony conviction, six to 10 years.

(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (4) of this subsection, zero to two years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085, and the court may, as a condition of probation under AS 12.55.036, require the defendant to serve an active term of imprisonment within the range specified in this paragraph;

(2) if the offense is a second felony conviction, two to four years;

(3) if the offense is a third felony conviction, three to five years;

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.20 (a)(15), one to two years.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085

(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d), (e), or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080 below the low end of the presumptive range;

(2) and except as provided in (d)(1) or (e)(1) of this section, imposition of sentence may not be suspended under AS 12.55.085 :

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(i) A defendant convicted of

(1) sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, eight to 12 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 12 to 16 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 15 to 20 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 20 to 30 years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (i) of this section, 25 to 35 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (i) of this section, and the defendant has two prior convictions for sexual felonies, 30 to 40 years;

(2) attempt, conspiracy, or solicitation to commit sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years and shall be sentenced to a definite term within the following

presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175;

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, five to eight years;

(B) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 to 14 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 12 to 16 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 to 20 years;

(E) if the offense is a third felony conviction, does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (I) of this section, 15 to 25 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 20 to 30 years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography may be sentenced to a definite term of imprisonment of not more than 20 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, two to four years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, five to eight years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 10 to 14 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 10 to 14 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 15 to 20 years;

presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175;

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, five to eight years;

(B) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 to 14 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 12 to 16 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 to 20 years;

(E) if the offense is a third felony conviction, does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (I) of this section, 15 to 25 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 20 to 30 years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography may be sentenced to a definite term of imprisonment of not more than 20 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, two to four years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, five to eight years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 10 to 14 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 10 to 14 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 15 to 20 years;

(i) sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 10 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.165, 12.55.175:

(A) if the offense is a first felony conviction, one to two years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, two to five years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, three to six years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, three to six years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, six to 10 years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (i) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving the greater of (A) one-half of the definite term or (B) 30 years. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) *[Repealed, Sec. 32 ch 2 SLA 2005].*

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years when the defendant has been previously convicted of two or more most serious felonies and the prosecuting attorney has filed a notice of intent to seek a definite sentence under this subsection at the

(4) sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 10 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, one to two years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, two to five years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, three to six years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, three to six years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, six to 10 years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (l) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving the greater of (A) one-half of the definite term or (B) 30 years. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) *[Repealed, Sec. 32 ch 2 SLA 2005].*

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years when the defendant has been previously convicted of two or more most serious felonies and the prosecuting attorney has filed a notice of intent to seek a definite sentence under this subsection at the

time the defendant was arraigned in superior court. If a defendant is sentenced to a definite term under this subsection,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080 ;

(2) imposition of sentence may not be suspended under AS 12.55.085 ;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section.

(n) In imposing a sentence within a presumptive range under (c), (d), (e), or (i) of this section, the total term, made up of the active term of imprisonment plus any suspended term of imprisonment, must fall within the presumptive range, and the active term of imprisonment may not fall below the lower end of the presumptive range.

SEXUAL OFFENSES IN ALASKA STATUTES

Sec. 11.41.410. Sexual assault in the first degree.

(a) An offender commits the crime of sexual assault in the first degree if

(1) the offender engages in sexual penetration with another person without consent of that person;

(2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;

(3) the offender engages in sexual penetration with another person

(A) who the offender knows is mentally incapable; and

(B) who is in the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the state; or

(4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and

(A) the offender is a health care worker; and

(B) the offense takes place during the course of professional treatment of the victim.

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 11.41.420. Sexual assault in the second degree.

(a) An offender commits the crime of sexual assault in the second degree if

(1) the offender engages in sexual contact with another person without consent of that person;

(2) the offender engages in sexual contact with a person

(A) who the offender knows is mentally incapable; and

(B) who is in the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the state;

(3) the offender engages in sexual penetration with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed; or

(4) the offender engages in sexual contact with a person who the offender knows is unaware that a sexual act is being committed and

(A) the offender is a health care worker; and

(B) the offense takes place during the course of professional treatment of the victim.

(b) Sexual assault in the second degree is a class B felony.

Sec. 11.41.425. Sexual assault in the third degree.

(a) An offender commits the crime of sexual assault in the third degree if the offender

(1) engages in sexual contact with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed;

(2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of

Corrections to serve a term of imprisonment or period of temporary commitment; or

(3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person.

(b) Sexual assault in the third degree is a class C felony.

Sec. 11.41.427. Sexual assault in the fourth degree.

(a) An offender commits the crime of sexual assault in the fourth degree if

(1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; or

(2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person.

(b) Sexual assault in the fourth degree is a class A misdemeanor.

Sec. 11.41.430. Sexual assault in the third degree. [Repealed. Sec. 10 ch 78 SLA 1983. For current law, see AS 11.41.420 (a)(2)].

Repealed or Renumbered

Sec. 11.41.432. Defenses.

(a) It is a defense to a crime charged under AS 11.41.410 (a)(3), 11.41.420(a)(2), 11.41.420(a)(3), or 11.41.425 that the offender is

(1) mentally incapable; or

(2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.